

109TH CONGRESS } <i>1st Session</i>	HOUSE OF REPRESENTATIVES SENATE	{ REPORT 109-____
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ENERGY POLICY ACT OF 2005

\_\_\_\_\_, 2005.—Ordered to be printed

\_\_\_\_\_, from the committee of conference,  
submitted the following

CONFERENCE REPORT

[To accompany H.R. 6]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6), to ensure jobs for our future with secure, affordable, and reliable energy, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

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

2 (a) SHORT TITLE.—This Act may be cited as the

3 “Energy Policy Act of 2005”.

4 (b) TABLE OF CONTENTS.—The table of contents of

5 this Act is as follows:

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Subtitle A—Federal Programs

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- Sec. 101. Energy and water saving measures in congressional buildings.
- Sec. 102. Energy management requirements.
- Sec. 103. Energy use measurement and accountability.
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- Sec. 105. Energy savings performance contracts.
- Sec. 106. Voluntary commitments to reduce industrial energy intensity.
- Sec. 107. Advanced Building Efficiency Testbed.
- Sec. 108. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete.
- Sec. 109. Federal building performance standards.
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- Sec. 111. Enhancing energy efficiency in management of Federal lands.

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- Sec. 122. Weatherization assistance.
- Sec. 123. State energy programs.
- Sec. 124. Energy efficient appliance rebate programs.
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- Sec. 126. Low income community energy efficiency pilot program.
- Sec. 127. State Technologies Advancement Collaborative.
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- Sec. 132. HVAC maintenance consumer education program.
- Sec. 133. Public energy education program.
- Sec. 134. Energy efficiency public information initiative.
- Sec. 135. Energy conservation standards for additional products.
- Sec. 136. Energy conservation standards for commercial equipment.
- Sec. 137. Energy labeling.
- Sec. 138. Intermittent escalator study.
- Sec. 139. Energy efficient electric and natural gas utilities study.
- Sec. 140. Energy efficiency pilot program.
- Sec. 141. Report on failure to comply with deadlines for new or revised energy conservation standards.

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- Sec. 151. Public housing capital fund.
- Sec. 152. Energy-efficient appliances.
- Sec. 153. Energy efficiency standards.
- Sec. 154. Energy strategy for HUD.

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- Sec. 207. Installation of photovoltaic system.
- Sec. 208. Sugar cane ethanol program.
- Sec. 209. Rural and remote community electrification grants.
- Sec. 210. Grants to improve the commercial value of forest biomass for electric energy, useful heat, transportation fuels, and other commercial purposes.
- Sec. 211. Sense of Congress regarding generation capacity of electricity from renewable energy resources on public lands.

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- Sec. 223. Direct use.
- Sec. 224. Royalties and near-term production incentives.
- Sec. 225. Coordination of geothermal leasing and permitting on Federal lands.
- Sec. 226. Assessment of geothermal energy potential.
- Sec. 227. Cooperative or unit plans.
- Sec. 228. Royalty on byproducts.
- Sec. 229. Authorities of Secretary to readjust terms, conditions, rentals, and royalties.
- Sec. 230. Crediting of rental toward royalty.
- Sec. 231. Lease duration and work commitment requirements.
- Sec. 232. Advanced royalties required for cessation of production.
- Sec. 233. Annual rental.
- Sec. 234. Deposit and use of geothermal lease revenues for 5 fiscal years.
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- Sec. 237. Intermountain West Geothermal Consortium.

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- Sec. 245. Flint Creek hydroelectric project.
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- Sec. 433. Approval of logical mining units.
- Sec. 434. Payment of advance royalties under coal leases.
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- Sec. 1521. Short title.
- Sec. 1522. Leaking underground storage tanks.
- Sec. 1523. Inspection of underground storage tanks.
- Sec. 1524. Operator training.
- Sec. 1525. Remediation from oxygenated fuel additives.
- Sec. 1526. Release prevention, compliance, and enforcement.
- Sec. 1527. Delivery prohibition.
- Sec. 1528. Federal facilities.
- Sec. 1529. Tanks on tribal lands.
- Sec. 1530. Additional measures to protect groundwater.
- Sec. 1531. Authorization of appropriations.
- Sec. 1532. Conforming amendments.
- Sec. 1533. Technical amendments.

18

Subtitle C—Boutique Fuels

Sec. 1541. Reducing the proliferation of boutique fuels.

TITLE XVI—CLIMATE CHANGE

Subtitle A—National Climate Change Technology Deployment

Sec. 1601. Greenhouse gas intensity reducing technology strategies.

Subtitle B—Climate Change Technology Deployment in Developing Countries

Sec. 1611. Climate change technology deployment in developing countries.

TITLE XVII—INCENTIVES FOR INNOVATIVE TECHNOLOGIES

Sec. 1701. Definitions.

Sec. 1702. Terms and conditions.

Sec. 1703. Eligible projects.

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TITLE XVIII—STUDIES

Sec. 1801. Study on inventory of petroleum and natural gas storage.

Sec. 1802. Study of energy efficiency standards.

Sec. 1803. Telecommuting study.

Sec. 1804. LIHEAP Report.

Sec. 1805. Oil bypass filtration technology.

Sec. 1806. Total integrated thermal systems.

Sec. 1807. Report on energy integration with Latin America.

Sec. 1808. Low-volume gas reservoir study.

Sec. 1809. Investigation of gasoline prices.

Sec. 1810. Alaska natural gas pipeline.

Sec. 1811. Coal bed methane study.

Sec. 1812. Backup fuel capability study.

Sec. 1813. Indian land rights-of-way.

Sec. 1814. Mobility of scientific and technical personnel.

Sec. 1815. Interagency review of competition in the wholesale and retail markets for electric energy.

Sec. 1816. Study of rapid electrical grid restoration.

Sec. 1817. Study of distributed generation.

Sec. 1818. Natural gas supply shortage report.

Sec. 1819. Hydrogen participation study.

Sec. 1820. Overall employment in a hydrogen economy.

Sec. 1821. Study of best management practices for energy research and development programs.

- Sec. 1822. Effect of electrical contaminants on reliability of energy production systems.
- Sec. 1823. Alternative fuels reports.
- Sec. 1824. Final action on refunds for excessive charges.
- Sec. 1825. Fuel cell and hydrogen technology study.
- Sec. 1826. Passive solar technologies.
- Sec. 1827. Study of link between energy security and increases in vehicle miles traveled.
- Sec. 1828. Science study on cumulative impacts of multiple offshore liquefied natural gas facilities.
- Sec. 1829. Energy and water saving measures in congressional buildings.
- Sec. 1830. Study of availability of skilled workers.
- Sec. 1831. Review of Energy Policy Act of 1992 programs.
- Sec. 1832. Study on the benefits of economic dispatch.
- Sec. 1833. Renewable energy on Federal land.
- Sec. 1834. Increased hydroelectric generation at existing Federal facilities.
- Sec. 1835. Split-estate Federal oil and gas leasing and development practices.
- Sec. 1836. Resolution of Federal resource development conflicts in the Powder River Basin.
- Sec. 1837. National security review of international energy requirements.
- Sec. 1838. Used oil re-refining study.
- Sec. 1839. Transmission system monitoring.
- Sec. 1840. Report identifying and describing the status of potential hydropower facilities.

1 **SEC. 2. DEFINITIONS.**

2 Except as otherwise provided, in this Act:

3 (1) DEPARTMENT.—The term “Department”  
4 means the Department of Energy.

5 (2) INSTITUTION OF HIGHER EDUCATION.—

6 (A) IN GENERAL.—The term “institution  
7 of higher education” has the meaning given the  
8 term in section 101(a) of the Higher Education  
9 Act of 1065 (20 U.S.C. 1001(a)).

1 (B) INCLUSION.—The term “institution of  
2 higher education” includes an organization  
3 that—

4 (i) is organized, and at all times  
5 thereafter operated, exclusively for the ben-  
6 efit of, to perform the functions of, or to  
7 carry out the functions of 1 or more orga-  
8 nizations referred to in subparagraph (A);  
9 and

10 (ii) is operated, supervised, or con-  
11 trolled by or in connection with 1 or more  
12 of those organizations.

13 (3) NATIONAL LABORATORY.—The term “Na-  
14 tional Laboratory” means any of the following lab-  
15 oratories owned by the Department:

16 (A) Ames Laboratory.

17 (B) Argonne National Laboratory.

18 (C) Brookhaven National Laboratory.

19 (D) Fermi National Accelerator Labora-  
20 tory.

21 (E) Idaho National Laboratory.

1 (F) Lawrence Berkeley National Labora-  
2 tory.

3 (G) Lawrence Livermore National Labora-  
4 tory.

5 (H) Los Alamos National Laboratory.

6 (I) National Energy Technology Labora-  
7 tory.

8 (J) National Renewable Energy Labora-  
9 tory.

10 (K) Oak Ridge National Laboratory.

11 (L) Pacific Northwest National Labora-  
12 tory.

13 (M) Princeton Plasma Physics Laboratory.

14 (N) Sandia National Laboratories.

15 (O) Savannah River National Laboratory.

16 (P) Stanford Linear Accelerator Center.

17 (Q) Thomas Jefferson National Accel-  
18 erator Facility.

19 (4) SECRETARY.—The term “Secretary” means  
20 the Secretary of Energy.

1           (5) SMALL BUSINESS CONCERN.—The term  
2           “small business concern” has the meaning given the  
3           term in section 3 of the Small Business Act (15  
4           U.S.C. 632).

## 5           **TITLE I—ENERGY EFFICIENCY**

### 6           **Subtitle A—Federal Programs**

#### 7           **SEC. 101. ENERGY AND WATER SAVING MEASURES IN CON-** 8           **GRESSIONAL BUILDINGS.**

9           (a) IN GENERAL.—Part 3 of title V of the National  
10          Energy Conservation Policy Act (42 U.S.C. 8251 et seq.)  
11          is amended by adding at the end the following:

#### 12          **“SEC. 552. ENERGY AND WATER SAVINGS MEASURES IN** 13          **CONGRESSIONAL BUILDINGS.**

14          “(a) IN GENERAL.—The Architect of the Capitol—  
15                 “(1) shall develop, update, and implement a  
16                 cost-effective energy conservation and management  
17                 plan (referred to in this section as the ‘plan’) for all  
18                 facilities administered by Congress (referred to in  
19                 this section as ‘congressional buildings’) to meet the  
20                 energy performance requirements for Federal build-  
21                 ings established under section 543(a)(1); and

1           “(2) shall submit the plan to Congress, not  
2           later than 180 days after the date of enactment of  
3           this section.

4           “(b) PLAN REQUIREMENTS.—The plan shall  
5 include—

6           “(1) a description of the life cycle cost analysis  
7           used to determine the cost-effectiveness of proposed  
8           energy efficiency projects;

9           “(2) a schedule of energy surveys to ensure  
10          complete surveys of all congressional buildings every  
11          5 years to determine the cost and payback period of  
12          energy and water conservation measures;

13          “(3) a strategy for installation of life cycle cost-  
14          effective energy and water conservation measures;

15          “(4) the results of a study of the costs and ben-  
16          efits of installation of submetering in congressional  
17          buildings; and

18          “(5) information packages and ‘how-to’ guides  
19          for each Member and employing authority of Con-  
20          gress that detail simple, cost-effective methods to  
21          save energy and taxpayer dollars in the workplace.

1           “(c) ANNUAL REPORT.—The Architect of the Capitol  
2 shall submit to Congress annually a report on congress-  
3 sional energy management and conservation programs re-  
4 quired under this section that describes in detail—

5           “(1) energy expenditures and savings estimates  
6 for each facility;

7           “(2) energy management and conservation  
8 projects; and

9           “(3) future priorities to ensure compliance with  
10 this section.”.

11          (b) TABLE OF CONTENTS AMENDMENT.—The table  
12 of contents of the National Energy Conservation Policy  
13 Act is amended by adding at the end of the items relating  
14 to part 3 of title V the following new item:

“Sec. 552. Energy and water savings measures in congressional buildings”.

15          (c) REPEAL.—Section 310 of the Legislative Branch  
16 Appropriations Act, 1999 (2 U.S.C. 1815), is repealed.

17 **SEC. 102. ENERGY MANAGEMENT REQUIREMENTS.**

18          (a) ENERGY REDUCTION GOALS.—

19               (1) AMENDMENT.—Section 543(a)(1) of the  
20 National Energy Conservation Policy Act (42 U.S.C.



1       8253(a)(1)) is amended by striking “its Federal  
 2       buildings so that” and all that follows through the  
 3       end and inserting “the Federal buildings of the  
 4       agency (including each industrial or laboratory facil-  
 5       ity) so that the energy consumption per gross square  
 6       foot of the Federal buildings of the agency in fiscal  
 7       years 2006 through 2015 is reduced, as compared  
 8       with the energy consumption per gross square foot  
 9       of the Federal buildings of the agency in fiscal year  
 10      2003, by the percentage specified in the following  
 11      table:

<b>“Fiscal Year</b>	<b>Percentage reduction</b>
2006 .....	2
2007 .....	4
2008 .....	6
2009 .....	8
2010 .....	10
2011 .....	12
2012 .....	14
2013 .....	16
2014 .....	18
2015 .....	20.

12           (2) REPORTING BASELINE.—The energy reduc-  
 13       tion goals and baseline established in paragraph (1)  
 14       of section 543(a) of the National Energy Conserva-  
 15       tion Policy Act (42 U.S.C. 8253(a)(1)), as amended

1 by this subsection, supersede all previous goals and  
2 baselines under such paragraph, and related report-  
3 ing requirements.

4 (b) REVIEW AND REVISION OF ENERGY PERFORM-  
5 ANCE REQUIREMENT.—Section 543(a) of the National  
6 Energy Conservation Policy Act (42 U.S.C. 8253(a)) is  
7 further amended by adding at the end the following:

8 “(3) Not later than December 31, 2014, the Sec-  
9 retary shall review the results of the implementation of  
10 the energy performance requirement established under  
11 paragraph (1) and submit to Congress recommendations  
12 concerning energy performance requirements for fiscal  
13 years 2016 through 2025.”.

14 (c) EXCLUSIONS.—Section 543(c)(1) of the National  
15 Energy Conservation Policy Act (42 U.S.C. 8253(c)(1))  
16 is amended by striking “An agency may exclude” and all  
17 that follows through the end and inserting “(A) An agency  
18 may exclude, from the energy performance requirement  
19 for a fiscal year established under subsection (a) and the  
20 energy management requirement established under sub-

1 section (b), any Federal building or collection of Federal  
2 buildings, if the head of the agency finds that—

3 “(i) compliance with those requirements would  
4 be impracticable;

5 “(ii) the agency has completed and submitted  
6 all federally required energy management reports;

7 “(iii) the agency has achieved compliance with  
8 the energy efficiency requirements of this Act, the  
9 Energy Policy Act of 1992, Executive orders, and  
10 other Federal law; and

11 “(iv) the agency has implemented all prac-  
12 ticable, life cycle cost-effective projects with respect  
13 to the Federal building or collection of Federal  
14 buildings to be excluded.

15 “(B) A finding of impracticability under subpara-  
16 graph (A)(i) shall be based on—

17 “(i) the energy intensiveness of activities car-  
18 ried out in the Federal building or collection of Fed-  
19 eral buildings; or

1           “(ii) the fact that the Federal building or col-  
2           lection of Federal buildings is used in the perform-  
3           ance of a national security function.”.

4           (d) REVIEW BY SECRETARY.—Section 543(c)(2) of  
5           the National Energy Conservation Policy Act (42 U.S.C.  
6           8253(c)(2)) is amended—

7           (1) by striking “impracticability standards” and  
8           inserting “standards for exclusion”;

9           (2) by striking “a finding of impracticability”  
10          and inserting “the exclusion”; and

11          (3) by striking “energy consumption require-  
12          ments” and inserting “requirements of subsections  
13          (a) and (b)(1)”.

14          (e) CRITERIA.—Section 543(c) of the National En-  
15          ergy Conservation Policy Act (42 U.S.C. 8253(c)) is fur-  
16          ther amended by adding at the end the following:

17          “(3) Not later than 180 days after the date of enact-  
18          ment of this paragraph, the Secretary shall issue guide-  
19          lines that establish criteria for exclusions under paragraph  
20          (1).”.

1           (f) RETENTION OF ENERGY AND WATER SAVINGS.—  
2 Section 546 of the National Energy Conservation Policy  
3 Act (42 U.S.C. 8256) is amended by adding at the end  
4 the following new subsection:

5           “(e) RETENTION OF ENERGY AND WATER SAV-  
6 INGS.—An agency may retain any funds appropriated to  
7 that agency for energy expenditures, water expenditures,  
8 or wastewater treatment expenditures, at buildings subject  
9 to the requirements of section 543(a) and (b), that are  
10 not made because of energy savings or water savings. Ex-  
11 cept as otherwise provided by law, such funds may be used  
12 only for energy efficiency, water conservation, or uncon-  
13 ventional and renewable energy resources projects. Such  
14 projects shall be subject to the requirements of section  
15 3307 of title 40, United States Code.”.

16           (g) REPORTS.—Section 548(b) of the National En-  
17 ergy Conservation Policy Act (42 U.S.C. 8258(b)) is  
18 amended—

19           (1) in the subsection heading, by inserting  
20           “THE PRESIDENT AND” before “CONGRESS”; and

1           (2) by inserting “President and” before “Con-  
2       gress”.

3       (h) CONFORMING AMENDMENT.—Section 550(d) of  
4 the National Energy Conservation Policy Act (42 U.S.C.  
5 8258b(d)) is amended in the second sentence by striking  
6 “the 20 percent reduction goal established under section  
7 543(a) of the National Energy Conservation Policy Act  
8 (42 U.S.C. 8253(a)).” and inserting “each of the energy  
9 reduction goals established under section 543(a).”.

10 **SEC. 103. ENERGY USE MEASUREMENT AND ACCOUNT-**  
11 **ABILITY.**

12       Section 543 of the National Energy Conservation  
13 Policy Act (42 U.S.C. 8253) is further amended by adding  
14 at the end the following:

15       “(e) METERING OF ENERGY USE.—

16           “(1) DEADLINE.—By October 1, 2012, in ac-  
17 cordance with guidelines established by the Sec-  
18 retary under paragraph (2), all Federal buildings  
19 shall, for the purposes of efficient use of energy and  
20 reduction in the cost of electricity used in such  
21 buildings, be metered. Each agency shall use, to the

1 maximum extent practicable, advanced meters or ad-  
2 vanced metering devices that provide data at least  
3 daily and that measure at least hourly consumption  
4 of electricity in the Federal buildings of the agency.  
5 Such data shall be incorporated into existing Federal  
6 energy tracking systems and made available to Fed-  
7 eral facility managers.

8 “(2) GUIDELINES.—

9 “(A) IN GENERAL.—Not later than 180  
10 days after the date of enactment of this sub-  
11 section, the Secretary, in consultation with the  
12 Department of Defense, the General Services  
13 Administration, representatives from the meter-  
14 ing industry, utility industry, energy services in-  
15 dustry, energy efficiency industry, energy effi-  
16 ciency advocacy organizations, national labora-  
17 tories, universities, and Federal facility man-  
18 agers, shall establish guidelines for agencies to  
19 carry out paragraph (1).

20 “(B) REQUIREMENTS FOR GUIDELINES.—

21 The guidelines shall—

1 “(i) take into consideration—

2 “(I) the cost of metering and the  
3 reduced cost of operation and mainte-  
4 nance expected to result from meter-  
5 ing;

6 “(II) the extent to which meter-  
7 ing is expected to result in increased  
8 potential for energy management, in-  
9 creased potential for energy savings  
10 and energy efficiency improvement,  
11 and cost and energy savings due to  
12 utility contract aggregation; and

13 “(III) the measurement and  
14 verification protocols of the Depart-  
15 ment of Energy;

16 “(ii) include recommendations con-  
17 cerning the amount of funds and the num-  
18 ber of trained personnel necessary to gath-  
19 er and use the metering information to  
20 track and reduce energy use;



1                   “(iii) establish priorities for types and  
2                   locations of buildings to be metered based  
3                   on cost-effectiveness and a schedule of 1 or  
4                   more dates, not later than 1 year after the  
5                   date of issuance of the guidelines, on which  
6                   the requirements specified in paragraph  
7                   (1) shall take effect; and

8                   “(iv) establish exclusions from the re-  
9                   quirements specified in paragraph (1)  
10                  based on the de minimis quantity of energy  
11                  use of a Federal building, industrial proc-  
12                  ess, or structure.

13                  “(3) PLAN.—Not later than 6 months after the  
14                  date guidelines are established under paragraph (2),  
15                  in a report submitted by the agency under section  
16                  548(a), each agency shall submit to the Secretary a  
17                  plan describing how the agency will implement the  
18                  requirements of paragraph (1), including (A) how  
19                  the agency will designate personnel primarily respon-  
20                  sible for achieving the requirements and (B) dem-  
21                  onstration by the agency, complete with documenta-



1 by section 324A of the Energy Policy and Conserva-  
2 tion Act.

3 “(4) FEMP DESIGNATED PRODUCT.—The term  
4 ‘FEMP designated product’ means a product that is  
5 designated under the Federal Energy Management  
6 Program of the Department of Energy as being  
7 among the highest 25 percent of equivalent products  
8 for energy efficiency.

9 “(5) PRODUCT.—The term ‘product’ does not  
10 include any energy consuming product or system de-  
11 signed or procured for combat or combat-related  
12 missions.

13 “(b) PROCUREMENT OF ENERGY EFFICIENT PROD-  
14 UCTS.—

15 “(1) REQUIREMENT.—To meet the require-  
16 ments of an agency for an energy consuming prod-  
17 uct, the head of the agency shall, except as provided  
18 in paragraph (2), procure—

19 “(A) an Energy Star product; or

20 “(B) a FEMP designated product.

1           “(2) EXCEPTIONS.—The head of an agency is  
2 not required to procure an Energy Star product or  
3 FEMP designated product under paragraph (1) if  
4 the head of the agency finds in writing that—

5           “(A) an Energy Star product or FEMP  
6 designated product is not cost-effective over the  
7 life of the product taking energy cost savings  
8 into account; or

9           “(B) no Energy Star product or FEMP  
10 designated product is reasonably available that  
11 meets the functional requirements of the agen-  
12 cy.

13           “(3) PROCUREMENT PLANNING.—The head of  
14 an agency shall incorporate into the specifications  
15 for all procurements involving energy consuming  
16 products and systems, including guide specifications,  
17 project specifications, and construction, renovation,  
18 and services contracts that include provision of en-  
19 ergy consuming products and systems, and into the  
20 factors for the evaluation of offers received for the  
21 procurement, criteria for energy efficiency that are

1 consistent with the criteria used for rating Energy  
2 Star products and for rating FEMP designated  
3 products.

4 “(c) LISTING OF ENERGY EFFICIENT PRODUCTS IN  
5 FEDERAL CATALOGS.—Energy Star products and FEMP  
6 designated products shall be clearly identified and promi-  
7 nently displayed in any inventory or listing of products  
8 by the General Services Administration or the Defense Lo-  
9 gistics Agency. The General Services Administration or  
10 the Defense Logistics Agency shall supply only Energy  
11 Star products or FEMP designated products for all prod-  
12 uct categories covered by the Energy Star program or the  
13 Federal Energy Management Program, except in cases  
14 where the agency ordering a product specifies in writing  
15 that no Energy Star product or FEMP designated product  
16 is available to meet the buyer’s functional requirements,  
17 or that no Energy Star product or FEMP designated  
18 product is cost-effective for the intended application over  
19 the life of the product, taking energy cost savings into ac-  
20 count.

1       “(d) SPECIFIC PRODUCTS.—(1) In the case of elec-  
2 tric motors of 1 to 500 horsepower, agencies shall select  
3 only premium efficient motors that meet a standard des-  
4 ignated by the Secretary. The Secretary shall designate  
5 such a standard not later than 120 days after the date  
6 of the enactment of this section, after considering the rec-  
7 ommendations of associated electric motor manufacturers  
8 and energy efficiency groups.

9       “(2) All Federal agencies are encouraged to take ac-  
10 tions to maximize the efficiency of air conditioning and  
11 refrigeration equipment, including appropriate cleaning  
12 and maintenance, including the use of any system treat-  
13 ment or additive that will reduce the electricity consumed  
14 by air conditioning and refrigeration equipment. Any such  
15 treatment or additive must be—

16               “(A) determined by the Secretary to be effective  
17       in increasing the efficiency of air conditioning and  
18       refrigeration equipment without having an adverse  
19       impact on air conditioning performance (including  
20       cooling capacity) or equipment useful life;

1           “(B) determined by the Administrator of the  
2           Environmental Protection Agency to be environ-  
3           mentally safe; and

4           “(C) shown to increase seasonal energy effi-  
5           ciency ratio (SEER) or energy efficiency ratio  
6           (EER) when tested by the National Institute of  
7           Standards and Technology according to Department  
8           of Energy test procedures without causing any ad-  
9           verse impact on the system, system components, the  
10          refrigerant or lubricant, or other materials in the  
11          system.

12          Results of testing described in subparagraph (C)  
13          shall be published in the Federal Register for public  
14          review and comment. For purposes of this section, a  
15          hardware device or primary refrigerant shall not be  
16          considered an additive.

17          “(e) REGULATIONS.—Not later than 180 days after  
18          the date of the enactment of this section, the Secretary  
19          shall issue guidelines to carry out this section.”.

20          (b) CONFORMING AMENDMENT.—The table of con-  
21          tents of the National Energy Conservation Policy Act is

1 further amended by inserting after the item relating to  
2 section 552 the following new item:

“Sec. 553. Federal procurement of energy efficient products.”.

3 **SEC. 105. ENERGY SAVINGS PERFORMANCE CONTRACTS.**

4 (a) EXTENSION.—Section 801(c) of the National En-  
5 ergy Conservation Policy Act (42 U.S.C. 8287(c)) is  
6 amended by striking “2006” and inserting “2016”.

7 (b) EXTENSION OF AUTHORITY.—Any energy sav-  
8 ings performance contract entered into under section 801  
9 of the National Energy Conservation Policy Act (42  
10 U.S.C. 8287) after October 1, 2003, and before the date  
11 of enactment of this Act, shall be considered to have been  
12 entered into under that section.

13 **SEC. 106. VOLUNTARY COMMITMENTS TO REDUCE INDUS-**  
14 **TRIAL ENERGY INTENSITY.**

15 (a) DEFINITION OF ENERGY INTENSITY.—In this  
16 section, the term “energy intensity” means the primary  
17 energy consumed for each unit of physical output in an  
18 industrial process.

19 (b) VOLUNTARY AGREEMENTS.—The Secretary may  
20 enter into voluntary agreements with 1 or more persons



1 in industrial sectors that consume significant quantities  
2 of primary energy for each unit of physical output to re-  
3 duce the energy intensity of the production activities of  
4 the persons.

5 (c) GOAL.—Voluntary agreements under this section  
6 shall have as a goal the reduction of energy intensity by  
7 not less than 2.5 percent each year during the period of  
8 calendar years 2007 through 2016.

9 (d) RECOGNITION.—The Secretary, in cooperation  
10 with other appropriate Federal agencies, shall develop  
11 mechanisms to recognize and publicize the achievements  
12 of participants in voluntary agreements under this section.

13 (e) TECHNICAL ASSISTANCE.—A person that enters  
14 into an agreement under this section and continues to  
15 make a good faith effort to achieve the energy efficiency  
16 goals specified in the agreement shall be eligible to receive  
17 from the Secretary a grant or technical assistance, as ap-  
18 propriate, to assist in the achievement of those goals.

19 (f) REPORT.—Not later than each of June 30, 2012,  
20 and June 30, 2017, the Secretary shall submit to Con-  
21 gress a report that—

1 (1) evaluates the success of the voluntary agree-  
2 ments under this section; and

3 (2) provides independent verification of a sam-  
4 ple of the energy savings estimates provided by par-  
5 ticipating firms.

6 **SEC. 107. ADVANCED BUILDING EFFICIENCY TESTBED.**

7 (a) ESTABLISHMENT.—The Secretary, in consulta-  
8 tion with the Administrator of General Services, shall es-  
9 tablish an Advanced Building Efficiency Testbed program  
10 for the development, testing, and demonstration of ad-  
11 vanced engineering systems, components, and materials to  
12 enable innovations in building technologies. The program  
13 shall evaluate efficiency concepts for government and in-  
14 dustry buildings, and demonstrate the ability of next gen-  
15 eration buildings to support individual and organizational  
16 productivity and health (including by improving indoor air  
17 quality) as well as flexibility and technological change to  
18 improve environmental sustainability. Such program shall  
19 complement and not duplicate existing national programs.

20 (b) PARTICIPANTS.—The program established under  
21 subsection (a) shall be led by a university with the ability

1 to combine the expertise from numerous academic fields  
2 including, at a minimum, intelligent workplaces and ad-  
3 vanced building systems and engineering, electrical and  
4 computer engineering, computer science, architecture,  
5 urban design, and environmental and mechanical engi-  
6 neering. Such university shall partner with other univer-  
7 sities and entities who have established programs and the  
8 capability of advancing innovative building efficiency tech-  
9 nologies.

10 (c) AUTHORIZATION OF APPROPRIATIONS.—There  
11 are authorized to be appropriated to the Secretary to carry  
12 out this section \$6,000,000 for each of the fiscal years  
13 2006 through 2008, to remain available until expended.  
14 For any fiscal year in which funds are expended under  
15 this section, the Secretary shall provide  $\frac{1}{3}$  of the total  
16 amount to the lead university described in subsection (b),  
17 and provide the remaining  $\frac{2}{3}$  to the other participants re-  
18 ferred to in subsection (b) on an equal basis.

1 **SEC. 108. INCREASED USE OF RECOVERED MINERAL COM-**  
2 **PONENT IN FEDERALLY FUNDED PROJECTS**  
3 **INVOLVING PROCUREMENT OF CEMENT OR**  
4 **CONCRETE.**

5 (a) AMENDMENT.—Subtitle F of the Solid Waste  
6 Disposal Act (42 U.S.C. 6961 et seq.) is amended by add-  
7 ing at the end the following:

8 “INCREASED USE OF RECOVERED MINERAL COMPONENT  
9 IN FEDERALLY FUNDED PROJECTS INVOLVING PRO-  
10 CUREMENT OF CEMENT OR CONCRETE

11 “SEC. 6005. (a) DEFINITIONS.—In this section:

12 “(1) AGENCY HEAD.—The term ‘agency head’  
13 means—

14 “(A) the Secretary of Transportation; and

15 “(B) the head of any other Federal agency  
16 that, on a regular basis, procures, or provides  
17 Federal funds to pay or assist in paying the  
18 cost of procuring, material for cement or con-  
19 crete projects.

20 “(2) CEMENT OR CONCRETE PROJECT.—The  
21 term ‘cement or concrete project’ means a project

1 for the construction or maintenance of a highway or  
2 other transportation facility or a Federal, State, or  
3 local government building or other public facility  
4 that—

5 “(A) involves the procurement of cement  
6 or concrete; and

7 “(B) is carried out, in whole or in part,  
8 using Federal funds.

9 “(3) RECOVERED MINERAL COMPONENT.—The  
10 term ‘recovered mineral component’ means—

11 “(A) ground granulated blast furnace slag,  
12 excluding lead slag;

13 “(B) coal combustion fly ash; and

14 “(C) any other waste material or byprod-  
15 uct recovered or diverted from solid waste that  
16 the Administrator, in consultation with an  
17 agency head, determines should be treated as  
18 recovered mineral component under this section  
19 for use in cement or concrete projects paid for,  
20 in whole or in part, by the agency head.

21 “(b) IMPLEMENTATION OF REQUIREMENTS.—

1           “(1) IN GENERAL.—Not later than 1 year after  
2           the date of enactment of this section, the Adminis-  
3           trator and each agency head shall take such actions  
4           as are necessary to implement fully all procurement  
5           requirements and incentives in effect as of the date  
6           of enactment of this section (including guidelines  
7           under section 6002) that provide for the use of ce-  
8           ment and concrete incorporating recovered mineral  
9           component in cement or concrete projects.

10           “(2) PRIORITY.—In carrying out paragraph (1),  
11           an agency head shall give priority to achieving great-  
12           er use of recovered mineral component in cement or  
13           concrete projects for which recovered mineral compo-  
14           nents historically have not been used or have been  
15           used only minimally.

16           “(3) FEDERAL PROCUREMENT REQUIRE-  
17           MENTS.—The Administrator and each agency head  
18           shall carry out this subsection in accordance with  
19           section 6002.

20           “(c) FULL IMPLEMENTATION STUDY.—

1           “(1) IN GENERAL.—The Administrator, in co-  
2           operation with the Secretary of Transportation and  
3           the Secretary of Energy, shall conduct a study to de-  
4           termine the extent to which procurement require-  
5           ments, when fully implemented in accordance with  
6           subsection (b), may realize energy savings and envi-  
7           ronmental benefits attainable with substitution of re-  
8           covered mineral component in cement used in ce-  
9           ment or concrete projects.

10           “(2) MATTERS TO BE ADDRESSED.—The study  
11           shall—

12                   “(A) quantify—

13                           “(i) the extent to which recovered  
14                           mineral components are being substituted  
15                           for Portland cement, particularly as a re-  
16                           sult of procurement requirements; and

17                           “(ii) the energy savings and environ-  
18                           mental benefits associated with the substi-  
19                           tution;

20                   “(B) identify all barriers in procurement  
21                   requirements to greater realization of energy

1 savings and environmental benefits, including  
2 barriers resulting from exceptions from the law;  
3 and

4 “(C)(i) identify potential mechanisms to  
5 achieve greater substitution of recovered min-  
6 eral component in types of cement or concrete  
7 projects for which recovered mineral compo-  
8 nents historically have not been used or have  
9 been used only minimally;

10 “(ii) evaluate the feasibility of establishing  
11 guidelines or standards for optimized substi-  
12 tution rates of recovered mineral component in  
13 those cement or concrete projects; and

14 “(iii) identify any potential environmental  
15 or economic effects that may result from great-  
16 er substitution of recovered mineral component  
17 in those cement or concrete projects.

18 “(3) REPORT.—Not later than 30 months after  
19 the date of enactment of this section, the Adminis-  
20 trator shall submit to Congress a report on the  
21 study.



1           “(d) ADDITIONAL PROCUREMENT REQUIREMENTS.—  
2 Unless the study conducted under subsection (c) identifies  
3 any effects or other problems described in subsection  
4 (c)(2)(C)(iii) that warrant further review or delay, the Ad-  
5 ministrator and each agency head shall, not later than 1  
6 year after the date on which the report under subsection  
7 (c)(3) is submitted, take additional actions under this Act  
8 to establish procurement requirements and incentives that  
9 provide for the use of cement and concrete with increased  
10 substitution of recovered mineral component in the con-  
11 struction and maintenance of cement or concrete  
12 projects—

13                   “(1) to realize more fully the energy savings  
14           and environmental benefits associated with increased  
15           substitution; and

16                   “(2) to eliminate barriers identified under sub-  
17           section (c)(2)(B).

18           “(e) EFFECT OF SECTION.—Nothing in this section  
19 affects the requirements of section 6002 (including the  
20 guidelines and specifications for implementing those re-  
21 quirements).”.

1 (b) CONFORMING AMENDMENT.—The table of con-  
2 tents of the Solid Waste Disposal Act is amended by add-  
3 ing after the item relating to section 6004 the following:

“Sec. 6005. Increased use of recovered mineral component in federally funded  
projects involving procurement of cement or concrete.”.

4 **SEC. 109. FEDERAL BUILDING PERFORMANCE STANDARDS.**

5 Section 305(a) of the Energy Conservation and Pro-  
6 duction Act (42 U.S.C. 6834(a)) is amended—

7 (1) in paragraph (2)(A), by striking “CABO  
8 Model Energy Code, 1992 (in the case of residential  
9 buildings) or ASHRAE Standard 90.1–1989” and  
10 inserting “the 2004 International Energy Conserva-  
11 tion Code (in the case of residential buildings) or  
12 ASHRAE Standard 90.1–2004”; and

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

14 “(3)(A) Not later than 1 year after the date of enact-  
15 ment of this paragraph, the Secretary shall establish, by  
16 rule, revised Federal building energy efficiency perform-  
17 ance standards that require that—

18 “(i) if life-cycle cost-effective for new Federal  
19 buildings—

1           “(I) the buildings be designed to achieve  
2           energy consumption levels that are at least 30  
3           percent below the levels established in the  
4           version of the ASHRAE Standard or the Inter-  
5           national Energy Conservation Code, as appro-  
6           priate, that is in effect as of the date of enact-  
7           ment of this paragraph; and

8           “(II) sustainable design principles are ap-  
9           plied to the siting, design, and construction of  
10          all new and replacement buildings; and

11          “(ii) if water is used to achieve energy effi-  
12          ciency, water conservation technologies shall be ap-  
13          plied to the extent that the technologies are life-cycle  
14          cost-effective.

15          “(iii) Not later than 1 year after the date of approval  
16          of each subsequent revision of the ASHRAE Standard or  
17          the International Energy Conservation Code, as appro-  
18          priate, the Secretary shall determine, based on the cost-  
19          effectiveness of the requirements under the amendment,  
20          whether the revised standards established under this para-  
21          graph should be updated to reflect the amendment.

1       “(iv) In the budget request of the Federal agency for  
2 each fiscal year and each report submitted by the Federal  
3 agency under section 548(a) of the National Energy Con-  
4 servation Policy Act (42 U.S.C. 8258(a)), the head of each  
5 Federal agency shall include—

6               “(v) a list of all new Federal buildings owned,  
7 operated, or controlled by the Federal agency; and

8               “(vi) a statement specifying whether the Fed-  
9 eral buildings meet or exceed the revised standards  
10 established under this paragraph.”.

11 **SEC. 110. DAYLIGHT SAVINGS.**

12       (a) AMENDMENT.—Section 3(a) of the Uniform Time  
13 Act of 1966 (15 U.S.C. 260a(a)) is amended—

14               (1) by striking “first Sunday of April” and in-  
15 serting “second Sunday of March”; and

16               (2) by striking “last Sunday of October” and  
17 inserting “first Sunday of November”.

18       (b) EFFECTIVE DATE.—Subsection (a) shall take ef-  
19 fect 1 year after the date of enactment of this Act or  
20 March 1, 2007, whichever is later.

1 (c) REPORT TO CONGRESS.—Not later than 9  
2 months after the effective date stated in subsection (b),  
3 the Secretary shall report to Congress on the impact of  
4 this section on energy consumption in the United States.

5 (d) RIGHT TO REVERT.—Congress retains the right  
6 to revert the Daylight Saving Time back to the 2005 time  
7 schedules once the Department study is complete.

8 **SEC. 111. ENHANCING ENERGY EFFICIENCY IN MANAGE-**  
9 **MENT OF FEDERAL LANDS.**

10 (a) SENSE OF THE CONGRESS.—It is the sense of the  
11 Congress that Federal agencies should enhance the use of  
12 energy efficient technologies in the management of natural  
13 resources.

14 (b) ENERGY EFFICIENT BUILDINGS.—To the extent  
15 practicable, the Secretary of the Interior, the Secretary  
16 of Commerce, and the Secretary of Agriculture shall seek  
17 to incorporate energy efficient technologies in public and  
18 administrative buildings associated with management of  
19 the National Park System, National Wildlife Refuge Sys-  
20 tem, National Forest System, National Marine Sanc-

1 tuaries System, and other public lands and resources man-  
2 aged by the Secretaries.

3 (c) ENERGY EFFICIENT VEHICLES.—To the extent  
4 practicable, the Secretary of the Interior, the Secretary  
5 of Commerce, and the Secretary of Agriculture shall seek  
6 to use energy efficient motor vehicles, including vehicles  
7 equipped with biodiesel or hybrid engine technologies, in  
8 the management of the National Park System, National  
9 Wildlife Refuge System, National Forest System, National  
10 Marine Sanctuaries System, and other public lands and  
11 resources managed by the Secretaries.

12 **Subtitle B—Energy Assistance and**  
13 **State Programs**

14 **SEC. 121. LOW INCOME HOME ENERGY ASSISTANCE PRO-**  
15 **GRAM.**

16 (a) AUTHORIZATION OF APPROPRIATIONS.—Section  
17 2602(b) of the Low-Income Home Energy Assistance Act  
18 of 1981 (42 U.S.C. 8621(b)) is amended by striking “and  
19 \$2,000,000,000 for each of fiscal years 2002 through  
20 2004” and inserting “and \$5,100,000,000 for each of fis-  
21 cal years 2005 through 2007”.

1 (b) RENEWABLE FUELS.—The Low-Income Home  
2 Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.)  
3 is amended by adding at the end the following new section:

4 “RENEWABLE FUELS

5 “SEC. 2612. In providing assistance pursuant to this  
6 title, a State, or any other person with which the State  
7 makes arrangements to carry out the purposes of this title,  
8 may purchase renewable fuels, including biomass.”.

9 (c) REPORT TO CONGRESS.—The Secretary shall re-  
10 port to Congress on the use of renewable fuels in providing  
11 assistance under the Low-Income Home Energy Assist-  
12 ance Act of 1981 (42 U.S.C. 8621 et seq.).

13 **SEC. 122. WEATHERIZATION ASSISTANCE.**

14 (a) AUTHORIZATION OF APPROPRIATIONS.—Section  
15 422 of the Energy Conservation and Production Act (42  
16 U.S.C. 6872) is amended by striking “for fiscal years  
17 1999 through 2003 such sums as may be necessary” and  
18 inserting “\$500,000,000 for fiscal year 2006,  
19 \$600,000,000 for fiscal year 2007, and \$700,000,000 for  
20 fiscal year 2008”.

1 (b) ELIGIBILITY.—Section 412(7) of the Energy  
2 Conservation and Production Act (42 U.S.C. 6862(7)) is  
3 amended by striking “125 percent” both places it appears  
4 and inserting “150 percent”.

5 **SEC. 123. STATE ENERGY PROGRAMS.**

6 (a) STATE ENERGY CONSERVATION PLANS.—Section  
7 362 of the Energy Policy and Conservation Act (42 U.S.C.  
8 6322) is amended by inserting at the end the following  
9 new subsection:

10 “(g) The Secretary shall, at least once every 3 years,  
11 invite the Governor of each State to review and, if nec-  
12 essary, revise the energy conservation plan of such State  
13 submitted under subsection (b) or (e). Such reviews should  
14 consider the energy conservation plans of other States  
15 within the region, and identify opportunities and actions  
16 carried out in pursuit of common energy conservation  
17 goals.”.

18 (b) STATE ENERGY EFFICIENCY GOALS.—Section  
19 364 of the Energy Policy and Conservation Act (42 U.S.C.  
20 6324) is amended to read as follows:



1                   “STATE ENERGY EFFICIENCY GOALS

2           “SEC. 364. Each State energy conservation plan with  
3 respect to which assistance is made available under this  
4 part on or after the date of enactment of the Energy Pol-  
5 icy Act of 2005 shall contain a goal, consisting of an im-  
6 provement of 25 percent or more in the efficiency of use  
7 of energy in the State concerned in calendar year 2012  
8 as compared to calendar year 1990, and may contain in-  
9 terim goals.”.

10           (c) AUTHORIZATION OF APPROPRIATIONS.—Section  
11 365(f) of the Energy Policy and Conservation Act (42  
12 U.S.C. 6325(f)) is amended by striking “for fiscal years  
13 1999 through 2003 such sums as may be necessary” and  
14 inserting “\$100,000,000 for each of the fiscal years 2006  
15 and 2007 and \$125,000,000 for fiscal year 2008”.

16 **SEC. 124. ENERGY EFFICIENT APPLIANCE REBATE PRO-**  
17 **GRAMS.**

18           (a) DEFINITIONS.—In this section:

19                   (1) ELIGIBLE STATE.—The term “eligible  
20 State” means a State that meets the requirements  
21 of subsection (b).

1           (2) ENERGY STAR PROGRAM.—The term “En-  
2           ergy Star program” means the program established  
3           by section 324A of the Energy Policy and Conserva-  
4           tion Act.

5           (3) RESIDENTIAL ENERGY STAR PRODUCT.—  
6           The term “residential Energy Star product” means  
7           a product for a residence that is rated for energy ef-  
8           ficiency under the Energy Star program.

9           (4) STATE ENERGY OFFICE.—The term “State  
10          energy office” means the State agency responsible  
11          for developing State energy conservation plans under  
12          section 362 of the Energy Policy and Conservation  
13          Act (42 U.S.C. 6322).

14          (5) STATE PROGRAM.—The term “State pro-  
15          gram” means a State energy efficient appliance re-  
16          bate program described in subsection (b)(1).

17          (b) ELIGIBLE STATES.—A State shall be eligible to  
18          receive an allocation under subsection (c) if the State—

19               (1) establishes (or has established) a State en-  
20               ergy efficient appliance rebate program to provide  
21               rebates to residential consumers for the purchase of

1 residential Energy Star products to replace used ap-  
2 pliances of the same type;

3 (2) submits an application for the allocation at  
4 such time, in such form, and containing such infor-  
5 mation as the Secretary may require; and

6 (3) provides assurances satisfactory to the Sec-  
7 retary that the State will use the allocation to sup-  
8 plement, but not supplant, funds made available to  
9 carry out the State program.

10 (c) AMOUNT OF ALLOCATIONS.—

11 (1) IN GENERAL.—Subject to paragraph (2),  
12 for each fiscal year, the Secretary shall allocate to  
13 the State energy office of each eligible State to carry  
14 out subsection (d) an amount equal to the product  
15 obtained by multiplying the amount made available  
16 under subsection (f) for the fiscal year by the ratio  
17 that the population of the State in the most recent  
18 calendar year for which data are available bears to  
19 the total population of all eligible States in that cal-  
20 endar year.

1           (2) MINIMUM ALLOCATIONS.—For each fiscal  
2           year, the amounts allocated under this subsection  
3           shall be adjusted proportionately so that no eligible  
4           State is allocated a sum that is less than an amount  
5           determined by the Secretary.

6           (d) USE OF ALLOCATED FUNDS.—The allocation to  
7           a State energy office under subsection (c) may be used  
8           to pay up to 50 percent of the cost of establishing and  
9           carrying out a State program.

10          (e) ISSUANCE OF REBATES.—Rebates may be pro-  
11          vided to residential consumers that meet the requirements  
12          of the State program. The amount of a rebate shall be  
13          determined by the State energy office, taking into  
14          consideration—

15                (1) the amount of the allocation to the State  
16                energy office under subsection (c);

17                (2) the amount of any Federal or State tax in-  
18                centive available for the purchase of the residential  
19                Energy Star product; and

20                (3) the difference between the cost of the resi-  
21                dential Energy Star product and the cost of an ap-

1       pliance that is not a residential Energy Star prod-  
2       uct, but is of the same type as, and is the nearest  
3       capacity, performance, and other relevant character-  
4       istics (as determined by the State energy office) to,  
5       the residential Energy Star product.

6       (f) AUTHORIZATION OF APPROPRIATIONS.—There  
7       are authorized to be appropriated to the Secretary to carry  
8       out this section \$50,000,000 for each of the fiscal years  
9       2006 through 2010.

10   **SEC. 125. ENERGY EFFICIENT PUBLIC BUILDINGS.**

11       (a) GRANTS.—The Secretary may make grants to the  
12       State agency responsible for developing State energy con-  
13       servation plans under section 362 of the Energy Policy  
14       and Conservation Act (42 U.S.C. 6322), or, if no such  
15       agency exists, a State agency designated by the Governor  
16       of the State, to assist units of local government in the  
17       State in improving the energy efficiency of public buildings  
18       and facilities—

19               (1) through construction of new energy efficient  
20       public buildings that use at least 30 percent less en-  
21       ergy than a comparable public building constructed

1 in compliance with standards prescribed in the most  
2 recent version of the International Energy Conserva-  
3 tion Code, or a similar State code intended to  
4 achieve substantially equivalent efficiency levels; or

5 (2) through renovation of existing public build-  
6 ings to achieve reductions in energy use of at least  
7 30 percent as compared to the baseline energy use  
8 in such buildings prior to renovation, assuming a 3-  
9 year, weather-normalized average for calculating  
10 such baseline.

11 (b) ADMINISTRATION.—State energy offices receiving  
12 grants under this section shall—

13 (1) maintain such records and evidence of com-  
14 pliance as the Secretary may require; and

15 (2) develop and distribute information and ma-  
16 terials and conduct programs to provide technical  
17 services and assistance to encourage planning, fi-  
18 nancing, and design of energy efficient public build-  
19 ings by units of local government.

20 (c) AUTHORIZATION OF APPROPRIATIONS.—For the  
21 purposes of this section, there are authorized to be appro-

1 priated to the Secretary \$30,000,000 for each of fiscal  
2 years 2006 through 2010. Not more than 10 percent of  
3 appropriated funds shall be used for administration.

4 **SEC. 126. LOW INCOME COMMUNITY ENERGY EFFICIENCY**  
5 **PILOT PROGRAM.**

6 (a) GRANTS.—The Secretary is authorized to make  
7 grants to units of local government, private, non-profit  
8 community development organizations, and Indian tribe  
9 economic development entities to improve energy effi-  
10 ciency; identify and develop alternative, renewable, and  
11 distributed energy supplies; and increase energy conserva-  
12 tion in low income rural and urban communities.

13 (b) PURPOSE OF GRANTS.—The Secretary may make  
14 grants on a competitive basis for—

15 (1) investments that develop alternative, renew-  
16 able, and distributed energy supplies;

17 (2) energy efficiency projects and energy con-  
18 servation programs;

19 (3) studies and other activities that improve en-  
20 ergy efficiency in low income rural and urban com-  
21 munities;

1           (4) planning and development assistance for in-  
2           creasing the energy efficiency of buildings and facili-  
3           ties; and

4           (5) technical and financial assistance to local  
5           government and private entities on developing new  
6           renewable and distributed sources of power or com-  
7           bined heat and power generation.

8           (c) DEFINITION.—For purposes of this section, the  
9           term “Indian tribe” means any Indian tribe, band, nation,  
10          or other organized group or community, including any  
11          Alaskan Native village or regional or village corporation  
12          as defined in or established pursuant to the Alaska Native  
13          Claims Settlement Act (43 U.S.C. 1601 et seq.), that is  
14          recognized as eligible for the special programs and services  
15          provided by the United States to Indians because of their  
16          status as Indians.

17          (d) AUTHORIZATION OF APPROPRIATIONS.—For the  
18          purposes of this section there are authorized to be appro-  
19          priated to the Secretary \$20,000,000 for each of fiscal  
20          years 2006 through 2008.



1 **SEC. 127. STATE TECHNOLOGIES ADVANCEMENT COLLABO-**  
2 **RATIVE.**

3 (a) IN GENERAL.—The Secretary, in cooperation  
4 with the States, shall establish a cooperative program for  
5 research, development, demonstration, and deployment of  
6 technologies in which there is a common Federal and State  
7 energy efficiency, renewable energy, and fossil energy in-  
8 terest, to be known as the “State Technologies Advance-  
9 ment Collaborative” (referred to in this section as the  
10 “Collaborative”).

11 (b) DUTIES.—The Collaborative shall—

12 (1) leverage Federal and State funding through  
13 cost-shared activity;

14 (2) reduce redundancies in Federal and State  
15 funding; and

16 (3) create multistate projects to be awarded  
17 through a competitive process.

18 (c) ADMINISTRATION.—The Collaborative shall be  
19 administered through an agreement between the Depart-  
20 ment and appropriate State-based organizations.

1 (d) FUNDING SOURCES.—Funding for the Collabo-  
2 rative may be provided from—

3 (1) amounts specifically appropriated for the  
4 Collaborative; or

5 (2) amounts that may be allocated from other  
6 appropriations without changing the purpose for  
7 which the amounts are appropriated.

8 (e) AUTHORIZATION OF APPROPRIATIONS.—There  
9 are authorized to carry out this section such sums as are  
10 necessary for each of fiscal years 2006 through 2010.

11 **SEC. 128. STATE BUILDING ENERGY EFFICIENCY CODES IN-**  
12 **CENTIVES.**

13 Section 304(e) of the Energy Conservation and Pro-  
14 duction Act (42 U.S.C. 6833(e)) is amended—

15 (1) in paragraph (1), by inserting before the pe-  
16 riod at the end of the first sentence the following:

17 “, including increasing and verifying compliance with  
18 such codes”; and

19 (2) by striking paragraph (2) and inserting the  
20 following:

1           “(2) Additional funding shall be provided under this  
2 subsection for implementation of a plan to achieve and  
3 document at least a 90 percent rate of compliance with  
4 residential and commercial building energy efficiency  
5 codes, based on energy performance—

6           “(A) to a State that has adopted and is imple-  
7 menting, on a statewide basis—

8           “(i) a residential building energy efficiency  
9 code that meets or exceeds the requirements of  
10 the 2004 International Energy Conservation  
11 Code, or any succeeding version of that code  
12 that has received an affirmative determination  
13 from the Secretary under subsection (a)(5)(A);  
14 and

15           “(ii) a commercial building energy effi-  
16 ciency code that meets or exceeds the require-  
17 ments of the ASHRAE Standard 90.1–2004, or  
18 any succeeding version of that standard that  
19 has received an affirmative determination from  
20 the Secretary under subsection (b)(2)(A); or

1           “(B) in a State in which there is no statewide  
2           energy code either for residential buildings or for  
3           commercial buildings, to a local government that has  
4           adopted and is implementing residential and com-  
5           mercial building energy efficiency codes, as described  
6           in subparagraph (A).

7           “(3) Of the amounts made available under this sub-  
8           section, the Secretary may use \$500,000 for each fiscal  
9           year to train State and local officials to implement codes  
10          described in paragraph (2).

11          “(4)(A) There are authorized to be appropriated to  
12          carry out this subsection—

13                 “(i) \$25,000,000 for each of fiscal years 2006  
14                 through 2010; and

15                 “(ii) such sums as are necessary for fiscal year  
16                 2011 and each fiscal year thereafter.

17                 “(iii) Funding provided to States under paragraph  
18                 (2) for each fiscal year shall not exceed  $\frac{1}{2}$  of the excess  
19                 of funding under this subsection over \$5,000,000 for the  
20                 fiscal year.”.

1           **Subtitle C—Energy Efficient**  
2                           **Products**

3 **SEC. 131. ENERGY STAR PROGRAM.**

4           (a) IN GENERAL.—The Energy Policy and Conserva-  
5 tion Act is amended by inserting after section 324 (42  
6 U.S.C. 6294) the following:

7                           “ENERGY STAR PROGRAM

8           “SEC. 324A. (a) IN GENERAL.—There is established  
9 within the Department of Energy and the Environmental  
10 Protection Agency a voluntary program to identify and  
11 promote energy-efficient products and buildings in order  
12 to reduce energy consumption, improve energy security,  
13 and reduce pollution through voluntary labeling of, or  
14 other forms of communication about, products and build-  
15 ings that meet the highest energy conservation standards.

16           “(b) DIVISION OF RESPONSIBILITIES.—Responsibil-  
17 ities under the program shall be divided between the De-  
18 partment of Energy and the Environmental Protection  
19 Agency in accordance with the terms of applicable agree-  
20 ments between those agencies.

1           “(c) DUTIES.—The Administrator and the Secretary  
2 shall—

3           “(1) promote Energy Star compliant tech-  
4 nologies as the preferred technologies in the market-  
5 place for—

6                   “(A) achieving energy efficiency; and

7                   “(B) reducing pollution;

8           “(2) work to enhance public awareness of the  
9 Energy Star label, including by providing special  
10 outreach to small businesses;

11           “(3) preserve the integrity of the Energy Star  
12 label;

13           “(4) regularly update Energy Star product cri-  
14 teria for product categories;

15           “(5) solicit comments from interested parties  
16 prior to establishing or revising an Energy Star  
17 product category, specification, or criterion (or prior  
18 to effective dates for any such product category,  
19 specification, or criterion);

20           “(6) on adoption of a new or revised product  
21 category, specification, or criterion, provide reason-

1       able notice to interested parties of any changes (in-  
2       cluding effective dates) in product categories, speci-  
3       fications, or criteria, along with—

4               “(A) an explanation of the changes; and

5               “(B) as appropriate, responses to com-  
6       ments submitted by interested parties; and

7               “(7) provide appropriate lead time (which shall  
8       be 270 days, unless the Agency or Department  
9       specifies otherwise) prior to the applicable effective  
10      date for a new or a significant revision to a product  
11      category, specification, or criterion, taking into ac-  
12      count the timing requirements of the manufacturing,  
13      product marketing, and distribution process for the  
14      specific product addressed.

15      “(d) DEADLINES.—The Secretary shall establish new  
16      qualifying levels—

17              “(1) not later than January 1, 2006, for clothes  
18      washers and dishwashers, effective beginning Janu-  
19      ary 1, 2007; and

20              “(2) not later than January 1, 2008, for clothes  
21      washers, effective beginning January 1, 2010.”.

1 (b) TABLE OF CONTENTS AMENDMENT.—The table  
2 of contents of the Energy Policy and Conservation Act (42  
3 U.S.C. prec. 6201) is amended by inserting after the item  
4 relating to section 324 the following:

“Sec. 324A. Energy Star program.”.

5 **SEC. 132. HVAC MAINTENANCE CONSUMER EDUCATION**  
6 **PROGRAM.**

7 Section 337 of the Energy Policy and Conservation  
8 Act (42 U.S.C. 6307) is amended by adding at the end  
9 the following:

10 “(c) HVAC MAINTENANCE.—(1) To ensure that in-  
11 stalled air conditioning and heating systems operate at  
12 maximum rated efficiency levels, the Secretary shall, not  
13 later than 180 days after the date of enactment of this  
14 subsection, carry out a program to educate homeowners  
15 and small business owners concerning the energy savings  
16 from properly conducted maintenance of air conditioning,  
17 heating, and ventilating systems.

18 “(2) The Secretary shall carry out the program under  
19 paragraph (1), on a cost-shared basis, in cooperation with  
20 the Administrator of the Environmental Protection Agen-



1 cy and any other entities that the Secretary determines  
2 to be appropriate, including industry trade associations,  
3 industry members, and energy efficiency organizations.

4 “(d) SMALL BUSINESS EDUCATION AND ASSIST-  
5 ANCE.—(1) The Administrator of the Small Business Ad-  
6 ministration, in consultation with the Secretary and the  
7 Administrator of the Environmental Protection Agency,  
8 shall develop and coordinate a Government-wide program,  
9 building on the Energy Star for Small Business Program,  
10 to assist small businesses in—

11 “(A) becoming more energy efficient;

12 “(B) understanding the cost savings from im-  
13 proved energy efficiency;

14 “(C) understanding and accessing Federal pro-  
15 curement opportunities with regard to Energy Star  
16 technologies and products; and

17 “(D) identifying financing options for energy  
18 efficiency upgrades.

19 “(2) The Secretary, the Administrator of the Envi-  
20 ronmental Protection Agency, and the Administrator of  
21 the Small Business Administration shall—

1           “(A) make program information available to  
2           small business concerns directly through the district  
3           offices and resource partners of the Small Business  
4           Administration, including small business develop-  
5           ment centers, women’s business centers, and the  
6           Service Corps of Retired Executives (SCORE), and  
7           through other Federal agencies, including the Fed-  
8           eral Emergency Management Agency and the De-  
9           partment of Agriculture; and

10           “(B) coordinate assistance with the Secretary  
11           of Commerce for manufacturing-related efforts, in-  
12           cluding the Manufacturing Extension Partnership  
13           Program.

14           “(3) The Secretary, on a cost shared basis in coopera-  
15           tion with the Administrator of the Environmental Protec-  
16           tion Agency, shall provide to the Small Business Adminis-  
17           tration all advertising, marketing, and other written mate-  
18           rials necessary for the dissemination of information under  
19           paragraph (2).

20           “(4) The Secretary, the Administrator of the Envi-  
21           ronmental Protection Agency, and the Administrator of

1 the Small Business Administration, as part of the out-  
2 reach to small business concerns under the Energy Star  
3 Program for Small Business Program, may enter into co-  
4 operative agreements with qualified resources partners  
5 (including the National Center for Appropriate Tech-  
6 nology) to establish, maintain, and promote a Small Busi-  
7 ness Energy Clearinghouse (in this subsection referred to  
8 as the ‘Clearinghouse’).

9 “(5) The Secretary, the Administrator of the Envi-  
10 ronmental Protection Agency, and the Administrator of  
11 the Small Business Administration shall ensure that the  
12 Clearinghouse provides a centralized resource where small  
13 business concerns may access, telephonically and electroni-  
14 cally, technical information and advice to help increase en-  
15 ergy efficiency and reduce energy costs.

16 “(6) There are authorized to be appropriated such  
17 sums as are necessary to carry out this subsection, to re-  
18 main available until expended.”.

19 **SEC. 133. PUBLIC ENERGY EDUCATION PROGRAM.**

20 (a) IN GENERAL.—Not later than 180 days after the  
21 date of enactment of this Act, the Secretary shall convene

1 an organizational conference for the purpose of estab-  
2 lishing an ongoing, self-sustaining national public energy  
3 education program.

4 (b) PARTICIPANTS.—The Secretary shall invite to  
5 participate in the conference individuals and entities rep-  
6 resenting all aspects of energy production and distribu-  
7 tion, including—

- 8 (1) industrial firms;
- 9 (2) professional societies;
- 10 (3) educational organizations;
- 11 (4) trade associations; and
- 12 (5) governmental agencies.

13 (c) PURPOSE, SCOPE, AND STRUCTURE.—

14 (1) PURPOSE.—The purpose of the conference  
15 shall be to establish an ongoing, self-sustaining na-  
16 tional public energy education program to examine  
17 and recognize interrelationships between energy  
18 sources in all forms, including—

- 19 (A) conservation and energy efficiency;
- 20 (B) the role of energy use in the economy;
- 21 and

1 (C) the impact of energy use on the envi-  
2 ronment.

3 (2) SCOPE AND STRUCTURE.—Taking into con-  
4 sideration the purpose described in paragraph (1),  
5 the participants in the conference invited under sub-  
6 section (b) shall design the scope and structure of  
7 the program described in subsection (a).

8 (d) TECHNICAL ASSISTANCE.—The Secretary shall  
9 provide technical assistance and other guidance necessary  
10 to carry out the program described in subsection (a).

11 (e) AUTHORIZATION OF APPROPRIATIONS.—There  
12 are authorized to be appropriated such sums as are nec-  
13 essary to carry out this section.

14 **SEC. 134. ENERGY EFFICIENCY PUBLIC INFORMATION INI-**  
15 **TIATIVE.**

16 (a) IN GENERAL.—The Secretary shall carry out a  
17 comprehensive national program, including advertising  
18 and media awareness, to inform consumers about—

19 (1) the need to reduce energy consumption dur-  
20 ing the 4-year period beginning on the date of enact-  
21 ment of this Act;

1           (2) the benefits to consumers of reducing con-  
2           sumption of electricity, natural gas, and petroleum,  
3           particularly during peak use periods;

4           (3) the importance of low energy costs to eco-  
5           nomic growth and preserving manufacturing jobs in  
6           the United States; and

7           (4) practical, cost-effective measures that con-  
8           sumers can take to reduce consumption of elec-  
9           tricity, natural gas, and gasoline, including—

10                   (A) maintaining and repairing heating and  
11                   cooling ducts and equipment;

12                   (B) weatherizing homes and buildings;

13                   (C) purchasing energy efficient products;

14                   and

15                   (D) proper tire maintenance.

16           (b) COOPERATION.—The program carried out under  
17           subsection (a) shall—

18                   (1) include collaborative efforts with State and  
19                   local government officials and the private sector; and



1 (ii) in clause (ii), by striking “C78.1–  
2 1978(R1984)” and inserting “C78.81–  
3 2003 (Data Sheet 7881–ANSI–3007–1)”;  
4 and

5 (iii) in clause (iii), by striking  
6 “C78.1–1978(R1984)” and inserting  
7 “C78.81–2003 (Data Sheet 7881–ANSI–  
8 1019–1)”;

9 (B) by adding at the end the following:

10 “(M) The term ‘F34T12 lamp’ (also known as  
11 a ‘F40T12/ES lamp’) means a nominal 34 watt tu-  
12 bular fluorescent lamp that is 48 inches in length  
13 and 1½ inches in diameter, and conforms to ANSI  
14 standard C78.81–2003 (Data Sheet 7881–ANSI–  
15 1006–1).

16 “(N) The term ‘F96T12/ES lamp’ means a  
17 nominal 60 watt tubular fluorescent lamp that is 96  
18 inches in length and 1½ inches in diameter, and  
19 conforms to ANSI standard C78.81–2003 (Data  
20 Sheet 7881–ANSI–3006–1).



1           “(O) The term ‘F96T12HO/ES lamp’ means a  
2           nominal 95 watt tubular fluorescent lamp that is 96  
3           inches in length and 1½ inches in diameter, and  
4           conforms to ANSI standard C78.81–2003 (Data  
5           Sheet 7881–ANSI–1017–1).

6           “(P) The term ‘replacement ballast’ means a  
7           ballast that—

8                   “(i) is designed for use to replace an exist-  
9                   ing ballast in a previously installed luminaire;

10                   “(ii) is marked ‘FOR REPLACEMENT  
11                   USE ONLY’;

12                   “(iii) is shipped by the manufacturer in  
13                   packages containing not more than 10 ballasts;  
14                   and

15                   “(iv) has output leads that when fully ex-  
16                   tended are a total length that is less than the  
17                   length of the lamp with which the ballast is in-  
18                   tended to be operated.”;

19           (2) in paragraph (30)(S)—

20                   (A) by inserting “(i)” before “The term”;  
21                   and

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

2 “(ii) The term ‘medium base compact fluo-  
3 rescent lamp’ does not include—

4 “(I) any lamp that is—

5 “(aa) specifically designed to be  
6 used for special purpose applications;  
7 and

8 “(bb) unlikely to be used in gen-  
9 eral purpose applications, such as the  
10 applications described in subpara-  
11 graph (D); or

12 “(II) any lamp not described in sub-  
13 paragraph (D) that is excluded by the Sec-  
14 retary, by rule, because the lamp is—

15 “(aa) designed for special appli-  
16 cations; and

17 “(bb) unlikely to be used in gen-  
18 eral purpose applications.”; and

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

20 “(32) The term ‘battery charger’ means a de-  
21 vice that charges batteries for consumer products,

1 including battery chargers embedded in other con-  
2 sumer products.

3 “(33)(A) The term ‘commercial prerinse spray  
4 valve’ means a handheld device designed and mar-  
5 keted for use with commercial dishwashing and ware  
6 washing equipment that sprays water on dishes, flat-  
7 ware, and other food service items for the purpose  
8 of removing food residue before cleaning the items.

9 “(B) The Secretary may modify the definition  
10 of ‘commercial prerinse spray valve’ by rule—

11 “(i) to include products—

12 “(I) that are extensively used in con-  
13 junction with commercial dishwashing and  
14 ware washing equipment;

15 “(II) the application of standards to  
16 which would result in significant energy  
17 savings; and

18 “(III) the application of standards to  
19 which would meet the criteria specified in  
20 section 325(o)(4); and

21 “(ii) to exclude products—

1                   “(I) that are used for special food  
2                   service applications;

3                   “(II) that are unlikely to be widely  
4                   used in conjunction with commercial dish-  
5                   washing and ware washing equipment; and

6                   “(III) the application of standards to  
7                   which would not result in significant en-  
8                   ergy savings.

9                   “(34) The term ‘dehumidifier’ means a self-con-  
10                  tained, electrically operated, and mechanically en-  
11                  cased assembly consisting of—

12                   “(A) a refrigerated surface (evaporator)  
13                   that condenses moisture from the atmosphere;

14                   “(B) a refrigerating system, including an  
15                   electric motor;

16                   “(C) an air-circulating fan; and

17                   “(D) means for collecting or disposing of  
18                   the condensate.

19                   “(35)(A) The term ‘distribution transformer’  
20                  means a transformer that—

1           “(i) has an input voltage of 34.5 kilovolts  
2           or less;

3           “(ii) has an output voltage of 600 volts or  
4           less; and

5           “(iii) is rated for operation at a frequency  
6           of 60 Hertz.

7           “(B) The term ‘distribution transformer’ does  
8           not include—

9           “(i) a transformer with multiple voltage  
10          taps, the highest of which equals at least 20  
11          percent more than the lowest;

12          “(ii) a transformer that is designed to be  
13          used in a special purpose application and is un-  
14          likely to be used in general purpose applica-  
15          tions, such as a drive transformer, rectifier  
16          transformer, auto-transformer, Uninterruptible  
17          Power System transformer, impedance trans-  
18          former, regulating transformer, sealed and non-  
19          ventilating transformer, machine tool trans-  
20          former, welding transformer, grounding trans-  
21          former, or testing transformer; or

1                   “(iii) any transformer not listed in clause  
2                   (ii) that is excluded by the Secretary by rule  
3                   because—

4                   “(I) the transformer is designed for a  
5                   special application;

6                   “(II) the transformer is unlikely to be  
7                   used in general purpose applications; and

8                   “(III) the application of standards to  
9                   the transformer would not result in signifi-  
10                  cant energy savings.

11                  “(36) The term ‘external power supply’ means  
12                  an external power supply circuit that is used to con-  
13                  vert household electric current into DC current or  
14                  lower-voltage AC current to operate a consumer  
15                  product.

16                  “(37) The term ‘illuminated exit sign’ means a  
17                  sign that—

18                  “(A) is designed to be permanently fixed in  
19                  place to identify an exit; and

20                  “(B) consists of an electrically powered in-  
21                  tegral light source that—

1                   “(i) illuminates the legend ‘EXIT’  
2                   and any directional indicators; and

3                   “(ii) provides contrast between the  
4                   legend, any directional indicators, and the  
5                   background.

6                   “(38) The term ‘low-voltage dry-type distribu-  
7                   tion transformer’ means a distribution transformer  
8                   that—

9                   “(A) has an input voltage of 600 volts or  
10                  less;

11                  “(B) is air-cooled; and

12                  “(C) does not use oil as a coolant.

13                  “(39) The term ‘pedestrian module’ means a  
14                  light signal used to convey movement information to  
15                  pedestrians.

16                  “(40) The term ‘refrigerated bottled or canned  
17                  beverage vending machine’ means a commercial re-  
18                  frigerator that cools bottled or canned beverages and  
19                  dispenses the bottled or canned beverages on pay-  
20                  ment.

1           “(41) The term ‘standby mode’ means the low-  
2           est power consumption mode, as established on an  
3           individual product basis by the Secretary, that—

4                   “(A) cannot be switched off or influenced  
5                   by the user; and

6                   “(B) may persist for an indefinite time  
7                   when an appliance is—

8                           “(i) connected to the main electricity  
9                           supply; and

10                           “(ii) used in accordance with the in-  
11                           structions of the manufacturer.

12           “(42) The term ‘torchiere’ means a portable  
13           electric lamp with a reflector bowl that directs light  
14           upward to give indirect illumination.

15           “(43) The term ‘traffic signal module’ means a  
16           standard 8-inch (200mm) or 12-inch (300mm) traf-  
17           fic signal indication that—

18                   “(A) consists of a light source, a lens, and  
19                   all other parts necessary for operation; and

20                   “(B) communicates movement messages to  
21                   drivers through red, amber, and green colors.



1           “(44) The term ‘transformer’ means a device  
2           consisting of 2 or more coils of insulated wire that  
3           transfers alternating current by electromagnetic in-  
4           duction from 1 coil to another to change the original  
5           voltage or current value.

6           “(45)(A) The term ‘unit heater’ means a self-  
7           contained fan-type heater designed to be installed  
8           within the heated space.

9           “(B) The term ‘unit heater’ does not include a  
10          warm air furnace.

11          “(46)(A) The term ‘high intensity discharge  
12          lamp’ means an electric-discharge lamp in which—

13                 “(i) the light-producing arc is stabilized by  
14                 bulb wall temperature; and

15                 “(ii) the arc tube has a bulb wall loading  
16                 in excess of 3 Watts/cm<sup>2</sup>.

17          “(B) The term ‘high intensity discharge lamp’  
18          includes mercury vapor, metal halide, and high-pres-  
19          sure sodium lamps described in subparagraph (A).

20          “(47)(A) The term ‘mercury vapor lamp’ means  
21          a high intensity discharge lamp in which the major

1 portion of the light is produced by radiation from  
2 mercury operating at a partial pressure in excess of  
3 100,000 Pa (approximately 1 atm).

4 “(B) The term ‘mercury vapor lamp’ includes  
5 clear, phosphor-coated, and self-ballasted lamps de-  
6 scribed in subparagraph (A).

7 “(48) The term ‘mercury vapor lamp ballast’  
8 means a device that is designed and marketed to  
9 start and operate mercury vapor lamps by providing  
10 the necessary voltage and current.

11 “(49) The term ‘ceiling fan’ means a nonport-  
12 able device that is suspended from a ceiling for cir-  
13 culating air via the rotation of fan blades.

14 “(50) The term ‘ceiling fan light kit’ means  
15 equipment designed to provide light from a ceiling  
16 fan that can be—

17 “(A) integral, such that the equipment is  
18 attached to the ceiling fan prior to the time of  
19 retail sale; or

20 “(B) attachable, such that at the time of  
21 retail sale the equipment is not physically at-

1           tached to the ceiling fan, but may be included  
2           inside the ceiling fan at the time of sale or sold  
3           separately for subsequent attachment to the  
4           fan.

5           “(51) The term ‘medium screw base’ means an  
6           Edison screw base identified with the prefix E-26 in  
7           the ‘American National Standard for Electric Lamp  
8           Bases’, ANSI\_\_IEC C81.61—2003, published by  
9           the American National Standards Institute.”.

10          (b) TEST PROCEDURES.—Section 323 of the Energy  
11 Policy and Conservation Act (42 U.S.C. 6293) is  
12 amended—

13           (1) in subsection (b), by adding at the end the  
14           following:

15           “(9) Test procedures for illuminated exit signs shall  
16 be based on the test method used under version 2.0 of  
17 the Energy Star program of the Environmental Protection  
18 Agency for illuminated exit signs.

19           “(10)(A) Test procedures for distribution trans-  
20 formers and low voltage dry-type distribution transformers  
21 shall be based on the ‘Standard Test Method for Meas-

1 uring the Energy Consumption of Distribution Trans-  
2 formers' prescribed by the National Electrical Manufac-  
3 turers Association (NEMA TP 2-1998).

4 “(B) The Secretary may review and revise the test  
5 procedures established under subparagraph (A).

6 “(C) For purposes of section 346(a), the test proce-  
7 dures established under subparagraph (A) shall be consid-  
8 ered to be the testing requirements prescribed by the Sec-  
9 retary under section 346(a)(1) for distribution trans-  
10 formers for which the Secretary makes a determination  
11 that energy conservation standards would—

12 “(i) be technologically feasible and economically  
13 justified; and

14 “(ii) result in significant energy savings.

15 “(11) Test procedures for traffic signal modules and  
16 pedestrian modules shall be based on the test method used  
17 under the Energy Star program of the Environmental  
18 Protection Agency for traffic signal modules, as in effect  
19 on the date of enactment of this paragraph.

20 “(12)(A) Test procedures for medium base compact  
21 fluorescent lamps shall be based on the test methods for

1 compact fluorescent lamps used under the August 9, 2001,  
2 version of the Energy Star program of the Environmental  
3 Protection Agency and the Department of Energy.

4 “(B) Except as provided in subparagraph (C), me-  
5 dium base compact fluorescent lamps shall meet all test  
6 requirements for regulated parameters of section 325(cc).

7 “(C) Notwithstanding subparagraph (B), if manufac-  
8 turers document engineering predictions and analysis that  
9 support expected attainment of lumen maintenance at 40  
10 percent rated life and lamp lifetime, medium base compact  
11 fluorescent lamps may be marketed before completion of  
12 the testing of lamp life and lumen maintenance at 40 per-  
13 cent of rated life.

14 “(13) Test procedures for dehumidifiers shall be  
15 based on the test criteria used under the Energy Star Pro-  
16 gram Requirements for Dehumidifiers developed by the  
17 Environmental Protection Agency, as in effect on the date  
18 of enactment of this paragraph unless revised by the Sec-  
19 retary pursuant to this section.

20 “(14) The test procedure for measuring flow rate for  
21 commercial prerinse spray valves shall be based on Amer-

1   ican Society for Testing and Materials Standard F2324,  
2   entitled ‘Standard Test Method for Pre-Rinse Spray  
3   Valves.’

4       “(15) The test procedure for refrigerated bottled or  
5   canned beverage vending machines shall be based on  
6   American National Standards Institute/American Society  
7   of Heating, Refrigerating and Air-Conditioning Engineers  
8   Standard 32.1–2004, entitled ‘Methods of Testing for  
9   Rating Vending Machines for Bottled, Canned or Other  
10   Sealed Beverages’.

11       “(16)(A)(i) Test procedures for ceiling fans shall be  
12   based on the ‘Energy Star Testing Facility Guidance Man-  
13   ual: Building a Testing Facility and Performing the Solid  
14   State Test Method for ENERGY STAR Qualified Ceiling  
15   Fans, Version 1.1’ published by the Environmental Pro-  
16   tection Agency.

17       “(ii) Test procedures for ceiling fan light kits shall  
18   be based on the test procedures referenced in the Energy  
19   Star specifications for Residential Light Fixtures and  
20   Compact Fluorescent Light Bulbs, as in effect on the date  
21   of enactment of this paragraph.

1           “(B) The Secretary may review and revise the test  
2 procedures established under subparagraph (A).”; and

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

4           “(f) ADDITIONAL CONSUMER AND COMMERCIAL  
5 PRODUCTS.—(1) Not later than 2 years after the date of  
6 enactment of this subsection, the Secretary shall prescribe  
7 testing requirements for refrigerated bottled or canned  
8 beverage vending machines.

9           “(2) To the maximum extent practicable, the testing  
10 requirements prescribed under paragraph (1) shall be  
11 based on existing test procedures used in industry.”.

12           (c) STANDARD SETTING AUTHORITY.—Section 325  
13 of the Energy Policy and Conservation Act (42 U.S.C.  
14 6295) is amended—

15                   (1) in subsection (f)(3), by adding at the end  
16 the following:

17           “(D) Notwithstanding any other provision of this Act,  
18 if the requirements of subsection (o) are met, the Sec-  
19 retary may consider and prescribe energy conservation  
20 standards or energy use standards for electricity used for  
21 purposes of circulating air through duct work.”;

1 (2) in subsection (g)—

2 (A) in paragraph (6)(B), by inserting “and  
3 labeled” after “designed”; and

4 (B) by adding at the end the following:

5 “(8)(A) Each fluorescent lamp ballast (other than re-  
6 placement ballasts or ballasts described in subparagraph  
7 (C))—

8 “(i)(I) manufactured on or after July 1, 2009;

9 “(II) sold by the manufacturer on or after Oc-  
10 tober 1, 2009; or

11 “(III) incorporated into a luminaire by a lumi-  
12 naire manufacturer on or after July 1, 2010; and

13 “(ii) designed—

14 “(I) to operate at nominal input voltages  
15 of 120 or 277 volts;

16 “(II) to operate with an input current fre-  
17 quency of 60 Hertz; and

18 “(III) for use in connection with F34T12  
19 lamps, F96T12/ES lamps, or F96T12HO/ES  
20 lamps;



1 shall have a power factor of 0.90 or greater and  
 2 shall have a ballast efficacy factor of not less than  
 3 the following:

<b>Application for operation of</b>	<b>Ballast input voltage</b>	<b>Total nominal lamp watts</b>	<b>Ballast efficacy factor</b>
One F34T12 lamp	120/277	34	2.61
Two F34T12 lamps	120/277	68	1.35
Two F96 T12/ES lamps	120/277	120	0.77
Two F96 T12HO/ES lamps	120/277	190	0.42.

4 “(B) The standards described in subparagraph (A)  
 5 shall apply to all ballasts covered by subparagraph (A)(ii)  
 6 that are manufactured on or after July 1, 2010, or sold  
 7 by the manufacturer on or after October 1, 2010.

8 “(C) The standards described in subparagraph (A)  
 9 do not apply to—

10 “(i) a ballast that is designed for dimming to  
 11 50 percent or less of the maximum output of the  
 12 ballast;

13 “(ii) a ballast that is designed for use with 2  
 14 F96T12HO lamps at ambient temperatures of 20°F  
 15 or less and for use in an outdoor sign; or

1           “(iii) a ballast that has a power factor of less  
2           than 0.90 and is designed and labeled for use only  
3           in residential applications.”;

4           (3) in subsection (o), by adding at the end the  
5           following:

6           “(5) The Secretary may set more than 1 energy con-  
7           servation standard for products that serve more than 1  
8           major function by setting 1 energy conservation standard  
9           for each major function.”; and

10           (4) by adding at the end the following:

11           “(u) BATTERY CHARGER AND EXTERNAL POWER  
12           SUPPLY ELECTRIC ENERGY CONSUMPTION.—(1)(A) Not  
13           later than 18 months after the date of enactment of this  
14           subsection, the Secretary shall, after providing notice and  
15           an opportunity for comment, prescribe, by rule, definitions  
16           and test procedures for the power use of battery chargers  
17           and external power supplies.

18           “(B) In establishing the test procedures under sub-  
19           paragraph (A), the Secretary shall—

1           “(i) consider existing definitions and test proce-  
2           dures used for measuring energy consumption in  
3           standby mode and other modes; and

4           “(ii) assess the current and projected future  
5           market for battery chargers and external power sup-  
6           plies.

7           “(C) The assessment under subparagraph (B)(ii)  
8 shall include—

9           “(i) estimates of the significance of potential  
10           energy savings from technical improvements to bat-  
11           tery chargers and external power supplies; and

12           “(ii) suggested product classes for energy con-  
13           servation standards.

14           “(D) Not later than 18 months after the date of en-  
15           actment of this subsection, the Secretary shall hold a  
16           scoping workshop to discuss and receive comments on  
17           plans for developing energy conservation standards for en-  
18           ergy use for battery chargers and external power supplies.

19           “(E)(i) Not later than 3 years after the date of enact-  
20           ment of this subsection, the Secretary shall issue a final  
21           rule that determines whether energy conservation stand-

1 ards shall be issued for battery chargers and external  
2 power supplies or classes of battery chargers and external  
3 power supplies.

4 “(ii) For each product class, any energy conservation  
5 standards issued under clause (i) shall be set at the lowest  
6 level of energy use that—

7 “(I) meets the criteria and procedures of sub-  
8 sections (o), (p), (q), (r), (s), and (t); and

9 “(II) would result in significant overall annual  
10 energy savings, considering standby mode and other  
11 operating modes.

12 “(2) In determining under section 323 whether test  
13 procedures and energy conservation standards under this  
14 section should be revised with respect to covered products  
15 that are major sources of standby mode energy consump-  
16 tion, the Secretary shall consider whether to incorporate  
17 standby mode into the test procedures and energy con-  
18 servation standards, taking into account standby mode  
19 power consumption compared to overall product energy  
20 consumption.

1       “(3) The Secretary shall not propose an energy con-  
2 servation standard under this section, unless the Secretary  
3 has issued applicable test procedures for each product  
4 under section 323.

5       “(4) Any energy conservation standard issued under  
6 this subsection shall be applicable to products manufac-  
7 tured or imported beginning on the date that is 3 years  
8 after the date of issuance.

9       “(5) The Secretary and the Administrator shall col-  
10 laborate and develop programs (including programs under  
11 section 324A and other voluntary industry agreements or  
12 codes of conduct) that are designed to reduce standby  
13 mode energy use.

14       “(v) CEILING FANS AND REFRIGERATED BEVERAGE  
15 VENDING MACHINES.—(1) Not later than 1 year after the  
16 date of enactment of this subsection, the Secretary shall  
17 prescribe, by rule, test procedures and energy conservation  
18 standards for ceiling fans and ceiling fan light kits. If the  
19 Secretary sets such standards, the Secretary shall consider  
20 exempting or setting different standards for certain prod-  
21 uct classes for which the primary standards are not tech-

1 nically feasible or economically justified, and establishing  
2 separate or exempted product classes for highly decorative  
3 fans for which air movement performance is a secondary  
4 design feature.

5 “(2) Not later than 4 years after the date of enact-  
6 ment of this subsection, the Secretary shall prescribe, by  
7 rule, energy conservation standards for refrigerated bottle  
8 or canned beverage vending machines.

9 “(3) In establishing energy conservation standards  
10 under this subsection, the Secretary shall use the criteria  
11 and procedures prescribed under subsections (o) and (p).

12 “(4) Any energy conservation standard prescribed  
13 under this subsection shall apply to products manufac-  
14 tured 3 years after the date of publication of a final rule  
15 establishing the energy conservation standard.

16 “(w) ILLUMINATED EXIT SIGNS.—An illuminated  
17 exit sign manufactured on or after January 1, 2006, shall  
18 meet the version 2.0 Energy Star Program performance  
19 requirements for illuminated exit signs prescribed by the  
20 Environmental Protection Agency.

1       “(x) TORCHIERES.—A torchiere manufactured on or  
2 after January 1, 2006—

3               “(1) shall consume not more than 190 watts of  
4 power; and

5               “(2) shall not be capable of operating with  
6 lamps that total more than 190 watts.

7       “(y) LOW VOLTAGE DRY-TYPE DISTRIBUTION  
8 TRANSFORMERS.—The efficiency of a low voltage dry-type  
9 distribution transformer manufactured on or after Janu-  
10 ary 1, 2007, shall be the Class I Efficiency Levels for dis-  
11 tribution transformers specified in table 4–2 of the ‘Guide  
12 for Determining Energy Efficiency for Distribution Trans-  
13 formers’ published by the National Electrical Manufactur-  
14 ers Association (NEMA TP–1–2002).

15       “(z) TRAFFIC SIGNAL MODULES AND PEDESTRIAN  
16 MODULES.—Any traffic signal module or pedestrian mod-  
17 ule manufactured on or after January 1, 2006, shall—

18               “(1) meet the performance requirements used  
19 under the Energy Star program of the Environ-  
20 mental Protection Agency for traffic signals, as in

1 effect on the date of enactment of this subsection;

2 and

3 “(2) be installed with compatible, electrically  
4 connected signal control interface devices and con-  
5 flict monitoring systems.

6 “(aa) UNIT HEATERS.—A unit heater manufactured  
7 on or after the date that is 3 years after the date of enact-  
8 ment of this subsection shall—

9 “(1) be equipped with an intermittent ignition  
10 device; and

11 “(2) have power venting or an automatic flue  
12 damper.

13 “(bb) MEDIUM BASE COMPACT FLUORESCENT  
14 LAMPS.—(1) A bare lamp and covered lamp (no reflector)  
15 medium base compact fluorescent lamp manufactured on  
16 or after January 1, 2006, shall meet the following require-  
17 ments prescribed by the August 9, 2001, version of the  
18 Energy Star Program Requirements for Compact Fluores-  
19 cent Lamps, Energy Star Eligibility Criteria, Energy-Effi-  
20 ciency Specification issued by the Environmental Protec-  
21 tion Agency and Department of Energy:



1           “(A) Minimum initial efficacy.

2           “(B) Lumen maintenance at 1000 hours.

3           “(C) Lumen maintenance at 40 percent of  
4           rated life.

5           “(D) Rapid cycle stress test.

6           “(E) Lamp life.

7           “(2) The Secretary may, by rule, establish require-  
8           ments for color quality (CRI), power factor, operating fre-  
9           quency, and maximum allowable start time based on the  
10           requirements prescribed by the August 9, 2001, version  
11           of the Energy Star Program Requirements for Compact  
12           Fluorescent Lamps.

13           “(3) The Secretary may, by rule—

14           “(A) revise the requirements established under  
15           paragraph (2); or

16           “(B) establish other requirements, after consid-  
17           ering energy savings, cost effectiveness, and con-  
18           sumer satisfaction.

19           “(cc) DEHUMIDIFIERS.—(1) Dehumidifiers manufac-  
20           tured on or after October 1, 2007, shall have an Energy  
21           Factor that meets or exceeds the following values:

<b>“Product Capacity (pints/day):</b>	<b>Minimum Energy Factor (Liters/kWh)</b>
25.00 or less .....	1.00
25.01 – 35.00 .....	1.20
35.01 – 54.00 .....	1.30
54.01 – 74.99 .....	1.50
75.00 or more .....	2.25.

1       “(2)(A) Not later than October 1, 2009, the Sec-  
2       retary shall publish a final rule in accordance with sub-  
3       sections (o) and (p), to determine whether the energy con-  
4       servation standards established under paragraph (1)  
5       should be amended.

6       “(B) The final rule published under subparagraph  
7       (A) shall—

8               “(i) contain any amendment by the Secretary;  
9       and

10              “(ii) provide that the amendment applies to  
11       products manufactured on or after October 1, 2012.

12       “(C) If the Secretary does not publish an amendment  
13       that takes effect by October 1, 2012, dehumidifiers manu-  
14       factured on or after October 1, 2012, shall have an Energy  
15       Factor that meets or exceeds the following values:

<b>“Product Capacity (pints/day):</b>	<b>Minimum Energy Factor (Liters/kWh)</b>
25.00 or less .....	1.20
25.01 – 35.00 .....	1.30

<b>“Product Capacity (pints/day):</b>	<b>Minimum Energy Factor (Liters/kWh)</b>
35.01 – 45.00 .....	1.40
45.01 – 54.00 .....	1.50
54.01 – 74.99 .....	1.60
75.00 or more .....	2.5.

1       “(dd) COMMERCIAL PRERINSE SPRAY VALVES.—  
2 Commercial prerinse spray valves manufactured on or  
3 after January 1, 2006, shall have a flow rate of not more  
4 than 1.6 gallons per minute.

5       “(ee) MERCURY VAPOR LAMP BALLASTS.—Mercury  
6 vapor lamp ballasts shall not be manufactured or imported  
7 after January 1, 2008.

8       “(ff) CEILING FANS AND CEILING FAN LIGHT  
9 KITS.—(1)(A) All ceiling fans manufactured on or after  
10 January 1, 2007, shall have the following features:

11           “(i) Fan speed controls separate from any light-  
12       ing controls.

13           “(ii) Adjustable speed controls (either more  
14       than 1 speed or variable speed).

15           “(iii) Adjustable speed controls (either more  
16       than 1 speed or variable speed).

17           “(iv) The capability of reversible fan action, ex-  
18       cept for—

1                   “(I) fans sold for industrial applications;  
2                   “(II) outdoor applications; and  
3                   “(III) cases in which safety standards  
4                   would be violated by the use of the reversible  
5                   mode.

6           “(B) The Secretary may define the exceptions de-  
7           scribed in clause (iv) in greater detail, but shall not sub-  
8           stantively expand the exceptions

9           “(2)(A) Ceiling fan light kits with medium screw base  
10           sockets manufactured on or after January 1, 2007, shall  
11           be packaged with screw-based lamps to fill all screw base  
12           sockets.

13           “(B) The screw-based lamps required under subpara-  
14           graph (A) shall—

15                   “(i) meet the Energy Star Program Require-  
16                   ments for Compact Fluorescent Lamps, version 3.0,  
17                   issued by the Department of Energy; or

18                   “(ii) use light sources other than compact fluo-  
19                   rescent lamps that have lumens per watt perform-  
20                   ance at least equivalent to comparably configured

1 compact fluorescent lamps meeting the Energy Star  
2 Program Requirements described in clause (i).

3 “(3) Ceiling fan light kits with pin-based sockets for  
4 fluorescent lamps manufactured on or after January 1,  
5 2007 shall—

6 “(A) meet the Energy Star Program Require-  
7 ments for Residential Light Fixtures version 4.0  
8 issued by the Environmental Protection Agency; and

9 “(B) be packaged with lamps to fill all sockets.

10 “(4)(A) By January 1, 2007, the Secretary shall con-  
11 sider and issue requirements for any ceiling fan lighting  
12 kits other than those covered in paragraphs (2) and (3),  
13 including candelabra screw base sockets.

14 “(B) The requirements issued under subparagraph  
15 (A) shall be effective for products manufactured 2 years  
16 after the date of the final rule.

17 “(C) If the Secretary fails to issue a final rule by  
18 the date specified in subparagraph (B), any type of ceiling  
19 fan lighting kit described in subparagraph (A) that is  
20 manufactured after January 1, 2009—

1           “(i) shall not be capable of operating with  
2           lamps that total more than 190 watts; and

3           “(ii) shall include the lamps described in clause  
4           (i) in the ceiling fan lighting kits.

5           “(5)(A) After January 1, 2010, the Secretary may  
6           consider, and issue, if the requirements of subsections (o)  
7           and (p) are met, amended energy efficiency standards for  
8           ceiling fan light kits.

9           “(B) Any amended standards issued under subpara-  
10          graph (A) shall apply to products manufactured not ear-  
11          lier than 2 years after the date of publication of the final  
12          rule establishing the amended standard.

13          “(6)(A) Notwithstanding any other provision of this  
14          Act, the Secretary may consider, and issue, if the require-  
15          ments of subsections (o) and (p) are met, energy efficiency  
16          or energy use standards for electricity used by ceiling fans  
17          to circulate air in a room.

18          “(B) In issuing the standards under subparagraph  
19          (A), the Secretary shall consider—

20                 “(C) exempting, or setting different standards  
21                 for, certain product classes for which the primary

1 standards are not technically feasible or economically  
2 justified; and

3 “(D) establishing separate exempted product  
4 classes for highly decorative fans for which air move-  
5 ment performance is a secondary design feature.

6 “(7) Section 327 shall apply to the products covered  
7 in paragraphs (1) through (4) beginning on the date of  
8 enactment of this subsection, except that any State or  
9 local labeling requirement for ceiling fans prescribed or en-  
10 acted before the date of enactment of this subsection shall  
11 not be preempted until the labeling requirements applica-  
12 ble to ceiling fans established under section 327 take ef-  
13 fect.

14 “(gg) APPLICATION DATE.—Section 327 applies—

15 “(1) to products for which energy conservation  
16 standards are to be established under subsection (l),  
17 (u), or (v) beginning on the date on which a final  
18 rule is issued by the Secretary, except that any State  
19 or local standard prescribed or enacted for the prod-  
20 uct before the date on which the final rule is issued  
21 shall not be preempted until the energy conservation

1 standard established under subsection (l), (u), or (v)  
2 for the product takes effect; and

3 “(2) to products for which energy conservation  
4 standards are established under subsections (w)  
5 through (ff) on the date of enactment of those sub-  
6 sections, except that any State or local standard pre-  
7 scribed or enacted before the date of enactment of  
8 those subsections shall not be preempted until the  
9 energy conservation standards established under  
10 subsections (w) through (ff) take effect.”.

11 (d) GENERAL RULE OF PREEMPTION.—Section  
12 327(c) of the Energy Policy and Conservation Act (42  
13 U.S.C. 6297(c)) is amended—

14 (1) in paragraph (5), by striking “or” at the  
15 end;

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

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

19 “(7)(A) is a regulation concerning standards for  
20 commercial prerinse spray valves adopted by the



1 California Energy Commission before January 1,  
2 2005; or

3 “(B) is an amendment to a regulation described  
4 in subparagraph (A) that was developed to align  
5 California regulations with changes in American So-  
6 ciety for Testing and Materials Standard F2324;

7 “(8)(A) is a regulation concerning standards for  
8 pedestrian modules adopted by the California En-  
9 ergy Commission before January 1, 2005; or

10 “(B) is an amendment to a regulation described  
11 in subparagraph (A) that was developed to align  
12 California regulations to changes in the Institute for  
13 Transportation Engineers standards, entitled ‘Per-  
14 formance Specification: Pedestrian Traffic Control  
15 Signal Indications’.”.

16 **SEC. 136. ENERGY CONSERVATION STANDARDS FOR COM-**  
17 **MERCIAL EQUIPMENT.**

18 (a) DEFINITIONS.—Section 340 of the Energy Policy  
19 and Conservation Act (42 U.S.C. 6311) is amended—

20 (1) in paragraph (1)—

1 (A) by redesignating subparagraphs (D)  
2 through (G) as subparagraphs (H) through  
3 (K), respectively; and

4 (B) by inserting after subparagraph (C)  
5 the following:

6 “(D) Very large commercial package air  
7 conditioning and heating equipment.

8 “(E) Commercial refrigerators, freezers,  
9 and refrigerator-freezers.

10 “(F) Automatic commercial ice makers.

11 “(G) Commercial clothes washers.”;

12 (2) in paragraph (2)(B), by striking “small and  
13 large commercial package air conditioning and heat-  
14 ing equipment” and inserting “commercial package  
15 air conditioning and heating equipment, commercial  
16 refrigerators, freezers, and refrigerator-freezers,  
17 automatic commercial ice makers, commercial  
18 clothes washers”;

19 (3) by striking paragraphs (8) and (9) and in-  
20 serting the following:

1           “(8)(A) The term ‘commercial package air con-  
2           ditioning and heating equipment’ means air-cooled,  
3           water-cooled, evaporatively-cooled, or water source  
4           (not including ground water source) electrically oper-  
5           ated, unitary central air conditioners and central air  
6           conditioning heat pumps for commercial application.

7           “(B) The term ‘small commercial package air  
8           conditioning and heating equipment’ means commer-  
9           cial package air conditioning and heating equipment  
10          that is rated below 135,000 Btu per hour (cooling  
11          capacity).

12          “(C) The term ‘large commercial package air  
13          conditioning and heating equipment’ means commer-  
14          cial package air conditioning and heating equipment  
15          that is rated—

16                 “(i) at or above 135,000 Btu per hour;  
17                 and

18                 “(ii) below 240,000 Btu per hour (cooling  
19                 capacity).

20          “(D) The term ‘very large commercial package  
21          air conditioning and heating equipment’ means com-

1 commercial package air conditioning and heating equip-  
2 ment that is rated—

3 “(i) at or above 240,000 Btu per hour;

4 and

5 “(ii) below 760,000 Btu per hour (cooling  
6 capacity).

7 “(9)(A) The term ‘commercial refrigerator,  
8 freezer, and refrigerator-freezer’ means refrigeration  
9 equipment that—

10 “(i) is not a consumer product (as defined  
11 in section 321);

12 “(ii) is not designed and marketed exclu-  
13 sively for medical, scientific, or research pur-  
14 poses;

15 “(iii) operates at a chilled, frozen, com-  
16 bination chilled and frozen, or variable tempera-  
17 ture;

18 “(iv) displays or stores merchandise and  
19 other perishable materials horizontally,  
20 semivertically, or vertically;

1           “(v) has transparent or solid doors, sliding  
2           or hinged doors, a combination of hinged, slid-  
3           ing, transparent, or solid doors, or no doors;

4           “(vi) is designed for pull-down temperature  
5           applications or holding temperature applica-  
6           tions; and

7           “(vii) is connected to a self-contained con-  
8           densing unit or to a remote condensing unit.

9           “(B) The term ‘holding temperature applica-  
10          tion’ means a use of commercial refrigeration equip-  
11          ment other than a pull-down temperature applica-  
12          tion, except a blast chiller or freezer.

13          “(C) The term ‘integrated average temperature’  
14          means the average temperature of all test package  
15          measurements taken during the test.

16          “(D) The term ‘pull-down temperature applica-  
17          tion’ means a commercial refrigerator with doors  
18          that, when fully loaded with 12 ounce beverage cans  
19          at 90 degrees F, can cool those beverages to an av-  
20          erage stable temperature of 38 degrees F in 12  
21          hours or less.

1           “(E) The term ‘remote condensing unit’ means  
2           a factory-made assembly of refrigerating components  
3           designed to compress and liquefy a specific refrigerant  
4           that is remotely located from the refrigerated  
5           equipment and consists of 1 or more refrigerant  
6           compressors, refrigerant condensers, condenser fans  
7           and motors, and factory supplied accessories.

8           “(F) The term ‘self-contained condensing unit’  
9           means a factory-made assembly of refrigerating components  
10           designed to compress and liquefy a specific  
11           refrigerant that is an integral part of the refrigerated  
12           equipment and consists of 1 or more refrigerant  
13           compressors, refrigerant condensers, condenser  
14           fans and motors, and factory supplied accessories.”;  
15           and

16           (4) by adding at the end the following:

17           “(19) The term ‘automatic commercial ice  
18           maker’ means a factory-made assembly (not necessarily  
19           shipped in 1 package) that—

1           “(A) consists of a condensing unit and ice-  
2           making section operating as an integrated unit,  
3           with means for making and harvesting ice; and

4           “(B) may include means for storing ice,  
5           dispensing ice, or storing and dispensing ice.

6           “(20) The term ‘commercial clothes washer’  
7           means a soft-mount front-loading or soft-mount top-  
8           loading clothes washer that—

9           “(A) has a clothes container compartment  
10          that—

11           “(i) for horizontal-axis clothes wash-  
12           ers, is not more than 3.5 cubic feet; and

13           “(ii) for vertical-axis clothes washers,  
14           is not more than 4.0 cubic feet; and

15           “(B) is designed for use in—

16           “(i) applications in which the occu-  
17           pants of more than 1 household will be  
18           using the clothes washer, such as multi-  
19           family housing common areas and coin  
20           laundries; or

21           “(ii) other commercial applications.

1           “(21) The term ‘harvest rate’ means the  
2           amount of ice (at 32 degrees F) in pounds produced  
3           per 24 hours.”.

4           (b) STANDARDS FOR COMMERCIAL PACKAGE AIR  
5           CONDITIONING AND HEATING EQUIPMENT.—Section  
6           342(a) of the Energy Policy and Conservation Act (42  
7           U.S.C. 6313(a)) is amended—

8           (1) in the subsection heading, by striking  
9           “SMALL AND LARGE” and inserting “SMALL,  
10           LARGE, AND VERY LARGE”;

11           (2) in paragraph (1), by inserting “but before  
12           January 1, 2010,” after “January 1, 1994,”;

13           (3) in paragraph (2), by inserting “but before  
14           January 1, 2010,” after “January 1, 1995,”; and

15           (4) in paragraph (6)—

16           (A) in subparagraph (A)—

17           (i) by inserting “(i)” after “(A)”;

18           (ii) by striking “the date of enactment  
19           of the Energy Policy Act of 1992” and in-  
20           serting “January 1, 2010”;



1 (iii) by inserting after “large commer-  
2 cial package air conditioning and heating  
3 equipment,” the following: “and very large  
4 commercial package air conditioning and  
5 heating equipment, or if ASHRAE/IES  
6 Standard 90.1, as in effect on October 24,  
7 1992, is amended with respect to any”;  
8 and

9 (iv) by adding at the end the fol-  
10 lowing:

11 “(ii) If ASHRAE/IES Standard 90.1 is not amended  
12 with respect to small commercial package air conditioning  
13 and heating equipment, large commercial package air con-  
14 ditioning and heating equipment, and very large commer-  
15 cial package air conditioning and heating equipment dur-  
16 ing the 5-year period beginning on the effective date of  
17 a standard, the Secretary may initiate a rulemaking to  
18 determine whether a more stringent standard—

19 “(I) would result in significant additional con-  
20 servation of energy; and

1           “(II) is technologically feasible and economi-  
2 cally justified.”; and

3           (B) in subparagraph (C)(ii), by inserting  
4 “and very large commercial package air condi-  
5 tioning and heating equipment” after “large  
6 commercial package air conditioning and heat-  
7 ing equipment”; and

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

9           “(7) Small commercial package air conditioning and  
10 heating equipment manufactured on or after January 1,  
11 2010, shall meet the following standards:

12           “(A) The minimum energy efficiency ratio of  
13 air-cooled central air conditioners at or above 65,000  
14 Btu per hour (cooling capacity) and less than  
15 135,000 Btu per hour (cooling capacity) shall be—

16           “(i) 11.2 for equipment with no heating or  
17 electric resistance heating; and

18           “(ii) 11.0 for equipment with all other  
19 heating system types that are integrated into  
20 the equipment (at a standard rating of 95 de-  
21 grees F db).

1           “(B) The minimum energy efficiency ratio of  
2           air-cooled central air conditioner heat pumps at or  
3           above 65,000 Btu per hour (cooling capacity) and  
4           less than 135,000 Btu per hour (cooling capacity)  
5           shall be—

6                   “(i) 11.0 for equipment with no heating or  
7                   electric resistance heating; and

8                   “(ii) 10.8 for equipment with all other  
9                   heating system types that are integrated into  
10                  the equipment (at a standard rating of 95 de-  
11                  grees F db).

12           “(C) The minimum coefficient of performance  
13           in the heating mode of air-cooled central air condi-  
14           tioning heat pumps at or above 65,000 Btu per hour  
15           (cooling capacity) and less than 135,000 Btu per  
16           hour (cooling capacity) shall be 3.3 (at a high tem-  
17           perature rating of 47 degrees F db).

18           “(8) Large commercial package air conditioning and  
19           heating equipment manufactured on or after January 1,  
20           2010, shall meet the following standards:

1           “(A) The minimum energy efficiency ratio of  
2           air-cooled central air conditioners at or above  
3           135,000 Btu per hour (cooling capacity) and less  
4           than 240,000 Btu per hour (cooling capacity) shall  
5           be—

6                   “(i) 11.0 for equipment with no heating or  
7                   electric resistance heating; and

8                   “(ii) 10.8 for equipment with all other  
9                   heating system types that are integrated into  
10                  the equipment (at a standard rating of 95 de-  
11                  grees F db).

12           “(B) The minimum energy efficiency ratio of  
13           air-cooled central air conditioner heat pumps at or  
14           above 135,000 Btu per hour (cooling capacity) and  
15           less than 240,000 Btu per hour (cooling capacity)  
16           shall be—

17                   “(i) 10.6 for equipment with no heating or  
18                   electric resistance heating; and

19                   “(ii) 10.4 for equipment with all other  
20                  heating system types that are integrated into

1           the equipment (at a standard rating of 95 de-  
2           grees F db).

3           “(C) The minimum coefficient of performance  
4           in the heating mode of air-cooled central air condi-  
5           tioning heat pumps at or above 135,000 Btu per  
6           hour (cooling capacity) and less than 240,000 Btu  
7           per hour (cooling capacity) shall be 3.2 (at a high  
8           temperature rating of 47 degrees F db).

9           “(9) Very large commercial package air conditioning  
10          and heating equipment manufactured on or after January  
11          1, 2010, shall meet the following standards:

12           “(A) The minimum energy efficiency ratio of  
13           air-cooled central air conditioners at or above  
14           240,000 Btu per hour (cooling capacity) and less  
15           than 760,000 Btu per hour (cooling capacity) shall  
16           be—

17                   “(i) 10.0 for equipment with no heating or  
18                   electric resistance heating; and

19                   “(ii) 9.8 for equipment with all other heat-  
20                   ing system types that are integrated into the

1 equipment (at a standard rating of 95 degrees  
2 F db).

3 “(B) The minimum energy efficiency ratio of  
4 air-cooled central air conditioner heat pumps at or  
5 above 240,000 Btu per hour (cooling capacity) and  
6 less than 760,000 Btu per hour (cooling capacity)  
7 shall be—

8 “(i) 9.5 for equipment with no heating or  
9 electric resistance heating; and

10 “(ii) 9.3 for equipment with all other heat-  
11 ing system types that are integrated into the  
12 equipment (at a standard rating of 95 degrees  
13 F db).

14 “(C) The minimum coefficient of performance  
15 in the heating mode of air-cooled central air condi-  
16 tioning heat pumps at or above 240,000 Btu per  
17 hour (cooling capacity) and less than 760,000 Btu  
18 per hour (cooling capacity) shall be 3.2 (at a high  
19 temperature rating of 47 degrees F db).”.

20 (c) STANDARDS FOR COMMERCIAL REFRIGERATORS,  
21 FREEZERS, AND REFRIGERATOR-FREEZERS.—Section

1 342 of the Energy Policy and Conservation Act (42 U.S.C.  
2 6313) is amended by adding at the end the following:

3 “(c) COMMERCIAL REFRIGERATORS, FREEZERS, AND  
4 REFRIGERATOR-FREEZERS.—(1) In this subsection:

5 “(A) The term ‘AV’ means the adjusted volume  
6 (ft<sup>3</sup>) (defined as 1.63 x frozen temperature compart-  
7 ment volume (ft<sup>3</sup>) + chilled temperature compart-  
8 ment volume (ft<sup>3</sup>)) with compartment volumes meas-  
9 ured in accordance with the Association of Home  
10 Appliance Manufacturers Standard HRF1–1979.

11 “(B) The term ‘V’ means the chilled or frozen  
12 compartment volume (ft<sup>3</sup>) (as defined in the Asso-  
13 ciation of Home Appliance Manufacturers Standard  
14 HRF1–1979).

15 “(C) Other terms have such meanings as may  
16 be established by the Secretary, based on industry-  
17 accepted definitions and practice.

18 “(2) Each commercial refrigerator, freezer, and re-  
19 frigerator-freezer with a self-contained condensing unit de-  
20 signed for holding temperature applications manufactured  
21 on or after January 1, 2010, shall have a daily energy

1 consumption (in kilowatt hours per day) that does not ex-  
2 ceed the following:

Refrigerators with solid doors .....	0.10 V + 2.04
Refrigerators with transparent doors .....	0.12 V + 3.34
Freezers with solid doors .....	0.40 V + 1.38
Freezers with transparent doors .....	0.75 V + 4.10
Refrigerators/freezers with solid doors the greater of.	0.27 AV – 0.71 or 0.70.

3 “(3) Each commercial refrigerator with a self-con-  
4 tained condensing unit designed for pull-down tempera-  
5 ture applications and transparent doors manufactured on  
6 or after January 1, 2010, shall have a daily energy con-  
7 sumption (in kilowatt hours per day) of not more than  
8 0.126 V + 3.51.

9 “(4)(A) Not later than January 1, 2009, the Sec-  
10 retary shall issue, by rule, standard levels for ice-cream  
11 freezers, self-contained commercial refrigerators, freezers,  
12 and refrigerator-freezers without doors, and remote con-  
13 densing commercial refrigerators, freezers, and refrig-  
14 erator-freezers, with the standard levels effective for  
15 equipment manufactured on or after January 1, 2012.

16 “(B) The Secretary may issue, by rule, standard lev-  
17 els for other types of commercial refrigerators, freezers,



1 and refrigerator-freezers not covered by paragraph (2)(A)  
2 with the standard levels effective for equipment manufac-  
3 tured 3 or more years after the date on which the final  
4 rule is published.

5 “(5)(A) Not later than January 1, 2013, the Sec-  
6 retary shall issue a final rule to determine whether the  
7 standards established under this subsection should be  
8 amended.

9 “(B) Not later than 3 years after the effective date  
10 of any amended standards under subparagraph (A) or the  
11 publication of a final rule determining that the standards  
12 should not be amended, the Secretary shall issue a final  
13 rule to determine whether the standards established under  
14 this subsection or the amended standards, as applicable,  
15 should be amended.

16 “(C) If the Secretary issues a final rule under sub-  
17 paragraph (A) or (B) establishing amended standards, the  
18 final rule shall provide that the amended standards apply  
19 to products manufactured on or after the date that is—

20 “(i) 3 years after the date on which the final  
21 amended standard is published; or

1           “(ii) if the Secretary determines, by rule, that  
 2           3 years is inadequate, not later than 5 years after  
 3           the date on which the final rule is published.”.

4           (d) STANDARDS FOR AUTOMATIC COMMERCIAL ICE  
 5 MAKERS.—Section 342 of the Energy Policy and Con-  
 6 servation Act (42 U.S.C. 6313) (as amended by subsection  
 7 (e)) is amended by adding at the end the following:

8           “(d) AUTOMATIC COMMERCIAL ICE MAKERS.—(1)  
 9 Each automatic commercial ice maker that produces cube  
 10 type ice with capacities between 50 and 2500 pounds per  
 11 24-hour period when tested according to the test standard  
 12 established in section 343(a)(7) and is manufactured on  
 13 or after January 1, 2010, shall meet the following stand-  
 14 ard levels:

Equipment Type	Type of Cooling	Harvest Rate (lbs ice/24 hours)	Maximum Energy Use (kWh/100 lbs Ice)	Maximum Condenser Water Use (gal/100 lbs Ice)
Ice Making Head	Water	<500	7.80–0.0055H	200–0.022H
		≥500 and <1436	5.58–0.0011H	200–0.022H
		≥1436	4.0	200–0.022H
Ice Making Head	Air	<450	10.26–0.0086H	Not Applicable
		≥450	6.89–0.0011H	Not Applicable

Equipment Type	Type of Cooling	Harvest Rate (lbs ice/24 hours)	Maximum Energy Use (kWh/100 lbs Ice)	Maximum Condenser Water Use (gal/100 lbs Ice)
Remote Condensing (but not remote compressor)	Air	<1000	8.85–0.0038H	Not Applicable
		≥1000	5.10	Not Applicable
Remote Condensing and Remote Compressor	Air	<934	8.85–0.0038H	Not Applicable
		≥934	5.3	Not Applicable
Self Contained	Water	<200	11.40–0.019H	191–0.0315H
		≥200	7.60	191–0.0315H
Self Contained	Air	<175	18.0–0.0469H	Not Applicable
		≥175	9.80	Not Applicable

H = Harvest rate in pounds per 24 hours.

Water use is for the condenser only and does not include potable water used to make ice.

1           “(2)(A) The Secretary may issue, by rule, standard  
2 levels for types of automatic commercial ice makers that  
3 are not covered by paragraph (1).

4           “(B) The standards established under subparagraph  
5 (A) shall apply to products manufactured on or after the  
6 date that is—

7                   “(i) 3 years after the date on which the rule is  
8           published under subparagraph (A); or

1           “(ii) if the Secretary determines, by rule, that  
2           3 years is inadequate, not later than 5 years after  
3           the date on which the final rule is published.

4           “(3)(A) Not later than January 1, 2015, with respect  
5 to the standards established under paragraph (1), and,  
6 with respect to the standards established under paragraph  
7 (2), not later than 5 years after the date on which the  
8 standards take effect, the Secretary shall issue a final rule  
9 to determine whether amending the applicable standards  
10 is technologically feasible and economically justified.

11           “(B) Not later than 5 years after the effective date  
12 of any amended standards under subparagraph (A) or the  
13 publication of a final rule determining that amending the  
14 standards is not technologically feasible or economically  
15 justified, the Secretary shall issue a final rule to determine  
16 whether amending the standards established under para-  
17 graph (1) or the amended standards, as applicable, is tech-  
18 nologically feasible or economically justified.

19           “(C) If the Secretary issues a final rule under sub-  
20 paragraph (A) or (B) establishing amended standards, the

1 final rule shall provide that the amended standards apply  
2 to products manufactured on or after the date that is—

3 “(i) 3 years after the date on which the final  
4 amended standard is published; or

5 “(ii) if the Secretary determines, by rule, that  
6 3 years is inadequate, not later than 5 years after  
7 the date on which the final amended standard is  
8 published.

9 “(4) A final rule issued under paragraph (2) or (3)  
10 shall establish standards at the maximum level that is  
11 technically feasible and economically justified, as provided  
12 in subsections (o) and (p) of section 325.”.

13 (e) STANDARDS FOR COMMERCIAL CLOTHES WASH-  
14 ERS.—Section 342 of the Energy Policy and Conservation  
15 Act (42 U.S.C. 6313) (as amended by subsection (d)) is  
16 amended by adding at the end the following:

17 “(e) COMMERCIAL CLOTHES WASHERS.—(1) Each  
18 commercial clothes washer manufactured on or after Jan-  
19 uary 1, 2007, shall have—

20 “(A) a Modified Energy Factor of at least 1.26;

21 and

1           “(B) a Water Factor of not more than 9.5.

2           “(2)(A)(i) Not later than January 1, 2010, the Sec-  
3 retary shall publish a final rule to determine whether the  
4 standards established under paragraph (1) should be  
5 amended.

6           “(ii) The rule published under clause (i) shall provide  
7 that any amended standard shall apply to products manu-  
8 factured 3 years after the date on which the final amended  
9 standard is published.

10          “(B)(i) Not later than January 1, 2015, the Sec-  
11 retary shall publish a final rule to determine whether the  
12 standards established under paragraph (1) should be  
13 amended.

14          “(ii) The rule published under clause (i) shall provide  
15 that any amended standard shall apply to products manu-  
16 factured 3 years after the date on which the final amended  
17 standard is published.”.

18          (f) TEST PROCEDURES.—Section 343 of the Energy  
19 Policy and Conservation Act (42 U.S.C. 6314) is  
20 amended—

21                 (1) in subsection (a)—

1 (A) in paragraph (4)—

2 (i) in subparagraph (A), by inserting  
3 “very large commercial package air condi-  
4 tioning and heating equipment,” after  
5 “large commercial package air conditioning  
6 and heating equipment,”; and

7 (ii) in subparagraph (B), by inserting  
8 “very large commercial package air condi-  
9 tioning and heating equipment,” after  
10 “large commercial package air conditioning  
11 and heating equipment,”; and

12 (B) by adding at the end the following:

13 “(6)(A)(i) In the case of commercial refrigerators,  
14 freezers, and refrigerator-freezers, the test procedures  
15 shall be—

16 “(I) the test procedures determined by the Sec-  
17 retary to be generally accepted industry testing pro-  
18 cedures; or

19 “(II) rating procedures developed or recognized  
20 by the ASHRAE or by the American National  
21 Standards Institute.

1       “(ii) In the case of self-contained refrigerators, freez-  
2       ers, and refrigerator-freezers to which standards are appli-  
3       cable under paragraphs (2) and (3) of section 342(c), the  
4       initial test procedures shall be the ASHRAE 117 test pro-  
5       cedure that is in effect on January 1, 2005.

6       “(B)(i) In the case of commercial refrigerators, freez-  
7       ers, and refrigerators-freezers with doors covered by the  
8       standards adopted in February 2002, by the California  
9       Energy Commission, the rating temperatures shall be the  
10      integrated average temperature of 38 degrees F ( $\pm$  2 de-  
11      grees F) for refrigerator compartments and 0 degrees F  
12      ( $\pm$  2 degrees F) for freezer compartments.

13      “(C) The Secretary shall issue a rule in accordance  
14      with paragraphs (2) and (3) to establish the appropriate  
15      rating temperatures for the other products for which  
16      standards will be established under section 342(c)(4).

17      “(D) In establishing the appropriate test tempera-  
18      tures under this subparagraph, the Secretary shall follow  
19      the procedures and meet the requirements under section  
20      323(e).



1       “(E)(i) Not later than 180 days after the publication  
2 of the new ASHRAE 117 test procedure, if the ASHRAE  
3 117 test procedure for commercial refrigerators, freezers,  
4 and refrigerator-freezers is amended, the Secretary shall,  
5 by rule, amend the test procedure for the product as nec-  
6 essary to ensure that the test procedure is consistent with  
7 the amended ASHRAE 117 test procedure, unless the  
8 Secretary makes a determination, by rule, and supported  
9 by clear and convincing evidence, that to do so would not  
10 meet the requirements for test procedures under para-  
11 graphs (2) and (3).

12       “(ii) If the Secretary determines that 180 days is an  
13 insufficient period during which to review and adopt the  
14 amended test procedure or rating procedure under clause  
15 (i), the Secretary shall publish a notice in the Federal  
16 Register stating the intent of the Secretary to wait not  
17 longer than 1 additional year before putting into effect  
18 an amended test procedure or rating procedure.

19       “(F)(i) If a test procedure other than the ASHRAE  
20 117 test procedure is approved by the American National  
21 Standards Institute, the Secretary shall, by rule—

1           “(I) review the relative strengths and weak-  
2           nesses of the new test procedure relative to the  
3           ASHRAE 117 test procedure; and

4           “(II) based on that review, adopt 1 new test  
5           procedure for use in the standards program.

6           “(ii) If a new test procedure is adopted under clause  
7 (i)—

8           “(I) section 323(e) shall apply; and

9           “(II) subparagraph (B) shall apply to the  
10          adopted test procedure.

11          “(7)(A) In the case of automatic commercial ice mak-  
12          ers, the test procedures shall be the test procedures speci-  
13          fied in Air-Conditioning and Refrigeration Institute  
14          Standard 810–2003, as in effect on January 1, 2005.

15          “(B)(i) If Air-Conditioning and Refrigeration Insti-  
16          tute Standard 810–2003 is amended, the Secretary shall  
17          amend the test procedures established in subparagraph  
18          (A) as necessary to be consistent with the amended Air-  
19          Conditioning and Refrigeration Institute Standard, unless  
20          the Secretary determines, by rule, published in the Federal  
21          Register and supported by clear and convincing evidence,

1 that to do so would not meet the requirements for test  
2 procedures under paragraphs (2) and (3).

3 “(ii) If the Secretary issues a rule under clause (i)  
4 containing a determination described in clause (ii), the  
5 rule may establish an amended test procedure for the  
6 product that meets the requirements of paragraphs (2)  
7 and (3).

8 “(C) The Secretary shall comply with section 323(e)  
9 in establishing any amended test procedure under this  
10 paragraph.

11 “(8) With respect to commercial clothes washers, the  
12 test procedures shall be the same as the test procedures  
13 established by the Secretary for residential clothes wash-  
14 ers under section 325(g).”; and

15 (2) in subsection (d)(1), by inserting “very  
16 large commercial package air conditioning and heat-  
17 ing equipment, commercial refrigerators, freezers,  
18 and refrigerator-freezers, automatic commercial ice  
19 makers, commercial clothes washers,” after “large  
20 commercial package air conditioning and heating  
21 equipment,”.

1 (g) LABELING.—Section 344(e) of the Energy Policy  
2 and Conservation Act (42 U.S.C. 6315(e)) is amended by  
3 inserting “very large commercial package air conditioning  
4 and heating equipment, commercial refrigerators, freezers,  
5 and refrigerator-freezers, automatic commercial ice mak-  
6 ers, commercial clothes washers,” after “large commercial  
7 package air conditioning and heating equipment,” each  
8 place it appears.

9 (h) ADMINISTRATION, PENALTIES, ENFORCEMENT,  
10 AND PREEMPTION.—Section 345 of the Energy Policy and  
11 Conservation Act (42 U.S.C. 6316) is amended—

12 (1) in subsection (a)—

13 (A) in paragraph (7), by striking “and” at  
14 the end;

15 (B) in paragraph (8), by striking the pe-  
16 riod at the end and inserting “; and”; and

17 (C) by adding at the end the following:

18 “(9) in the case of commercial clothes washers,  
19 section 327(b)(1) shall be applied as if the National  
20 Appliance Energy Conservation Act of 1987 was the  
21 Energy Policy Act of 2005.”;

1           (2) in the first sentence of subsection (b)(1), by  
2           striking “part B” and inserting “part A”; and

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

4           “(d)(1) Except as provided in paragraphs (2) and  
5           (3), section 327 shall apply with respect to very large com-  
6           mercial package air conditioning and heating equipment  
7           to the same extent and in the same manner as section  
8           327 applies under part A on the date of enactment of this  
9           subsection.

10          “(2) Any State or local standard issued before the  
11          date of enactment of this subsection shall not be pre-  
12          empted until the standards established under section  
13          342(a)(9) take effect on January 1, 2010.

14          “(e)(1)(A) Subsections (a), (b), and (d) of section  
15          326, subsections (m) through (s) of section 325, and sec-  
16          tions 328 through 336 shall apply with respect to commer-  
17          cial refrigerators, freezers, and refrigerator-freezers to the  
18          same extent and in the same manner as those provisions  
19          apply under part A.

1       “(B) In applying those provisions to commercial re-  
2 frigerators, freezers, and refrigerator-freezers, paragraphs  
3 (1), (2), (3), and (4) of subsection (a) shall apply.

4       “(2)(A) Section 327 shall apply to commercial refrig-  
5 erators, freezers, and refrigerator-freezers for which  
6 standards are established under paragraphs (2) and (3)  
7 of section 342(c) to the same extent and in the same man-  
8 ner as those provisions apply under part A on the date  
9 of enactment of this subsection, except that any State or  
10 local standard issued before the date of enactment of this  
11 subsection shall not be preempted until the standards es-  
12 tablished under paragraphs (2) and (3) of section 342(c)  
13 take effect.

14       “(B) In applying section 327 in accordance with sub-  
15 paragraph (A), paragraphs (1), (2), and (3) of subsection  
16 (a) shall apply.

17       “(3)(A) Section 327 shall apply to commercial refrig-  
18 erators, freezers, and refrigerator-freezers for which  
19 standards are established under section 342(c)(4) to the  
20 same extent and in the same manner as the provisions  
21 apply under part A on the date of publication of the final

1 rule by the Secretary, except that any State or local stand-  
2 ard issued before the date of publication of the final rule  
3 by the Secretary shall not be preempted until the stand-  
4 ards take effect.

5 “(B) In applying section 327 in accordance with sub-  
6 paragraph (A), paragraphs (1), (2), and (3) of subsection  
7 (a) shall apply.

8 “(4)(A) If the Secretary does not issue a final rule  
9 for a specific type of commercial refrigerator, freezer, or  
10 refrigerator-freezer within the time frame specified in sec-  
11 tion 342(c)(5), subsections (b) and (c) of section 327 shall  
12 not apply to that specific type of refrigerator, freezer, or  
13 refrigerator-freezer for the period beginning on the date  
14 that is 2 years after the scheduled date for a final rule  
15 and ending on the date on which the Secretary publishes  
16 a final rule covering the specific type of refrigerator, freez-  
17 er, or refrigerator-freezer.

18 “(B) Any State or local standard issued before the  
19 date of publication of the final rule shall not be preempted  
20 until the final rule takes effect.

1       “(5)(A) In the case of any commercial refrigerator,  
2 freezer, or refrigerator-freezer to which standards are ap-  
3 plicable under paragraphs (2) and (3) of section 342(c),  
4 the Secretary shall require manufacturers to certify,  
5 through an independent, nationally recognized testing or  
6 certification program, that the commercial refrigerator,  
7 freezer, or refrigerator-freezer meets the applicable stand-  
8 ard.

9       “(B) The Secretary shall, to the maximum extent  
10 practicable, encourage the establishment of at least 2 inde-  
11 pendent testing and certification programs.

12       “(C) As part of certification, information on equip-  
13 ment energy use and interior volume shall be made avail-  
14 able to the Secretary.

15       “(f)(1)(A)(i) Except as provided in clause (ii), section  
16 327 shall apply to automatic commercial ice makers for  
17 which standards have been established under section  
18 342(d)(1) to the same extent and in the same manner as  
19 the section applies under part A on the date of enactment  
20 of this subsection.



1       “(ii) Any State standard issued before the date of en-  
2 actment of this subsection shall not be preempted until  
3 the standards established under section 342(d)(1) take ef-  
4 fect.

5       “(B) In applying section 327 to the equipment under  
6 subparagraph (A), paragraphs (1), (2), and (3) of sub-  
7 section (a) shall apply.

8       “(2)(A)(i) Except as provided in clause (ii), section  
9 327 shall apply to automatic commercial ice makers for  
10 which standards have been established under section  
11 342(d)(2) to the same extent and in the same manner as  
12 the section applies under part A on the date of publication  
13 of the final rule by the Secretary.

14       “(ii) Any State standard issued before the date of  
15 publication of the final rule by the Secretary shall not be  
16 preempted until the standards established under section  
17 342(d)(2) take effect.

18       “(B) In applying section 327 in accordance with sub-  
19 paragraph (A), paragraphs (1), (2), and (3) of subsection  
20 (a) shall apply.

1           “(3)(A) If the Secretary does not issue a final rule  
2 for a specific type of automatic commercial ice maker  
3 within the time frame specified in section 342(d), sub-  
4 sections (b) and (c) of section 327 shall no longer apply  
5 to the specific type of automatic commercial ice maker for  
6 the period beginning on the day after the scheduled date  
7 for a final rule and ending on the date on which the Sec-  
8 retary publishes a final rule covering the specific type of  
9 automatic commercial ice maker.

10           “(B) Any State standard issued before the publica-  
11 tion of the final rule shall not be preempted until the  
12 standards established in the final rule take effect.

13           “(4)(A) The Secretary shall monitor whether manu-  
14 facturers are reducing harvest rates below tested values  
15 for the purpose of bringing non-complying equipment into  
16 compliance.

17           “(B) If the Secretary finds that there has been a sub-  
18 stantial amount of manipulation with respect to harvest  
19 rates under subparagraph (A), the Secretary shall take  
20 steps to minimize the manipulation, such as requiring har-  
21 vest rates to be within 5 percent of tested values.

1           “(g)(1)(A) If the Secretary does not issue a final rule  
2 for commercial clothes washers within the timeframe spec-  
3 ified in section 342(e)(2), subsections (b) and (c) of sec-  
4 tion 327 shall not apply to commercial clothes washers for  
5 the period beginning on the day after the scheduled date  
6 for a final rule and ending on the date on which the Sec-  
7 retary publishes a final rule covering commercial clothes  
8 washers.

9           “(B) Any State or local standard issued before the  
10 date on which the Secretary publishes a final rule shall  
11 not be preempted until the standards established under  
12 section 342(e)(2) take effect.

13           “(2) The Secretary shall undertake an educational  
14 program to inform owners of laundromats, multifamily  
15 housing, and other sites where commercial clothes washers  
16 are located about the new standard, including impacts on  
17 washer purchase costs and options for recovering those  
18 costs through coin collection.”.

19 **SEC. 137. ENERGY LABELING.**

20           (a) RULEMAKING ON EFFECTIVENESS OF CONSUMER  
21 PRODUCT LABELING.—Section 324(a)(2) of the Energy

1 Policy and Conservation Act (42 U.S.C. 6294(a)(2)) is  
2 amended by adding at the end the following:

3 “(F)(i) Not later than 90 days after the date of en-  
4 actment of this subparagraph, the Commission shall ini-  
5 tiate a rulemaking to consider—

6 “(I) the effectiveness of the consumer products  
7 labeling program in assisting consumers in making  
8 purchasing decisions and improving energy effi-  
9 ciency; and

10 “(II) changes to the labeling rules (including  
11 categorical labeling) that would improve the effec-  
12 tiveness of consumer product labels.

13 “(ii) Not later than 2 years after the date of enact-  
14 ment of this subparagraph, the Commission shall complete  
15 the rulemaking initiated under clause (i).

16 “(G)(i) Not later than 18 months after the date of  
17 enactment of this subparagraph, the Commission shall  
18 issue by rule, in accordance with this section, labeling re-  
19 quirements for the electricity used by ceiling fans to cir-  
20 culate air in a room.

1       “(ii) The rule issued under clause (i) shall apply to  
2 products manufactured after the later of—

3               “(I) January 1, 2009; or

4               “(II) the date that is 60 days after the final  
5 rule is issued.”.

6       (b) RULEMAKING ON LABELING FOR ADDITIONAL  
7 PRODUCTS.—Section 324(a) of the Energy Policy and  
8 Conservation Act (42 U.S.C. 6294(a)) is amended by add-  
9 ing at the end the following:

10       “(5)(A) For covered products described in sub-  
11 sections (u) through (ff) of section 325, after a test proce-  
12 dure has been prescribed under section 323, the Secretary  
13 or the Commission, as appropriate, may prescribe, by rule,  
14 under this section labeling requirements for the products.

15       “(B) In the case of products to which TP–1 stand-  
16 ards under section 325(y) apply, labeling requirements  
17 shall be based on the ‘Standard for the Labeling of Dis-  
18 tribution Transformer Efficiency’ prescribed by the Na-  
19 tional Electrical Manufacturers Association (NEMA TP–  
20 3) as in effect on the date of enactment of this paragraph.

1       “(C) In the case of dehumidifiers covered under sec-  
2 tion 325(dd), the Commission shall not require an ‘Energy  
3 Guide’ label.”.

4 **SEC. 138. INTERMITTENT ESCALATOR STUDY.**

5       (a) IN GENERAL.—The Administrator of General  
6 Services shall conduct a study on the advantages and dis-  
7 advantages of employing intermittent escalators in the  
8 United States.

9       (b) CONTENTS.—Such study shall include an analysis  
10 of—

11           (1) the energy end-cost savings derived from  
12 the use of intermittent escalators;

13           (2) the cost savings derived from reduced main-  
14 tenance requirements; and

15           (3) such other issues as the Administrator con-  
16 siders appropriate.

17       (c) REPORT TO CONGRESS.—Not later than 1 year  
18 after the date of enactment of this Act, the Administrator  
19 shall transmit to Congress a report on the results of the  
20 study.

1 (d) DEFINITION.—For purpose of this section, the  
2 term “intermittent escalator” means an escalator that re-  
3 mains in a stationary position until it automatically oper-  
4 ates at the approach of a passenger, returning to a sta-  
5 tionary position after the passenger completes passage.

6 **SEC. 139. ENERGY EFFICIENT ELECTRIC AND NATURAL GAS**  
7 **UTILITIES STUDY.**

8 (a) IN GENERAL.—Not later than 1 year after the  
9 date of enactment of this Act, the Secretary, in consulta-  
10 tion with the National Association of Regulatory Utility  
11 Commissioners and the National Association of State En-  
12 ergy Officials, shall conduct a study of State and regional  
13 policies that promote cost-effective programs to reduce en-  
14 ergy consumption (including energy efficiency programs)  
15 that are carried out by—

16 (1) utilities that are subject to State regulation;

17 and

18 (2) nonregulated utilities.

19 (b) CONSIDERATION.—In conducting the study under  
20 subsection (a), the Secretary shall take into  
21 consideration—

- 1           (1) performance standards for achieving energy  
2           use and demand reduction targets;
- 3           (2) funding sources, including rate surcharges;
- 4           (3) infrastructure planning approaches (includ-  
5           ing energy efficiency programs) and infrastructure  
6           improvements;
- 7           (4) the costs and benefits of consumer edu-  
8           cation programs conducted by State and local gov-  
9           ernments and local utilities to increase consumer  
10          awareness of energy efficiency technologies and  
11          measures; and
- 12          (5) methods of—
- 13                (A) removing disincentives for utilities to  
14                implement energy efficiency programs;
- 15                (B) encouraging utilities to undertake vol-  
16                untary energy efficiency programs; and
- 17                (C) ensuring appropriate returns on energy  
18                efficiency programs.
- 19          (c) REPORT.—Not later than 1 year after the date  
20          of enactment of this Act, the Secretary shall submit to  
21          Congress a report that includes—



- 1 (1) the findings of the study; and
- 2 (2) any recommendations of the Secretary, in-
- 3 cluding recommendations on model policies to pro-
- 4 mote energy efficiency programs.

5 **SEC. 140. ENERGY EFFICIENCY PILOT PROGRAM.**

6 (a) IN GENERAL.—The Secretary shall establish a  
7 pilot program under which the Secretary provides financial  
8 assistance to at least 3, but not more than 7, States to  
9 carry out pilot projects in the States for—

10 (1) planning and adopting statewide programs  
11 that encourage, for each year in which the pilot  
12 project is carried out—

13 (A) energy efficiency; and

14 (B) reduction of consumption of electricity  
15 or natural gas in the State by at least 0.75 per-  
16 cent, as compared to a baseline determined by  
17 the Secretary for the period preceding the im-  
18 plementation of the program; or

19 (2) for any State that has adopted a statewide  
20 program as of the date of enactment of this Act, ac-



1 peditionally prescribing such new or revised standard. The  
2 Secretary's initial report shall be submitted not later than  
3 6 months following enactment of this Act and subsequent  
4 reports shall be submitted whenever the Secretary deter-  
5 mines that additional deadlines for issuance of new or re-  
6 vised standards have been missed.

7 (b) IMPLEMENTATION REPORT.—Every 6 months  
8 following the submission of a report under subsection (a)  
9 until the adoption of a new or revised standard described  
10 in such report, the Secretary shall submit to the Congress  
11 an implementation report describing the Secretary's  
12 progress in implementing the Secretary's plan or the  
13 issuance of the new or revised standard.

## 14 **Subtitle D—Public Housing**

### 15 **SEC. 151. PUBLIC HOUSING CAPITAL FUND.**

16 Section 9 of the United States Housing Act of 1937  
17 (42 U.S.C. 1437g) is amended—

18 (1) in subsection (d)(1)—

19 (A) in subparagraph (I), by striking “and”  
20 at the end;

1 (B) in subparagraph (J), by striking the  
2 period at the end and inserting a semicolon;  
3 and

4 (C) by adding at the end the following new  
5 subparagraphs:

6 “(K) improvement of energy and water-use  
7 efficiency by installing fixtures and fittings that  
8 conform to the American Society of Mechanical  
9 Engineers/American National Standards Insti-  
10 tute standards A112.19.2–1998 and  
11 A112.18.1–2000, or any revision thereto, appli-  
12 cable at the time of installation, and by increas-  
13 ing energy efficiency and water conservation by  
14 such other means as the Secretary determines  
15 are appropriate; and

16 “(L) integrated utility management and  
17 capital planning to maximize energy conserva-  
18 tion and efficiency measures.”; and

19 (2) in subsection (e)(2)(C)—

20 (A) by striking “The” and inserting the  
21 following:

1                   “(i) IN GENERAL.—The”; and  
2                   (B) by adding at the end the following:

3                   “(ii) THIRD PARTY CONTRACTS.—  
4                   Contracts described in clause (i) may in-  
5                   clude contracts for equipment conversions  
6                   to less costly utility sources, projects with  
7                   resident-paid utilities, and adjustments to  
8                   frozen base year consumption, including  
9                   systems repaired to meet applicable build-  
10                  ing and safety codes and adjustments for  
11                  occupancy rates increased by rehabilita-  
12                  tion.

13                  “(iii) TERM OF CONTRACT.—The total  
14                  term of a contract described in clause (i)  
15                  shall not exceed 20 years to allow longer  
16                  payback periods for retrofits, including  
17                  windows, heating system replacements,  
18                  wall insulation, site-based generation, ad-  
19                  vanced energy savings technologies, includ-  
20                  ing renewable energy generation, and other  
21                  such retrofits.”.

1 **SEC. 152. ENERGY-EFFICIENT APPLIANCES.**

2 In purchasing appliances, a public housing agency  
3 shall purchase energy-efficient appliances that are Energy  
4 Star products or FEMP-designated products, as such  
5 terms are defined in section 553 of the National Energy  
6 Conservation Policy Act), unless the purchase of energy-  
7 efficient appliances is not cost-effective to the agency.

8 **SEC. 153. ENERGY EFFICIENCY STANDARDS.**

9 Section 109 of the Cranston-Gonzalez National Af-  
10 fordable Housing Act (42 U.S.C. 12709) is amended—

11 (1) in subsection (a)—

12 (A) in paragraph (1)—

13 (i) by striking “1 year after the date  
14 of the enactment of the Energy Policy Act  
15 of 1992” and inserting “September 30,  
16 2006”;

17 (ii) in subparagraph (A), by striking  
18 “and” at the end;

19 (iii) in subparagraph (B), by striking  
20 the period at the end and inserting “;  
21 and”;

1 (iv) by adding at the end the fol-  
2 lowing:

3 “(C) rehabilitation and new construction of  
4 public and assisted housing funded by HOPE  
5 VI revitalization grants under section 24 of the  
6 United States Housing Act of 1937 (42 U.S.C.  
7 1437v), where such standards are determined  
8 to be cost effective by the Secretary of Housing  
9 and Urban Development.”; and

10 (B) in paragraph (2), by inserting “, and,  
11 with respect to rehabilitation and new construc-  
12 tion of public and assisted housing funded by  
13 HOPE VI revitalization grants under section  
14 24 of the United States Housing Act of 1937  
15 (42 U.S.C. 1437v), the 2003 International En-  
16 ergy Conservation Code” after “90.1–1989”);  
17 (2) in subsection (b)—

18 (A) by striking “within 1 year after the  
19 date of the enactment of the Energy Policy Act  
20 of 1992” and inserting “by September 30,  
21 2006”; and

1 (B) by inserting “, and, with respect to re-  
2 habilitation and new construction of public and  
3 assisted housing funded by HOPE VI revital-  
4 ization grants under section 24 of the United  
5 States Housing Act of 1937 (42 U.S.C. 1437v),  
6 the 2003 International Energy Conservation  
7 Code” before the period at the end; and  
8 (3) in subsection (c)—

9 (A) in the heading, by inserting “AND THE  
10 INTERNATIONAL ENERGY CONSERVATION  
11 CODE” after “MODEL ENERGY CODE”; and

12 (B) by inserting “, or, with respect to re-  
13 habilitation and new construction of public and  
14 assisted housing funded by HOPE VI revital-  
15 ization grants under section 24 of the United  
16 States Housing Act of 1937 (42 U.S.C. 1437v),  
17 the 2003 International Energy Conservation  
18 Code” after “1989”.

19 **SEC. 154. ENERGY STRATEGY FOR HUD.**

20 The Secretary of Housing and Urban Development  
21 shall develop and implement an integrated strategy to re-



1 duce utility expenses through cost-effective energy con-  
2 servation and efficiency measures and energy efficient de-  
3 sign and construction of public and assisted housing. The  
4 energy strategy shall include the development of energy  
5 reduction goals and incentives for public housing agencies.  
6 The Secretary shall submit a report to Congress, not later  
7 than 1 year after the date of the enactment of this Act,  
8 on the energy strategy and the actions taken by the De-  
9 partment of Housing and Urban Development to monitor  
10 the energy usage of public housing agencies and shall sub-  
11 mit an update every 2 years thereafter on progress in im-  
12 plementing the strategy.

## 13 **TITLE II—RENEWABLE ENERGY**

### 14 **Subtitle A—General Provisions**

#### 15 **SEC. 201. ASSESSMENT OF RENEWABLE ENERGY RE-** 16 **SOURCES.**

17 (a) RESOURCE ASSESSMENT.—Not later than 6  
18 months after the date of enactment of this Act, and each  
19 year thereafter, the Secretary shall review the available as-  
20 sessments of renewable energy resources within the United  
21 States, including solar, wind, biomass, ocean (including

1 tidal, wave, current, and thermal), geothermal, and hydro-  
2 electric energy resources, and undertake new assessments  
3 as necessary, taking into account changes in market condi-  
4 tions, available technologies, and other relevant factors.

5 (b) CONTENTS OF REPORTS.—Not later than 1 year  
6 after the date of enactment of this Act, and each year  
7 thereafter, the Secretary shall publish a report based on  
8 the assessment under subsection (a). The report shall  
9 contain—

10 (1) a detailed inventory describing the available  
11 amount and characteristics of the renewable energy  
12 resources; and

13 (2) such other information as the Secretary be-  
14 lieves would be useful in developing such renewable  
15 energy resources, including descriptions of sur-  
16 rounding terrain, population and load centers, near-  
17 by energy infrastructure, location of energy and  
18 water resources, and available estimates of the costs  
19 needed to develop each resource, together with an  
20 identification of any barriers to providing adequate  
21 transmission for remote sources of renewable energy

1 resources to current and emerging markets, rec-  
2 ommendations for removing or addressing such bar-  
3 riers, and ways to provide access to the grid that do  
4 not unfairly disadvantage renewable or other energy  
5 producers.

6 (c) AUTHORIZATION OF APPROPRIATIONS.—For the  
7 purposes of this section, there are authorized to be appro-  
8 priated to the Secretary \$10,000,000 for each of fiscal  
9 years 2006 through 2010.

10 **SEC. 202. RENEWABLE ENERGY PRODUCTION INCENTIVE.**

11 (a) INCENTIVE PAYMENTS.—Section 1212(a) of the  
12 Energy Policy Act of 1992 (42 U.S.C. 13317(a)) is  
13 amended—

14 (1) by striking the last sentence;

15 (2) by designating the first, second, and third  
16 sentences as paragraphs (1), (2), and (3), respec-  
17 tively;

18 (3) in paragraph (3) (as so designated), by  
19 striking “and which satisfies” and all that follows  
20 through “deems necessary”; and

21 (4) by adding at the end the following:

1       “(4)(A) Subject to subparagraph (B), if there are in-  
2 sufficient appropriations to make full payments for electric  
3 production from all qualified renewable energy facilities  
4 for a fiscal year, the Secretary shall assign—

5           “(i) 60 percent of appropriated funds for the  
6 fiscal year to facilities that use solar, wind, ocean  
7 (including tidal, wave, current, and thermal), geo-  
8 thermal, or closed-loop (dedicated energy crops) bio-  
9 mass technologies to generate electricity; and

10          “(ii) 40 percent of appropriated funds for the  
11 fiscal year to other projects.

12       “(B) After submitting to Congress an explanation of  
13 the reasons for the alteration, the Secretary may alter the  
14 percentage requirements of subparagraph (A).”.

15       (b) QUALIFIED RENEWABLE ENERGY FACILITY.—  
16 Section 1212(b) of the Energy Policy Act of 1992 (42  
17 U.S.C. 13317(b)) is amended—

18           (1) by striking “a State or any political” and  
19 all that follows through “nonprofit electrical cooper-  
20 ative” and inserting “a not-for-profit electric cooper-  
21 ative, a public utility described in section 115 of the

1 Internal Revenue Code of 1986, a State, Common-  
2 wealth, territory, or possession of the United States,  
3 or the District of Columbia, or a political subdivision  
4 thereof, an Indian tribal government or subdivision  
5 thereof, or a Native Corporation (as defined in sec-  
6 tion 3 of the Alaska Native Claims Settlement Act  
7 (43 U.S.C. 1602)),”; and

8 (2) by inserting “landfill gas, livestock methane,  
9 ocean (including tidal, wave, current, and thermal),”  
10 after “wind, biomass,”.

11 (c) ELIGIBILITY WINDOW.—Section 1212(c) of the  
12 Energy Policy Act of 1992 (42 U.S.C. 13317(c)) is  
13 amended by striking “during the 10-fiscal year period be-  
14 ginning with the first full fiscal year occurring after the  
15 enactment of this section” and inserting “before October  
16 1, 2016”.

17 (d) PAYMENT PERIOD.—Section 1212(d) of the En-  
18 ergy Policy Act of 1992 (42 U.S.C. 13317(d)) is amended  
19 in the second sentence by inserting “, or in which the Sec-  
20 retary determines that all necessary Federal and State au-

1 thORIZATIONS have been obtained to begin construction of  
2 the facility” after “eligible for such payments”.

3 (e) AMOUNT OF PAYMENT.—Section 1212(e)(1) of  
4 the Energy Policy Act of 1992 (42 U.S.C. 13317(e)(1))  
5 is amended in the first sentence by inserting “landfill gas,  
6 livestock methane, ocean (including tidal, wave, current,  
7 and thermal),” after “wind, biomass,”.

8 (f) TERMINATION OF AUTHORITY.—Section 1212(f)  
9 of the Energy Policy Act of 1992 (42 U.S.C. 13317(f))  
10 is amended by striking “the expiration of” and all that  
11 follows through “of this section” and inserting “Sep-  
12 tember 30, 2026”.

13 (g) AUTHORIZATION OF APPROPRIATIONS.—Section  
14 1212 of the Energy Policy Act of 1992 (42 U.S.C. 13317)  
15 is amended by striking subsection (g) and inserting the  
16 following:

17 “(g) AUTHORIZATION OF APPROPRIATIONS.—There  
18 are authorized to be appropriated such sums as are nec-  
19 essary to carry out this section for each of fiscal years  
20 2006 through 2026, to remain available until expended.”.

1 **SEC. 203. FEDERAL PURCHASE REQUIREMENT.**

2 (a) REQUIREMENT.—The President, acting through  
3 the Secretary, shall seek to ensure that, to the extent eco-  
4 nomically feasible and technically practicable, of the total  
5 amount of electric energy the Federal Government con-  
6 sumes during any fiscal year, the following amounts shall  
7 be renewable energy:

8 (1) Not less than 3 percent in fiscal years 2007  
9 through 2009.

10 (2) Not less than 5 percent in fiscal years 2010  
11 through 2012.

12 (3) Not less than 7.5 percent in fiscal year  
13 2013 and each fiscal year thereafter.

14 (b) DEFINITIONS.—In this section:

15 (1) BIOMASS.—The term “biomass” means any  
16 lignin waste material that is segregated from other  
17 waste materials and is determined to be nonhaz-  
18 ardous by the Administrator of the Environmental  
19 Protection Agency and any solid, nonhazardous, cel-  
20 lulosic material that is derived from—

1 (A) any of the following forest-related re-  
2 sources: mill residues, precommercial thinnings,  
3 slash, and brush, or nonmerchantable material;

4 (B) solid wood waste materials, including  
5 waste pallets, crates, dunnage, manufacturing  
6 and construction wood wastes (other than pres-  
7 sure-treated, chemically-treated, or painted  
8 wood wastes), and landscape or right-of-way  
9 tree trimmings, but not including municipal  
10 solid waste (garbage), gas derived from the bio-  
11 degradation of solid waste, or paper that is  
12 commonly recycled;

13 (C) agriculture wastes, including orchard  
14 tree crops, vineyard, grain, legumes, sugar, and  
15 other crop by-products or residues, and live-  
16 stock waste nutrients; or

17 (D) a plant that is grown exclusively as a  
18 fuel for the production of electricity.

19 (2) RENEWABLE ENERGY.—The term “renew-  
20 able energy” means electric energy generated from  
21 solar, wind, biomass, landfill gas, ocean (including



1 tidal, wave, current, and thermal), geothermal, mu-  
2 nicipal solid waste, or new hydroelectric generation  
3 capacity achieved from increased efficiency or addi-  
4 tions of new capacity at an existing hydroelectric  
5 project.

6 (c) CALCULATION.—For purposes of determining  
7 compliance with the requirement of this section, the  
8 amount of renewable energy shall be doubled if—

9 (1) the renewable energy is produced and used  
10 on-site at a Federal facility;

11 (2) the renewable energy is produced on Fed-  
12 eral lands and used at a Federal facility; or

13 (3) the renewable energy is produced on Indian  
14 land as defined in title XXVI of the Energy Policy  
15 Act of 1992 (25 U.S.C. 3501 et seq.) and used at  
16 a Federal facility.

17 (d) REPORT.—Not later than April 15, 2007, and  
18 every 2 years thereafter, the Secretary shall provide a re-  
19 port to Congress on the progress of the Federal Govern-  
20 ment in meeting the goals established by this section.

1 **SEC. 204. USE OF PHOTOVOLTAIC ENERGY IN PUBLIC**  
2 **BUILDINGS.**

3 (a) IN GENERAL.—Subchapter VI of chapter 31 of  
4 title 40, United States Code, is amended by adding at the  
5 end the following:

6 **“§ 3177. Use of photovoltaic energy in public build-**  
7 **ings**

8 “(a) PHOTOVOLTAIC ENERGY COMMERCIALIZATION  
9 PROGRAM.—

10 “(1) IN GENERAL.—The Administrator of Gen-  
11 eral Services may establish a photovoltaic energy  
12 commercialization program for the procurement and  
13 installation of photovoltaic solar electric systems for  
14 electric production in new and existing public build-  
15 ings.

16 “(2) PURPOSES.—The purposes of the program  
17 shall be to accomplish the following:

18 “(A) To accelerate the growth of a com-  
19 mercially viable photovoltaic industry to make  
20 this energy system available to the general pub-

1           lic as an option which can reduce the national  
2           consumption of fossil fuel.

3           “(B) To reduce the fossil fuel consumption  
4           and costs of the Federal Government.

5           “(C) To attain the goal of installing solar  
6           energy systems in 20,000 Federal buildings by  
7           2010, as contained in the Federal Government’s  
8           Million Solar Roof Initiative of 1997.

9           “(D) To stimulate the general use within  
10          the Federal Government of life-cycle costing  
11          and innovative procurement methods.

12          “(E) To develop program performance  
13          data to support policy decisions on future incen-  
14          tive programs with respect to energy.

15          “(3) ACQUISITION OF PHOTOVOLTAIC SOLAR  
16          ELECTRIC SYSTEMS.—

17          “(A) IN GENERAL.—The program shall  
18          provide for the acquisition of photovoltaic solar  
19          electric systems and associated storage capa-  
20          bility for use in public buildings.

1           “(B) ACQUISITION LEVELS.—The acquisi-  
2           tion of photovoltaic electric systems shall be at  
3           a level substantial enough to allow use of low-  
4           cost production techniques with at least 150  
5           megawatts (peak) cumulative acquired during  
6           the 5 years of the program.

7           “(4) ADMINISTRATION.—The Administrator  
8           shall administer the program and shall—

9                   “(A) issue such rules and regulations as  
10                  may be appropriate to monitor and assess the  
11                  performance and operation of photovoltaic solar  
12                  electric systems installed pursuant to this sub-  
13                  section;

14                   “(B) develop innovative procurement strat-  
15                  egies for the acquisition of such systems; and

16                   “(C) transmit to Congress an annual re-  
17                  port on the results of the program.

18           “(b) PHOTOVOLTAIC SYSTEMS EVALUATION PRO-  
19           GRAM.—

20                   “(1) IN GENERAL.—Not later than 60 days  
21                  after the date of enactment of this section, the Ad-

1 administrator shall establish a photovoltaic solar en-  
2 ergy systems evaluation program to evaluate such  
3 photovoltaic solar energy systems as are required in  
4 public buildings.

5 “(2) PROGRAM REQUIREMENT.—In evaluating  
6 photovoltaic solar energy systems under the pro-  
7 gram, the Administrator shall ensure that such sys-  
8 tems reflect the most advanced technology.

9 “(c) AUTHORIZATION OF APPROPRIATIONS.—

10 “(1) PHOTOVOLTAIC ENERGY COMMERCIALIZA-  
11 TION PROGRAM.—There are authorized to be appro-  
12 priated to carry out subsection (a) \$50,000,000 for  
13 each of fiscal years 2006 through 2010. Such sums  
14 shall remain available until expended.

15 “(2) PHOTOVOLTAIC SYSTEMS EVALUATION  
16 PROGRAM.—There are authorized to be appropriated  
17 to carry out subsection (b) \$10,000,000 for each of  
18 fiscal years 2006 through 2010. Such sums shall re-  
19 main available until expended.”.

20 (b) CONFORMING AMENDMENT.—The table of sec-  
21 tions for the National Energy Conservation Policy Act is

1 amended by inserting after the item relating to section  
2 569 the following:

“Sec. 570. Use of photovoltaic energy in public buildings”.

3 **SEC. 205. BIOBASED PRODUCTS.**

4 Section 9002(c)(1) of the Farm Security and Rural  
5 Investment Act of 2002 (7 U.S.C. 8102(c)(1)) is amended  
6 by inserting “or such items that comply with the regula-  
7 tions issued under section 103 of Public Law 100–556 (42  
8 U.S.C. 6914b–1)” after “practicable”.

9 **SEC. 206. RENEWABLE ENERGY SECURITY.**

10 (a) WEATHERIZATION ASSISTANCE.—Section 415(c)  
11 of the Energy Conservation and Production Act (42  
12 U.S.C. 6865(c)) is amended—

13 (1) in paragraph (1), by striking “in paragraph  
14 (3)” and inserting “in paragraphs (3) and (4)”;

15 (2) in paragraph (3), by striking “\$2,500 per  
16 dwelling unit average provided in paragraph (1)”  
17 and inserting “dwelling unit averages provided in  
18 paragraphs (1) and (4)”;

19 (3) by adding at the end the following new  
20 paragraphs:

1       “(4) The expenditure of financial assistance provided  
2 under this part for labor, weatherization materials, and  
3 related matters for a renewable energy system shall not  
4 exceed an average of \$3,000 per dwelling unit.

5       “(5)(A) The Secretary shall by regulations—

6           “(i) establish the criteria which are to be used  
7 in prescribing performance and quality standards  
8 under paragraph (6)(A)(ii) or in specifying any form  
9 of renewable energy under paragraph (6)(A)(i)(I);  
10 and

11           “(ii) establish a procedure under which a manu-  
12 facturer of an item may request the Secretary to  
13 certify that the item will be treated, for purposes of  
14 this paragraph, as a renewable energy system.

15       “(B) The Secretary shall make a final determination  
16 with respect to any request filed under subparagraph  
17 (A)(ii) within 1 year after the filing of the request, to-  
18 gether with any information required to be filed with such  
19 request under subparagraph (A)(ii).

20       “(C) Each month the Secretary shall publish a report  
21 of any request under subparagraph (A)(ii) which has been

1 denied during the preceding month and the reasons for  
2 the denial.

3 “(D) The Secretary shall not specify any form of re-  
4 newable energy under paragraph (6)(A)(i)(I) unless the  
5 Secretary determines that—

6 “(i) there will be a reduction in oil or natural  
7 gas consumption as a result of such specification;

8 “(ii) such specification will not result in an in-  
9 creased use of any item which is known to be, or  
10 reasonably suspected to be, environmentally haz-  
11 ardous or a threat to public health or safety; and

12 “(iii) available Federal subsidies do not make  
13 such specification unnecessary or inappropriate (in  
14 the light of the most advantageous allocation of eco-  
15 nomic resources).

16 “(6) In this subsection—

17 “(A) the term ‘renewable energy system’ means  
18 a system which—

19 “(i) when installed in connection with a  
20 dwelling, transmits or uses—



1           “(I) solar energy, energy derived from  
2           the geothermal deposits, energy derived  
3           from biomass, or any other form of renew-  
4           able energy which the Secretary specifies  
5           by regulations, for the purpose of heating  
6           or cooling such dwelling or providing hot  
7           water or electricity for use within such  
8           dwelling; or

9           “(II) wind energy for nonbusiness res-  
10          idential purposes;

11          “(ii) meets the performance and quality  
12          standards (if any) which have been prescribed  
13          by the Secretary by regulations;

14          “(iii) in the case of a combustion rated  
15          system, has a thermal efficiency rating of at  
16          least 75 percent; and

17          “(iv) in the case of a solar system, has a  
18          thermal efficiency rating of at least 15 percent;  
19          and

20          “(B) the term ‘biomass’ means any organic  
21          matter that is available on a renewable or recurring

1 basis, including agricultural crops and trees, wood  
2 and wood wastes and residues, plants (including  
3 aquatic plants), grasses, residues, fibers, and animal  
4 wastes, municipal wastes, and other waste mate-  
5 rials.”.

6 (b) DISTRICT HEATING AND COOLING PROGRAMS.—  
7 Section 172 of the Energy Policy Act of 1992 (42 U.S.C.  
8 13451 note) is amended—

9 (1) in subsection (a)—

10 (A) by striking “and” at the end of para-  
11 graph (3);

12 (B) by striking the period at the end of  
13 paragraph (4) and inserting “; and”; and

14 (C) by adding at the end the following new  
15 paragraph:

16 “(5) evaluate the use of renewable energy sys-  
17 tems (as such term is defined in section 415(c) of  
18 the Energy Conservation and Production Act (42  
19 U.S.C. 6865(c))) in residential buildings.”; and

20 (2) in subsection (b), by striking “this Act” and  
21 inserting “the Energy Policy Act of 2005”.

1 (c) REBATE PROGRAM.—

2 (1) ESTABLISHMENT.—The Secretary shall es-  
3 tablish a program providing rebates for consumers  
4 for expenditures made for the installation of a re-  
5 newable energy system in connection with a dwelling  
6 unit or small business.

7 (2) AMOUNT OF REBATE.—Rebates provided  
8 under the program established under paragraph (1)  
9 shall be in an amount not to exceed the lesser of—

10 (A) 25 percent of the expenditures de-  
11 scribed in paragraph (1) made by the con-  
12 sumer; or

13 (B) \$3,000.

14 (3) DEFINITION.—For purposes of this sub-  
15 section, the term “renewable energy system” has the  
16 meaning given that term in section 415(c)(6)(A) of  
17 the Energy Conservation and Production Act (42  
18 U.S.C. 6865(c)(6)(A)), as added by subsection  
19 (a)(3) of this section.

20 (4) AUTHORIZATION OF APPROPRIATIONS.—  
21 There are authorized to be appropriated to the Sec-

180

1       retary for carrying out this subsection, to remain  
2       available until expended—

3               (A) \$150,000,000 for fiscal year 2006;

4               (B) \$150,000,000 for fiscal year 2007;

5               (C) \$200,000,000 for fiscal year 2008;

6               (D) \$250,000,000 for fiscal year 2009;

7               and

8               (E) \$250,000,000 for fiscal year 2010.

9       (d) RENEWABLE FUEL INVENTORY.—Not later than  
10 180 days after the date of enactment of this Act, the Sec-  
11 retary shall transmit to Congress a report containing—

12               (1) an inventory of renewable fuels available for  
13 consumers; and

14               (2) a projection of future inventories of renew-  
15 able fuels based on the incentives provided in this  
16 section.

17 **SEC. 207. INSTALLATION OF PHOTOVOLTAIC SYSTEM.**

18       There is authorized to be appropriated to the General  
19 Services Administration to install a photovoltaic system,  
20 as set forth in the Sun Wall Design Project, for the head-  
21 quarters building of the Department of Energy located at

1 1000 Independence Avenue Southwest in the District of  
2 Columbia, commonly know as the Forrestal Building,  
3 \$20,000,000 for fiscal year 2006. Such sums shall remain  
4 available until expended.

5 **SEC. 208. SUGAR CANE ETHANOL PROGRAM.**

6 (a) DEFINITION OF PROGRAM.—In this section, the  
7 term “program” means the Sugar Cane Ethanol Program  
8 established by subsection (b).

9 (b) ESTABLISHMENT.—There is established within  
10 the Environmental Protection Agency a program to be  
11 known as the “Sugar Cane Ethanol Program”.

12 (c) PROJECT.—

13 (1) IN GENERAL.—Subject to the availability of  
14 appropriations under subsection (d), in carrying out  
15 the program, the Administrator of the Environ-  
16 mental Protection Agency shall establish a project  
17 that is—

18 (A) carried out in multiple States—

19 (i) in each of which is produced cane  
20 sugar that is eligible for loans under sec-  
21 tion 156 of the Federal Agriculture Im-

1           provement and Reform Act of 1996 (7  
2           U.S.C. 7272), or a similar subsequent au-  
3           thority; and

4           (ii) at the option of each such State,  
5           that have an incentive program that re-  
6           quires the use of ethanol in the State; and

7           (B) designed to study the production of  
8           ethanol from cane sugar, sugarcane, and sugar-  
9           cane byproducts.

10          (2) REQUIREMENTS.—A project described in  
11          paragraph (1) shall—

12           (A) be limited to sugar producers and the  
13           production of ethanol in the States of Florida,  
14           Louisiana, Texas, and Hawaii, divided equally  
15           among the States, to demonstrate that the  
16           process may be applicable to cane sugar, sugar-  
17           cane, and sugarcane byproducts;

18           (B) include information on the ways in  
19           which the scale of production may be replicated  
20           once the sugar cane industry has located sites

1           for, and constructed, ethanol production facili-  
2           ties; and

3                   (C) not last more than 3 years.

4           (d) AUTHORIZATION OF APPROPRIATIONS.—There is  
5 authorized to be appropriated to carry out this section  
6 \$36,000,000, to remain available until expended.

7 **SEC. 209. RURAL AND REMOTE COMMUNITY ELECTRIFICA-**  
8 **TION GRANTS.**

9           The Public Utility Regulatory Policies Act of 1978  
10 (16 U.S.C. 2601 et seq.) is amended in title VI by adding  
11 at the end the following:

12 **“SEC. 609. RURAL AND REMOTE COMMUNITIES ELEC-**  
13 **TRIFICATION GRANTS.**

14           “(a) DEFINITIONS.—In this section:

15                   “(1) The term ‘eligible grantee’ means a local  
16 government or municipality, peoples’ utility district,  
17 irrigation district, and cooperative, nonprofit, or lim-  
18 ited-dividend association in a rural area.

19                   “(2) The term ‘incremental hydropower’ means  
20 additional generation achieved from increased effi-

1       ciency after January 1, 2005, at a hydroelectric dam  
2       that was placed in service before January 1, 2005.

3           “(3) The term ‘renewable energy’ means elec-  
4       tricity generated from—

5                   “(A) a renewable energy source; or

6                   “(B) hydrogen, other than hydrogen pro-  
7       duced from a fossil fuel, that is produced from  
8       a renewable energy source.

9           “(4) The term ‘renewable energy source’  
10       means—

11                   “(A) wind;

12                   “(B) ocean waves;

13                   “(C) biomass;

14                   “(D) solar

15                   “(E) landfill gas;

16                   “(F) incremental hydropower;

17                   “(G) livestock methane; or

18                   “(H) geothermal energy.

19           “(5) The term ‘rural area’ means a city, town,  
20       or unincorporated area that has a population of not  
21       more than 10,000 inhabitants.



1       “(b) GRANTS.—The Secretary, in consultation with  
2 the Secretary of Agriculture and the Secretary of the Inte-  
3 rior, may provide grants under this section to eligible  
4 grantees for the purpose of—

5           “(1) increasing energy efficiency, siting or up-  
6 grading transmission and distribution lines serving  
7 rural areas;; or

8           “(2) providing or modernizing electric genera-  
9 tion facilities that serve rural areas.

10       “(c) GRANT ADMINISTRATION.—(1) The Secretary  
11 shall make grants under this section based on a deter-  
12 mination of cost-effectiveness and the most effective use  
13 of the funds to achieve the purposes described in sub-  
14 section (b).

15       “(2) For each fiscal year, the Secretary shall allocate  
16 grant funds under this section equally between the pur-  
17 poses described in paragraphs (1) and (2) of subsection  
18 (b).

19       “(3) In making grants for the purposes described in  
20 subsection (b)(2), the Secretary shall give preference to  
21 renewable energy facilities.

1       “(d) AUTHORIZATION OF APPROPRIATIONS.—There  
2 is authorized to be appropriated to the Secretary to carry  
3 out this section \$20,000,000 for each of fiscal years 2006  
4 through 2012.”.

5 **SEC. 210. GRANTS TO IMPROVE THE COMMERCIAL VALUE**  
6                   **OF FOREST BIOMASS FOR ELECTRIC ENERGY,**  
7                   **USEFUL HEAT, TRANSPORTATION FUELS,**  
8                   **AND OTHER COMMERCIAL PURPOSES.**

9       (a) DEFINITIONS.—In this section:

10           (1) BIOMASS.—The term “biomass” means  
11 nonmerchantable materials or precommercial  
12 thinnings that are byproducts of preventive treat-  
13 ments, such as trees, wood, brush, thinnings, chips,  
14 and slash, that are removed—

15                   (A) to reduce hazardous fuels;

16                   (B) to reduce or contain disease or insect  
17 infestation; or

18                   (C) to restore forest health.

19           (2) INDIAN TRIBE.—The term “Indian tribe”  
20 has the meaning given the term in section 4(e) of

1 the Indian Self-Determination and Education Assist-  
2 ance Act (25 U.S.C. 450b(e)).

3 (3) NONMERCHANTABLE.—For purposes of  
4 subsection (b), the term “nonmerchantable” means  
5 that portion of the byproducts of preventive treat-  
6 ments that would not otherwise be used for higher  
7 value products.

8 (4) PERSON.—The term “person” includes—

9 (A) an individual;

10 (B) a community (as determined by the  
11 Secretary concerned);

12 (C) an Indian tribe;

13 (D) a small business or a corporation that  
14 is incorporated in the United States; and

15 (E) a nonprofit organization.

16 (5) PREFERRED COMMUNITY.—The term “pre-  
17 ferred community” means—

18 (A) any Indian tribe;

19 (B) any town, township, municipality, or  
20 other similar unit of local government (as deter-  
21 mined by the Secretary concerned) that—

1 (i) has a population of not more than  
2 50,000 individuals; and

3 (ii) the Secretary concerned, in the  
4 sole discretion of the Secretary concerned,  
5 determines contains or is located near Fed-  
6 eral or Indian land, the condition of which  
7 is at significant risk of catastrophic wild-  
8 fire, disease, or insect infestation or which  
9 suffers from disease or insect infestation;  
10 or

11 (C) any county that—

12 (i) is not contained within a metro-  
13 politan statistical area; and

14 (ii) the Secretary concerned, in the  
15 sole discretion of the Secretary concerned,  
16 determines contains or is located near Fed-  
17 eral or Indian land, the condition of which  
18 is at significant risk of catastrophic wild-  
19 fire, disease, or insect infestation or which  
20 suffers from disease or insect infestation.

1           (6) SECRETARY CONCERNED.—The term “Sec-  
2       retary concerned” means the Secretary of Agri-  
3       culture or the Secretary of the Interior.

4       (b) BIOMASS COMMERCIAL USE GRANT PROGRAM.—

5           (1) IN GENERAL.—The Secretary concerned  
6       may make grants to any person in a preferred com-  
7       munity that owns or operates a facility that uses  
8       biomass as a raw material to produce electric en-  
9       ergy, sensible heat, or transportation fuels to offset  
10      the costs incurred to purchase biomass for use by  
11      such facility.

12          (2) GRANT AMOUNTS.—A grant under this sub-  
13      section may not exceed \$20 per green ton of biomass  
14      delivered.

15          (3) MONITORING OF GRANT RECIPIENT ACTIVI-  
16      TIES.—As a condition of a grant under this sub-  
17      section, the grant recipient shall keep such records  
18      as the Secretary concerned may require to fully and  
19      correctly disclose the use of the grant funds and all  
20      transactions involved in the purchase of biomass.  
21      Upon notice by a representative of the Secretary

1 concerned, the grant recipient shall afford the rep-  
2 resentative reasonable access to the facility that pur-  
3 chases or uses biomass and an opportunity to exam-  
4 ine the inventory and records of the facility.

5 (c) IMPROVED BIOMASS USE GRANT PROGRAM.—

6 (1) IN GENERAL.—The Secretary concerned  
7 may make grants to persons to offset the cost of  
8 projects to develop or research opportunities to im-  
9 prove the use of, or add value to, biomass. In mak-  
10 ing such grants, the Secretary concerned shall give  
11 preference to persons in preferred communities.

12 (2) SELECTION.—The Secretary concerned shall  
13 select a grant recipient under paragraph (1) after  
14 giving consideration to—

15 (A) the anticipated public benefits of the  
16 project, including the potential to develop ther-  
17 mal or electric energy resources or affordable  
18 energy;

19 (B) opportunities for the creation or ex-  
20 pansion of small businesses and micro-busi-  
21 nesses;

1 (C) the potential for new job creation;

2 (D) the potential for the project to improve  
3 efficiency or develop cleaner technologies for  
4 biomass utilization; and

5 (E) the potential for the project to reduce  
6 the hazardous fuels from the areas in greatest  
7 need of treatment.

8 (3) GRANT AMOUNT.—A grant under this sub-  
9 section may not exceed \$500,000.

10 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
11 are authorized to be appropriated \$50,000,000 for each  
12 of the fiscal years 2006 through 2016 to carry out this  
13 section.

14 (e) REPORT.—Not later than October 1, 2010, the  
15 Secretary of Agriculture, in consultation with the Sec-  
16 retary of the Interior, shall submit to the Committee on  
17 Energy and Natural Resources and the Committee on Ag-  
18 riculture, Nutrition, and Forestry of the Senate, and the  
19 Committee on Resources, the Committee on Energy and  
20 Commerce, and the Committee on Agriculture of the  
21 House of Representatives, a report describing the results

1 of the grant programs authorized by this section. The re-  
2 port shall include the following:

3 (1) An identification of the size, type, and use  
4 of biomass by persons that receive grants under this  
5 section.

6 (2) The distance between the land from which  
7 the biomass was removed and the facility that used  
8 the biomass.

9 (3) The economic impacts, particularly new job  
10 creation, resulting from the grants to and operation  
11 of the eligible operations.

12 **SEC. 211. SENSE OF CONGRESS REGARDING GENERATION**  
13 **CAPACITY OF ELECTRICITY FROM RENEW-**  
14 **ABLE ENERGY RESOURCES ON PUBLIC**  
15 **LANDS.**

16 It is the sense of the Congress that the Secretary of  
17 the Interior should, before the end of the 10-year period  
18 beginning on the date of enactment of this Act, seek to  
19 have approved non-hydropower renewable energy projects  
20 located on the public lands with a generation capacity of  
21 at least 10,000 megawatts of electricity.



## 1       **Subtitle B—Geothermal Energy**

### 2       **SEC. 221. SHORT TITLE.**

3           This subtitle may be cited as the “John Rishel Geo-  
4 thermal Steam Act Amendments of 2005”.

### 5       **SEC. 222. COMPETITIVE LEASE SALE REQUIREMENTS.**

6           Section 4 of the Geothermal Steam Act of 1970 (30  
7 U.S.C. 1003) is amended to read as follows:

#### 8       **“SEC. 4. LEASING PROCEDURES.**

9           “(a) **NOMINATIONS.**—The Secretary shall accept  
10 nominations of land to be leased at any time from quali-  
11 fied companies and individuals under this Act.

12          “(b) **COMPETITIVE LEASE SALE REQUIRED.**—

13               “(1) **IN GENERAL.**—Except as otherwise specifi-  
14 cally provided by this Act, all land to be leased that  
15 is not subject to leasing under subsection (c) shall  
16 be leased as provided in this subsection to the high-  
17 est responsible qualified bidder, as determined by  
18 the Secretary.

19               “(2) **COMPETITIVE LEASE SALES.**—The Sec-  
20 retary shall hold a competitive lease sale at least  
21 once every 2 years for land in a State that has nomi-

1 nations pending under subsection (a) if the land is  
2 otherwise available for leasing.

3 “(3) LANDS SUBJECT TO MINING CLAIMS.—  
4 Lands that are subject to a mining claim for which  
5 a plan of operations has been approved by the rel-  
6 evant Federal land management agency may be  
7 available for noncompetitive leasing under this sec-  
8 tion to the mining claim holder.

9 “(c) NONCOMPETITIVE LEASING.—The Secretary  
10 shall make available for a period of 2 years for non-  
11 competitive leasing any tract for which a competitive lease  
12 sale is held, but for which the Secretary does not receive  
13 any bids in a competitive lease sale.

14 “(d) PENDING LEASE APPLICATIONS.—

15 “(1) IN GENERAL.—It shall be a priority for  
16 the Secretary, and for the Secretary of Agriculture  
17 with respect to National Forest Systems land, to en-  
18 sure timely completion of administrative actions, in-  
19 cluding amendments to applicable forest plans and  
20 resource management plans, necessary to process  
21 applications for geothermal leasing pending on the

1 date of enactment of this subsection. All future for-  
2 est plans and resource management plans for areas  
3 with high geothermal resource potential shall con-  
4 sider geothermal leasing and development.

5 “(2) ADMINISTRATION.—An application de-  
6 scribed in paragraph (1) and any lease issued pursu-  
7 ant to the application—

8 “(A) except as provided in subparagraph  
9 (B), shall be subject to this section as in effect  
10 on the day before the date of enactment of this  
11 paragraph; or

12 “(B) at the election of the applicant, shall  
13 be subject to this section as in effect on the ef-  
14 fective date of this paragraph.

15 “(e) LEASES SOLD AS A BLOCK.—If information is  
16 available to the Secretary indicating a geothermal resource  
17 that could be produced as 1 unit can reasonably be ex-  
18 pected to underlie more than 1 parcel to be offered in a  
19 competitive lease sale, the parcels for such a resource may  
20 be offered for bidding as a block in the competitive lease  
21 sale.”.

1 **SEC. 223. DIRECT USE.**

2 (a) FEES FOR DIRECT USE.—Section 5 of the Geo-  
3 thermal Steam Act of 1970 (30 U.S.C. 1004) is  
4 amended—

5 (1) in subsection (c), by redesignating para-  
6 graphs (1) and (2) as subparagraphs (A) and (B),  
7 respectively;

8 (2) by redesignating subsections (a) through (d)  
9 as paragraphs (1) through (4), respectively;

10 (3) by inserting “(a) IN GENERAL.—” after  
11 “**SEC. 5.**”; and

12 (4) by adding at the end the following:

13 “(b) DIRECT USE.—

14 “(1) IN GENERAL.—Notwithstanding subsection  
15 (a)(1), the Secretary shall establish a schedule of  
16 fees, in lieu of royalties for geothermal resources,  
17 that a lessee or its affiliate—

18 “(A) uses for a purpose other than the  
19 commercial generation of electricity; and

20 “(B) does not sell.

1           “(2) SCHEDULE OF FEES.—The schedule of  
2 fees—

3                   “(A) may be based on the quantity or ther-  
4 mal content, or both, of geothermal resources  
5 used;

6                   “(B) shall ensure a fair return to the  
7 United States for use of the resource; and

8                   “(C) shall encourage development of the  
9 resource.

10           “(3) STATE, TRIBAL, OR LOCAL GOVERN-  
11 MENTS.—If a State, tribal, or local government is  
12 the lessee and uses geothermal resources without  
13 sale and for public purposes other than commercial  
14 generation of electricity, the Secretary shall charge  
15 only a nominal fee for use of the resource.

16           “(4) FINAL REGULATION.—In issuing any final  
17 regulation establishing a schedule of fees under this  
18 subsection, the Secretary shall seek—

19                   “(A) to provide lessees with a simplified  
20 administrative system;

1           “(B) to facilitate development of direct use  
2           of geothermal resources; and

3           “(C) to contribute to sustainable economic  
4           development opportunities in the area.”.

5           (b) LEASING FOR DIRECT USE.—Section 4 of the  
6 Geothermal Steam Act of 1970 (30 U.S.C. 1003) (as  
7 amended by section 222) is further amended by adding  
8 at the end the following:

9           “(f) LEASING FOR DIRECT USE OF GEOTHERMAL  
10 RESOURCES.—Notwithstanding subsection (b), the Sec-  
11 retary may identify areas in which the land to be leased  
12 under this Act exclusively for direct use of geothermal re-  
13 sources, without sale for purposes other than commercial  
14 generation of electricity, may be leased to any qualified  
15 applicant that first applies for such a lease under regula-  
16 tions issued by the Secretary, if the Secretary—

17           “(1) publishes a notice of the land proposed for  
18           leasing not later than 90 days before the date of the  
19           issuance of the lease;

20           “(2) does not receive during the 90-day period  
21           beginning on the date of the publication any nomi-

1 nation to include the land concerned in the next  
2 competitive lease sale; and

3 “(3) determines there is no competitive interest  
4 in the geothermal resources in the land to be leased.

5 “(g) AREA SUBJECT TO LEASE FOR DIRECT USE.—

6 “(1) IN GENERAL.—Subject to paragraph (2), a  
7 geothermal lease for the direct use of geothermal re-  
8 sources shall cover not more than the quantity of  
9 acreage determined by the Secretary to be reason-  
10 ably necessary for the proposed use.

11 “(2) LIMITATIONS.—The quantity of acreage  
12 covered by the lease shall not exceed the limitations  
13 established under section 7.”.

14 (c) APPLICATION OF NEW LEASE TERMS.—The  
15 schedule of fees established under the amendment made  
16 by subsection (a)(4) shall apply with respect to payments  
17 under a lease converted under this subsection that are due  
18 and owing, and have been paid, on or after July 16, 2003.  
19 This subsection shall not require the refund of royalties  
20 paid to a state under section 20 of the Geothermal Steam

1 Act of 1970 (30 U.S.C. 1019) prior to the date of enact-  
2 ment of this Act.

3 **SEC. 224. ROYALTIES AND NEAR-TERM PRODUCTION IN-**  
4 **CENTIVES.**

5 (a) ROYALTY.—Section 5 of the Geothermal Steam  
6 Act of 1970 (30 U.S.C. 1004) is further amended—

7 (1) in subsection (a) by striking paragraph (1)  
8 and inserting the following:

9 “(1) a royalty on electricity produced using geo-  
10 thermal resources, other than direct use of geo-  
11 thermal resources, that shall be—

12 “(A) not less than 1 percent and not more  
13 than 2.5 percent of the gross proceeds from the  
14 sale of electricity produced from such resources  
15 during the first 10 years of production under  
16 the lease; and

17 “(B) not less than 2 and not more than 5  
18 percent of the gross proceeds from the sale of  
19 electricity produced from such resources during  
20 each year after such 10-year period;” and

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



1       “(c) FINAL REGULATION ESTABLISHING ROYALTY  
2 RATES.—In issuing any final regulation establishing roy-  
3 alty rates under this section, the Secretary shall seek—

4               “(1) to provide lessees a simplified administra-  
5 tive system;

6               “(2) to encourage new development; and

7               “(3) to achieve the same level of royalty reve-  
8 nues over a 10-year period as the regulation in effect  
9 on the date of enactment of this subsection.

10       “(d) CREDITS FOR IN-KIND PAYMENTS OF ELEC-  
11 TRICITY.—The Secretary may provide to a lessee a credit  
12 against royalties owed under this Act, in an amount equal  
13 to the value of electricity provided under contract to a  
14 State or county government that is entitled to a portion  
15 of such royalties under section 20 of this Act, section 35  
16 of the Mineral Leasing Act (30 U.S.C. 191), except as  
17 otherwise provided by this section, or section 6 of the Min-  
18 eral Leasing Act for Acquired Lands (30 U.S.C. 355), if—

19               “(1) the Secretary has approved in advance the  
20 contract between the lessee and the State or county  
21 government for such in-kind payments;

1           “(2) the contract establishes a specific method-  
2           ology to determine the value of such credits; and

3           “(3) the maximum credit will be equal to the  
4           royalty value owed to the State or county that is a  
5           party to the contract and the electricity received will  
6           serve as the royalty payment from the Federal Gov-  
7           ernment to that entity.”.

8           (b) DISPOSAL OF MONEYS FROM SALES, BONUSES,  
9 ROYALTIES, AND RENTS.—Section 20 of the Geothermal  
10 Steam Act of 1970 (30 U.S.C. 1019) is amended to read  
11 as follows:

12 **“SEC. 20. DISPOSAL OF MONEYS FROM SALES, BONUSES,**  
13 **RENTALS, AND ROYALTIES.**

14           “(a) IN GENERAL.—Except with respect to lands in  
15 the State of Alaska, all monies received by the United  
16 States from sales, bonuses, rentals, and royalties under  
17 this Act shall be paid into the Treasury of the United  
18 States. Of amounts deposited under this subsection, sub-  
19 ject to the provisions of subsection (b) of section 35 of  
20 the Mineral Leasing Act (30 U.S.C. 191(b)) and section  
21 5(a)(2) of this Act—

1           “(1) 50 percent shall be paid to the State with-  
2           in the boundaries of which the leased lands or geo-  
3           thermal resources are or were located; and

4           “(2) 25 percent shall be paid to the County  
5           within the boundaries of which the leased lands or  
6           geothermal resources are or were located.

7           “(b) USE OF PAYMENTS.—Amounts paid to a State  
8           or county under subsection (a) shall be used consistent  
9           with the terms of section 35 of the Mineral Leasing Act  
10          (30 U.S.C. 191).”.

11          (c) NEAR-TERM PRODUCTION INCENTIVE FOR EX-  
12          ISTING LEASES.—

13                 (1) IN GENERAL.—Notwithstanding section  
14                 5(a) of the Geothermal Steam Act of 1970, the roy-  
15                 alty required to be paid shall be 50 percent of the  
16                 amount of the royalty otherwise required, on any  
17                 lease issued before the date of enactment of this Act  
18                 that does not convert to new royalty terms under  
19                 subsection (e)—

20                         (A) with respect to commercial production  
21                         of energy from a facility that begins such pro-

1           duction in the 6-year period beginning on the  
2           date of enactment of this Act; or

3                   (B) on qualified expansion geothermal en-  
4           ergy.

5           (2) 4-YEAR APPLICATION.—Paragraph (1) ap-  
6           plies only to new commercial production of energy  
7           from a facility in the first 4 years of such produc-  
8           tion.

9           (d) DEFINITION OF QUALIFIED EXPANSION GEO-  
10          THERMAL ENERGY.—In this section, the term “qualified  
11          expansion geothermal energy” means geothermal energy  
12          produced from a generation facility for which—

13                   (1) the production is increased by more than 10  
14           percent as a result of expansion of the facility car-  
15           ried out in the 6-year period beginning on the date  
16           of enactment of this Act; and

17                   (2) such production increase is greater than 10  
18           percent of the average production by the facility dur-  
19           ing the 5-year period preceding the expansion of the  
20           facility (as such average is adjusted to reflect any  
21           trend in changes in production during that period).

1 (e) ROYALTY UNDER EXISTING LEASES.—

2 (1) IN GENERAL.—Any lessee under a lease  
3 issued under the Geothermal Steam Act of 1970 (30  
4 U.S.C. 1001 et seq.) before the date of enactment  
5 of this Act may, within the time period specified in  
6 paragraph (2), submit to the Secretary of the Inte-  
7 rior a request to modify the terms of the lease relat-  
8 ing to payment of royalties to provide—

9 (A) in the case of a lease that meets the  
10 requirements of subsection (b) of section 5 of  
11 the Geothermal Steam Act of 1970 (30 U.S.C.  
12 1004) (as amended by section 223), that roy-  
13 alties be based on the schedule of fees established  
14 under that section; and

15 (B) in the case of any other lease, that  
16 royalties be computed on a percentage of the  
17 gross proceeds from the sale of electricity, at a  
18 royalty rate that is expected to yield total roy-  
19 alty payments equivalent to payments that  
20 would have been received for comparable pro-  
21 duction under the royalty rate in effect for the

1           lease before the date of enactment of this sub-  
2           section.

3           (2) TIMING.—A request for a modification  
4           under paragraph (1) shall be submitted to the Sec-  
5           retary of the Interior by the date that is not later  
6           than—

7                   (A) in the case of a lease for direct use, 18  
8                   months after the effective date of the schedule  
9                   of fees established by the Secretary of the Inte-  
10                  rior under section 5 of the Geothermal Steam  
11                  Act of 1970 (30 U.S.C. 1004); or

12                  (B) in the case of any other lease, 18  
13                  months after the effective date of the final reg-  
14                  ulation issued under subsection (a).

15           (3) APPLICATION OF MODIFICATION.—If the  
16           lessee requests modification of a lease under para-  
17           graph (1)—

18                   (A) the Secretary of the Interior shall,  
19                   within 180 days after the receipt of the request  
20                   for modification, modify the lease to comply  
21                   with—

1 (i) in the case of a lease for direct  
2 use, the schedule of fees established by the  
3 Secretary under section 5 of the Geo-  
4 thermal Steam Act of 1970 (30 U.S.C.  
5 1004); or

6 (ii) in the case of any other lease, the  
7 royalty for the lease established under  
8 paragraph (1)(B); and

9 (B) the modification shall apply to any use  
10 of geothermal resources to which subsection (a)  
11 applies that occurs after the date of the modi-  
12 fication.

13 (4) CONSULTATION.—The Secretary of the In-  
14 terior shall consult with the State and local govern-  
15 ments affected by any proposed changes in lease roy-  
16 alty terms under this subsection.

17 **SEC. 225. COORDINATION OF GEOTHERMAL LEASING AND**  
18 **PERMITTING ON FEDERAL LANDS.**

19 (a) IN GENERAL.—Not later than 180 days after the  
20 date of enactment of this section, the Secretary of the In-  
21 terior and the Secretary of Agriculture shall enter into and

1 submit to Congress a memorandum of understanding in  
2 accordance with this section, the Geothermal Steam Act  
3 of 1970 (as amended by this Act), and other applicable  
4 laws, regarding coordination of leasing and permitting for  
5 geothermal development of public lands and National For-  
6 est System lands under their respective jurisdictions.

7 (b) LEASE AND PERMIT APPLICATIONS.—The memo-  
8 randum of understanding shall—

9 (1) establish an administrative procedure for  
10 processing geothermal lease applications, including  
11 lines of authority, steps in application processing,  
12 and time limits for application procession;

13 (2) establish a 5-year program for geothermal  
14 leasing of lands in the National Forest System, and  
15 a process for updating that program every 5 years;  
16 and

17 (3) establish a program for reducing the back-  
18 log of geothermal lease application pending on Janu-  
19 ary 1, 2005, by 90 percent within the 5-year period  
20 beginning on the date of enactment of this Act, in-  
21 cluding, as necessary, by issuing leases, rejecting



1 lease applications for failure to comply with the pro-  
2 visions of the regulations under which they were  
3 filed, or determining that an original applicant (or  
4 the applicant's assigns, heirs, or estate) is no longer  
5 interested in pursuing the lease application.

6 (c) DATA RETRIEVAL SYSTEM.—The memorandum  
7 of understanding shall establish a joint data retrieval sys-  
8 tem that is capable of tracking lease and permit applica-  
9 tions and providing to the applicant information as to  
10 their status within the Departments of the Interior and  
11 Agriculture, including an estimate of the time required for  
12 administrative action.

13 **SEC. 226. ASSESSMENT OF GEOTHERMAL ENERGY POTEN-**  
14 **TIAL.**

15 Not later than 3 years after the date of enactment  
16 of this Act and thereafter as the availability of data and  
17 developments in technology warrants, the Secretary of the  
18 Interior, acting through the Director of the United States  
19 Geological Survey and in cooperation with the States,  
20 shall—

1           (1) update the Assessment of Geothermal Re-  
2           sources made during 1978; and

3           (2) submit to Congress the updated assessment.

4 **SEC. 227. COOPERATIVE OR UNIT PLANS.**

5           Section 18 of the Geothermal Steam Act of 1970 (30  
6 U.S.C. 1017) is amended to read as follows:

7 **“SEC. 18. UNIT AND COMMUNITIZATION AGREEMENTS.**

8           “(a) ADOPTION OF UNITS BY LESSEES.—

9           “(1) IN GENERAL.—For the purpose of more  
10           properly conserving the natural resources of any  
11           geothermal reservoir, field, or like area, or any part  
12           thereof (whether or not any part of the geothermal  
13           reservoir, field, or like area, is subject to any cooper-  
14           ative plan of development or operation (referred to  
15           in this section as a ‘unit agreement’)), lessees there-  
16           of and their representatives may unite with each  
17           other, or jointly or separately with others, in collec-  
18           tively adopting and operating under a unit agree-  
19           ment for the reservoir, field, or like area, or any  
20           part thereof, including direct use resources, if deter-

1       mined and certified by the Secretary to be necessary  
2       or advisable in the public interest.

3           “(2) MAJORITY INTEREST OF SINGLE  
4       LEASES.—A majority interest of owners of any sin-  
5       gle lease shall have the authority to commit the lease  
6       to a unit agreement.

7           “(3) INITIATIVE OF SECRETARY.—The Sec-  
8       retary may also initiate the formation of a unit  
9       agreement, or require an existing Federal lease to  
10       commit to a unit agreement, if in the public interest.

11          “(4) MODIFICATION OF LEASE REQUIREMENTS  
12       BY SECRETARY.—

13           “(A) IN GENERAL.—The Secretary may, in  
14       the discretion of the Secretary and with the  
15       consent of the holders of leases involved, estab-  
16       lish, alter, change, or revoke rates of operations  
17       (including drilling, operations, production, and  
18       other requirements) of the leases and make con-  
19       ditions with respect to the leases, with the con-  
20       sent of the lessees, in connection with the cre-  
21       ation and operation of any such unit agreement

1 as the Secretary may consider necessary or ad-  
2 visable to secure the protection of the public in-  
3 terest.

4 “(B) UNLIKE TERMS OR RATES.—Leases  
5 with unlike lease terms or royalty rates shall  
6 not be required to be modified to be in the  
7 same unit.

8 “(b) REQUIREMENT OF PLANS UNDER NEW  
9 LEASES.—The Secretary may—

10 “(1) provide that geothermal leases issued  
11 under this Act shall contain a provision requiring  
12 the lessee to operate under a unit agreement; and

13 “(2) prescribe the unit agreement under which  
14 the lessee shall operate, which shall adequately pro-  
15 tect the rights of all parties in interest, including the  
16 United States.

17 “(c) MODIFICATION OF RATE OF PROSPECTING, DE-  
18 VELOPMENT, AND PRODUCTION.—The Secretary may re-  
19 quire that any unit agreement authorized by this section  
20 that applies to land owned by the United States contain  
21 a provision under which authority is vested in the Sec-

1 retary, or any person, committee, or State or Federal offi-  
2 cer or agency as may be designated in the unit agreement  
3 to alter or modify, from time to time, the rate of  
4 prospecting and development and the quantity and rate  
5 of production under the unit agreement.

6 “(d) EXCLUSION FROM DETERMINATION OF HOLD-  
7 ING OR CONTROL.—Any land that is subject to a unit  
8 agreement approved or prescribed by the Secretary under  
9 this section shall not be considered in determining hold-  
10 ings or control under section 7.

11 “(e) POOLING OF CERTAIN LAND.—If separate  
12 tracts of land cannot be independently developed and oper-  
13 ated to use geothermal resources pursuant to any section  
14 of this Act—

15 “(1) the land, or a portion of the land, may be  
16 pooled with other land, whether or not owned by the  
17 United States, for purposes of development and op-  
18 eration under a communitization agreement pro-  
19 viding for an apportionment of production or royal-  
20 ties among the separate tracts of land comprising

1 the production unit, if the pooling is determined by  
2 the Secretary to be in the public interest; and

3 “(2) operation or production pursuant to the  
4 communitization agreement shall be treated as oper-  
5 ation or production with respect to each tract of  
6 land that is subject to the communitization agree-  
7 ment.

8 “(f) UNIT AGREEMENT REVIEW.—

9 “(1) IN GENERAL.—Not later than 5 years  
10 after the date of approval of any unit agreement and  
11 at least every 5 years thereafter, the Secretary  
12 shall—

13 “(A) review each unit agreement; and

14 “(B) after notice and opportunity for com-  
15 ment, eliminate from inclusion in the unit  
16 agreement any land that the Secretary deter-  
17 mines is not reasonably necessary for unit oper-  
18 ations under the unit agreement.

19 “(2) BASIS FOR ELIMINATION.—The elimi-  
20 nation shall—

21 “(A) be based on scientific evidence; and

1           “(B) occur only if the elimination is deter-  
2           mined by the Secretary to be for the purpose of  
3           conserving and properly managing the geo-  
4           thermal resource.

5           “(3) EXTENSION.—Any land eliminated under  
6           this subsection shall be eligible for an extension  
7           under section 6(g) if the land meets the require-  
8           ments for the extension.

9           “(g) DRILLING OR DEVELOPMENT CONTRACTS.—

10           “(1) IN GENERAL.—The Secretary may, on  
11           such conditions as the Secretary may prescribe, ap-  
12           prove drilling or development contracts made by 1 or  
13           more lessees of geothermal leases, with 1 or more  
14           persons, associations, or corporations if, in the dis-  
15           cretion of the Secretary, the conservation of natural  
16           resources or the public convenience or necessity may  
17           require or the interests of the United States may be  
18           best served by the approval.

19           “(2) HOLDINGS OR CONTROL.—Each lease op-  
20           erated under an approved drilling or development  
21           contract, and interest under the contract, shall be

1       excepted in determining holdings or control under  
2       section 7.

3       “(h) COORDINATION WITH STATE GOVERNMENTS.—  
4       The Secretary shall coordinate unitization and pooling ac-  
5       tivities with appropriate State agencies.”.

6       **SEC. 228. ROYALTY ON BYPRODUCTS.**

7       Section 5 of the Geothermal Steam Act of 1970 (30  
8       U.S.C. 1004) (as amended by section 223(a)) is further  
9       amended in subsection (a) by striking paragraph (2) and  
10       inserting the following:

11               “(2) a royalty on any byproduct that is a min-  
12       eral specified in the first section of the Mineral  
13       Leasing Act (30 U.S.C. 181), and that is derived  
14       from production under the lease, at the rate of the  
15       royalty that applies under that Act to production of  
16       the mineral under a lease under that Act;”.

17       **SEC. 229. AUTHORITIES OF SECRETARY TO READJUST**  
18                       **TERMS, CONDITIONS, RENTALS, AND ROYAL-**  
19                       **TIES.**

20       Section 8(b) of the Geothermal Steam Act of 1970  
21       (30 U.S.C. 1006) is amended in the second sentence by



1 striking “period, and in no event” and all that follows  
2 through the end of the sentence and inserting “period”.

3 **SEC. 230. CREDITING OF RENTAL TOWARD ROYALTY.**

4 Section 5 of the Geothermal Steam Act of 1970 (30  
5 U.S.C. 1004) (as amended by sections 223 and 224) is  
6 further amended—

7 (1) in subsection (a)(2) by inserting “and”  
8 after the semicolon at the end;

9 (2) in subsection (a)(3) by striking “; and” and  
10 inserting a period;

11 (3) by striking paragraph (4) of subsection (a);  
12 and

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

14 “(e) CREDITING OF RENTAL TOWARD ROYALTY.—  
15 Any annual rental under this section that is paid with re-  
16 spect to a lease before the first day of the year for which  
17 the annual rental is owed shall be credited to the amount  
18 of royalty that is required to be paid under the lease for  
19 that year.”.

1 **SEC. 231. LEASE DURATION AND WORK COMMITMENT RE-**  
2 **QUIREMENTS.**

3 Section 6 of the Geothermal Steam Act of 1970 (30  
4 U.S.C. 1005) is amended—

5 (1) by striking so much as precedes subsection  
6 (c), and striking subsections (e), (g), (h), (i), and  
7 (j);

8 (2) by redesignating subsections (c), (d), and  
9 (f) in order as subsections (g), (h), and (i); and

10 (3) by inserting before subsection (g), as so re-  
11 designated, the following:

12 **“SEC. 6. LEASE TERM AND WORK COMMITMENT REQUIRE-**  
13 **MENTS.**

14 **“(a) IN GENERAL.—**

15 **“(1) PRIMARY TERM.—**A geothermal lease shall  
16 be for a primary term of 10 years.

17 **“(2) INITIAL EXTENSION.—**The Secretary shall  
18 extend the primary term of a geothermal lease for  
19 5 years if, for each year after the tenth year of the  
20 lease—

1           “(A) the Secretary determined under sub-  
2           section (b) that the lessee satisfied the work  
3           commitment requirements that applied to the  
4           lease for that year; or

5           “(B) the lessee paid in annual payments  
6           accordance with subsection (c).

7           “(3) ADDITIONAL EXTENSION.—The Secretary  
8           shall extend the primary term of a geothermal lease  
9           (after an initial extension under paragraph (2)) for  
10          an additional 5 years if, for each year of the initial  
11          extension under paragraph (2), the Secretary deter-  
12          mined under subsection (b) that the lessee satisfied  
13          the minimum work requirements that applied to the  
14          lease for that year.

15          “(b) REQUIREMENT TO SATISFY ANNUAL MINIMUM  
16          WORK REQUIREMENT.—

17                 “(1) IN GENERAL.—The lessee for a geothermal  
18                 lease shall, for each year after the tenth year of the  
19                 lease, satisfy minimum work requirements prescribed  
20                 by the Secretary that apply to the lease for that  
21                 year.

1           “(2) PRESCRIPTION OF MINIMUM WORK RE-  
2           QUIREMENTS.—The Secretary shall issue regulations  
3           prescribing minimum work requirements for geo-  
4           thermal leases, that—

5                     “(A) establish a geothermal potential; and

6                     “(B) if a geothermal potential has been es-  
7                     tablished, confirm the existence of producible  
8                     geothermal resources.

9           “(c) PAYMENTS IN LIEU OF MINIMUM WORK RE-  
10           QUIREMENTS.—In lieu of the minimum work requirements  
11           set forth in subsection (b)(2), the Secretary shall by regu-  
12           lation establish minimum annual payments which may be  
13           made by the lessee for a limited number of years that the  
14           Secretary determines will not impair achieving diligent de-  
15           velopment of the geothermal resource, but in no event  
16           shall the number of years exceed the duration of the exten-  
17           sion period provided in subsection (a).

18           “(d) TRANSITION RULES FOR LEASES ISSUED PRIOR  
19           TO ENACTMENT OF ENERGY POLICY ACT OF 2005.—The  
20           Secretary shall by regulation establish transition rules for  
21           leases issued before the date of the enactment of this sub-

1 section, including terms under which a lease that is near  
2 the end of its term on the date of enactment of this sub-  
3 section may be extended for up to 2 years—

4 “(1) to allow achievement of production under  
5 the lease; or

6 “(2) to allow the lease to be included in a pro-  
7 ducing unit.

8 “(e) GEOTHERMAL LEASE OVERLYING MINING  
9 CLAIM.—

10 “(1) EXEMPTION.—The lessee for a geothermal  
11 lease of an area overlying an area subject to a min-  
12 ing claim for which a plan of operations has been  
13 approved by the relevant Federal land management  
14 agency is exempt from annual work requirements es-  
15 tablished under this Act, if development of the geo-  
16 thermal resource subject to the lease would interfere  
17 with the mining operations under such claim.

18 “(2) TERMINATION OF EXEMPTION.—An ex-  
19 emption under this paragraph expires upon the ter-  
20 mination of the mining operations.

1       “(f) TERMINATION OF APPLICATION OF REQUIRE-  
2 MENTS.—Minimum work requirements prescribed under  
3 this section shall not apply to a geothermal lease after the  
4 date on which the geothermal resource is utilized under  
5 the lease in commercial quantities.”.

6 **SEC. 232. ADVANCED ROYALTIES REQUIRED FOR CES-**  
7 **SATION OF PRODUCTION.**

8       Section 5 of the Geothermal Steam Act of 1970 (30  
9 U.S.C. 1004) (as amended by sections 223, 224, and 230)  
10 is further amended by adding at the end the following:

11       “(f) ADVANCED ROYALTIES REQUIRED FOR CES-  
12 SATION OF PRODUCTION.—

13           “(1) IN GENERAL.—Subject to paragraphs (2)  
14 and (3), if, at any time after commercial production  
15 under a lease is achieved, production ceases for any  
16 reason, the lease shall remain in full force and effect  
17 for a period of not more than an aggregate number  
18 of 10 years beginning on the date production ceases,  
19 if, during the period in which production is ceased,  
20 the lessee pays royalties in advance at the monthly

1 average rate at which the royalty was paid during  
2 the period of production.

3 “(2) REDUCTION.—The amount of any produc-  
4 tion royalty paid for any year shall be reduced (but  
5 not below 0) by the amount of any advanced royalti-  
6 ties paid under the lease to the extent that the ad-  
7 vance royalties have not been used to reduce produc-  
8 tion royalties for a prior year.

9 “(3) EXCEPTIONS.—Paragraph (1) shall not  
10 apply if the cessation in production is required or  
11 otherwise caused by—

12 “(A) the Secretary;

13 “(B) the Secretary of the Air Force;

14 “(C) the Secretary of the Army;

15 “(D) the Secretary of the Navy;

16 “(E) a State or a political subdivision of a  
17 State; or

18 “(F) a force majeure.”

19 **SEC. 233. ANNUAL RENTAL.**

20 (a) ANNUAL RENTAL RATE.—Section 5 of the Geo-  
21 thermal Steam Act of 1970 (30 U.S.C. 1004) (as amended

1 by section 223(a)) is further amended in subsection (a)  
2 by striking paragraph (3) and inserting the following:

3 “(3) payment in advance of an annual rental of  
4 not less than—

5 “(A) for each of the first through tenth  
6 years of the lease—

7 “(i) in the case of a lease awarded in  
8 a noncompetitive lease sale, \$1 per acre or  
9 fraction thereof; or

10 “(ii) in the case of a lease awarded in  
11 a competitive lease sale, \$2 per acre or  
12 fraction thereof for the first year and \$3  
13 per acre or fraction thereof for each of the  
14 second through 10th years; and

15 “(B) for each year after the 10th year of  
16 the lease, \$5 per acre or fraction thereof;”.

17 (b) TERMINATION OF LEASE FOR FAILURE TO PAY  
18 RENTAL.—Section 5 of the Geothermal Steam Act of  
19 1970 (30 U.S.C. 1004) (as amended by sections 223, 224,  
20 230, and 232) is further amended by adding at the end  
21 the following:



1           “(g) TERMINATION OF LEASE FOR FAILURE TO PAY  
2 RENTAL.—

3           “(1) IN GENERAL.—The Secretary shall termi-  
4 nate any lease with respect to which rental is not  
5 paid in accordance with this Act and the terms of  
6 the lease under which the rental is required, on the  
7 expiration of the 45-day period beginning on the  
8 date of the failure to pay the rental.

9           “(2) NOTIFICATION.—The Secretary shall  
10 promptly notify a lessee that has not paid rental re-  
11 quired under the lease that the lease will be termi-  
12 nated at the end of the period referred to in para-  
13 graph (1).

14           “(3) REINSTATEMENT.—A lease that would  
15 otherwise terminate under paragraph (1) shall not  
16 terminate under that paragraph if the lessee pays to  
17 the Secretary, before the end of the period referred  
18 to in paragraph (1), the amount of rental due plus  
19 a late fee equal to 10 percent of the amount.”.

1 **SEC. 234. DEPOSIT AND USE OF GEOTHERMAL LEASE REVE-**  
2 **NUES FOR 5 FISCAL YEARS.**

3 (a) DEPOSIT OF GEOTHERMAL RESOURCES  
4 LEASES.—Notwithstanding any other provision of law,  
5 amounts received by the United States in the first 5 fiscal  
6 years beginning after the date of enactment of this Act  
7 as rentals, royalties, and other payments required under  
8 leases under the Geothermal Steam Act of 1970, excluding  
9 funds required to be paid to State and county govern-  
10 ments, shall be deposited into a separate account in the  
11 Treasury.

12 (b) USE OF DEPOSITS.—Amounts deposited under  
13 subsection (a) shall be available to the Secretary of the  
14 Interior for expenditure, without further appropriation  
15 and without fiscal year limitation, to implement the Geo-  
16 thermal Steam Act of 1970 and this Act.

17 (c) TRANSFER OF FUNDS.—For the purposes of co-  
18 ordination and processing of geothermal leases and geo-  
19 thermal use authorizations on Federal land the Secretary  
20 of the Interior may authorize the expenditure or transfer  
21 of such funds as are necessary to the Forest Service.

1 **SEC. 235. ACREAGE LIMITATIONS.**

2 Section 7 of the Geothermal Steam Act of 1970 (30  
3 U.S.C. 1006) is amended—

4 (1) by striking “**SEC. 7.**”, and by inserting im-  
5 mediately before and above the first paragraph the  
6 following:

7 “**SEC. 7. ACREAGE LIMITATIONS.**”;

8 (2) in the first paragraph—

9 (A) by striking “two thousand five hun-  
10 dred and sixty acres” and inserting “5,120  
11 acres”; and

12 (B) by striking “twenty thousand four  
13 hundred and eighty acres” and inserting  
14 “51,200 acres”; and

15 (3) by striking the second paragraph.

16 **SEC. 236. TECHNICAL AMENDMENTS.**

17 The Geothermal Steam Act of 1970 (30 U.S.C. 1001  
18 et seq.) is further amended as follows:

19 (1) By striking “geothermal steam and associ-  
20 ated geothermal resources” each place it appears  
21 and inserting “geothermal resources”.

1           (2) Section 2 (30 U.S.C. 1001) is amended by  
2 adding at the end the following:

3           “(g) ‘direct use’ means utilization of geothermal  
4 resources for commercial, residential, agricultural,  
5 public facilities, or other energy needs other than the  
6 commercial production of electricity; and”.

7           (3) Section 21 (30 U.S.C. 1020) is amended by  
8 striking “(a) Within one hundred” and all that fol-  
9 lows through “(b) Geothermal” and inserting “Geo-  
10 thermal”.

11           (4) The first section (30 U.S.C. 1001 note) is  
12 amended by striking “That this” and inserting the  
13 following:

14 **“SEC. 1. SHORT TITLE.**

15           “‘This’.

16           (5) Section 2 (30 U.S.C. 1001) is amended by  
17 striking “**SEC. 2. As**” and inserting the following:

18 **“SEC. 2. DEFINITIONS.**

19           “‘As’.





1           (14) Section 14 (30 U.S.C. 1013) is amended  
2           by striking “**SEC. 14. Subject**” and inserting the fol-  
3           lowing:

4           **“SEC. 14. SURFACE LAND USE.**

5           “Subject”.

6           (15) Section 15 (30 U.S.C. 1014) is amended  
7           by striking “**SEC. 15. (a) Geothermal**” and inserting  
8           the following:

9           **“SEC. 15. LANDS SUBJECT TO GEOTHERMAL LEASING.**

10          “(a) Geothermal”.

11          (16) Section 16 (30 U.S.C. 1015) is amended  
12          by striking “**SEC. 16. Leases**” and inserting the fol-  
13          lowing:

14          **“SEC. 16. REQUIREMENT FOR LESSEES.**

15          “Leases”.

16          (17) Section 17 (30 U.S.C. 1016) is amended  
17          by striking “**SEC. 17. Administration**” and inserting  
18          the following:

19          **“SEC. 17. ADMINISTRATION.**

20          “Administration”.





1           (22) Section 24 (30 U.S.C. 1023) is amended  
2           by striking “**SEC. 24. The**” and inserting the fol-  
3           lowing:

4           **“SEC. 24. RULES AND REGULATIONS.**

5           “**The**”.

6           (23) Section 25 (30 U.S.C. 1024) is amended  
7           by striking “**SEC. 25. As**” and inserting the fol-  
8           lowing:

9           **“SEC. 25. INCLUSION OF GEOTHERMAL LEASING UNDER**  
10           **CERTAIN OTHER LAWS.**

11          “**As**”.

12          (24) Section 26 is amended by striking “**SEC.**  
13          **26. The**” and inserting the following:

14          **“SEC. 26. AMENDMENT.**

15          “**The**”.

16          (25) Section 27 (30 U.S.C. 1025) is amended  
17          by striking “**SEC. 27. The**” and inserting the fol-  
18          lowing:

19          **“SEC. 27. FEDERAL RESERVATION OF CERTAIN MINERAL**  
20          **RIGHTS.**

21          “**The**”.



1           (1) be known as the “Intermountain West Geo-  
2           thermal Consortium”;

3           (2) be a regional consortium of institutions and  
4           government agencies that focuses on building col-  
5           laborative efforts among the universities in the State  
6           of Idaho, other regional universities, State agencies,  
7           and the Idaho National Laboratory;

8           (3) include Boise State University, the Univer-  
9           sity of Idaho (including the Idaho Water Resources  
10          Research Institute), the Oregon Institute of Tech-  
11          nology, the Desert Research Institute with the Uni-  
12          versity and Community College System of Nevada,  
13          and the Energy and Geoscience Institute at the Uni-  
14          versity of Utah;

15          (4) be hosted and managed by Boise State Uni-  
16          versity; and

17          (5) have a director appointed by Boise State  
18          University, and associate directors appointed by each  
19          participating institution.

20          (c) FINANCIAL ASSISTANCE.—The Secretary, acting  
21          through the Idaho National Laboratory and subject to the

1 availability of appropriations, will provide financial assist-  
2 ance to Boise State University for expenditure under con-  
3 tracts with members of the consortium to carry out the  
4 activities of the consortium.

## 5 **Subtitle C—Hydroelectric**

### 6 **SEC. 241. ALTERNATIVE CONDITIONS AND FISHWAYS.**

7 (a) FEDERAL RESERVATIONS.—Section 4(e) of the  
8 Federal Power Act (16 U.S.C. 797(e)) is amended by in-  
9 serting after “adequate protection and utilization of such  
10 reservation.” at the end of the first proviso the following:  
11 “The license applicant and any party to the proceeding  
12 shall be entitled to a determination on the record, after  
13 opportunity for an agency trial-type hearing of no more  
14 than 90 days, on any disputed issues of material fact with  
15 respect to such conditions. All disputed issues of material  
16 fact raised by any party shall be determined in a single  
17 trial-type hearing to be conducted by the relevant resource  
18 agency in accordance with the regulations promulgated  
19 under this subsection and within the time frame estab-  
20 lished by the Commission for each license proceeding.  
21 Within 90 days of the date of enactment of the Energy

1 Policy Act of 2005, the Secretaries of the Interior, Com-  
2 merce, and Agriculture shall establish jointly, by rule, the  
3 procedures for such expedited trial-type hearing, including  
4 the opportunity to undertake discovery and cross-examine  
5 witnesses, in consultation with the Federal Energy Regu-  
6 latory Commission.”.

7 (b) FISHWAYS.—Section 18 of the Federal Power Act  
8 (16 U.S.C. 811) is amended by inserting after “and such  
9 fishways as may be prescribed by the Secretary of Com-  
10 merce.” the following: “The license applicant and any  
11 party to the proceeding shall be entitled to a determination  
12 on the record, after opportunity for an agency trial-type  
13 hearing of no more than 90 days, on any disputed issues  
14 of material fact with respect to such fishways. All disputed  
15 issues of material fact raised by any party shall be deter-  
16 mined in a single trial-type hearing to be conducted by  
17 the relevant resource agency in accordance with the regu-  
18 lations promulgated under this subsection and within the  
19 time frame established by the Commission for each license  
20 proceeding. Within 90 days of the date of enactment of  
21 the Energy Policy Act of 2005, the Secretaries of the Inte-

1 rior, Commerce, and Agriculture shall establish jointly, by  
2 rule, the procedures for such expedited trial-type hearing,  
3 including the opportunity to undertake discovery and  
4 cross-examine witnesses, in consultation with the Federal  
5 Energy Regulatory Commission.”.

6 (c) ALTERNATIVE CONDITIONS AND PRESCRIP-  
7 TIONS.—Part I of the Federal Power Act (16 U.S.C. 791a  
8 et seq.) is amended by adding the following new section  
9 at the end thereof:

10 **“SEC. 33. ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.**

11 “(a) ALTERNATIVE CONDITIONS.—(1) Whenever any  
12 person applies for a license for any project works within  
13 any reservation of the United States, and the Secretary  
14 of the department under whose supervision such reserva-  
15 tion falls (referred to in this subsection as the ‘Secretary’)  
16 deems a condition to such license to be necessary under  
17 the first proviso of section 4(e), the license applicant or  
18 any other party to the license proceeding may propose an  
19 alternative condition.

20 “(2) Notwithstanding the first proviso of section 4(e),  
21 the Secretary shall accept the proposed alternative condi-

1 tion referred to in paragraph (1), and the Commission  
2 shall include in the license such alternative condition, if  
3 the Secretary determines, based on substantial evidence  
4 provided by the license applicant, any other party to the  
5 proceeding, or otherwise available to the Secretary, that  
6 such alternative condition—

7           “(A) provides for the adequate protection and  
8           utilization of the reservation; and

9           “(B) will either, as compared to the condition  
10          initially by the Secretary—

11                   “(i) cost significantly less to implement; or

12                   “(ii) result in improved operation of the  
13                   project works for electricity production.

14          “(3) In making a determination under paragraph (2),  
15 the Secretary shall consider evidence provided for the  
16 record by any party to a licensing proceeding, or otherwise  
17 available to the Secretary, including any evidence provided  
18 by the Commission, on the implementation costs or oper-  
19 ational impacts for electricity production of a proposed al-  
20 ternative.

1       “(4) The Secretary concerned shall submit into the  
2 public record of the Commission proceeding with any con-  
3 dition under section 4(e) or alternative condition it accepts  
4 under this section, a written statement explaining the  
5 basis for such condition, and reason for not accepting any  
6 alternative condition under this section. The written state-  
7 ment must demonstrate that the Secretary gave equal con-  
8 sideration to the effects of the condition adopted and alter-  
9 natives not accepted on energy supply, distribution, cost,  
10 and use; flood control; navigation; water supply; and air  
11 quality (in addition to the preservation of other aspects  
12 of environmental quality); based on such information as  
13 may be available to the Secretary, including information  
14 voluntarily provided in a timely manner by the applicant  
15 and others. The Secretary shall also submit, together with  
16 the aforementioned written statement, all studies, data,  
17 and other factual information available to the Secretary  
18 and relevant to the Secretary’s decision.

19       “(5) If the Commission finds that the Secretary’s  
20 final condition would be inconsistent with the purposes of  
21 this part, or other applicable law, the Commission may



1 refer the dispute to the Commission's Dispute Resolution  
2 Service. The Dispute Resolution Service shall consult with  
3 the Secretary and the Commission and issue a non-binding  
4 advisory within 90 days. The Secretary may accept the  
5 Dispute Resolution Service advisory unless the Secretary  
6 finds that the recommendation will not adequately protect  
7 the reservation. The Secretary shall submit the advisory  
8 and the Secretary's final written determination into the  
9 record of the Commission's proceeding.

10       “(b) ALTERNATIVE PRESCRIPTIONS.—(1) Whenever  
11 the Secretary of the Interior or the Secretary of Commerce  
12 prescribes a fishway under section 18, the license appli-  
13 cant or any other party to the license proceeding may pro-  
14 pose an alternative to such prescription to construct,  
15 maintain, or operate a fishway.

16       “(2) Notwithstanding section 18, the Secretary of the  
17 Interior or the Secretary of Commerce, as appropriate,  
18 shall accept and prescribe, and the Commission shall re-  
19 quire, the proposed alternative referred to in paragraph  
20 (1), if the Secretary of the appropriate department deter-  
21 mines, based on substantial evidence provided by the li-

1 cense applicant, any other party to the proceeding, or oth-  
2 erwise available to the Secretary, that such alternative—

3 “(A) will be no less protective than the fishway  
4 initially prescribed by the Secretary; and

5 “(B) will either, as compared to the fishway ini-  
6 tially prescribed by the Secretary—

7 “(i) cost significantly less to implement; or

8 “(ii) result in improved operation of the  
9 project works for electricity production.

10 “(3) In making a determination under paragraph (2),  
11 the Secretary shall consider evidence provided for the  
12 record by any party to a licensing proceeding, or otherwise  
13 available to the Secretary, including any evidence provided  
14 by the Commission, on the implementation costs or oper-  
15 ational impacts for electricity production of a proposed al-  
16 ternative.

17 “(4) The Secretary concerned shall submit into the  
18 public record of the Commission proceeding with any pre-  
19 scription under section 18 or alternative prescription it ac-  
20 cepts under this section, a written statement explaining  
21 the basis for such prescription, and reason for not accept-

1 ing any alternative prescription under this section. The  
2 written statement must demonstrate that the Secretary  
3 gave equal consideration to the effects of the prescription  
4 adopted and alternatives not accepted on energy supply,  
5 distribution, cost, and use; flood control; navigation; water  
6 supply; and air quality (in addition to the preservation of  
7 other aspects of environmental quality); based on such in-  
8 formation as may be available to the Secretary, including  
9 information voluntarily provided in a timely manner by the  
10 applicant and others. The Secretary shall also submit, to-  
11 gether with the aforementioned written statement, all  
12 studies, data, and other factual information available to  
13 the Secretary and relevant to the Secretary's decision.

14       “(5) If the Commission finds that the Secretary's  
15 final prescription would be inconsistent with the purposes  
16 of this part, or other applicable law, the Commission may  
17 refer the dispute to the Commission's Dispute Resolution  
18 Service. The Dispute Resolution Service shall consult with  
19 the Secretary and the Commission and issue a non-binding  
20 advisory within 90 days. The Secretary may accept the  
21 Dispute Resolution Service advisory unless the Secretary

1 finds that the recommendation will not adequately protect  
2 the fish resources. The Secretary shall submit the advisory  
3 and the Secretary's final written determination into the  
4 record of the Commission's proceeding."

5 **SEC. 242. HYDROELECTRIC PRODUCTION INCENTIVES.**

6 (a) INCENTIVE PAYMENTS.—For electric energy gen-  
7 erated and sold by a qualified hydroelectric facility during  
8 the incentive period, the Secretary shall make, subject to  
9 the availability of appropriations, incentive payments to  
10 the owner or operator of such facility. The amount of such  
11 payment made to any such owner or operator shall be as  
12 determined under subsection (e) of this section. Payments  
13 under this section may only be made upon receipt by the  
14 Secretary of an incentive payment application which estab-  
15 lishes that the applicant is eligible to receive such payment  
16 and which satisfies such other requirements as the Sec-  
17 retary deems necessary. Such application shall be in such  
18 form, and shall be submitted at such time, as the Sec-  
19 retary shall establish.

20 (b) DEFINITIONS.—For purposes of this section:

1 (1) QUALIFIED HYDROELECTRIC FACILITY.—

2 The term “qualified hydroelectric facility” means a  
3 turbine or other generating device owned or solely  
4 operated by a non-Federal entity which generates  
5 hydroelectric energy for sale and which is added to  
6 an existing dam or conduit.

7 (2) EXISTING DAM OR CONDUIT.—The term

8 “existing dam or conduit” means any dam or con-  
9 duit the construction of which was completed before  
10 the date of the enactment of this section and which  
11 does not require any construction or enlargement of  
12 impoundment or diversion structures (other than re-  
13 pair or reconstruction) in connection with the instal-  
14 lation of a turbine or other generating device.

15 (3) CONDUIT.—The term “conduit” has the  
16 same meaning as when used in section 30(a)(2) of  
17 the Federal Power Act (16 U.S.C. 823a(a)(2)).

18 The terms defined in this subsection shall apply without  
19 regard to the hydroelectric kilowatt capacity of the facility  
20 concerned, without regard to whether the facility uses a  
21 dam owned by a governmental or nongovernmental entity,

1 and without regard to whether the facility begins oper-  
2 ation on or after the date of the enactment of this section.

3 (c) ELIGIBILITY WINDOW.—Payments may be made  
4 under this section only for electric energy generated from  
5 a qualified hydroelectric facility which begins operation  
6 during the period of 10 fiscal years beginning with the  
7 first full fiscal year occurring after the date of enactment  
8 of this subtitle.

9 (d) INCENTIVE PERIOD.—A qualified hydroelectric  
10 facility may receive payments under this section for a pe-  
11 riod of 10 fiscal years (referred to in this section as the  
12 “incentive period”). Such period shall begin with the fiscal  
13 year in which electric energy generated from the facility  
14 is first eligible for such payments.

15 (e) AMOUNT OF PAYMENT.—

16 (1) IN GENERAL.—Payments made by the Sec-  
17 retary under this section to the owner or operator of  
18 a qualified hydroelectric facility shall be based on  
19 the number of kilowatt hours of hydroelectric energy  
20 generated by the facility during the incentive period.  
21 For any such facility, the amount of such payment

1 shall be 1.8 cents per kilowatt hour (adjusted as  
2 provided in paragraph (2)), subject to the avail-  
3 ability of appropriations under subsection (g), except  
4 that no facility may receive more than \$750,000 in  
5 1 calendar year.

6 (2) ADJUSTMENTS.—The amount of the pay-  
7 ment made to any person under this section as pro-  
8 vided in paragraph (1) shall be adjusted for inflation  
9 for each fiscal year beginning after calendar year  
10 2005 in the same manner as provided in the provi-  
11 sions of section 29(d)(2)(B) of the Internal Revenue  
12 Code of 1986, except that in applying such provi-  
13 sions the calendar year 2005 shall be substituted for  
14 calendar year 1979.

15 (f) SUNSET.—No payment may be made under this  
16 section to any qualified hydroelectric facility after the ex-  
17 piration of the period of 20 fiscal years beginning with  
18 the first full fiscal year occurring after the date of enact-  
19 ment of this subtitle, and no payment may be made under  
20 this section to any such facility after a payment has been

1 made with respect to such facility for a period of 10 fiscal  
2 years.

3 (g) AUTHORIZATION OF APPROPRIATIONS.—There  
4 are authorized to be appropriated to the Secretary to carry  
5 out the purposes of this section \$10,000,000 for each of  
6 the fiscal years 2006 through 2015.

7 **SEC. 243. HYDROELECTRIC EFFICIENCY IMPROVEMENT.**

8 (a) INCENTIVE PAYMENTS.—The Secretary shall  
9 make incentive payments to the owners or operators of  
10 hydroelectric facilities at existing dams to be used to make  
11 capital improvements in the facilities that are directly re-  
12 lated to improving the efficiency of such facilities by at  
13 least 3 percent.

14 (b) LIMITATIONS.—Incentive payments under this  
15 section shall not exceed 10 percent of the costs of the cap-  
16 ital improvement concerned and not more than 1 payment  
17 may be made with respect to improvements at a single  
18 facility. No payment in excess of \$750,000 may be made  
19 with respect to improvements at a single facility.

20 (c) AUTHORIZATION OF APPROPRIATIONS.—There  
21 are authorized to be appropriated to carry out this section



1 not more than \$10,000,000 for each of the fiscal years  
2 2006 through 2015.

3 **SEC. 244. ALASKA STATE JURISDICTION OVER SMALL HY-**  
4 **DROELECTRIC PROJECTS.**

5 Section 32 of the Federal Power Act (16 U.S.C.  
6 823c) is amended—

7 (1) in subsection (a)(3)(C), by inserting “except  
8 as provided in subsection (j),” before “conditions”;  
9 and

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

11 “(j) FISH AND WILDLIFE.—If the State of Alaska  
12 determines that a recommendation under subsection  
13 (a)(3)(C) is inconsistent with paragraphs (1) and (2) of  
14 subsection (a), the State of Alaska may decline to adopt  
15 all or part of the recommendations in accordance with the  
16 procedures established under section 10(j)(2).”.

17 **SEC. 245. FLINT CREEK HYDROELECTRIC PROJECT.**

18 (a) EXTENSION OF TIME.—Notwithstanding the time  
19 period specified in section 5 of the Federal Power Act (16  
20 U.S.C. 798) that would otherwise apply to the Federal En-  
21 ergy Regulatory Commission (referred to in this section

1 as the “Commission”) project numbered 12107, the Com-  
2 mission shall—

3 (1) if the preliminary permit is in effect on the  
4 date of enactment of this Act, extend the prelimi-  
5 nary permit for a period of 3 years beginning on the  
6 date on which the preliminary permit expires; or

7 (2) if the preliminary permit expired before the  
8 date of enactment of this Act, on request of the per-  
9 mittee, reinstate the preliminary permit for an addi-  
10 tional 3-year period beginning on the date of enact-  
11 ment of this Act.

12 (b) LIMITATION ON CERTAIN FEES.—Notwith-  
13 standing section 10(e)(1) of the Federal Power Act (16  
14 U.S.C. 803(e)(1)) or any other provision of Federal law  
15 providing for the payment to the United States of charges  
16 for the use of Federal land for the purposes of operating  
17 and maintaining a hydroelectric development licensed by  
18 the Commission, any political subdivision of the State of  
19 Montana that holds a Commission license for the Commis-  
20 sion project numbered 12107 in Granite and Deer Lodge  
21 Counties, Montana, shall be required to pay to the United

1 States for the use of that land for each year during which  
2 the political subdivision continues to hold the license for  
3 the project, the lesser of—

4 (1) \$25,000; or

5 (2) such annual charge as the Commission or  
6 any other department or agency of the Federal Gov-  
7 ernment may assess.

8 **SEC. 246. SMALL HYDROELECTRIC POWER PROJECTS.**

9 Section 408(a)(6) of the Public Utility Regulatory  
10 Policies Act of 1978 (16 U.S.C. 2708(a)(6)) is amended  
11 by striking “April 20, 1977” and inserting “July 22,  
12 2005”.

13 **Subtitle D—Insular Energy**

14 **SEC. 251. INSULAR AREAS ENERGY SECURITY.**

15 Section 604 of the Act entitled “An Act to authorize  
16 appropriations for certain insular areas of the United  
17 States, and for other purposes”, approved December 24,  
18 1980 (48 U.S.C. 1492), is amended—

19 (1) in subsection (a)(4) by striking the period  
20 and inserting a semicolon;

1           (2) by adding at the end of subsection (a) the  
2 following new paragraphs:

3           “(5) electric power transmission and distribu-  
4 tion lines in insular areas are inadequate to with-  
5 stand damage caused by the hurricanes and ty-  
6 phoons which frequently occur in insular areas and  
7 such damage often costs millions of dollars to repair;  
8 and

9           “(6) the refinement of renewable energy tech-  
10 nologies since the publication of the 1982 Territorial  
11 Energy Assessment prepared pursuant to subsection  
12 (c) reveals the need to reassess the state of energy  
13 production, consumption, infrastructure, reliance on  
14 imported energy, opportunities for energy conserva-  
15 tion and increased energy efficiency, and indigenous  
16 sources in regard to the insular areas.”;

17           (3) by amending subsection (e) to read as fol-  
18 lows:

19           “(e)(1) The Secretary of the Interior, in consultation  
20 with the Secretary of Energy and the head of government

1 of each insular area, shall update the plans required under  
2 subsection (c) by—

3 “(A) updating the contents required by sub-  
4 section (c);

5 “(B) drafting long-term energy plans for such  
6 insular areas with the objective of reducing, to the  
7 extent feasible, their reliance on energy imports by  
8 the year 2012, increasing energy conservation and  
9 energy efficiency, and maximizing, to the extent fea-  
10 sible, use of indigenous energy sources; and

11 “(C) drafting long-term energy transmission  
12 line plans for such insular areas with the objective  
13 that the maximum percentage feasible of electric  
14 power transmission and distribution lines in each in-  
15 sular area be protected from damage caused by hur-  
16 ricanes and typhoons.

17 “(2) In carrying out this subsection, the Secretary  
18 of Energy shall identify and evaluate the strategies or  
19 projects with the greatest potential for reducing the de-  
20 pendence on imported fossil fuels as used for the genera-  
21 tion of electricity, including strategies and projects for—

1           “(A) improved supply-side efficiency of central-  
2           ized electrical generation, transmission, and distribu-  
3           tion systems;

4           “(B) improved demand-side management  
5           through—

6                 “(i) the application of established stand-  
7                 ards for energy efficiency for appliances;

8                 “(ii) the conduct of energy audits for busi-  
9                 ness and industrial customers; and

10                “(iii) the use of energy savings perform-  
11                ance contracts;

12           “(C) increased use of renewable energy,  
13           including—

14                 “(i) solar thermal energy for electric gen-  
15                 eration;

16                 “(ii) solar thermal energy for water heat-  
17                 ing in large buildings, such as hotels, hospitals,  
18                 government buildings, and residences;

19                 “(iii) photovoltaic energy;

20                 “(iv) wind energy;

21                 “(v) hydroelectric energy;

1                   “(vi) wave energy;

2                   “(vii) energy from ocean thermal re-

3 sources, including ocean thermal-cooling for

4 community air conditioning;

5                   “(viii) water vapor condensation for the

6 production of potable water;

7                   “(ix) fossil fuel and renewable hybrid elec-

8 trical generation systems; and

9                   “(x) other strategies or projects that the

10 Secretary may identify as having significant po-

11 tential; and

12                   “(D) fuel substitution and minimization with

13 indigenous biofuels, such as coconut oil.

14                   “(3) In carrying out this subsection, for each insular

15 area with a significant need for distributed generation, the

16 Secretary of Energy shall identify and evaluate the most

17 promising strategies and projects described in subpara-

18 graphs (C) and (D) of paragraph (2) for meeting that

19 need.

1           “(4) In assessing the potential of any strategy or  
2 project under paragraphs (2) and (3), the Secretary of  
3 Energy shall consider—

4           “(A) the estimated cost of the power or energy  
5 to be produced, including—

6           “(i) any additional costs associated with  
7 the distribution of the generation; and

8           “(ii) the long-term availability of the gen-  
9 eration source;

10           “(B) the capacity of the local electrical utility  
11 to manage, operate, and maintain any project that  
12 may be undertaken; and

13           “(C) other factors the Secretary of Energy con-  
14 siders to be appropriate.

15           “(5) Not later than 1 year after the date of enact-  
16 ment of this subsection, the Secretary of the Interior shall  
17 submit to the Committee on Energy and Natural Re-  
18 sources of the Senate, the Committee on Resources of the  
19 House of Representatives, and the Committee on Energy  
20 and Commerce of the House of Representatives, the up-



1 dated plans for each insular area required by this sub-  
2 section.”; and

3 (4) by amending subsection (g)(4) to read as  
4 follows:

5 “(4) POWER LINE GRANTS FOR INSULAR  
6 AREAS.—

7 “(A) IN GENERAL.—The Secretary of the  
8 Interior is authorized to make grants to govern-  
9 ments of insular areas of the United States to  
10 carry out eligible projects to protect electric  
11 power transmission and distribution lines in  
12 such insular areas from damage caused by hur-  
13 ricanes and typhoons.

14 “(B) ELIGIBLE PROJECTS.—The Secretary  
15 of the Interior may award grants under sub-  
16 paragraph (A) only to governments of insular  
17 areas of the United States that submit written  
18 project plans to the Secretary for projects that  
19 meet the following criteria:

20 “(i) The project is designed to protect  
21 electric power transmission and distribu-

1                   tion lines located in 1 or more of the insu-  
2                   lar areas of the United States from dam-  
3                   age caused by hurricanes and typhoons.

4                   “(ii) The project is likely to substan-  
5                   tially reduce the risk of future damage,  
6                   hardship, loss, or suffering.

7                   “(iii) The project addresses 1 or more  
8                   problems that have been repetitive or that  
9                   pose a significant risk to public health and  
10                  safety.

11                  “(iv) The project is not likely to cost  
12                  more than the value of the reduction in di-  
13                  rect damage and other negative impacts  
14                  that the project is designed to prevent or  
15                  mitigate. The cost benefit analysis required  
16                  by this criterion shall be computed on a  
17                  net present value basis.

18                  “(v) The project design has taken into  
19                  consideration long-term changes to the  
20                  areas and persons it is designed to protect

1 and has manageable future maintenance  
2 and modification requirements.

3 “(vi) The project plan includes an  
4 analysis of a range of options to address  
5 the problem it is designed to prevent or  
6 mitigate and a justification for the selec-  
7 tion of the project in light of that analysis.

8 “(vii) The applicant has demonstrated  
9 to the Secretary that the matching funds  
10 required by subparagraph (D) are avail-  
11 able.

12 “(C) PRIORITY.—When making grants  
13 under this paragraph, the Secretary of the Inte-  
14 rior shall give priority to grants for projects  
15 which are likely to—

16 “(i) have the greatest impact on re-  
17 ducing future disaster losses; and

18 “(ii) best conform with plans that  
19 have been approved by the Federal Govern-  
20 ment or the government of the insular area  
21 where the project is to be carried out for

1           development or hazard mitigation for that  
2           insular area.

3           “(D) MATCHING REQUIREMENT.—The  
4           Federal share of the cost for a project for which  
5           a grant is provided under this paragraph shall  
6           not exceed 75 percent of the total cost of that  
7           project. The non-Federal share of the cost may  
8           be provided in the form of cash or services.

9           “(E) TREATMENT OF FUNDS FOR CERTAIN  
10          PURPOSES.—Grants provided under this para-  
11          graph shall not be considered as income, a re-  
12          source, or a duplicative program when deter-  
13          mining eligibility or benefit levels for Federal  
14          major disaster and emergency assistance.

15          “(F) AUTHORIZATION OF APPROPRIA-  
16          TIONS.—There are authorized to be appro-  
17          priated to carry out this paragraph \$6,000,000  
18          for each fiscal year beginning after the date of  
19          the enactment of this paragraph.”.

1 **SEC. 252. PROJECTS ENHANCING INSULAR ENERGY INDE-**  
2 **PENDENCE.**

3 (a) PROJECT FEASIBILITY STUDIES.—

4 (1) IN GENERAL.—On a request described in  
5 paragraph (2), the Secretary shall conduct a feasi-  
6 bility study of a project to implement a strategy or  
7 project identified in the plans submitted to Congress  
8 pursuant to section 604 of the Act entitled “An Act  
9 to authorize appropriations for certain insular areas  
10 of the United States, and for other purposes”, ap-  
11 proved December 24, 1980 (48 U.S.C. 1492), as  
12 having the potential to—

13 (A) significantly reduce the dependence of  
14 an insular area on imported fossil fuels; or

15 (B) provide needed distributed generation  
16 to an insular area.

17 (2) REQUEST.—The Secretary shall conduct a  
18 feasibility study under paragraph (1) on—

19 (A) the request of an electric utility located  
20 in an insular area that commits to fund at least  
21 10 percent of the cost of the study; and

1           (B) if the electric utility is located in the  
2           Federated States of Micronesia, the Republic of  
3           the Marshall Islands, or the Republic of Palau,  
4           written support for that request by the Presi-  
5           dent or the Ambassador of the affected freely  
6           associated state.

7           (3) CONSULTATION.—The Secretary shall con-  
8           sult with regional utility organizations in—

9           (A) conducting feasibility studies under  
10           paragraph (1); and

11           (B) determining the feasibility of potential  
12           projects.

13           (4) FEASIBILITY.—For the purpose of a feasi-  
14           bility study under paragraph (1), a project shall be  
15           determined to be feasible if the project would signifi-  
16           cantly reduce the dependence of an insular area on  
17           imported fossil fuels, or provide needed distributed  
18           generation to an insular area, at a reasonable cost.

19           (b) IMPLEMENTATION.—

20           (1) IN GENERAL.—On a determination by the  
21           Secretary (in consultation with the Secretary of the

1 Interior) that a project is feasible under subsection  
2 (a) and a commitment by an electric utility to oper-  
3 ate and maintain the project, the Secretary may pro-  
4 vide such technical and financial assistance as the  
5 Secretary determines is appropriate for the imple-  
6 mentation of the project.

7 (2) REGIONAL UTILITY ORGANIZATIONS.—In  
8 providing assistance under paragraph (1), the Sec-  
9 retary shall consider providing the assistance  
10 through regional utility organizations.

11 (c) AUTHORIZATION OF APPROPRIATIONS.—

12 (1) IN GENERAL.—There are authorized to be  
13 appropriated to the Secretary—

14 (A) \$500,000 for each fiscal year for  
15 project feasibility studies under subsection (a);  
16 and

17 (B) \$4,000,000 for each fiscal year for  
18 project implementation under subsection (b).

19 (2) LIMITATION OF FUNDS RECEIVED BY INSU-  
20 LAR AREAS.—No insular area may receive, during  
21 any 3-year period, more than 20 percent of the total

1 funds made available during that 3-year period  
2 under subparagraphs (A) and (B) of paragraph (1)  
3 unless the Secretary determines that providing fund-  
4 ing in excess of that percentage best advances exist-  
5 ing opportunities to meet the objectives of this sec-  
6 tion.

7 **TITLE III—OIL AND GAS**  
8 **Subtitle A—Petroleum Reserve and**  
9 **Home Heating Oil**

10 **SEC. 301. PERMANENT AUTHORITY TO OPERATE THE STRA-**  
11 **TEGIC PETROLEUM RESERVE AND OTHER**  
12 **ENERGY PROGRAMS.**

13 (a) AMENDMENT TO TITLE I OF THE ENERGY POL-  
14 ICY AND CONSERVATION ACT.—Title I of the Energy Pol-  
15 icy and Conservation Act (42 U.S.C. 6212 et seq.) is  
16 amended—

17 (1) by striking section 166 (42 U.S.C. 6246)  
18 and inserting the following:





1           (1) by inserting after the items relating to part  
2           C of title I the following:

“PART D—NORTHEAST HOME HEATING OIL RESERVE

“Sec. 181. Establishment.

“Sec. 182. Authority.

“Sec. 183. Conditions for release; plan.

“Sec. 184. Northeast Home Heating Oil Reserve Account.

“Sec. 185. Exemptions.”;

3           (2) by amending the items relating to part C of  
4           title II to read as follows:

“PART C—SUMMER FILL AND FUEL BUDGETING PROGRAMS

“Sec. 273. Summer fill and fuel budgeting programs.”; and

5           (3) by striking the items relating to part D of  
6           title II.

7           (d) AMENDMENT TO THE ENERGY POLICY AND CON-  
8           SERVATION ACT.—Section 183(b)(1) of the Energy Policy  
9           and Conservation Act (42 U.S.C. 6250b(b)(1)) is amended  
10          by striking “by more” and all that follows through “mid-  
11          October through March” and inserting “by more than 60  
12          percent over its 5-year rolling average for the months of  
13          mid-October through March (considered as a heating sea-  
14          son average)”.

15          (e) FILL STRATEGIC PETROLEUM RESERVE TO CA-  
16          PACITY.—

1           (1) IN GENERAL.—The Secretary shall, as expe-  
2           ditiously as practicable, without incurring excessive  
3           cost or appreciably affecting the price of petroleum  
4           products to consumers, acquire petroleum in quan-  
5           tities sufficient to fill the Strategic Petroleum Re-  
6           serve to the 1,000,000,000-barrel capacity author-  
7           ized under section 154(a) of the Energy Policy and  
8           Conservation Act (42 U.S.C. 6234(a)), in accord-  
9           ance with the sections 159 and 160 of that Act (42  
10          U.S.C. 6239, 6240).

11          (2) PROCEDURES.—

12                 (A) AMENDMENT.—Section 160 of the En-  
13                 ergy Policy and Conservation Act (42 U.S.C.  
14                 6240) is amended by inserting after subsection  
15                 (b) the following new subsection:

16          “(c) PROCEDURES.—The Secretary shall develop,  
17          with public notice and opportunity for comment, proce-  
18          dures consistent with the objectives of this section to ac-  
19          quire petroleum for the Reserve. Such procedures shall  
20          take into account the need to—

1           “(1) maximize overall domestic supply of crude  
2           oil (including quantities stored in private sector in-  
3           ventories);

4           “(2) avoid incurring excessive cost or appre-  
5           ciably affecting the price of petroleum products to  
6           consumers;

7           “(3) minimize the costs to the Department of  
8           the Interior and the Department of Energy in ac-  
9           quiring such petroleum products (including foregone  
10          revenues to the Treasury when petroleum products  
11          for the Reserve are obtained through the royalty-in-  
12          kind program);

13          “(4) protect national security;

14          “(5) avoid adversely affecting current and fu-  
15          tures prices, supplies, and inventories of oil; and

16          “(6) address other factors that the Secretary  
17          determines to be appropriate.”.

18                   (B) REVIEW OF REQUESTS FOR DEFER-  
19                   RALS OF SCHEDULED DELIVERIES.—The proce-  
20                   dures developed under section 160(c) of the En-  
21                   ergy Policy and Conservation Act, as added by

1           subparagraph (A), shall include procedures and  
2           criteria for the review of requests for the defer-  
3           rals of scheduled deliveries.

4           (C) DEADLINES.—The Secretary shall—

5                 (i) propose the procedures required  
6                 under the amendment made by subpara-  
7                 graph (A) not later than 120 days after  
8                 the date of enactment of this Act;

9                 (ii) promulgate the procedures not  
10                later than 180 days after the date of en-  
11                actment of this Act; and

12               (iii) comply with the procedures in ac-  
13                quiring petroleum for the Reserve effective  
14                beginning on the date that is 180 days  
15                after the date of enactment of this Act.

16 **SEC. 302. NATIONAL OILHEAT RESEARCH ALLIANCE.**

17           Section 713 of the Energy Act of 2000 (Public Law  
18 106–469; 42 U.S.C. 6201 note) is amended by striking  
19 “4” and inserting “9”.

**1 SEC. 303. SITE SELECTION.**

2 Not later than 1 year after the date of enactment  
3 of this Act, the Secretary shall complete a proceeding to  
4 select, from sites that the Secretary has previously stud-  
5 ied, sites necessary to enable acquisition by the Secretary  
6 of the full authorized volume of the Strategic Petroleum  
7 Reserve. In such proceeding, the Secretary shall first con-  
8 sider and give preference to the five sites which the Sec-  
9 retary previously assessed in the Draft Environmental Im-  
10 pact Statement, DOE/EIS-0165-D. However, the Sec-  
11 retary in his discretion may select other sites as proposed  
12 by a State where a site has been previously studied by  
13 the Secretary to meet the full authorized volume of the  
14 Strategic Petroleum Reserve.

**15 Subtitle B—Natural Gas****16 SEC. 311. EXPORTATION OR IMPORTATION OF NATURAL  
17 GAS.**

18 (a) SCOPE OF NATURAL GAS ACT.—Section 1(b) of  
19 the Natural Gas Act (15 U.S.C. 717(b)) is amended by  
20 inserting “and to the importation or exportation of natural  
21 gas in foreign commerce and to persons engaged in such

1 importation or exportation,” after “such transportation or  
2 sale,”.

3 (b) DEFINITION.—Section 2 of the Natural Gas Act  
4 (15 U.S.C. 717a) is amended by adding at the end the  
5 following new paragraph:

6 “(11) ‘LNG terminal’ includes all natural gas  
7 facilities located onshore or in State waters that are  
8 used to receive, unload, load, store, transport, gasify,  
9 liquefy, or process natural gas that is imported to  
10 the United States from a foreign country, exported  
11 to a foreign country from the United States, or  
12 transported in interstate commerce by waterborne  
13 vessel, but does not include—

14 “(A) waterborne vessels used to deliver  
15 natural gas to or from any such facility; or

16 “(B) any pipeline or storage facility sub-  
17 ject to the jurisdiction of the Commission under  
18 section 7.”.

19 (c) AUTHORIZATION FOR SITING, CONSTRUCTION,  
20 EXPANSION, OR OPERATION OF LNG TERMINALS.—(1)  
21 The title for section 3 of the Natural Gas Act (15 U.S.C.

1 717b) is amended by inserting “; LNG TERMINALS” after  
2 “EXPORTATION OR IMPORTATION OF NATURAL GAS”.

3 (2) Section 3 of the Natural Gas Act (15 U.S.C.  
4 717b) is amended by adding at the end the following:

5 “(d) Except as specifically provided in this Act, noth-  
6 ing in this Act affects the rights of States under—

7 “(1) the Coastal Zone Management Act of 1972  
8 (16 U.S.C. 1451 et seq.);

9 “(2) the Clean Air Act (42 U.S.C. 7401 et  
10 seq.); or

11 “(3) the Federal Water Pollution Control Act  
12 (33 U.S.C. 1251 et seq.).

13 “(e)(1) The Commission shall have the exclusive au-  
14 thority to approve or deny an application for the siting,  
15 construction, expansion, or operation of an LNG terminal.  
16 Except as specifically provided in this Act, nothing in this  
17 Act is intended to affect otherwise applicable law related  
18 to any Federal agency’s authorities or responsibilities re-  
19 lated to LNG terminals.



1       “(2) Upon the filing of any application to site, con-  
2 struct, expand, or operate an LNG terminal, the Commis-  
3 sion shall—

4               “(A) set the matter for hearing;

5               “(B) give reasonable notice of the hearing to all  
6 interested persons, including the State commission  
7 of the State in which the LNG terminal is located  
8 and, if not the same, the Governor-appointed State  
9 agency described in section 3A;

10              “(C) decide the matter in accordance with this  
11 subsection; and

12              “(D) issue or deny the appropriate order ac-  
13 cordingly.

14       “(3)(A) Except as provided in subparagraph (B), the  
15 Commission may approve an application described in para-  
16 graph (2), in whole or part, with such modifications and  
17 upon such terms and conditions as the Commission find  
18 necessary or appropriate.

19       “(B) Before January 1, 2015, the Commission shall  
20 not—

1           “(i) deny an application solely on the basis that  
2           the applicant proposes to use the LNG terminal ex-  
3           clusively or partially for gas that the applicant or an  
4           affiliate of the applicant will supply to the facility;  
5           or

6           “(ii) condition an order on—

7                   “(I) a requirement that the LNG terminal  
8                   offer service to customers other than the appli-  
9                   cant, or any affiliate of the applicant, securing  
10                  the order;

11                   “(II) any regulation of the rates, charges,  
12                   terms, or conditions of service of the LNG ter-  
13                   minal; or

14                   “(III) a requirement to file with the Com-  
15                   mission schedules or contracts related to the  
16                   rates, charges, terms, or conditions of service of  
17                   the LNG terminal.

18           “(C) Subparagraph (B) shall cease to have effect on  
19           January 1, 2030.

20           “(4) An order issued for an LNG terminal that also  
21           offers service to customers on an open access basis shall

1 not result in subsidization of expansion capacity by exist-  
2 ing customers, degradation of service to existing cus-  
3 tomers, or undue discrimination against existing cus-  
4 tomers as to their terms or conditions of service at the  
5 facility, as all of those terms are defined by the Commis-  
6 sion.

7 “(f)(1) In this subsection, the term ‘military  
8 installation’—

9 “(A) means a base, camp, post, range, station,  
10 yard, center, or homeport facility for any ship or  
11 other activity under the jurisdiction of the Depart-  
12 ment of Defense, including any leased facility, that  
13 is located within a State, the District of Columbia,  
14 or any territory of the United States; and

15 “(B) does not include any facility used pri-  
16 marily for civil works, rivers and harbors projects, or  
17 flood control projects, as determined by the Sec-  
18 retary of Defense.

19 “(2) The Commission shall enter into a memorandum  
20 of understanding with the Secretary of Defense for the  
21 purpose of ensuring that the Commission coordinate and

1 consult with the Secretary of Defense on the siting, con-  
2 struction, expansion, or operation of liquefied natural gas  
3 facilities that may affect an active military installation.

4 “(3) The Commission shall obtain the concurrence of  
5 the Secretary of Defense before authorizing the siting,  
6 construction, expansion, or operation of liquefied natural  
7 gas facilities affecting the training or activities of an active  
8 military installation.”.

9 (d) LNG TERMINAL STATE AND LOCAL SAFETY  
10 CONCERNS.—After section 3 of the Natural Gas Act (15  
11 U.S.C. 717b) insert the following:

12 “STATE AND LOCAL SAFETY CONSIDERATIONS

13 “SEC. 3A. (a) The Commission shall promulgate reg-  
14 ulations on the National Environmental Policy Act of  
15 1969 (42 U.S.C. 4321 et seq) pre-filing process within 60  
16 days after the date of enactment of this section. An appli-  
17 cant shall comply with pre-filing process required under  
18 the National Environmental Policy Act of 1969 prior to  
19 filing an application with the Commission. The regulations  
20 shall require that the pre-filing process commence at least  
21 6 months prior to the filing of an application for author-

1 ization to construct an LNG terminal and encourage ap-  
2 plicants to cooperate with State and local officials.

3       “(b) The Governor of a State in which an LNG ter-  
4 minal is proposed to be located shall designate the appro-  
5 priate State agency for the purposes of consulting with  
6 the Commission regarding an application under section 3.  
7 The Commission shall consult with such State agency re-  
8 garding State and local safety considerations prior to  
9 issuing an order pursuant to section 3. For the purposes  
10 of this section, State and local safety considerations  
11 include—

12           “(1) the kind and use of the facility;

13           “(2) the existing and projected population and  
14 demographic characteristics of the location;

15           “(3) the existing and proposed land use near  
16 the location;

17           “(4) the natural and physical aspects of the lo-  
18 cation;

19           “(5) the emergency response capabilities near  
20 the facility location; and

21           “(6) the need to encourage remote siting.

1           “(c) The State agency may furnish an advisory report  
2 on State and local safety considerations to the Commission  
3 with respect to an application no later than 30 days after  
4 the application was filed with the Commission. Before  
5 issuing an order authorizing an applicant to site, con-  
6 struct, expand, or operate an LNG terminal, the Commis-  
7 sion shall review and respond specifically to the issues  
8 raised by the State agency described in subsection (b) in  
9 the advisory report. This subsection shall apply to any ap-  
10 plication filed after the date of enactment of the Energy  
11 Policy Act of 2005. A State agency has 30 days after such  
12 date of enactment to file an advisory report related to any  
13 applications pending at the Commission as of such date  
14 of enactment.

15           “(d) The State commission of the State in which an  
16 LNG terminal is located may, after the terminal is oper-  
17 ational, conduct safety inspections in conformance with  
18 Federal regulations and guidelines with respect to the  
19 LNG terminal upon written notice to the Commission. The  
20 State commission may notify the Commission of any al-  
21 leged safety violations. The Commission shall transmit in-

1 formation regarding such allegations to the appropriate  
2 Federal agency, which shall take appropriate action and  
3 notify the State commission.

4 “(e)(1) In any order authorizing an LNG terminal  
5 the Commission shall require the LNG terminal operator  
6 to develop an Emergency Response Plan. The Emergency  
7 Response Plan shall be prepared in consultation with the  
8 United States Coast Guard and State and local agencies  
9 and be approved by the Commission prior to any final ap-  
10 proval to begin construction. The Plan shall include a cost-  
11 sharing plan.

12 “(2) A cost-sharing plan developed under paragraph  
13 (1) shall include a description of any direct cost reim-  
14 bursements that the applicant agrees to provide to any  
15 State and local agencies with responsibility for security  
16 and safety—

17 “(A) at the LNG terminal; and

18 “(B) in proximity to vessels that serve the facil-  
19 ity.”.

1 **SEC. 312. NEW NATURAL GAS STORAGE FACILITIES.**

2 Section 4 of the Natural Gas Act (15 U.S.C. 717c)  
3 is amended by adding at the end the following:

4 “(f)(1) In exercising its authority under this Act or  
5 the Natural Gas Policy Act of 1978 (15 U.S.C. 3301 et  
6 seq.), the Commission may authorize a natural gas com-  
7 pany (or any person that will be a natural gas company  
8 on completion of any proposed construction) to provide  
9 storage and storage-related services at market-based rates  
10 for new storage capacity related to a specific facility  
11 placed in service after the date of enactment of the Energy  
12 Policy Act of 2005, notwithstanding the fact that the com-  
13 pany is unable to demonstrate that the company lacks  
14 market power, if the Commission determines that—

15 “(A) market-based rates are in the public inter-  
16 est and necessary to encourage the construction of  
17 the storage capacity in the area needing storage  
18 services; and

19 “(B) customers are adequately protected.

20 “(2) The Commission shall ensure that reasonable  
21 terms and conditions are in place to protect consumers.



1       “(3) If the Commission authorizes a natural gas com-  
2 pany to charge market-based rates under this subsection,  
3 the Commission shall review periodically whether the mar-  
4 ket-based rate is just, reasonable, and not unduly discrimi-  
5 natory or preferential.”.

6 **SEC. 313. PROCESS COORDINATION; HEARINGS; RULES OF**  
7 **PROCEDURE.**

8       (a) IN GENERAL.—Section 15 of the Natural Gas Act  
9 (15 U.S.C. 717n) is amended—

10           (1) by striking the section heading and insert-  
11 ing “PROCESS COORDINATION; HEARINGS; RULES OF  
12 PROCEDURE”;

13           (2) by redesignating subsections (a) and (b) as  
14 subsections (e) and (f), respectively; and

15           (3) by striking “SEC. 15.” and inserting the fol-  
16 lowing:

17       “SEC. 15.(a) In this section, the term ‘Federal  
18 authorization’—

19           “(1) means any authorization required under  
20 Federal law with respect to an application for au-

1       thorization under section 3 or a certificate of public  
2       convenience and necessity under section 7; and

3               “(2) includes any permits, special use author-  
4       izations, certifications, opinions, or other approvals  
5       as may be required under Federal law with respect  
6       to an application for authorization under section 3  
7       or a certificate of public convenience and necessity  
8       under section 7.

9       “(b) DESIGNATION AS LEAD AGENCY.—

10               “(1) IN GENERAL.—The Commission shall act  
11       as the lead agency for the purposes of coordinating  
12       all applicable Federal authorizations and for the  
13       purposes of complying with the National Environ-  
14       mental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

15               “(2) OTHER AGENCIES.—Each Federal and  
16       State agency considering an aspect of an application  
17       for Federal authorization shall cooperate with the  
18       Commission and comply with the deadlines estab-  
19       lished by the Commission.

20       “(c) SCHEDULE.—

1           “(1) COMMISSION AUTHORITY TO SET SCHED-  
2           ULE.—The Commission shall establish a schedule  
3           for all Federal authorizations. In establishing the  
4           schedule, the Commission shall—

5                   “(A) ensure expeditious completion of all  
6                   such proceedings; and

7                   “(B) comply with applicable schedules es-  
8                   tablished by Federal law.

9           “(2) FAILURE TO MEET SCHEDULE.—If a Fed-  
10          eral or State administrative agency does not com-  
11          plete a proceeding for an approval that is required  
12          for a Federal authorization in accordance with the  
13          schedule established by the Commission, the appli-  
14          cant may pursue remedies under section 19(d).

15          “(d) CONSOLIDATED RECORD.—The Commission  
16          shall, with the cooperation of Federal and State adminis-  
17          trative agencies and officials, maintain a complete consoli-  
18          dated record of all decisions made or actions taken by the  
19          Commission or by a Federal administrative agency or offi-  
20          cer (or State administrative agency or officer acting under

1 delegated Federal authority) with respect to any Federal  
2 authorization. Such record shall be the record for—

3 “(1) appeals or reviews under the Coastal Zone  
4 Management Act of 1972 (16 U.S.C. 1451 et seq.),  
5 provided that the record may be supplemented as ex-  
6 pressly provided pursuant to section 319 of that Act;  
7 or

8 “(2) judicial review under section 19(d) of deci-  
9 sions made or actions taken of Federal and State  
10 administrative agencies and officials, provided that,  
11 if the Court determines that the record does not  
12 contain sufficient information, the Court may re-  
13 mand the proceeding to the Commission for further  
14 development of the consolidated record.”.

15 (b) JUDICIAL REVIEW.—Section 19 of the Natural  
16 Gas Act (15 U.S.C. 717r) is amended by adding at the  
17 end the following:

18 “(d) JUDICIAL REVIEW.—

19 “(1) IN GENERAL.—The United States Court of  
20 Appeals for the circuit in which a facility subject to  
21 section 3 or section 7 is proposed to be constructed,

1 expanded, or operated shall have original and exclu-  
2 sive jurisdiction over any civil action for the review  
3 of an order or action of a Federal agency (other  
4 than the Commission) or State administrative agen-  
5 cy acting pursuant to Federal law to issue, condi-  
6 tion, or deny any permit, license, concurrence, or ap-  
7 proval ( hereinafter collectively referred to as ‘per-  
8 mit’) required under Federal law, other than the  
9 Coastal Zone Management Act of 1972 (16 U.S.C.  
10 1451 et seq.).

11 “(2) AGENCY DELAY.—The United States  
12 Court of Appeals for the District of Columbia shall  
13 have original and exclusive jurisdiction over any civil  
14 action for the review of an alleged failure to act by  
15 a Federal agency (other than the Commission) or  
16 State administrative agency acting pursuant to Fed-  
17 eral law to issue, condition, or deny any permit re-  
18 quired under Federal law, other than the Coastal  
19 Zone Management Act of 1972 (16 U.S.C. 1451 et  
20 seq.), for a facility subject to section 3 or section 7.  
21 The failure of an agency to take action on a permit

1 required under Federal law, other than the Coastal  
2 Zone Management Act of 1972, in accordance with  
3 the Commission schedule established pursuant to  
4 section 15(c) shall be considered inconsistent with  
5 Federal law for the purposes of paragraph (3).

6 “(3) COURT ACTION.—If the Court finds that  
7 such order or action is inconsistent with the Federal  
8 law governing such permit and would prevent the  
9 construction, expansion, or operation of the facility  
10 subject to section 3 or section 7, the Court shall re-  
11 mand the proceeding to the agency to take appro-  
12 priate action consistent with the order of the Court.  
13 If the Court remands the order or action to the Fed-  
14 eral or State agency, the Court shall set a reason-  
15 able schedule and deadline for the agency to act on  
16 remand.

17 “(4) COMMISSION ACTION.—For any action de-  
18 scribed in this subsection, the Commission shall file  
19 with the Court the consolidated record of such order  
20 or action to which the appeal hereunder relates.

1           “(5) EXPEDITED REVIEW.—The Court shall set  
2           any action brought under this subsection for expe-  
3           dited consideration.”.

4   **SEC. 314. PENALTIES.**

5           (a) CRIMINAL PENALTIES.—

6           (1) NATURAL GAS ACT.—Section 21 of the Nat-  
7           ural Gas Act (15 U.S.C. 717t) is amended—

8                   (A) in subsection (a)—

9                           (i) by striking “\$5,000” and inserting  
10                           “\$1,000,000”; and—

11                           (ii) by striking “two years” and in-  
12                           serting “5 years”; and

13                   (B) in subsection (b), by striking “\$500”  
14                   and inserting “\$50,000”.

15           (2) NATURAL GAS POLICY ACT OF 1978.—Sec-  
16           tion 504(c) of the Natural Gas Policy Act of 1978  
17           (15 U.S.C. 3414(c)) is amended—

18                   (A) in paragraph (1)—

19                           (i) in subparagraph (A), by striking  
20                           “\$5,000” and inserting “\$1,000,000”; and

1 (ii) in subparagraph (B), by striking  
2 “two years” and inserting “5 years”; and  
3 (B) in paragraph (2), by striking “\$500  
4 for each violation” and inserting “\$50,000 for  
5 each day on which the offense occurs”.

6 (b) CIVIL PENALTIES.—

7 (1) NATURAL GAS ACT.—The Natural Gas Act  
8 (15 U.S.C. 717 et seq.) is amended—

9 (A) by redesignating sections 22 through  
10 24 as sections 24 through 26, respectively; and

11 (B) by inserting after section 21 (15  
12 U.S.C. 717t) the following:

13 “CIVIL PENALTY AUTHORITY

14 “SEC. 22. (a) Any person that violates this Act, or  
15 any rule, regulation, restriction, condition, or order made  
16 or imposed by the Commission under authority of this Act,  
17 shall be subject to a civil penalty of not more than  
18 \$1,000,000 per day per violation for as long as the viola-  
19 tion continues.

20 “(b) The penalty shall be assessed by the Commission  
21 after notice and opportunity for public hearing.



1       “(c) In determining the amount of a proposed pen-  
2 alty, the Commission shall take into consideration the na-  
3 ture and seriousness of the violation and the efforts to  
4 remedy the violation.”.

5           (2) NATURAL GAS POLICY ACT OF 1978.—Sec-  
6 tion 504(b)(6)(A) of the Natural Gas Policy Act of  
7 1978 (15 U.S.C. 3414(b)(6)(A)) is amended—

8           (A) in clause (i), by striking “\$5,000” and  
9           inserting “\$1,000,000”; and

10          (B) in clause (ii), by striking “\$25,000”  
11          and inserting “\$1,000,000”.

12 **SEC. 315. MARKET MANIPULATION.**

13       The Natural Gas Act is amended by inserting after  
14 section 4 (15 U.S.C. 717c) the following:

15           “PROHIBITION ON MARKET MANIPULATION

16           “SEC. 4A. It shall be unlawful for any entity, directly  
17 or indirectly, to use or employ, in connection with the pur-  
18 chase or sale of natural gas or the purchase or sale of  
19 transportation services subject to the jurisdiction of the  
20 Commission, any manipulative or deceptive device or con-  
21 trivance (as those terms are used in section 10(b) of the

1 Securities Exchange Act of 1934 (15 U.S.C. 78j(b))) in  
2 contravention of such rules and regulations as the Com-  
3 mission may prescribe as necessary in the public interest  
4 or for the protection of natural gas ratepayers. Nothing  
5 in this section shall be construed to create a private right  
6 of action.”.

7 **SEC. 316. NATURAL GAS MARKET TRANSPARENCY RULES.**

8 The Natural Gas Act (15 U.S.C. 717 et seq.) is  
9 amended by inserting after section 22 the following:

10 “NATURAL GAS MARKET TRANSPARENCY RULES

11 “SEC. 23. (a)(1) The Commission is directed to facili-  
12 tate price transparency in markets for the sale or trans-  
13 portation of physical natural gas in interstate commerce,  
14 having due regard for the public interest, the integrity of  
15 those markets, fair competition, and the protection of con-  
16 sumers.

17 “(2) The Commission may prescribe such rules as the  
18 Commission determines necessary and appropriate to  
19 carry out the purposes of this section. The rules shall pro-  
20 vide for the dissemination, on a timely basis, of informa-  
21 tion about the availability and prices of natural gas sold

1 at wholesale and in interstate commerce to the Commis-  
2 sion, State commissions, buyers and sellers of wholesale  
3 natural gas, and the public.

4 “(3) The Commission may—

5 “(A) obtain the information described in para-  
6 graph (2) from any market participant; and

7 “(B) rely on entities other than the Commission  
8 to receive and make public the information, subject  
9 to the disclosure rules in subsection (b).

10 “(4) In carrying out this section, the Commission  
11 shall consider the degree of price transparency provided  
12 by existing price publishers and providers of trade proc-  
13 essing services, and shall rely on such publishers and serv-  
14 ices to the maximum extent possible. The Commission may  
15 establish an electronic information system if it determines  
16 that existing price publications are not adequately pro-  
17 viding price discovery or market transparency.

18 “(b)(1) Rules described in subsection (a)(2), if adopt-  
19 ed, shall exempt from disclosure information the Commis-  
20 sion determines would, if disclosed, be detrimental to the

1 operation of an effective market or jeopardize system secu-  
2 rity.

3 “(2) In determining the information to be made avail-  
4 able under this section and the time to make the informa-  
5 tion available, the Commission shall seek to ensure that  
6 consumers and competitive markets are protected from the  
7 adverse effects of potential collusion or other anticompeti-  
8 tive behaviors that can be facilitated by untimely public  
9 disclosure of transaction-specific information.

10 “(c)(1) Within 180 days of enactment of this section,  
11 the Commission shall conclude a memorandum of under-  
12 standing with the Commodity Futures Trading Commis-  
13 sion relating to information sharing, which shall include,  
14 among other things, provisions ensuring that information  
15 requests to markets within the respective jurisdiction of  
16 each agency are properly coordinated to minimize duplica-  
17 tive information requests, and provisions regarding the  
18 treatment of proprietary trading information.

19 “(2) Nothing in this section may be construed to limit  
20 or affect the exclusive jurisdiction of the Commodity Fu-

1 tures Trading Commission under the Commodity Ex-  
2 change Act (7 U.S.C. 1 et seq.).

3 “(d)(1) The Commission shall not condition access to  
4 interstate pipeline transportation on the reporting require-  
5 ments of this section.

6 “(2) The Commission shall not require natural gas  
7 producers, processors, or users who have a de minimis  
8 market presence to comply with the reporting require-  
9 ments of this section.

10 “(e)(1) Except as provided in paragraph (2), no per-  
11 son shall be subject to any civil penalty under this section  
12 with respect to any violation occurring more than 3 years  
13 before the date on which the person is provided notice of  
14 the proposed penalty under section 22(b).

15 “(2) Paragraph (1) shall not apply in any case in  
16 which the Commission finds that a seller that has entered  
17 into a contract for the transportation or sale of natural  
18 gas subject to the jurisdiction of the Commission has en-  
19 gaged in fraudulent market manipulation activities materi-  
20 ally affecting the contract in violation of section 4A.”.

1 **SEC. 317. FEDERAL-STATE LIQUEFIED NATURAL GAS FO-**  
2 **RUMS.**

3 (a) **IN GENERAL.**—Not later than 1 year after the  
4 date of enactment of this Act, the Secretary, in coopera-  
5 tion and consultation with the Secretary of Transpor-  
6 tation, the Secretary of Homeland Security, the Federal  
7 Energy Regulatory Commission, and the Governors of the  
8 Coastal States, shall convene not less than 3 forums on  
9 liquefied natural gas.

10 (b) **REQUIREMENTS.**—The forums shall—

11 (1) be located in areas where liquefied natural  
12 gas facilities are under consideration;

13 (2) be designed to foster dialogue among Fed-  
14 eral officials, State and local officials, the general  
15 public, independent experts, and industry represent-  
16 atives; and

17 (3) at a minimum, provide an opportunity for  
18 public education and dialogue on—

19 (A) the role of liquefied natural gas in  
20 meeting current and future United States en-  
21 ergy supply requirements and demand, in the

1 context of the full range of energy supply op-  
2 tions;

3 (B) the Federal and State siting and per-  
4 mitting processes;

5 (C) the potential risks and rewards associ-  
6 ated with importing liquefied natural gas;

7 (D) the Federal safety and environmental  
8 requirements (including regulations) applicable  
9 to liquefied natural gas;

10 (E) prevention, mitigation, and response  
11 strategies for liquefied natural gas hazards; and

12 (F) additional issues as appropriate.

13 (c) PURPOSE.—The purpose of the forums shall be  
14 to identify and develop best practices for addressing the  
15 issues and challenges associated with liquefied natural gas  
16 imports, building on existing cooperative efforts.

17 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
18 are authorized to be appropriated such sums as are nec-  
19 essary to carry out this section.

1 **SEC. 318. PROHIBITION OF TRADING AND SERVING BY CER-**  
2 **TAIN INDIVIDUALS.**

3 Section 20 of the Natural Gas Act (15 U.S.C. 717s)  
4 is amended by adding at the end the following:

5 “(d) In any proceedings under subsection (a), the  
6 court may prohibit, conditionally or unconditionally, and  
7 permanently or for such period of time as the court deter-  
8 mines, any individual who is engaged or has engaged in  
9 practices constituting a violation of section 4A (including  
10 related rules and regulations) from—

11 “(1) acting as an officer or director of a natural  
12 gas company; or

13 “(2) engaging in the business of—

14 “(A) the purchasing or selling of natural  
15 gas; or

16 “(B) the purchasing or selling of trans-  
17 mission services subject to the jurisdiction of  
18 the Commission.”.



1                                   **Subtitle C—Production**

2   **SEC. 321. OUTER CONTINENTAL SHELF PROVISIONS.**

3           (a) STORAGE ON THE OUTER CONTINENTAL  
4 SHELF.—Section 5(a)(5) of the Outer Continental Shelf  
5 Lands Act (43 U.S.C. 1334(a)(5)) is amended by insert-  
6 ing “from any source” after “oil and gas”.

7           (b) NATURAL GAS DEFINED.—Section 3(13) of the  
8 Deepwater Port Act of 1974 (33 U.S.C. 1502(13)) is  
9 amended by adding at the end before the semicolon the  
10 following: “, natural gas liquids, liquefied petroleum gas,  
11 and condensate recovered from natural gas”.

12   **SEC. 322. HYDRAULIC FRACTURING.**

13           Paragraph (1) of section 1421(d) of the Safe Drink-  
14 ing Water Act (42 U.S.C. 300h(d)) is amended to read  
15 as follows:

16                   “(1) UNDERGROUND INJECTION.—The term  
17           ‘underground injection’—

18                                   “(A) means the subsurface emplacement of  
19                   fluids by well injection; and

20                                   “(B) excludes—

1                   “(i) the underground injection of nat-  
2                   ural gas for purposes of storage; and

3                   “(ii) the underground injection of  
4                   fluids or propping agents (other than diesel  
5                   fuels) pursuant to hydraulic fracturing op-  
6                   erations related to oil, gas, or geothermal  
7                   production activities.”.

8 **SEC. 323. OIL AND GAS EXPLORATION AND PRODUCTION**  
9 **DEFINED.**

10           Section 502 of the Federal Water Pollution Control  
11 Act (33 U.S.C. 1362) is amended by adding at the end  
12 the following:

13                   “(24) OIL AND GAS EXPLORATION AND PRO-  
14                   DUCTION.—The term ‘oil and gas exploration, pro-  
15                   duction, processing, or treatment operations or  
16                   transmission facilities’ means all field activities or  
17                   operations associated with exploration, production,  
18                   processing, or treatment operations, or transmission  
19                   facilities, including activities necessary to prepare a  
20                   site for drilling and for the movement and placement  
21                   of drilling equipment, whether or not such field ac-

1           tivities or operations may be considered to be con-  
2           struction activities.”.

3           **Subtitle D—Naval Petroleum**  
4           **Reserve**

5           **SEC. 331. TRANSFER OF ADMINISTRATIVE JURISDICTION**  
6                           **AND ENVIRONMENTAL REMEDIATION, NAVAL**  
7                           **PETROLEUM RESERVE NUMBERED 2, KERN**  
8                           **COUNTY, CALIFORNIA.**

9           (a) ADMINISTRATION JURISDICTION TRANSFER TO  
10          SECRETARY OF THE INTERIOR.—Effective on the date of  
11          the enactment of this Act, administrative jurisdiction and  
12          control over all public domain lands included within Naval  
13          Petroleum Reserve Numbered 2 located in Kern County,  
14          California, (other than the lands specified in subsection  
15          (b)) are transferred from the Secretary to the Secretary  
16          of the Interior for management, subject to subsection (c),  
17          in accordance with the laws governing management of the  
18          public lands, and the regulations promulgated under such  
19          laws, including the Mineral Leasing Act (30 U.S.C. 181  
20          et seq.) and the Federal Land Policy and Management  
21          Act of 1976 (43 U.S.C. 1701 et seq.).

1           (b) EXCLUSION OF CERTAIN RESERVE LANDS.—The  
2 transfer of administrative jurisdiction made by subsection  
3 (a) does not include the following lands:

4           (1) That portion of Naval Petroleum Reserve  
5       Numbered 2 authorized for disposal under section  
6       3403(a) of the Strom Thurmond National Defense  
7       Authorization Act for Fiscal Year 1999 (Public Law  
8       105–261; 10 U.S.C. 7420 note).

9           (2) That portion of the surface estate of Naval  
10       Petroleum Reserve Numbered 2 conveyed to the City  
11       of Taft, California, by section 333.

12       (c) PURPOSE OF TRANSFER.—

13           (1) PRODUCTION OF HYDROCARBON RE-  
14       SOURCES.—Notwithstanding any other provision of  
15       law, the principal purpose of the lands subject to  
16       transfer under subsection (a) is the production of  
17       hydrocarbon resources, and the Secretary of the In-  
18       terior shall manage the lands in a fashion consistent  
19       with this purpose. In managing the lands, the Sec-  
20       retary of the Interior shall regulate operations to

1 prevent unnecessary degradation and to provide for  
2 ultimate economic recovery of the resources.

3 (2) DISPOSAL AUTHORITY AND SURFACE  
4 USE.—The Secretary of the Interior may make dis-  
5 posals of lands subject to transfer under subsection  
6 (a), or allow commercial or non-profit surface use of  
7 such lands, not to exceed 10 acres each, so long as  
8 the disposals or surface uses do not materially inter-  
9 fere with the ultimate economic recovery of the hy-  
10 drocarbon resources of such lands. All revenues re-  
11 ceived from the disposal of lands under this para-  
12 graph or from allowing the surface use of such lands  
13 shall be deposited in the Naval Petroleum Reserve  
14 Numbered 2 Lease Revenue Account established by  
15 section 332.

16 (d) CONFORMING AMENDMENT.—Section 3403 of the  
17 Strom Thurmond National Defense Authorization Act for  
18 Fiscal Year 1999 (Public Law 105–261; 10 U.S.C 7420  
19 note) is amended by striking subsection (b).

1 **SEC. 332. NAVAL PETROLEUM RESERVE NUMBERED 2**  
2 **LEASE REVENUE ACCOUNT.**

3 (a) ESTABLISHMENT.—There is established in the  
4 Treasury a special deposit account to be known as the  
5 “Naval Petroleum Reserve Numbered 2 Lease Revenue  
6 Account” (in this section referred to as the “lease revenue  
7 account”). The lease revenue account is a revolving ac-  
8 count, and amounts in the lease revenue account shall be  
9 available to the Secretary of the Interior, without further  
10 appropriation, for the purposes specified in subsection (b).

11 (b) PURPOSES OF ACCOUNT.—

12 (1) ENVIRONMENTAL-RELATED COSTS.—The  
13 lease revenue account shall be the sole and exclusive  
14 source of funds to pay for any and all costs and ex-  
15 penses incurred by the United States for—

16 (A) environmental investigations (other  
17 than any environmental investigations that were  
18 conducted by the Secretary before the transfer  
19 of the Naval Petroleum Reserve Numbered 2  
20 lands under section 331), remediation, compli-  
21 ance actions, response, waste management, im-

1           pediments, fines or penalties, or any other costs  
2           or expenses of any kind arising from, or relat-  
3           ing to, conditions existing on or below the  
4           Naval Petroleum Reserve Numbered 2 lands, or  
5           activities occurring or having occurred on such  
6           lands, on or before the date of the transfer of  
7           such lands; and

8                   (B) any future remediation necessitated as  
9           a result of pre-transfer and leasing activities on  
10          such lands.

11          (2) TRANSITION COSTS.—The lease revenue ac-  
12          count shall also be available for use by the Secretary  
13          of the Interior to pay for transition costs incurred  
14          by the Department of the Interior associated with  
15          the transfer and leasing of the Naval Petroleum Re-  
16          serve Numbered 2 lands.

17          (c) FUNDING.—The lease revenue account shall con-  
18          sist of the following:

19                  (1) Notwithstanding any other provision of law,  
20          for a period of three years after the date of the  
21          transfer of the Naval Petroleum Reserve Numbered

1        2 lands under section 331, the sum of \$500,000 per  
2        year of revenue from leases entered into before that  
3        date, including bonuses, rents, royalties, and interest  
4        charges collected pursuant to the Federal Oil and  
5        Gas Royalty Management Act of 1982 (30 U.S.C.  
6        1701 et. seq.), derived from the Naval Petroleum  
7        Reserve Numbered 2 lands, shall be deposited into  
8        the lease revenue account.

9            (2) Subject to subsection (d), all revenues de-  
10        rived from leases on Naval Petroleum Reserve Num-  
11        bered 2 lands issued on or after the date of the  
12        transfer of such lands, including bonuses, rents, roy-  
13        alties, and interest charges collected pursuant to the  
14        Federal Oil and Gas Royalty Management Act of  
15        1982 (30 U.S.C. 1701 et seq.), shall be deposited  
16        into the lease revenue account.

17        (d) LIMITATION.—Funds in the lease revenue ac-  
18        count shall not exceed \$3,000,000 at any one time. When-  
19        ever funds in the lease revenue account are obligated or  
20        expended so that the balance in the account falls below  
21        that amount, lease revenues referred to in subsection



1 (e)(2) shall be deposited in the account to maintain a bal-  
2 ance of \$3,000,000.

3 (e) TERMINATION OF ACCOUNT.—At such time as  
4 the Secretary of the Interior certifies that remediation of  
5 all environmental contamination of Naval Petroleum Re-  
6 serve Numbered 2 lands in existence as of the date of the  
7 transfer of such lands under section 331 has been success-  
8 fully completed, that all costs and expenses of investiga-  
9 tion, remediation, compliance actions, response, waste  
10 management, impediments, fines, or penalties associated  
11 with environmental contamination of such lands in exist-  
12 ence as of the date of the transfer have been paid in full,  
13 and that the transition costs of the Department of the In-  
14 terior referred to in subsection (b)(2) have been paid in  
15 full, the lease revenue account shall be terminated and any  
16 remaining funds shall be distributed in accordance with  
17 subsection (f).

18 (f) DISTRIBUTION OF REMAINING FUNDS.—Section  
19 35 of the Mineral Leasing Act (30 U.S.C. 191) shall apply  
20 to the payment and distribution of all funds remaining in

1 the lease revenue account upon its termination under sub-  
2 section (e).

3 **SEC. 333. LAND CONVEYANCE, PORTION OF NAVAL PETRO-**  
4 **LEUM RESERVE NUMBERED 2, TO CITY OF**  
5 **TAFT, CALIFORNIA.**

6 (a) CONVEYANCE.—Effective on the date of the en-  
7 actment of this Act, there is conveyed to the City of Taft,  
8 California (in this section referred to as the “City”), all  
9 surface right, title, and interest of the United States in  
10 and to a parcel of real property consisting of approxi-  
11 mately 220 acres located in the NE<sup>1</sup>/<sub>4</sub>, the NE<sup>1</sup>/<sub>4</sub> of the  
12 NW<sup>1</sup>/<sub>4</sub>, and the N<sup>1</sup>/<sub>2</sub> of the SE<sup>1</sup>/<sub>4</sub> of the NW<sup>1</sup>/<sub>4</sub> of section  
13 18, township 32 south, range 24 east, Mount Diablo me-  
14 ridian, Kern County, California.

15 (b) CONSIDERATION.—The conveyance under sub-  
16 section (a) is made without the payment of consideration  
17 by the City.

18 (c) TREATMENT OF EXISTING RIGHTS.—The convey-  
19 ance under subsection (a) is subject to valid existing  
20 rights, including Federal oil and gas lease SAC—019577.

1           (d) TREATMENT OF MINERALS.—All coal, oil, gas,  
2 and other minerals within the lands conveyed under sub-  
3 section (a) are reserved to the United States, except that  
4 the United States and its lessees, licensees, permittees, or  
5 assignees shall have no right of surface use or occupancy  
6 of the lands. Nothing in this subsection shall be construed  
7 to require the United States or its lessees, licensees, per-  
8 mittees, or assignees to support the surface of the con-  
9 veyed lands.

10          (e) INDEMNIFY AND HOLD HARMLESS.—The City  
11 shall indemnify, defend, and hold harmless the United  
12 States for, from, and against, and the City shall assume  
13 all responsibility for, any and all liability of any kind or  
14 nature, including all loss, cost, expense, or damage, arising  
15 from the City's use or occupancy of, or operations on, the  
16 land conveyed under subsection (a), whether such use or  
17 occupancy of, or operations on, occurred before or occur  
18 after the date of the enactment of this Act.

19          (f) INSTRUMENT OF CONVEYANCE.—Not later than  
20 one year after the date of the enactment of this Act, the  
21 Secretary shall execute, file, and cause to be recorded in

1 the appropriate office a deed or other appropriate instru-  
2 ment documenting the conveyance made by this section.

3 **SEC. 334. REVOCATION OF LAND WITHDRAWAL.**

4 Effective on the date of the enactment of this Act,  
5 the Executive Order of December 13, 1912, which created  
6 Naval Petroleum Reserve Numbered 2, is revoked in its  
7 entirety.

8 **Subtitle E—Production Incentives**

9 **SEC. 341. DEFINITION OF SECRETARY.**

10 In this subtitle, the term “Secretary” means the Sec-  
11 retary of the Interior.

12 **SEC. 342. PROGRAM ON OIL AND GAS ROYALTIES IN-KIND.**

13 (a) **APPLICABILITY OF SECTION.**—Notwithstanding  
14 any other provision of law, this section applies to all roy-  
15 alty in-kind accepted by the Secretary on or after the date  
16 of enactment of this Act under any Federal oil or gas lease  
17 or permit under—

18 (1) section 36 of the Mineral Leasing Act (30  
19 U.S.C. 192);

20 (2) section 27 of the Outer Continental Shelf  
21 Lands Act (43 U.S.C. 1353); or

1           (3) any other Federal law governing leasing of  
2       Federal land for oil and gas development.

3       (b) TERMS AND CONDITIONS.—All royalty accruing  
4 to the United States shall, on the demand of the Sec-  
5 retary, be paid in-kind. If the Secretary makes such a de-  
6 mand, the following provisions apply to the payment:

7           (1) SATISFACTION OF ROYALTY OBLIGATION.—  
8       Delivery by, or on behalf of, the lessee of the royalty  
9       amount and quality due under the lease satisfies  
10      royalty obligation of the lessee for the amount deliv-  
11      ered, except that transportation and processing re-  
12      imbursements paid to, or deductions claimed by, the  
13      lessee shall be subject to review and audit.

14          (2) MARKETABLE CONDITION.—

15               (A) DEFINITION OF MARKETABLE CONDI-  
16              TION.—In this paragraph, the term “in market-  
17              able condition” means sufficiently free from im-  
18              purities and otherwise in a condition that the  
19              royalty production will be accepted by a pur-  
20              chaser under a sales contract typical of the field

1           or area in which the royalty production was  
2           produced.

3           (B) REQUIREMENT.—Royalty production  
4           shall be placed in marketable condition by the  
5           lessee at no cost to the United States.

6           (3) DISPOSITION BY THE SECRETARY.—The  
7           Secretary may—

8           (A) sell or otherwise dispose of any royalty  
9           production taken in-kind (other than oil or gas  
10          transferred under section 27(a)(3) of the Outer  
11          Continental Shelf Lands Act (43 U.S.C.  
12          1353(a)(3)) for not less than the market price;  
13          and

14          (B) transport or process (or both) any roy-  
15          alty production taken in-kind.

16          (4) RETENTION BY THE SECRETARY.—The Sec-  
17          retary may, notwithstanding section 3302 of title 31,  
18          United States Code, retain and use a portion of the  
19          revenues from the sale of oil and gas taken in-kind  
20          that otherwise would be deposited to miscellaneous  
21          receipts, without regard to fiscal year limitation, or

1       may use oil or gas received as royalty taken in-kind  
2       (referred to in this paragraph as “royalty produc-  
3       tion”) to pay the cost of—

- 4               (A) transporting the royalty production;
- 5               (B) processing the royalty production;
- 6               (C) disposing of the royalty production; or
- 7               (D) any combination of transporting, pro-  
8       cessing, and disposing of the royalty production.

9       (5) LIMITATION.—

10           (A) IN GENERAL.—Except as provided in  
11       subparagraph (B), the Secretary may not use  
12       revenues from the sale of oil and gas taken in-  
13       kind to pay for personnel, travel, or other ad-  
14       ministrative costs of the Federal Government.

15           (B) EXCEPTION.—Notwithstanding sub-  
16       paragraph (A), the Secretary may use a portion  
17       of the revenues from royalty in-kind sales, with-  
18       out fiscal year limitation, to pay salaries and  
19       other administrative costs directly related to the  
20       royalty in-kind program.

1           (c) REIMBURSEMENT OF COST.—If the lessee, pursu-  
2 ant to an agreement with the United States or as provided  
3 in the lease, processes the royalty gas or delivers the roy-  
4 alty oil or gas at a point not on or adjacent to the lease  
5 area, the Secretary shall—

6           (1) reimburse the lessee for the reasonable costs  
7 of transportation (not including gathering) from the  
8 lease to the point of delivery or for processing costs;  
9 or

10           (2) allow the lessee to deduct the transportation  
11 or processing costs in reporting and paying royalties  
12 in-value for other Federal oil and gas leases.

13           (d) BENEFIT TO THE UNITED STATES REQUIRED.—  
14 The Secretary may receive oil or gas royalties in-kind only  
15 if the Secretary determines that receiving royalties in-kind  
16 provides benefits to the United States that are greater  
17 than or equal to the benefits that are likely to have been  
18 received had royalties been taken in-value.

19           (e) REPORTS.—



1           (1) IN GENERAL.—Not later than September  
2           30, 2006, the Secretary shall submit to Congress a  
3           report that addresses—

4                   (A) actions taken to develop business proc-  
5                   esses and automated systems to fully support  
6                   the royalty-in-kind capability to be used in tan-  
7                   dem with the royalty-in-value approach in man-  
8                   aging Federal oil and gas revenue; and

9                   (B) future royalty-in-kind businesses oper-  
10                  ation plans and objectives.

11           (2) REPORTS ON OIL OR GAS ROYALTIES TAKEN  
12           IN-KIND.—For each of fiscal years 2006 through  
13           2015 in which the United States takes oil or gas  
14           royalties in-kind from production in any State or  
15           from the outer Continental Shelf, excluding royalties  
16           taken in-kind and sold to refineries under subsection  
17           (h), the Secretary shall submit to Congress a report  
18           that describes—

19                   (A) the 1 or more methodologies used by  
20                   the Secretary to determine compliance with sub-  
21                   section (d), including the performance standard

1           for comparing amounts received by the United  
2           States derived from royalties in-kind to  
3           amounts likely to have been received had royal-  
4           ties been taken in-value;

5           (B) an explanation of the evaluation that  
6           led the Secretary to take royalties in-kind from  
7           a lease or group of leases, including the ex-  
8           pected revenue effect of taking royalties in-kind;

9           (C) actual amounts received by the United  
10          States derived from taking royalties in-kind and  
11          costs and savings incurred by the United States  
12          associated with taking royalties in-kind, includ-  
13          ing administrative savings and any new or in-  
14          creased administrative costs; and

15          (D) an evaluation of other relevant public  
16          benefits or detriments associated with taking  
17          royalties in-kind.

18          (f) DEDUCTION OF EXPENSES.—

19           (1) IN GENERAL.—Before making payments  
20          under section 35 of the Mineral Leasing Act (30  
21          U.S.C. 191) or section 8(g) of the Outer Continental

1 Shelf Lands Act (43 U.S.C. 1337(g)) of revenues  
2 derived from the sale of royalty production taken in-  
3 kind from a lease, the Secretary shall deduct  
4 amounts paid or deducted under subsections (b)(4)  
5 and (c) and deposit the amount of the deductions in  
6 the miscellaneous receipts of the Treasury.

7 (2) ACCOUNTING FOR DEDUCTIONS.—When the  
8 Secretary allows the lessee to deduct transportation  
9 or processing costs under subsection (c), the Sec-  
10 retary may not reduce any payments to recipients of  
11 revenues derived from any other Federal oil and gas  
12 lease as a consequence of that deduction.

13 (g) CONSULTATION WITH STATES.—The  
14 Secretary—

15 (1) shall consult with a State before conducting  
16 a royalty in-kind program under this subtitle within  
17 the State;

18 (2) may delegate management of any portion of  
19 the Federal royalty in-kind program to the State ex-  
20 cept as otherwise prohibited by Federal law; and

1           (3) shall consult annually with any State from  
2           which Federal oil or gas royalty is being taken in-  
3           kind to ensure, to the maximum extent practicable,  
4           that the royalty in-kind program provides revenues  
5           to the State greater than or equal to the revenues  
6           likely to have been received had royalties been taken  
7           in-value.

8           (h) SMALL REFINERIES.—

9           (1) PREFERENCE.—If the Secretary finds that  
10          sufficient supplies of crude oil are not available in  
11          the open market to refineries that do not have their  
12          own source of supply for crude oil, the Secretary  
13          may grant preference to those refineries in the sale  
14          of any royalty oil accruing or reserved to the United  
15          States under Federal oil and gas leases issued under  
16          any mineral leasing law, for processing or use in  
17          those refineries at private sale at not less than the  
18          market price.

19          (2) PRORATION AMONG REFINERIES IN PRO-  
20          DUCTION AREA.—In disposing of oil under this sub-  
21          section, the Secretary may, at the discretion of the

1 Secretary, prorate the oil among refineries described  
2 in paragraph (1) in the area in which the oil is pro-  
3 duced.

4 (i) DISPOSITION TO FEDERAL AGENCIES.—

5 (1) ONSHORE ROYALTY.—Any royalty oil or gas  
6 taken by the Secretary in-kind from onshore oil and  
7 gas leases may be sold at not less than the market  
8 price to any Federal agency.

9 (2) OFFSHORE ROYALTY.—Any royalty oil or  
10 gas taken in-kind from a Federal oil or gas lease on  
11 the outer Continental Shelf may be disposed of only  
12 under section 27 of the Outer Continental Shelf  
13 Lands Act (43 U.S.C. 1353).

14 (j) FEDERAL LOW-INCOME ENERGY ASSISTANCE  
15 PROGRAMS.—

16 (1) PREFERENCE.—In disposing of royalty oil  
17 or gas taken in-kind under this section, the Sec-  
18 retary may grant a preference to any person, includ-  
19 ing any Federal or State agency, for the purpose of  
20 providing additional resources to any Federal low-in-  
21 come energy assistance program.

1           (2) REPORT.—Not later than 3 years after the  
2           date of enactment of this Act, the Secretary shall  
3           submit a report to Congress—

4                   (A) assessing the effectiveness of granting  
5                   preferences specified in paragraph (1); and

6                   (B) providing a specific recommendation  
7                   on the continuation of authority to grant pref-  
8                   erences.

9   **SEC. 343. MARGINAL PROPERTY PRODUCTION INCENTIVES.**

10       (a) DEFINITION OF MARGINAL PROPERTY.—Until  
11       such time as the Secretary issues regulations under sub-  
12       section (e) that prescribe a different definition, in this sec-  
13       tion, the term “marginal property” means an onshore  
14       unit, communitization agreement, or lease not within a  
15       unit or communitization agreement, that produces on av-  
16       erage the combined equivalent of less than 15 barrels of  
17       oil per well per day or 90,000,000 British thermal units  
18       of gas per well per day calculated based on the average  
19       over the 3 most recent production months, including only  
20       wells that produce on more than half of the days during  
21       those 3 production months.

1           (b) CONDITIONS FOR REDUCTION OF ROYALTY  
2 RATE.—Until such time as the Secretary issues regula-  
3 tions under subsection (e) that prescribe different stand-  
4 ards or requirements, the Secretary shall reduce the roy-  
5 alty rate on—

6           (1) oil production from marginal properties as  
7 prescribed in subsection (c) if the spot price of West  
8 Texas Intermediate crude oil at Cushing, Oklahoma,  
9 is, on average, less than \$15 per barrel (adjusted in  
10 accordance with the Consumer Price Index for all-  
11 urban consumers, United States city average, as  
12 published by the Bureau of Labor Statistics) for 90  
13 consecutive trading days; and

14           (2) gas production from marginal properties as  
15 prescribed in subsection (c) if the spot price of nat-  
16 ural gas delivered at Henry Hub, Louisiana, is, on  
17 average, less than \$2.00 per million British thermal  
18 units (adjusted in accordance with the Consumer  
19 Price Index for all-urban consumers, United States  
20 city average, as published by the Bureau of Labor  
21 Statistics) for 90 consecutive trading days.

1 (c) REDUCED ROYALTY RATE.—

2 (1) IN GENERAL.—When a marginal property  
3 meets the conditions specified in subsection (b), the  
4 royalty rate shall be the lesser of—

5 (A) 5 percent; or

6 (B) the applicable rate under any other  
7 statutory or regulatory royalty relief provision  
8 that applies to the affected production.

9 (2) PERIOD OF EFFECTIVENESS.—The reduced  
10 royalty rate under this subsection shall be effective  
11 beginning on the first day of the production month  
12 following the date on which the applicable condition  
13 specified in subsection (b) is met.

14 (d) TERMINATION OF REDUCED ROYALTY RATE.—  
15 A royalty rate prescribed in subsection (c)(1) shall  
16 terminate—

17 (1) with respect to oil production from a mar-  
18 ginal property, on the first day of the production  
19 month following the date on which—

20 (A) the spot price of West Texas Inter-  
21 mediate crude oil at Cushing, Oklahoma, on av-



1           erage, exceeds \$15 per barrel (adjusted in ac-  
2           cordance with the Consumer Price Index for all-  
3           urban consumers, United States city average,  
4           as published by the Bureau of Labor Statistics)  
5           for 90 consecutive trading days; or

6                   (B) the property no longer qualifies as a  
7           marginal property; and

8           (2) with respect to gas production from a mar-  
9           ginal property, on the first day of the production  
10          month following the date on which—

11                   (A) the spot price of natural gas delivered  
12           at Henry Hub, Louisiana, on average, exceeds  
13           \$2.00 per million British thermal units (ad-  
14           justed in accordance with the Consumer Price  
15           Index for all-urban consumers, United States  
16           city average, as published by the Bureau of  
17           Labor Statistics) for 90 consecutive trading  
18           days; or

19                   (B) the property no longer qualifies as a  
20          marginal property.

1 (e) REGULATIONS PRESCRIBING DIFFERENT RE-  
2 LIEF.—

3 (1) DISCRETIONARY REGULATIONS.—The Sec-  
4 retary may by regulation prescribe different param-  
5 eters, standards, and requirements for, and a dif-  
6 ferent degree or extent of, royalty relief for marginal  
7 properties in lieu of those prescribed in subsections  
8 (a) through (d).

9 (2) MANDATORY REGULATIONS.—Unless a de-  
10 termination is made under paragraph (3), not later  
11 than 18 months after the date of enactment of this  
12 Act, the Secretary shall by regulation—

13 (A) prescribe standards and requirements  
14 for, and the extent of royalty relief for, mar-  
15 ginal properties for oil and gas leases on the  
16 outer Continental Shelf; and

17 (B) define what constitutes a marginal  
18 property on the outer Continental Shelf for pur-  
19 poses of this section.

20 (3) REPORT.—To the extent the Secretary de-  
21 termines that it is not practicable to issue the regu-

1       lations referred to in paragraph (2), the Secretary  
2       shall provide a report to Congress explaining such  
3       determination by not later than 18 months after the  
4       date of enactment of this Act.

5           (4) CONSIDERATIONS.—In issuing regulations  
6       under this subsection, the Secretary may consider—

7                   (A) oil and gas prices and market trends;

8                   (B) production costs;

9                   (C) abandonment costs;

10                   (D) Federal and State tax provisions and  
11       the effects of those provisions on production ec-  
12       onomics;

13                   (E) other royalty relief programs;

14                   (F) regional differences in average well-  
15       head prices;

16                   (G) national energy security issues; and

17                   (H) other relevant matters, as determined  
18       by the Secretary.

19       (f) SAVINGS PROVISION.—Nothing in this section  
20       prevents a lessee from receiving royalty relief or a royalty  
21       reduction pursuant to any other law (including a regula-

1 tion) that provides more relief than the amounts provided  
2 by this section.

3 **SEC. 344. INCENTIVES FOR NATURAL GAS PRODUCTION**  
4 **FROM DEEP WELLS IN THE SHALLOW WA-**  
5 **TERS OF THE GULF OF MEXICO.**

6 (a) ROYALTY INCENTIVE REGULATIONS FOR ULTRA  
7 DEEP GAS WELLS.—

8 (1) IN GENERAL.—Not later than 180 days  
9 after the date of enactment of this Act, in addition  
10 to any other regulations that may provide royalty in-  
11 centives for natural gas produced from deep wells on  
12 oil and gas leases issued pursuant to the Outer Con-  
13 tinental Shelf Lands Act (43 U.S.C. 1331 et seq.),  
14 the Secretary shall issue regulations granting royalty  
15 relief suspension volumes of not less than 35 billion  
16 cubic feet with respect to the production of natural  
17 gas from ultra deep wells on leases issued in shallow  
18 waters less than 400 meters deep located in the Gulf  
19 of Mexico wholly west of 87 degrees, 30 minutes  
20 west longitude. Regulations issued under this sub-  
21 section shall be retroactive to the date that the no-

1       tice of proposed rulemaking is published in the Fed-  
2       eral Register.

3           (2) SUSPENSION VOLUMES.—The Secretary  
4       may grant suspension volumes of not less than 35  
5       billion cubic feet in any case in which—

6           (A) the ultra deep well is a sidetrack; or

7           (B) the lease has previously produced from  
8       wells with a perforated interval the top of which  
9       is at least 15,000 feet true vertical depth below  
10      the datum at mean sea level.

11       (3) DEFINITIONS.—In this subsection:

12           (A) ULTRA DEEP WELL.—The term “ultra  
13       deep well” means a well drilled with a per-  
14       forated interval, the top of which is at least  
15       20,000 true vertical depth below the datum at  
16       mean sea level.

17           (B) SIDETRACK.—

18           (i) IN GENERAL.—The term “side-  
19       track” means a well resulting from drilling  
20       an additional hole to a new objective bot-

1 tom-hole location by leaving a previously  
2 drilled hole.

3 (ii) INCLUSION.—The term “side-  
4 track” includes—

5 (I) drilling a well from a plat-  
6 form slot reclaimed from a previously  
7 drilled well;

8 (II) re-entering and deepening a  
9 previously drilled well; and

10 (III) a bypass from a sidetrack,  
11 including drilling around material  
12 blocking a hole or drilling to straight-  
13 en a crooked hole.

14 (b) ROYALTY INCENTIVE REGULATIONS FOR DEEP  
15 GAS WELLS.—Not later than 180 days after the date of  
16 enactment of this Act, in addition to any other regulations  
17 that may provide royalty incentives for natural gas pro-  
18 duced from deep wells on oil and gas leases issued pursu-  
19 ant to the Outer Continental Shelf Lands Act (43 U.S.C.  
20 1331 et seq.), the Secretary shall issue regulations grant-  
21 ing royalty relief suspension volumes with respect to pro-

1 duction of natural gas from deep wells on leases issued  
2 in waters more than 200 meters but less than 400 meters  
3 deep located in the Gulf of Mexico wholly west of 87 de-  
4 grees, 30 minutes west longitude. The suspension volumes  
5 for deep wells within 200 to 400 meters of water depth  
6 shall be calculated using the same methodology used to  
7 calculate the suspension volumes for deep wells in the  
8 shallower waters of the Gulf of Mexico, and in no case  
9 shall the suspension volumes for deep wells within 200 to  
10 400 meters of water depth be lower than those for deep  
11 wells in shallower waters. Regulations issued under this  
12 subsection shall be retroactive to the date that the notice  
13 of proposed rulemaking is published in the Federal Reg-  
14 ister.

15 (c) LIMITATIONS.—The Secretary may place limita-  
16 tions on the royalty relief granted under this section based  
17 on market price. The royalty relief granted under this sec-  
18 tion shall not apply to a lease for which deep water royalty  
19 relief is available.

1 **SEC. 345. ROYALTY RELIEF FOR DEEP WATER PRODUC-**  
2 **TION.**

3 (a) IN GENERAL.—Subject to subsections (b) and (c),  
4 for each tract located in water depths of greater than 400  
5 meters in the Western and Central Planning Area of the  
6 Gulf of Mexico (including the portion of the Eastern Plan-  
7 ning Area of the Gulf of Mexico encompassing whole lease  
8 blocks lying west of 87 degrees, 30 minutes West lon-  
9 gitude), any oil or gas lease sale under the Outer Conti-  
10 nental Shelf Lands Act (43 U.S.C. 1331 et seq.) occurring  
11 during the 5-year period beginning on the date of enact-  
12 ment of this Act shall use the bidding system authorized  
13 under section 8(a)(1)(H) of the Outer Continental Shelf  
14 Lands Act (43 U.S.C. 1337(a)(1)(H)).

15 (b) SUSPENSION OF ROYALTIES.—The suspension of  
16 royalties under subsection (a) shall be established at a vol-  
17 ume of not less than—

18 (1) 5,000,000 barrels of oil equivalent for each  
19 lease in water depths of 400 to 800 meters;

20 (2) 9,000,000 barrels of oil equivalent for each  
21 lease in water depths of 800 to 1,600 meters;



1           (3) 12,000,000 barrels of oil equivalent for each  
2           lease in water depths of 1,600 to 2,000 meters; and

3           (4) 16,000,000 barrels of oil equivalent for each  
4           lease in water depths greater than 2,000 meters.

5           (c) LIMITATION.—The Secretary may place limita-  
6           tions on royalty relief granted under this section based on  
7           market price.

8           **SEC. 346. ALASKA OFFSHORE ROYALTY SUSPENSION.**

9           Section 8(a)(3)(B) of the Outer Continental Shelf  
10          Lands Act (43 U.S.C. 1337(a)(3)(B)) is amended by in-  
11          serting “and in the Planning Areas offshore Alaska” after  
12          “West longitude”.

13          **SEC. 347. OIL AND GAS LEASING IN THE NATIONAL PETRO-**  
14          **LEUM RESERVE IN ALASKA.**

15          (a) TRANSFER OF AUTHORITY.—

16                 (1) REDESIGNATION.—The Naval Petroleum  
17                 Reserves Production Act of 1976 (42 U.S.C. 6501  
18                 et seq.) is amended by redesignating section 107 (42  
19                 U.S.C. 6507) as section 108.

20                 (2) TRANSFER.—The matter under the heading  
21                 “**EXPLORATION OF NATIONAL PETROLEUM RE-**

1       **SERVE IN ALASKA**” under the heading “**ENERGY**  
2       **AND MINERALS**” of title I of Public Law 96–514  
3       (42 U.S.C. 6508) is—

4               (A) transferred to the Naval Petroleum  
5       Reserves Production Act of 1976 (42 U.S.C.  
6       6501 et seq.);

7               (B) redesignated as section 107 of that  
8       Act; and

9               (C) moved so as to appear after section  
10       106 of that Act (42 U.S.C. 6506).

11       (b) **COMPETITIVE LEASING**.—Section 107 of the  
12       Naval Petroleum Reserves Production Act of 1976 (as  
13       amended by subsection (a)(2)) is amended—

14               (1) by striking the heading and all that follows  
15       through “*Provided*, That (1) activities” and insert-  
16       ing the following:

17       **“SEC. 107. COMPETITIVE LEASING OF OIL AND GAS.**

18       “(a) **IN GENERAL**.—The Secretary shall conduct an  
19       expeditious program of competitive leasing of oil and gas  
20       in the Reserve in accordance with this Act.

1 “(b) MITIGATION OF ADVERSE EFFECTS.—Activi-  
2 ties”;

3 (2) by striking “Alaska (the Reserve); (2) the”  
4 and inserting “Alaska.

5 “(c) LAND USE PLANNING; BLM WILDERNESS  
6 STUDY.—The”;

7 (3) by striking “Reserve; (3) the” and inserting  
8 “Reserve.

9 “(d) FIRST LEASE SALE.—The”;

10 (4) by striking “4332); (4) the” and inserting  
11 “4321 et seq.).

12 “(e) WITHDRAWALS.—The”;

13 (5) by striking “herein; (5) bidding” and insert-  
14 ing “under this section.

15 “(f) BIDDING SYSTEMS.—Bidding”;

16 (6) by striking “629); (6) lease” and inserting  
17 “629).

18 “(g) GEOLOGICAL STRUCTURES.—Lease”;

19 (7) by striking “structures; (7) the” and insert-  
20 ing “structures.

21 “(h) SIZE OF LEASE TRACTS.—The”;

1           (8) by striking “Secretary; (8)” and all that fol-  
2           lows through “Drilling, production,” and inserting  
3           “Secretary.

4           “(i) TERMS.—

5           “(1) IN GENERAL.—Each lease shall be issued  
6           for an initial period of not more than 10 years, and  
7           shall be extended for so long thereafter as oil or gas  
8           is produced from the lease in paying quantities, oil  
9           or gas is capable of being produced in paying quan-  
10          tities, or drilling or reworking operations, as ap-  
11          proved by the Secretary, are conducted on the leased  
12          land.

13          “(2) RENEWAL OF LEASES WITH DISCOV-  
14          ERIES.—At the end of the primary term of a lease  
15          the Secretary shall renew for an additional 10-year  
16          term a lease that does not meet the requirements of  
17          paragraph (1) if the lessee submits to the Secretary  
18          an application for renewal not later than 60 days be-  
19          fore the expiration of the primary lease and the les-  
20          see certifies, and the Secretary agrees, that hydro-  
21          carbon resources were discovered on one or more

1 wells drilled on the leased land in such quantities  
2 that a prudent operator would hold the lease for po-  
3 tential future development.

4 “(3) RENEWAL OF LEASES WITHOUT DISCOV-  
5 ERIES.—At the end of the primary term of a lease  
6 the Secretary shall renew for an additional 10-year  
7 term a lease that does not meet the requirements of  
8 paragraph (1) if the lessee submits to the Secretary  
9 an application for renewal not later than 60 days be-  
10 fore the expiration of the primary lease and pays the  
11 Secretary a renewal fee of \$100 per acre of leased  
12 land, and—

13 “(A) the lessee provides evidence, and the  
14 Secretary agrees that, the lessee has diligently  
15 pursued exploration that warrants continuation  
16 with the intent of continued exploration or fu-  
17 ture potential development of the leased land;  
18 or

19 “(B) all or part of the lease—

1                   “(i) is part of a unit agreement cov-  
2                   ering a lease described in subparagraph  
3                   (A); and

4                   “(ii) has not been previously con-  
5                   tracted out of the unit.

6                   “(4) APPLICABILITY.—This subsection applies  
7                   to a lease that is in effect on or after the date of  
8                   enactment of the Energy Policy Act of 2005.

9                   “(5) EXPIRATION FOR FAILURE TO  
10                  PRODUCE.—Notwithstanding any other provision of  
11                  this Act, if no oil or gas is produced from a lease  
12                  within 30 years after the date of the issuance of the  
13                  lease the lease shall expire.

14                  “(6) TERMINATION.—No lease issued under  
15                  this section covering lands capable of producing oil  
16                  or gas in paying quantities shall expire because the  
17                  lessee fails to produce the same due to cir-  
18                  cumstances beyond the control of the lessee.

19                  “(j) UNIT AGREEMENTS.—

20                  “(1) IN GENERAL.—For the purpose of con-  
21                  servation of the natural resources of all or part of

1 any oil or gas pool, field, reservoir, or like area, les-  
2 sees (including representatives) of the pool, field,  
3 reservoir, or like area may unite with each other, or  
4 jointly or separately with others, in collectively  
5 adopting and operating under a unit agreement for  
6 all or part of the pool, field, reservoir, or like area  
7 (whether or not any other part of the oil or gas pool,  
8 field, reservoir, or like area is already subject to any  
9 cooperative or unit plan of development or oper-  
10 ation), if the Secretary determines the action to be  
11 necessary or advisable in the public interest. In de-  
12 termining the public interest, the Secretary should  
13 consider, among other things, the extent to which  
14 the unit agreement will minimize the impact to sur-  
15 face resources of the leases and will facilitate con-  
16 solidation of facilities.

17 “(2) CONSULTATION.—In making a determina-  
18 tion under paragraph (1), the Secretary shall consult  
19 with and provide opportunities for participation by  
20 the State of Alaska or a Regional Corporation (as  
21 defined in section 3 of the Alaska Native Claims

1 Settlement Act (43 U.S.C. 1602)) with respect to  
2 the creation or expansion of units that include acre-  
3 age in which the State of Alaska or the Regional  
4 Corporation has an interest in the mineral estate.

5 “(3) PRODUCTION ALLOCATION METHODOLOGY.—(A) The Secretary may use a production  
6 allocation methodology for each participating area  
7 within a unit that includes solely Federal land in the  
8 Reserve.  
9

10 “(B) The Secretary shall use a production allo-  
11 cation methodology for each participating area with-  
12 in a unit that includes Federal land in the Reserve  
13 and non-Federal land based on the characteristics of  
14 each specific oil or gas pool, field, reservoir, or like  
15 area to take into account reservoir heterogeneity and  
16 area variation in reservoir producibility across di-  
17 verse leasehold interests. The implementation of the  
18 foregoing production allocation methodology shall be  
19 controlled by agreement among the affected lessors  
20 and lessees.



1           “(4) BENEFIT OF OPERATIONS.—Drilling, pro-  
2           duction,”;

3           (9) by striking “When separate” and inserting  
4           the following:

5           “(5) POOLING.—If separate”;

6           (10) by inserting “(in consultation with the  
7           owners of the other land)” after “determined by the  
8           Secretary of the Interior”;

9           (11) by striking “thereto; (10) to” and all that  
10          follows through “the terms provided therein” and in-  
11          serting “to the agreement.

12          “(k) EXPLORATION INCENTIVES.—

13           “(1) IN GENERAL.—

14           “(A) WAIVER, SUSPENSION, OR REDUC-  
15           TION.—To encourage the greatest ultimate re-  
16           covery of oil or gas or in the interest of con-  
17           servation, the Secretary may waive, suspend, or  
18           reduce the rental fees or minimum royalty, or  
19           reduce the royalty on an entire leasehold (in-  
20           cluding on any lease operated pursuant to a  
21           unit agreement), whenever (after consultation

1 with the State of Alaska and the North Slope  
2 Borough of Alaska and the concurrence of any  
3 Regional Corporation for leases that include  
4 land that was made available for acquisition by  
5 the Regional Corporation under the provisions  
6 of section 1431(o) of the Alaska National Inter-  
7 est Lands Conservation Act (16 U.S.C. 3101 et  
8 seq.)) in the judgment of the Secretary it is  
9 necessary to do so to promote development, or  
10 whenever in the judgment of the Secretary the  
11 leases cannot be successfully operated under the  
12 terms provided therein.

13 “(B) APPLICABILITY.—This paragraph ap-  
14 plies to a lease that is in effect on or after the  
15 date of enactment of the Energy Policy Act of  
16 2005.”;

17 (12) by striking “The Secretary is authorized  
18 to” and inserting the following:

19 “(2) SUSPENSION OF OPERATIONS AND PRO-  
20 Duction.—The Secretary may”;

1           (13) by striking “In the event” and inserting  
2           the following:

3           “(3) SUSPENSION OF PAYMENTS.—If”;

4           (14) by striking “thereto; and (11) all” and in-  
5           serting “to the lease.

6           “(1) RECEIPTS.—All”;

7           (15) by redesignating subparagraphs (A), (B),  
8           and (C) as paragraphs (1), (2), and (3), respectively;

9           (16) by striking “Any agency” and inserting  
10          the following:

11          “(m) EXPLORATIONS.—Any agency”;

12          (17) by striking “Any action” and inserting the  
13          following:

14          “(n) ENVIRONMENTAL IMPACT STATEMENTS.—

15                 “(1) JUDICIAL REVIEW.—Any action”;

16          (18) by striking “The detailed” and inserting  
17          the following:

18                 “(2) INITIAL LEASE SALES.—The detailed”;

19          (19) by striking “section 104(b) of the Naval  
20          Petroleum Reserves Production Act of 1976 (90

1 Stat. 304; 42 U.S.C. 6504)” and inserting “section  
2 104(a)”;

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

4 “(o) REGULATIONS.—As soon as practicable after the  
5 date of enactment of the Energy Policy Act of 2005, the  
6 Secretary shall issue regulations to implement this section.

7 “(p) WAIVER OF ADMINISTRATION FOR CONVEYED  
8 LANDS.—

9 “(1) IN GENERAL.—Notwithstanding section  
10 14(g) of the Alaska Native Claims Settlement Act  
11 (43 U.S.C. 1613(g))—

12 “(A) the Secretary of the Interior shall  
13 waive administration of any oil and gas lease to  
14 the extent that the lease covers any land in the  
15 Reserve in which all of the subsurface estate is  
16 conveyed to the Arctic Slope Regional Corpora-  
17 tion (referred to in this subsection as the ‘Cor-  
18 poration’);

19 “(B)(i) in a case in which a conveyance of  
20 a subsurface estate described in subparagraph  
21 (A) does not include all of the land covered by

1           the oil and gas lease, the person that owns the  
2           subsurface estate in any particular portion of  
3           the land covered by the lease shall be entitled  
4           to all of the revenues reserved under the lease  
5           as to that portion, including, without limitation,  
6           all the royalty payable with respect to oil or gas  
7           produced from or allocated to that portion;

8                       “(ii) in a case described in clause (i),  
9                       the Secretary of the Interior shall—

10                      “(I) segregate the lease into 2  
11                      leases, 1 of which shall cover only the  
12                      subsurface estate conveyed to the Cor-  
13                      poration; and

14                      “(II) waive administration of the  
15                      lease that covers the subsurface estate  
16                      conveyed to the Corporation; and

17                      “(iii) the segregation of the lease de-  
18                      scribed in clause (ii)(I) has no effect on  
19                      the obligations of the lessee under either of  
20                      the resulting leases, including obligations  
21                      relating to operations, production, or other

1                   circumstances (other than payment of  
2                   rentals or royalties); and

3                   “(C) nothing in this subsection limits the  
4                   authority of the Secretary of the Interior to  
5                   manage the federally-owned surface estate with-  
6                   in the Reserve.”.

7           (c) CONFORMING AMENDMENTS.—Section 104 of the  
8   Naval Petroleum Reserves Production Act of 1976 (42  
9   U.S.C. 6504) is amended—

10                   (1) by striking subsection (a); and

11                   (2) by redesignating subsections (b) through (d)  
12                   as subsections (a) through (c), respectively.

13   **SEC. 348. NORTH SLOPE SCIENCE INITIATIVE.**

14           (a) ESTABLISHMENT.—

15                   (1) IN GENERAL.—The Secretary of the Inte-  
16                   rior shall establish a long-term initiative to be known  
17                   as the “North Slope Science Initiative” (referred to  
18                   in this section as the “Initiative”).

19                   (2) PURPOSE.—The purpose of the Initiative  
20                   shall be to implement efforts to coordinate collection  
21                   of scientific data that will provide a better under-

1 standing of the terrestrial, aquatic, and marine eco-  
2 systems of the North Slope of Alaska.

3 (b) OBJECTIVES.—To ensure that the Initiative is  
4 conducted through a comprehensive science strategy and  
5 implementation plan, the Initiative shall, at a minimum—

6 (1) identify and prioritize information needs for  
7 inventory, monitoring, and research activities to ad-  
8 dress the individual and cumulative effects of past,  
9 ongoing, and anticipated development activities and  
10 environmental change on the North Slope;

11 (2) develop an understanding of information  
12 needs for regulatory and land management agencies,  
13 local governments, and the public;

14 (3) focus on prioritization of pressing natural  
15 resource management and ecosystem information  
16 needs, coordination, and cooperation among agencies  
17 and organizations;

18 (4) coordinate ongoing and future inventory,  
19 monitoring, and research activities to minimize du-  
20 plication of effort, share financial resources and ex-

1        pertise, and assure the collection of quality informa-  
2        tion;

3           (5) identify priority needs not addressed by  
4        agency science programs in effect on the date of en-  
5        actment of this Act and develop a funding strategy  
6        to meet those needs;

7           (6) provide a consistent approach to high cal-  
8        iber science, including inventory, monitoring, and re-  
9        search;

10          (7) maintain and improve public and agency ac-  
11        cess to—

12           (A) accumulated and ongoing research;

13           and

14           (B) contemporary and traditional local  
15        knowledge; and

16          (8) ensure through appropriate peer review that  
17        the science conducted by participating agencies and  
18        organizations is of the highest technical quality.

19        (c) MEMBERSHIP.—

20           (1) IN GENERAL.—To ensure comprehensive  
21        collection of scientific data, in carrying out the Ini-



1       tiative, the Secretary shall consult and coordinate  
2       with Federal, State, and local agencies that have re-  
3       sponsibilities for land and resource management  
4       across the North Slope.

5           (2) COOPERATIVE AGREEMENTS.—The Sec-  
6       retary shall enter into cooperative agreements with  
7       the State of Alaska, the North Slope Borough, the  
8       Arctic Slope Regional Corporation, and other Fed-  
9       eral agencies as appropriate to coordinate efforts,  
10      share resources, and fund projects under this sec-  
11      tion.

12      (d) SCIENCE TECHNICAL ADVISORY PANEL.—

13           (1) IN GENERAL.—The Initiative shall include a  
14      panel to provide advice on proposed inventory, moni-  
15      toring, and research functions.

16           (2) MEMBERSHIP.—The panel described in  
17      paragraph (1) shall consist of a representative group  
18      of not more than 15 scientists and technical experts  
19      from diverse professions and interests, including the  
20      oil and gas industry, subsistence users, Native Alas-  
21      kan entities, conservation organizations, wildlife

1 management organizations, and academia, as deter-  
2 mined by the Secretary.

3 (e) REPORTS.—Not later than 3 years after the date  
4 of enactment of this section and each year thereafter, the  
5 Secretary shall publish a report that describes the studies  
6 and findings of the Initiative.

7 (f) AUTHORIZATION OF APPROPRIATIONS.—There  
8 are authorized to be appropriated such sums as are nec-  
9 essary to carry out this section.

10 **SEC. 349. ORPHANED, ABANDONED, OR IDLED WELLS ON**  
11 **FEDERAL LAND.**

12 (a) IN GENERAL.—The Secretary, in cooperation  
13 with the Secretary of Agriculture, shall establish a pro-  
14 gram not later than 1 year after the date of enactment  
15 of this Act to remediate, reclaim, and close orphaned,  
16 abandoned, or idled oil and gas wells located on land ad-  
17 ministered by the land management agencies within the  
18 Department of the Interior and the Department of Agri-  
19 culture.

20 (b) ACTIVITIES.—The program under subsection (a)  
21 shall—

1           (1) include a means of ranking orphaned, aban-  
2           doned, or idled wells sites for priority in remedi-  
3           ation, reclamation, and closure, based on public  
4           health and safety, potential environmental harm,  
5           and other land use priorities;

6           (2) provide for identification and recovery of  
7           the costs of remediation, reclamation, and closure  
8           from persons or other entities currently providing a  
9           bond or other financial assurance required under  
10          State or Federal law for an oil or gas well that is  
11          orphaned, abandoned, or idled; and

12          (3) provide for recovery from the persons or en-  
13          tities identified under paragraph (2), or their sure-  
14          ties or guarantors, of the costs of remediation, rec-  
15          lamation, and closure of such wells.

16          (c) COOPERATION AND CONSULTATIONS.—In car-  
17          rying out the program under subsection (a), the Secretary  
18          shall—

19                 (1) work cooperatively with the Secretary of Ag-  
20                 riculture and the States within which Federal land  
21                 is located; and

1           (2) consult with the Secretary of Energy and  
2           the Interstate Oil and Gas Compact Commission.

3           (d) PLAN.—Not later than 1 year after the date of  
4           enactment of this Act, the Secretary, in cooperation with  
5           the Secretary of Agriculture, shall submit to Congress a  
6           plan for carrying out the program under subsection (a).

7           (e) IDLED WELL.—For the purposes of this section,  
8           a well is idled if—

9           (1) the well has been nonoperational for at least  
10          7 years; and

11          (2) there is no anticipated beneficial use for the  
12          well.

13          (f) FEDERAL REIMBURSEMENT FOR ORPHANED  
14          WELL RECLAMATION PILOT PROGRAM.—

15               (1) REIMBURSEMENT FOR REMEDIATING, RE-  
16               CLAIMING, AND CLOSING WELLS ON LAND SUBJECT  
17               TO A NEW LEASE.—The Secretary shall carry out a  
18               pilot program under which, in issuing a new oil and  
19               gas lease on federally owned land on which 1 or  
20               more orphaned wells are located, the Secretary—

1           (A) may require, other than as a condition  
2           of the lease, that the lessee remediate, reclaim,  
3           and close in accordance with standards estab-  
4           lished by the Secretary, all orphaned wells on  
5           the land leased; and

6           (B) shall develop a program to reimburse  
7           a lessee, through a royalty credit against the  
8           Federal share of royalties owed or other means,  
9           for the reasonable actual costs of remediating,  
10          reclaiming, and closing the orphaned wells pur-  
11          suant to that requirement.

12          (2) REIMBURSEMENT FOR RECLAIMING OR-  
13          PHANED WELLS ON OTHER LAND.—In carrying out  
14          this subsection, the Secretary—

15               (A) may authorize any lessee under an oil  
16               and gas lease on federally owned land to re-  
17               claim in accordance with the Secretary's  
18               standards—

19                       (i) an orphaned well on unleased fed-  
20                       erally owned land; or

1 (ii) an orphaned well located on an ex-  
2 isting lease on federally owned land for the  
3 reclamation of which the lessee is not le-  
4 gally responsible; and

5 (B) shall develop a program to provide re-  
6 imbursement of 100 percent of the reasonable  
7 actual costs of remediating, reclaiming, and  
8 closing the orphaned well, through credits  
9 against the Federal share of royalties or other  
10 means.

11 (3) REGULATIONS.—The Secretary may issue  
12 such regulations as are appropriate to carry out this  
13 subsection.

14 (g) TECHNICAL ASSISTANCE PROGRAM FOR NON-  
15 FEDERAL LAND.—

16 (1) IN GENERAL.—The Secretary of Energy  
17 shall establish a program to provide technical and fi-  
18 nancial assistance to oil and gas producing States to  
19 facilitate State efforts over a 10-year period to en-  
20 sure a practical and economical remedy for environ-  
21 mental problems caused by orphaned or abandoned

1 oil and gas exploration or production well sites on  
2 State or private land.

3 (2) ASSISTANCE.—The Secretary of Energy  
4 shall work with the States, through the Interstate  
5 Oil and Gas Compact Commission, to assist the  
6 States in quantifying and mitigating environmental  
7 risks of onshore orphaned or abandoned oil or gas  
8 wells on State and private land.

9 (3) ACTIVITIES.—The program under para-  
10 graph (1) shall include—

11 (A) mechanisms to facilitate identification,  
12 if feasible, of the persons currently providing a  
13 bond or other form of financial assurance re-  
14 quired under State or Federal law for an oil or  
15 gas well that is orphaned or abandoned;

16 (B) criteria for ranking orphaned or aban-  
17 doned well sites based on factors such as public  
18 health and safety, potential environmental  
19 harm, and other land use priorities;

1 (C) information and training programs on  
2 best practices for remediation of different types  
3 of sites; and

4 (D) funding of State mitigation efforts on  
5 a cost-shared basis.

6 (h) AUTHORIZATION OF APPROPRIATIONS.—

7 (1) IN GENERAL.—There are authorized to be  
8 appropriated to carry out this section \$25,000,000  
9 for each of fiscal years 2006 through 2010.

10 (2) USE.—Of the amounts authorized under  
11 paragraph (1), \$5,000,000 are authorized for each  
12 fiscal year for activities under subsection (f).

13 **SEC. 350. COMBINED HYDROCARBON LEASING.**

14 (a) SPECIAL PROVISIONS REGARDING LEASING.—  
15 Section 17(b)(2) of the Mineral Leasing Act (30 U.S.C.  
16 226(b)(2)) is amended—

17 (1) by inserting “(A)” after “(2)”; and

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

19 “(B) For any area that contains any combination of  
20 tar sand and oil or gas (or both), the Secretary may issue  
21 under this Act, separately—



1           “(i) a lease for exploration for and extraction of  
2           tar sand; and

3           “(ii) a lease for exploration for and development  
4           of oil and gas.

5           “(C) A lease issued for tar sand shall be issued using  
6           the same bidding process, annual rental, and posting pe-  
7           riod as a lease issued for oil and gas, except that the min-  
8           imum acceptable bid required for a lease issued for tar  
9           sand shall be \$2 per acre.

10          “(D) The Secretary may waive, suspend, or alter any  
11          requirement under section 26 that a permittee under a  
12          permit authorizing prospecting for tar sand must exercise  
13          due diligence, to promote any resource covered by a com-  
14          bined hydrocarbon lease.”.

15          (b)           CONFORMING           AMENDMENT.—Section  
16          17(b)(1)(B) of the Mineral Leasing Act (30 U.S.C.  
17          226(b)(1)(B)) is amended in the second sentence by in-  
18          serting “, subject to paragraph (2)(B),” after “Sec-  
19          retary”.

1 (c) REGULATIONS.—Not later than 45 days after the  
2 date of enactment of this Act, the Secretary shall issue  
3 final regulations to implement this section.

4 **SEC. 351. PRESERVATION OF GEOLOGICAL AND GEO-**  
5 **PHYSICAL DATA.**

6 (a) SHORT TITLE.—This section may be cited as the  
7 “National Geological and Geophysical Data Preservation  
8 Program Act of 2005”.

9 (b) PROGRAM.—The Secretary shall carry out a Na-  
10 tional Geological and Geophysical Data Preservation Pro-  
11 gram in accordance with this section—

12 (1) to archive geologic, geophysical, and engi-  
13 neering data, maps, well logs, and samples;

14 (2) to provide a national catalog of such archi-  
15 val material; and

16 (3) to provide technical and financial assistance  
17 related to the archival material.

18 (c) PLAN.—Not later than 1 year after the date of  
19 enactment of this Act, the Secretary shall submit to Con-  
20 gress a plan for the implementation of the Program.

21 (d) DATA ARCHIVE SYSTEM.—

1           (1) ESTABLISHMENT.—The Secretary shall es-  
2           tablish, as a component of the Program, a data ar-  
3           chive system to provide for the storage, preservation,  
4           and archiving of subsurface, surface, geological, geo-  
5           physical, and engineering data and samples. The  
6           Secretary, in consultation with the Advisory Com-  
7           mittee, shall develop guidelines relating to the data  
8           archive system, including the types of data and sam-  
9           ples to be preserved.

10          (2) SYSTEM COMPONENTS.—The system shall  
11          be comprised of State agencies that elect to be part  
12          of the system and agencies within the Department  
13          of the Interior that maintain geological and geo-  
14          physical data and samples that are designated by  
15          the Secretary in accordance with this subsection.  
16          The Program shall provide for the storage of data  
17          and samples through data repositories operated by  
18          such agencies.

19          (3) LIMITATION OF DESIGNATION.—The Sec-  
20          retary may not designate a State agency as a com-  
21          ponent of the data archive system unless that agency

1 is the agency that acts as the geological survey in  
2 the State.

3 (4) DATA FROM FEDERAL LAND.—The data ar-  
4 chive system shall provide for the archiving of rel-  
5 evant subsurface data and samples obtained from  
6 Federal land—

7 (A) in the most appropriate repository des-  
8 igned under paragraph (2), with preference  
9 being given to archiving data in the State in  
10 which the data were collected; and

11 (B) consistent with all applicable law and  
12 requirements relating to confidentiality and pro-  
13 prietary data.

14 (e) NATIONAL CATALOG.—

15 (1) IN GENERAL.—As soon as practicable after  
16 the date of enactment of this Act, the Secretary  
17 shall develop and maintain, as a component of the  
18 Program, a national catalog that identifies—

19 (A) data and samples available in the data  
20 archive system established under subsection (d);

1 (B) the repository for particular material  
2 in the system; and

3 (C) the means of accessing the material.

4 (2) AVAILABILITY.—The Secretary shall make  
5 the national catalog accessible to the public on the  
6 site of the Survey on the Internet, consistent with all  
7 applicable requirements related to confidentiality  
8 and proprietary data.

9 (f) ADVISORY COMMITTEE.—

10 (1) IN GENERAL.—The Advisory Committee  
11 shall advise the Secretary on planning and imple-  
12 mentation of the Program.

13 (2) NEW DUTIES.—In addition to its duties  
14 under the National Geologic Mapping Act of 1992  
15 (43 U.S.C. 31a et seq.), the Advisory Committee  
16 shall perform the following duties:

17 (A) Advise the Secretary on developing  
18 guidelines and procedures for providing assist-  
19 ance for facilities under subsection (g)(1).

1 (B) Review and critique the draft imple-  
2 mentation plan prepared by the Secretary under  
3 subsection (c).

4 (C) Identify useful studies of data archived  
5 under the Program that will advance under-  
6 standing of the Nation's energy and mineral re-  
7 sources, geologic hazards, and engineering geol-  
8 ogy.

9 (D) Review the progress of the Program in  
10 archiving significant data and preventing the  
11 loss of such data, and the scientific progress of  
12 the studies funded under the Program.

13 (E) Include in the annual report to the  
14 Secretary required under section 5(b)(3) of the  
15 National Geologic Mapping Act of 1992 (43  
16 U.S.C. 31d(b)(3)) an evaluation of the progress  
17 of the Program toward fulfilling the purposes of  
18 the Program under subsection (b).

19 (g) FINANCIAL ASSISTANCE.—

20 (1) ARCHIVE FACILITIES.—Subject to the avail-  
21 ability of appropriations, the Secretary shall provide

1 financial assistance to a State agency that is des-  
2 ignated under subsection (d)(2) for providing facili-  
3 ties to archive energy material.

4 (2) STUDIES.—Subject to the availability of ap-  
5 propriations, the Secretary shall provide financial as-  
6 sistance to any State agency designated under sub-  
7 section (d)(2) for studies and technical assistance  
8 activities that enhance understanding, interpreta-  
9 tion, and use of materials archived in the data ar-  
10 chive system established under subsection (d).

11 (3) FEDERAL SHARE.—The Federal share of  
12 the cost of an activity carried out with assistance  
13 under this subsection shall be not more than 50 per-  
14 cent of the total cost of the activity.

15 (4) PRIVATE CONTRIBUTIONS.—The Secretary  
16 shall apply to the non-Federal share of the cost of  
17 an activity carried out with assistance under this  
18 subsection the value of private contributions of prop-  
19 erty and services used for that activity.

1 (h) REPORT.—The Secretary shall include in each re-  
2 port under section 8 of the National Geologic Mapping Act  
3 of 1992 (43 U.S.C. 31g)—

4 (1) a description of the status of the Program;

5 (2) an evaluation of the progress achieved in  
6 developing the Program during the period covered by  
7 the report; and

8 (3) any recommendations for legislative or other  
9 action the Secretary considers necessary and appro-  
10 priate to fulfill the purposes of the Program under  
11 subsection (b).

12 (i) MAINTENANCE OF STATE EFFORT.—It is the in-  
13 tent of Congress that the States not use this section as  
14 an opportunity to reduce State resources applied to the  
15 activities that are the subject of the Program.

16 (j) DEFINITIONS.—In this section:

17 (1) ADVISORY COMMITTEE.—The term “Advi-  
18 sory Committee” means the advisory committee es-  
19 tablished under section 5 of the National Geologic  
20 Mapping Act of 1992 (43 U.S.C. 31d).



1           (2) PROGRAM.—The term “Program” means  
2           the National Geological and Geophysical Data Pres-  
3           ervation Program carried out under this section.

4           (3) SECRETARY.—The term “Secretary” means  
5           the Secretary of the Interior, acting through the Di-  
6           rector of the United States Geological Survey.

7           (4) SURVEY.—The term “Survey” means the  
8           United States Geological Survey.

9           (k) AUTHORIZATION OF APPROPRIATIONS.—There  
10          are authorized to be appropriated to carry out this section  
11          \$30,000,000 for each of fiscal years 2006 through 2010.

12          **SEC. 352. OIL AND GAS LEASE ACREAGE LIMITATIONS.**

13          Section 27(d)(1) of the Mineral Leasing Act (30  
14          U.S.C. 184(d)(1)) is amended by inserting after “acreage  
15          held in special tar sand areas” the following: “, and acre-  
16          age under any lease any portion of which has been com-  
17          mitted to a federally approved unit or cooperative plan or  
18          communitization agreement or for which royalty (includ-  
19          ing compensatory royalty or royalty in-kind) was paid in  
20          the preceding calendar year,”.

1 **SEC. 353. GAS HYDRATE PRODUCTION INCENTIVE .**

2 (a) PURPOSE.—The purpose of this section is to pro-  
3 mote natural gas production from the natural gas hydrate  
4 resources on the outer Continental Shelf and Federal  
5 lands in Alaska by providing royalty incentives.

6 (b) SUSPENSION OF ROYALTIES.—

7 (1) IN GENERAL.—The Secretary may grant  
8 royalty relief in accordance with this section for nat-  
9 ural gas produced from gas hydrate resources under  
10 an eligible lease.

11 (2) ELIGIBLE LEASES.—A lease shall be an eli-  
12 gible lease for purposes of this section if—

13 (A) it is issued under the Outer Conti-  
14 nental Shelf Lands Act (43 U.S.C. 1331 et  
15 seq.), or is an oil and gas lease issued for on-  
16 shore Federal lands in Alaska;

17 (B) it is issued prior to January 1, 2016;  
18 and

19 (C) production under the lease of natural  
20 gas from gas hydrate resources commences  
21 prior to January 1, 2018.

1           (3) AMOUNT OF RELIEF.—The Secretary shall  
2           conduct a rulemaking and grant royalty relief under  
3           this section as a suspension volume if the Secretary  
4           determines that such royalty relief would encourage  
5           production of natural gas from gas hydrate re-  
6           sources from an eligible lease. The maximum sus-  
7           pension volume shall be 30 billion cubic feet of nat-  
8           ural gas per lease. Such relief shall be in addition  
9           to any other royalty relief under any other provision  
10          applicable to the lease that does not specifically  
11          grant a gas hydrate production incentive. Such roy-  
12          alty suspension volume shall be applied to any eligi-  
13          ble production occurring on or after the date of pub-  
14          lication of the advanced notice of proposed rule-  
15          making.

16          (4) LIMITATION.—The Secretary may place lim-  
17          itations on royalty relief granted under this section  
18          based on market price.

19          (c) APPLICATION.—This section shall apply to any el-  
20          igible lease issued before, on, or after the date of enact-  
21          ment of this Act.

1 (d) RULEMAKINGS.—

2 (1) REQUIREMENT.—The Secretary shall pub-  
3 lish the advanced notice of proposed rulemaking  
4 within 180 days after the date of enactment of this  
5 Act and complete the rulemaking implementing this  
6 section within 365 days after the date of enactment  
7 of this Act.

8 (2) GAS HYDRATE RESOURCES DEFINED.—  
9 Such regulations shall define the term “gas hydrate  
10 resources” to include both the natural gas content of  
11 gas hydrates within the hydrate stability zone and  
12 free natural gas trapped by and beneath the hydrate  
13 stability zone.

14 (e) REVIEW.—Not later than 365 days after the date  
15 of enactment of this Act, the Secretary, in consultation  
16 with the Secretary of Energy, shall carry out a review of,  
17 and submit to Congress a report on, further opportunities  
18 to enhance production of natural gas from gas hydrate re-  
19 sources on the outer Continental Shelf and on Federal  
20 lands in Alaska through the provision of other production  
21 incentives or through technical or financial assistance.

1 **SEC. 354. ENHANCED OIL AND NATURAL GAS PRODUCTION**  
2 **THROUGH CARBON DIOXIDE INJECTION.**

3 (a) PRODUCTION INCENTIVE.—

4 (1) FINDINGS.—Congress finds the following:

5 (A) Approximately two-thirds of the origi-  
6 nal oil in place in the United States remains  
7 unproduced.

8 (B) Enhanced oil and natural gas produc-  
9 tion from the sequestering of carbon dioxide  
10 and other appropriate gases has the potential to  
11 increase oil and natural gas production.

12 (C) Capturing and productively using car-  
13 bon dioxide would help reduce the carbon inten-  
14 sity of the economy.

15 (2) PURPOSE.—The purpose of this section is—

16 (A) to promote the capturing, transpor-  
17 tation, and injection of produced carbon diox-  
18 ide, natural carbon dioxide, and other appro-  
19 priate gases or other matter for sequestration  
20 into oil and gas fields; and

1 (B) to promote oil and natural gas produc-  
2 tion from the outer Continental Shelf and on-  
3 shore Federal lands under lease by providing  
4 royalty incentives to use enhanced recovery  
5 techniques using injection of the substances re-  
6 ferred to in subparagraph (A).

7 (b) SUSPENSION OF ROYALTIES.—

8 (1) IN GENERAL.—If the Secretary determines  
9 that reduction of the royalty under a Federal oil and  
10 gas lease that is an eligible lease is in the public in-  
11 terest and promotes the purposes of this section, the  
12 Secretary shall undertake a rulemaking to provide  
13 for such reduction for an eligible lease.

14 (2) RULEMAKINGS.—The Secretary shall pub-  
15 lish the advanced notice of proposed rulemaking  
16 within 180 days after the date of enactment of this  
17 Act and complete the rulemaking implementing this  
18 section within 365 days after the date of enactment  
19 of this Act.

20 (3) ELIGIBLE LEASES.—A lease shall be an eli-  
21 gible lease for purposes of this section if—

1 (A) it is a lease for production of oil and  
2 gas from the outer Continental Shelf or Federal  
3 onshore lands;

4 (B) the injection of the substances referred  
5 to in subsection (a)(2)(A) will be used as an en-  
6 hanced recovery technique on such lease; and

7 (C) the Secretary determines that the lease  
8 contains oil or gas that would not likely be pro-  
9 duced without the royalty reduction provided  
10 under this section.

11 (4) AMOUNT OF RELIEF.—The rulemaking shall  
12 provide for a suspension volume, which shall not ex-  
13 ceed 5,000,000 barrels of oil equivalent for each eli-  
14 gible lease. Such suspension volume shall be applied  
15 to any production from an eligible lease occurring on  
16 or after the date of publication of any advanced no-  
17 tice of proposed rulemaking under this subsection.

18 (5) LIMITATION.—The Secretary may place lim-  
19 itations on the royalty reduction granted under this  
20 section based on market price.

1           (6) APPLICATION.—This section shall apply to  
2           any eligible lease issued before, on, or after the date  
3           of enactment of this Act.

4           (c) DEMONSTRATION PROGRAM.—

5           (1) ESTABLISHMENT.—

6           (A) IN GENERAL.—The Secretary of En-  
7           ergy shall establish a competitive grant pro-  
8           gram to provide grants to producers of oil and  
9           gas to carry out projects to inject carbon diox-  
10          ide for the purpose of enhancing recovery of oil  
11          or natural gas while increasing the sequestra-  
12          tion of carbon dioxide.

13          (B) PROJECTS.—The demonstration pro-  
14          gram shall provide for—

15                  (i) not more than 10 projects in the  
16                  Willistin Basin in North Dakota and Mon-  
17                  tana; and

18                  (ii) 1 project in the Cook Inlet Basin  
19                  in Alaska.

20          (2) REQUIREMENTS.—



1           (A) IN GENERAL.—The Secretary of En-  
2           ergy shall issue requirements relating to appli-  
3           cations for grants under paragraph (1).

4           (B) RULEMAKING.—The issuance of re-  
5           quirements under subparagraph (A) shall not  
6           require a rulemaking.

7           (C) MINIMUM REQUIREMENTS.—At a min-  
8           imum, the Secretary shall require under sub-  
9           paragraph (A) that an application for a grant  
10          include—

11           (i) a description of the project pro-  
12          posed in the application;

13           (ii) an estimate of the production in-  
14          crease and the duration of the production  
15          increase from the project, as compared to  
16          conventional recovery techniques, including  
17          water flooding;

18           (iii) an estimate of the carbon dioxide  
19          sequestered by project, over the life of the  
20          project;

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1 (iv) a plan to collect and disseminate  
2 data relating to each project to be funded  
3 by the grant;

4 (v) a description of the means by  
5 which the project will be sustainable with-  
6 out Federal assistance after the completion  
7 of the term of the grant;

8 (vi) a complete description of the  
9 costs of the project, including acquisition,  
10 construction, operation, and maintenance  
11 costs over the expected life of the project;

12 (vii) a description of which costs of  
13 the project will be supported by Federal  
14 assistance under this section; and

15 (viii) a description of any secondary  
16 or tertiary recovery efforts in the field and  
17 the efficacy of water flood recovery tech-  
18 niques used.

19 (3) PARTNERS.—An applicant for a grant  
20 under paragraph (1) may carry out a project under

1 a pilot program in partnership with 1 or more other  
2 public or private entities.

3 (4) SELECTION CRITERIA.—In evaluating appli-  
4 cations under this subsection, the Secretary of En-  
5 ergy shall—

6 (A) consider the previous experience with  
7 similar projects of each applicant; and

8 (B) give priority consideration to applica-  
9 tions that—

10 (i) are most likely to maximize pro-  
11 duction of oil and gas in a cost-effective  
12 manner;

13 (ii) sequester significant quantities of  
14 carbon dioxide from anthropogenic sources;

15 (iii) demonstrate the greatest commit-  
16 ment on the part of the applicant to ensure  
17 funding for the proposed project and the  
18 greatest likelihood that the project will be  
19 maintained or expanded after Federal as-  
20 sistance under this section is completed;  
21 and

1 (iv) minimize any adverse environ-  
2 mental effects from the project.

3 (5) DEMONSTRATION PROGRAM REQUIRE-  
4 MENTS.—

5 (A) MAXIMUM AMOUNT.—The Secretary of  
6 Energy shall not provide more than \$3,000,000  
7 in Federal assistance under this subsection to  
8 any applicant.

9 (B) COST SHARING.—The Secretary of En-  
10 ergy shall require cost-sharing under this sub-  
11 section in accordance with section 988.

12 (C) PERIOD OF GRANTS.—

13 (i) IN GENERAL.—A project funded by  
14 a grant under this subsection shall begin  
15 construction not later than 2 years after  
16 the date of provision of the grant, but in  
17 any case not later than December 31,  
18 2010.

19 (ii) TERM.—The Secretary shall not  
20 provide grant funds to any applicant under

1           this subsection for a period of more than  
2           5 years.

3           (6) TRANSFER OF INFORMATION AND KNOWL-  
4           EDGE.—The Secretary of Energy shall establish  
5           mechanisms to ensure that the information and  
6           knowledge gained by participants in the program  
7           under this subsection are transferred among other  
8           participants and interested persons, including other  
9           applicants that submitted applications for a grant  
10          under this subsection.

11          (7) SCHEDULE.—

12           (A) PUBLICATION.—Not later than 180  
13           days after the date of enactment of this Act,  
14           the Secretary of Energy shall publish in the  
15           Federal Register, and elsewhere, as appropriate,  
16           a request for applications to carry out projects  
17           under this subsection.

18           (B) DATE FOR APPLICATIONS.—An appli-  
19           cation for a grant under this subsection shall be  
20           submitted not later than 180 days after the

1 date of publication of the request under sub-  
2 paragraph (A).

3 (C) SELECTION.—After the date by which  
4 applications for grants are required to be sub-  
5 mitted under subparagraph (B), the Secretary  
6 of Energy, in a timely manner, shall select,  
7 after peer review and based on the criteria  
8 under paragraph (4), those projects to be  
9 awarded a grant under this subsection.

10 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
11 are authorized to be appropriated such sums as are nec-  
12 essary to carry out this section.

13 **SEC. 355. ASSESSMENT OF DEPENDENCE OF STATE OF HA-**  
14 **WAI ON OIL.**

15 (a) ASSESSMENT.—The Secretary of Energy shall as-  
16 sess the economic implications of the dependence of the  
17 State of Hawaii on oil as the principal source of energy  
18 for the State, including—

19 (1) the short- and long-term prospects for crude  
20 oil supply disruption and price volatility and poten-  
21 tial impacts on the economy of Hawaii;

1           (2) the economic relationship between oil-fired  
2           generation of electricity from residual fuel and re-  
3           fined petroleum products consumed for ground, ma-  
4           rine, and air transportation;

5           (3) the technical and economic feasibility of in-  
6           creasing the contribution of renewable energy re-  
7           sources for generation of electricity, on an island-by-  
8           island basis, including—

9                   (A) siting and facility configuration;

10                   (B) environmental, operational, and safety  
11           considerations;

12                   (C) the availability of technology;

13                   (D) the effects on the utility system, in-  
14           cluding reliability;

15                   (E) infrastructure and transport require-  
16           ments;

17                   (F) community support; and

18                   (G) other factors affecting the economic  
19           impact of such an increase and any effect on  
20           the economic relationship described in para-  
21           graph (2);

1           (4) the technical and economic feasibility of  
2           using liquefied natural gas to displace residual fuel  
3           oil for electric generation, including neighbor island  
4           opportunities, and the effect of the displacement on  
5           the economic relationship described in paragraph  
6           (2), including—

7                   (A) the availability of supply;

8                   (B) siting and facility configuration for on-  
9                   shore and offshore liquefied natural gas receiv-  
10                  ing terminals;

11                  (C) the factors described in subparagraphs  
12                  (B) through (F) of paragraph (3); and

13                  (D) other economic factors;

14           (5) the technical and economic feasibility of  
15           using renewable energy sources (including hydrogen)  
16           for ground, marine, and air transportation energy  
17           applications to displace the use of refined petroleum  
18           products, on an island-by-island basis, and the eco-  
19           nomic impact of the displacement on the relationship  
20           described in paragraph (2); and

21                  (6) an island-by-island approach to—



1 (A) the development of hydrogen from re-  
2 newable resources; and

3 (B) the application of hydrogen to the en-  
4 ergy needs of Hawaii

5 (b) CONTRACTING AUTHORITY.—The Secretary of  
6 Energy may carry out the assessment under subsection  
7 (a) directly or, in whole or in part, through 1 or more  
8 contracts with qualified public or private entities.

9 (c) REPORT.—Not later than 300 days after the date  
10 of enactment of this Act, the Secretary of Energy shall  
11 prepare (in consultation with agencies of the State of Ha-  
12 waii and other stakeholders, as appropriate), and submit  
13 to Congress, a report describing the findings, conclusions,  
14 and recommendations resulting from the assessment.

15 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
16 are authorized to be appropriated such sums as are nec-  
17 essary to carry out this section.

18 **SEC. 356. DENALI COMMISSION.**

19 (a) DEFINITION OF COMMISSION.—In this section,  
20 the term “Commission” means the Denali Commission es-

1 established by the Denali Commission Act of 1998 (42  
2 U.S.C. 3121 note; Public Law 105–277).

3 (b) ENERGY PROGRAMS.—The Commission shall use  
4 amounts made available under subsection (d) to carry out  
5 energy programs, including—

6 (1) energy generation and development,  
7 including—

8 (A) fuel cells, hydroelectric, solar, wind,  
9 wave, and tidal energy; and

10 (B) alternative energy sources;

11 (2) the construction of energy transmission, in-  
12 cluding interties;

13 (3) the replacement and cleanup of fuel tanks;

14 (4) the construction of fuel transportation net-  
15 works and related facilities;

16 (5) power cost equalization programs; and

17 (6) projects using coal as a fuel, including coal  
18 gasification projects.

19 (c) OPEN MEETINGS.—

1           (1) IN GENERAL.—Except as provided in para-  
2           graph (2), a meeting of the Commission shall be  
3           open to the public if—

4                   (A) the Commission members take action  
5                   on behalf of the Commission; or

6                   (B) the deliberations of the Commission  
7                   determine, or result in the joint conduct or dis-  
8                   position of, official Commission business.

9           (2) EXCEPTIONS.—Paragraph (1) shall not  
10           apply to any portion of a Commission meeting for  
11           which the Commission, in public session, votes to  
12           close the meeting for the reasons described in para-  
13           graph (2), (4), (5), or (6) of subsection (c) of section  
14           552b of title 5, United States Code.

15           (3) PUBLIC NOTICE.—

16                   (A) IN GENERAL.—At least 1 week before  
17                   a meeting of the Commission, the Commission  
18                   shall make a public announcement of the meet-  
19                   ing that describes—

20                           (i) the time, place, and subject matter  
21                           of the meeting;

1 (ii) whether the meeting is to be open  
2 or closed to the public; and

3 (iii) the name and telephone number  
4 of an appropriate person to respond to re-  
5 quests for information about the meeting.

6 (B) ADDITIONAL NOTICE.—The Commis-  
7 sion shall make a public announcement of any  
8 change to the information made available under  
9 subparagraph (A) at the earliest practicable  
10 time.

11 (4) MINUTES.—The Commission shall keep,  
12 and make available to the public, a transcript, elec-  
13 tronic recording, or minutes from each Commission  
14 meeting, except for portions of the meeting closed  
15 under paragraph (2).

16 (d) AUTHORIZATION OF APPROPRIATIONS.—There is  
17 authorized to be appropriated to the Commission not more  
18 than \$55,000,000 for each of fiscal years 2006 through  
19 2015 to carry out subsection (b).

1 **SEC. 357. COMPREHENSIVE INVENTORY OF OCS OIL AND**  
2 **NATURAL GAS RESOURCES.**

3 (a) IN GENERAL.—The Secretary shall conduct an  
4 inventory and analysis of oil and natural gas resources be-  
5 neath all of the waters of the United States Outer Conti-  
6 nental Shelf (“OCS”). The inventory and analysis shall—

7 (1) use available data on oil and gas resources  
8 in areas offshore of Mexico and Canada that will  
9 provide information on trends of oil and gas accu-  
10 mulation in areas of the OCS;

11 (2) use any available technology, except drilling,  
12 but including 3–D seismic technology to obtain accu-  
13 rate resource estimates;

14 (3) analyze how resource estimates in OCS  
15 areas have changed over time in regards to gath-  
16 ering geological and geophysical data, initial explo-  
17 ration, or full field development, including areas  
18 such as the deepwater and subsalt areas in the Gulf  
19 of Mexico;

1           (4) estimate the effect that understated oil and  
2           gas resource inventories have on domestic energy in-  
3           vestments; and

4           (5) identify and explain how legislative, regu-  
5           latory, and administrative programs or processes re-  
6           strict or impede the development of identified re-  
7           sources and the extent that they affect domestic sup-  
8           ply, such as moratoria, lease terms and conditions,  
9           operational stipulations and requirements, approval  
10          delays by the Federal Government and coastal  
11          States, and local zoning restrictions for onshore  
12          processing facilities and pipeline landings.

13          (b) REPORTS.—The Secretary shall submit a report  
14          to Congress on the inventory of estimates and the analysis  
15          of restrictions or impediments, together with any rec-  
16          ommendations, within 6 months of the date of enactment  
17          of the section. The report shall be publicly available and  
18          updated at least every 5 years.

1           **Subtitle F—Access to Federal**  
2                           **Lands**

3   **SEC. 361. FEDERAL ONSHORE OIL AND GAS LEASING AND**  
4                           **PERMITTING PRACTICES.**

5           (a) REVIEW OF ONSHORE OIL AND GAS LEASING  
6 PRACTICES.—

7                   (1) IN GENERAL.—The Secretary of the Inte-  
8           rior, in consultation with the Secretary of Agri-  
9           culture with respect to National Forest System lands  
10          under the jurisdiction of the Department of Agri-  
11          culture, shall perform an internal review of current  
12          Federal onshore oil and gas leasing and permitting  
13          practices.

14                  (2) INCLUSIONS.—The review shall include the  
15          process for—

16                          (A) accepting or rejecting offers to lease;

17                          (B) administrative appeals of decisions or  
18                  orders of officers or employees of the Bureau of  
19                  Land Management with respect to a Federal oil  
20                  or gas lease;

1 (C) considering surface use plans of oper-  
2 ation, including the timeframes in which the  
3 plans are considered, and any recommendations  
4 for improving and expediting the process; and

5 (D) identifying stipulations to address site-  
6 specific concerns and conditions, including those  
7 stipulations relating to the environment and re-  
8 source use conflicts.

9 (b) REPORT.—Not later than 180 days after the date  
10 of enactment of this Act, the Secretary of the Interior and  
11 the Secretary of Agriculture shall transmit a report to  
12 Congress that describes—

13 (1) actions taken under section 3 of Executive  
14 Order No. 13212 (42 U.S.C. 13201 note); and

15 (2) actions taken or any plans to improve the  
16 Federal onshore oil and gas leasing program.

17 **SEC. 362. MANAGEMENT OF FEDERAL OIL AND GAS LEAS-**  
18 **ING PROGRAMS.**

19 (a) TIMELY ACTION ON LEASES AND PERMITS.—

20 (1) SECRETARY OF THE INTERIOR.—To ensure  
21 timely action on oil and gas leases and applications



1 for permits to drill on land otherwise available for  
2 leasing, the Secretary of the Interior (referred to in  
3 this section as the “Secretary”) shall—

4 (A) ensure expeditious compliance with  
5 section 102(2)(C) of the National Environ-  
6 mental Policy Act of 1969 (42 U.S.C.  
7 4332(2)(C)) and any other applicable environ-  
8 mental and cultural resources laws;

9 (B) improve consultation and coordination  
10 with the States and the public; and

11 (C) improve the collection, storage, and re-  
12 trieval of information relating to the oil and gas  
13 leasing activities.

14 (2) SECRETARY OF AGRICULTURE.—To ensure  
15 timely action on oil and gas lease applications for  
16 permits to drill on land otherwise available for leas-  
17 ing, the Secretary of Agriculture shall—

18 (A) ensure expeditious compliance with all  
19 applicable environmental and cultural resources  
20 laws; and

1 (B) improve the collection, storage, and re-  
2 trieval of information relating to the oil and gas  
3 leasing activities.

4 (b) BEST MANAGEMENT PRACTICES.—

5 (1) IN GENERAL.—Not later than 18 months  
6 after the date of enactment of this Act, the Sec-  
7 retary shall develop and implement best manage-  
8 ment practices to—

9 (A) improve the administration of the on-  
10 shore oil and gas leasing program under the  
11 Mineral Leasing Act (30 U.S.C. 181 et seq.);  
12 and

13 (B) ensure timely action on oil and gas  
14 leases and applications for permits to drill on  
15 land otherwise available for leasing.

16 (2) CONSIDERATIONS.—In developing the best  
17 management practices under paragraph (1), the Sec-  
18 retary shall consider any recommendations from the  
19 review under section 361.

20 (3) REGULATIONS.—Not later than 180 days  
21 after the development of the best management prac-

1 tices under paragraph (1), the Secretary shall pub-  
2 lish, for public comment, proposed regulations that  
3 set forth specific timeframes for processing leases  
4 and applications in accordance with the best man-  
5 agement practices, including deadlines for—

6 (A) approving or disapproving—

7 (i) resource management plans and  
8 related documents;

9 (ii) lease applications;

10 (iii) applications for permits to drill;

11 and

12 (iv) surface use plans; and

13 (B) related administrative appeals.

14 (c) IMPROVED ENFORCEMENT.—The Secretary and  
15 the Secretary Agriculture shall improve inspection and en-  
16 forcement of oil and gas activities, including enforcement  
17 of terms and conditions in permits to drill on land under  
18 the jurisdiction of the Secretary and the Secretary of Agri-  
19 culture, respectively.

20 (d) AUTHORIZATION OF APPROPRIATIONS.—In addi-  
21 tion to amounts made available to carry out activities re-

1 lating to oil and gas leasing on public land administered  
2 by the Secretary and National Forest System land admin-  
3 istered by the Secretary of Agriculture, there are author-  
4 ized to be appropriated for each of fiscal years 2006  
5 through 2010—

6 (1) to the Secretary, acting through the Direc-  
7 tor of the Bureau of Land Management—

8 (A) \$40,000,000 to carry out subsections  
9 (a)(1) and (b); and

10 (B) \$20,000,000 to carry out subsection  
11 (c);

12 (2) to the Secretary, acting through the Direc-  
13 tor of the United States Fish and Wildlife Service,  
14 \$5,000,000 to carry out subsection (a)(1); and

15 (3) to the Secretary of Agriculture, acting  
16 through the Chief of the Forest Service, \$5,000,000  
17 to carry out subsections (a)(2) and (c).

18 **SEC. 363. CONSULTATION REGARDING OIL AND GAS LEAS-**  
19 **ING ON PUBLIC LAND.**

20 (a) **IN GENERAL.**—Not later than 180 days after the  
21 date of enactment of this Act, the Secretary of the Interior

1 and the Secretary of Agriculture shall enter into a memo-  
2 randum of understanding regarding oil and gas leasing  
3 on—

4 (1) public land under the jurisdiction of the  
5 Secretary of the Interior; and

6 (2) National Forest System land under the ju-  
7 risdiction of the Secretary of Agriculture.

8 (b) CONTENTS.—The memorandum of understanding  
9 shall include provisions that—

10 (1) establish administrative procedures and  
11 lines of authority that ensure timely processing of—

12 (A) oil and gas lease applications;

13 (B) surface use plans of operation, includ-  
14 ing steps for processing surface use plans; and

15 (C) applications for permits to drill con-  
16 sistent with applicable timelines;

17 (2) eliminate duplication of effort by providing  
18 for coordination of planning and environmental com-  
19 pliance efforts;

20 (3) ensure that lease stipulations are—

21 (A) applied consistently;

- 1 (B) coordinated between agencies; and
- 2 (C) only as restrictive as necessary to pro-
- 3 tect the resource for which the stipulations are
- 4 applied;
- 5 (4) establish a joint data retrieval system that
- 6 is capable of—
- 7 (A) tracking applications and formal re-
- 8 quests made in accordance with procedures of
- 9 the Federal onshore oil and gas leasing pro-
- 10 gram; and
- 11 (B) providing information regarding the
- 12 status of the applications and requests within
- 13 the Department of the Interior and the Depart-
- 14 ment of Agriculture; and
- 15 (5) establish a joint geographic information sys-
- 16 tem mapping system for use in—
- 17 (A) tracking surface resource values to aid
- 18 in resource management; and
- 19 (B) processing surface use plans of oper-
- 20 ation and applications for permits to drill.

1 **SEC. 364. ESTIMATES OF OIL AND GAS RESOURCES UNDER-**  
2 **LYING ONSHORE FEDERAL LAND.**

3 (a) ASSESSMENT.—Section 604 of the Energy Act of  
4 2000 (42 U.S.C. 6217) is amended—

5 (1) in subsection (a)—

6 (A) in paragraph (1)—

7 (i) by striking “reserve”; and

8 (ii) by striking “and” after the semi-  
9 colon; and

10 (B) by striking paragraph (2) and insert-  
11 ing the following:

12 “(2) the extent and nature of any restrictions  
13 or impediments to the development of the resources,  
14 including—

15 “(A) impediments to the timely granting of  
16 leases;

17 “(B) post-lease restrictions, impediments,  
18 or delays on development for conditions of ap-  
19 proval, applications for permits to drill, or proc-  
20 essing of environmental permits; and

1           “(C) permits or restrictions associated with  
2           transporting the resources for entry into com-  
3           merce; and

4           “(3) the quantity of resources not produced or  
5           introduced into commerce because of the restric-  
6           tions.”;

7           (2) in subsection (b)—

8           (A) by striking “reserve” and inserting  
9           “resource”; and

10           (B) by striking “publically” and inserting  
11           “publicly”; and

12           (3) by striking subsection (d) and inserting the  
13           following:

14           “(d) ASSESSMENTS.—Using the inventory, the Sec-  
15           retary of Energy shall make periodic assessments of eco-  
16           nomically recoverable resources accounting for a range of  
17           parameters such as current costs, commodity prices, tech-  
18           nology, and regulations.”.

19           (b) METHODOLOGY.—The Secretary of the Interior  
20           shall use the same assessment methodology across all geo-  
21           logical provinces, areas, and regions in preparing and



1 issuing national geological assessments to ensure accurate  
2 comparisons of geological resources.

3 **SEC. 365. PILOT PROJECT TO IMPROVE FEDERAL PERMIT**  
4 **COORDINATION.**

5 (a) **ESTABLISHMENT.**—The Secretary of the Interior  
6 (referred to in this section as the “Secretary”) shall estab-  
7 lish a Federal Permit Streamlining Pilot Project (referred  
8 to in this section as the “Pilot Project”).

9 (b) **MEMORANDUM OF UNDERSTANDING.**—

10 (1) **IN GENERAL.**—Not later than 90 days after  
11 the date of enactment of this Act, the Secretary  
12 shall enter into a memorandum of understanding for  
13 purposes of this section with—

14 (A) the Secretary of Agriculture;

15 (B) the Administrator of the Environ-  
16 mental Protection Agency; and

17 (C) the Chief of Engineers.

18 (2) **STATE PARTICIPATION.**—The Secretary  
19 may request that the Governors of Wyoming, Mon-  
20 tana, Colorado, Utah, and New Mexico be signato-  
21 ries to the memorandum of understanding.

1 (c) DESIGNATION OF QUALIFIED STAFF.—

2 (1) IN GENERAL.—Not later than 30 days after  
3 the date of the signing of the memorandum of un-  
4 derstanding under subsection (b), all Federal signa-  
5 tory parties shall, if appropriate, assign to each of  
6 the field offices identified in subsection (d) an em-  
7 ployee who has expertise in the regulatory issues re-  
8 lating to the office in which the employee is em-  
9 ployed, including, as applicable, particular expertise  
10 in—

11 (A) the consultations and the preparation  
12 of biological opinions under section 7 of the En-  
13 dangered Species Act of 1973 (16 U.S.C.  
14 1536);

15 (B) permits under section 404 of Federal  
16 Water Pollution Control Act (33 U.S.C. 1344);

17 (C) regulatory matters under the Clean Air  
18 Act (42 U.S.C. 7401 et seq.);

19 (D) planning under the National Forest  
20 Management Act of 1976 (16 U.S.C. 472a et  
21 seq.); and

1           (E) the preparation of analyses under the  
2           National Environmental Policy Act of 1969 (42  
3           U.S.C. 4321 et seq.).

4           (2) DUTIES.—Each employee assigned under  
5           paragraph (1) shall—

6           (A) not later than 90 days after the date  
7           of assignment, report to the Bureau of Land  
8           Management Field Managers in the office to  
9           which the employee is assigned;

10           (B) be responsible for all issues relating to  
11           the jurisdiction of the home office or agency of  
12           the employee; and

13           (C) participate as part of the team of per-  
14           sonnel working on proposed energy projects,  
15           planning, and environmental analyses.

16           (d) FIELD OFFICES.—The following Bureau of Land  
17           Management Field Offices shall serve as the Pilot Project  
18           offices:

19           (1) Rawlins, Wyoming.

20           (2) Buffalo, Wyoming.

21           (3) Miles City, Montana

1 (4) Farmington, New Mexico.

2 (5) Carlsbad, New Mexico.

3 (6) Grand Junction/Glenwood Springs, Colo-  
4 rado.

5 (7) Vernal, Utah.

6 (e) REPORTS.—Not later than 3 years after the date  
7 of enactment of this Act, the Secretary shall submit to  
8 Congress a report that—

9 (1) outlines the results of the Pilot Project to  
10 date; and

11 (2) makes a recommendation to the President  
12 regarding whether the Pilot Project should be imple-  
13 mented throughout the United States.

14 (f) ADDITIONAL PERSONNEL.—The Secretary shall  
15 assign to each field office identified in subsection (d) any  
16 additional personnel that are necessary to ensure the ef-  
17 fective implementation of—

18 (1) the Pilot Project; and

19 (2) other programs administered by the field of-  
20 fices, including inspection and enforcement relating  
21 to energy development on Federal land, in accord-

1           ance with the multiple use mandate of the Federal  
2           Land Policy and Management Act of 1976 (43  
3           U.S.C. 1701 et seq).

4           (g) PERMIT PROCESSING IMPROVEMENT FUND.—  
5           Section 35 of the Mineral Leasing Act (30 U.S.C. 191)  
6           is amended by adding at the end the following:

7           “(c)(1) Notwithstanding the first sentence of sub-  
8           section (a), any rentals received from leases in any State  
9           (other than the State of Alaska) on or after the date of  
10          enactment of this subsection shall be deposited in the  
11          Treasury, to be allocated in accordance with paragraph  
12          (2).

13          “(2) Of the amounts deposited in the Treasury under  
14          paragraph (1)—

15                 “(A) 50 percent shall be paid by the Secretary  
16                 of the Treasury to the State within the boundaries  
17                 of which the leased land is located or the deposits  
18                 were derived; and

19                 “(B) 50 percent shall be deposited in a special  
20                 fund in the Treasury, to be known as the ‘BLM Per-

1           mit Processing Improvement Fund’ (referred to in  
2           this subsection as the ‘Fund’).

3           “(3) For each of fiscal years 2006 through 2015, the  
4 Fund shall be available to the Secretary of the Interior  
5 for expenditure, without further appropriation and with-  
6 out fiscal year limitation, for the coordination and proc-  
7 essing of oil and gas use authorizations on onshore Fed-  
8 eral land under the jurisdiction of the Pilot Project offices  
9 identified in section 365(d) of the Energy Policy Act of  
10 2005.”.

11           (h) TRANSFER OF FUNDS.—For the purposes of co-  
12 ordination and processing of oil and gas use authorizations  
13 on Federal land under the administration of the Pilot  
14 Project offices identified in subsection (d), the Secretary  
15 may authorize the expenditure or transfer of such funds  
16 as are necessary to—

- 17           (1) the United States Fish and Wildlife Service;
- 18           (2) the Bureau of Indian Affairs;
- 19           (3) the Forest Service;
- 20           (4) the Environmental Protection Agency;
- 21           (5) the Corps of Engineers; and

1           (6) the States of Wyoming, Montana, Colorado,  
2           Utah, and New Mexico.

3           (i) FEES.—During the period in which the Pilot  
4 Project is authorized, the Secretary shall not implement  
5 a rulemaking that would enable an increase in fees to re-  
6 cover additional costs related to processing drilling-related  
7 permit applications and use authorizations.

8           (j) SAVINGS PROVISION.—Nothing in this section  
9 affects—

10           (1) the operation of any Federal or State law;

11           or

12           (2) any delegation of authority made by the  
13 head of a Federal agency whose employees are par-  
14 ticipating in the Pilot Project.

15 **SEC. 366. DEADLINE FOR CONSIDERATION OF APPLICA-**  
16 **TIONS FOR PERMITS.**

17           Section 17 of the Mineral Leasing Act (30 U.S.C.  
18 226) is amended by adding at the end the following:

19           “(p) DEADLINES FOR CONSIDERATION OF APPLICA-  
20 TIONS FOR PERMITS.—

1           “(1) IN GENERAL.—Not later than 10 days  
2           after the date on which the Secretary receives an ap-  
3           plication for any permit to drill, the Secretary  
4           shall—

5                   “(A) notify the applicant that the applica-  
6                   tion is complete; or

7                   “(B) notify the applicant that information  
8                   is missing and specify any information that is  
9                   required to be submitted for the application to  
10                  be complete.

11           “(2) ISSUANCE OR DEFERRAL.—Not later than  
12           30 days after the applicant for a permit has sub-  
13           mitted a complete application, the Secretary shall—

14                   “(A) issue the permit, if the requirements  
15                   under the National Environmental Policy Act of  
16                   1969 and other applicable law have been com-  
17                   pleted within such timeframe; or

18                   “(B) defer the decision on the permit and  
19                   provide to the applicant a notice—



1           “(i) that specifies any steps that the  
2           applicant could take for the permit to be  
3           issued; and

4           “(ii) a list of actions that need to be  
5           taken by the agency to complete compli-  
6           ance with applicable law together with  
7           timelines and deadlines for completing  
8           such actions.

9           “(3) REQUIREMENTS FOR DEFERRED APPLICA-  
10          TIONS.—

11           “(A) IN GENERAL.—If the Secretary pro-  
12           vides notice under paragraph (2)(B), the appli-  
13           cant shall have a period of 2 years from the  
14           date of receipt of the notice in which to com-  
15           plete all requirements specified by the Sec-  
16           retary, including providing information needed  
17           for compliance with the National Environmental  
18           Policy Act of 1969.

19           “(B) ISSUANCE OF DECISION ON PER-  
20           MIT.—If the applicant completes the require-  
21           ments within the period specified in subpara-

1 graph (A), the Secretary shall issue a decision  
2 on the permit not later than 10 days after the  
3 date of completion of the requirements de-  
4 scribed in subparagraph (A), unless compliance  
5 with the National Environmental Policy Act of  
6 1969 and other applicable law has not been  
7 completed within such timeframe.

8 “(C) DENIAL OF PERMIT.—If the appli-  
9 cant does not complete the requirements within  
10 the period specified in subparagraph (A) or if  
11 the applicant does not comply with applicable  
12 law, the Secretary shall deny the permit.”.

13 **SEC. 367. FAIR MARKET VALUE DETERMINATIONS FOR LIN-**  
14 **EAR RIGHTS-OF-WAY ACROSS PUBLIC LANDS**  
15 **AND NATIONAL FORESTS.**

16 (a) UPDATE OF FEE SCHEDULE.—Not later than one  
17 year after the date of enactment of this section—

18 (1) the Secretary of the Interior shall update  
19 section 2806.20 of title 43, Code of Federal Regula-  
20 tions, as in effect on the date of enactment of this  
21 section, to revise the per acre rental fee zone value

1 schedule by State, county, and type of linear right-  
2 of-way use to reflect current values of land in each  
3 zone; and

4 (2) the Secretary of Agriculture shall make the  
5 same revision for linear rights-of-way granted,  
6 issued, or renewed under title V of the Federal  
7 Lands Policy and Management Act of 1976 (43  
8 U.S.C. 1761 et seq.) on National Forest System  
9 land.

10 (b) FAIR MARKET VALUE RENTAL DETERMINATION  
11 FOR LINEAR RIGHTS-OF-WAY.—The fair market value  
12 rent of a linear right-of-way across public lands or Na-  
13 tional Forest System lands issued under section 504 of  
14 the Federal Land Policy and Management Act of 1976  
15 (43 U.S.C. 1764) or section 28 of the Mineral Leasing  
16 Act (30 U.S.C. 185) shall be determined in accordance  
17 with subpart 2806 of title 43, Code of Federal Regula-  
18 tions, as in effect on the date of enactment of this section  
19 (including the annual or periodic updates specified in the  
20 regulations) and as updated in accordance with subsection  
21 (a).

1 **SEC. 368. ENERGY RIGHT-OF-WAY CORRIDORS ON FEDERAL**  
2 **LAND.**

3 (a) WESTERN STATES.—Not later than 2 years after  
4 the date of enactment of this Act, the Secretary of Agri-  
5 culture, the Secretary of Commerce, the Secretary of De-  
6 fense, the Secretary of Energy, and the Secretary of the  
7 Interior (in this section referred to collectively as “the Sec-  
8 retaries”), in consultation with the Federal Energy Regu-  
9 latory Commission, States, tribal or local units of govern-  
10 ments as appropriate, affected utility industries, and other  
11 interested persons, shall consult with each other and  
12 shall—

13 (1) designate, under their respective authorities,  
14 corridors for oil, gas, and hydrogen pipelines and  
15 electricity transmission and distribution facilities on  
16 Federal land in the eleven contiguous Western  
17 States (as defined in section 103(o) of the Federal  
18 Land Policy and Management Act of 1976 (43  
19 U.S.C. 1702(o));

1           (2) perform any environmental reviews that  
2           may be required to complete the designation of such  
3           corridors; and

4           (3) incorporate the designated corridors into  
5           the relevant agency land use and resource manage-  
6           ment plans or equivalent plans.

7           (b) OTHER STATES.—Not later than 4 years after  
8           the date of enactment of this Act, the Secretaries, in con-  
9           sultation with the Federal Energy Regulatory Commis-  
10          sion, affected utility industries, and other interested per-  
11          sons, shall jointly—

12           (1) identify corridors for oil, gas, and hydrogen  
13           pipelines and electricity transmission and distribu-  
14           tion facilities on Federal land in States other than  
15           those described in subsection (a); and

16           (2) schedule prompt action to identify, des-  
17           ignate, and incorporate the corridors into the appli-  
18           cable land use plans.

19           (c) ONGOING RESPONSIBILITIES.—The Secretaries,  
20           in consultation with the Federal Energy Regulatory Com-  
21           mission, affected utility industries, and other interested

1 parties, shall establish procedures under their respective  
2 authorities that—

3 (1) ensure that additional corridors for oil, gas,  
4 and hydrogen pipelines and electricity transmission  
5 and distribution facilities on Federal land are  
6 promptly identified and designated as necessary; and

7 (2) expedite applications to construct or modify  
8 oil, gas, and hydrogen pipelines and electricity trans-  
9 mission and distribution facilities within such cor-  
10 ridors, taking into account prior analyses and envi-  
11 ronmental reviews undertaken during the designa-  
12 tion of such corridors.

13 (d) CONSIDERATIONS.—In carrying out this section,  
14 the Secretaries shall take into account the need for up-  
15 graded and new electricity transmission and distribution  
16 facilities to—

17 (1) improve reliability;

18 (2) relieve congestion; and

19 (3) enhance the capability of the national grid  
20 to deliver electricity.

1 (e) SPECIFICATIONS OF CORRIDOR.—A corridor des-  
2 ignated under this section shall, at a minimum, specify  
3 the centerline, width, and compatible uses of the corridor.

4 **SEC. 369. OIL SHALE, TAR SANDS, AND OTHER STRATEGIC**  
5 **UNCONVENTIONAL FUELS.**

6 (a) SHORT TITLE.—This section may be cited as the  
7 “Oil Shale, Tar Sands, and Other Strategic Unconven-  
8 tional Fuels Act of 2005”.

9 (b) DECLARATION OF POLICY.—Congress declares  
10 that it is the policy of the United States that—

11 (1) United States oil shale, tar sands, and other  
12 unconventional fuels are strategically important do-  
13 mestic resources that should be developed to reduce  
14 the growing dependence of the United States on po-  
15 litically and economically unstable sources of foreign  
16 oil imports;

17 (2) the development of oil shale, tar sands, and  
18 other strategic unconventional fuels, for research  
19 and commercial development, should be conducted in  
20 an environmentally sound manner, using practices  
21 that minimize impacts; and

1           (3) development of those strategic unconven-  
2           tional fuels should occur, with an emphasis on sus-  
3           tainability, to benefit the United States while taking  
4           into account affected States and communities.

5           (c) LEASING PROGRAM FOR RESEARCH AND DEVEL-  
6           OPMENT OF OIL SHALE AND TAR SANDS.—In accordance  
7           with section 21 of the Mineral Leasing Act (30 U.S.C.  
8           241) and any other applicable law, except as provided in  
9           this section, not later than 180 days after the date of en-  
10          actment of this Act, from land otherwise available for leas-  
11          ing, the Secretary of the Interior (referred to in this sec-  
12          tion as the “Secretary”) shall make available for leasing  
13          such land as the Secretary considers to be necessary to  
14          conduct research and development activities with respect  
15          to technologies for the recovery of liquid fuels from oil  
16          shale and tar sands resources on public lands. Prospective  
17          public lands within each of the States of Colorado, Utah,  
18          and Wyoming shall be made available for such research  
19          and development leasing.



1 (d) PROGRAMMATIC ENVIRONMENTAL IMPACT  
2 STATEMENT AND COMMERCIAL LEASING PROGRAM FOR  
3 OIL SHALE AND TAR SANDS.—

4 (1) PROGRAMMATIC ENVIRONMENTAL IMPACT  
5 STATEMENT.—Not later than 18 months after the  
6 date of enactment of this Act, in accordance with  
7 section 102(2)(C) of the National Environmental  
8 Policy Act of 1969 (42 U.S.C. 4332(2)(C)), the Sec-  
9 retary shall complete a programmatic environmental  
10 impact statement for a commercial leasing program  
11 for oil shale and tar sands resources on public lands,  
12 with an emphasis on the most geologically prospec-  
13 tive lands within each of the States of Colorado,  
14 Utah, and Wyoming.

15 (2) FINAL REGULATION.—Not later than 6  
16 months after the completion of the programmatic  
17 environmental impact statement under this sub-  
18 section, the Secretary shall publish a final regulation  
19 establishing such program.

20 (e) COMMENCEMENT OF COMMERCIAL LEASING OF  
21 OIL SHALE AND TAR SANDS.—Not later than 180 days

1 after publication of the final regulation required by sub-  
2 section (d), the Secretary shall consult with the Governors  
3 of States with significant oil shale and tar sands resources  
4 on public lands, representatives of local governments in  
5 such States, interested Indian tribes, and other interested  
6 persons, to determine the level of support and interest in  
7 the States in the development of tar sands and oil shale  
8 resources. If the Secretary finds sufficient support and in-  
9 terest exists in a State, the Secretary may conduct a lease  
10 sale in that State under the commercial leasing program  
11 regulations. Evidence of interest in a lease sale under this  
12 subsection shall include, but not be limited to, appropriate  
13 areas nominated for leasing by potential lessees and other  
14 interested parties.

15 (f) DILIGENT DEVELOPMENT REQUIREMENTS.—The  
16 Secretary shall, by regulation, designate work require-  
17 ments and milestones to ensure the diligent development  
18 of the lease.

19 (g) INITIAL REPORT BY THE SECRETARY OF THE IN-  
20 TERIOR.—Within 90 days after the date of enactment of  
21 this Act, the Secretary of the Interior shall report to the

1 Committee on Resources of the House of Representatives  
2 and the Committee on Energy and Natural Resources of  
3 the Senate on—

4 (1) the interim actions necessary to—

5 (A) develop the program, complete the pro-  
6 grammatic environmental impact statement,  
7 and promulgate the final regulation as required  
8 by subsection (d); and,

9 (B) conduct the first lease sales under the  
10 program as required by subsection (e); and

11 (2) a schedule to complete such actions within  
12 the time limits mandated by this section.

13 (h) TASK FORCE.—

14 (1) ESTABLISHMENT.—The Secretary of En-  
15 ergy, in cooperation with the Secretary of the Inte-  
16 rior and the Secretary of Defense, shall establish a  
17 task force to develop a program to coordinate and  
18 accelerate the commercial development of strategic  
19 unconventional fuels, including but not limited to oil  
20 shale and tar sands resources within the United  
21 States, in an integrated manner.

1           (2) COMPOSITION.—The Task Force shall be  
2        composed of

3                   (A) the Secretary of Energy (or the des-  
4                   ignee of the Secretary);

5                   (B) the Secretary of the Interior (or the  
6                   designee of the Secretary of the Interior);

7                   (C) the Secretary of Defense (or the des-  
8                   ignee of the Secretary of Defense);

9                   (D) the Governors of affected States; and

10                   (E) representatives of local governments in  
11        affected areas.

12           (3) RECOMMENDATIONS.—The Task Force  
13        shall make such recommendations regarding pro-  
14        moting the development of the strategic unconven-  
15        tional fuels resources within the United States as it  
16        may deem appropriate.

17           (4) PARTNERSHIPS.—The Task Force shall  
18        make recommendations with respect to initiating a  
19        partnership with the Province of Alberta, Canada,  
20        for purposes of sharing information relating to the  
21        development and production of oil from tar sands,

1 and similar partnerships with other nations that  
2 contain significant oil shale resources

3 (5) REPORTS.—

4 (A) INITIAL REPORT.—Not later than 180  
5 days after the date of enactment of this Act,  
6 the Task Force shall submit to the President  
7 and Congress a report that describes the anal-  
8 ysis and recommendations of the Task Force.

9 (B) SUBSEQUENT REPORTS.—The Sec-  
10 retary shall provide an annual report describing  
11 the progress in developing the strategic uncon-  
12 ventional fuels resources within the United  
13 States for each of the 5 years following submis-  
14 sion of the report provided for in subparagraph  
15 (A).

16 (i) OFFICE OF PETROLEUM RESERVES.—

17 (1) IN GENERAL.—The Office of Petroleum Re-  
18 serves of the Department of Energy shall—

19 (A) coordinate the creation and implemen-  
20 tation of a commercial strategic fuel develop-  
21 ment program for the United States;

1           (B) evaluate the strategic importance of  
2           unconventional sources of strategic fuels to the  
3           security of the United States;

4           (C) promote and coordinate Federal Gov-  
5           ernment actions that facilitate the development  
6           of strategic fuels in order to effectively address  
7           the energy supply needs of the United States;

8           (D) identify, assess, and recommend ap-  
9           propriate actions of the Federal Government re-  
10          quired to assist in the development and manu-  
11          facturing of strategic fuels; and

12          (E) coordinate and facilitate appropriate  
13          relationships between private industry and the  
14          Federal Government to promote sufficient and  
15          timely private investment to commercialize stra-  
16          tegic fuels for domestic and military use.

17          (2) CONSULTATION AND COORDINATION.—The  
18          Office of Petroleum Reserves shall work closely with  
19          the Task Force and coordinate its staff support.

20          (3) ANNUAL REPORTS.—Not later than 180  
21          days after the date of enactment of this Act and an-

1 nually thereafter, the Secretary shall submit to Con-  
2 gress a report that describes the activities of the Of-  
3 fice of Petroleum Reserves carried out under this  
4 subsection.

5 (j) MINERAL LEASING ACT AMENDMENTS.—

6 (1) SECTION 17.—Section 17(b)(2) of the Min-  
7 eral Leasing Act (30 U.S.C. 226(b)(2)), as amended  
8 by section 350, is further amended—

9 (A) in subparagraph (A) (as designated by  
10 the amendment made by subsection (a)(1) of  
11 that section) by designating the first, second,  
12 and third sentences as clauses (i), (ii), and (iii),  
13 respectively;

14 (B) by moving clause (ii), as so designated,  
15 so as to begin immediately after and below  
16 clause (i);

17 (C) by moving clause (iii), as so des-  
18 ignated, so as to begin immediately after and  
19 below clause (ii);

20 (D) in clause (i) of subparagraph (A) (as  
21 designated by subparagraph (A) of this para-

1 graph) by striking “five thousand one hundred  
2 and twenty” and inserting “5,760”; and

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

4 “(iv) No lease issued under this paragraph shall  
5 be included in any chargeability limitation associated  
6 with oil and gas leases.”.

7 (2) SECTION 21.—Section 21(a) of the Mineral  
8 Leasing Act (30 U.S.C. 241(a)) is amended—

9 (A) by striking “(a) That the Secretary”  
10 and inserting the following:

11 “(a)(1) The Secretary”;

12 (B) by striking “; that no lease” and in-  
13 serting a period, followed by the following:

14 “(2) No lease”;

15 (C) by striking “Leases may be for” and  
16 inserting the following:

17 “(3) Leases may be for”;

18 (D) by striking “For the privilege” and in-  
19 serting the following:

20 “(4) For the privilege”;



1           (E) in paragraph (2) (as designated by  
2           subparagraph (B) of this paragraph) by strik-  
3           ing “five thousand one hundred and twenty”  
4           and inserting “5,760”;

5           (F) in paragraph (4) (as designated by  
6           subparagraph (D) of this paragraph) by strik-  
7           ing “rate of 50 cents per acre” and inserting  
8           “rate of \$2.00 per acre”;

9           (G)(i) by striking “: *Provided further*, That  
10          not more than one lease shall be granted under  
11          this section to any” and inserting “: *Provided*  
12          *further*, That no”; and

13          (ii) by striking “except that with respect to  
14          leases for” and inserting “shall acquire or hold  
15          more than 50,000 acres of oil shale leases in  
16          any one State. For”; and

17          (H) by adding at the end the following:

18          “(5) No lease issued under this section shall be  
19          included in any chargeability limitation associated  
20          with oil and gas leases.”.

1 (k) INTERAGENCY COORDINATION AND EXPEDITIOUS  
2 REVIEW OF PERMITTING PROCESS.—

3 (1) DEPARTMENT OF THE INTERIOR AS LEAD  
4 AGENCY.—Upon written request of a prospective ap-  
5 plicant for Federal authorization to develop a pro-  
6 posed oil shale or tar sands project, the Department  
7 of the Interior shall act as the lead Federal agency  
8 for the purposes of coordinating all applicable Fed-  
9 eral authorizations and environmental reviews. To  
10 the maximum extent practicable under applicable  
11 Federal law, the Secretary shall coordinate this Fed-  
12 eral authorization and review process with any In-  
13 dian tribes and State and local agencies responsible  
14 for conducting any separate permitting and environ-  
15 mental reviews.

16 (2) IMPLEMENTING REGULATIONS.—Not later  
17 than 6 months after the date of enactment of this  
18 Act, the Secretary shall issue any regulations nec-  
19 essary to implement this subsection.

20 (l) COST-SHARED DEMONSTRATION TECH-  
21 NOLOGIES.—

1           (1) IDENTIFICATION.—The Secretary of Energy  
2           shall identify technologies for the development of oil  
3           shale and tar sands that—

4                   (A) are ready for demonstration at a com-  
5                   mercially-representative scale; and

6                   (B) have a high probability of leading to  
7                   commercial production.

8           (2) ASSISTANCE.—For each technology identi-  
9           fied under paragraph (1), the Secretary of Energy  
10          may provide—

11                   (A) technical assistance;

12                   (B) assistance in meeting environmental  
13                   and regulatory requirements; and

14                   (C) cost-sharing assistance.

15          (m) NATIONAL OIL SHALE AND TAR SANDS ASSESS-  
16          MENT.—

17           (1) ASSESSMENT.—

18                   (A) IN GENERAL.—The Secretary shall  
19                   carry out a national assessment of oil shale and  
20                   tar sands resources for the purposes of evalu-  
21                   ating and mapping oil shale and tar sands de-

1           posits, in the geographic areas described in sub-  
2           paragraph (B). In conducting such an assess-  
3           ment, the Secretary shall make use of the ex-  
4           tensive geological assessment work for oil shale  
5           and tar sands already conducted by the United  
6           States Geological Survey.

7           (B) GEOGRAPHIC AREAS.—The geographic  
8           areas referred to in subparagraph (A), listed in  
9           the order in which the Secretary shall assign  
10          priority, are—

11           (i) the Green River Region of the  
12           States of Colorado, Utah, and Wyoming;

13           (ii) the Devonian oil shales and other  
14           hydrocarbon-bearing rocks having the no-  
15           menclature of “shale” located east of the  
16           Mississippi River; and

17           (iii) any remaining area in the central  
18           and western United States (including the  
19           State of Alaska) that contains oil shale  
20           and tar sands, as determined by the Sec-  
21           retary.

1           (2) USE OF STATE SURVEYS AND UNIVER-  
2           SITIES.—In carrying out the assessment under para-  
3           graph (1), the Secretary may request assistance  
4           from any State- administered geological survey or  
5           university.

6           (n) LAND EXCHANGES.—

7           (1) IN GENERAL.—To facilitate the recovery of  
8           oil shale and tar sands, especially in areas where  
9           Federal, State, and private lands are intermingled,  
10          the Secretary shall consider the use of land ex-  
11          changes where appropriate and feasible to consoli-  
12          date land ownership and mineral interests into man-  
13          ageable areas.

14          (2) IDENTIFICATION AND PRIORITY OF PUBLIC  
15          LANDS.—The Secretary shall identify public lands  
16          containing deposits of oil shale or tar sands within  
17          the Green River, Piceance Creek, Uintah, and  
18          Washakie geologic basins, and shall give priority to  
19          implementing land exchanges within those basins.  
20          The Secretary shall consider the geology of the re-

1       spective basin in determining the optimum size of  
2       the lands to be consolidated.

3           (3) COMPLIANCE WITH SECTION 206 OF  
4       FLPMA.—A land exchange undertaken in furtherance  
5       of this subsection shall be implemented in accord-  
6       ance with section 206 of the Federal Land Policy  
7       and Management Act of 1976 (43 U.S.C. 1716).

8           (o) ROYALTY RATES FOR LEASES.—The Secretary  
9       shall establish royalties, fees, rentals, bonus, or other pay-  
10      ments for leases under this section that shall—

11           (1) encourage development of the oil shale and  
12      tar sands resource; and

13           (2) ensure a fair return to the United States.

14           (p) HEAVY OIL TECHNICAL AND ECONOMIC ASSESS-  
15      MENT.—The Secretary of Energy shall update the 1987  
16      technical and economic assessment of domestic heavy oil  
17      resources that was prepared by the Interstate Oil and Gas  
18      Compact Commission. Such an update should include all  
19      of North America and cover all unconventional oil, includ-  
20      ing heavy oil, tar sands (oil sands), and oil shale.

1           (q) PROCUREMENT OF UNCONVENTIONAL FUELS BY  
2 THE DEPARTMENT OF DEFENSE.—

3           (1) IN GENERAL.—Chapter 141 of title 10,  
4 United States Code, is amended by inserting after  
5 section 2398 the following:

6 **“§ 2398a. Procurement of fuel derived from coal, oil**  
7 **shale, and tar sands**

8           “(a) USE OF FUEL TO MEET DEPARTMENT OF DE-  
9 FENSE NEEDS.—The Secretary of Defense shall develop  
10 a strategy to use fuel produced, in whole or in part, from  
11 coal, oil shale, and tar sands (referred to in this section  
12 as a ‘covered fuel’) that are extracted by either mining  
13 or in-situ methods and refined or otherwise processed in  
14 the United States in order to assist in meeting the fuel  
15 requirements of the Department of Defense when the Sec-  
16 retary determines that it is in the national interest.

17           “(b) AUTHORITY TO PROCURE.—The Secretary of  
18 Defense may enter into 1 or more contracts or other  
19 agreements (that meet the requirements of this section)  
20 to procure a covered fuel to meet 1 or more fuel require-  
21 ments of the Department of Defense.

1           “(c) CLEAN FUEL REQUIREMENTS.—A covered fuel  
2 may be procured under subsection (b) only if the covered  
3 fuel meets such standards for clean fuel produced from  
4 domestic sources as the Secretary of Defense shall estab-  
5 lish for purposes of this section in consultation with the  
6 Department of Energy.

7           “(d) MULTIYEAR CONTRACT AUTHORITY.—Subject  
8 to applicable provisions of law, any contract or other  
9 agreement for the procurement of covered fuel under sub-  
10 section (b) may be for 1 or more years at the election of  
11 the Secretary of Defense.

12           “(e) FUEL SOURCE ANALYSIS.—In order to facilitate  
13 the procurement by the Department of Defense of covered  
14 fuel under subsection (b), the Secretary of Defense may  
15 carry out a comprehensive assessment of current and po-  
16 tential locations in the United States for the supply of cov-  
17 ered fuel to the Department.”.

18           (2) CLERICAL AMENDMENT.—The table of sec-  
19 tions for chapter 141 of title 10, United States  
20 Code, is amended by inserting after the item relating  
21 to section 2398 the following:



“2398a. Procurement of fuel derived from coal, oil shale, and tar sands”.

1           (r) STATE WATER RIGHTS.—Nothing in this section  
2 preempts or affects any State water law or interstate com-  
3 pact relating to water.

4           (s) AUTHORIZATION OF APPROPRIATIONS.—There  
5 are authorized to be appropriated such sums as are nec-  
6 essary to carry out this section.

7 **SEC. 370. FINGER LAKES WITHDRAWAL.**

8           All Federal land within the boundary of Finger Lakes  
9 National Forest in the State of New York is withdrawn  
10 from—

11           (1) all forms of entry, appropriation, or disposal  
12           under the public land laws; and

13           (2) disposition under all laws relating to oil and  
14           gas leasing.

15 **SEC. 371. REINSTATEMENT OF LEASES.**

16           (a) LEASES TERMINATED FOR CERTAIN FAILURE TO  
17 PAY RENTAL.—Notwithstanding section 31(d)(2)(B) of  
18 the Mineral Leasing Act (30 U.S.C. 188(d)(2)(B)) as in  
19 effect before the effective date of this section, and notwith-  
20 standing the amendment made by subsection (b) of this

1 section, the Secretary of the Interior may reinstate any  
2 oil and gas lease issued under that Act that was termi-  
3 nated for failure of a lessee to pay the full amount of rent-  
4 al on or before the anniversary date of the lease, during  
5 the period beginning on September 1, 2001, and ending  
6 on June 30, 2004, if—

7 (1) not later than 120 days after the date of  
8 enactment of this Act, the lessee—

9 (A) files a petition for reinstatement of the  
10 lease;

11 (B) complies with the conditions of section  
12 31(e) of the Mineral Leasing Act (30 U.S.C.  
13 188(e)); and

14 (C) certifies that the lessee did not receive  
15 a notice of termination by the date that was 13  
16 months before the date of termination; and

17 (2) the land is available for leasing.

18 (b) DEADLINE FOR PETITIONS, GENERALLY.—Sec-  
19 tion 31(d)(2) of the Mineral Leasing Act (30 U.S.C.  
20 188(d)(2)) is amended by striking subparagraphs (A) and  
21 (B) and inserting the following:

1           “(A) with respect to any lease that termi-  
2           nated under subsection (b) on or before the  
3           date of the enactment of the Energy Policy Act  
4           of 2005, a petition for reinstatement (together  
5           with the required back rental and royalty accru-  
6           ing after the date of termination) is filed on or  
7           before the earlier of—

8                       “(i) 60 days after the lessee receives  
9                       from the Secretary notice of termination,  
10                      whether by return of check or by any other  
11                      form of actual notice; or

12                     “(ii) 15 months after the termination  
13                     of the lease; or

14           “(B) with respect to any lease that termi-  
15           nates under subsection (b) after the date of the  
16           enactment of the Energy Policy Act of 2005, a  
17           petition for reinstatement (together with the re-  
18           quired back rental and royalty accruing after  
19           the date of termination) is filed on or before the  
20           earlier of—

1                   “(i) 60 days after receipt of the notice  
2                   of termination sent by the Secretary by  
3                   certified mail to all lessees of record; or

4                   “(ii) 24 months after the termination  
5                   of the lease.”.

6 **SEC. 372. CONSULTATION REGARDING ENERGY RIGHTS-OF-**  
7 **WAY ON PUBLIC LAND.**

8           (a) MEMORANDUM OF UNDERSTANDING.—

9                   (1) IN GENERAL.—Not later than 6 months  
10                  after the date of enactment of this Act, the Sec-  
11                  retary of Energy, in consultation with the Secretary  
12                  of the Interior, the Secretary of Agriculture, and the  
13                  Secretary of Defense with respect to lands under  
14                  their respective jurisdictions, shall enter into a  
15                  memorandum of understanding to coordinate all ap-  
16                  plicable Federal authorizations and environmental  
17                  reviews relating to a proposed or existing utility fa-  
18                  cility. To the maximum extent practicable under ap-  
19                  plicable law, the Secretary of Energy shall, to ensure  
20                  timely review and permit decisions, coordinate such  
21                  authorizations and reviews with any Indian tribes,

1 multi-State entities, and State agencies that are re-  
2 sponsible for conducting any separate permitting  
3 and environmental reviews of the affected utility fa-  
4 cility.

5 (2) CONTENTS.—The memorandum of under-  
6 standing shall include provisions that—

7 (A) establish—

8 (i) a unified right-of-way application  
9 form; and

10 (ii) an administrative procedure for  
11 processing right-of-way applications, in-  
12 cluding lines of authority, steps in applica-  
13 tion processing, and timeframes for appli-  
14 cation processing;

15 (B) provide for coordination of planning  
16 relating to the granting of the rights-of-way;

17 (C) provide for an agreement among the  
18 affected Federal agencies to prepare a single  
19 environmental review document to be used as  
20 the basis for all Federal authorization decisions;  
21 and

1           (D) provide for coordination of use of  
2           right-of-way stipulations to achieve consistency.

3       (b) NATURAL GAS PIPELINES.—

4           (1) IN GENERAL.—With respect to permitting  
5           activities for interstate natural gas pipelines, the  
6           May 2002 document entitled “Interagency Agree-  
7           ment On Early Coordination Of Required Environ-  
8           mental And Historic Preservation Reviews Con-  
9           ducted In Conjunction With The Issuance Of Au-  
10          thorizations To Construct And Operate Interstate  
11          Natural Gas Pipelines Certificated By The Federal  
12          Energy Regulatory Commission” shall constitute  
13          compliance with subsection (a).

14       (2) REPORT.—

15           (A) IN GENERAL.—Not later than 1 year  
16           after the date of enactment of this Act, and  
17           every 2 years thereafter, agencies that are sig-  
18           natories to the document referred to in para-  
19           graph (1) shall transmit to Congress a report  
20           on how the agencies under the jurisdiction of  
21           the Secretaries are incorporating and imple-

1           menting the provisions of the document referred  
2           to in paragraph (1).

3           (B) CONTENTS.—The report shall  
4           address—

5                   (i) efforts to implement the provisions  
6                   of the document referred to in paragraph  
7                   (1);

8                   (ii) whether the efforts have had a  
9                   streamlining effect;

10                   (iii) further improvements to the per-  
11                   mitting process of the agency; and

12                   (iv) recommendations for inclusion of  
13                   State and tribal governments in a coordi-  
14                   nated permitting process.

15           (c) DEFINITION OF UTILITY FACILITY.—In this sec-  
16           tion, the term “utility facility” means any privately, pub-  
17           licly, or cooperatively owned line, facility, or system—

18                   (1) for the transportation of—

19                           (A) oil, natural gas, synthetic liquid fuel,  
20                           or gaseous fuel;

1 (B) any refined product produced from oil,  
2 natural gas, synthetic liquid fuel, or gaseous  
3 fuel; or

4 (C) products in support of the production  
5 of material referred to in subparagraph (A) or  
6 (B);

7 (2) for storage and terminal facilities in connec-  
8 tion with the production of material referred to in  
9 paragraph (1); or

10 (3) for the generation, transmission, and dis-  
11 tribution of electric energy.

12 **SEC. 373. SENSE OF CONGRESS REGARDING DEVELOPMENT**  
13 **OF MINERALS UNDER PADRE ISLAND NA-**  
14 **TIONAL SEASHORE.**

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

16 (1) Pursuant to Public Law 87–712 (16 U.S.C.  
17 459d et seq.; popularly known as the “Federal Ena-  
18 bling Act”) and various deeds and actions under  
19 that Act, the United States is the owner of only the  
20 surface estate of certain lands constituting the  
21 Padre Island National Seashore.



1           (2) Ownership of the oil, gas, and other min-  
2           erals in the subsurface estate of the lands consti-  
3           tuting the Padre Island National Seashore was never  
4           acquired by the United States, and ownership of  
5           those interests is held by the State of Texas and pri-  
6           vate parties.

7           (3) Public Law 87-712 (16 U.S.C. 459d et  
8           seq.)—

9                   (A) expressly contemplated that the United  
10                  States would recognize the ownership and fu-  
11                  ture development of the oil, gas, and other min-  
12                  erals in the subsurface estate of the lands con-  
13                  stituting the Padre Island National Seashore by  
14                  the owners and their mineral lessees; and

15                   (B) recognized that approval of the State  
16                  of Texas was required to create Padre Island  
17                  National Seashore.

18           (4) Approval was given for the creation of  
19           Padre Island National Seashore by the State of  
20           Texas through Tex. Rev. Civ. Stat. Ann. Art.  
21           6077(t) (Vernon 1970), which expressly recognized



1 lands, along with the right to explore for, and produce the  
2 oil and gas under applicable law and such regulations as  
3 the Secretary of the Interior may prescribe. Not later than  
4 180 days after the date of enactment of the Energy Policy  
5 Act of 2005, the Secretary of the Interior shall convey the  
6 remaining mineral rights to the parties who as of the date  
7 of enactment of the Energy Policy Act of 2005 would be  
8 recognized as holders of a right, title, or interest to any  
9 portion of such minerals under the laws of the State of  
10 Louisiana, but for the interest of the United States in  
11 such minerals.

12       “(c) OIL AND GAS RESOURCE ASSESSMENT AND RE-  
13 PORT.—The United States Geological Survey shall con-  
14 duct a resource assessment and publish a report of the  
15 findings of such resource assessment (‘USGS Assessment  
16 and Report’) within one year of the date of enactment of  
17 the Energy Policy Act of 2005. The USGS Assessment  
18 and Report shall provide an assessment of all oil and gas  
19 resources underlying the certain lands in Livingston Par-  
20 ish, Louisiana, as described in section 103 (the ‘Living-  
21 ston Parish lands’). Upon a finding by the Secretary of

1 the Interior based upon the USGS Assessment and Report  
2 that it is unlikely that economically recoverable oil and gas  
3 resources are present, the Secretary shall convey all rights  
4 to oil and gas underlying such lands to the recipients, or  
5 their successors, heirs, or assigns, of the conveyances  
6 under subsection (b). Such further conveyances shall be  
7 made within 180 days after a finding by the Secretary  
8 that it is unlikely that economically recoverable oil and gas  
9 resources are present.”.

## 10 **Subtitle G—Miscellaneous**

### 11 **SEC. 381. DEADLINE FOR DECISION ON APPEALS OF CON-** 12 **SISTENCY DETERMINATION UNDER THE** 13 **COASTAL ZONE MANAGEMENT ACT OF 1972.**

14 Section 319 of the Coastal Zone Management Act of  
15 1972 (16 U.S.C. 1465) is amended to read as follows:

16 “APPEALS TO THE SECRETARY

17 “SEC. 319. (a) NOTICE.—Not later than 30 days  
18 after the date of the filing of an appeal to the Secretary  
19 of a consistency determination under section 307, the Sec-  
20 retary shall publish an initial notice in the Federal Reg-  
21 ister.

1 “(b) CLOSURE OF RECORD.—

2 “(1) IN GENERAL.—Not later than the end of  
3 the 160-day period beginning on the date of publica-  
4 tion of an initial notice under subsection (a), except  
5 as provided in paragraph (3), the Secretary shall im-  
6 mediately close the decision record and receive no  
7 more filings on the appeal.

8 “(2) NOTICE.—After closing the administrative  
9 record, the Secretary shall immediately publish a no-  
10 tice in the Federal Register that the administrative  
11 record has been closed.

12 “(3) EXCEPTION.—

13 “(A) IN GENERAL.—Subject to subpara-  
14 graph (B), during the 160-day period described  
15 in paragraph (1), the Secretary may stay the  
16 closing of the decision record—

17 “(i) for a specific period mutually  
18 agreed to in writing by the appellant and  
19 the State agency; or

20 “(ii) as the Secretary determines nec-  
21 essary to receive, on an expedited basis—

1           “(I) any supplemental informa-  
2           tion specifically requested by the Sec-  
3           retary to complete a consistency re-  
4           view under this Act; or

5           “(II) any clarifying information  
6           submitted by a party to the pro-  
7           ceeding related to information in the  
8           consolidated record compiled by the  
9           lead Federal permitting agency.

10           “(B) APPLICABILITY.—The Secretary may  
11           only stay the 160-day period described in para-  
12           graph (1) for a period not to exceed 60 days.

13           “(c) DEADLINE FOR DECISION.—

14           “(1) IN GENERAL.—Not later than 60 days  
15           after the date of publication of a Federal Register  
16           notice stating when the decision record for an appeal  
17           has been closed, the Secretary shall issue a decision  
18           or publish a notice in the Federal Register explain-  
19           ing why a decision cannot be issued at that time.

20           “(2) SUBSEQUENT DECISION.—Not later than  
21           15 days after the date of publication of a Federal

1 Register notice explaining why a decision cannot be  
2 issued within the 60-day period, the Secretary shall  
3 issue a decision.”.

4 **SEC. 382. APPEALS RELATING TO OFFSHORE MINERAL DE-**  
5 **VELOPMENT.**

6 For any Federal administrative agency proceeding  
7 that is an appeal or review under section 319 of the Coast-  
8 al Zone Management Act of 1972 (16 U.S.C. 1465), as  
9 amended by this Act, related to any Federal authorization  
10 for the permitting, approval, or other authorization of an  
11 energy project, the lead Federal permitting agency for the  
12 project shall, with the cooperation of Federal and State  
13 administrative agencies, maintain a consolidated record of  
14 all decisions made or actions taken by the lead agency or  
15 by another Federal or State administrative agency or offi-  
16 cer. Such record shall be the initial record for appeals or  
17 reviews under that Act, provided that the record may be  
18 supplemented as expressly provided pursuant to section  
19 319 of that Act.

1 **SEC. 383. ROYALTY PAYMENTS UNDER LEASES UNDER THE**  
2 **OUTER CONTINENTAL SHELF LANDS ACT.**

3 (a) ROYALTY RELIEF.—

4 (1) IN GENERAL.—For purposes of providing  
5 compensation for lessees and a State for which  
6 amounts are authorized by section 6004(c) of the Oil  
7 Pollution Act of 1990 (Public Law 101–380), a les-  
8 see may withhold from payment any royalty due and  
9 owing to the United States under any leases under  
10 the Outer Continental Shelf Lands Act (43 U.S.C.  
11 1301 et seq.) for offshore oil or gas production from  
12 a covered lease tract if, on or before the date that  
13 the payment is due and payable to the United  
14 States, the lessee makes a payment to the State of  
15 44 cents for every \$1 of royalty withheld.

16 (2) TREATMENT OF AMOUNTS.—Any royalty  
17 withheld by a lessee in accordance with this section  
18 (including any portion thereof that is paid to the  
19 State under paragraph (1)) shall be treated as paid  
20 for purposes of satisfaction of the royalty obligations  
21 of the lessee to the United States.



1           (3) CERTIFICATION OF WITHHELD AMOUNTS.—

2           The Secretary of the Treasury shall—

3                   (A) determine the amount of royalty with-  
4                   held by a lessee under this section; and

5                   (B) promptly publish a certification when  
6                   the total amount of royalty withheld by the les-  
7                   see under this section is equal to—

8                           (i) the dollar amount stated at page  
9                           47 of Senate Report number 101–534,  
10                           which is designated therein as the total  
11                           drainage claim for the West Delta field;  
12                           plus

13                           (ii) interest as described at page 47 of  
14                           that Report.

15           (b) PERIOD OF ROYALTY RELIEF.—Subsection (a)  
16           shall apply to royalty amounts that are due and payable  
17           in the period beginning on October 1, 2006, and ending  
18           on the date on which the Secretary of the Treasury pub-  
19           lishes a certification under subsection (a)(3)(B).

20           (c) DEFINITIONS.—As used in this section:

1           (1) COVERED LEASE TRACT.—The term “cov-  
2       ered lease tract” means a leased tract (or portion of  
3       a leased tract)—

4           (A) lying seaward of the zone defined and  
5       governed by section 8(g) of the Outer Conti-  
6       nental Shelf Lands Act (43 U.S.C. 1337(g)); or

7           (B) lying within such zone but to which  
8       such section does not apply.

9           (2) LESSEE.—The term “lessee”—

10          (A) means a person or entity that, on the  
11       date of the enactment of the Oil Pollution Act  
12       of 1990, was a lessee referred to in section  
13       6004(c) of that Act (as in effect on that date  
14       of the enactment), but did not hold lease rights  
15       in Federal offshore lease OCS–G–5669; and

16          (B) includes successors and affiliates of a  
17       person or entity described in subparagraph (A).

18 **SEC. 384. COASTAL IMPACT ASSISTANCE PROGRAM.**

19       Section 31 of the Outer Continental Shelf Lands Act  
20       (43 U.S.C. 1356a) is amended to read as follows:

1 **“SEC. 31. COASTAL IMPACT ASSISTANCE PROGRAM.**

2 “(a) DEFINITIONS.—In this section:

3 “(1) COASTAL POLITICAL SUBDIVISION.—The  
4 term ‘coastal political subdivision’ means a political  
5 subdivision of a coastal State any part of which po-  
6 litical subdivision is—

7 “(A) within the coastal zone (as defined in  
8 section 304 of the Coastal Zone Management  
9 Act of 1972 (16 U.S.C. 1453)) of the coastal  
10 State as of the date of enactment of the Energy  
11 Policy Act of 2005; and

12 “(B) not more than 200 nautical miles  
13 from the geographic center of any leased tract.

14 “(2) COASTAL POPULATION.—The term ‘coastal  
15 population’ means the population, as determined by  
16 the most recent official data of the Census Bureau,  
17 of each political subdivision any part of which lies  
18 within the designated coastal boundary of a State  
19 (as defined in a State’s coastal zone management  
20 program under the Coastal Zone Management Act of  
21 1972 (16 U.S.C. 1451 et seq.)).

1           “(3) COASTAL STATE.—The term ‘coastal  
2 State’ has the meaning given the term in section  
3 304 of the Coastal Zone Management Act of 1972  
4 (16 U.S.C. 1453).

5           “(4) COASTLINE.—The term ‘coastline’ has the  
6 meaning given the term ‘coast line’ in section 2 of  
7 the Submerged Lands Act (43 U.S.C. 1301).

8           “(5) DISTANCE.—The term ‘distance’ means  
9 the minimum great circle distance, measured in stat-  
10 ute miles.

11           “(6) LEASED TRACT.—The term ‘leased tract’  
12 means a tract that is subject to a lease under section  
13 6 or 8 for the purpose of drilling for, developing,  
14 and producing oil or natural gas resources.

15           “(7) LEASING MORATORIA.—The term ‘leasing  
16 moratoria’ means the prohibitions on preleasing,  
17 leasing, and related activities on any geographic area  
18 of the outer Continental Shelf as contained in sec-  
19 tions 107 through 109 of division E of the Consoli-  
20 dated Appropriations Act, 2005 (Public Law 108–  
21 447; 118 Stat. 3063).

1           “(8) POLITICAL SUBDIVISION.—The term ‘polit-  
2           ical subdivision’ means the local political jurisdiction  
3           immediately below the level of State government, in-  
4           cluding counties, parishes, and boroughs.

5           “(9) PRODUCING STATE.—

6                   “(A) IN GENERAL.—The term ‘producing  
7           State’ means a coastal State that has a coastal  
8           seaward boundary within 200 nautical miles of  
9           the geographic center of a leased tract within  
10          any area of the outer Continental Shelf.

11                   “(B) EXCLUSION.—The term ‘producing  
12          State’ does not include a producing State, a  
13          majority of the coastline of which is subject to  
14          leasing moratoria, unless production was occur-  
15          ring on January 1, 2005, from a lease within  
16          10 nautical miles of the coastline of that State.

17           “(10) QUALIFIED OUTER CONTINENTAL SHELF  
18          REVENUES.—

19                   “(A) IN GENERAL.—The term ‘qualified  
20          Outer Continental Shelf revenues’ means all

1 amounts received by the United States from  
2 each leased tract or portion of a leased tract—

3 “(i) lying—

4 “(I) seaward of the zone covered  
5 by section 8(g); or

6 “(II) within that zone, but to  
7 which section 8(g) does not apply; and

8 “(ii) the geographic center of which  
9 lies within a distance of 200 nautical miles  
10 from any part of the coastline of any  
11 coastal State.

12 “(B) INCLUSIONS.—The term ‘qualified  
13 Outer Continental Shelf revenues’ includes  
14 bonus bids, rents, royalties (including payments  
15 for royalty taken in kind and sold), net profit  
16 share payments, and related late-payment inter-  
17 est from natural gas and oil leases issued under  
18 this Act.

19 “(C) EXCLUSION.—The term ‘qualified  
20 Outer Continental Shelf revenues’ does not in-  
21 clude any revenues from a leased tract or por-

1           tion of a leased tract that is located in a geo-  
2           graphic area subject to a leasing moratorium on  
3           January 1, 2005, unless the lease was in pro-  
4           duction on January 1, 2005.

5           “(b) PAYMENTS TO PRODUCING STATES AND COAST-  
6   AL POLITICAL SUBDIVISIONS.—

7           “(1) IN GENERAL.—The Secretary shall, with-  
8           out further appropriation, disburse to producing  
9           States and coastal political subdivisions in accord-  
10          ance with this section \$250,000,000 for each of fis-  
11          cal years 2007 through 2010.

12          “(2) DISBURSEMENT.—In each fiscal year, the  
13          Secretary shall disburse to each producing State for  
14          which the Secretary has approved a plan under sub-  
15          section (c), and to coastal political subdivisions  
16          under paragraph (4), such funds as are allocated to  
17          the producing State or coastal political subdivision,  
18          respectively, under this section for the fiscal year.

19          “(3) ALLOCATION AMONG PRODUCING  
20          STATES.—

1           “(A) IN GENERAL.—Except as provided in  
2           subparagraph (C) and subject to subparagraph  
3           (D), the amounts available under paragraph (1)  
4           shall be allocated to each producing State based  
5           on the ratio that—

6                   “(i) the amount of qualified outer  
7                   Continental Shelf revenues generated off  
8                   the coastline of the producing State; bears  
9                   to

10                   “(ii) the amount of qualified outer  
11                   Continental Shelf revenues generated off  
12                   the coastline of all producing States.

13           “(B) AMOUNT OF OUTER CONTINENTAL  
14           SHELF REVENUES.—For purposes of subpara-  
15           graph (A)—

16                   “(i) the amount of qualified outer  
17                   Continental Shelf revenues for each of fis-  
18                   cal years 2007 and 2008 shall be deter-  
19                   mined using qualified outer Continental  
20                   Shelf revenues received for fiscal year  
21                   2006; and



1           “(ii) the amount of qualified outer  
2 Continental Shelf revenues for each of fis-  
3 cal years 2009 and 2010 shall be deter-  
4 mined using qualified outer Continental  
5 Shelf revenues received for fiscal year  
6 2008.

7           “(C) MULTIPLE PRODUCING STATES.—In  
8 a case in which more than 1 producing State is  
9 located within 200 nautical miles of any portion  
10 of a leased tract, the amount allocated to each  
11 producing State for the leased tract shall be in-  
12 versely proportional to the distance between—

13           “(i) the nearest point on the coastline  
14 of the producing State; and

15           “(ii) the geographic center of the  
16 leased tract.

17           “(D) MINIMUM ALLOCATION.—The  
18 amount allocated to a producing State under  
19 subparagraph (A) shall be at least 1 percent of  
20 the amounts available under paragraph (1).

1           “(4) PAYMENTS TO COASTAL POLITICAL SUB-  
2           DIVISIONS.—

3                   “(A) IN GENERAL.—The Secretary shall  
4           pay 35 percent of the allocable share of each  
5           producing State, as determined under para-  
6           graph (3) to the coastal political subdivisions in  
7           the producing State.

8                   “(B) FORMULA.—Of the amount paid by  
9           the Secretary to coastal political subdivisions  
10          under subparagraph (A)—

11                   “(i) 25 percent shall be allocated to  
12          each coastal political subdivision in the  
13          proportion that—

14                   “(I) the coastal population of the  
15          coastal political subdivision; bears to

16                   “(II) the coastal population of all  
17          coastal political subdivisions in the  
18          producing State;

19                   “(ii) 25 percent shall be allocated to  
20          each coastal political subdivision in the  
21          proportion that—

1                   “(I) the number of miles of  
2                   coastline of the coastal political sub-  
3                   division; bears to

4                   “(II) the number of miles of  
5                   coastline of all coastal political sub-  
6                   divisions in the producing State; and

7                   “(iii) 50 percent shall be allocated in  
8                   amounts that are inversely proportional to  
9                   the respective distances between the points  
10                  in each coastal political subdivision that  
11                  are closest to the geographic center of each  
12                  leased tract, as determined by the Sec-  
13                  retary.

14                  “(C) EXCEPTION FOR THE STATE OF LOU-  
15                  ISIANA.—For the purposes of subparagraph  
16                  (B)(ii), the coastline for coastal political sub-  
17                  divisions in the State of Louisiana without a  
18                  coastline shall be considered to be  $\frac{1}{3}$  the aver-  
19                  age length of the coastline of all coastal political  
20                  subdivisions with a coastline in the State of  
21                  Louisiana.

1           “(D) EXCEPTION FOR THE STATE OF  
2           ALASKA.—For the purposes of carrying out  
3           subparagraph (B)(iii) in the State of Alaska,  
4           the amounts allocated shall be divided equally  
5           among the 2 coastal political subdivisions that  
6           are closest to the geographic center of a leased  
7           tract.

8           “(E) EXCLUSION OF CERTAIN LEASED  
9           TRACTS.—For purposes of subparagraph  
10          (B)(iii), a leased tract or portion of a leased  
11          tract shall be excluded if the tract or portion of  
12          a leased tract is located in a geographic area  
13          subject to a leasing moratorium on January 1,  
14          2005, unless the lease was in production on  
15          that date.

16          “(5) NO APPROVED PLAN.—

17          “(A) IN GENERAL.—Subject to subpara-  
18          graph (B) and except as provided in subpara-  
19          graph (C), in a case in which any amount allo-  
20          cated to a producing State or coastal political  
21          subdivision under paragraph (4) or (5) is not

1           disbursed because the producing State does not  
2           have in effect a plan that has been approved by  
3           the Secretary under subsection (c), the Sec-  
4           retary shall allocate the undisbursed amount  
5           equally among all other producing States.

6           “(B) RETENTION OF ALLOCATION.—The  
7           Secretary shall hold in escrow an undisbursed  
8           amount described in subparagraph (A) until  
9           such date as the final appeal regarding the dis-  
10          approval of a plan submitted under subsection  
11          (c) is decided.

12          “(C) WAIVER.—The Secretary may waive  
13          subparagraph (A) with respect to an allocated  
14          share of a producing State and hold the allo-  
15          cable share in escrow if the Secretary deter-  
16          mines that the producing State is making a  
17          good faith effort to develop and submit, or up-  
18          date, a plan in accordance with subsection (c).

19          “(c) COASTAL IMPACT ASSISTANCE PLAN.—

20          “(1) SUBMISSION OF STATE PLANS.—

1           “(A) IN GENERAL.—Not later than July 1,  
2           2008, the Governor of a producing State shall  
3           submit to the Secretary a coastal impact assist-  
4           ance plan.

5           “(B) PUBLIC PARTICIPATION.—In carrying  
6           out subparagraph (A), the Governor shall solicit  
7           local input and provide for public participation  
8           in the development of the plan.

9           “(2) APPROVAL.—

10           “(A) IN GENERAL.—The Secretary shall  
11           approve a plan of a producing State submitted  
12           under paragraph (1) before disbursing any  
13           amount to the producing State, or to a coastal  
14           political subdivision located in the producing  
15           State, under this section.

16           “(B) COMPONENTS.—The Secretary shall  
17           approve a plan submitted under paragraph (1)  
18           if—

19                   “(i) the Secretary determines that the  
20                   plan is consistent with the uses described  
21                   in subsection (d); and

455

1 “(ii) the plan contains—

2 “(I) the name of the State agen-  
3 cy that will have the authority to rep-  
4 resent and act on behalf of the pro-  
5 ducing State in dealing with the Sec-  
6 retary for purposes of this section;

7 “(II) a program for the imple-  
8 mentation of the plan that describes  
9 how the amounts provided under this  
10 section to the producing State will be  
11 used;

12 “(III) for each coastal political  
13 subdivision that receives an amount  
14 under this section—

15 “(aa) the name of a contact  
16 person; and

17 “(bb) a description of how  
18 the coastal political subdivision  
19 will use amounts provided under  
20 this section;

1                   “(IV) a certification by the Gov-  
2                   ernor that ample opportunity has been  
3                   provided for public participation in  
4                   the development and revision of the  
5                   plan; and

6                   “(V) a description of measures  
7                   that will be taken to determine the  
8                   availability of assistance from other  
9                   relevant Federal resources and pro-  
10                  grams.

11                  “(3) AMENDMENT.—Any amendment to a plan  
12                  submitted under paragraph (1) shall be—

13                         “(A) developed in accordance with this  
14                         subsection; and

15                         “(B) submitted to the Secretary for ap-  
16                         proval or disapproval under paragraph (4).

17                  “(4) PROCEDURE.—Not later than 90 days  
18                  after the date on which a plan or amendment to a  
19                  plan is submitted under paragraph (1) or (3), the  
20                  Secretary shall approve or disapprove the plan or  
21                  amendment.



1 “(d) AUTHORIZED USES.—

2 “(1) IN GENERAL.—A producing State or coast-  
3 al political subdivision shall use all amounts received  
4 under this section, including any amount deposited  
5 in a trust fund that is administered by the State or  
6 coastal political subdivision and dedicated to uses  
7 consistent with this section, in accordance with all  
8 applicable Federal and State law, only for 1 or more  
9 of the following purposes:

10 “(A) Projects and activities for the con-  
11 servation, protection, or restoration of coastal  
12 areas, including wetland.

13 “(B) Mitigation of damage to fish, wildlife,  
14 or natural resources.

15 “(C) Planning assistance and the adminis-  
16 trative costs of complying with this section.

17 “(D) Implementation of a federally-ap-  
18 proved marine, coastal, or comprehensive con-  
19 servation management plan.

20 “(E) Mitigation of the impact of outer  
21 Continental Shelf activities through funding of

1            onshore infrastructure projects and public serv-  
2            ice needs.

3            “(2) COMPLIANCE WITH AUTHORIZED USES.—  
4            If the Secretary determines that any expenditure  
5            made by a producing State or coastal political sub-  
6            division is not consistent with this subsection, the  
7            Secretary shall not disburse any additional amount  
8            under this section to the producing State or the  
9            coastal political subdivision until such time as all  
10           amounts obligated for unauthorized uses have been  
11           repaid or reobligated for authorized uses.

12           “(3) LIMITATION.—Not more than 23 percent  
13           of amounts received by a producing State or coastal  
14           political subdivision for any 1 fiscal year shall be  
15           used for the purposes described subparagraphs (C)  
16           and (E) of paragraph (1).”.

17 **SEC. 385. STUDY OF AVAILABILITY OF SKILLED WORKERS.**

18           (a) IN GENERAL.—The Secretary shall enter into an  
19           arrangement with the National Academy of Sciences  
20           under which the National Academy of Sciences shall con-  
21           duct a study of the short-term and long-term availability

1 of skilled workers to meet the energy and mineral security  
2 requirements of the United States.

3 (b) INCLUSIONS.—The study shall include an analysis  
4 of—

5 (1) the need for and availability of workers for  
6 the oil, gas, and mineral industries;

7 (2) the availability of skilled labor at both entry  
8 level and more senior levels; and

9 (3) recommendations for future actions needed  
10 to meet future labor requirements.

11 (c) REPORT.—Not later than 2 years after the date  
12 of enactment of this Act, the Secretary shall submit to  
13 Congress a report that describes the results of the study.

14 **SEC. 386. GREAT LAKES OIL AND GAS DRILLING BAN.**

15 No Federal or State permit or lease shall be issued  
16 for new oil and gas slant, directional, or offshore drilling  
17 in or under one or more of the Great Lakes.

18 **SEC. 387. FEDERAL COALBED METHANE REGULATION.**

19 Any State currently on the list of Affected States es-  
20 tablished under section 1339(b) of the Energy Policy Act  
21 of 1992 (42 U.S.C. 13368(b)) shall be removed from the

1 list if, not later than 3 years after the date of enactment  
2 of this Act, the State takes, or prior to the date of enact-  
3 ment has taken, any of the actions required for removal  
4 from the list under such section 1339(b).

5 **SEC. 388. ALTERNATE ENERGY-RELATED USES ON THE**  
6 **OUTER CONTINENTAL SHELF.**

7 (a) AMENDMENT TO OUTER CONTINENTAL SHELF  
8 LANDS ACT.—Section 8 of the Outer Continental Shelf  
9 Lands Act (43 U.S.C. 1337) is amended by adding at the  
10 end the following:

11 “(p) LEASES, EASEMENTS, OR RIGHTS-OF-WAY FOR  
12 ENERGY AND RELATED PURPOSES.—

13 “(1) IN GENERAL.—The Secretary, in consulta-  
14 tion with the Secretary of the Department in which  
15 the Coast Guard is operating and other relevant de-  
16 partments and agencies of the Federal Government,  
17 may grant a lease, easement, or right-of-way on the  
18 outer Continental Shelf for activities not otherwise  
19 authorized in this Act, the Deepwater Port Act of  
20 1974 (33 U.S.C. 1501 et seq.), the Ocean Thermal

1 Energy Conversion Act of 1980 (42 U.S.C. 9101 et  
2 seq.), or other applicable law, if those activities—

3 “(A) support exploration, development,  
4 production, or storage of oil or natural gas, ex-  
5 cept that a lease, easement, or right-of-way  
6 shall not be granted in an area in which oil and  
7 gas preleasing, leasing, and related activities  
8 are prohibited by a moratorium;

9 “(B) support transportation of oil or nat-  
10 ural gas, excluding shipping activities;

11 “(C) produce or support production, trans-  
12 portation, or transmission of energy from  
13 sources other than oil and gas; or

14 “(D) use, for energy-related purposes or  
15 for other authorized marine-related purposes,  
16 facilities currently or previously used for activi-  
17 ties authorized under this Act, except that any  
18 oil and gas energy-related uses shall not be au-  
19 thorized in areas in which oil and gas  
20 preleasing, leasing, and related activities are  
21 prohibited by a moratorium.

1           “(2) PAYMENTS AND REVENUES.—(A) The Sec-  
2           retary shall establish royalties, fees, rentals, bo-  
3           nuses, or other payments to ensure a fair return to  
4           the United States for any lease, easement, or right-  
5           of-way granted under this subsection.

6           “(B) The Secretary shall provide for the pay-  
7           ment of 27 percent of the revenues received by the  
8           Federal Government as a result of payments under  
9           this section from projects that are located wholly or  
10          partially within the area extending three nautical  
11          miles seaward of State submerged lands. Payments  
12          shall be made based on a formula established by the  
13          Secretary by rulemaking no later than 180 days  
14          after the date of enactment of this section that pro-  
15          vides for equitable distribution, based on proximity  
16          to the project, among coastal states that have a  
17          coastline that is located within 15 miles of the geo-  
18          graphic center of the project.

19          “(3) COMPETITIVE OR NONCOMPETITIVE  
20          BASIS.—Except with respect to projects that meet  
21          the criteria established under section 388(d) of the

1 Energy Policy Act of 2005, the Secretary shall issue  
2 a lease, easement, or right-of-way under paragraph  
3 (1) on a competitive basis unless the Secretary de-  
4 termines after public notice of a proposed lease,  
5 easement, or right-of-way that there is no competi-  
6 tive interest.

7 “(4) REQUIREMENTS.—The Secretary shall en-  
8 sure that any activity under this subsection is car-  
9 ried out in a manner that provides for—

10 “(A) safety;

11 “(B) protection of the environment;

12 “(C) prevention of waste;

13 “(D) conservation of the natural resources  
14 of the outer Continental Shelf;

15 “(E) coordination with relevant Federal  
16 agencies;

17 “(F) protection of national security inter-  
18 ests of the United States;

19 “(G) protection of correlative rights in the  
20 outer Continental Shelf;

1           “(H) a fair return to the United States for  
2           any lease, easement, or right-of-way under this  
3           subsection;

4           “(I) prevention of interference with reason-  
5           able uses (as determined by the Secretary) of  
6           the exclusive economic zone, the high seas, and  
7           the territorial seas;

8           “(J) consideration of—

9           “(i) the location of, and any schedule  
10          relating to, a lease, easement, or right-of-  
11          way for an area of the outer Continental  
12          Shelf; and

13          “(ii) any other use of the sea or sea-  
14          bed, including use for a fishery, a sealane,  
15          a potential site of a deepwater port, or  
16          navigation;

17          “(K) public notice and comment on any  
18          proposal submitted for a lease, easement, or  
19          right-of-way under this subsection; and



1           “(L) oversight, inspection, research, moni-  
2           toring, and enforcement relating to a lease,  
3           easement, or right-of-way under this subsection.

4           “(5) LEASE DURATION, SUSPENSION, AND CAN-  
5           CELLATION.—The Secretary shall provide for the  
6           duration, issuance, transfer, renewal, suspension,  
7           and cancellation of a lease, easement, or right-of-way  
8           under this subsection.

9           “(6) SECURITY.—The Secretary shall require  
10          the holder of a lease, easement, or right-of-way  
11          granted under this subsection to—

12               “(A) furnish a surety bond or other form  
13               of security, as prescribed by the Secretary;

14               “(B) comply with such other requirements  
15               as the Secretary considers necessary to protect  
16               the interests of the public and the United  
17               States; and

18               “(C) provide for the restoration of the  
19               lease, easement, or right-of-way.

20           “(7) COORDINATION AND CONSULTATION WITH  
21          AFFECTED STATE AND LOCAL GOVERNMENTS.—The

1 Secretary shall provide for coordination and con-  
2 sultation with the Governor of any State or the execu-  
3 tive of any local government that may be affected  
4 by a lease, easement, or right-of-way under this sub-  
5 section.

6 “(8) REGULATIONS.—Not later than 270 days  
7 after the date of enactment of the Energy Policy Act  
8 of 2005, the Secretary, in consultation with the Sec-  
9 retary of Defense, the Secretary of the Department  
10 in which the Coast Guard is operating, the Secretary  
11 of Commerce, heads of other relevant departments  
12 and agencies of the Federal Government, and the  
13 Governor of any affected State, shall issue any nec-  
14 essary regulations to carry out this subsection.

15 “(9) EFFECT OF SUBSECTION.—Nothing in this  
16 subsection displaces, supersedes, limits, or modifies  
17 the jurisdiction, responsibility, or authority of any  
18 Federal or State agency under any other Federal  
19 law.

20 “(10) APPLICABILITY.—This subsection does  
21 not apply to any area on the outer Continental Shelf

1 within the exterior boundaries of any unit of the Na-  
2 tional Park System, National Wildlife Refuge Sys-  
3 tem, or National Marine Sanctuary System, or any  
4 National Monument.”.

5 (b) COORDINATED OCS MAPPING INITIATIVE.—

6 (1) IN GENERAL.—The Secretary of the Inte-  
7 rior, in cooperation with the Secretary of Commerce,  
8 the Commandant of the Coast Guard, and the Sec-  
9 retary of Defense, shall establish an interagency  
10 comprehensive digital mapping initiative for the  
11 outer Continental Shelf to assist in decisionmaking  
12 relating to the siting of activities under subsection  
13 (p) of section 8 of the Outer Continental Shelf  
14 Lands Act (43 U.S.C. 1337) (as added by sub-  
15 section (a)).

16 (2) USE OF DATA.—The mapping initiative  
17 shall use, and develop procedures for accessing, data  
18 collected before the date on which the mapping ini-  
19 tiative is established, to the maximum extent prac-  
20 ticable.

1           (3) INCLUSIONS.—Mapping carried out under  
2           the mapping initiative shall include an indication of  
3           the locations on the outer Continental Shelf of—

4                   (A) Federally-permitted activities;

5                   (B) obstructions to navigation;

6                   (C) submerged cultural resources;

7                   (D) undersea cables;

8                   (E) offshore aquaculture projects; and

9                   (F) any area designated for the purpose of  
10           safety, national security, environmental protec-  
11           tion, or conservation and management of living  
12           marine resources.

13           (c) CONFORMING AMENDMENT.—Section 8 of the  
14           Outer Continental Shelf Lands Act (43 U.S.C. 1337) is  
15           amended by striking the section heading and inserting the  
16           following: “LEASES, EASEMENTS, AND RIGHTS-OF-WAY  
17           ON THE OUTER CONTINENTAL SHELF.—”.

18           (d) SAVINGS PROVISION.—Nothing in the amend-  
19           ment made by subsection (a) requires the resubmittal of  
20           any document that was previously submitted or the reau-  
21           thorization of any action that was previously authorized

1 with respect to a project for which, before the date of en-  
2 actment of this Act—

3 (1) an offshore test facility has been con-  
4 structed; or

5 (2) a request for a proposal has been issued by  
6 a public authority.

7 (e) STATE CLAIMS TO JURISDICTION OVER SUB-  
8 MERGED LANDS.—Nothing in this section shall be con-  
9 strued to alter, limit, or modify any claim of any State  
10 to any jurisdiction over, or any right, title, or interest in,  
11 any submerged lands.

12 **SEC. 389. OIL SPILL RECOVERY INSTITUTE.**

13 Title V of the Oil Pollution Act of 1990 (33 U.S.C.  
14 2731 et seq.) is amended—

15 (1) in section 5001(i), by striking “September  
16 30, 2012” and inserting “1 year after the date on  
17 which the Secretary, in consultation with the Sec-  
18 retary of the Interior, determines that oil and gas  
19 exploration, development, and production in the  
20 State of Alaska have ceased”; and

1           (2) in section 5006(c), by striking “October 1,  
2           2012” and inserting “1 year after the date on which  
3           the Secretary, in consultation with the Secretary of  
4           the Interior, determines that oil and gas exploration,  
5           development, and production in the State of Alaska  
6           have ceased,”.

7   **SEC. 390. NEPA REVIEW.**

8           (a) NEPA REVIEW.—Action by the Secretary of the  
9           Interior in managing the public lands, or the Secretary  
10          of Agriculture in managing National Forest System  
11          Lands, with respect to any of the activities described in  
12          subsection (b) shall be subject to a rebuttable presumption  
13          that the use of a categorical exclusion under the National  
14          Environmental Policy Act of 1969 (NEPA) would apply  
15          if the activity is conducted pursuant to the Mineral Leas-  
16          ing Act for the purpose of exploration or development of  
17          oil or gas.

18          (b) ACTIVITIES DESCRIBED.—The activities referred  
19          to in subsection (a) are the following:

20                 (1) Individual surface disturbances of less than  
21                 five (5) acres so long as the total surface disturb-

1           ance on the lease is not greater than 150 acres and  
2           site-specific analysis in a document prepared pursu-  
3           ant to NEPA has been previously completed.

4           (2) Drilling an oil or gas well at a location or  
5           well pad site at which drilling has occurred pre-  
6           viously within five (5) years prior to the date of  
7           spudding the well.

8           (3) Drilling an oil or gas well within a devel-  
9           oped field for which an approved land use plan or  
10          any environmental document prepared pursuant to  
11          NEPA analyzed such drilling as a reasonably fore-  
12          seeable activity, so long as such plan or document  
13          was approved within five (5) years prior to the date  
14          of spudding the well.

15          (4) Placement of a pipeline in an approved  
16          right-of-way corridor, so long as the corridor was ap-  
17          proved within five (5) years prior to the date of  
18          placement of the pipeline.

19          (5) Maintenance of a minor activity, other than  
20          any construction or major renovation or a building  
21          or facility.

## 1 **Subtitle H—Refinery Revitalization**

### 2 **SEC. 391. FINDINGS AND DEFINITIONS.**

3 (a) FINDINGS.—Congress finds that—

4 (1) it serves the national interest to increase pe-  
5 troleum refining capacity for gasoline, heating oil,  
6 diesel fuel, jet fuel, kerosene, and petrochemical  
7 feedstocks wherever located within the United  
8 States, to bring more supply to the markets for the  
9 use of the American people;

10 (2) United States demand for refined petroleum  
11 products currently exceeds the country's petroleum  
12 refining capacity to produce such products;

13 (3) this excess demand has been met with in-  
14 creased imports;

15 (4) due to lack of capacity, refined petroleum  
16 product imports are expected to grow from 7.9 per-  
17 cent to 10.7 percent of total refined product by  
18 2025;

19 (5) refiners are still subject to significant envi-  
20 ronmental and other regulations and face several



1 new requirements under the Clean Air Act (42  
2 U.S.C. 7401 et seq.) over the next decade; and

3 (6) better coordination of Federal and State  
4 regulatory reviews may help facilitate siting and con-  
5 struction of new refineries to meet the demand in  
6 the United States for refined products.

7 (b) DEFINITIONS.—In this subtitle:

8 (1) ADMINISTRATOR.—The term “Adminis-  
9 trator” means the Administrator of the Environ-  
10 mental Protection Agency.

11 (2) STATE.—The term “State” means—

12 (A) a State;

13 (B) the Commonwealth of Puerto Rico;

14 and

15 (C) any other territory or possession of the  
16 United States.

17 **SEC. 392. FEDERAL-STATE REGULATORY COORDINATION**  
18 **AND ASSISTANCE.**

19 (a) IN GENERAL.—At the request of the Governor  
20 of a State, the Administrator may enter into a refinery  
21 permitting cooperative agreement with the State, under

1 which each party to the agreement identifies steps, includ-  
2 ing timelines, that it will take to streamline the consider-  
3 ation of Federal and State environmental permits for a  
4 new refinery.

5 (b) **AUTHORITY UNDER AGREEMENT.**—The Admin-  
6 istrator shall be authorized to—

7 (1) accept from a refiner a consolidated applica-  
8 tion for all permits required from the Environmental  
9 Protection Agency, to the extent consistent with  
10 other applicable law;

11 (2) enter into memoranda of agreement with  
12 other Federal agencies to coordinate consideration of  
13 refinery applications and permits among Federal  
14 agencies; and

15 (3) enter into memoranda of agreement with a  
16 State, under which Federal and State review of re-  
17 finery permit applications will be coordinated and  
18 concurrently considered, to the extent practicable.

19 (c) **STATE ASSISTANCE.**—The Administrator is au-  
20 thorized to provide financial assistance to State govern-  
21 ments to facilitate the hiring of additional personnel with

1 expertise in fields relevant to consideration of refinery per-  
2 mits.

3 (d) OTHER ASSISTANCE.—The Administrator is au-  
4 thorized to provide technical, legal, or other assistance to  
5 State governments to facilitate their review of applications  
6 to build new refineries.

7 **TITLE IV—COAL**  
8 **Subtitle A—Clean Coal Power**  
9 **Initiative**

10 **SEC. 401. AUTHORIZATION OF APPROPRIATIONS.**

11 (a) CLEAN COAL POWER INITIATIVE.—There are au-  
12 thorized to be appropriated to the Secretary to carry out  
13 the activities authorized by this subtitle \$200,000,000 for  
14 each of fiscal years 2006 through 2014, to remain avail-  
15 able until expended.

16 (b) REPORT.—The Secretary shall submit to Con-  
17 gress the report required by this subsection not later than  
18 March 31, 2007. The report shall include, with respect  
19 to subsection (a), a plan containing—

1           (1) a detailed assessment of whether the aggregate  
2           funding levels provided under subsection (a) are  
3           the appropriate funding levels for that program;

4           (2) a detailed description of how proposals will  
5           be solicited and evaluated, including a list of all activities  
6           expected to be undertaken;

7           (3) a detailed list of technical milestones for  
8           each coal and related technology that will be pursued;  
9           and

10          (4) a detailed description of how the program  
11          will avoid problems enumerated in Government Accountability  
12          Office reports on the Clean Coal Technology Program, including  
13          problems that have resulted in unspent funds and projects that  
14          failed either financially or scientifically.  
15

16 **SEC. 402. PROJECT CRITERIA.**

17          (a) IN GENERAL.—To be eligible to receive assistance  
18          under this subtitle, a project shall advance efficiency, environmental  
19          performance, and cost competitiveness well beyond the level of  
20          technologies that are in commercial service or have been demonstrated  
21          on a scale that the Sec-

1   retary determines is sufficient to demonstrate that com-  
2   mercial service is viable as of the date of enactment of  
3   this Act.

4       (b) TECHNICAL CRITERIA FOR CLEAN COAL POWER  
5   INITIATIVE.—

6       (1) GASIFICATION PROJECTS.—

7           (A) IN GENERAL.—In allocating the funds  
8           made available under section 401(a), the Sec-  
9           retary shall ensure that at least 70 percent of  
10          the funds are used only to fund projects on  
11          coal-based gasification technologies, including—

12                   (i) gasification combined cycle;

13                   (ii) gasification fuel cells and turbine  
14                   combined cycle;

15                   (iii) gasification coproduction;

16                   (iv) hybrid gasification and combus-  
17                   tion; and

18                   (v) other advanced coal based tech-  
19                   nologies capable of producing a con-  
20                   centrated stream of carbon dioxide.

21       (B) TECHNICAL MILESTONES.—

1 (i) PERIODIC DETERMINATION.—

2 (I) IN GENERAL.—The Secretary  
3 shall periodically set technical mile-  
4 stones specifying the emission and  
5 thermal efficiency levels that coal gas-  
6 ification projects under this subtitle  
7 shall be designed, and reasonably ex-  
8 pected, to achieve.

9 (II) PRESCRIPTIVE MILE-  
10 STONES.—The technical milestones  
11 shall become more prescriptive during  
12 the period of the clean coal power ini-  
13 tiative.

14 (ii) 2020 GOALS.—The Secretary shall  
15 establish the periodic milestones so as to  
16 achieve by the year 2020 coal gasification  
17 projects able—

18 (I) to remove at least 99 percent  
19 of sulfur dioxide;

20 (II) to emit not more than .05  
21 lbs of NO<sub>x</sub> per million Btu;

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1 (III) to achieve at least 95 per-  
2 cent reductions in mercury emissions;  
3 and

4 (IV) to achieve a thermal effi-  
5 ciency of at least—

6 (aa) 50 percent for coal of  
7 more than 9,000 Btu;

8 (bb) 48 percent for coal of  
9 7,000 to 9,000 Btu; and

10 (cc) 46 percent for coal of  
11 less than 7,000 Btu.

12 (2) OTHER PROJECTS.—

13 (A) ALLOCATION OF FUNDS.—The Sec-  
14 retary shall ensure that up to 30 percent of the  
15 funds made available under section 401(a) are  
16 used to fund projects other than those described  
17 in paragraph (1).

18 (B) TECHNICAL MILESTONES.—

19 (i) PERIODIC DETERMINATION.—

20 (I) IN GENERAL.—The Secretary  
21 shall periodically establish technical

480

1 milestones specifying the emission and  
2 thermal efficiency levels that projects  
3 funded under this paragraph shall be  
4 designed, and reasonably expected, to  
5 achieve.

6 (II) PRESCRIPTIVE MILE-  
7 STONES.—The technical milestones  
8 shall become more prescriptive during  
9 the period of the clean coal power ini-  
10 tiative.

11 (ii) 2020 GOALS.—The Secretary shall  
12 set the periodic milestones so as to achieve  
13 by the year 2020 projects able—

14 (I) to remove at least 97 percent  
15 of sulfur dioxide;

16 (II) to emit no more than .08 lbs  
17 of NO<sub>x</sub> per million Btu;

18 (III) to achieve at least 90 per-  
19 cent reductions in mercury emissions;  
20 and



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1 (IV) to achieve a thermal effi-  
2 ciency of at least—

3 (aa) 43 percent for coal of  
4 more than 9,000 Btu;

5 (bb) 41 percent for coal of  
6 7,000 to 9,000 Btu; and

7 (cc) 39 percent for coal of  
8 less than 7,000 Btu.

9 (3) CONSULTATION.—Before setting the tech-  
10 nical milestones under paragraphs (1)(B) and  
11 (2)(B), the Secretary shall consult with—

12 (A) the Administrator of the Environ-  
13 mental Protection Agency; and

14 (B) interested entities, including—

15 (i) coal producers;

16 (ii) industries using coal;

17 (iii) organizations that promote coal  
18 or advanced coal technologies;

19 (iv) environmental organizations;

20 (v) organizations representing work-  
21 ers; and

1 (vi) organizations representing con-  
2 sumers.

3 (4) EXISTING UNITS.—In the case of projects  
4 at units in existence on the date of enactment of this  
5 Act, in lieu of the thermal efficiency requirements  
6 described in paragraphs (1)(B)(ii)(IV) and  
7 (2)(B)(ii)(IV), the milestones shall be designed to  
8 achieve an overall thermal design efficiency improve-  
9 ment, compared to the efficiency of the unit as oper-  
10 ated, of not less than—

11 (A) 7 percent for coal of more than 9,000  
12 Btu;

13 (B) 6 percent for coal of 7,000 to 9,000  
14 Btu; or

15 (C) 4 percent for coal of less than 7,000  
16 Btu.

17 (5) ADMINISTRATION.—

18 (A) ELEVATION OF SITE.—In evaluating  
19 project proposals to achieve thermal efficiency  
20 levels established under paragraphs (1)(B)(i)  
21 and (2)(B)(i) and in determining progress to-

1           wards thermal efficiency milestones under para-  
2           graphs (1)(B)(ii)(IV), (2)(B)(ii)(IV), and (4),  
3           the Secretary shall take into account and make  
4           adjustments for the elevation of the site at  
5           which a project is proposed to be constructed.

6           (B) APPLICABILITY OF MILESTONES.—In  
7           applying the thermal efficiency milestones  
8           under paragraphs (1)(B)(ii)(IV), (2)(B)(ii)(IV),  
9           and (4) to projects that separate and capture at  
10          least 50 percent of the potential emissions of  
11          carbon dioxide by a facility, the energy used for  
12          separation and capture of carbon dioxide shall  
13          not be counted in calculating the thermal effi-  
14          ciency.

15          (C) PERMITTED USES.—In carrying out  
16          this section, the Secretary may give priority to  
17          projects that include, as part of the project—

18               (i) the separation or capture of carbon  
19               dioxide; or

20               (ii) the reduction of the demand for  
21               natural gas if deployed.

1           (c) FINANCIAL CRITERIA.—The Secretary shall not  
2 provide financial assistance under this subtitle for a  
3 project unless the recipient documents to the satisfaction  
4 of the Secretary that—

5                   (1) the recipient is financially responsible;

6                   (2) the recipient will provide sufficient informa-  
7 tion to the Secretary to enable the Secretary to en-  
8 sure that the funds are spent efficiently and effec-  
9 tively; and

10                  (3) a market exists for the technology being  
11 demonstrated or applied, as evidenced by statements  
12 of interest in writing from potential purchasers of  
13 the technology.

14           (d) FINANCIAL ASSISTANCE.—The Secretary shall  
15 provide financial assistance to projects that, as determined  
16 by the Secretary—

17                   (1) meet the requirements of subsections (a),

18                   (b), and (c); and

19                   (2) are likely—

1           (A) to achieve overall cost reductions in  
2           the use of coal to generate useful forms of en-  
3           ergy or chemical feedstocks;

4           (B) to improve the competitiveness of coal  
5           among various forms of energy in order to  
6           maintain a diversity of fuel choices in the  
7           United States to meet electricity generation re-  
8           quirements; and

9           (C) to demonstrate methods and equip-  
10          ment that are applicable to 25 percent of the  
11          electricity generating facilities, using various  
12          types of coal, that use coal as the primary feed-  
13          stock as of the date of enactment of this Act.

14          (e) COST-SHARING.—In carrying out this subtitle,  
15          the Secretary shall require cost sharing in accordance with  
16          section 988.

17          (f) SCHEDULED COMPLETION OF SELECTED  
18          PROJECTS.—

19               (1) IN GENERAL.—In selecting a project for fi-  
20               nancial assistance under this section, the Secretary  
21               shall establish a reasonable period of time during

1       which the owner or operator of the project shall  
2       complete the construction or demonstration phase of  
3       the project, as the Secretary determines to be appro-  
4       priate.

5               (2) CONDITION OF FINANCIAL ASSISTANCE.—  
6       The Secretary shall require as a condition of receipt  
7       of any financial assistance under this subtitle that  
8       the recipient of the assistance enter into an agree-  
9       ment with the Secretary not to request an extension  
10      of the time period established for the project by the  
11      Secretary under paragraph (1).

12              (3) EXTENSION OF TIME PERIOD.—

13                   (A) IN GENERAL.—Subject to subpara-  
14                   graph (B), the Secretary may extend the time  
15                   period established under paragraph (1) if the  
16                   Secretary determines, in the sole discretion of  
17                   the Secretary, that the owner or operator of the  
18                   project cannot complete the construction or  
19                   demonstration phase of the project within the  
20                   time period due to circumstances beyond the  
21                   control of the owner or operator.

1                   (B) LIMITATION.—The Secretary shall not  
2                   extend a time period under subparagraph (A)  
3                   by more than 4 years.

4           (g) FEE TITLE.—The Secretary may vest fee title or  
5 other property interests acquired under cost-share clean  
6 coal power initiative agreements under this subtitle in any  
7 entity, including the United States.

8           (h) DATA PROTECTION.—For a period not exceeding  
9 5 years after completion of the operations phase of a coop-  
10 erative agreement, the Secretary may provide appropriate  
11 protections (including exemptions from subchapter II of  
12 chapter 5 of title 5, United States Code) against the dis-  
13 semination of information that—

14                   (1) results from demonstration activities carried  
15                   out under the clean coal power initiative program;  
16                   and

17                   (2) would be a trade secret or commercial or fi-  
18                   nancial information that is privileged or confidential  
19                   if the information had been obtained from and first  
20                   produced by a non-Federal party participating in a  
21                   clean coal power initiative project.

1 (i) APPLICABILITY.—No technology, or level of emis-  
2 sion reduction, solely by reason of the use of the tech-  
3 nology, or the achievement of the emission reduction, by  
4 1 or more facilities receiving assistance under this Act,  
5 shall be considered to be—

6 (1) adequately demonstrated for purposes of  
7 section 111 of the Clean Air Act (42 U.S.C. 7411);

8 (2) achievable for purposes of section 169 of  
9 that Act (42 U.S.C. 7479); or

10 (3) achievable in practice for purposes of sec-  
11 tion 171 of that Act (42 U.S.C. 7501).

12 **SEC. 403. REPORT.**

13 Not later than 1 year after the date of enactment  
14 of this Act, and once every 2 years thereafter through  
15 2014, the Secretary, in consultation with other appro-  
16 priate Federal agencies, shall submit to Congress a report  
17 describing—

18 (1) the technical milestones set forth in section  
19 402 and how those milestones ensure progress to-  
20 ward meeting the requirements of subsections  
21 (b)(1)(B) and (b)(2) of section 402; and



1           (2) the status of projects funded under this  
2 subtitle.

3 **SEC. 404. CLEAN COAL CENTERS OF EXCELLENCE.**

4       (a) IN GENERAL.—As part of the clean coal power  
5 initiative, the Secretary shall award competitive, merit-  
6 based grants to institutions of higher education for the  
7 establishment of centers of excellence for energy systems  
8 of the future.

9       (b) BASIS FOR GRANTS.—The Secretary shall award  
10 grants under this section to institutions of higher edu-  
11 cation that show the greatest potential for advancing new  
12 clean coal technologies.

13 **Subtitle B—Clean Power Projects**

14 **SEC. 411. INTEGRATED COAL/RENEWABLE ENERGY SYS-**  
15 **TEM.**

16       (a) IN GENERAL.—Subject to the availability of ap-  
17 propriations, the Secretary may provide loan guarantees  
18 for a project to produce energy from coal of less than  
19 7,000 Btu/lb using appropriate advanced integrated gasifi-  
20 cation combined cycle technology, including repowering of  
21 existing facilities, that—

1           (1) is combined with wind and other renewable  
2 sources;

3           (2) minimizes and offers the potential to se-  
4 quester carbon dioxide emissions; and

5           (3) provides a ready source of hydrogen for  
6 near-site fuel cell demonstrations.

7 (b) REQUIREMENTS.—The facility—

8           (1) may be built in stages;

9           (2) shall have a combined output of at least  
10 200 megawatts at successively more competitive  
11 rates; and

12           (3) shall be located in the Upper Great Plains.

13 (c) TECHNICAL CRITERIA.—Technical criteria de-  
14 scribed in section 402(b) shall apply to the facility.

15 (d) INVESTMENT TAX CREDITS.—

16           (1) IN GENERAL.—The loan guarantees pro-  
17 vided under this section do not preclude the facility  
18 from receiving an allocation for investment tax cred-  
19 its under section 48A of the Internal Revenue Code  
20 of 1986.

1           (2) OTHER FUNDING.—Use of the investment  
2       tax credit described in paragraph (1) does not pro-  
3       hibit the use of other clean coal program funding.

4 **SEC. 412. LOAN TO PLACE ALASKA CLEAN COAL TECH-**  
5 **NOLOGY FACILITY IN SERVICE.**

6       (a) DEFINITIONS.—In this section:

7           (1) BORROWER.—The term “borrower” means  
8       the owner of the clean coal technology plant.

9           (2) CLEAN COAL TECHNOLOGY PLANT.—The  
10      term “clean coal technology plant” means the plant  
11      located near Healy, Alaska, constructed under De-  
12      partment cooperative agreement number DE-FC-  
13      22-91PC90544.

14          (3) COST OF A DIRECT LOAN.—The term “cost  
15      of a direct loan” has the meaning given the term in  
16      section 502(5)(B) of the Federal Credit Reform Act  
17      of 1990 (2 U.S.C. 661a(5)(B)).

18       (b) AUTHORIZATION.—Subject to subsection (c), the  
19      Secretary shall use amounts made available under sub-  
20      section (e) to provide the cost of a direct loan to the bor-  
21      rower for purposes of placing the clean coal technology

1 plant into reliable operation for the generation of elec-  
2 tricity.

3 (c) REQUIREMENTS.—

4 (1) MAXIMUM LOAN AMOUNT.—The amount of  
5 the direct loan provided under subsection (b) shall  
6 not exceed \$80,000,000.

7 (2) DETERMINATIONS BY SECRETARY.—Before  
8 providing the direct loan to the borrower under sub-  
9 section (b), the Secretary shall determine that—

10 (A) the plan of the borrower for placing  
11 the clean coal technology plant in reliable oper-  
12 ation has a reasonable prospect of success;

13 (B) the amount of the loan (when com-  
14 bined with amounts available to the borrower  
15 from other sources) will be sufficient to carry  
16 out the project; and

17 (C) there is a reasonable prospect that the  
18 borrower will repay the principal and interest  
19 on the loan.

20 (3) INTEREST; TERM.—The direct loan pro-  
21 vided under subsection (b) shall bear interest at a

1 rate and for a term that the Secretary determines  
2 appropriate, after consultation with the Secretary of  
3 the Treasury, taking into account the needs and ca-  
4 pacities of the borrower and the prevailing rate of  
5 interest for similar loans made by public and private  
6 lenders.

7 (4) ADDITIONAL TERMS AND CONDITIONS.—  
8 The Secretary may require any other terms and con-  
9 ditions that the Secretary determines to be appro-  
10 priate.

11 (d) USE OF PAYMENTS.—The Secretary shall retain  
12 any payments of principal and interest on the direct loan  
13 provided under subsection (b) to support energy research  
14 and development activities, to remain available until ex-  
15 pended, subject to any other conditions in an applicable  
16 appropriations Act.

17 (e) AUTHORIZATION OF APPROPRIATIONS.—There  
18 are authorized to be appropriated such sums as are nec-  
19 essary to provide the cost of a direct loan under subsection  
20 (b).

1 **SEC. 413. WESTERN INTEGRATED COAL GASIFICATION**  
2 **DEMONSTRATION PROJECT.**

3 (a) IN GENERAL.—Subject to the availability of ap-  
4 propriations, the Secretary shall carry out a project to  
5 demonstrate production of energy from coal mined in the  
6 western United States using integrated gasification com-  
7 bined cycle technology (referred to in this section as the  
8 “demonstration project”).

9 (b) COMPONENTS.—The demonstration project—

10 (1) may include repowering of existing facilities;

11 (2) shall be designed to demonstrate the ability  
12 to use coal with an energy content of not more than  
13 9,000 Btu/lb.; and

14 (3) shall be capable of removing and seques-  
15 tering carbon dioxide emissions.

16 (c) ALL TYPES OF WESTERN COALS.—Notwith-  
17 standing the foregoing, and to the extent economically fea-  
18 sible, the demonstration project shall also be designed to  
19 demonstrate the ability to use a variety of types of coal  
20 (including subbituminous and bituminous coal with an en-

1 ergy content of up to 13,000 Btu/lb.) mined in the western  
2 United States.

3 (d) LOCATION.—The demonstration project shall be  
4 located in a western State at an altitude of greater than  
5 4,000 feet above sea level.

6 (e) COST SHARING.—The Federal share of the cost  
7 of the demonstration project shall be determined in ac-  
8 cordance with section 988.

9 (f) LOAN GUARANTEES.—Notwithstanding title XIV,  
10 the demonstration project shall not be eligible for Federal  
11 loan guarantees.

12 **SEC. 414. COAL GASIFICATION.**

13 The Secretary is authorized to provide loan guaran-  
14 tees for a project to produce energy from a plant using  
15 integrated gasification combined cycle technology of at  
16 least 400 megawatts in capacity that produces power at  
17 competitive rates in deregulated energy generation mar-  
18 kets and that does not receive any subsidy (direct or indi-  
19 rect) from ratepayers.

1 **SEC. 415. PETROLEUM COKE GASIFICATION.**

2 The Secretary is authorized to provide loan guaran-  
3 tees for at least 5 petroleum coke gasification projects.

4 **SEC. 416. ELECTRON SCRUBBING DEMONSTRATION.**

5 The Secretary shall use \$5,000,000 from amounts  
6 appropriated to initiate, through the Chicago Operations  
7 Office, a project to demonstrate the viability of high-en-  
8 ergy electron scrubbing technology on commercial-scale  
9 electrical generation using high-sulfur coal.

10 **SEC. 417. DEPARTMENT OF ENERGY TRANSPORTATION**  
11 **FUELS FROM ILLINOIS BASIN COAL.**

12 (a) IN GENERAL.—The Secretary shall carry out a  
13 program to evaluate the commercial and technical viability  
14 of advanced technologies for the production of Fischer-  
15 Tropsch transportation fuels, and other transportation  
16 fuels, manufactured from Illinois basin coal, including the  
17 capital modification of existing facilities and the construc-  
18 tion of testing facilities under subsection (b).

19 (b) FACILITIES.—For the purpose of evaluating the  
20 commercial and technical viability of different processes  
21 for producing Fischer-Tropsch transportation fuels, and



1 other transportation fuels, from Illinois basin coal, the  
2 Secretary shall support the use and capital modification  
3 of existing facilities and the construction of new facilities  
4 at—

5 (1) Southern Illinois University Coal Research  
6 Center;

7 (2) University of Kentucky Center for Applied  
8 Energy Research; and

9 (3) Energy Center at Purdue University.

10 (c) GASIFICATION PRODUCTS TEST CENTER.—In  
11 conjunction with the activities described in subsections (a)  
12 and (b), the Secretary shall construct a test center to  
13 evaluate and confirm liquid and gas products from syngas  
14 catalysis in order that the system has an output of at least  
15 500 gallons of Fischer-Tropsch transportation fuel per  
16 day in a 24-hour operation.

17 (d) MILESTONES.—

18 (1) SELECTION OF PROCESSES.—Not later than  
19 180 days after the date of enactment of this Act, the  
20 Secretary shall select processes for evaluating the  
21 commercial and technical viability of different proc-

1       esses of producing Fischer-Tropsch transportation  
2       fuels, and other transportation fuels, from Illinois  
3       basin coal.

4           (2) AGREEMENTS.—Not later than 1 year after  
5       the date of enactment of this Act, the Secretary  
6       shall offer to enter into agreements—

7           (A) to carry out the activities described in  
8       this section, at the facilities described in sub-  
9       section (b); and

10          (B) for the capital modifications or con-  
11       struction of the facilities at the locations de-  
12       scribed in subsection (b).

13          (3) EVALUATIONS.—Not later than 3 years  
14       after the date of enactment of the Act, the Secretary  
15       shall begin, at the facilities described in subsection  
16       (b), evaluation of the technical and commercial via-  
17       bility of different processes of producing Fischer-  
18       Tropsch transportation fuels, and other transpor-  
19       tation fuels, from Illinois basin coal.

20          (4) CONSTRUCTION OF FACILITIES.—

1           (A) IN GENERAL.—The Secretary shall  
2           construct the facilities described in subsection  
3           (b) at the lowest cost practicable.

4           (B) GRANTS OR AGREEMENTS.—The Sec-  
5           retary may make grants or enter into agree-  
6           ments or contracts with the institutions of high-  
7           er education described in subsection (b).

8           (e) COST SHARING.—The cost of making grants  
9           under this section shall be shared in accordance with sec-  
10          tion 988.

11          (f) AUTHORIZATION OF APPROPRIATIONS.—There is  
12          authorized to be appropriated to carry out this section  
13          \$85,000,000 for the period of fiscal years 2006 through  
14          2010.

## 15           **Subtitle C—Coal and Related** 16           **Programs**

### 17          **SEC. 421. AMENDMENT OF THE ENERGY POLICY ACT OF** 18           **1992.**

19          (a) AMENDMENT.—The Energy Policy Act of 1992  
20          (42 U.S.C. 13201 et seq.) is amended by adding at the  
21          end the following:

1     **“TITLE XXXI—CLEAN AIR COAL**  
2                             **PROGRAM**

3     **“SEC. 3101. PURPOSES.**

4             “The purposes of this title are to—

5                     “(1) promote national energy policy and energy  
6             security, diversity, and economic competitiveness  
7             benefits that result from the increased use of coal;

8                     “(2) mitigate financial risks, reduce the cost of  
9             clean coal generation, and increase the marketplace  
10            acceptance of clean coal generation and pollution  
11            control equipment and processes; and

12                    “(3) facilitate the environmental performance of  
13            clean coal generation.

14     **“SEC. 3102. AUTHORIZATION OF PROGRAM.**

15             “(a) IN GENERAL.—The Secretary shall carry out a  
16     program of financial assistance to—

17                    “(1) facilitate the production and generation of  
18            coal-based power, through the deployment of clean  
19            coal electric generating equipment and processes  
20            that, compared to equipment or processes that are  
21            in operation on a full scale—

501

1           “(A) improve—  
2                 “(i) energy efficiency; or  
3                 “(ii) environmental performance con-  
4                 sistent with relevant Federal and State  
5                 clean air requirements, including those  
6                 promulgated under the Clean Air Act (42  
7                 U.S.C. 7401 et seq.); and  
8                 “(B) are not yet cost competitive; and  
9           “(2) facilitate the utilization of existing coal-  
10           based electricity generation plants through projects  
11           that—  
12                 “(A) deploy advanced air pollution control  
13                 equipment and processes; and  
14                 “(B) are designed to voluntarily enhance  
15                 environmental performance above current appli-  
16                 cable obligations under the Clean Air Act and  
17                 State implementation efforts pursuant to such  
18                 Act.  
19           “(b) FINANCIAL CRITERIA.—As determined by the  
20           Secretary for a particular project, financial assistance  
21           under this title shall be in the form of—

1           “(1) cost-sharing of an appropriate percentage  
2           of the total project cost, not to exceed 50 percent as  
3           calculated under section 988 of the Energy Policy  
4           Act of 2005; or

5           “(2) financial assistance, including grants, co-  
6           operative agreements, or loans as authorized under  
7           this Act or other statutory authority of the Sec-  
8           retary.

9   **“SEC. 3103. GENERATION PROJECTS.**

10       “(a) ELIGIBLE PROJECTS.—Projects supported  
11       under section 3102(a)(1) may include—

12           “(1) equipment or processes previously sup-  
13           ported by a Department of Energy program;

14           “(2) advanced combustion equipment and proc-  
15           esses that the Secretary determines will be cost-ef-  
16           fective and could substantially contribute to meeting  
17           environmental or energy needs, including gasifi-  
18           cation, gasification fuel cells, gasification coproduc-  
19           tion, oxidation combustion techniques, ultra-super-  
20           critical boilers, and chemical looping; and

1           “(3) hybrid gasification/combustion systems, in-  
2           cluding systems integrating fuel cells with gasifi-  
3           cation or combustion units.

4           “(b) CRITERIA.—The Secretary shall establish cri-  
5           teria for the selection of generation projects under section  
6           3102(a)(1). The Secretary may modify the criteria as ap-  
7           propriate to reflect improvements in equipment, except  
8           that the criteria shall not be modified to be less stringent.  
9           The selection criteria shall include—

10           “(1) prioritization of projects whose installation  
11           is likely to result in significant air quality improve-  
12           ments in nonattainment air quality areas;

13           “(2) prioritization of projects whose installation  
14           is likely to result in lower emission rates of pollution;

15           “(3) prioritization of projects that result in the  
16           repowering or replacement of older, less efficient  
17           units;

18           “(4) documented broad interest in the procure-  
19           ment of the equipment and utilization of the proc-  
20           esses used in the projects by owners or operators of  
21           facilities for electricity generation;

1           “(5) equipment and processes beginning in  
2           2006 through 2011 that are projected to achieve a  
3           thermal efficiency of—

4                   “(A) 40 percent for coal of more than  
5                   9,000 Btu per pound based on higher heating  
6                   values;

7                   “(B) 38 percent for coal of 7,000 to 9,000  
8                   Btu per pound passed on higher heating values;  
9                   and

10                   “(C) 36 percent for coal of less than 7,000  
11                   Btu per pound based on higher heating values;  
12           except that energy used for coproduction or cogen-  
13           eration shall not be counted in calculating the ther-  
14           mal efficiency under this paragraph; and

15           “(6) equipment and processes beginning in  
16           2012 and 2013 that are projected to achieve a ther-  
17           mal efficiency of—

18                   “(A) 45 percent for coal of more than  
19                   9,000 Btu per pound based on higher heating  
20                   values;



1                   “(B) 44 percent for coal of 7,000 to 9,000  
2                   Btu per pound passed on higher heating values;  
3                   and

4                   “(C) 40 percent for coal of less than 7,000  
5                   Btu per pound based on higher heating values;  
6                   except that energy used for coproduction or cogen-  
7                   eration shall not be counted in calculating the ther-  
8                   mal efficiency under this paragraph

9                   “(c) PROGRAM BALANCE AND PRIORITY.—In car-  
10                   rying out the program under section 3102(a)(1), the Sec-  
11                   retary shall ensure, to the extent practicable, that—

12                   “(1) between 25 percent and 75 percent of the  
13                   projects supported are for the sole purpose of elec-  
14                   trical generation; and

15                   “(2) priority is given to projects that use elec-  
16                   trical generation equipment and processes that have  
17                   been developed and demonstrated and applied in ac-  
18                   tual production of electricity, but are not yet cost-  
19                   competitive, and that achieve greater efficiency and  
20                   environmental performance.

1       “(d) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated to the Secretary to carry  
3 out section 3102(a)(1)—

4           “(1) \$250,000,000 for fiscal year 2007;

5           “(2) \$350,000,000 for fiscal year 2008;

6           “(3) \$400,000,000 for each of fiscal years 2009  
7 through 2012; and

8           “(4) \$300,000,000 for fiscal year 2013.

9       “(e) APPLICABILITY.—No technology, or level of  
10 emission reduction shall be treated as adequately dem-  
11 onstrated for purpose of section 111 of the Clean Air Act  
12 (42 U.S.C. 7411), achievable for purposes of section 169  
13 of that Act (42 U.S.C. 7479), or achievable in practice  
14 for purposes of section 171 of that Act (42 U.S.C. 7501)  
15 solely by reason of the use of such technology, or the  
16 achievement of such emission reduction, by 1 or more fa-  
17 cilities receiving assistance under section 3102(a)(1).

18 **“SEC. 3104. AIR QUALITY ENHANCEMENT PROGRAM.**

19       “(a) ELIGIBLE PROJECTS.—Projects supported  
20 under section 3102(a)(2) shall—

1           “(1) utilize technologies that meet relevant Fed-  
2           eral and State clean air requirements applicable to  
3           the unit or facility, including being adequately dem-  
4           onstrated for purposes of section 111 of the Clean  
5           Air Act (42 U.S.C. 7411), achievable for purposes of  
6           section 169 of that Act (42 U.S.C. 7479), or achiev-  
7           able in practice for purposes of section 171 of that  
8           Act (42 U.S.C. 7501); or

9           “(2) utilize equipment or processes that exceed  
10          relevant Federal or State clean air requirements ap-  
11          plicable to the unit or facilities included in the  
12          projects by achieving greater efficiency or environ-  
13          mental performance.

14          “(b) PRIORITY IN PROJECT SELECTION.—In making  
15          an award under section 3102(a)(2), the Secretary shall  
16          give priority to—

17                 “(1) projects whose installation is likely to re-  
18                 sult in significant air quality improvements in non-  
19                 attainment air quality areas or substantially reduce  
20                 the emission level of criteria pollutants and mercury  
21                 air emissions;

1           “(2) projects for pollution control that result in  
2           the mitigation or collection of more than 1 pollutant;  
3           and

4           “(3) projects designed to allow the use of the  
5           waste byproducts or other byproducts of the equip-  
6           ment.

7           “(c) AUTHORIZATION OF APPROPRIATIONS.—There  
8           are authorized to be appropriated to the Secretary to carry  
9           out section 3102(a)(2)—

10           “(1) \$300,000,000 for fiscal year 2007;

11           “(2) \$100,000,000 for fiscal year 2008;

12           “(3) \$40,000,000 for fiscal year 2009;

13           “(4) \$30,000,000 for fiscal year 2010; and

14           “(5) \$30,000,000 for fiscal year 2011.

15           “(d) APPLICABILITY.—No technology, or level of  
16           emission reduction under subsection (a)(2) shall be treated  
17           as adequately demonstrated for purpose of Section 111 of  
18           the Clean Air Act (42 U.S.C. 7411), achievable for pur-  
19           poses of section 169 of that Act (42 U.S.C. 7479), or  
20           achievable in practice for purposes of section 171 of that  
21           Act (42 U.S.C. 7501) solely by reason of the use of such

1 technology, or the achievement of such emission reduction,  
2 by 1 or more facilities receiving assistance under section  
3 3102(a)(2).”.

4 (b) TABLE OF CONTENTS AMENDMENT.—The table  
5 of contents of the Energy Policy Act of 1992 (42 U.S.C.  
6 prec. 13201) is amended by adding at the end the fol-  
7 lowing:

“TITLE XXXI—CLEAN AIR COAL PROGRAM

“Sec. 3101. Purposes.

“Sec. 3102. Authorization of program.

“Sec. 3103. Generation projects.

“Sec. 3104. Air quality enhancement program.”.

8 **Subtitle D—Federal Coal Leases**

9 **SEC. 431. SHORT TITLE.**

10 This subtitle may be cited as the “Coal Leasing  
11 Amendments Act of 2005”.

12 **SEC. 432. REPEAL OF THE 160-ACRE LIMITATION FOR COAL**  
13 **LEASES.**

14 Section 3 of the Mineral Leasing Act (30 U.S.C. 203)  
15 is amended—

16 (1) in the first sentence, by striking “Any per-  
17 son” and inserting the following: “(a)(1) Except as

1 provided in paragraph (3), on a finding by the Sec-  
2 retary under paragraph (2), any person”;

3 (2) in the second sentence, by striking “The  
4 Secretary” and inserting the following:

5 “(b) The Secretary”;

6 (3) in the third sentence, by striking “The min-  
7 imum” and inserting the following:

8 “(c) The minimum”;

9 (4) in subsection (a) (as designated by para-  
10 graph (1))—

11 (A) by striking “upon” and all that follows  
12 and inserting the following: “secure modifica-  
13 tions of the original coal lease by including ad-  
14 ditional coal lands or coal deposits contiguous  
15 or cornering to those embraced in the lease.”;

16 and

17 (B) by adding at the end the following:

18 “(2) A finding referred to in paragraph (1) is a find-  
19 ing by the Secretary that the modifications—

20 “(A) would be in the interest of the United  
21 States;

1           “(B) would not displace a competitive interest  
2           in the lands; and

3           “(C) would not include lands or deposits that  
4           can be developed as part of another potential or ex-  
5           isting operation.

6           “(3) In no case shall the total area added by modi-  
7           fications to an existing coal lease under paragraph (1)—

8           “(A) exceed 960 acres; or

9           “(B) add acreage larger than that in the origi-  
10          nal lease.”.

11 **SEC. 433. APPROVAL OF LOGICAL MINING UNITS.**

12          Section 2(d)(2) of the Mineral Leasing Act (30  
13 U.S.C. 202a(2)) is amended—

14           (1) by inserting “(A)” after “(2)”; and

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

16          “(B) The Secretary may establish a period of more  
17          than 40 years if the Secretary determines that the longer  
18          period—

19           “(i) will ensure the maximum economic recovery  
20          of a coal deposit; or

1           “(ii) the longer period is in the interest of the  
2           orderly, efficient, or economic development of a coal  
3           resource.”.

4   **SEC. 434. PAYMENT OF ADVANCE ROYALTIES UNDER COAL**  
5                                   **LEASES.**

6           Section 7(b) of the Mineral Leasing Act (30 U.S.C.  
7   207(b)) is amended—

8           (1) in the first sentence, by striking “Each  
9           lease” and inserting the following: “(1) Each lease”;

10           (2) in the second sentence, by striking “The  
11           Secretary” and inserting the following:  
12           “(2) The Secretary”;

13           (3) in the third sentence, by striking “Such ad-  
14           vance royalties” and inserting the following:  
15           “(3) Advance royalties described in paragraph (2)”;

16           (4) in the seventh sentence, by striking “The  
17           Secretary” and inserting the following:  
18           “(6) The Secretary”;

19           (5) in the last sentence, by striking “Nothing”  
20           and inserting the following:  
21           “(7) Nothing”;



1           (6) by striking the fourth, fifth, and sixth sen-  
2           tences; and

3           (7) by inserting after paragraph (3) (as des-  
4           ignated by paragraph (3)) the following:

5           “(4) Advance royalties described in paragraph (2)  
6           shall be computed—

7           “(A) based on—

8                   “(i) the average price in the spot market  
9                   for sales of comparable coal from the same re-  
10                  gion during the last month of each applicable  
11                  continued operation year; or

12                  “(ii) in the absence of a spot market for  
13                  comparable coal from the same region, by using  
14                  a comparable method established by the Sec-  
15                  retary of the Interior to capture the commercial  
16                  value of coal; and

17           “(B) based on commercial quantities, as defined  
18           by regulation by the Secretary of the Interior.

19           “(5) The aggregate number of years during the pe-  
20           riod of any lease for which advance royalties may be ac-

1 cepted in lieu of the condition of continued operation shall  
2 not exceed 20 years.

3 “(6) The amount of any production royalty paid for  
4 any year shall be reduced (but not below 0) by the amount  
5 of any advance royalties paid under a lease described in  
6 paragraph (5) to the extent that the advance royalties  
7 have not been used to reduce production royalties for a  
8 prior year.”.

9 **SEC. 435. ELIMINATION OF DEADLINE FOR SUBMISSION OF**  
10 **COAL LEASE OPERATION AND RECLAMATION**  
11 **PLAN.**

12 Section 7(c) of the Mineral Leasing Act (30 U.S.C.  
13 207(c)) is amended by striking “and not later than three  
14 years after a lease is issued,”.

15 **SEC. 436. AMENDMENT RELATING TO FINANCIAL ASSUR-**  
16 **ANCES WITH RESPECT TO BONUS BIDS.**

17 Section 2(a) of the Mineral Leasing Act (30 U.S.C.  
18 201(a)) is amended by adding at the end the following:

19 “(4)(A) The Secretary shall not require a surety bond  
20 or any other financial assurance to guarantee payment of  
21 deferred bonus bid installments with respect to any coal

1 lease issued on a cash bonus bid to a lessee or successor  
2 in interest having a history of a timely payment of noncon-  
3 tested coal royalties and advanced coal royalties in lieu  
4 of production (where applicable) and bonus bid installment  
5 payments.

6 “(B) The Secretary may waive any requirement that  
7 a lessee provide a surety bond or other financial assurance  
8 to guarantee payment of deferred bonus bid installment  
9 with respect to any coal lease issued before the date of  
10 the enactment of the Energy Policy Act of 2005 only if  
11 the Secretary determines that the lessee has a history of  
12 making timely payments referred to in subparagraph (A).

13 “(5) Notwithstanding any other provision of law, if  
14 the lessee under a coal lease fails to pay any installment  
15 of a deferred cash bonus bid within 10 days after the Sec-  
16 retary provides written notice that payment of the install-  
17 ment is past due—

18 “(A) the lease shall automatically terminate;  
19 and

20 “(B) any bonus payments already made to the  
21 United States with respect to the lease shall not be

1 returned to the lessee or credited in any future lease  
2 sale.”.

3 **SEC. 437. INVENTORY REQUIREMENT.**

4 (a) REVIEW OF ASSESSMENTS.—

5 (1) IN GENERAL.—The Secretary of the Inte-  
6 rior, in consultation with the Secretary of Agri-  
7 culture and the Secretary, shall review coal assess-  
8 ments and other available data to identify—

9 (A) Federal lands with coal resources that  
10 are available for development;

11 (B) the extent and nature of any restric-  
12 tions on the development of coal resources on  
13 Federal lands identified under paragraph (1);  
14 and

15 (C) with respect to areas of such lands for  
16 which sufficient data exists, resources of com-  
17 pliant coal and supercompliant coal.

18 (2) DEFINITIONS.—For purposes of this  
19 subsection—

20 (A) the term “compliant coal” means coal  
21 that contains not less than 1.0 and not more

1           than 1.2 pounds of sulfur dioxide per million  
2           Btu; and

3                   (B) the term “supercompliant coal” means  
4           coal that contains less than 1.0 pounds of sul-  
5           fur dioxide per million Btu.

6           (b) COMPLETION AND UPDATING OF THE INVEN-  
7   TORY.—The Secretary—

8                   (1) shall complete the inventory under sub-  
9           section (a) by not later than 2 years after the date  
10          of enactment of this Act; and

11                   (2) shall update the inventory as the availability  
12          of data and developments in technology warrant.

13           (c) REPORT.—The Secretary shall submit to the  
14   Committee on Resources of the House of Representatives  
15   and to the Committee on Energy and Natural Resources  
16   of the Senate and make publicly available—

17                   (1) a report containing the inventory under this  
18          section, by not later than 2 years after the effective  
19          date of this section; and

20                   (2) each update of such inventory.

1 **SEC. 438. APPLICATION OF AMENDMENTS.**

2 The amendments made by this subtitle apply with re-  
3 spect to any coal lease issued before, on, or after the date  
4 of the enactment of this Act.

5 **TITLE V—INDIAN ENERGY**

6 **SEC. 501. SHORT TITLE.**

7 This title may be cited as the “Indian Tribal Energy  
8 Development and Self-Determination Act of 2005”.

9 **SEC. 502. OFFICE OF INDIAN ENERGY POLICY AND PRO-**  
10 **GRAMS.**

11 (a) IN GENERAL.—Title II of the Department of En-  
12 ergy Organization Act (42 U.S.C. 7131 et seq.) is amend-  
13 ed by adding at the end the following:

14 “OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS

15 “SEC. 217. (a) ESTABLISHMENT.—There is estab-  
16 lished within the Department an Office of Indian Energy  
17 Policy and Programs (referred to in this section as the  
18 ‘Office’). The Office shall be headed by a Director, who  
19 shall be appointed by the Secretary and compensated at  
20 a rate equal to that of level IV of the Executive Schedule  
21 under section 5315 of title 5, United States Code.

1       “(b) DUTIES OF DIRECTOR.—The Director, in ac-  
2 cordance with Federal policies promoting Indian self-de-  
3 termination and the purposes of this Act, shall provide,  
4 direct, foster, coordinate, and implement energy planning,  
5 education, management, conservation, and delivery pro-  
6 grams of the Department that—

7           “(1) promote Indian tribal energy development,  
8 efficiency, and use;

9           “(2) reduce or stabilize energy costs;

10          “(3) enhance and strengthen Indian tribal en-  
11 ergy and economic infrastructure relating to natural  
12 resource development and electrification; and

13          “(4) bring electrical power and service to In-  
14 dian land and the homes of tribal members located  
15 on Indian lands or acquired, constructed, or im-  
16 proved (in whole or in part) with Federal funds.”.

17       (b) CONFORMING AMENDMENTS.—

18           (1) The table of contents of the Department of  
19 Energy Organization Act (42 U.S.C. prec. 7101) is  
20 amended—

1 (A) in the item relating to section 209, by  
2 striking “Section” and inserting “Sec.”; and

3 (B) by striking the items relating to sec-  
4 tions 213 through 216 and inserting the fol-  
5 lowing:

“Sec. 213. Establishment of policy for National Nuclear Security Administra-  
tion

“Sec. 214. Establishment of security, counterintelligence, and intelligence poli-  
cies

“Sec. 215. Office of Counterintelligence

“Sec. 216. Office of Intelligence

“Sec. 217. Office of Indian Energy Policy and Programs”.

6 (2) Section 5315 of title 5, United States Code,  
7 is amended by inserting after the item related to the  
8 Inspector General, Department of Energy the fol-  
9 lowing new item:

10 “Director, Office of Indian Energy Policy and Pro-  
11 grams, Department of Energy.”.

12 **SEC. 503. INDIAN ENERGY.**

13 (a) IN GENERAL.—Title XXVI of the Energy Policy  
14 Act of 1992 (25 U.S.C. 3501 et seq.) is amended to read  
15 as follows:



1     **“TITLE XXVI—INDIAN ENERGY**

2     **“SEC. 2601. DEFINITIONS.**

3         “In this title:

4             “(1) The term ‘Director’ means the Director of  
5             the Office of Indian Energy Policy and Programs,  
6             Department of Energy.

7             “(2) The term ‘Indian land’ means—

8                 “(A) any land located within the bound-  
9                 aries of an Indian reservation, pueblo, or  
10                 rancheria;

11                 “(B) any land not located within the  
12                 boundaries of an Indian reservation, pueblo, or  
13                 rancheria, the title to which is held—

14                     “(i) in trust by the United States for  
15                     the benefit of an Indian tribe or an indi-  
16                     vidual Indian;

17                     “(ii) by an Indian tribe or an indi-  
18                     vidual Indian, subject to restriction against  
19                     alienation under laws of the United States;  
20                     or

1                   “(iii) by a dependent Indian commu-  
2                   nity; and

3                   “(C) land that is owned by an Indian tribe  
4                   and was conveyed by the United States to a  
5                   Native Corporation pursuant to the Alaska Na-  
6                   tive Claims Settlement Act (43 U.S.C. 1601 et  
7                   seq.), or that was conveyed by the United  
8                   States to a Native Corporation in exchange for  
9                   such land.

10                  “(3) The term ‘Indian reservation’ includes—

11                   “(A) an Indian reservation in existence in  
12                   any State or States as of the date of enactment  
13                   of this paragraph;

14                   “(B) a public domain Indian allotment;  
15                   and

16                   “(C) a dependent Indian community lo-  
17                   cated within the borders of the United States,  
18                   regardless of whether the community is  
19                   located—

20                   “(i) on original or acquired territory  
21                   of the community; or

1                   “(ii) within or outside the boundaries  
2                   of any State or States.

3                   “(4)(A) The term ‘Indian tribe’ has the mean-  
4                   ing given the term in section 4 of the Indian Self-  
5                   Determination and Education Assistance Act (25  
6                   U.S.C. 450b).

7                   “(B) For the purpose of paragraph (12) and  
8                   sections 2603(b)(1)(C) and 2604, the term ‘Indian  
9                   tribe’ does not include any Native Corporation.

10                  “(5) The term ‘integration of energy resources’  
11                  means any project or activity that promotes the loca-  
12                  tion and operation of a facility (including any pipe-  
13                  line, gathering system, transportation system or fa-  
14                  cility, or electric transmission or distribution facility)  
15                  on or near Indian land to process, refine, generate  
16                  electricity from, or otherwise develop energy re-  
17                  sources on, Indian land.

18                  “(6) The term ‘Native Corporation’ has the  
19                  meaning given the term in section 3 of the Alaska  
20                  Native Claims Settlement Act (43 U.S.C. 1602).

1           “(7) The term ‘organization’ means a partner-  
2           ship, joint venture, limited liability company, or  
3           other unincorporated association or entity that is es-  
4           tablished to develop Indian energy resources.

5           “(8) The term ‘Program’ means the Indian en-  
6           ergy resource development program established  
7           under section 2602(a).

8           “(9) The term ‘Secretary’ means the Secretary  
9           of the Interior.

10           “(10) The term ‘sequestration’ means the long-  
11           term separation, isolation, or removal of greenhouse  
12           gases from the atmosphere, including through a bio-  
13           logical or geologic method such as reforestation or  
14           an underground reservoir.

15           “(11) The term ‘tribal energy resource develop-  
16           ment organization’ means an organization of 2 or  
17           more entities, at least 1 of which is an Indian tribe,  
18           that has the written consent of the governing bodies  
19           of all Indian tribes participating in the organization  
20           to apply for a grant, loan, or other assistance under  
21           section 2602.

1           “(12) The term ‘tribal land’ means any land or  
2           interests in land owned by any Indian tribe, title to  
3           which is held in trust by the United States, or is  
4           subject to a restriction against alienation under laws  
5           of the United States.

6   **“SEC. 2602. INDIAN TRIBAL ENERGY RESOURCE DEVELOP-**  
7           **MENT.**

8           “(a) DEPARTMENT OF THE INTERIOR PROGRAM.—

9           “(1) To assist Indian tribes in the development  
10          of energy resources and further the goal of Indian  
11          self-determination, the Secretary shall establish and  
12          implement an Indian energy resource development  
13          program to assist consenting Indian tribes and tribal  
14          energy resource development organizations in achiev-  
15          ing the purposes of this title.

16          “(2) In carrying out the Program, the Sec-  
17          retary shall—

18                 “(A) provide development grants to Indian  
19                 tribes and tribal energy resource development  
20                 organizations for use in developing or obtaining  
21                 the managerial and technical capacity needed to

1           develop energy resources on Indian land, and to  
2           properly account for resulting energy produc-  
3           tion and revenues;

4           “(B) provide grants to Indian tribes and  
5           tribal energy resource development organiza-  
6           tions for use in carrying out projects to pro-  
7           mote the integration of energy resources, and to  
8           process, use, or develop those energy resources,  
9           on Indian land;

10          “(C) provide low-interest loans to Indian  
11          tribes and tribal energy resource development  
12          organizations for use in the promotion of en-  
13          ergy resource development on Indian land and  
14          integration of energy resources; and

15          “(D) provide grants and technical assist-  
16          ance to an appropriate tribal environmental or-  
17          ganization, as determined by the Secretary, that  
18          represents multiple Indian tribes to establish a  
19          national resource center to develop tribal capac-  
20          ity to establish and carry out tribal environ-  
21          mental programs in support of energy-related

1 programs and activities under this title,  
2 including—

3 “(i) training programs for tribal envi-  
4 ronmental officials, program managers,  
5 and other governmental representatives;

6 “(ii) the development of model envi-  
7 ronmental policies and tribal laws, includ-  
8 ing tribal environmental review codes, and  
9 the creation and maintenance of a clear-  
10 ouse of best environmental manage-  
11 ment practices; and

12 “(iii) recommended standards for re-  
13 viewing the implementation of tribal envi-  
14 ronmental laws and policies within tribal  
15 judicial or other tribal appeals systems.

16 “(3) There are authorized to be appropriated to  
17 carry out this subsection such sums as are necessary  
18 for each of fiscal years 2006 through 2016.

19 “(b) DEPARTMENT OF ENERGY INDIAN ENERGY  
20 EDUCATION PLANNING AND MANAGEMENT ASSISTANCE  
21 PROGRAM.—

1           “(1) The Director shall establish programs to  
2           assist consenting Indian tribes in meeting energy  
3           education, research and development, planning, and  
4           management needs.

5           “(2) In carrying out this subsection, the Direc-  
6           tor may provide grants, on a competitive basis, to an  
7           Indian tribe or tribal energy resource development  
8           organization for use in carrying out—

9                   “(A) energy, energy efficiency, and energy  
10                  conservation programs;

11                  “(B) studies and other activities sup-  
12                  porting tribal acquisitions of energy supplies,  
13                  services, and facilities, including the creation of  
14                  tribal utilities to assist in securing electricity to  
15                  promote electrification of homes and businesses  
16                  on Indian land;

17                  “(C) planning, construction, development,  
18                  operation, maintenance, and improvement of  
19                  tribal electrical generation, transmission, and  
20                  distribution facilities located on Indian land;  
21                  and



1           “(D) development, construction, and inter-  
2           connection of electric power transmission facili-  
3           ties located on Indian land with other electric  
4           transmission facilities.

5           “(3)(A) The Director shall develop a program  
6           to support and implement research projects that  
7           provide Indian tribes with opportunities to partici-  
8           pate in carbon sequestration practices on Indian  
9           land, including—

10                   “(i) geologic sequestration;

11                   “(ii) forest sequestration;

12                   “(iii) agricultural sequestration; and

13                   “(iv) any other sequestration opportunities  
14           the Director considers to be appropriate.

15           “(B) The activities carried out under subpara-  
16           graph (A) shall be—

17                   “(i) coordinated with other carbon seques-  
18           tration research and development programs  
19           conducted by the Secretary of Energy;

20                   “(ii) conducted to determine methods con-  
21           sistent with existing standardized measurement

1 protocols to account and report the quantity of  
2 carbon dioxide or other greenhouse gases se-  
3 questered in projects that may be implemented  
4 on Indian land; and

5 “(iii) reviewed periodically to collect and  
6 distribute to Indian tribes information on car-  
7 bon sequestration practices that will increase  
8 the sequestration of carbon without threatening  
9 the social and economic well-being of Indian  
10 tribes.

11 “(4)(A) The Director, in consultation with In-  
12 dian tribes, may develop a formula for providing  
13 grants under this subsection.

14 “(B) In providing a grant under this sub-  
15 section, the Director shall give priority to any appli-  
16 cation received from an Indian tribe with inadequate  
17 electric service (as determined by the Director).

18 “(C) In providing a grant under this subsection  
19 for an activity to provide, or expand the provision of,  
20 electricity on Indian land, the Director shall encour-  
21 age cooperative arrangements between Indian tribes

1 and utilities that provide service to Indian tribes, as  
2 the Director determines to be appropriate.

3 “(5) The Secretary of Energy may issue such  
4 regulations as the Secretary determines to be nec-  
5 essary to carry out this subsection.

6 “(6) There is authorized to be appropriated to  
7 carry out this subsection \$20,000,000 for each of  
8 fiscal years 2006 through 2016.

9 “(c) DEPARTMENT OF ENERGY LOAN GUARANTEE  
10 PROGRAM.—

11 “(1) Subject to paragraphs (2) and (4), the  
12 Secretary of Energy may provide loan guarantees  
13 (as defined in section 502 of the Federal Credit Re-  
14 form Act of 1990 (2 U.S.C. 661a)) for an amount  
15 equal to not more than 90 percent of the unpaid  
16 principal and interest due on any loan made to an  
17 Indian tribe for energy development.

18 “(2) In providing a loan guarantee under this  
19 subsection for an activity to provide, or expand the  
20 provision of, electricity on Indian land, the Secretary  
21 of Energy shall encourage cooperative arrangements

1       between Indian tribes and utilities that provide serv-  
2       ice to Indian tribes, as the Secretary determines to  
3       be appropriate.

4           “(3) A loan guarantee under this subsection  
5       shall be made by—

6           “(A) a financial institution subject to ex-  
7       amination by the Secretary of Energy; or

8           “(B) an Indian tribe, from funds of the In-  
9       dian tribe.

10          “(4) The aggregate outstanding amount guar-  
11       anteed by the Secretary of Energy at any time under  
12       this subsection shall not exceed \$2,000,000,000.

13          “(5) The Secretary of Energy may issue such  
14       regulations as the Secretary of Energy determines  
15       are necessary to carry out this subsection.

16          “(6) There are authorized to be appropriated  
17       such sums as are necessary to carry out this sub-  
18       section, to remain available until expended.

19          “(7) Not later than 1 year after the date of en-  
20       actment of this section, the Secretary of Energy  
21       shall submit to Congress a report on the financing

1 requirements of Indian tribes for energy develop-  
2 ment on Indian land.

3 “(d) PREFERENCE.—

4 “(1) In purchasing electricity or any other en-  
5 ergy product or byproduct, a Federal agency or de-  
6 partment may give preference to an energy and re-  
7 source production enterprise, partnership, consor-  
8 tium, corporation, or other type of business organi-  
9 zation the majority of the interest in which is owned  
10 and controlled by 1 or more Indian tribes.

11 “(2) In carrying out this subsection, a Federal  
12 agency or department shall not—

13 “(A) pay more than the prevailing market  
14 price for an energy product or byproduct; or

15 “(B) obtain less than prevailing market  
16 terms and conditions.

17 **“SEC. 2603. INDIAN TRIBAL ENERGY RESOURCE REGULA-**  
18 **TION.**

19 “(a) GRANTS.—The Secretary may provide to Indian  
20 tribes, on an annual basis, grants for use in accordance  
21 with subsection (b).

1       “(b) USE OF FUNDS.—Funds from a grant provided  
2 under this section may be used—

3               “(1)(A) by an Indian tribe for the development  
4 of a tribal energy resource inventory or tribal energy  
5 resource on Indian land;

6               “(B) by an Indian tribe for the development of  
7 a feasibility study or other report necessary to the  
8 development of energy resources on Indian land;

9               “(C) by an Indian tribe (other than an Indian  
10 Tribe in the State of Alaska, except the Metlakatla  
11 Indian Community) for—

12               “(i) the development and enforcement of  
13 tribal laws (including regulations) relating to  
14 tribal energy resource development; and

15               “(ii) the development of technical infra-  
16 structure to protect the environment under ap-  
17 plicable law; or

18               “(D) by a Native Corporation for the develop-  
19 ment and implementation of corporate policies and  
20 the development of technical infrastructure to pro-  
21 tect the environment under applicable law; and

1           “(2) by an Indian tribe for the training of em-  
2           ployees that—

3                   “(A) are engaged in the development of en-  
4                   ergy resources on Indian land; or

5                   “(B) are responsible for protecting the en-  
6                   vironment.

7           “(c) OTHER ASSISTANCE.—

8                   “(1) In carrying out the obligations of the  
9                   United States under this title, the Secretary shall  
10                  ensure, to the maximum extent practicable and to  
11                  the extent of available resources, that on the request  
12                  of an Indian tribe, the Indian tribe shall have avail-  
13                  able scientific and technical information and exper-  
14                  tise, for use in the regulation, development, and  
15                  management of energy resources of the Indian tribe  
16                  on Indian land.

17                  “(2) The Secretary may carry out paragraph  
18                  (1)—

19                         “(A) directly, through the use of Federal  
20                         officials; or

1           “(B) indirectly, by providing financial as-  
2           sistance to an Indian tribe to secure inde-  
3           pendent assistance.

4   **“SEC. 2604. LEASES, BUSINESS AGREEMENTS, AND RIGHTS-**  
5                   **OF-WAY INVOLVING ENERGY DEVELOPMENT**  
6                   **OR TRANSMISSION.**

7           “(a) LEASES AND BUSINESS AGREEMENTS.—In ac-  
8           cordance with this section—

9           “(1) an Indian tribe may, at the discretion of  
10          the Indian tribe, enter into a lease or business  
11          agreement for the purpose of energy resource devel-  
12          opment on tribal land, including a lease or business  
13          agreement for—

14               “(A) exploration for, extraction of, proc-  
15               essing of, or other development of the energy  
16               mineral resources of the Indian tribe located on  
17               tribal land; or

18               “(B) construction or operation of—

19                       “(i) an electric generation, trans-  
20                       mission, or distribution facility located on  
21                       tribal land; or



1                   “(ii) a facility to process or refine en-  
2                   ergy resources developed on tribal land;  
3                   and

4                   “(2) a lease or business agreement described in  
5                   paragraph (1) shall not require review by or the ap-  
6                   proval of the Secretary under section 2103 of the  
7                   Revised Statutes (25 U.S.C. 81), or any other provi-  
8                   sion of law, if—

9                   “(A) the lease or business agreement is ex-  
10                  ecuted pursuant to a tribal energy resource  
11                  agreement approved by the Secretary under  
12                  subsection (e);

13                  “(B) the term of the lease or business  
14                  agreement does not exceed—

15                         “(i) 30 years; or

16                         “(ii) in the case of a lease for the pro-  
17                         duction of oil resources, gas resources, or  
18                         both, 10 years and as long thereafter as oil  
19                         or gas is produced in paying quantities;  
20                         and

1           “(C) the Indian tribe has entered into a  
2           tribal energy resource agreement with the Sec-  
3           retary, as described in subsection (e), relating  
4           to the development of energy resources on tribal  
5           land (including the periodic review and evalua-  
6           tion of the activities of the Indian tribe under  
7           the agreement, to be conducted pursuant to  
8           subsection (e)(2)(D)(i)).

9           “(b) RIGHTS-OF-WAY FOR PIPELINES OR ELECTRIC  
10          TRANSMISSION OR DISTRIBUTION LINES.—An Indian  
11          tribe may grant a right-of-way over tribal land for a pipe-  
12          line or an electric transmission or distribution line without  
13          review or approval by the Secretary if—

14                 “(1) the right-of-way is executed in accordance  
15                 with a tribal energy resource agreement approved by  
16                 the Secretary under subsection (e);

17                 “(2) the term of the right-of-way does not ex-  
18                 ceed 30 years;

19                 “(3) the pipeline or electric transmission or dis-  
20                 tribution line serves—

1           “(A) an electric generation, transmission,  
2           or distribution facility located on tribal land; or

3           “(B) a facility located on tribal land that  
4           processes or refines energy resources developed  
5           on tribal land; and

6           “(4) the Indian tribe has entered into a tribal  
7           energy resource agreement with the Secretary, as de-  
8           scribed in subsection (e), relating to the development  
9           of energy resources on tribal land (including the  
10          periodic review and evaluation of the activities of the  
11          Indian tribe under an agreement described in sub-  
12          paragraphs (D) and (E) of subsection (e)(2)).

13          “(c) RENEWALS.—A lease or business agreement en-  
14          tered into, or a right-of-way granted, by an Indian tribe  
15          under this section may be renewed at the discretion of the  
16          Indian tribe in accordance with this section.

17          “(d) VALIDITY.—No lease, business agreement, or  
18          right-of-way relating to the development of tribal energy  
19          resources under this section shall be valid unless the lease,  
20          business agreement, or right-of-way is authorized by a

1 tribal energy resource agreement approved by the Sec-  
2 retary under subsection (e)(2).

3 “(e) TRIBAL ENERGY RESOURCE AGREEMENTS.—

4 “(1) On the date on which regulations are pro-  
5 mulgated under paragraph (8), an Indian tribe may  
6 submit to the Secretary for approval a tribal energy  
7 resource agreement governing leases, business agree-  
8 ments, and rights-of-way under this section.

9 “(2)(A) Not later than 270 days after the date  
10 on which the Secretary receives a tribal energy re-  
11 source agreement from an Indian tribe under para-  
12 graph (1), or not later than 60 days after the Sec-  
13 retary receives a revised tribal energy resource  
14 agreement from an Indian tribe under paragraph  
15 (4)(C) (or a later date, as agreed to by the Secretary  
16 and the Indian tribe), the Secretary shall approve or  
17 disapprove the tribal energy resource agreement.

18 “(B) The Secretary shall approve a tribal en-  
19 ergy resource agreement submitted under paragraph  
20 (1) if—

1           “(i) the Secretary determines that the In-  
2           dian tribe has demonstrated that the Indian  
3           tribe has sufficient capacity to regulate the de-  
4           velopment of energy resources of the Indian  
5           tribe;

6           “(ii) the tribal energy resource agreement  
7           includes provisions required under subpara-  
8           graph (D); and

9           “(iii) the tribal energy resource agreement  
10          includes provisions that, with respect to a lease,  
11          business agreement, or right-of-way under this  
12          section—

13               “(I) ensure the acquisition of nec-  
14               essary information from the applicant for  
15               the lease, business agreement, or right-of-  
16               way;

17               “(II) address the term of the lease or  
18               business agreement or the term of convey-  
19               ance of the right-of-way;

20               “(III) address amendments and re-  
21               newals;

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1           “(IV) address the economic return to  
2           the Indian tribe under leases, business  
3           agreements, and rights-of-way;

4           “(V) address technical or other rel-  
5           evant requirements;

6           “(VI) establish requirements for envi-  
7           ronmental review in accordance with sub-  
8           paragraph (C);

9           “(VII) ensure compliance with all ap-  
10          plicable environmental laws, including a re-  
11          quirement that each lease, business agree-  
12          ment, and right-of-way state that the les-  
13          see, operator, or right-of-way grantee shall  
14          comply with all such laws;

15          “(VIII) identify final approval author-  
16          ity;

17          “(IX) provide for public notification of  
18          final approvals;

19          “(X) establish a process for consulta-  
20          tion with any affected States regarding off-

1 reservation impacts, if any, identified  
2 under subparagraph (C)(i);

3 “(XI) describe the remedies for  
4 breach of the lease, business agreement, or  
5 right-of-way;

6 “(XII) require each lease, business  
7 agreement, and right-of-way to include a  
8 statement that, if any of its provisions vio-  
9 lates an express term or requirement of the  
10 tribal energy resource agreement pursuant  
11 to which the lease, business agreement, or  
12 right-of-way was executed—

13 “(aa) the provision shall be null  
14 and void; and

15 “(bb) if the Secretary determines  
16 the provision to be material, the Sec-  
17 retary may suspend or rescind the  
18 lease, business agreement, or right-of-  
19 way or take other appropriate action  
20 that the Secretary determines to be in  
21 the best interest of the Indian tribe;

1           “(XIII) require each lease, business  
2           agreement, and right-of-way to provide  
3           that it will become effective on the date on  
4           which a copy of the executed lease, busi-  
5           ness agreement, or right-of-way is deliv-  
6           ered to the Secretary in accordance with  
7           regulations promulgated under paragraph  
8           (8);

9           “(XIV) include citations to tribal  
10          laws, regulations, or procedures, if any,  
11          that set out tribal remedies that must be  
12          exhausted before a petition may be sub-  
13          mitted to the Secretary under paragraph  
14          (7)(B);

15          “(XV) specify the financial assistance,  
16          if any, to be provided by the Secretary to  
17          the Indian tribe to assist in implementa-  
18          tion of the tribal energy resource agree-  
19          ment, including environmental review of in-  
20          dividual projects; and



1           “(XVI) in accordance with the regula-  
2           tions promulgated by the Secretary under  
3           paragraph (8), require that the Indian  
4           tribe, as soon as practicable after receipt  
5           of a notice by the Indian tribe, give written  
6           notice to the Secretary of—

7                   “(aa) any breach or other viola-  
8                   tion by another party of any provision  
9                   in a lease, business agreement, or  
10                  right-of-way entered into under the  
11                  tribal energy resource agreement; and

12                   “(bb) any activity or occurrence  
13                   under a lease, business agreement, or  
14                   right-of-way that constitutes a viola-  
15                  tion of Federal or tribal environ-  
16                  mental laws.

17           “(C) Tribal energy resource agreements  
18           submitted under paragraph (1) shall establish,  
19           and include provisions to ensure compliance  
20           with, an environmental review process that,  
21           with respect to a lease, business agreement, or

1 right-of-way under this section, provides for, at  
2 a minimum—

3 “(i) the identification and evaluation  
4 of all significant environmental effects (as  
5 compared to a no-action alternative), in-  
6 cluding effects on cultural resources;

7 “(ii) the identification of proposed  
8 mitigation measures, if any, and incorpora-  
9 tion of appropriate mitigation measures  
10 into the lease, business agreement, or  
11 right-of-way;

12 “(iii) a process for ensuring that—

13 “(I) the public is informed of,  
14 and has an opportunity to comment  
15 on, the environmental impacts of the  
16 proposed action; and

17 “(II) responses to relevant and  
18 substantive comments are provided,  
19 before tribal approval of the lease,  
20 business agreement, or right-of-way;

1           “(iv) sufficient administrative support  
2           and technical capability to carry out the  
3           environmental review process; and

4           “(v) oversight by the Indian tribe of  
5           energy development activities by any other  
6           party under any lease, business agreement,  
7           or right-of-way entered into pursuant to  
8           the tribal energy resource agreement, to  
9           determine whether the activities are in  
10          compliance with the tribal energy resource  
11          agreement and applicable Federal environ-  
12          mental laws.

13          “(D) A tribal energy resource agreement  
14          between the Secretary and an Indian tribe  
15          under this subsection shall include—

16               “(i) provisions requiring the Secretary  
17               to conduct a periodic review and evaluation  
18               to monitor the performance of the activi-  
19               ties of the Indian tribe associated with the  
20               development of energy resources under the  
21               tribal energy resource agreement; and

1           “(ii) if a periodic review and evalua-  
2           tion, or an investigation, by the Secretary  
3           of any breach or violation described in a  
4           notice provided by the Indian tribe to the  
5           Secretary in accordance with subparagraph  
6           (B)(iii)(XVI), results in a finding by the  
7           Secretary of imminent jeopardy to a phys-  
8           ical trust asset arising from a violation of  
9           the tribal energy resource agreement or ap-  
10          plicable Federal laws, provisions author-  
11          izing the Secretary to take actions deter-  
12          mined by the Secretary to be necessary to  
13          protect the asset, including reassumption  
14          of responsibility for activities associated  
15          with the development of energy resources  
16          on tribal land until the violation and any  
17          condition that caused the jeopardy are cor-  
18          rected.

19           “(E) Periodic review and evaluation under  
20          subparagraph (D) shall be conducted on an an-  
21          nual basis, except that, after the third annual

1 review and evaluation, the Secretary and the  
2 Indian tribe may mutually agree to amend the  
3 tribal energy resource agreement to authorize  
4 the review and evaluation under subparagraph  
5 (D) to be conducted once every 2 years.

6 “(3) The Secretary shall provide notice and op-  
7 portunity for public comment on tribal energy re-  
8 source agreements submitted for approval under  
9 paragraph (1). The Secretary’s review of a tribal en-  
10 ergy resource agreement shall be limited to activities  
11 specified by the provisions of the tribal energy re-  
12 source agreement.

13 “(4) If the Secretary disapproves a tribal en-  
14 ergy resource agreement submitted by an Indian  
15 tribe under paragraph (1), the Secretary shall, not  
16 later than 10 days after the date of disapproval—

17 “(A) notify the Indian tribe in writing of  
18 the basis for the disapproval;

19 “(B) identify what changes or other ac-  
20 tions are required to address the concerns of  
21 the Secretary; and

1           “(C) provide the Indian tribe with an op-  
2           portunity to revise and resubmit the tribal en-  
3           ergy resource agreement.

4           “(5) If an Indian tribe executes a lease or busi-  
5           ness agreement, or grants a right-of-way, in accord-  
6           ance with a tribal energy resource agreement ap-  
7           proved under this subsection, the Indian tribe shall,  
8           in accordance with the process and requirements  
9           under regulations promulgated under paragraph (8),  
10          provide to the Secretary—

11           “(A) a copy of the lease, business agree-  
12          ment, or right-of-way document (including all  
13          amendments to and renewals of the document);  
14          and

15           “(B) in the case of a tribal energy resource  
16          agreement or a lease, business agreement, or  
17          right-of-way that permits payments to be made  
18          directly to the Indian tribe, information and  
19          documentation of those payments sufficient to  
20          enable the Secretary to discharge the trust re-  
21          sponsibility of the United States to enforce the

1 terms of, and protect the rights of the Indian  
2 tribe under, the lease, business agreement, or  
3 right-of-way.

4 “(6)(A) In carrying out this section, the Sec-  
5 retary shall—

6 “(i) act in accordance with the trust re-  
7 sponsibility of the United States relating to  
8 mineral and other trust resources; and

9 “(ii) act in good faith and in the best in-  
10 terests of the Indian tribes.

11 “(B) Subject to the provisions of subsections  
12 (a)(2), (b), and (c) waiving the requirement of Sec-  
13 retarial approval of leases, business agreements, and  
14 rights-of-way executed pursuant to tribal energy re-  
15 source agreements approved under this section, and  
16 the provisions of subparagraph (D), nothing in this  
17 section shall absolve the United States from any re-  
18 sponsibility to Indians or Indian tribes, including,  
19 but not limited to, those which derive from the trust  
20 relationship or from any treaties, statutes, and other  
21 laws of the United States, Executive Orders, or

1 agreements between the United States and any In-  
2 dian tribe.

3 “(C) The Secretary shall continue to fulfill the  
4 trust obligation of the United States to ensure that  
5 the rights and interests of an Indian tribe are pro-  
6 tected if—

7 “(i) any other party to a lease, business  
8 agreement, or right-of-way violates any applica-  
9 ble Federal law or the terms of any lease, busi-  
10 ness agreement, or right-of-way under this sec-  
11 tion; or

12 “(ii) any provision in a lease, business  
13 agreement, or right-of-way violates the tribal  
14 energy resource agreement pursuant to which  
15 the lease, business agreement, or right-of-way  
16 was executed.

17 “(D)(i) In this subparagraph, the term ‘nego-  
18 tiated term’ means any term or provision that is ne-  
19 gotiated by an Indian tribe and any other party to  
20 a lease, business agreement, or right-of-way entered



1 into pursuant to an approved tribal energy resource  
2 agreement.

3 “(ii) Notwithstanding subparagraph (B), the  
4 United States shall not be liable to any party (in-  
5 cluding any Indian tribe) for any negotiated term of,  
6 or any loss resulting from the negotiated terms of,  
7 a lease, business agreement, or right-of-way executed  
8 pursuant to and in accordance with a tribal energy  
9 resource agreement approved by the Secretary under  
10 paragraph (2).

11 “(7)(A) In this paragraph, the term ‘interested  
12 party’ means any person (including an entity) that  
13 has demonstrated that an interest of the person has  
14 sustained, or will sustain, an adverse environmental  
15 impact as a result of the failure of an Indian tribe  
16 to comply with a tribal energy resource agreement of  
17 the Indian tribe approved by the Secretary under  
18 paragraph (2).

19 “(B) After exhaustion of any tribal remedy, and  
20 in accordance with regulations promulgated by the  
21 Secretary under paragraph (8), an interested party

1       may submit to the Secretary a petition to review the  
2       compliance by an Indian tribe with a tribal energy  
3       resource agreement of the Indian tribe approved by  
4       the Secretary under paragraph (2).

5           “(C)(i) Not later than 20 days after the date on  
6       which the Secretary receives a petition under sub-  
7       paragraph (B), the Secretary shall—

8           “(I) provide to the Indian tribe a copy of  
9       the petition; and

10          “(II) consult with the Indian tribe regard-  
11       ing any noncompliance alleged in the petition.

12          “(ii) Not later than 45 days after the date on  
13       which a consultation under clause (i)(II) takes place,  
14       the Indian tribe shall respond to any claim made in  
15       a petition under subparagraph (B).

16          “(iii) The Secretary shall act in accordance with  
17       subparagraphs (D) and (E) only if the Indian  
18       tribe—

19           “(I) denies, or fails to respond to, each  
20       claim made in the petition within the period de-  
21       scribed in clause (ii); or

1           “(II) fails, refuses, or is unable to cure or  
2           otherwise resolve each claim made in the peti-  
3           tion within a reasonable period, as determined  
4           by the Secretary, after the expiration of the pe-  
5           riod described in clause (ii).

6           “(D)(i) Not later than 120 days after the date  
7           on which the Secretary receives a petition under sub-  
8           paragraph (B), the Secretary shall determine wheth-  
9           er the Indian tribe is not in compliance with the  
10          tribal energy resource agreement.

11          “(ii) The Secretary may adopt procedures  
12          under paragraph (8) authorizing an extension of  
13          time, not to exceed 120 days, for making the deter-  
14          mination under clause (i) in any case in which the  
15          Secretary determines that additional time is nec-  
16          essary to evaluate the allegations of the petition.

17          “(iii) Subject to subparagraph (E), if the Sec-  
18          retary determines that the Indian tribe is not in  
19          compliance with the tribal energy resource agree-  
20          ment, the Secretary shall take such action as the  
21          Secretary determines to be necessary to ensure com-

1 compliance with the tribal energy resource agreement,  
2 including—

3 “(I) temporarily suspending any activity  
4 under a lease, business agreement, or right-of-  
5 way under this section until the Indian tribe is  
6 in compliance with the approved tribal energy  
7 resource agreement; or

8 “(II) rescinding approval of all or part of  
9 the tribal energy resource agreement, and if all  
10 of the agreement is rescinded, reassuming the  
11 responsibility for approval of any future leases,  
12 business agreements, or rights-of-way described  
13 in subsection (a) or (b).

14 “(E) Before taking an action described in sub-  
15 paragraph (D)(iii), the Secretary shall—

16 “(i) make a written determination that de-  
17 scribes the manner in which the tribal energy  
18 resource agreement has been violated;

19 “(ii) provide the Indian tribe with a writ-  
20 ten notice of the violations together with the  
21 written determination; and

1           “(iii) before taking any action described in  
2           subparagraph (D)(iii) or seeking any other rem-  
3           edy, provide the Indian tribe with a hearing and  
4           a reasonable opportunity to attain compliance  
5           with the tribal energy resource agreement.

6           “(F) An Indian tribe described in subparagraph  
7           (E) shall retain all rights to appeal under any regu-  
8           lation promulgated by the Secretary.

9           “(8) Not later than 1 year after the date of en-  
10          actment of the Energy Policy Act of 2005, the Sec-  
11          retary shall promulgate regulations that implement  
12          this subsection, including—

13               “(A) criteria to be used in determining the  
14               capacity of an Indian tribe under paragraph  
15               (2)(B)(i), including the experience of the Indian  
16               tribe in managing natural resources and finan-  
17               cial and administrative resources available for  
18               use by the Indian tribe in implementing the ap-  
19               proved tribal energy resource agreement of the  
20               Indian tribe;

1           “(B) a process and requirements in accord-  
2           ance with which an Indian tribe may—

3                   “(i) voluntarily rescind a tribal energy  
4                   resource agreement approved by the Sec-  
5                   retary under this subsection; and

6                   “(ii) return to the Secretary the re-  
7                   sponsibility to approve any future lease,  
8                   business agreement, or right-of-way under  
9                   this subsection;

10           “(C) provisions establishing the scope of,  
11           and procedures for, the periodic review and  
12           evaluation described in subparagraphs (D) and  
13           (E) of paragraph (2), including provisions for  
14           review of transactions, reports, site inspections,  
15           and any other review activities the Secretary  
16           determines to be appropriate; and

17                   “(D) provisions describing final agency ac-  
18                   tions after exhaustion of administrative appeals  
19                   from determinations of the Secretary under  
20                   paragraph (7).

1 “(f) NO EFFECT ON OTHER LAW.—Nothing in this  
2 section affects the application of—

3 “(1) any Federal environmental law;

4 “(2) the Surface Mining Control and Reclama-  
5 tion Act of 1977 (30 U.S.C. 1201 et seq.); or

6 “(3) except as otherwise provided in this title,  
7 the Indian Mineral Development Act of 1982 (25  
8 U.S.C. 2101 et seq.).

9 “(g) AUTHORIZATION OF APPROPRIATIONS.—There  
10 are authorized to be appropriated to the Secretary such  
11 sums as are necessary for each of fiscal years 2006  
12 through 2016 to carry out this section and to make grants  
13 or provide other appropriate assistance to Indian tribes  
14 to assist the Indian tribes in developing and implementing  
15 tribal energy resource agreements in accordance with this  
16 section.

17 **“SEC. 2605. FEDERAL POWER MARKETING ADMINISTRA-**  
18 **TIONS.**

19 “(a) DEFINITIONS.—In this section:

20 “(1) The term ‘Administrator’ means the Ad-  
21 ministrator of the Bonneville Power Administration

1 and the Administrator of the Western Area Power  
2 Administration.

3 “(2) The term ‘power marketing administra-  
4 tion’ means—

5 “(A) the Bonneville Power Administration;

6 “(B) the Western Area Power Administra-  
7 tion; and

8 “(C) any other power administration the  
9 power allocation of which is used by or for the  
10 benefit of an Indian tribe located in the service  
11 area of the administration.

12 “(b) ENCOURAGEMENT OF INDIAN TRIBAL ENERGY  
13 DEVELOPMENT.—Each Administrator shall encourage In-  
14 dian tribal energy development by taking such actions as  
15 the Administrators determine to be appropriate, including  
16 administration of programs of the power marketing ad-  
17 ministration, in accordance with this section.

18 “(c) ACTION BY ADMINISTRATORS.—In carrying out  
19 this section, in accordance with laws in existence on the  
20 date of enactment of the Energy Policy Act of 2005—



1           “(1) each Administrator shall consider the  
2 unique relationship that exists between the United  
3 States and Indian tribes;

4           “(2) power allocations from the Western Area  
5 Power Administration to Indian tribes may be used  
6 to meet firming and reserve needs of Indian-owned  
7 energy projects on Indian land;

8           “(3) the Administrator of the Western Area  
9 Power Administration may purchase non-federally  
10 generated power from Indian tribes to meet the  
11 firming and reserve requirements of the Western  
12 Area Power Administration; and

13           “(4) each Administrator shall not—

14                   “(A) pay more than the prevailing market  
15 price for an energy product; or

16                   “(B) obtain less than prevailing market  
17 terms and conditions.

18           “(d) ASSISTANCE FOR TRANSMISSION SYSTEM  
19 USE.—

20           “(1) An Administrator may provide technical  
21 assistance to Indian tribes seeking to use the high-

1 voltage transmission system for delivery of electric  
2 power.

3 “(2) The costs of technical assistance provided  
4 under paragraph (1) shall be funded—

5 “(A) by the Secretary of Energy using  
6 nonreimbursable funds appropriated for that  
7 purpose; or

8 “(B) by any appropriate Indian tribe.

9 “(e) POWER ALLOCATION STUDY.—Not later than 2  
10 years after the date of enactment of the Energy Policy  
11 Act of 2005, the Secretary of Energy shall submit to Con-  
12 gress a report that—

13 “(1) describes the use by Indian tribes of Fed-  
14 eral power allocations of the power marketing ad-  
15 ministration (or power sold by the Southwestern  
16 Power Administration) to or for the benefit of In-  
17 dian tribes in a service area of the power marketing  
18 administration; and

19 “(2) identifies—

1           “(A) the quantity of power allocated to, or  
2           used for the benefit of, Indian tribes by the  
3           Western Area Power Administration;

4           “(B) the quantity of power sold to Indian  
5           tribes by any other power marketing adminis-  
6           tration; and

7           “(C) barriers that impede tribal access to  
8           and use of Federal power, including an assess-  
9           ment of opportunities to remove those barriers  
10          and improve the ability of power marketing ad-  
11          ministrations to deliver Federal power.

12          “(f) AUTHORIZATION OF APPROPRIATIONS.—There  
13          are authorized to be appropriated to carry out this section  
14          \$750,000, non-reimbursable, to remain available until ex-  
15          pended.

16          **“SEC. 2606. WIND AND HYDROPOWER FEASIBILITY STUDY.**

17          “(a) STUDY.—The Secretary of Energy, in coordina-  
18          tion with the Secretary of the Army and the Secretary,  
19          shall conduct a study of the cost and feasibility of devel-  
20          oping a demonstration project that uses wind energy gen-  
21          erated by Indian tribes and hydropower generated by the

1 Army Corps of Engineers on the Missouri River to supply  
2 firming power to the Western Area Power Administration.

3 “(b) SCOPE OF STUDY.—The study shall—

4 “(1) determine the economic and engineering  
5 feasibility of blending wind energy and hydropower  
6 generated from the Missouri River dams operated by  
7 the Army Corps of Engineers, including an assess-  
8 ment of the costs and benefits of blending wind en-  
9 ergy and hydropower compared to current sources  
10 used for firming power to the Western Area Power  
11 Administration;

12 “(2) review historical and projected require-  
13 ments for, patterns of availability and use of, and  
14 reasons for historical patterns concerning the avail-  
15 ability of firming power;

16 “(3) assess the wind energy resource potential  
17 on tribal land and projected cost savings through a  
18 blend of wind and hydropower over a 30-year period;

19 “(4) determine seasonal capacity needs and as-  
20 sociated transmission upgrades for integration of

1 tribal wind generation and identify costs associated  
2 with these activities;

3 “(5) include an independent tribal engineer and  
4 a Western Area Power Administration customer rep-  
5 resentative as study team members; and

6 “(6) incorporate, to the extent appropriate, the  
7 results of the Dakotas Wind Transmission study  
8 prepared by the Western Area Power Administra-  
9 tion.

10 “(c) REPORT.—Not later than 1 year after the date  
11 of enactment of the Energy Policy Act of 2005, the Sec-  
12 retary of Energy, the Secretary and the Secretary of the  
13 Army shall submit to Congress a report that describes the  
14 results of the study, including—

15 “(1) an analysis and comparison of the poten-  
16 tial energy cost or benefits to the customers of the  
17 Western Area Power Administration through the use  
18 of combined wind and hydropower;

19 “(2) an economic and engineering evaluation of  
20 whether a combined wind and hydropower system  
21 can reduce reservoir fluctuation, enhance efficient

1 and reliable energy production, and provide Missouri  
2 River management flexibility;

3 “(3) if found feasible, recommendations for a  
4 demonstration project to be carried out by the West-  
5 ern Area Power Administration, in partnership with  
6 an Indian tribal government or tribal energy re-  
7 source development organization, and Western Area  
8 Power Administration customers to demonstrate the  
9 feasibility and potential of using wind energy pro-  
10 duced on Indian land to supply firming energy to  
11 the Western Area Power Administration; and

12 “(4) an identification of—

13 “(A) the economic and environmental costs  
14 of, or benefits to be realized through, a Fed-  
15 eral-tribal-customer partnership; and

16 “(B) the manner in which a Federal-tribal-  
17 customer partnership could contribute to the  
18 energy security of the United States.

19 “(d) FUNDING.—

20 “(1) AUTHORIZATION OF APPROPRIATIONS.—

21 There is authorized to be appropriated to carry out

1       this section \$1,000,000, to remain available until ex-  
2       pended.

3           “(2) NONREIMBURSABILITY.—Costs incurred  
4       by the Secretary in carrying out this section shall be  
5       nonreimbursable.”.

6       (b) CONFORMING AMENDMENTS.—The table of con-  
7       tents for the Energy Policy Act of 1992 is amended by  
8       striking the items relating to title XXVI and inserting the  
9       following:

“Sec. 2601. Definitions.

“Sec. 2602. Indian tribal energy resource development.

“Sec. 2603. Indian tribal energy resource regulation.

“Sec. 2604. Leases, business agreements, and rights-of-way involving energy  
development or transmission.

“Sec. 2605. Federal Power Marketing Administrations.

“Sec. 2606. Wind and hydropower feasibility study.”.

10   **SEC. 504. CONSULTATION WITH INDIAN TRIBES.**

11       In carrying out this title and the amendments made  
12       by this title, the Secretary and the Secretary of the Inte-  
13       rior shall, as appropriate and to the maximum extent prac-  
14       ticable, involve and consult with Indian tribes.

1 **SEC. 505. FOUR CORNERS TRANSMISSION LINE PROJECT**  
2 **AND ELECTRIFICATION.**

3 (a) TRANSMISSION LINE PROJECT.—The Dine  
4 Power Authority, an enterprise of the Navajo Nation, shall  
5 be eligible to receive grants and other assistance under  
6 section 217 of the Department of Energy Organization  
7 Act, as added by section 502, and section 2602 of the En-  
8 ergy Policy Act of 1992, as amended by this Act, for ac-  
9 tivities associated with the development of a transmission  
10 line from the Four Corners Area to southern Nevada, in-  
11 cluding related power generation opportunities.

12 (b) NAVAJO ELECTRIFICATION.—Section 602 of  
13 Public Law 106–511 (114 Stat. 2376) is amended—

14 (1) in subsection (a)—

15 (A) in the first sentence, by striking “5-  
16 year” and inserting “10-year”; and

17 (B) in the third sentence, by striking  
18 “2006” and inserting “2011”; and

19 (2) in the first sentence of subsection (e) by  
20 striking “2006” and inserting “2011”.



1 **SEC. 506. ENERGY EFFICIENCY IN FEDERALLY ASSISTED**  
2 **HOUSING.**

3 (a) IN GENERAL.—The Secretary of Housing and  
4 Urban Development shall promote energy conservation in  
5 housing that is located on Indian land and assisted with  
6 Federal resources through—

7 (1) the use of energy-efficient technologies and  
8 innovations (including the procurement of energy-ef-  
9 ficient refrigerators and other appliances);

10 (2) the promotion of shared savings contracts;  
11 and

12 (3) the use and implementation of such other  
13 similar technologies and innovations as the Secretary  
14 of Housing and Urban Development considers to be  
15 appropriate.

16 (b) AMENDMENT.—Section 202(2) of the Native  
17 American Housing and Self-Determination Act of 1996  
18 (25 U.S.C. 4132(2)) is amended by inserting “improve-  
19 ment to achieve greater energy efficiency,” after “plan-  
20 ning.”

1     **TITLE VI—NUCLEAR MATTERS**  
2         **Subtitle A—Price-Anderson Act**  
3             **Amendments**

4     **SEC. 601. SHORT TITLE.**

5         This subtitle may be cited as the “Price-Anderson  
6     Amendments Act of 2005”.

7     **SEC. 602. EXTENSION OF INDEMNIFICATION AUTHORITY.**

8         (a) INDEMNIFICATION OF NUCLEAR REGULATORY  
9     COMMISSION LICENSEES.—Section 170 c. of the Atomic  
10    Energy Act of 1954 (42 U.S.C. 2210(c)) is amended—

11             (1) in the subsection heading, by striking “LI-  
12         CENSES” and inserting “LICENSEES”; and

13             (2) by striking “December 31, 2003” each  
14         place it appears and inserting “December 31,  
15         2025”.

16         (b) INDEMNIFICATION OF DEPARTMENT CONTRAC-  
17     TORS.—Section 170 d.(1)(A) of the Atomic Energy Act  
18     of 1954 (42 U.S.C. 2210(d)(1)(A)) is amended by striking  
19     “December 31, 2006” and inserting “December 31,  
20     2025”.

1 (c) INDEMNIFICATION OF NONPROFIT EDUCATIONAL  
2 INSTITUTIONS.—Section 170 k. of the Atomic Energy Act  
3 of 1954 (42 U.S.C. 2210(k)) is amended by striking “Au-  
4 gust 1, 2002” each place it appears and inserting “Decem-  
5 ber 31, 2025”.

6 **SEC. 603. MAXIMUM ASSESSMENT.**

7 Section 170 of the Atomic Energy Act of 1954 (42  
8 U.S.C. 2210) is amended—

9 (1) in the second proviso of the third sentence  
10 of subsection b.(1)—

11 (A) by striking “\$63,000,000” and insert-  
12 ing “\$95,800,000”; and

13 (B) by striking “\$10,000,000 in any 1  
14 year” and inserting “\$15,000,000 in any 1 year  
15 (subject to adjustment for inflation under sub-  
16 section t.)”; and

17 (2) in subsection t.(1)—

18 (A) by inserting “total and annual” after  
19 “amount of the maximum”;

1 (B) by striking “the date of the enactment  
2 of the Price-Anderson Amendments Act of  
3 1988” and inserting “August 20, 2003”; and

4 (C) in subparagraph (A), by striking “such  
5 date of enactment” and inserting “August 20,  
6 2003”.

7 **SEC. 604. DEPARTMENT LIABILITY LIMIT.**

8 (a) INDEMNIFICATION OF DEPARTMENT CONTRAC-  
9 TORS.—Section 170 d. of the Atomic Energy Act of 1954  
10 (42 U.S.C. 2210(d)) is amended by striking paragraph (2)  
11 and inserting the following:

12 “(2) In an agreement of indemnification entered into  
13 under paragraph (1), the Secretary—

14 “(A) may require the contractor to provide and  
15 maintain financial protection of such a type and in  
16 such amounts as the Secretary shall determine to be  
17 appropriate to cover public liability arising out of or  
18 in connection with the contractual activity; and

19 “(B) shall indemnify the persons indemnified  
20 against such liability above the amount of the finan-  
21 cial protection required, in the amount of

1       \$10,000,000,000 (subject to adjustment for inflation  
2       under subsection t.), in the aggregate, for all per-  
3       sons indemnified in connection with the contract and  
4       for each nuclear incident, including such legal costs  
5       of the contractor as are approved by the Secretary.”.

6       (b) CONTRACT AMENDMENTS.—Section 170 d. of the  
7       Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is further  
8       amended by striking paragraph (3) and inserting the  
9       following—

10       “(3) All agreements of indemnification under which  
11       the Department of Energy (or its predecessor agencies)  
12       may be required to indemnify any person under this sec-  
13       tion shall be deemed to be amended, on the date of enact-  
14       ment of the Price-Anderson Amendments Act of 2005, to  
15       reflect the amount of indemnity for public liability and any  
16       applicable financial protection required of the contractor  
17       under this subsection.”.

18       (c) LIABILITY LIMIT.—Section 170 e.(1)(B) of the  
19       Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(1)(B)) is  
20       amended—

1           (1) by striking “the maximum amount of finan-  
2           cial protection required under subsection b. or”; and

3           (2) by striking “paragraph (3) of subsection d.,  
4           whichever amount is more” and inserting “para-  
5           graph (2) of subsection d.”.

6 **SEC. 605. INCIDENTS OUTSIDE THE UNITED STATES.**

7           (a) AMOUNT OF INDEMNIFICATION.—Section 170  
8 d.(5) of the Atomic Energy Act of 1954 (42 U.S.C.  
9 2210(d)(5)) is amended by striking “\$100,000,000” and  
10 inserting “\$500,000,000”.

11           (b) LIABILITY LIMIT.—Section 170 e.(4) of the  
12 Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(4)) is  
13 amended by striking “\$100,000,000” and inserting  
14 “\$500,000,000”.

15 **SEC. 606. REPORTS.**

16           Section 170 p. of the Atomic Energy Act of 1954 (42  
17 U.S.C. 2210(p)) is amended by striking “August 1, 1998”  
18 and inserting “December 31, 2021”.

19 **SEC. 607. INFLATION ADJUSTMENT.**

20           Section 170 t. of the Atomic Energy Act of 1954 (42  
21 U.S.C. 2210(t)) is amended—

1           (1) by redesignating paragraph (2) as para-  
2           graph (3); and

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

5           “(2) The Secretary shall adjust the amount of indem-  
6           nification provided under an agreement of indemnification  
7           under subsection d. not less than once during each 5-year  
8           period following July 1, 2003, in accordance with the ag-  
9           gregate percentage change in the Consumer Price Index  
10          since—

11           “(A) that date, in the case of the first adjust-  
12          ment under this paragraph; or

13           “(B) the previous adjustment under this para-  
14          graph.”.

15   **SEC. 608. TREATMENT OF MODULAR REACTORS.**

16          Section 170 b. of the Atomic Energy Act of 1954 (42  
17   U.S.C. 2210(b)) is amended by adding at the end the fol-  
18   lowing:

19          “(5)(A) For purposes of this section only, the Com-  
20   mission shall consider a combination of facilities described

1 in subparagraph (B) to be a single facility having a rated  
2 capacity of 100,000 electrical kilowatts or more.

3 “(B) A combination of facilities referred to in sub-  
4 paragraph (A) is 2 or more facilities located at a single  
5 site, each of which has a rated capacity of 100,000 elec-  
6 trical kilowatts or more but not more than 300,000 elec-  
7 trical kilowatts, with a combined rated capacity of not  
8 more than 1,300,000 electrical kilowatts.”

9 **SEC. 609. APPLICABILITY.**

10 The amendments made by sections 603, 604, and 605  
11 do not apply to a nuclear incident that occurs before the  
12 date of the enactment of this Act.

13 **SEC. 610. CIVIL PENALTIES.**

14 (a) REPEAL OF AUTOMATIC REMISSION.—Section  
15 234A b.(2) of the Atomic Energy Act of 1954 (42 U.S.C.  
16 2282a(b)(2)) is amended by striking the last sentence.

17 (b) LIMITATION FOR NOT-FOR-PROFIT INSTITU-  
18 TIONS.—Subsection d. of section 234A of the Atomic En-  
19 ergy Act of 1954 (42 U.S.C. 2282a(d)) is amended to read  
20 as follows:



1       “d.(1) Notwithstanding subsection a., in the case of  
2 any not-for-profit contractor, subcontractor, or supplier,  
3 the total amount of civil penalties paid under subsection  
4 a. may not exceed the total amount of fees paid within  
5 any 1-year period (as determined by the Secretary) under  
6 the contract under which the violation occurs.

7       “(2) For purposes of this section, the term ‘not-for-  
8 profit’ means that no part of the net earnings of the con-  
9 tractor, subcontractor, or supplier inures to the benefit of  
10 any natural person or for-profit artificial person.”.

11       (c) EFFECTIVE DATE.—The amendments made by  
12 this section shall not apply to any violation of the Atomic  
13 Energy Act of 1954 (42 U.S.C. 2011 et seq.) occurring  
14 under a contract entered into before the date of enactment  
15 of this section.

## 16                   **Subtitle B—General Nuclear** 17                                   **Matters**

### 18       **SEC. 621. LICENSES.**

19       Section 103 c. of the Atomic Energy Act of 1954 (42  
20 U.S.C. 2133(c)) is amended by inserting “from the au-  
21 thorization to commence operations” after “forty years”.

1 **SEC. 622. NUCLEAR REGULATORY COMMISSION SCHOLAR-**  
2 **SHIP AND FELLOWSHIP PROGRAM.**

3 (a) IN GENERAL.—Chapter 19 of the Atomic Energy  
4 Act of 1954 is amended by inserting after section 242 (42  
5 U.S.C. 2015a) the following:

6 **“SEC. 243. SCHOLARSHIP AND FELLOWSHIP PROGRAM.**

7 “a. SCHOLARSHIP PROGRAM.—To enable students to  
8 study, for at least 1 academic semester or equivalent term,  
9 science, engineering, or another field of study that the  
10 Commission determines is in a critical skill area related  
11 to the regulatory mission of the Commission, the Commis-  
12 sion may carry out a program to—

13 “(1) award scholarships to undergraduate stu-  
14 dents who—

15 “(A) are United States citizens; and

16 “(B) enter into an agreement under sub-  
17 section c. to be employed by the Commission in  
18 the area of study for which the scholarship is  
19 awarded.

20 “b. FELLOWSHIP PROGRAM.—To enable students to  
21 pursue education in science, engineering, or another field

1 of study that the Commission determines is in a critical  
2 skill area related to its regulatory mission, in a graduate  
3 or professional degree program offered by an institution  
4 of higher education in the United States, the Commission  
5 may carry out a program to—

6 “(1) award fellowships to graduate students  
7 who—

8 “(A) are United States citizens; and

9 “(B) enter into an agreement under sub-  
10 section c. to be employed by the Commission in  
11 the area of study for which the fellowship is  
12 awarded.

13 “c. REQUIREMENTS.—

14 “(1) IN GENERAL.—As a condition of receiving  
15 a scholarship or fellowship under subsection a. or b.,  
16 a recipient of the scholarship or fellowship shall  
17 enter into an agreement with the Commission under  
18 which, in return for the assistance, the recipient  
19 shall—

20 “(A) maintain satisfactory academic  
21 progress in the studies of the recipient, as de-

1           terminated by criteria established by the Commis-  
2           sion;

3           “(B) agree that failure to maintain satis-  
4           factory academic progress shall constitute  
5           grounds on which the Commission may termi-  
6           nate the assistance;

7           “(C) on completion of the academic course  
8           of study in connection with which the assistance  
9           was provided, and in accordance with criteria  
10          established by the Commission, engage in em-  
11          ployment by the Commission for a period speci-  
12          fied by the Commission, that shall be not less  
13          than 1 time and not more than 3 times the pe-  
14          riod for which the assistance was provided; and

15          “(D) if the recipient fails to meet the re-  
16          quirements of subparagraph (A), (B), or (C),  
17          reimburse the United States Government for—

18                  “(i) the entire amount of the assist-  
19                  ance provided the recipient under the  
20                  scholarship or fellowship; and

1                   “(ii) interest at a rate determined by  
2                   the Commission.

3                   “(2) WAIVER OR SUSPENSION.—The Commis-  
4                   sion may establish criteria for the partial or total  
5                   waiver or suspension of any obligation of service or  
6                   payment incurred by a recipient of a scholarship or  
7                   fellowship under this section.

8                   “d. COMPETITIVE PROCESS.—Recipients of scholar-  
9                   ships or fellowships under this section shall be selected  
10                  through a competitive process primarily on the basis of  
11                  academic merit and such other criteria as the Commission  
12                  may establish, with consideration given to financial need  
13                  and the goal of promoting the participation of individuals  
14                  identified in section 33 or 34 of the Science and Engineer-  
15                  ing Equal Opportunities Act (42 U.S.C. 1885a, 1885b).

16                  “e. DIRECT APPOINTMENT.—The Commission may  
17                  appoint directly, with no further competition, public no-  
18                  tice, or consideration of any other potential candidate, an  
19                  individual who has—

20                         “(1) received a scholarship or fellowship award-  
21                         ed by the Commission under this section; and

1           “(2) completed the academic program for which  
2           the scholarship or fellowship was awarded.”.

3           (b) CONFORMING AMENDMENT.—The table of sec-  
4           tions of the Atomic Energy Act of 1954 (42 U.S.C. prec.  
5           2011) is amended by adding after the item relating to sec-  
6           tion 242 the following:

          “Sec. 243. Scholarship and fellowship program.”.

7           **SEC. 623. COST RECOVERY FROM GOVERNMENT AGENCIES.**

8           Section 161 w. of the Atomic Energy Act of 1954  
9           (42 U.S.C. 2201(w)) is amended—

10           (1) by striking “for or is issued” and all that  
11           follows through “1702” and inserting “to the Com-  
12           mission for, or is issued by the Commission, a li-  
13           cense or certificate”;

14           (2) by striking “483a” and inserting “9701”;  
15           and

16           (3) by striking “, of applicants for, or holders  
17           of, such licenses or certificates”.

1 **SEC. 624. ELIMINATION OF PENSION OFFSET FOR CERTAIN**  
2 **REHIRED FEDERAL RETIREES.**

3 (a) IN GENERAL.—Chapter 14 of the Atomic Energy  
4 Act of 1954 (42 U.S.C. 2201 et seq.) is amended by add-  
5 ing at the end the following:

6 **“SEC. 170C. ELIMINATION OF PENSION OFFSET FOR CER-**  
7 **TAIN REHIRED FEDERAL RETIREES.**

8 “a. IN GENERAL.—The Commission may waive the  
9 application of section 8344 or 8468 of title 5, United  
10 States Code, on a case-by-case basis for employment of  
11 an annuitant—

12 “(1) in a position of the Commission for which  
13 there is exceptional difficulty in recruiting or retain-  
14 ing a qualified employee; or

15 “(2) when a temporary emergency hiring need  
16 exists.

17 “b. PROCEDURES.—The Commission shall prescribe  
18 procedures for the exercise of authority under this section,  
19 including—

20 “(1) criteria for any exercise of authority; and

21 “(2) procedures for a delegation of authority.

1       “c. EFFECT OF WAIVER.—An employee as to whom  
2 a waiver under this section is in effect shall not be consid-  
3 ered an employee for purposes of subchapter II of chapter  
4 83, or chapter 84, of title 5, United States Code.”.

5       (b) CONFORMING AMENDMENT.—The table of sec-  
6 tions of the Atomic Energy Act of 1954 (42 U.S.C. prec.  
7 2011) is amended by adding at the end of the items relat-  
8 ing to chapter 14 the following:

“Sec. 170C. Elimination of pension offset for certain rehired Federal retirees.”.

9       **SEC. 625. ANTITRUST REVIEW.**

10       Section 105 c. of the Atomic Energy Act of 1954 (42  
11 U.S.C. 2135(e)) is amended by adding at the end the fol-  
12 lowing:

13       “(9) APPLICABILITY.—This subsection does not  
14 apply to an application for a license to construct or oper-  
15 ate a utilization facility or production facility under sec-  
16 tion 103 or 104 b. that is filed on or after the date of  
17 enactment of this paragraph.”.

18       **SEC. 626. DECOMMISSIONING.**

19       Section 161 i. of the Atomic Energy Act of 1954 (42  
20 U.S.C. 2201(i)) is amended—



1 (1) by striking “and (3)” and inserting “(3)”;

2 and

3 (2) by inserting before the semicolon at the end  
4 the following: “, and (4) to ensure that sufficient  
5 funds will be available for the decommissioning of  
6 any production or utilization facility licensed under  
7 section 103 or 104 b., including standards and re-  
8 strictions governing the control, maintenance, use,  
9 and disbursement by any former licensee under this  
10 Act that has control over any fund for the decom-  
11 missioning of the facility”.

12 **SEC. 627. LIMITATION ON LEGAL FEE REIMBURSEMENT.**

13 Title II of the Energy Reorganization Act of 1974  
14 (42 U.S.C. 5841 et seq.) is amended by adding at the end  
15 the following new section:

16 “LIMITATION ON LEGAL FEE REIMBURSEMENT

17 “SEC. 212. The Department of Energy shall not, ex-  
18 cept as required under a contract entered into before the  
19 date of enactment of this section, reimburse any con-  
20 tractor or subcontractor of the Department for any legal

1 fees or expenses incurred with respect to a complaint sub-  
2 sequent to—

3           “(1) an adverse determination on the merits  
4 with respect to such complaint against the con-  
5 tractor or subcontractor by the Director of the De-  
6 partment of Energy’s Office of Hearings and Ap-  
7 peals pursuant to part 708 of title 10, Code of Fed-  
8 eral Regulations, or by a Department of Labor Ad-  
9 ministrative Law Judge pursuant to section 211 of  
10 this Act; or

11           “(2) an adverse final judgment by any State or  
12 Federal court with respect to such complaint against  
13 the contractor or subcontractor for wrongful termi-  
14 nation or retaliation due to the making of disclo-  
15 sures protected under chapter 12 of title 5, United  
16 States Code, section 211 of this Act, or any com-  
17 parable State law,

18 unless the adverse determination or final judgment is re-  
19 versed upon further administrative or judicial review.”.

1 **SEC. 628. DECOMMISSIONING PILOT PROGRAM.**

2 (a) PILOT PROGRAM.—The Secretary shall establish  
3 a decommissioning pilot program under which the Sec-  
4 retary shall decommission and decontaminate the sodium-  
5 cooled fast breeder experimental test-site reactor located  
6 in northwest Arkansas, in accordance with the decommis-  
7 sioning activities contained in the report of the Depart-  
8 ment relating to the reactor, dated August 31, 1998.

9 (b) AUTHORIZATION OF APPROPRIATIONS.—There is  
10 authorized to be appropriated to the Secretary to carry  
11 out this section \$16,000,000.

12 **SEC. 629. WHISTLEBLOWER PROTECTION.**

13 (a) DEFINITION OF EMPLOYER.—Section 211(a)(2)  
14 of the Energy Reorganization Act of 1974 (42 U.S.C.  
15 5851(a)(2)) is amended—

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

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

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

1                   “(E) a contractor or subcontractor of the  
2                   Commission;

3                   “(F) the Commission; and

4                   “(G) the Department of Energy.”.

5           (b) DE NOVO REVIEW.—Subsection (b) of such sec-  
6 tion 211 is amended by adding at the end the following  
7 new paragraph:

8                   “(4) If the Secretary has not issued a final de-  
9                   cision within 1 year after the filing of a complaint  
10                  under paragraph (1), and there is no showing that  
11                  such delay is due to the bad faith of the person  
12                  seeking relief under this paragraph, such person  
13                  may bring an action at law or equity for de novo re-  
14                  view in the appropriate district court of the United  
15                  States, which shall have jurisdiction over such an ac-  
16                  tion without regard to the amount in controversy.”.

17 **SEC. 630. MEDICAL ISOTOPE PRODUCTION.**

18           Section 134 of the Atomic Energy Act of 1954 (42  
19 U.S.C. 2160d) is amended—

1           (1) in subsection a., by striking “a. The Com-  
2           mission” and inserting “a. IN GENERAL.—Except as  
3           provided in subsection b., the Commission”;

4           (2) by redesignating subsection b. as subsection  
5           c.; and

6           (3) by inserting after subsection a. the fol-  
7           lowing:

8           “b. MEDICAL ISOTOPE PRODUCTION.—

9           “(1) DEFINITIONS.—In this subsection:

10           “(A) HIGHLY ENRICHED URANIUM.—The  
11           term ‘highly enriched uranium’ means uranium  
12           enriched to include concentration of U-235  
13           above 20 percent.

14           “(B) MEDICAL ISOTOPE.—The term ‘med-  
15           ical isotope’ includes Molybdenum 99, Iodine  
16           131, Xenon 133, and other radioactive mate-  
17           rials used to produce a radiopharmaceutical for  
18           diagnostic, therapeutic procedures or for re-  
19           search and development.

1                   “(C) **RADIOPHARMACEUTICAL.**—The term  
2                   ‘radiopharmaceutical’ means a radioactive iso-  
3                   tope that—

4                   “(i) contains byproduct material com-  
5                   bined with chemical or biological material;  
6                   and

7                   “(ii) is designed to accumulate tempo-  
8                   rarily in a part of the body for therapeutic  
9                   purposes or for enabling the production of  
10                  a useful image for use in a diagnosis of a  
11                  medical condition.

12                  “(D) **RECIPIENT COUNTRY.**—The term ‘re-  
13                  cipient country’ means Canada, Belgium,  
14                  France, Germany, and the Netherlands.

15                  “(2) **LICENSES.**—The Commission may issue a  
16                  license authorizing the export (including shipment to  
17                  and use at intermediate and ultimate consignees  
18                  specified in the license) to a recipient country of  
19                  highly enriched uranium for medical isotope produc-  
20                  tion if, in addition to any other requirements of this

1 Act (except subsection a.), the Commission deter-  
2 mines that—

3 “(A) a recipient country that supplies an  
4 assurance letter to the United States Govern-  
5 ment in connection with the consideration by  
6 the Commission of the export license applica-  
7 tion has informed the United States Govern-  
8 ment that any intermediate consignees and the  
9 ultimate consignee specified in the application  
10 are required to use the highly enriched uranium  
11 solely to produce medical isotopes; and

12 “(B) the highly enriched uranium for med-  
13 ical isotope production will be irradiated only in  
14 a reactor in a recipient country that—

15 “(i) uses an alternative nuclear reac-  
16 tor fuel; or

17 “(ii) is the subject of an agreement  
18 with the United States Government to con-  
19 vert to an alternative nuclear reactor fuel  
20 when alternative nuclear reactor fuel can  
21 be used in the reactor.

1           “(3) REVIEW OF PHYSICAL PROTECTION RE-  
2           QUIREMENTS.—

3                   “(A) IN GENERAL.—The Commission shall  
4           review the adequacy of physical protection re-  
5           quirements that, as of the date of an applica-  
6           tion under paragraph (2), are applicable to the  
7           transportation and storage of highly enriched  
8           uranium for medical isotope production or con-  
9           trol of residual material after irradiation and  
10          extraction of medical isotopes.

11                   “(B) IMPOSITION OF ADDITIONAL RE-  
12          QUIREMENTS.—If the Commission determines  
13          that additional physical protection requirements  
14          are necessary (including a limit on the quantity  
15          of highly enriched uranium that may be con-  
16          tained in a single shipment), the Commission  
17          shall impose such requirements as license condi-  
18          tions or through other appropriate means.

19          “(4) FIRST REPORT TO CONGRESS.—

20                   “(A) NAS STUDY.—The Secretary shall  
21          enter into an arrangement with the National



1 Academy of Sciences to conduct a study to  
2 determine—

3 “(i) the feasibility of procuring sup-  
4 plies of medical isotopes from commercial  
5 sources that do not use highly enriched  
6 uranium;

7 “(ii) the current and projected de-  
8 mand and availability of medical isotopes  
9 in regular current domestic use;

10 “(iii) the progress that is being made  
11 by the Department of Energy and others  
12 to eliminate all use of highly enriched ura-  
13 nium in reactor fuel, reactor targets, and  
14 medical isotope production facilities; and

15 “(iv) the potential cost differential in  
16 medical isotope production in the reactors  
17 and target processing facilities if the prod-  
18 ucts were derived from production systems  
19 that do not involve fuels and targets with  
20 highly enriched uranium.

1           “(B) FEASIBILITY.—For the purpose of  
2           this subsection, the use of low enriched uranium  
3           to produce medical isotopes shall be determined  
4           to be feasible if—

5                   “(i) low enriched uranium targets  
6                   have been developed and demonstrated for  
7                   use in the reactors and target processing  
8                   facilities that produce significant quantities  
9                   of medical isotopes to serve United States  
10                  needs for such isotopes;

11                   “(ii) sufficient quantities of medical  
12                   isotopes are available from low enriched  
13                   uranium targets and fuel to meet United  
14                   States domestic needs; and

15                   “(iii) the average anticipated total  
16                   cost increase from production of medical  
17                   isotopes in such facilities without use of  
18                   highly enriched uranium is less than 10  
19                   percent.

20           “(C) REPORT BY THE SECRETARY.—Not  
21           later than 5 years after the date of enactment

1 of the Energy Policy Act of 2005, the Secretary  
2 shall submit to Congress a report that—

3 “(i) contains the findings of the Na-  
4 tional Academy of Sciences made in the  
5 study under subparagraph (A); and

6 “(ii) discloses the existence of any  
7 commitments from commercial producers  
8 to provide domestic requirements for med-  
9 ical isotopes without use of highly enriched  
10 uranium consistent with the feasibility cri-  
11 teria described in subparagraph (B) not  
12 later than the date that is 4 years after  
13 the date of submission of the report.

14 “(5) SECOND REPORT TO CONGRESS.—If the  
15 study of the National Academy of Sciences deter-  
16 mines under paragraph (4)(A)(i) that the procure-  
17 ment of supplies of medical isotopes from commer-  
18 cial sources that do not use highly enriched uranium  
19 is feasible, but the Secretary is unable to report the  
20 existence of commitments under paragraph  
21 (4)(C)(ii), not later than the date that is 6 years

1 after the date of enactment of the Energy Policy Act  
2 of 2005, the Secretary shall submit to Congress a  
3 report that describes options for developing domestic  
4 supplies of medical isotopes in quantities that are  
5 adequate to meet domestic demand without the use  
6 of highly enriched uranium consistent with the cost  
7 increase described in paragraph (4)(B)(iii).

8 “(6) CERTIFICATION.—At such time as com-  
9 mercial facilities that do not use highly enriched  
10 uranium are capable of meeting domestic require-  
11 ments for medical isotopes, within the cost increase  
12 described in paragraph (4)(B)(iii) and without im-  
13 pairing the reliable supply of medical isotopes for  
14 domestic utilization, the Secretary shall submit to  
15 Congress a certification to that effect.

16 “(7) SUNSET PROVISION.—After the Secretary  
17 submits a certification under paragraph (6), the  
18 Commission shall, by rule, terminate its review of  
19 export license applications under this subsection.”.

1 **SEC. 631. SAFE DISPOSAL OF GREATER-THAN-CLASS C RA-**  
2 **DIOACTIVE WASTE.**

3 (a) RESPONSIBILITY FOR ACTIVITIES TO PROVIDE  
4 STORAGE FACILITY.—The Secretary shall provide to Con-  
5 gress official notification of the final designation of an en-  
6 tity within the Department to have the responsibility of  
7 completing activities needed to provide a facility for safely  
8 disposing of all greater-than-Class C low-level radioactive  
9 waste.

10 (b) REPORTS AND PLANS.—

11 (1) REPORT ON PERMANENT DISPOSAL FACIL-  
12 ITY.—

13 (A) PLAN REGARDING COST AND SCHED-  
14 ULE FOR COMPLETION OF EIS AND ROD.—Not  
15 later than 1 year after the date of enactment of  
16 this Act, the Secretary, in consultation with  
17 Congress, shall submit to Congress a report  
18 containing an estimate of the cost and a pro-  
19 posed schedule to complete an environmental  
20 impact statement and record of decision for a

1 permanent disposal facility for greater-than-  
2 Class C radioactive waste.

3 (B) ANALYSIS OF ALTERNATIVES.—Before  
4 the Secretary makes a final decision on the dis-  
5 posal alternative or alternatives to be imple-  
6 mented, the Secretary shall—

7 (i) submit to Congress a report that  
8 describes all alternatives under consider-  
9 ation, including all information required in  
10 the comprehensive report making rec-  
11 ommendations for ensuring the safe dis-  
12 posal of all greater-than-Class C low-level  
13 radioactive waste that was submitted by  
14 the Secretary to Congress in February  
15 1987; and

16 (ii) await action by Congress.

17 (2) SHORT-TERM PLAN FOR RECOVERY AND  
18 STORAGE.—

19 (A) IN GENERAL.—Not later than 180  
20 days after the date of enactment of this Act,  
21 the Secretary shall submit to Congress a plan

1 to ensure the continued recovery and storage of  
2 greater-than-Class C low-level radioactive sealed  
3 sources that pose a security threat until a per-  
4 manent disposal facility is available.

5 (B) CONTENTS.—The plan shall address  
6 estimated cost, resource, and facility needs.

7 **SEC. 632. PROHIBITION ON NUCLEAR EXPORTS TO COUN-**  
8 **TRIES THAT SPONSOR TERRORISM.**

9 (a) IN GENERAL.—Section 129 of the Atomic Energy  
10 Act of 1954 (42 U.S.C. 2158) is amended—

11 (1) by inserting “a.” before “No nuclear mate-  
12 rials and equipment”; and

13 (2) by adding at the end the following new sub-  
14 section:

15 “b.(1) Notwithstanding any other provision of law,  
16 including specifically section 121 of this Act, and except  
17 as provided in paragraphs (2) and (3), no nuclear mate-  
18 rials and equipment or sensitive nuclear technology, in-  
19 cluding items and assistance authorized by section 57 b.  
20 of this Act and regulated under part 810 of title 10, Code  
21 of Federal Regulations, and nuclear-related items on the

1 Commerce Control List maintained under part 774 of title  
2 15 of the Code of Federal Regulations, shall be exported  
3 or reexported, or transferred or retransferred whether di-  
4 rectly or indirectly, and no Federal agency shall issue any  
5 license, approval, or authorization for the export or reex-  
6 port, or transfer, or retransfer, whether directly or indi-  
7 rectly, of these items or assistance (as defined in this para-  
8 graph) to any country whose government has been identi-  
9 fied by the Secretary of State as engaged in state sponsor-  
10 ship of terrorist activities (specifically including any coun-  
11 try the government of which has been determined by the  
12 Secretary of State under section 620A(a) of the Foreign  
13 Assistance Act of 1961 (22 U.S.C. 2371(a)), section  
14 6(j)(1) of the Export Administration Act of 1979 (50  
15 U.S.C. App. 2405(j)(1)), or section 40(d) of the Arms Ex-  
16 port Control Act (22 U.S.C. 2780(d)) to have repeatedly  
17 provided support for acts of international terrorism).

18       “(2) This subsection shall not apply to exports, reex-  
19 ports, transfers, or retransfers of radiation monitoring  
20 technologies, surveillance equipment, seals, cameras, tam-  
21 per-indication devices, nuclear detectors, monitoring sys-



1 tems, or equipment necessary to safely store, transport,  
2 or remove hazardous materials, whether such items, serv-  
3 ices, or information are regulated by the Department of  
4 Energy, the Department of Commerce, or the Commis-  
5 sion, except to the extent that such technologies, equip-  
6 ment, seals, cameras, devices, detectors, or systems are  
7 available for use in the design or construction of nuclear  
8 reactors or nuclear weapons.

9 “(3) The President may waive the application of  
10 paragraph (1) to a country if the President determines  
11 and certifies to Congress that the waiver will not result  
12 in any increased risk that the country receiving the waiver  
13 will acquire nuclear weapons, nuclear reactors, or any ma-  
14 terials or components of nuclear weapons and—

15 “(A) the government of such country has not  
16 within the preceding 12-month period willfully aided  
17 or abetted the international proliferation of nuclear  
18 explosive devices to individuals or groups or willfully  
19 aided and abetted an individual or groups in acquir-  
20 ing unsafeguarded nuclear materials;

1           “(B) in the judgment of the President, the gov-  
2           ernment of such country has provided adequate,  
3           verifiable assurances that it will cease its support for  
4           acts of international terrorism;

5           “(C) the waiver of that paragraph is in the vital  
6           national security interest of the United States; or

7           “(D) such a waiver is essential to prevent or re-  
8           spond to a serious radiological hazard in the country  
9           receiving the waiver that may or does threaten pub-  
10          lic health and safety.”.

11          (b) **APPLICABILITY TO EXPORTS APPROVED FOR**  
12 **TRANSFER BUT NOT TRANSFERRED.**—Subsection b. of  
13 section 129 of Atomic Energy Act of 1954, as added by  
14 subsection (a) of this section, shall apply with respect to  
15 exports that have been approved for transfer as of the date  
16 of the enactment of this Act but have not yet been trans-  
17 ferred as of that date.

18 **SEC. 633. EMPLOYEE BENEFITS.**

19          Section 3110(a) of the USEC Privatization Act (42  
20 U.S.C. 2297h-8(a)) is amended by adding at the end the  
21 following new paragraph:

1       “(8) CONTINUITY OF BENEFITS.—To the extent ap-  
2       propriations are provided in advance for this purpose or  
3       are otherwise available, not later than 30 days after the  
4       date of enactment of this paragraph, the Secretary shall  
5       implement such actions as are necessary to ensure that  
6       any employee who—

7               “(A) is involved in providing infrastructure or  
8       environmental remediation services at the Ports-  
9       mouth, Ohio, or the Paducah, Kentucky, Gaseous  
10      Diffusion Plant;

11              “(B) has been an employee of the Department  
12      of Energy’s predecessor management and inte-  
13      grating contractor (or its first or second tier sub-  
14      contractors), or of the Corporation, at the Ports-  
15      mouth, Ohio, or the Paducah, Kentucky, facility;  
16      and

17              “(C) was eligible as of April 1, 2005, to partici-  
18      pate in or transfer into the Multiple Employer Pen-  
19      sion Plan or the associated multiple employer retiree  
20      health care benefit plans, as defined in those plans,

1 shall continue to be eligible to participate in or transfer  
2 into such pension or health care benefit plans.”.

3 **SEC. 634. DEMONSTRATION HYDROGEN PRODUCTION AT**  
4 **EXISTING NUCLEAR POWER PLANTS.**

5 (a) DEMONSTRATION PROJECTS.—The Secretary  
6 shall provide for the establishment of 2 projects in geo-  
7 graphic areas that are regionally and climatically diverse  
8 to demonstrate the commercial production of hydrogen at  
9 existing nuclear power plants.

10 (b) ECONOMIC ANALYSIS.—Prior to making an  
11 award under subsection (a), the Secretary shall determine  
12 whether the use of existing nuclear power plants is a cost-  
13 effective means of producing hydrogen.

14 (c) AUTHORIZATION OF APPROPRIATIONS.—There  
15 are authorized to be appropriated to the Secretary for the  
16 purposes of carrying out this section not more than  
17 \$100,000,000.

1 **SEC. 635. PROHIBITION ON ASSUMPTION BY UNITED**  
2 **STATES GOVERNMENT OF LIABILITY FOR**  
3 **CERTAIN FOREIGN INCIDENTS.**

4 (a) IN GENERAL.—Notwithstanding any other provi-  
5 sion of law, no officer of the United States or of any de-  
6 partment, agency, or instrumentality of the United States  
7 Government may enter into any contract or other arrange-  
8 ment, or into any amendment or modification of a contract  
9 or other arrangement, the purpose or effect of which  
10 would be to directly or indirectly impose liability on the  
11 United States Government, or any department, agency, or  
12 instrumentality of the United States Government, or to  
13 otherwise directly or indirectly require an indemnity by the  
14 United States Government, for nuclear incidents occurring  
15 in connection with the design, construction, or operation  
16 of a production facility or utilization facility in any coun-  
17 try whose government has been identified by the Secretary  
18 of State as engaged in state sponsorship of terrorist activi-  
19 ties (specifically including any country the government of  
20 which, as of September 11, 2001, had been determined  
21 by the Secretary of State under section 620A(a) of the

1 Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)), sec-  
2 tion 6(j)(1) of the Export Administration Act of 1979 (50  
3 U.S.C. App. 2405(j)(1)), or section 40(d) of the Arms Ex-  
4 port Control Act (22 U.S.C. 2780(d)) to have repeatedly  
5 provided support for acts of international terrorism). This  
6 section shall not apply to nuclear incidents occurring as  
7 a result of missions, carried out under the direction of the  
8 Secretary, the Secretary of Defense, or the Secretary of  
9 State, that are necessary to safely secure, store, transport,  
10 or remove nuclear materials for nuclear safety or non-  
11 proliferation purposes.

12 (b) DEFINITIONS.—The terms used in this section  
13 shall have the same meaning as those terms have under  
14 section 11 of the Atomic Energy Act of 1954 (42 U.S.C.  
15 2014), unless otherwise expressly provided in this section.

16 **SEC. 636. AUTHORIZATION OF APPROPRIATIONS.**

17 There are authorized to be appropriated such sums  
18 as are necessary to carry out this subtitle and the amend-  
19 ments made by this subtitle.

1 **SEC. 637. NUCLEAR REGULATORY COMMISSION USER FEES**  
2 **AND ANNUAL CHARGES.**

3 (a) IN GENERAL.—Section 6101 of the Omnibus  
4 Budget Reconciliation Act of 1990 (42 U.S.C. 2214) is  
5 amended—

6 (1) in subsection (a)—

7 (A) by striking “Except as provided in  
8 paragraph (3), the” and inserting “The” in  
9 paragraph (1); and

10 (B) by striking paragraph (3); and

11 (2) in subsection (c)—

12 (A) by striking “and” at the end of para-  
13 graph (2)(A)(i);

14 (B) by striking the period at the end of  
15 paragraph (2)(A)(ii) and inserting a semicolon;

16 (C) by adding at the end of paragraph  
17 (2)(A) the following new clauses:

18 “(iii) amounts appropriated to the  
19 Commission for the fiscal year for imple-  
20 mentation of section 3116 of the Ronald

1           W. Reagan National Defense Authorization  
2           Act for Fiscal Year 2005; and

3                   “(iv) amounts appropriated to the  
4           Commission for homeland security activi-  
5           ties of the Commission for the fiscal year,  
6           except for the costs of fingerprinting and  
7           background checks required by section 149  
8           of the Atomic Energy Act of 1954 (42  
9           U.S.C. 2169) and the costs of conducting  
10          security inspections.”; and

11          (D) by amending paragraph (2)(B)(v) to  
12          read as follows:

13                   “(v) 90 percent for fiscal year 2005  
14           and each fiscal year thereafter.”.

15          (b) REPEAL.—Section 7601 of the Consolidated Om-  
16          nibus Budget Reconciliation Act of 1985 (42 U.S.C. 2213)  
17          is repealed.

18          (c) EFFECTIVE DATE.—The amendments made by  
19          this section take effect on October 1, 2006.



1 **SEC. 638. STANDBY SUPPORT FOR CERTAIN NUCLEAR**  
2 **PLANT DELAYS.**

3 (a) DEFINITIONS.—In this section:

4 (1) ADVANCED NUCLEAR FACILITY.—The term  
5 “advanced nuclear facility” means any nuclear facil-  
6 ity the reactor design for which is approved after  
7 December 31, 1993, by the Commission (and such  
8 design or a substantially similar design of com-  
9 parable capacity was not approved on or before that  
10 date).

11 (2) COMBINED LICENSE.—The term “combined  
12 license” means a combined construction and oper-  
13 ating license for an advanced nuclear facility issued  
14 by the Commission.

15 (3) COMMISSION.—The term “Commission”  
16 means the Nuclear Regulatory Commission.

17 (4) SPONSOR.—The term “sponsor” means a  
18 person who has applied for or been granted a com-  
19 bined license.

20 (b) CONTRACT AUTHORITY.—

1           (1) IN GENERAL.—The Secretary may enter  
2           into contracts under this section with sponsors of an  
3           advanced nuclear facility that cover a total of 6 reac-  
4           tors, with the 6 reactors consisting of not more than  
5           3 different reactor designs, in accordance with para-  
6           graph (2).

7           (2) REQUIREMENT FOR CONTRACTS.—

8           (A) DEFINITION OF LOAN COST.—In this  
9           paragraph, the term “loan cost” has the mean-  
10          ing given the term “cost of a loan guarantee”  
11          under section 502(5)(C) of the Federal Credit  
12          Reform Act of 1990 (2 U.S.C. 661a(5)(C)).

13          (B) ESTABLISHMENT OF ACCOUNTS.—  
14          There is established in the Department 2 sepa-  
15          rate accounts, which shall be known as the—

16                 (i) “Standby Support Program Ac-  
17                 count”; and

18                 (ii) “Standby Support Grant Ac-  
19                 count”.

1           (C) REQUIREMENT.—The Secretary shall  
2           not enter into a contract under this section un-  
3           less the Secretary deposits—

4                   (i) in the Standby Support Program  
5           Account established under subparagraph  
6           (B), funds appropriated to the Secretary in  
7           advance of the contract or a combination  
8           of appropriated funds and loan guarantee  
9           fees that are in an amount sufficient to  
10          cover the loan costs described in subsection  
11          (d)(5)(A); and

12                   (ii) in the Standby Support Grant Ac-  
13          count established under subparagraph (B),  
14          funds appropriated to the Secretary in ad-  
15          vance of the contract, paid to the Secretary  
16          by the sponsor of the advanced nuclear fa-  
17          cility, or a combination of appropriations  
18          and payments that are in an amount suffi-  
19          cient cover the costs described in subpara-  
20          graphs (B), (C), and (D) of subsection  
21          (d)(5).

1 (c) COVERED DELAYS.—

2 (1) INCLUSIONS.—Under each contract author-  
3 ized by this section, the Secretary shall pay the costs  
4 specified in subsection (d), using funds appropriated  
5 or collected for the covered costs, if full power oper-  
6 ation of the advanced nuclear facility is delayed by—

7 (A) the failure of the Commission to com-  
8 ply with schedules for review and approval of  
9 inspections, tests, analyses, and acceptance cri-  
10 teria established under the combined license or  
11 the conduct of preoperational hearings by the  
12 Commission for the advanced nuclear facility;  
13 or

14 (B) litigation that delays the commence-  
15 ment of full-power operations of the advanced  
16 nuclear facility.

17 (2) EXCLUSIONS.—The Secretary may not  
18 enter into any contract under this section that would  
19 obligate the Secretary to pay any costs resulting  
20 from—

1 (A) the failure of the sponsor to take any  
2 action required by law or regulation;

3 (B) events within the control of the spon-  
4 sor; or

5 (C) normal business risks.

6 (d) COVERED COSTS.—

7 (1) IN GENERAL.—Subject to paragraphs (2),  
8 (3), and (4), the costs that shall be paid by the Sec-  
9 retary pursuant to a contract entered into under this  
10 section are the costs that result from a delay covered  
11 by the contract.

12 (2) INITIAL 2 REACTORS.—In the case of the  
13 first 2 reactors that receive combined licenses and  
14 on which construction is commenced, the Secretary  
15 shall pay—

16 (A) 100 percent of the covered costs of  
17 delay; but

18 (B) not more than \$500,000,000 per con-  
19 tract.

20 (3) SUBSEQUENT 4 REACTORS.—In the case of  
21 the next 4 reactors that receive a combined license

1 and on which construction is commenced, the Sec-  
2 retary shall pay—

3 (A) 50 percent of the covered costs of  
4 delay that occur after the initial 180-day period  
5 of covered delay; but

6 (B) not more than \$250,000,000 per con-  
7 tract.

8 (4) CONDITIONS ON PAYMENT OF CERTAIN  
9 COVERED COSTS.—

10 (A) IN GENERAL.—The obligation of the  
11 Secretary to pay the covered costs described in  
12 subparagraph (B) of paragraph (5) is subject to  
13 the Secretary receiving from appropriations or  
14 payments from other non-Federal sources  
15 amounts sufficient to pay the covered costs.

16 (B) NON-FEDERAL SOURCES.—The Sec-  
17 retary may receive and accept payments from  
18 any non-Federal source, which shall be made  
19 available without further appropriation for the  
20 payment of the covered costs.

1           (5) TYPES OF COVERED COSTS.—Subject to  
2 paragraphs (2), (3), and (4), the contract entered  
3 into under this section for an advanced nuclear facil-  
4 ity shall include as covered costs those costs that re-  
5 sult from a delay during construction and in gaining  
6 approval for fuel loading and full-power operation,  
7 including—

8           (A) principal or interest on any debt obli-  
9 gation of an advanced nuclear facility owned by  
10 a non-Federal entity; and

11           (B) the incremental difference between—

12           (i) the fair market price of power pur-  
13 chased to meet the contractual supply  
14 agreements that would have been met by  
15 the advanced nuclear facility but for the  
16 delay; and

17           (ii) the contractual price of power  
18 from the advanced nuclear facility subject  
19 to the delay.

20           (e) REQUIREMENTS.—Any contract between a spon-  
21 sor and the Secretary covering an advanced nuclear facil-

1 ity under this section shall require the sponsor to use due  
2 diligence to shorten, and to end, the delay covered by the  
3 contract.

4 (f) REPORTS.—For each advanced nuclear facility  
5 that is covered by a contract under this section, the Com-  
6 mission shall submit to Congress and the Secretary quar-  
7 terly reports summarizing the status of licensing actions  
8 associated with the advanced nuclear facility.

9 (g) REGULATIONS.—

10 (1) IN GENERAL.—Subject to paragraphs (2)  
11 and (3), the Secretary shall issue such regulations as  
12 are necessary to carry out this section.

13 (2) INTERIM FINAL RULEMAKING.—Not later  
14 than 270 days after the date of enactment of this  
15 Act, the Secretary shall issue for public comment an  
16 interim final rule regulating contracts authorized by  
17 this section.

18 (3) NOTICE OF FINAL RULEMAKING.—Not later  
19 than 1 year after the date of enactment of this Act,  
20 the Secretary shall issue a notice of final rulemaking  
21 regulating the contracts.



1 (h) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated such sums as are nec-  
3 essary to carry out this section.

4 **SEC. 639. CONFLICTS OF INTEREST RELATING TO CON-**  
5 **TRACTS AND OTHER ARRANGEMENTS.**

6 Section 170A b. of the Atomic Energy Act of 1954  
7 (42 U.S.C. 2210a(b)) is amended—

8 (1) by redesignating paragraphs (1) and (2) as  
9 subparagraphs (A) and (B), respectively, and indent-  
10 ing appropriately;

11 (2) by striking “b. The Commission” and in-  
12 sserting the following:

13 “b. EVALUATION.—

14 “(1) IN GENERAL.—Except as provided in para-  
15 graph (2), the Nuclear Regulatory Commission”;

16 and

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

18 “(2) NUCLEAR REGULATORY COMMISSION.—

19 Notwithstanding any conflict of interest, the Nuclear  
20 Regulatory Commission may enter into a contract,  
21 agreement, or arrangement with the Department of

1 Energy or the operator of a Department of Energy  
2 facility, if the Nuclear Regulatory Commission deter-  
3 mines that—

4 “(A) the conflict of interest cannot be miti-  
5 gated; and

6 “(B) adequate justification exists to pro-  
7 ceed without mitigation of the conflict of inter-  
8 est.”.

9 **Subtitle C—Next Generation**  
10 **Nuclear Plant Project**

11 **SEC. 641. PROJECT ESTABLISHMENT.**

12 (a) ESTABLISHMENT.—The Secretary shall establish  
13 a project to be known as the “Next Generation Nuclear  
14 Plant Project” (referred to in this subtitle as the  
15 “Project”).

16 (b) CONTENT.—The Project shall consist of the re-  
17 search, development, design, construction, and operation  
18 of a prototype plant, including a nuclear reactor that—

19 (1) is based on research and development activi-  
20 ties supported by the Generation IV Nuclear Energy  
21 Systems Initiative under section 942(d); and

619

- 1           (2) shall be used—  
2                 (A) to generate electricity;  
3                 (B) to produce hydrogen; or  
4                 (C) both to generate electricity and to  
5           produce hydrogen.

6 **SEC. 642. PROJECT MANAGEMENT.**

7         (a) DEPARTMENTAL MANAGEMENT.—

8           (1) IN GENERAL.—The Project shall be man-  
9           aged in the Department by the Office of Nuclear  
10          Energy, Science, and Technology.

11          (2) GENERATION IV NUCLEAR ENERGY SYS-  
12          TEMS PROGRAM.—The Secretary may combine the  
13          Project with the Generation IV Nuclear Energy Sys-  
14          tems Initiative.

15          (3) EXISTING DOE PROJECT MANAGEMENT EX-  
16          PERTISE.—The Secretary may utilize capabilities for  
17          review of construction projects for advanced sci-  
18          entific facilities within the Office of Science to track  
19          the progress of the Project.

20         (b) LABORATORY MANAGEMENT.—

1           (1) LEAD LABORATORY.—The Idaho National  
2           Laboratory shall be the lead National Laboratory for  
3           the Project and shall collaborate with other National  
4           Laboratories, institutions of higher education, other  
5           research institutes, industrial researchers, and inter-  
6           national researchers to carry out the Project.

7           (2) INDUSTRIAL PARTNERSHIPS.—

8           (A) IN GENERAL.—The Idaho National  
9           Laboratory shall organize a consortium of ap-  
10          propriate industrial partners that will carry out  
11          cost-shared research, development, design, and  
12          construction activities, and operate research fa-  
13          cilities, on behalf of the Project.

14          (B) COST-SHARING.—Activities of indus-  
15          trial partners funded by the Project shall be  
16          cost-shared in accordance with section 988.

17          (C) PREFERENCE.—Preference in deter-  
18          mining the final structure of the consortium or  
19          any partnerships under this subtitle shall be  
20          given to a structure (including designating as a  
21          lead industrial partner an entity incorporated in

1           the United States) that retains United States  
2           technological leadership in the Project while  
3           maximizing cost sharing opportunities and  
4           minimizing Federal funding responsibilities.

5           (3) PROTOTYPE PLANT SITING.—The prototype  
6           nuclear reactor and associated plant shall be sited at  
7           the Idaho National Laboratory in Idaho.

8           (4) REACTOR TEST CAPABILITIES.—The  
9           Project shall use, if appropriate, reactor test capa-  
10          bilities at the Idaho National Laboratory.

11          (5) OTHER LABORATORY CAPABILITIES.—The  
12          Project may use, if appropriate, facilities at other  
13          National Laboratories.

14 **SEC. 643. PROJECT ORGANIZATION.**

15          (a) MAJOR PROJECT ELEMENTS.—The Project shall  
16          consist of the following major program elements:

17               (1) High-temperature hydrogen production  
18               technology development and validation.

19               (2) Energy conversion technology development  
20               and validation.

1           (3) Nuclear fuel development, characterization,  
2           and qualification.

3           (4) Materials selection, development, testing,  
4           and qualification.

5           (5) Reactor and balance-of-plant design, engi-  
6           neering, safety analysis, and qualification.

7           (b) PROJECT PHASES.—The Project shall be con-  
8           ducted in the following phases:

9           (1) FIRST PROJECT PHASE.—A first project  
10          phase shall be conducted to—

11                 (A) select and validate the appropriate  
12                 technology under subsection (a)(1);

13                 (B) carry out enabling research, develop-  
14                 ment, and demonstration activities on tech-  
15                 nologies and components under paragraphs (2)  
16                 through (4) of subsection (a);

17                 (C) determine whether it is appropriate to  
18                 combine electricity generation and hydrogen  
19                 production in a single prototype nuclear reactor  
20                 and plant; and

1           (D) carry out initial design activities for a  
2           prototype nuclear reactor and plant, including  
3           development of design methods and safety ana-  
4           lytical methods and studies under subsection  
5           (a)(5).

6           (2) SECOND PROJECT PHASE.—A second  
7           project phase shall be conducted to—

8           (A) continue appropriate activities under  
9           paragraphs (1) through (5) of subsection (a);

10          (B) develop, through a competitive process,  
11          a final design for the prototype nuclear reactor  
12          and plant;

13          (C) apply for licenses to construct and op-  
14          erate the prototype nuclear reactor from the  
15          Nuclear Regulatory Commission; and

16          (D) construct and start up operations of  
17          the prototype nuclear reactor and its associated  
18          hydrogen or electricity production facilities.

19          (c) PROJECT REQUIREMENTS.—

20           (1) IN GENERAL.—The Secretary shall ensure  
21           that the Project is structured so as to maximize the

1 technical interchange and transfer of technologies  
2 and ideas into the Project from other sources of rel-  
3 evant expertise, including—

4 (A) the nuclear power industry, including  
5 nuclear powerplant construction firms, particu-  
6 larly with respect to issues associated with  
7 plant design, construction, and operational and  
8 safety issues;

9 (B) the chemical processing industry, par-  
10 ticularly with respect to issues relating to—

11 (i) the use of process energy for pro-  
12 duction of hydrogen; and

13 (ii) the integration of technologies de-  
14 veloped by the Project into chemical proc-  
15 essing environments; and

16 (C) international efforts in areas related to  
17 the Project, particularly with respect to hydro-  
18 gen production technologies.

19 (2) INTERNATIONAL COLLABORATION.—



1           (A) IN GENERAL.—The Secretary shall  
2           seek international cooperation, participation,  
3           and financial contributions for the Project.

4           (B) ASSISTANCE FROM INTERNATIONAL  
5           PARTNERS.—The Secretary, through the Idaho  
6           National Laboratory, may contract for assist-  
7           ance from specialists or facilities from member  
8           countries of the Generation IV International  
9           Forum, the Russian Federation, or other inter-  
10          national partners if the specialists or facilities  
11          provide access to cost-effective and relevant  
12          skills or test capabilities.

13          (C) PARTNER NATIONS.—The Project may  
14          involve demonstration of selected project objec-  
15          tives in a partner country.

16          (D) GENERATION IV INTERNATIONAL  
17          FORUM.—The Secretary shall ensure that inter-  
18          national activities of the Project are coordinated  
19          with the Generation IV International Forum.

20          (3) REVIEW BY NUCLEAR ENERGY RESEARCH  
21          ADVISORY COMMITTEE.—

1           (A) IN GENERAL.—The Nuclear Energy  
2           Research Advisory Committee of the Depart-  
3           ment (referred to in this paragraph as the  
4           “NERAC”) shall—

5                   (i) review all program plans for the  
6                   Project and all progress under the Project  
7                   on an ongoing basis; and

8                   (ii) ensure that important scientific,  
9                   technical, safety, and program manage-  
10                  ment issues receive attention in the Project  
11                  and by the Secretary.

12           (B) ADDITIONAL EXPERTISE.—The  
13           NERAC shall supplement the expertise of the  
14           NERAC or appoint subpanels to incorporate  
15           into the review by the NERAC the relevant  
16           sources of expertise described under paragraph  
17           (1).

18           (C) INITIAL REVIEW.—Not later than 180  
19           days after the date of enactment of this Act,  
20           the NERAC shall—

1 (i) review existing program plans for  
2 the Project in light of the recommenda-  
3 tions of the document entitled “Design  
4 Features and Technology Uncertainties for  
5 the Next Generation Nuclear Plant,” dated  
6 June 30, 2004; and

7 (ii) address any recommendations of  
8 the document not incorporated in program  
9 plans for the Project.

10 (D) FIRST PROJECT PHASE REVIEW.—On  
11 a determination by the Secretary that the ap-  
12 propriate activities under the first project phase  
13 under subsection (b)(1) are nearly complete, the  
14 Secretary shall request the NERAC to conduct  
15 a comprehensive review of the Project and to  
16 report to the Secretary the recommendation of  
17 the NERAC concerning whether the Project is  
18 ready to proceed to the second project phase  
19 under subsection (b)(2).

20 (E) TRANSMITTAL OF REPORTS TO CON-  
21 GRESS.—Not later than 60 days after receiving

1           any report from the NERAC related to the  
2           Project, the Secretary shall submit to the ap-  
3           propriate committees of the Senate and the  
4           House of Representatives a copy of the report,  
5           along with any additional views of the Secretary  
6           that the Secretary may consider appropriate.

7 **SEC. 644. NUCLEAR REGULATORY COMMISSION.**

8           (a) IN GENERAL.—In accordance with section 202 of  
9           the Energy Reorganization Act of 1974 (42 U.S.C. 5842),  
10          the Nuclear Regulatory Commission shall have licensing  
11          and regulatory authority for any reactor authorized under  
12          this subtitle.

13          (b) LICENSING STRATEGY.—Not later than 3 years  
14          after the date of enactment of this Act, the Secretary and  
15          the Chairman of the Nuclear Regulatory Commission shall  
16          jointly submit to the appropriate committees of the Senate  
17          and the House of Representatives a licensing strategy for  
18          the prototype nuclear reactor, including—

19                  (1) a description of ways in which current li-  
20          censing requirements relating to light-water reactors

1       need to be adapted for the types of prototype nu-  
2       clear reactor being considered by the Project;

3           (2) a description of analytical tools that the  
4       Nuclear Regulatory Commission will have to develop  
5       to independently verify designs and performance  
6       characteristics of components, equipment, systems,  
7       or structures associated with the prototype nuclear  
8       reactor;

9           (3) other research or development activities that  
10       may be required on the part of the Nuclear Regu-  
11       latory Commission in order to review a license appli-  
12       cation for the prototype nuclear reactor; and

13           (4) an estimate of the budgetary requirements  
14       associated with the licensing strategy.

15       (c) ONGOING INTERACTION.—The Secretary shall  
16       seek the active participation of the Nuclear Regulatory  
17       Commission throughout the duration of the Project to—

18           (1) avoid design decisions that will compromise  
19       adequate safety margins in the design of the reactor  
20       or impair the accessibility of nuclear safety-related

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1 components of the prototype reactor for inspection  
2 and maintenance;

3 (2) develop tools to facilitate inspection and  
4 maintenance needed for safety purposes; and

5 (3) develop risk-based criteria for any future  
6 commercial development of a similar reactor archi-  
7 tectures.

8 **SEC. 645. PROJECT TIMELINES AND AUTHORIZATION OF**  
9 **APPROPRIATIONS.**

10 (a) TARGET DATE TO COMPLETE THE FIRST  
11 PROJECT PHASE.—Not later than September 30, 2011,  
12 the Secretary shall—

13 (1) select the technology to be used by the  
14 Project for high-temperature hydrogen production  
15 and the initial design parameters for the prototype  
16 nuclear plant; or

17 (2) submit to Congress a report establishing an  
18 alternative date for making the selection.

19 (b) DESIGN COMPETITION FOR SECOND PROJECT  
20 PHASE.—

1           (1) IN GENERAL.—The Secretary, acting  
2 through the Idaho National Laboratory, shall fund  
3 not more than 4 teams for not more than 2 years  
4 to develop detailed proposals for competitive evalua-  
5 tion and selection of a single proposal for a final de-  
6 sign of the prototype nuclear reactor.

7           (2) SYSTEMS INTEGRATION.—The Secretary  
8 may structure Project activities in the second project  
9 phase to use the lead industrial partner of the com-  
10 petitively selected design under paragraph (1) in a  
11 systems integration role for final design and con-  
12 struction of the Project.

13       (c) TARGET DATE TO COMPLETE PROJECT CON-  
14 STRUCTION.—Not later than September 30, 2021, the  
15 Secretary shall—

16           (1) complete construction and begin operations  
17 of the prototype nuclear reactor and associated en-  
18 ergy or hydrogen facilities; or

19           (2) submit to Congress a report establishing an  
20 alternative date for completion.

1 (d) AUTHORIZATION OF APPROPRIATIONS.—There is  
2 authorized to be appropriated to the Secretary for re-  
3 search and construction activities under this subtitle (in-  
4 cluding for transfer to the Nuclear Regulatory Commis-  
5 sion for activities under section 644 as appropriate)—

6 (1) \$1,250,000,000 for the period of fiscal  
7 years 2006 through 2015; and

8 (2) such sums as are necessary for each of fis-  
9 cal years 2016 through 2021.

## 10 **Subtitle D—Nuclear Security**

### 11 **SEC. 651. NUCLEAR FACILITY AND MATERIALS SECURITY.**

12 (a) SECURITY EVALUATIONS; DESIGN BASIS THREAT  
13 RULEMAKING.—

14 (1) IN GENERAL.—Chapter 14 of the Atomic  
15 Energy Act of 1954 (42 U.S.C. 2201 et seq.) (as  
16 amended by section 624(a)) is amended by adding at  
17 the end the following:

#### 18 **“SEC. 170D. SECURITY EVALUATIONS.**

19 “a. SECURITY RESPONSE EVALUATIONS.—Not less  
20 often than once every 3 years, the Commission shall con-  
21 duct security evaluations at each licensed facility that is



1 part of a class of licensed facilities, as the Commission  
2 considers to be appropriate, to assess the ability of a pri-  
3 vate security force of a licensed facility to defend against  
4 any applicable design basis threat.

5 “b. FORCE-ON-FORCE EXERCISES.—(1) The security  
6 evaluations shall include force-on-force exercises.

7 “(2) The force-on-force exercises shall, to the max-  
8 imum extent practicable, simulate security threats in ac-  
9 cordance with any design basis threat applicable to a facil-  
10 ity.

11 “(3) In conducting a security evaluation, the Com-  
12 mission shall mitigate any potential conflict of interest  
13 that could influence the results of a force-on-force exer-  
14 cise, as the Commission determines to be necessary and  
15 appropriate.

16 “c. ACTION BY LICENSEES.—The Commission shall  
17 ensure that an affected licensee corrects those material de-  
18 fects in performance that adversely affect the ability of  
19 a private security force at that facility to defend against  
20 any applicable design basis threat.

1           “d. FACILITIES UNDER HEIGHTENED THREAT LEV-  
2 ELS.—The Commission may suspend a security evaluation  
3 under this section if the Commission determines that the  
4 evaluation would compromise security at a nuclear facility  
5 under a heightened threat level.

6           “e. REPORT.—Not less often than once each year, the  
7 Commission shall submit to the Committee on Environ-  
8 ment and Public Works of the Senate and the Committee  
9 on Energy and Commerce of the House of Representatives  
10 a report, in classified form and unclassified form, that de-  
11 scribes the results of each security response evaluation  
12 conducted and any relevant corrective action taken by a  
13 licensee during the previous year.

14 **“SEC. 170E. DESIGN BASIS THREAT RULEMAKING.**

15           “a. RULEMAKING.—The Commission shall—

16                   “(1) not later than 90 days after the date of  
17 enactment of this section, initiate a rulemaking pro-  
18 ceeding, including notice and opportunity for public  
19 comment, to be completed not later than 18 months  
20 after that date, to revise the design basis threats of  
21 the Commission; or

1           “(2) not later than 18 months after the date of  
2           enactment of this section, complete any ongoing  
3           rulemaking to revise the design basis threats.

4           “b. FACTORS.—When conducting its rulemaking, the  
5           Commission shall consider the following, but not be lim-  
6           ited to—

7           “(1) the events of September 11, 2001;

8           “(2) an assessment of physical, cyber, bio-  
9           chemical, and other terrorist threats;

10           “(3) the potential for attack on facilities by  
11           multiple coordinated teams of a large number of in-  
12           dividuals;

13           “(4) the potential for assistance in an attack  
14           from several persons employed at the facility;

15           “(5) the potential for suicide attacks;

16           “(6) the potential for water-based and air-based  
17           threats;

18           “(7) the potential use of explosive devices of  
19           considerable size and other modern weaponry;

20           “(8) the potential for attacks by persons with  
21           a sophisticated knowledge of facility operations;

1           “(9) the potential for fires, especially fires of  
2           long duration;

3           “(10) the potential for attacks on spent fuel  
4           shipments by multiple coordinated teams of a large  
5           number of individuals;

6           “(11) the adequacy of planning to protect the  
7           public health and safety at and around nuclear fa-  
8           cilities, as appropriate, in the event of a terrorist at-  
9           tack against a nuclear facility; and

10           “(12) the potential for theft and diversion of  
11           nuclear materials from such facilities.”.

12           (2) CONFORMING AMENDMENT.—The table of  
13           sections of the Atomic Energy Act of 1954 (42  
14           U.S.C. prec. 2011) (as amended by section 624(b))  
15           is amended by adding at the end of the items relat-  
16           ing to chapter 14 the following:

“Sec. 170D. Security evaluations.

“Sec. 170E. Design basis threat rulemaking.”.

17           (3) FEDERAL SECURITY COORDINATORS.—

18           (A) REGIONAL OFFICES.—Not later than  
19           18 months after the date of enactment of this

1 Act, the Nuclear Regulatory Commission (re-  
2 ferred to in this section as the “Commission”)  
3 shall assign a Federal security coordinator,  
4 under the employment of the Commission, to  
5 each region of the Commission.

6 (B) RESPONSIBILITIES.—The Federal se-  
7 curity coordinator shall be responsible for—

8 (i) communicating with the Commis-  
9 sion and other Federal, State, and local  
10 authorities concerning threats, including  
11 threats against such classes of facilities as  
12 the Commission determines to be appro-  
13 priate;

14 (ii) monitoring such classes of facili-  
15 ties as the Commission determines to be  
16 appropriate to ensure that they maintain  
17 security consistent with the security plan  
18 in accordance with the appropriate threat  
19 level; and

20 (iii) assisting in the coordination of  
21 security measures among the private secu-

1           rity forces at such classes of facilities as  
2           the Commission determines to be appro-  
3           priate and Federal, State, and local au-  
4           thorities, as appropriate.

5           (b) **BACKUP POWER FOR CERTAIN EMERGENCY NO-**  
6 **TIFICATION SYSTEMS.**—For any licensed nuclear power  
7 plants located where there is a permanent population, as  
8 determined by the 2000 decennial census, in excess of  
9 15,000,000 within a 50-mile radius of the power plant,  
10 not later than 18 months after enactment of this Act, the  
11 Commission shall require that backup power to be avail-  
12 able for the emergency notification system of the power  
13 plant, including the emergency siren warning system, if  
14 the alternating current supply within the 10-mile emer-  
15 gency planning zone of the power plant is lost.

16           (c) **ADDITIONAL PROVISIONS.**—

17           (1) **PROVISION OF SUPPORT TO UNIVERSITY**  
18 **NUCLEAR SAFETY, SECURITY, AND ENVIRONMENTAL**  
19 **PROTECTION PROGRAMS.**—Section 31 b. of the  
20 Atomic Energy Act of 1954 (42 U.S.C. 2051(b)) is  
21 amended—

1 (A) by striking “b. The Commission is fur-  
2 ther authorized to make” and inserting the fol-  
3 lowing:

4 “b. GRANTS AND CONTRIBUTIONS.—The Commis-  
5 sion is authorized—

6 “(1) to make”;

7 (B) in paragraph (1) (as designated by  
8 subparagraph (A)) by striking the period at the  
9 end and inserting “; and”; and

10 (C) by adding at the end the following:

11 “(2) to provide grants, loans, cooperative agree-  
12 ments, contracts, and equipment to institutions of  
13 higher education (as defined in section 102 of the  
14 Higher Education Act of 1965 (20 U.S.C. 1002)) to  
15 support courses, studies, training, curricula, and dis-  
16 ciplines pertaining to nuclear safety, security, or en-  
17 vironmental protection, or any other field that the  
18 Commission determines to be critical to the regu-  
19 latory mission of the Commission.”.

20 (2) RECRUITMENT TOOLS.—Chapter 14 of the  
21 Atomic Energy Act of 1954 (42 U.S.C. 2201 et

1       seq.) (as amended by subsection (a)(1)) is amended  
2       by adding at the end the following:

3       **“SEC. 170F. RECRUITMENT TOOLS.**

4       “The Commission may purchase promotional items of  
5       nominal value for use in the recruitment of individuals for  
6       employment.”.

7               (3) EXPENSES AUTHORIZED TO BE PAID BY  
8       THE COMMISSION.—Chapter 14 of the Atomic En-  
9       ergy Act of 1954 (42 U.S.C. 2201 et seq.) (as  
10       amended by paragraph (2)) is amended by adding at  
11       the end the following:

12       **“SEC. 170G. EXPENSES AUTHORIZED TO BE PAID BY THE**  
13               **COMMISSION.**

14       “The Commission may—

15               “(1) pay transportation, lodging, and subsist-  
16       ence expenses of employees who—

17                       “(A) assist scientific, professional, admin-  
18       istrative, or technical employees of the Commis-  
19       sion; and

20                       “(B) are students in good standing at an  
21       institution of higher education (as defined in



1 section 102 of the Higher Education Act of  
2 1965 (20 U.S.C. 1002)) pursuing courses re-  
3 lated to the field in which the students are em-  
4 ployed by the Commission; and

5 “(2) pay the costs of health and medical serv-  
6 ices furnished, pursuant to an agreement between  
7 the Commission and the Department of State, to  
8 employees of the Commission and dependents of the  
9 employees serving in foreign countries.”.

10 (4) PARTNERSHIP PROGRAM WITH INSTITU-  
11 TIONS OF HIGHER EDUCATION.—

12 (A) IN GENERAL.—Chapter 19 of the  
13 Atomic Energy Act of 1954 (42 U.S.C. 2015 et  
14 seq.) (as amended by section 622(a)) is amend-  
15 ed by inserting after section 243 the following:

16 **“SEC. 244. PARTNERSHIP PROGRAM WITH INSTITUTIONS**  
17 **OF HIGHER EDUCATION.**

18 “a. DEFINITIONS.—In this section:

19 “(1) HISPANIC-SERVING INSTITUTION.—The  
20 term ‘Hispanic-serving institution’ has the meaning

1 given the term in section 502(a) of the Higher Edu-  
2 cation Act of 1965 (20 U.S.C. 1101a(a)).

3 “(2) HISTORICALLY BLACK COLLEGE AND UNI-  
4 VERSITY.—The term ‘historically Black college or  
5 university’ has the meaning given the term ‘part B  
6 institution’ in section 322 of the Higher Education  
7 Act of 1965 (20 U.S.C. 1061).

8 “(3) TRIBAL COLLEGE.—The term ‘Tribal col-  
9 lege’ has the meaning given the term ‘tribally con-  
10 trolled college or university’ in section 2(a) of the  
11 Tribally Controlled College or University Assistance  
12 Act of 1978 (25 U.S.C. 1801(a)).

13 “b. PARTNERSHIP PROGRAM.—The Commission may  
14 establish and participate in activities relating to research,  
15 mentoring, instruction, and training with institutions of  
16 higher education, including Hispanic-serving institutions,  
17 historically Black colleges or universities, and Tribal col-  
18 leges, to strengthen the capacity of the institutions—

19 “(1) to educate and train students (including  
20 present or potential employees of the Commission);  
21 and

1           “(2) to conduct research in the field of science,  
2           engineering, or law, or any other field that the Com-  
3           mission determines is important to the work of the  
4           Commission.”.

5           (5) CONFORMING AMENDMENTS.—The table of  
6           sections of the Atomic Energy Act of 1954 (42  
7           U.S.C. prec. 2011) (as amended by subsection  
8           (a)(2)) is amended—

9                   (A) by adding at the end of the items re-  
10           lating to chapter 14 the following:

“Sec. 170F. Recruitment tools.

“Sec. 170G. Expenses authorized to be paid by the Commission.”; and

11                   (B) by inserting after the item relating to  
12           section 243 the following:

“Sec. 244. Partnership program with institutions of higher education.”.

13           (d) RADIATION SOURCE PROTECTION.—

14                   (1) AMENDMENT.—Chapter 14 of the Atomic  
15           Energy Act of 1954 (42 U.S.C. 2201 et seq.) (as  
16           amended by subsection (c)(3)) is amended by adding  
17           at the end the following:

18   **“SEC. 170H. RADIATION SOURCE PROTECTION.**

19           “a. DEFINITIONS.—In this section:

1           “(1) CODE OF CONDUCT.—The term ‘Code of  
2           Conduct’ means the code entitled the ‘Code of Con-  
3           duct on the Safety and Security of Radioactive  
4           Sources’, approved by the Board of Governors of the  
5           International Atomic Energy Agency and dated Sep-  
6           tember 8, 2003.

7           “(2) RADIATION SOURCE.—The term ‘radiation  
8           source’ means—

9                   “(A) a Category 1 Source or a Category 2  
10                  Source, as defined in the Code of Conduct; and

11                  “(B) any other material that poses a  
12                  threat such that the material is subject to this  
13                  section, as determined by the Commission, by  
14                  regulation, other than spent nuclear fuel and  
15                  special nuclear materials.

16           “b. COMMISSION APPROVAL.—Not later than 180  
17           days after the date of enactment of this section, the Com-  
18           mission shall issue regulations prohibiting a person  
19           from—

20                   “(1) exporting a radiation source, unless the  
21                  Commission has specifically determined under sec-

1           tion 57 or 82, consistent with the Code of Conduct,  
2           with respect to the exportation, that—

3                   “(A) the recipient of the radiation source  
4                   may receive and possess the radiation source  
5                   under the laws and regulations of the country  
6                   of the recipient;

7                   “(B) the recipient country has the appro-  
8                   priate technical and administrative capability,  
9                   resources, and regulatory structure to ensure  
10                  that the radiation source will be managed in a  
11                  safe and secure manner; and

12                  “(C) before the date on which the radi-  
13                  ation source is shipped—

14                           “(i) a notification has been provided  
15                           to the recipient country; and

16                           “(ii) a notification has been received  
17                           from the recipient country;

18                  as the Commission determines to be appro-  
19                  priate;

1           “(2) importing a radiation source, unless the  
2           Commission has determined, with respect to the im-  
3           portation, that—

4                   “(A) the proposed recipient is authorized  
5                   by law to receive the radiation source; and

6                   “(B) the shipment will be made in accord-  
7                   ance with any applicable Federal or State law  
8                   or regulation; and

9           “(3) selling or otherwise transferring ownership  
10          of a radiation source, unless the Commission—

11                   “(A) has determined that the licensee has  
12                   verified that the proposed recipient is author-  
13                   ized under law to receive the radiation source;  
14                   and

15                   “(B) has required that the transfer shall  
16                   be made in accordance with any applicable Fed-  
17                   eral or State law or regulation.

18          “c. TRACKING SYSTEM.—(1)(A) Not later than 1  
19          year after the date of enactment of this section, the Com-  
20          mission shall issue regulations establishing a mandatory  
21          tracking system for radiation sources in the United States.

1       “(B) In establishing the tracking system under sub-  
2 paragraph (A), the Commission shall coordinate with the  
3 Secretary of Transportation to ensure compatibility, to the  
4 maximum extent practicable, between the tracking system  
5 and any system established by the Secretary of Transpor-  
6 tation to track the shipment of radiation sources.

7       “(2) The tracking system under paragraph (1)  
8 shall—

9           “(A) enable the identification of each radiation  
10 source by serial number or other unique identifier;

11           “(B) require reporting within 7 days of any  
12 change of possession of a radiation source;

13           “(C) require reporting within 24 hours of any  
14 loss of control of, or accountability for, a radiation  
15 source; and

16           “(D) provide for reporting under subparagraphs  
17 (B) and (C) through a secure Internet connection.

18       “d. PENALTY.—A violation of a regulation issued  
19 under subsection a. or b. shall be punishable by a civil  
20 penalty not to exceed \$1,000,000.

1           “e. NATIONAL ACADEMY OF SCIENCES STUDY.—(1)  
2 Not later than 60 days after the date of enactment of this  
3 section, the Commission shall enter into an arrangement  
4 with the National Academy of Sciences under which the  
5 National Academy of Sciences shall conduct a study of in-  
6 dustrial, research, and commercial uses for radiation  
7 sources.

8           “(2) The study under paragraph (1) shall include a  
9 review of uses of radiation sources in existence on the date  
10 on which the study is conducted, including an identifica-  
11 tion of any industrial or other process that—

12                   “(A) uses a radiation source that could be re-  
13 placed with an economically and technically equiva-  
14 lent (or improved) process that does not require the  
15 use of a radiation source; or

16                   “(B) may be used with a radiation source that  
17 would pose a lower risk to public health and safety  
18 in the event of an accident or attack involving the  
19 radiation source.



1       “(3) Not later than 2 years after the date of enact-  
2 ment of this section, the Commission shall submit to Con-  
3 gress the results of the study under paragraph (1).

4       “f. TASK FORCE ON RADIATION SOURCE PROTEC-  
5 TION AND SECURITY.—(1) There is established a task  
6 force on radiation source protection and security (referred  
7 to in this section as the ‘task force’).

8       “(2)(A) The chairperson of the task force shall be  
9 the Chairperson of the Commission (or a designee).

10       “(B) The membership of the task force shall consist  
11 of the following:

12           “(i) The Secretary of Homeland Security (or a  
13 designee).

14           “(ii) The Secretary of Defense (or a designee).

15           “(iii) The Secretary of Energy (or a designee).

16           “(iv) The Secretary of Transportation (or a  
17 designee).

18           “(v) The Attorney General (or a designee).

19           “(vi) The Secretary of State (or a designee).

20           “(vii) The Director of National Intelligence (or  
21 a designee).

1           “(viii) The Director of the Central Intelligence  
2           Agency (or a designee).

3           “(ix) The Director of the Federal Emergency  
4           Management Agency (or a designee).

5           “(x) The Director of the Federal Bureau of In-  
6           vestigation (or a designee).

7           “(xi) The Administrator of the Environmental  
8           Protection Agency (or a designee).

9           “(3)(A) The task force, in consultation with Federal,  
10          State, and local agencies, the Conference of Radiation  
11          Control Program Directors, and the Organization of  
12          Agreement States, and after public notice and an oppor-  
13          tunity for comment, shall evaluate, and provide rec-  
14          ommendations relating to, the security of radiation  
15          sources in the United States from potential terrorist  
16          threats, including acts of sabotage, theft, or use of a radi-  
17          ation source in a radiological dispersal device.

18          “(B) Not later than 1 year after the date of enact-  
19          ment of this section, and not less than once every 4 years  
20          thereafter, the task force shall submit to Congress and the  
21          President a report, in unclassified form with a classified

1 annex if necessary, providing recommendations, including  
2 recommendations for appropriate regulatory and legisla-  
3 tive changes, for—

4 “(i) a list of additional radiation sources that  
5 should be required to be secured under this Act,  
6 based on the potential attractiveness of the sources  
7 to terrorists and the extent of the threat to public  
8 health and safety of the sources, taking into  
9 consideration—

10 “(I) radiation source radioactivity levels;

11 “(II) radioactive half-life of a radiation  
12 source;

13 “(III) dispersability;

14 “(IV) chemical and material form;

15 “(V) for radioactive materials with a med-  
16 ical use, the availability of the sources to physi-  
17 cians and patients for medical treatment; and

18 “(VI) any other factor that the Chair-  
19 person of the Commission determines to be ap-  
20 propriate;

1           “(ii) the establishment of, or modifications to,  
2           a national system for recovery of lost or stolen radi-  
3           ation sources;

4           “(iii) the storage of radiation sources that are  
5           not used in a safe and secure manner as of the date  
6           on which the report is submitted;

7           “(iv) modifications to the national tracking sys-  
8           tem for radiation sources;

9           “(v) the establishment of, or modifications to, a  
10          national system (including user fees and other meth-  
11          ods) to provide for the proper disposal of radiation  
12          sources secured under this Act;

13          “(vi) modifications to export controls on radi-  
14          ation sources to ensure that foreign recipients of ra-  
15          diation sources are able and willing to adequately  
16          control radiation sources from the United States;

17          “(vii)(I) any alternative technologies available  
18          as of the date on which the report is submitted that  
19          may perform some or all of the functions performed  
20          by devices or processes that employ radiation  
21          sources; and

1           “(II) the establishment of appropriate regula-  
2           tions and incentives for the replacement of the de-  
3           vices and processes described in subclause (I)—

4                   “(aa) with alternative technologies in order  
5                   to reduce the number of radiation sources in  
6                   the United States; or

7                   “(bb) with radiation sources that would  
8                   pose a lower risk to public health and safety in  
9                   the event of an accident or attack involving the  
10                  radiation source; and

11                  “(viii) the creation of, or modifications to, pro-  
12                  cedures for improving the security of use, transpor-  
13                  tation, and storage of radiation sources, including—

14                          “(I) periodic audits or inspections by the  
15                          Commission to ensure that radiation sources  
16                          are properly secured and can be fully accounted  
17                          for;

18                          “(II) evaluation of the security measures  
19                          by the Commission;

20                          “(III) increased fines for violations of  
21                          Commission regulations relating to security and

1 safety measures applicable to licensees that pos-  
2 sess radiation sources;

3 “(IV) criminal and security background  
4 checks for certain individuals with access to ra-  
5 diation sources (including individuals involved  
6 with transporting radiation sources);

7 “(V) requirements for effective and timely  
8 exchanges of information relating to the results  
9 of criminal and security background checks be-  
10 tween the Commission and any State with  
11 which the Commission has entered into an  
12 agreement under section 274 b.;

13 “(VI) assurances of the physical security  
14 of facilities that contain radiation sources (in-  
15 cluding facilities used to temporarily store radi-  
16 ation sources being transported); and

17 “(VII) the screening of shipments to facili-  
18 ties that the Commission determines to be par-  
19 ticularly at risk for sabotage of radiation  
20 sources to ensure that the shipments do not  
21 contain explosives.

1       “g. ACTION BY COMMISSION.—Not later than 60  
2 days after the date of receipt by Congress and the Presi-  
3 dent of a report under subsection f.(3)(B), the Commis-  
4 sion, in accordance with the recommendations of the task  
5 force, shall—

6           “(1) take any action the Commission deter-  
7 mines to be appropriate, including revising the sys-  
8 tem of the Commission for licensing radiation  
9 sources; and

10           “(2) ensure that States that have entered into  
11 agreements with the Commission under section 274  
12 b. take similar action in a timely manner.”.

13           (2) CONFORMING AMENDMENT.—The table of  
14 sections of the Atomic Energy Act of 1954 (42  
15 U.S.C. prec. 2011) (as amended by subsection  
16 (c)(5)(A)) is amended by adding at the end of the  
17 items relating to chapter 14 the following:

“Sec. 170H. Radiation source protection.”.

18           (e) TREATMENT OF ACCELERATOR-PRODUCED AND  
19 OTHER RADIOACTIVE MATERIAL AS BYPRODUCT MATE-  
20 RIAL.—

1           (1) DEFINITION OF BYPRODUCT MATERIAL.—  
2           Section 11 e. of the Atomic Energy Act of 1954 (42  
3           U.S.C. 2014(e)) is amended—

4                   (A) by striking “means (1) any radio-  
5                   active” and inserting the following: “means—  
6                   “(1) any radioactive”.

7                   (B) by striking “material, and (2) the  
8                   tailings” and inserting the following: “material;  
9                   “(2) the tailings”.

10                  (C) by striking “content.” and inserting  
11                  the following: “content;

12                  “(3)(A) any discrete source of radium-226 that  
13                  is produced, extracted, or converted after extraction,  
14                  before, on, or after the date of enactment of this  
15                  paragraph for use for a commercial, medical, or re-  
16                  search activity; or

17                  “(B) any material that—

18                          “(i) has been made radioactive by use of a  
19                          particle accelerator; and

20                          “(ii) is produced, extracted, or converted  
21                          after extraction, before, on, or after the date of



1           enactment of this paragraph for use for a com-  
2           mercial, medical, or research activity; and

3           “(4) any discrete source of naturally occurring  
4           radioactive material, other than source material,  
5           that—

6                   “(A) the Commission, in consultation with  
7                   the Administrator of the Environmental Protec-  
8                   tion Agency, the Secretary of Energy, the Sec-  
9                   retary of Homeland Security, and the head of  
10                  any other appropriate Federal agency, deter-  
11                  mines would pose a threat similar to the threat  
12                  posed by a discrete source of radium-226 to the  
13                  public health and safety or the common defense  
14                  and security; and

15                   “(B) before, on, or after the date of enact-  
16                  ment of this paragraph is extracted or con-  
17                  verted after extraction for use in a commercial,  
18                  medical, or research activity.”.

19           (2) AGREEMENTS WITH GOVERNORS.—Section  
20           274 b. of the Atomic Energy Act of 1954 (42 U.S.C.  
21           2021(b)) is amended by striking “State—” and all

1 that follows through paragraph (4) and inserting the  
2 following: “State:

3 “(1) Byproduct materials (as defined in section  
4 11 e.).

5 “(2) Source materials.

6 “(3) Special nuclear materials in quantities not  
7 sufficient to form a critical mass.”.

8 (3) WASTE DISPOSAL.—

9 (A) DOMESTIC DISTRIBUTION.—Section 81  
10 of the Atomic Energy Act of 1954 (42 U.S.C.  
11 2111) is amended—

12 (i) by striking “No person may” and  
13 inserting the following:

14 “a. IN GENERAL.—No person may”.

15 (ii) by adding at the end the fol-  
16 lowing:

17 “b. REQUIREMENTS.—

18 “(1) IN GENERAL.—Except as provided in para-  
19 graph (2), byproduct material, as defined in para-  
20 graphs (3) and (4) of section 11 e., may only be

1 transferred to and disposed of in a disposal facility  
2 that—

3 “(A) is adequate to protect public health  
4 and safety; and

5 “(B)(i) is licensed by the Commission; or

6 “(ii) is licensed by a State that has entered  
7 into an agreement with the Commission under  
8 section 274 b., if the licensing requirements of  
9 the State are compatible with the licensing re-  
10 quirements of the Commission.

11 “(2) EFFECT OF SUBSECTION.—Nothing in this  
12 subsection affects the authority of any entity to dis-  
13 pose of byproduct material, as defined in paragraphs  
14 (3) and (4) of section 11 e., at a disposal facility in  
15 accordance with any Federal or State solid or haz-  
16 ardous waste law, including the Solid Waste Dis-  
17 posal Act (42 U.S.C. 6901 et seq.).

18 “c. TREATMENT AS LOW-LEVEL RADIOACTIVE  
19 WASTE.—Byproduct material, as defined in paragraphs  
20 (3) and (4) of section 11 e., disposed of under this section

1 shall not be considered to be low-level radioactive waste  
2 for the purposes of—

3 “(1) section 2 of the Low-Level Radioactive  
4 Waste Policy Act (42 U.S.C. 2021b); or

5 “(2) carrying out a compact that is—

6 “(A) entered into in accordance with that  
7 Act (42 U.S.C. 2021b et seq.); and

8 “(B) approved by Congress.”.

9 (B) DEFINITION OF LOW-LEVEL RADIO-  
10 ACTIVE WASTE.—Section 2(9) of the Low-Level  
11 Radioactive Waste Policy Act (42 U.S.C.  
12 2021b(9)) is amended—

13 (i) by redesignating subparagraphs  
14 (A) and (B) as clauses (i) and (ii), respec-  
15 tively, and indenting the clauses appro-  
16 priately;

17 (ii) in the matter preceding clause (i)  
18 (as redesignated by subparagraph (A)) by  
19 striking “The term” and inserting the fol-  
20 lowing:

21 “(A) IN GENERAL.—The term”; and

1 (iii) by adding at the end the fol-  
2 lowing:

3 “(B) EXCLUSION.—The term ‘low-level ra-  
4 dioactive waste’ does not include byproduct ma-  
5 terial (as defined in paragraphs (3) and (4) of  
6 section 11 e. of the Atomic Energy Act of 1954  
7 (42 U.S.C. 2014(e)).”.

8 (4) FINAL REGULATIONS.—

9 (A) REGULATIONS.—

10 (i) IN GENERAL.—Not later than 18  
11 months after the date of enactment of this  
12 Act, the Commission, after consultation  
13 with States and other stakeholders, shall  
14 issue final regulations establishing such re-  
15 quirements as the Commission determines  
16 to be necessary to carry out this section  
17 and the amendments made by this section.

18 (ii) INCLUSIONS.—The regulations  
19 shall include a definition of the term “dis-  
20 crete source” for purposes of paragraphs  
21 (3) and (4) of section 11 e. of the Atomic

1 Energy Act of 1954 (42 U.S.C. 2014(e))  
2 (as amended by paragraph (1)).

3 (B) COOPERATION.—In promulgating reg-  
4 ulations under paragraph (1), the Commission  
5 shall, to the maximum extent practicable—

6 (i) cooperate with States; and

7 (ii) use model State standards in ex-  
8 istence on the date of enactment of this  
9 Act.

10 (C) TRANSITION PLAN.—

11 (i) DEFINITION OF BYPRODUCT MATE-  
12 RIAL.—In this paragraph, the term “by-  
13 product material” has the meaning given  
14 the term in paragraphs (3) and (4) of sec-  
15 tion 11 e. of the Atomic Energy Act of  
16 1954 (42 U.S.C. 2014(e)) (as amended by  
17 paragraph (1)).

18 (ii) PREPARATION AND PUBLICA-  
19 TION.—To facilitate an orderly transition  
20 of regulatory authority with respect to by-  
21 product material, the Commission, in

1           issuing regulations under subparagraph  
2           (A), shall prepare and publish a transition  
3           plan for—

4                   (I) States that have not, before  
5                   the date on which the plan is pub-  
6                   lished, entered into an agreement with  
7                   the Commission under section 274 b.  
8                   of the Atomic Energy Act of 1954 (42  
9                   U.S.C. 2021(b)); and

10                   (II) States that have entered into  
11                   an agreement with the Commission  
12                   under that section before the date on  
13                   which the plan is published.

14                   (iii) INCLUSIONS.—The transition  
15                   plan under clause (ii) shall include—

16                           (I) a description of the conditions  
17                           under which a State may exercise au-  
18                           thority over byproduct material; and

19                                   (II) a statement of the Commis-  
20                                   sion that any agreement covering by-  
21                                   product material, as defined in para-

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1 graph (1) or (2) of section 11e. of the  
2 Atomic Energy Act of 1954 (42  
3 U.S.C. 2014(e)), entered into between  
4 the Commission and a State under  
5 section 274 b. of that Act (42 U.S.C.  
6 2021(b)) before the date of publica-  
7 tion of the transition plan shall be  
8 considered to include byproduct mate-  
9 rial, as defined in paragraph (3) or  
10 (4) of section 11e. of that Act (42  
11 U.S.C. 2014(e)) (as amended by para-  
12 graph (1)), if the Governor of the  
13 State certifies to the Commission on  
14 the date of publication of the transi-  
15 tion plan that—

16 (aa) the State has a pro-  
17 gram for licensing byproduct ma-  
18 terial, as defined in paragraph  
19 (3) or (4) of section 11e. of the  
20 Atomic Energy Act of 1954, that  
21 is adequate to protect the public



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1 health and safety, as determined  
2 by the Commission; and

3 (bb) the State intends to  
4 continue to implement the regu-  
5 latory responsibility of the State  
6 with respect to the byproduct  
7 material.

8 (D) AVAILABILITY OF RADIOPHARMA-  
9 CEUTICALS.—In promulgating regulations  
10 under subparagraph (A), the Commission shall  
11 consider the impact on the availability of radio-  
12 pharmaceuticals to—

13 (i) physicians; and

14 (ii) patients the medical treatment of  
15 which relies on radiopharmaceuticals.

16 (5) WAIVERS.—

17 (A) IN GENERAL.—Except as provided in  
18 subparagraph (B), the Commission may grant a  
19 waiver to any entity of any requirement under  
20 this section or an amendment made by this sec-  
21 tion with respect to a matter relating to byprod-

1           uct material (as defined in paragraphs (3) and  
2           (4) of section 11 e. of the Atomic Energy Act  
3           of 1954 (42 U.S.C. 2014(e)) (as amended by  
4           paragraph (1))) if the Commission determines  
5           that the waiver is in accordance with the pro-  
6           tection of the public health and safety and the  
7           promotion of the common defense and security.

8           (B) EXCEPTIONS.—

9           (i) IN GENERAL.—The Commission  
10          may not grant a waiver under subpara-  
11          graph (A) with respect to—

12           (I) any requirement under the  
13           amendments made by subsection  
14           (c)(1);

15           (II) a matter relating to an im-  
16           portation into, or exportation from,  
17           the United States for a period ending  
18           after the date that is 1 year after the  
19           date of enactment of this Act; or

20           (III) any other matter for a pe-  
21           riod ending after the date that is 4

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1                   years after the date of enactment of  
2                   this Act.

3                   (ii) WAIVERS TO STATES.—The Com-  
4                   mission shall terminate any waiver granted  
5                   to a State under subparagraph (A) if the  
6                   Commission determines that—

7                               (I) the State has entered into an  
8                               agreement with the Commission under  
9                               section 274 b. of the Atomic Energy  
10                              Act of 1954 (42 U.S.C. 2021(b));

11                             (II) the agreement described in  
12                             subclause (I) covers byproduct mate-  
13                             rial (as described in paragraph (3) or  
14                             (4) of section 11 e. of the Atomic En-  
15                             ergy Act of 1954 (42 U.S.C. 2014(e))  
16                             (as amended by paragraph (1))); and

17                             (III) the program of the State  
18                             for licensing such byproduct material  
19                             is adequate to protect the public  
20                             health and safety.

1 (C) PUBLICATION.—The Commission shall  
2 publish in the Federal Register a notice of any  
3 waiver granted under this subsection.

4 **SEC. 652. FINGERPRINTING AND CRIMINAL HISTORY**  
5 **RECORD CHECKS.**

6 Section 149 of the Atomic Energy Act of 1954 (42  
7 U.S.C. 2169) is amended—

8 (1) in subsection a.—

9 (A) by striking “a. The Nuclear” and all  
10 that follows through “section 147.” and insert-  
11 ing the following:

12 “a.(1)(A)(i) The Commission shall require each indi-  
13 vidual or entity described in clause (ii) to fingerprint each  
14 individual described in subparagraph (B) before the indi-  
15 vidual described in subparagraph (B) is permitted access  
16 under subparagraph (B).

17 “(ii) The individuals and entities referred to in clause  
18 (i) are individuals and entities that, on or before the date  
19 on which an individual is permitted access under subpara-  
20 graph (B)—

1           “(I) are licensed or certified to engage in an ac-  
2           tivity subject to regulation by the Commission;

3           “(II) have filed an application for a license or  
4           certificate to engage in an activity subject to regula-  
5           tion by the Commission; or

6           “(III) have notified the Commission in writing  
7           of an intent to file an application for licensing, cer-  
8           tification, permitting, or approval of a product or ac-  
9           tivity subject to regulation by the Commission.

10          “(B) The Commission shall require to be  
11          fingerprinted any individual who—

12               “(i) is permitted unescorted access to—

13                       “(I) a utilization facility; or

14                       “(II) radioactive material or other property  
15                       subject to regulation by the Commission that  
16                       the Commission determines to be of such sig-  
17                       nificance to the public health and safety or the  
18                       common defense and security as to warrant  
19                       fingerprinting and background checks; or

20               “(ii) is permitted access to safeguards informa-  
21          tion under section 147.”;

1 (B) by striking “All fingerprints obtained  
2 by a licensee or applicant as required in the  
3 preceding sentence” and inserting the following:

4 “(2) All fingerprints obtained by an individual or en-  
5 tity as required in paragraph (1)”;

6 (C) by striking “The costs of any identi-  
7 fication and records check conducted pursuant  
8 to the preceding sentence shall be paid by the  
9 licensee or applicant.” and inserting the fol-  
10 lowing:

11 “(3) The costs of an identification or records check  
12 under paragraph (2) shall be paid by the individual or en-  
13 tity required to conduct the fingerprinting under para-  
14 graph (1)(A).”; and

15 (D) by striking “Notwithstanding any  
16 other provision of law, the Attorney General  
17 may provide all the results of the search to the  
18 Commission, and, in accordance with regula-  
19 tions prescribed under this section, the Com-  
20 mission may provide such results to licensee or

1 applicant submitting such fingerprints.” and in-  
2 sserting the following:

3 “(4) Notwithstanding any other provision of law—

4 “(A) the Attorney General may provide any re-  
5 sult of an identification or records check under para-  
6 graph (2) to the Commission; and

7 “(B) the Commission, in accordance with regu-  
8 lations prescribed under this section, may provide  
9 the results to the individual or entity required to  
10 conduct the fingerprinting under paragraph  
11 (1)(A).”;

12 (2) in subsection c.—

13 (A) by striking “, subject to public notice  
14 and comment, regulations—” and inserting “re-  
15 quirements—”; and

16 (B) in paragraph (2)(B), by striking  
17 “unescorted access to the facility of a licensee  
18 or applicant” and inserting “unescorted access  
19 to a utilization facility, radioactive material, or  
20 other property described in subsection  
21 a.(1)(B)”;

1           (3) by redesignating subsection d. as subsection  
2           e.; and

3           (4) by inserting after subsection c. the fol-  
4           lowing:

5           “d. The Commission may require a person or indi-  
6           vidual to conduct fingerprinting under subsection a.(1) by  
7           authorizing or requiring the use of any alternative biomet-  
8           ric method for identification that has been approved by—

9           “(1) the Attorney General; and

10           “(2) the Commission, by regulation.”.

11   **SEC. 653. USE OF FIREARMS BY SECURITY PERSONNEL.**

12           The Atomic Energy Act of 1954 is amended by in-  
13           serting after section 161 (42 U.S.C. 2201) the following:

14   **“SEC. 161A. USE OF FIREARMS BY SECURITY PERSONNEL.**

15           “a. DEFINITIONS.—In this section, the terms ‘hand-  
16           gun’, ‘rifle’, ‘shotgun’, ‘firearm’, ‘ammunition’, ‘machine-  
17           gun’, ‘short-barreled shotgun’, and ‘short-barreled rifle’  
18           have the meanings given the terms in section 921(a) of  
19           title 18, United States Code.

20           “b. AUTHORIZATION.—Notwithstanding subsections  
21           (a)(4), (a)(5), (b)(2), (b)(4), and (c) of section 922 of title



1 18, United States Code, section 925(d)(3) of title 18,  
2 United States Code, section 5844 of the Internal Revenue  
3 Code of 1986, and any law (including regulations) of a  
4 State or a political subdivision of a State that prohibits  
5 the transfer, receipt, possession, transportation, importa-  
6 tion, or use of a handgun, a rifle, a shotgun, a short-bar-  
7 reled shotgun, a short-barreled rifle, a machinegun, a  
8 semiautomatic assault weapon, ammunition for any such  
9 gun or weapon, or a large capacity ammunition feeding  
10 device, in carrying out the duties of the Commission, the  
11 Commission may authorize the security personnel of any  
12 licensee or certificate holder of the Commission (including  
13 an employee of a contractor of such a licensee or certifi-  
14 cate holder) to transfer, receive, possess, transport, im-  
15 port, and use 1 or more such guns, weapons, ammunition,  
16 or devices, if the Commission determines that—

17           “(1) the authorization is necessary to the dis-  
18           charge of the official duties of the security per-  
19           sonnel; and

20           “(2) the security personnel—

1           “(A) are not otherwise prohibited from  
2           possessing or receiving a firearm under Federal  
3           or State laws relating to possession of firearms  
4           by a certain category of persons;

5           “(B) have successfully completed any re-  
6           quirement under this section for training in the  
7           use of firearms and tactical maneuvers;

8           “(C) are engaged in the protection of—

9           “(i) a facility owned or operated by a  
10           licensee or certificate holder of the Com-  
11           mission that is designated by the Commis-  
12           sion; or

13           “(ii) radioactive material or other  
14           property owned or possessed by a licensee  
15           or certificate holder of the Commission, or  
16           that is being transported to or from a fa-  
17           cility owned or operated by such a licensee  
18           or certificate holder, and that has been de-  
19           termined by the Commission to be of sig-  
20           nificance to the common defense and secu-  
21           rity or public health and safety; and

1           “(D) are discharging the official duties of  
2           the security personnel in transferring, receiving,  
3           possessing, transporting, or importing the  
4           weapons, ammunition, or devices.

5           “c. **BACKGROUND CHECKS.**—A person that receives,  
6 possesses, transports, imports, or uses a weapon, ammuni-  
7 tion, or a device under subsection (b) shall be subject to  
8 a background check by the Attorney General, based on  
9 fingerprints and including a background check under sec-  
10 tion 103(b) of the Brady Handgun Violence Prevention  
11 Act (Public Law 103–159; 18 U.S.C. 922 note) to deter-  
12 mine whether the person is prohibited from possessing or  
13 receiving a firearm under Federal or State law.

14           “d. **EFFECTIVE DATE.**—This section takes effect on  
15 the date on which guidelines are issued by the Commis-  
16 sion, with the approval of the Attorney General, to carry  
17 out this section.”

18 **SEC. 654. UNAUTHORIZED INTRODUCTION OF DANGEROUS**  
19 **WEAPONS.**

20           Section 229 of the Atomic Energy Act of 1954 (42  
21 U.S.C. 2278a) is amended—

1           (1) by striking “SEC. 229, TRESPASS UPON  
2           COMMISSION INSTALLATIONS.—” and inserting the  
3           following:

4           **“SEC. 229. TRESPASS ON COMMISSION INSTALLATIONS.”;**

5           (2) by adjusting the indentations of subsections  
6           a., b., and c. so as to reflect proper subsection in-  
7           dentations; and

8           (3) in subsection a.—

9           (A) in the first sentence, by striking “a.  
10           The” and inserting the following:

11           “a.(1) The”;

12           (B) in the second sentence, by striking  
13           “Every” and inserting the following:

14           “(2) Every”; and

15           (C) in paragraph (1) (as designated by  
16           subparagraph (A))—

17           (i) by striking “or in the custody” and  
18           inserting “in the custody”; and

19           (ii) by inserting “, or subject to the li-  
20           censing authority of the Commission or

1 certification by the Commission under this  
2 Act or any other Act” before the period.

3 **SEC. 655. SABOTAGE OF NUCLEAR FACILITIES, FUEL, OR**  
4 **DESIGNATED MATERIAL.**

5 (a) IN GENERAL.—Section 236a. of the Atomic En-  
6 ergy Act of 1954 (42 U.S.C. 2284(a)) is amended—

7 (1) in paragraph (2), by striking “storage facil-  
8 ity” and inserting “treatment, storage, or disposal  
9 facility”;

10 (2) in paragraph (3)—

11 (A) by striking “such a utilization facility”  
12 and inserting “a utilization facility licensed  
13 under this Act”; and

14 (B) by striking “or” at the end;

15 (3) in paragraph (4)—

16 (A) by striking “facility licensed” and in-  
17 serting “, uranium conversion, or nuclear fuel  
18 fabrication facility licensed or certified”; and

19 (B) by striking the comma at the end and  
20 inserting a semicolon; and

1           (4) by inserting after paragraph (4) the fol-  
2           lowing:

3           “(5) any production, utilization, waste storage,  
4           waste treatment, waste disposal, uranium enrich-  
5           ment, uranium conversion, or nuclear fuel fabrica-  
6           tion facility subject to licensing or certification  
7           under this Act during construction of the facility, if  
8           the destruction or damage caused or attempted to be  
9           caused could adversely affect public health and safe-  
10          ty during the operation of the facility;

11          “(6) any primary facility or backup facility  
12          from which a radiological emergency preparedness  
13          alert and warning system is activated; or

14          “(7) any radioactive material or other property  
15          subject to regulation by the Commission that, before  
16          the date of the offense, the Commission determines,  
17          by order or regulation published in the Federal Reg-  
18          ister, is of significance to the public health and safe-  
19          ty or to common defense and security;”.

20          (b) CONFORMING AMENDMENT.—Section 236 of the  
21          Atomic Energy Act of 1954 (42 U.S.C. 2284) is amended

1 by striking “intentionally and willfully” each place it ap-  
2 pears and inserting “knowingly”.

3 **SEC. 656. SECURE TRANSFER OF NUCLEAR MATERIALS.**

4 (a) AMENDMENT.—Chapter 14 of the Atomic Energy  
5 Act of 1954 (42 U.S.C. 2201–2210b) (as amended by sec-  
6 tion 651(d)(1)) is amended by adding at the end the fol-  
7 lowing new section:

8 **“SEC. 170I. SECURE TRANSFER OF NUCLEAR MATERIALS.**

9 “a. The Commission shall establish a system to en-  
10 sure that materials described in subsection b., when trans-  
11 ferred or received in the United States by any party pursu-  
12 ant to an import or export license issued pursuant to this  
13 Act, are accompanied by a manifest describing the type  
14 and amount of materials being transferred or received.  
15 Each individual receiving or accompanying the transfer of  
16 such materials shall be subject to a security background  
17 check conducted by appropriate Federal entities.

18 “b. Except as otherwise provided by the Commission  
19 by regulation, the materials referred to in subsection a.  
20 are byproduct materials, source materials, special nuclear  
21 materials, high-level radioactive waste, spent nuclear fuel,

1 transuranic waste, and low-level radioactive waste (as de-  
2 fined in section 2(16) of the Nuclear Waste Policy Act  
3 of 1982 (42 U.S.C. 10101(16))).”.

4 (b) REGULATIONS.—Not later than 1 year after the  
5 date of the enactment of this Act, and from time to time  
6 thereafter as it considers necessary, the Nuclear Regu-  
7 latory Commission shall issue regulations identifying ra-  
8 dioactive materials or classes of individuals that, con-  
9 sistent with the protection of public health and safety and  
10 the common defense and security, are appropriate excep-  
11 tions to the requirements of section 170D of the Atomic  
12 Energy Act of 1954, as added by subsection (a) of this  
13 section.

14 (c) EFFECTIVE DATE.—The amendment made by  
15 subsection (a) shall take effect upon the issuance of regu-  
16 lations under subsection (b), except that the background  
17 check requirement shall become effective on a date estab-  
18 lished by the Commission.

19 (d) EFFECT ON OTHER LAW.—Nothing in this sec-  
20 tion or the amendment made by this section shall waive,  
21 modify, or affect the application of chapter 51 of title 49,



1 United States Code, part A of subtitle V of title 49,  
2 United States Code, part B of subtitle VI of title 49,  
3 United States Code, and title 23, United States Code.

4 (e) CONFORMING AMENDMENT.—The table of sec-  
5 tions of the Atomic Energy Act of 1954 (42 U.S.C. prec.  
6 2011) (as amended by subsection (a)) is amended by add-  
7 ing at the end of the items relating to chapter 14 the fol-  
8 lowing:

“Sec. 170I. Secure transfer of nuclear materials.”.

9 **SEC. 657. DEPARTMENT OF HOMELAND SECURITY CON-**  
10 **SULTATION.**

11 Before issuing a license for a utilization facility, the  
12 Nuclear Regulatory Commission shall consult with the De-  
13 partment of Homeland Security concerning the potential  
14 vulnerabilities of the location of the proposed facility to  
15 terrorist attack.

1           **TITLE VII—VEHICLES AND**  
2                           **FUELS**  
3           **Subtitle A—Existing Programs**

4   **SEC. 701. USE OF ALTERNATIVE FUELS BY DUAL FUELED**  
5                           **VEHICLES.**

6           Section 400AA(a)(3)(E) of the Energy Policy and  
7 Conservation Act (42 U.S.C. 6374(a)(3)(E)) is amended  
8 to read as follows:

9           “(E)(i) Dual fueled vehicles acquired pursuant to this  
10 section shall be operated on alternative fuels unless the  
11 Secretary determines that an agency qualifies for a waiver  
12 of such requirement for vehicles operated by the agency  
13 in a particular geographic area in which—

14                   “(I) the alternative fuel otherwise required to  
15 be used in the vehicle is not reasonably available to  
16 retail purchasers of the fuel, as certified to the Sec-  
17 retary by the head of the agency; or

18                   “(II) the cost of the alternative fuel otherwise  
19 required to be used in the vehicle is unreasonably  
20 more expensive compared to gasoline, as certified to  
21 the Secretary by the head of the agency.

1       “(III) The Secretary shall monitor compliance with  
2 this subparagraph by all such fleets and shall report annu-  
3 ally to Congress on the extent to which the requirements  
4 of this subparagraph are being achieved. The report shall  
5 include information on annual reductions achieved from  
6 the use of petroleum-based fuels and the problems, if any,  
7 encountered in acquiring alternative fuels.”.

8 **SEC. 702. INCREMENTAL COST ALLOCATION.**

9       Section 303(c) of the Energy Policy Act of 1992 (42  
10 U.S.C. 13212(c)) is amended by striking “may” and in-  
11 serting “shall”.

12 **SEC. 703. ALTERNATIVE COMPLIANCE AND FLEXIBILITY.**

13       (a) ALTERNATIVE COMPLIANCE.—Title V of the En-  
14 ergy Policy Act of 1992 (42 U.S.C. 13251 et seq.) is  
15 amended—

16           (1) by redesignating section 514 (42 U.S.C.  
17 13264) as section 515; and

18           (2) by inserting after section 513 (42 U.S.C.  
19 13263) the following:

1 **“SEC. 514. ALTERNATIVE COMPLIANCE.**

2       “(a) APPLICATION FOR WAIVER.—Any covered per-  
3 son subject to section 501 and any State subject to section  
4 507(o) may petition the Secretary for a waiver of the ap-  
5 plicable requirements of section 501 or 507(o).

6       “(b) GRANT OF WAIVER.—The Secretary shall grant  
7 a waiver of the requirements of section 501 or 507(o) on  
8 a showing that the fleet owned, operated, leased, or other-  
9 wise controlled by the State or covered person—

10               “(1) will achieve a reduction in the annual con-  
11 sumption of petroleum fuels by the fleet equal to—

12                       “(A) the reduction in consumption of pe-  
13 troleum that would result from 100 percent cu-  
14 mulative compliance with the fuel use require-  
15 ments of section 501; or

16                       “(B) in the case of an entity covered under  
17 section 507(o), a reduction equal to the annual  
18 consumption by the State entity of alternative  
19 fuels if all of the cumulative alternative fuel ve-  
20 hicles of the State entity given credit under sec-

1           tion 508 were to use alternative fuel 100 per-  
2           cent of the time; and

3           “(2) is in compliance with all applicable vehicle  
4           emission standards established by the Administrator  
5           of the Environmental Protection Agency under the  
6           Clean Air Act (42 U.S.C. 7401 et seq.).

7           “(c) REPORTING REQUIREMENT.—Not later than  
8           December 31 of a model year, any State or covered person  
9           granted a waiver under this section for the preceding  
10          model year shall submit to the Secretary an annual report  
11          that—

12           “(1) certifies the quantity of the petroleum  
13          motor fuel reduction of the State or covered person  
14          during the preceding model year; and

15           “(2) projects the baseline quantity of the petro-  
16          leum motor fuel reduction of the State or covered  
17          person during the following model year.

18           “(d) REVOCATION OF WAIVER.—If a State or covered  
19          person that receives a waiver under this section fails to  
20          comply with this section, the Secretary—

21           “(1) shall revoke the waiver; and

1           “(2) may impose on the State or covered person  
2           a penalty under section 512.”.

3           (b) CONFORMING AMENDMENT.—Section 511 of the  
4 Energy Policy Act of 1992 (42 U.S.C. 13261) is amended  
5 by striking “or 507” and inserting “507, or 514”.

6           (c) TABLE OF CONTENTS AMENDMENT.—The table  
7 of contents of the Energy Policy Act of 1992 (42 U.S.C.  
8 prec. 13201) is amended by striking the item relating to  
9 section 514 and inserting the following:

“Sec. 514. Alternative compliance.

“Sec. 515. Authorization of appropriations.”.

10 **SEC. 704. REVIEW OF ENERGY POLICY ACT OF 1992 PRO-**  
11 **GRAMS.**

12           (a) IN GENERAL.—Not later than 180 days after the  
13 date of enactment of this section, the Secretary shall com-  
14 plete a study to determine the effect that titles III, IV,  
15 and V of the Energy Policy Act of 1992 (42 U.S.C. 13211  
16 et seq.) have had on—

17           (1) the development of alternative fueled vehicle  
18           technology;

1           (2) the availability of that technology in the  
2 market; and

3           (3) the cost of alternative fueled vehicles.

4       (b) TOPICS.—As part of the study under subsection  
5 (a), the Secretary shall specifically identify—

6           (1) the number of alternative fueled vehicles ac-  
7 quired by fleets or covered persons required to ac-  
8 quire alternative fueled vehicles;

9           (2) the quantity, by type, of alternative fuel ac-  
10 tually used in alternative fueled vehicles acquired by  
11 fleets or covered persons;

12           (3) the quantity of petroleum displaced by the  
13 use of alternative fuels in alternative fueled vehicles  
14 acquired by fleets or covered persons;

15           (4) the direct and indirect costs of compliance  
16 with requirements under titles III, IV, and V of the  
17 Energy Policy Act of 1992 (42 U.S.C. 13211 et  
18 seq.), including—

19                   (A) vehicle acquisition requirements im-  
20 posed on fleets or covered persons;

1 (B) administrative and recordkeeping ex-  
2 penses;

3 (C) fuel and fuel infrastructure costs;

4 (D) associated training and employee ex-  
5 penses; and

6 (E) any other factors or expenses the Sec-  
7 retary determines to be necessary to compile re-  
8 liable estimates of the overall costs and benefits  
9 of complying with programs under those titles  
10 for fleets, covered persons, and the national  
11 economy;

12 (5) the existence of obstacles preventing compli-  
13 ance with vehicle acquisition requirements and in-  
14 creased use of alternative fuel in alternative fueled  
15 vehicles acquired by fleets or covered persons; and

16 (6) the projected impact of amendments to the  
17 Energy Policy Act of 1992 made by this title.

18 (c) REPORT.—Upon completion of the study under  
19 this section, the Secretary shall submit to Congress a re-  
20 port that describes the results of the study and includes  
21 any recommendations of the Secretary for legislative or



1 administrative changes concerning the alternative fueled  
2 vehicle requirements under titles III, IV, and V of the En-  
3 ergy Policy Act of 1992 (42 U.S.C. 13211 et seq.).

4 **SEC. 705. REPORT CONCERNING COMPLIANCE WITH AL-**  
5 **TERNATIVE FUELED VEHICLE PURCHASING**  
6 **REQUIREMENTS.**

7 Section 310(b)(1) of the Energy Policy Act of 1992  
8 (42 U.S.C. 13218(b)(1)) is amended by striking “1 year  
9 after the date of enactment of this subsection” and insert-  
10 ing “February 15, 2006”.

11 **SEC. 706. JOINT FLEXIBLE FUEL/HYBRID VEHICLE COM-**  
12 **MERCIALIZATION INITIATIVE.**

13 (a) DEFINITIONS.—In this section:

14 (1) ELIGIBLE ENTITY.—The term eligible entity  
15 means—

16 (A) a for-profit corporation;

17 (B) a nonprofit corporation; or

18 (C) an institution of higher education.

19 (2) PROGRAM.—The term “program” means a  
20 program established under subsection (b).

1 (b) ESTABLISHMENT.—The Secretary shall establish  
2 a program to improve technologies for the commercializa-  
3 tion of—

- 4 (1) a combination hybrid/flexible fuel vehicle; or
- 5 (2) a plug-in hybrid/flexible fuel vehicle.

6 (c) GRANTS.—In carrying out the program, the Sec-  
7 retary shall provide grants that give preference to pro-  
8 posals that—

- 9 (1) achieve the greatest reduction in miles per  
10 gallon of petroleum fuel consumption;
- 11 (2) achieve not less than 250 miles per gallon  
12 of petroleum fuel consumption; and
- 13 (3) have the greatest potential of commer-  
14 cialization to the general public within 5 years.

15 (d) VERIFICATION.—Not later than 90 days after the  
16 date of enactment of this Act, the Secretary shall publish  
17 in the Federal Register procedures to verify—

- 18 (1) the hybrid/flexible fuel vehicle technologies  
19 to be demonstrated; and
- 20 (2) that grants are administered in accordance  
21 with this section.

1 (e) REPORT.—Not later than 260 days after the date  
2 of enactment of this Act, and annually thereafter, the Sec-  
3 retary shall submit to Congress a report that—

4 (1) identifies the grant recipients;

5 (2) describes the technologies to be funded  
6 under the program;

7 (3) assesses the feasibility of the technologies  
8 described in paragraph (2) in meeting the goals de-  
9 scribed in subsection (c);

10 (4) identifies applications submitted for the  
11 program that were not funded; and

12 (5) makes recommendations for Federal legisla-  
13 tion to achieve commercialization of the technology  
14 demonstrated.

15 (f) AUTHORIZATION OF APPROPRIATIONS.—There  
16 are authorized to be appropriated to carry out this section,  
17 to remain available until expended—

18 (1) \$3,000,000 for fiscal year 2006;

19 (2) \$7,000,000 for fiscal year 2007;

20 (3) \$10,000,000 for fiscal year 2008; and

21 (4) \$20,000,000 for fiscal year 2009.

1 **SEC. 707. EMERGENCY EXEMPTION.**

2 Section 301 of the Energy Policy Act of 1992 (42  
3 U.S.C. 13211) is amended in paragraph (9)(E) by insert-  
4 ing before the semicolon at the end “, including vehicles  
5 directly used in the emergency repair of transmission lines  
6 and in the restoration of electricity service following power  
7 outages, as determined by the Secretary”.

8 **Subtitle B—Hybrid Vehicles, Ad-**  
9 **vanced Vehicles, and Fuel Cell**  
10 **Buses**

11 **PART 1—HYBRID VEHICLES**

12 **SEC. 711. HYBRID VEHICLES.**

13 The Secretary shall accelerate efforts directed toward  
14 the improvement of batteries and other rechargeable en-  
15 ergy storage systems, power electronics, hybrid systems in-  
16 tegration, and other technologies for use in hybrid vehi-  
17 cles.

18 **SEC. 712. EFFICIENT HYBRID AND ADVANCED DIESEL VEHI-**  
19 **CLES.**

20 (a) PROGRAM.—The Secretary shall establish a pro-  
21 gram to encourage domestic production and sales of effi-

1 cient hybrid and advanced diesel vehicles. The program  
2 shall include grants to automobile manufacturers to en-  
3 courage domestic production of efficient hybrid and ad-  
4 vanced diesel vehicles.

5 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
6 are authorized to be appropriated to the Secretary for car-  
7 rying out this section such sums as may be necessary for  
8 each of the fiscal years 2006 through 2015.

## 9 **PART 2—ADVANCED VEHICLES**

### 10 **SEC. 721. PILOT PROGRAM.**

11 (a) ESTABLISHMENT.—The Secretary, in consulta-  
12 tion with the Secretary of Transportation, shall establish  
13 a competitive grant pilot program (referred to in this part  
14 as the “pilot program”), to be administered through the  
15 Clean Cities Program of the Department, to provide not  
16 more than 30 geographically dispersed project grants to  
17 State governments, local governments, or metropolitan  
18 transportation authorities to carry out a project or  
19 projects for the purposes described in subsection (b).

20 (b) GRANT PURPOSES.—A grant under this section  
21 may be used for the following purposes:

1           (1) The acquisition of alternative fueled vehicles  
2           or fuel cell vehicles, including—

3                   (A) passenger vehicles (including neighbor-  
4                   hood electric vehicles); and

5                   (B) motorized 2-wheel bicycles or other ve-  
6                   hicles for use by law enforcement personnel or  
7                   other State or local government or metropolitan  
8                   transportation authority employees.

9           (2) The acquisition of alternative fueled vehi-  
10           cles, hybrid vehicles, or fuel cell vehicles, including—

11                   (A) buses used for public transportation or  
12                   transportation to and from schools;

13                   (B) delivery vehicles for goods or services;  
14                   and

15                   (C) ground support vehicles at public air-  
16                   ports (including vehicles to carry baggage or  
17                   push or pull airplanes toward or away from ter-  
18                   minal gates).

19           (3) The acquisition of ultra-low sulfur diesel ve-  
20           hicles.

1           (4) Installation or acquisition of infrastructure  
2           necessary to directly support an alternative fueled  
3           vehicle, fuel cell vehicle, or hybrid vehicle project  
4           funded by the grant, including fueling and other  
5           support equipment.

6           (5) Operation and maintenance of vehicles, in-  
7           frastructure, and equipment acquired as part of a  
8           project funded by the grant.

9           (c) APPLICATIONS.—

10           (1) REQUIREMENTS.—

11           (A) IN GENERAL.—The Secretary shall  
12           issue requirements for applying for grants  
13           under the pilot program.

14           (B) MINIMUM REQUIREMENTS.—At a min-  
15           imum, the Secretary shall require that an appli-  
16           cation for a grant—

17           (i) be submitted by the head of a  
18           State or local government or a metropoli-  
19           tan transportation authority, or any com-  
20           bination thereof, and a registered partici-

1           part in the Clean Cities Program of the  
2           Department; and

3           (ii) include—

4                 (I) a description of the project  
5                 proposed in the application, including  
6                 how the project meets the require-  
7                 ments of this part;

8                 (II) an estimate of the ridership  
9                 or degree of use of the project;

10                (III) an estimate of the air pollu-  
11                tion emissions reduced and fossil fuel  
12                displaced as a result of the project,  
13                and a plan to collect and disseminate  
14                environmental data, related to the  
15                project to be funded under the grant,  
16                over the life of the project;

17                (IV) a description of how the  
18                project will be sustainable without  
19                Federal assistance after the comple-  
20                tion of the term of the grant;



1 (V) a complete description of the  
2 costs of the project, including acquisi-  
3 tion, construction, operation, and  
4 maintenance costs over the expected  
5 life of the project;

6 (VI) a description of which costs  
7 of the project will be supported by  
8 Federal assistance under this part;  
9 and

10 (VII) documentation to the satis-  
11 faction of the Secretary that diesel  
12 fuel containing sulfur at not more  
13 than 15 parts per million is available  
14 for carrying out the project, and a  
15 commitment by the applicant to use  
16 such fuel in carrying out the project.

17 (2) PARTNERS.—An applicant under paragraph  
18 (1) may carry out a project under the pilot program  
19 in partnership with public and private entities.

20 (d) SELECTION CRITERIA.—In evaluating applica-  
21 tions under the pilot program, the Secretary shall—

1           (1) consider each applicant's previous experi-  
2           ence with similar projects; and

3           (2) give priority consideration to applications  
4           that—

5                   (A) are most likely to maximize protection  
6                   of the environment;

7                   (B) demonstrate the greatest commitment  
8                   on the part of the applicant to ensure funding  
9                   for the proposed project and the greatest likeli-  
10                  hood that the project will be maintained or ex-  
11                  panded after Federal assistance under this part  
12                  is completed; and

13                  (C) exceed the minimum requirements of  
14                  subsection (c)(1)(B)(ii).

15           (e) PILOT PROJECT REQUIREMENTS.—

16                   (1) MAXIMUM AMOUNT.—The Secretary shall  
17                   not provide more than \$15,000,000 in Federal as-  
18                   sistance under the pilot program to any applicant.

19                   (2) COST SHARING.—The Secretary shall not  
20                   provide more than 50 percent of the cost, incurred

1       during the period of the grant, of any project under  
2       the pilot program.

3           (3) MAXIMUM PERIOD OF GRANTS.—The Sec-  
4       retary shall not fund any applicant under the pilot  
5       program for more than 5 years.

6           (4) DEPLOYMENT AND DISTRIBUTION.—The  
7       Secretary shall seek to the maximum extent prac-  
8       ticable to ensure a broad geographic distribution of  
9       project sites.

10          (5) TRANSFER OF INFORMATION AND KNOWL-  
11       EDGE.—The Secretary shall establish mechanisms to  
12       ensure that the information and knowledge gained  
13       by participants in the pilot program are transferred  
14       among the pilot program participants and to other  
15       interested parties, including other applicants that  
16       submitted applications.

17       (f) SCHEDULE.—

18           (1) PUBLICATION.—Not later than 90 days  
19       after the date of enactment of this Act, the Sec-  
20       retary shall publish in the Federal Register, Com-  
21       merce Business Daily, and elsewhere as appropriate,

1 a request for applications to undertake projects  
2 under the pilot program. Applications shall be due  
3 not later than 180 days after the date of publication  
4 of the notice.

5 (2) SELECTION.—Not later than 180 days after  
6 the date by which applications for grants are due,  
7 the Secretary shall select by competitive, peer re-  
8 viewed proposal, all applications for projects to be  
9 awarded a grant under the pilot program.

10 (g) DEFINITIONS.—For purposes of carrying out the  
11 pilot program, the Secretary shall issue regulations defin-  
12 ing any term, as the Secretary determines to be necessary.

13 **SEC. 722. REPORTS TO CONGRESS.**

14 (a) INITIAL REPORT.—Not later than 60 days after  
15 the date on which grants are awarded under this part,  
16 the Secretary shall submit to Congress a report  
17 containing—

18 (1) an identification of the grant recipients and  
19 a description of the projects to be funded;

20 (2) an identification of other applicants that  
21 submitted applications for the pilot program; and

1           (3) a description of the mechanisms used by the  
2           Secretary to ensure that the information and knowl-  
3           edge gained by participants in the pilot program are  
4           transferred among the pilot program participants  
5           and to other interested parties, including other ap-  
6           plicants that submitted applications.

7           (b) EVALUATION.—Not later than 3 years after the  
8           date of enactment of this Act, and annually thereafter  
9           until the pilot program ends, the Secretary shall submit  
10          to Congress a report containing an evaluation of the effec-  
11          tiveness of the pilot program, including—

12           (1) an assessment of the benefits to the envi-  
13          ronment derived from the projects included in the  
14          pilot program; and

15           (2) an estimate of the potential benefits to the  
16          environment to be derived from widespread applica-  
17          tion of alternative fueled vehicles and ultra-low sul-  
18          fur diesel vehicles.

1 **SEC. 723. AUTHORIZATION OF APPROPRIATIONS.**

2       There are authorized to be appropriated to the Sec-  
3 retary to carry out this part \$200,000,000, to remain  
4 available until expended.

5                               **PART 3—FUEL CELL BUSES**

6 **SEC. 731. FUEL CELL TRANSIT BUS DEMONSTRATION.**

7       (a) **IN GENERAL.**—The Secretary, in consultation  
8 with the Secretary of Transportation, shall establish a  
9 transit bus demonstration program to make competitive,  
10 merit-based awards for 5-year projects to demonstrate not  
11 more than 25 fuel cell transit buses (and necessary infra-  
12 structure) in 5 geographically dispersed localities.

13       (b) **PREFERENCE.**—In selecting projects under this  
14 section, the Secretary shall give preference to projects that  
15 are most likely to mitigate congestion and improve air  
16 quality.

17       (c) **AUTHORIZATION OF APPROPRIATIONS.**—There  
18 are authorized to be appropriated to the Secretary to carry  
19 out this section \$10,000,000 for each of fiscal years 2006  
20 through 2010.

1       **Subtitle C—Clean School Buses**

2       **SEC. 741. CLEAN SCHOOL BUS PROGRAM.**

3       (a) DEFINITIONS.—In this section:

4           (1) ADMINISTRATOR.—The term “Adminis-  
5       trator” means the Administrator of the Environ-  
6       mental Protection Agency.

7           (2) ALTERNATIVE FUEL.—The term “alter-  
8       native fuel” means—

9           (A) liquefied natural gas, compressed nat-  
10       ural gas, liquefied petroleum gas, hydrogen, or  
11       propane;

12          (B) methanol or ethanol at no less than 85  
13       percent by volume; or

14          (C) biodiesel conforming with standards  
15       published by the American Society for Testing  
16       and Materials as of the date of enactment of  
17       this Act.

18          (3) CLEAN SCHOOL BUS.—The term “clean  
19       school bus” means a school bus with a gross vehicle  
20       weight of greater than 14,000 pounds that—

21           (A) is powered by a heavy duty engine; and

1 (B) is operated solely on an alternative  
2 fuel or ultra-low sulfur diesel fuel.

3 (4) ELIGIBLE RECIPIENT.—

4 (A) IN GENERAL.—Subject to subpara-  
5 graph (B), the term “eligible recipient”  
6 means—

7 (i) 1 or more local or State govern-  
8 mental entities responsible for—

9 (I) providing school bus service  
10 to 1 or more public school systems; or

11 (II) the purchase of school buses;

12 (ii) 1 or more contracting entities that  
13 provide school bus service to 1 or more  
14 public school systems; or

15 (iii) a nonprofit school transportation  
16 association.

17 (B) SPECIAL REQUIREMENTS.—In the case  
18 of eligible recipients identified under clauses (ii)  
19 and (iii), the Administrator shall establish time-  
20 ly and appropriate requirements for notice and  
21 may establish timely and appropriate require-



1           ments for approval by the public school systems  
2           that would be served by buses purchased or ret-  
3           rofit using grant funds made available under  
4           this section.

5           (5) RETROFIT TECHNOLOGY.—The term “ret-  
6           rofit technology” means a particulate filter or other  
7           emissions control equipment that is verified or cer-  
8           tified by the Administrator or the California Air Re-  
9           sources Board as an effective emission reduction  
10          technology when installed on an existing school bus.

11          (6) ULTRA LOW SULFUR DIESEL FUEL.—The  
12          term “ultra-low sulfur diesel fuel” means diesel fuel  
13          that contains sulfur at not more than 15 parts per  
14          million.

15          (b) PROGRAM FOR RETROFIT OR REPLACEMENT OF  
16          CERTAIN EXISTING SCHOOL BUSES WITH CLEAN  
17          SCHOOL BUSES.—

18                 (1) ESTABLISHMENT.—

19                         (A) IN GENERAL.—The Administrator, in  
20                         consultation with the Secretary and other ap-  
21                         propriate Federal departments and agencies,

1 shall establish a program for awarding grants  
2 on a competitive basis to eligible recipients for  
3 the replacement, or retrofit (including  
4 repowering, aftertreatment, and remanufac-  
5 tured engines) of, certain existing school buses.

6 (B) BALANCING.—In awarding grants  
7 under this section, the Administrator shall, to  
8 the maximum extent practicable, achieve an ap-  
9 propriate balance between awarding grants—

10 (i) to replace school buses; and

11 (ii) to install retrofit technologies.

12 (2) PRIORITY OF GRANT APPLICATIONS.—

13 (A) REPLACEMENT.—In the case of grant  
14 applications to replace school buses, the Admin-  
15 istrator shall give priority to applicants that  
16 propose to replace school buses manufactured  
17 before model year 1977.

18 (B) RETROFITTING.—In the case of grant  
19 applications to retrofit school buses, the Admin-  
20 istrator shall give priority to applicants that

1 propose to retrofit school buses manufactured  
2 in or after model year 1991.

3 (3) USE OF SCHOOL BUS FLEET.—

4 (A) IN GENERAL.—All school buses ac-  
5 quired or retrofitted with funds provided under  
6 this section shall be operated as part of the  
7 school bus fleet for which the grant was made  
8 for not less than 5 years.

9 (B) MAINTENANCE, OPERATION, AND  
10 FUELING.—New school buses and retrofit tech-  
11 nology shall be maintained, operated, and fueled  
12 according to manufacturer recommendations or  
13 State requirements.

14 (4) RETROFIT GRANTS.—The Administrator  
15 may award grants for up to 100 percent of the ret-  
16 rofit technologies and installation costs.

17 (5) REPLACEMENT GRANTS.—

18 (A) ELIGIBILITY FOR 50 PERCENT  
19 GRANTS.—The Administrator may award  
20 grants for replacement of school buses in the

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1 amount of up to  $\frac{1}{2}$  of the acquisition costs (in-  
2 cluding fueling infrastructure) for—

3 (i) clean school buses with engines  
4 manufactured in model year 2005 or 2006  
5 that emit not more than—

6 (I) 1.8 grams per brake horse-  
7 power-hour of non-methane hydro-  
8 carbons and oxides of nitrogen; and

9 (II) .01 grams per brake horse-  
10 power-hour of particulate matter; or

11 (ii) clean school buses with engines  
12 manufactured in model year 2007, 2008,  
13 or 2009 that satisfy regulatory require-  
14 ments established by the Administrator for  
15 emissions of oxides of nitrogen and partic-  
16 ulate matter to be applicable for school  
17 buses manufactured in model year 2010.

18 (B) ELIGIBILITY FOR 25 PERCENT  
19 GRANTS.—The Administrator may award  
20 grants for replacement of school buses in the

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1 amount of up to  $\frac{1}{4}$  of the acquisition costs (in-  
2 cluding fueling infrastructure) for—

3 (i) clean school buses with engines  
4 manufactured in model year 2005 or 2006  
5 that emit not more than—

6 (I) 2.5 grams per brake horse-  
7 power-hour of non-methane hydro-  
8 carbons and oxides of nitrogen; and

9 (II) .01 grams per brake horse-  
10 power-hour of particulate matter; or

11 (ii) clean school buses with engines  
12 manufactured in model year 2007 or there-  
13 after that satisfy regulatory requirements  
14 established by the Administrator for emis-  
15 sions of oxides of nitrogen and particulate  
16 matter from school buses manufactured in  
17 that model year.

18 (6) ULTRA LOW SULFUR DIESEL FUEL.—

19 (A) IN GENERAL.—In the case of a grant  
20 recipient receiving a grant for the acquisition of  
21 ultra-low sulfur diesel fuel school buses with en-

1           gines manufactured in model year 2005 or  
2           2006, the grant recipient shall provide, to the  
3           satisfaction of the Administrator—

4                   (i) documentation that diesel fuel con-  
5                   taining sulfur at not more than 15 parts  
6                   per million is available for carrying out the  
7                   purposes of the grant; and

8                   (ii) a commitment by the applicant to  
9                   use that fuel in carrying out the purposes  
10                  of the grant.

11           (7) DEPLOYMENT AND DISTRIBUTION.—The  
12           Administrator shall, to the maximum extent  
13           practicable—

14                   (A) achieve nationwide deployment of clean  
15                   school buses through the program under this  
16                   section; and

17                   (B) ensure a broad geographic distribution  
18                   of grant awards, with no State receiving more  
19                   than 10 percent of the grant funding made  
20                   available under this section during a fiscal year.

21           (8) ANNUAL REPORT.—

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1           (A) IN GENERAL.—Not later than January  
2           31 of each year, the Administrator shall submit  
3           to Congress a report that—

4                   (i) evaluates the implementation of  
5                   this section; and

6                   (ii) describes—

7                           (I) the total number of grant ap-  
8                           plications received;

9                           (II) the number and types of al-  
10                          ternative fuel school buses, ultra-low  
11                          sulfur diesel fuel school buses, and  
12                          retrofitted buses requested in grant  
13                          applications;

14                          (III) grants awarded and the cri-  
15                          teria used to select the grant recipi-  
16                          ents;

17                          (IV) certified engine emission lev-  
18                          els of all buses purchased or retro-  
19                          fitted under this section;

1 (V) an evaluation of the in-use  
2 emission level of buses purchased or  
3 retrofitted under this section; and

4 (VI) any other information the  
5 Administrator considers appropriate.

6 (c) EDUCATION.—

7 (1) IN GENERAL.—Not later than 90 days after  
8 the date of enactment of this Act, the Administrator  
9 shall develop an education outreach program to pro-  
10 mote and explain the grant program.

11 (2) COORDINATION WITH STAKEHOLDERS.—  
12 The outreach program shall be designed and con-  
13 ducted in conjunction with national school bus trans-  
14 portation associations and other stakeholders.

15 (3) COMPONENTS.—The outreach program  
16 shall—

17 (A) inform potential grant recipients on  
18 the process of applying for grants;

19 (B) describe the available technologies and  
20 the benefits of the technologies;



1 (C) explain the benefits of participating in  
2 the grant program; and

3 (D) include, as appropriate, information  
4 from the annual report required under sub-  
5 section (b)(8).

6 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
7 are authorized to be appropriated to the Administrator to  
8 carry out this section, to remain available until  
9 expended—

10 (1) \$55,000,000 for each of fiscal years 2006  
11 and 2007; and

12 (2) such sums as are necessary for each of fis-  
13 cal years 2008, 2009, and 2010.

14 **SEC. 742. DIESEL TRUCK RETROFIT AND FLEET MOD-  
15 ERNIZATION PROGRAM.**

16 (a) ESTABLISHMENT.—The Administrator, in con-  
17 sultation with the Secretary, shall establish a program for  
18 awarding grants on a competitive basis to public agencies  
19 and entities for fleet modernization programs including in-  
20 stallation of retrofit technologies for diesel trucks.

1 (b) ELIGIBLE RECIPIENTS.—A grant shall be award-  
2 ed under this section only to a State or local government  
3 or an agency or instrumentality of a State or local govern-  
4 ment or of two or more State or local governments who  
5 will allocate funds, with preference to ports and other  
6 major hauling operations.

7 (c) AWARDS.—

8 (1) IN GENERAL.—The Administrator shall  
9 seek, to the maximum extent practicable, to ensure  
10 a broad geographic distribution of grants under this  
11 section.

12 (2) PREFERENCES.—In making awards of  
13 grants under this section, the Administrator shall  
14 give preference to proposals that—

15 (A) will achieve the greatest reductions in  
16 emissions of nonmethane hydrocarbons, oxides  
17 of nitrogen, and/or particulate matter per pro-  
18 posal or per truck; or

19 (B) involve the use of Environmental Pro-  
20 tection Agency or California Air Resources  
21 Board verified emissions control retrofit tech-

1           nology on diesel trucks that operate solely on  
2           ultra-low sulfur diesel fuel after September  
3           2006.

4       (d) CONDITIONS OF GRANT.—A grant shall be pro-  
5 vided under this section on the conditions that—

6           (1) trucks which are replacing scrapped trucks  
7           and on which retrofit emissions-control technology  
8           are to be demonstrated—

9                   (A) will operate on ultra-low sulfur diesel  
10                  fuel where such fuel is reasonably available or  
11                  required for sale by State or local law or regula-  
12                  tion;

13                   (B) were manufactured in model year 1998  
14                  and before; and

15                   (C) will be used for the transportation of  
16                  cargo goods especially in port areas or used in  
17                  goods movement and major hauling operations;

18           (2) grant funds will be used for the purchase of  
19           emission control retrofit technology, including State  
20           taxes and contract fees; and

1           (3) grant recipients will provide at least 50 per-  
2           cent of the total cost of the retrofit, including the  
3           purchase of emission control retrofit technology and  
4           all necessary labor for installation of the retrofit,  
5           from any source other than this section.

6           (e) VERIFICATION.—Not later than 90 days after the  
7           date of enactment of this Act, the Administrator shall  
8           publish in the Federal Register procedures to—

9           (1) make grants pursuant to this section;

10           (2) verify that trucks powered by ultra-low sul-  
11           fur diesel fuel on which retrofit emissions-control  
12           technology are to be demonstrated will operate on  
13           diesel fuel containing not more than 15 parts per  
14           million of sulfur after September 2006; and

15           (3) verify that grants are administered in ac-  
16           cordance with this section.

17           (f) AUTHORIZATION OF APPROPRIATIONS.—There  
18           are authorized to be appropriated to the Administrator to  
19           carry out this section, to remain available until expended  
20           the following sums:

21           (1) \$20,000,000 for fiscal year 2006.

1           (2) \$35,000,000 for fiscal year 2007.

2           (3) \$45,000,000 for fiscal year 2008.

3           (4) Such sums as are necessary for each of fis-  
4           cal years 2009 and 2010.

5 **SEC. 743. FUEL CELL SCHOOL BUSES.**

6           (a) ESTABLISHMENT.—The Secretary shall establish  
7 a program for entering into cooperative agreements—

8           (1) with private sector fuel cell bus developers  
9           for the development of fuel cell-powered school  
10           buses; and

11           (2) subsequently, with not less than 2 units of  
12           local government using natural gas-powered school  
13           buses and such private sector fuel cell bus developers  
14           to demonstrate the use of fuel cell-powered school  
15           buses.

16           (b) COST SHARING.—The non-Federal contribution  
17 for activities funded under this section shall be not less  
18 than—

19           (1) 20 percent for fuel infrastructure develop-  
20           ment activities; and

1           (2) 50 percent for demonstration activities and  
2           for development activities not described in paragraph  
3           (1).

4           (c) **REPORTS TO CONGRESS.**—Not later than 3 years  
5 after the date of enactment of this Act, the Secretary shall  
6 transmit to Congress a report that—

7           (1) evaluates the process of converting natural  
8           gas infrastructure to accommodate fuel cell-powered  
9           school buses; and

10           (2) assesses the results of the development and  
11           demonstration program under this section.

12           (d) **AUTHORIZATION OF APPROPRIATIONS.**—There  
13 are authorized to be appropriated to the Secretary to carry  
14 out this section \$25,000,000 for the period of fiscal years  
15 2006 through 2009.

## 16           **Subtitle D—Miscellaneous**

### 17           **SEC. 751. RAILROAD EFFICIENCY.**

18           (a) **ESTABLISHMENT.**—The Secretary shall (in co-  
19 operation with the Secretary of Transportation and the  
20 Administrator of the Environmental Protection Agency)  
21 establish a cost-shared, public-private research partner-

1 ship involving the Federal Government, railroad carriers,  
2 locomotive manufacturers and equipment suppliers, and  
3 the Association of American Railroads, to develop and  
4 demonstrate railroad locomotive technologies that increase  
5 fuel economy, reduce emissions, and lower costs of oper-  
6 ation.

7 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
8 are authorized to be appropriated to the Secretary to carry  
9 out this section—

10 (1) \$15,000,000 for fiscal year 2006;

11 (2) \$20,000,000 for fiscal year 2007; and

12 (3) \$30,000,000 for fiscal year 2008.

13 **SEC. 752. MOBILE EMISSION REDUCTIONS TRADING AND**  
14 **CREDITING.**

15 (a) IN GENERAL.—Not later than 180 days after the  
16 date of enactment of this Act, the Administrator of the  
17 Environmental Protection Agency shall submit to Con-  
18 gress a report on the experience of the Administrator with  
19 the trading of mobile source emission reduction credits for  
20 use by owners and operators of stationary source emission

1 sources to meet emission offset requirements within a non-  
2 attainment area.

3 (b) CONTENTS.—The report shall describe—

4 (1) projects approved by the Administrator that  
5 include the trading of mobile source emission reduc-  
6 tion credits for use by stationary sources in com-  
7 plying with offset requirements, including a descrip-  
8 tion of—

9 (A) project and stationary sources location;

10 (B) volumes of emissions offset and trad-  
11 ed;

12 (C) the sources of mobile emission reduc-  
13 tion credits; and

14 (D) if available, the cost of the credits;

15 (2) the significant issues identified by the Ad-  
16 ministrator in consideration and approval of trading  
17 in the projects;

18 (3) the requirements for monitoring and assess-  
19 ing the air quality benefits of any approved project;

20 (4) the statutory authority on which the Admin-  
21 istrator has based approval of the projects;



1           (5) an evaluation of how the resolution of issues  
2           in approved projects could be used in other projects  
3           and whether the emission reduction credits may be  
4           considered to be additional in relation to other re-  
5           quirements;

6           (6) the potential, for attainment purposes, of  
7           emission reduction credits relating to transit and  
8           land use policies; and

9           (7) any other issues that the Administrator con-  
10          siders relevant to the trading and generation of mo-  
11          bile source emission reduction credits for use by sta-  
12          tionary sources or for other purposes.

13 **SEC. 753. AVIATION FUEL CONSERVATION AND EMISSIONS.**

14          (a) IN GENERAL.—Not later than 60 days after the  
15          date of enactment of this Act, the Administrator of the  
16          Federal Aviation Administration and the Administrator of  
17          the Environmental Protection Agency shall jointly initiate  
18          a study to identify—

19                 (1) the impact of aircraft emissions on air qual-  
20                 ity in nonattainment areas;

1           (2) ways to promote fuel conservation measures  
2           for aviation to enhance fuel efficiency and reduce  
3           emissions; and

4           (3) opportunities to reduce air traffic inefficien-  
5           cies that increase fuel burn and emissions.

6           (b) FOCUS.—The study under subsection (a) shall  
7           focus on how air traffic management inefficiencies, such  
8           as aircraft idling at airports, result in unnecessary fuel  
9           burn and air emissions.

10          (c) REPORT.—Not later than 1 year after the date  
11          of the initiation of the study under subsection (a), the Ad-  
12          ministrators of the Federal Aviation Administration and  
13          the Administrator of the Environmental Protection Agen-  
14          cy shall jointly submit to the Committee on Energy and  
15          Commerce and the Committee on Transportation and In-  
16          frastructure of the House of Representatives and the Com-  
17          mittee on Environment and Public Works and the Com-  
18          mittee on Commerce, Science, and Transportation of the  
19          Senate a report that—

20                 (1) describes the results of the study; and

1           (2) includes any recommendations on ways in  
2           which unnecessary fuel use and emissions affecting  
3           air quality may be reduced—

4                   (A) without adversely affecting safety and  
5                   security and increasing individual aircraft noise;  
6                   and

7                   (B) while taking into account all aircraft  
8                   emissions and the impact of those emissions on  
9                   the human health.

10          (d) RISK ASSESSMENTS.—Any assessment of risk to  
11          human health and the environment prepared by the Ad-  
12          ministrators of the Federal Aviation Administration or the  
13          Administrator of the Environmental Protection Agency to  
14          support the report in this section shall be based on sound  
15          and objective scientific practices, shall consider the best  
16          available science, and shall present the weight of the sci-  
17          entific evidence concerning such risks.

18          **SEC. 754. DIESEL FUELED VEHICLES.**

19          (a) DEFINITION OF TIER 2 EMISSION STANDARDS.—  
20          In this section, the term “tier 2 emission standards”  
21          means the motor vehicle emission standards that apply to

1 passenger cars, light trucks, and larger passenger vehicles  
2 manufactured after the 2003 model year, as issued on  
3 February 10, 2000, by the Administrator of the Environ-  
4 mental Protection Agency under sections 202 and 211 of  
5 the Clean Air Act (42 U.S.C. 7521, 7545).

6 (b) DIESEL COMBUSTION AND AFTER-TREATMENT  
7 TECHNOLOGIES.—The Secretary shall accelerate efforts to  
8 improve diesel combustion and after-treatment tech-  
9 nologies for use in diesel fueled motor vehicles.

10 (c) GOALS.—The Secretary shall carry out subsection  
11 (b) with a view toward achieving the following goals:

12 (1) Developing and demonstrating diesel tech-  
13 nologies that, not later than 2010, meet the fol-  
14 lowing standards:

15 (A) Tier 2 emission standards.

16 (B) The heavy-duty emissions standards of  
17 2007 that are applicable to heavy-duty vehicles  
18 under regulations issued by the Administrator  
19 of the Environmental Protection Agency as of  
20 the date of enactment of this Act.

1           (2) Developing the next generation of low-emis-  
2           sion, high efficiency diesel engine technologies, in-  
3           cluding homogeneous charge compression ignition  
4           technology.

5 **SEC. 755. CONSERVE BY BICYCLING PROGRAM.**

6           (a) DEFINITIONS.—In this section:

7           (1) PROGRAM.—The term “program” means  
8           the Conserve by Bicycling Program established by  
9           subsection (b).

10           (2) SECRETARY.—The term “Secretary” means  
11           the Secretary of Transportation.

12           (b) ESTABLISHMENT.—There is established within  
13           the Department of Transportation a program to be known  
14           as the “Conserve by Bicycling Program”.

15           (c) PROJECTS.—

16           (1) IN GENERAL.—In carrying out the program,  
17           the Secretary shall establish not more than 10 pilot  
18           projects that are—

19                   (A) dispersed geographically throughout  
20                   the United States; and

1 (B) designed to conserve energy resources  
2 by encouraging the use of bicycles in place of  
3 motor vehicles.

4 (2) REQUIREMENTS.—A pilot project described  
5 in paragraph (1) shall—

6 (A) use education and marketing to con-  
7 vert motor vehicle trips to bicycle trips;

8 (B) document project results and energy  
9 savings (in estimated units of energy con-  
10 served);

11 (C) facilitate partnerships among inter-  
12 ested parties in at least 2 of the fields of—

13 (i) transportation;

14 (ii) law enforcement;

15 (iii) education;

16 (iv) public health;

17 (v) environment; and

18 (vi) energy;

19 (D) maximize bicycle facility investments;

20 (E) demonstrate methods that may be  
21 used in other regions of the United States; and

1 (F) facilitate the continuation of ongoing  
2 programs that are sustained by local resources.

3 (3) COST SHARING.—At least 20 percent of the  
4 cost of each pilot project described in paragraph (1)  
5 shall be provided from non-Federal sources.

6 (d) ENERGY AND BICYCLING RESEARCH STUDY.—

7 (1) IN GENERAL.—Not later than 2 years after  
8 the date of enactment of this Act, the Secretary  
9 shall enter into a contract with the National Acad-  
10 emy of Sciences for, and the National Academy of  
11 Sciences shall conduct and submit to Congress a re-  
12 port on, a study on the feasibility of converting  
13 motor vehicle trips to bicycle trips.

14 (2) COMPONENTS.—The study shall—

15 (A) document the results or progress of  
16 the pilot projects under subsection (c);

17 (B) determine the type and duration of  
18 motor vehicle trips that people in the United  
19 States may feasibly make by bicycle, taking into  
20 consideration factors such as—

21 (i) weather;

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- 1 (ii) land use and traffic patterns;
- 2 (iii) the carrying capacity of bicycles;
- 3 and
- 4 (iv) bicycle infrastructure;
- 5 (C) determine any energy savings that
- 6 would result from the conversion of motor vehi-
- 7 cle trips to bicycle trips;
- 8 (D) include a cost-benefit analysis of bicy-
- 9 cle infrastructure investments; and
- 10 (E) include a description of any factors
- 11 that would encourage more motor vehicle trips
- 12 to be replaced with bicycle trips.

13 (e) AUTHORIZATION OF APPROPRIATIONS.—There is

14 authorized to be appropriated to the Secretary to carry

15 out this section \$6,200,000, to remain available until ex-

16 pended, of which—

- 17 (1) \$5,150,000 shall be used to carry out pilot
- 18 projects described in subsection (c);
- 19 (2) \$300,000 shall be used by the Secretary to
- 20 coordinate, publicize, and disseminate the results of
- 21 the program; and



1           (3) \$750,000 shall be used to carry out sub-  
2           section (d).

3 **SEC. 756. REDUCTION OF ENGINE IDLING.**

4           (a) DEFINITIONS.—In this section:

5           (1) ADMINISTRATOR.—The term “Adminis-  
6           trator” means the Administrator of the Environ-  
7           mental Protection Agency.

8           (2) ADVANCED TRUCK STOP ELECTRIFICATION  
9           SYSTEM.—The term “advanced truck stop elec-  
10          trification system” means a stationary system that  
11          delivers heat, air conditioning, electricity, or commu-  
12          nications, and is capable of providing verifiable and  
13          auditable evidence of use of those services, to a  
14          heavy-duty vehicle and any occupants of the heavy-  
15          duty vehicle with or without relying on components  
16          mounted onboard the heavy-duty vehicle for delivery  
17          of those services.

18          (3) AUXILIARY POWER UNIT.—The term “auxil-  
19          iary power unit” means an integrated system that—

1 (A) provides heat, air conditioning, engine  
2 warming, or electricity to components on a  
3 heavy-duty vehicle; and

4 (B) is certified by the Administrator under  
5 part 89 of title 40, Code of Federal Regulations  
6 (or any successor regulation), as meeting appli-  
7 cable emission standards.

8 (4) HEAVY-DUTY VEHICLE.—The term “heavy-  
9 duty vehicle” means a vehicle that—

10 (A) has a gross vehicle weight rating great-  
11 er than 8,500 pounds; and

12 (B) is powered by a diesel engine.

13 (5) IDLE REDUCTION TECHNOLOGY.—The term  
14 “idle reduction technology” means an advanced  
15 truck stop electrification system, auxiliary power  
16 unit, or other technology that—

17 (A) is used to reduce long-duration idling;  
18 and

19 (B) allows for the main drive engine or  
20 auxiliary refrigeration engine to be shut down.

1           (6) ENERGY CONSERVATION TECHNOLOGY.—  
2           the term “energy conservation technology” means  
3           any device, system of devices, or equipment that im-  
4           proves the fuel economy.

5           (7) LONG-DURATION IDLING.—

6           (A) IN GENERAL.—The term “long-dura-  
7           tion idling” means the operation of a main  
8           drive engine or auxiliary refrigeration engine,  
9           for a period greater than 15 consecutive min-  
10          utes, at a time at which the main drive engine  
11          is not engaged in gear.

12          (B) EXCLUSIONS.—The term “long-dura-  
13          tion idling” does not include the operation of a  
14          main drive engine or auxiliary refrigeration en-  
15          gine during a routine stoppage associated with  
16          traffic movement or congestion.

17          (b) IDLE REDUCTION TECHNOLOGY BENEFITS, PRO-  
18          GRAMS, AND STUDIES.—

19           (1) IN GENERAL.—Not later than 90 days after  
20          the date of enactment of this Act, the Administrator  
21          shall—

1           (A)(i) commence a review of the mobile  
2           source air emission models of the Environ-  
3           mental Protection Agency used under the Clean  
4           Air Act (42 U.S.C. 7401 et seq.) to determine  
5           whether the models accurately reflect the emis-  
6           sions resulting from long-duration idling of  
7           heavy-duty vehicles and other vehicles and en-  
8           gines; and

9           (ii) update those models as the Adminis-  
10          trator determines to be appropriate; and

11          (B)(i) commence a review of the emission  
12          reductions achieved by the use of idle reduction  
13          technology; and

14          (ii) complete such revisions of the regula-  
15          tions and guidance of the Environmental Pro-  
16          tection Agency as the Administrator determines  
17          to be appropriate.

18          (2) DEADLINE FOR COMPLETION.—Not later  
19          than 180 days after the date of enactment of this  
20          Act, the Administrator shall—

1 (A) complete the reviews under subpara-  
2 graphs (A)(i) and (B)(i) of paragraph (1); and

3 (B) prepare and make publicly available 1  
4 or more reports on the results of the reviews.

5 (3) DISCRETIONARY INCLUSIONS.—The reviews  
6 under subparagraphs (A)(i) and (B)(i) of paragraph  
7 (1) and the reports under paragraph (2)(B) may ad-  
8 dress the potential fuel savings resulting from use of  
9 idle reduction technology.

10 (4) IDLE REDUCTION AND ENERGY CONSERVA-  
11 TION DEPLOYMENT PROGRAM.—

12 (A) ESTABLISHMENT.—

13 (i) IN GENERAL.—Not later than 90  
14 days after the date of enactment of this  
15 Act, the Administrator, in consultation  
16 with the Secretary of Transportation shall,  
17 through the Environmental Protection  
18 Agency's SmartWay Transport Partner-  
19 ship, establish a program to support de-  
20 ployment of idle reduction and energy con-  
21 servation technologies .

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1           (ii) PRIORITY.—The Administrator  
2 shall give priority to the deployment of idle  
3 reduction and energy conservation tech-  
4 nologies based on the costs and beneficial  
5 effects on air quality and ability to lessen  
6 the emission of criteria air pollutants.

7 (B) FUNDING.—

8           (i) AUTHORIZATION OF APPROPRIA-  
9 TIONS.—There are authorized to be appro-  
10 priated to the Administrator to carry out  
11 subparagraph (A) for the purpose of reduc-  
12 ing extended idling from heavy-duty vehi-  
13 cles \$19,500,000 for fiscal year 2006,  
14 \$30,000,000 for fiscal year 2007, and  
15 \$45,000,000 for fiscal year 2008.

16           (ii) LOCOMOTIVES.—There are au-  
17 thorized to be appropriated to the adminis-  
18 trator to carry out subparagraph (A) for  
19 the purpose of reducing extended idling  
20 from locomotives \$10,000,000 for fiscal  
21 year 2006, \$15,000,000 for fiscal year

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1           2007, and \$20,000,000 for fiscal year  
2           2008.

3           (iii) COST SHARING.—Subject to  
4           clause (iv), the Administrator shall require  
5           at least 50 percent of the costs directly  
6           and specifically related to any project  
7           under this section to be provided from non-  
8           Federal sources.

9           (iv) NECESSARY AND APPROPRIATE  
10          REDUCTIONS.—The Administrator may re-  
11          duce the non-Federal requirement under  
12          clause (iii) if the Administrator determines  
13          that the reduction is necessary and appro-  
14          priate to meet the objectives of this sec-  
15          tion.

16          (5) IDLING LOCATION STUDY.—

17               (A) IN GENERAL.—Not later than 90 days  
18               after the date of enactment of this Act, the Ad-  
19               ministrator, in consultation with the Secretary  
20               of Transportation, shall commence a study to

1 analyze all locations at which heavy-duty vehi-  
2 cles stop for long-duration idling, including—

- 3 (i) truck stops;  
4 (ii) rest areas;  
5 (iii) border crossings;  
6 (iv) ports;  
7 (v) transfer facilities; and  
8 (vi) private terminals.

9 (B) DEADLINE FOR COMPLETION.—Not  
10 later than 180 days after the date of enactment  
11 of this Act, the Administrator shall—

- 12 (i) complete the study under subpara-  
13 graph (A); and  
14 (ii) prepare and make publicly avail-  
15 able 1 or more reports of the results of the  
16 study.

17 (c) VEHICLE WEIGHT EXEMPTION.—Section 127(a)  
18 of title 23, United States Code, is amended—

- 19 (1) by designating the first through eleventh  
20 sentences as paragraphs (1) through (11), respec-  
21 tively; and



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

2 “(12) HEAVY DUTY VEHICLES.—

3 “(A) IN GENERAL.—Subject to subpara-  
4 graphs (B) and (C), in order to promote reduc-  
5 tion of fuel use and emissions because of engine  
6 idling, the maximum gross vehicle weight limit  
7 and the axle weight limit for any heavy-duty ve-  
8 hicle equipped with an idle reduction technology  
9 shall be increased by a quantity necessary to  
10 compensate for the additional weight of the idle  
11 reduction system.

12 “(B) MAXIMUM WEIGHT INCREASE.—The  
13 weight increase under subparagraph (A) shall  
14 be not greater than 400 pounds.

15 “(C) PROOF.—On request by a regulatory  
16 agency or law enforcement agency, the vehicle  
17 operator shall provide proof (through dem-  
18 onstration or certification) that—

19 “(i) the idle reduction technology is  
20 fully functional at all times; and

1                   “(ii) the 400-pound gross weight in-  
2                   crease is not used for any purpose other  
3                   than the use of idle reduction technology  
4                   described in subparagraph (A).”.

5           (d) REPORT.—Not later than 60 days after the date  
6           on which funds are initially awarded under this section,  
7           and on an annual basis thereafter, the Administrator shall  
8           submit to Congress a report containing—

9                   (1) an identification of the grant recipients, a  
10                  description of the projects to be funded and the  
11                  amount of funding provided; and

12                  (2) an identification of all other applicants that  
13                  submitted applications under the program.

14 **SEC. 757. BIODIESEL ENGINE TESTING PROGRAM.**

15           (a) IN GENERAL.—Not later than 180 days after the  
16           date of enactment of this Act, the Secretary shall initiate  
17           a partnership with diesel engine, diesel fuel injection sys-  
18           tem, and diesel vehicle manufacturers and diesel and bio-  
19           diesel fuel providers, to include biodiesel testing in ad-  
20           vanced diesel engine and fuel system technology.

1 (b) SCOPE.—The program shall provide for testing  
2 to determine the impact of biodiesel from different sources  
3 on current and future emission control technologies, with  
4 emphasis on—

5 (1) the impact of biodiesel on emissions war-  
6 ranty, in-use liability, and antitampering provisions;

7 (2) the impact of long-term use of biodiesel on  
8 engine operations;

9 (3) the options for optimizing these technologies  
10 for both emissions and performance when switching  
11 between biodiesel and diesel fuel; and

12 (4) the impact of using biodiesel in these fuel-  
13 ing systems and engines when used as a blend with  
14 2006 Environmental Protection Agency-mandated  
15 diesel fuel containing a maximum of 15-parts-per-  
16 million sulfur content.

17 (c) REPORT.—Not later than 2 years after the date  
18 of enactment of this Act, the Secretary shall provide an  
19 interim report to Congress on the findings of the program,  
20 including a comprehensive analysis of impacts from bio-  
21 diesel on engine operation for both existing and expected

1 future diesel technologies, and recommendations for en-  
2 suring optimal emissions reductions and engine perform-  
3 ance with biodiesel.

4 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
5 are authorized to be appropriated \$5,000,000 for each of  
6 fiscal years 2006 through 2010 to carry out this section.

7 (e) DEFINITION.—For purposes of this section, the  
8 term “biodiesel” means a diesel fuel substitute produced  
9 from nonpetroleum renewable resources that meets the  
10 registration requirements for fuels and fuel additives es-  
11 tablished by the Environmental Protection Agency under  
12 section 211 of the Clean Air Act (42 U.S.C. 7545) and  
13 that meets the American Society for Testing and Materials  
14 D6751–02a Standard Specification for Biodiesel Fuel  
15 (B100) Blend Stock for Distillate Fuels.

16 **SEC. 758. ULTRA-EFFICIENT ENGINE TECHNOLOGY FOR**  
17 **AIRCRAFT.**

18 (a) ULTRA-EFFICIENT ENGINE TECHNOLOGY PART-  
19 NERSHIP.—The Secretary shall enter into a cooperative  
20 agreement with the National Aeronautics and Space Ad-

1 ministration for the development of ultra-efficient engine  
2 technology for aircraft.

3 (b) PERFORMANCE OBJECTIVE.—The Secretary shall  
4 establish the following performance objectives for the pro-  
5 gram set forth in subsection (a):

6 (1) A fuel efficiency increase of at least 10 per-  
7 cent.

8 (2) A reduction in the impact of landing and  
9 takeoff nitrogen oxides emissions on local air quality  
10 of 70 percent.

11 (3) Exploring advanced concepts, alternate pro-  
12 pulsion, and power configurations, including hybrid  
13 fuel cell powered systems.

14 (4) Exploring the use of alternate fuel in con-  
15 ventional or nonconventional turbine-based systems.

16 (c) AUTHORIZATION OF APPROPRIATIONS.—There  
17 are authorized to be appropriated to the Secretary for car-  
18 rying out this section \$50,000,000 for each of the fiscal  
19 years 2006, 2007, 2008, 2009, and 2010.

1 **SEC. 759. FUEL ECONOMY INCENTIVE REQUIREMENTS.**

2 Section 32905 of title 49, United States Code, is  
3 amended by adding the following new subsection at the  
4 end thereof:

5 “(h) FUEL ECONOMY INCENTIVE REQUIREMENTS.—  
6 In order for any model of dual fueled automobile to be  
7 eligible to receive the fuel economy incentives included in  
8 section 32906(a) and (b), a label shall be attached to the  
9 fuel compartment of each dual fueled automobile of that  
10 model, notifying that the vehicle can be operated on an  
11 alternative fuel and on gasoline or diesel, with the form  
12 of alternative fuel stated on the notice. This requirement  
13 applies to dual fueled automobiles manufactured on or  
14 after September 1, 2006.”

15 **Subtitle E—Automobile Efficiency**

16 **SEC. 771. AUTHORIZATION OF APPROPRIATIONS FOR IM-**  
17 **PLEMENTATION AND ENFORCEMENT OF**  
18 **FUEL ECONOMY STANDARDS.**

19 In addition to any other funds authorized by law,  
20 there are authorized to be appropriated to the National  
21 Highway Traffic Safety Administration to carry out its ob-

1 ligations with respect to average fuel economy standards  
2 \$3,500,000 for each of the fiscal years 2006 through  
3 2010.

4 **SEC. 772. EXTENSION OF MAXIMUM FUEL ECONOMY IN-**  
5 **CREASE FOR ALTERNATIVE FUELED VEHI-**  
6 **CLES.**

7 (a) MANUFACTURING INCENTIVES.—Section 32905  
8 of title 49, United States Code, is amended—

9 (1) in each of subsections (b) and (d), by strik-  
10 ing “1993–2004” and inserting “1993–2010”;

11 (2) in subsection (f), by striking “2001” and  
12 inserting “2007”; and

13 (3) in subsection (f)(1), by striking “2004” and  
14 inserting “2010”.

15 (b) MAXIMUM FUEL ECONOMY INCREASE.—Sub-  
16 section (a)(1) of section 32906 of title 49, United States  
17 Code, is amended—

18 (1) in subparagraph (A), by striking “the model  
19 years 1993–2004” and inserting “model years  
20 1993–2010”; and





1           (2) examination of how automobile manufactur-  
2           ers could contribute toward achieving the reduction  
3           referred to in subsection (a);

4           (3) examination of the potential of fuel cell  
5           technology in motor vehicles in order to determine  
6           the extent to which such technology may contribute  
7           to achieving the reduction referred to in subsection  
8           (a); and

9           (4) examination of the effects of the reduction  
10          referred to in subsection (a) on—

11                 (A) gasoline supplies;

12                 (B) the automobile industry, including  
13                 sales of automobiles manufactured in the  
14                 United States;

15                 (C) motor vehicle safety; and

16                 (D) air quality.

17          (c) REPORT.—The Administrator shall submit to  
18          Congress a report on the findings, conclusion, and rec-  
19          ommendations of the study under this section by not later  
20          than 1 year after the date of the enactment of this Act.

1 **SEC. 774. UPDATE TESTING PROCEDURES.**

2 The Administrator of the Environmental Protection  
3 Agency shall update or revise the adjustment factors in  
4 sections 600.209–85 and 600.209–95, of the Code of Fed-  
5 eral Regulations, CFR Part 600 (1995) Fuel Economy  
6 Regulations for 1977 and Later Model Year Automobiles  
7 to take into consideration higher speed limits, faster accel-  
8 eration rates, variations in temperature, use of air condi-  
9 tioning, shorter city test cycle lengths, current reference  
10 fuels, and the use of other fuel depleting features.

11 **Subtitle F—Federal and State**  
12 **Procurement**

13 **SEC. 781. DEFINITIONS.**

14 In this subtitle:

15 (1) **FUEL CELL.**—The term “fuel cell” means a  
16 device that directly converts the chemical energy of  
17 a fuel and an oxidant into electricity by electro-  
18 chemical processes occurring at separate electrodes  
19 in the device.

20 (2) **LIGHT-DUTY OR HEAVY-DUTY VEHICLE**  
21 **FLEET.**—The term “light-duty or heavy-duty vehicle

1 fleet” does not include any vehicle designed or pro-  
2 cured for combat or combat-related missions.

3 (3) STATIONARY; PORTABLE.—The terms “sta-  
4 tionary” and “portable”, when used in reference to  
5 a fuel cell, include—

6 (A) continuous electric power; and

7 (B) backup electric power.

8 (4) TASK FORCE.—The term “Task Force”  
9 means the Hydrogen and Fuel Cell Technical Task  
10 Force established under section 806 of this Act.

11 (5) TECHNICAL ADVISORY COMMITTEE.—The  
12 term “Technical Advisory Committee” means the  
13 independent Technical Advisory Committee selected  
14 under section 807 of this Act.

15 **SEC. 782. FEDERAL AND STATE PROCUREMENT OF FUEL**  
16 **CELL VEHICLES AND HYDROGEN ENERGY**  
17 **SYSTEMS.**

18 (a) PURPOSES.—The purposes of this section are—

19 (1) to stimulate acceptance by the market of  
20 fuel cell vehicles and hydrogen energy systems;

1           (2) to support development of technologies re-  
2 relating to fuel cell vehicles, public refueling stations,  
3 and hydrogen energy systems; and

4           (3) to require the Federal government, which is  
5 the largest single user of energy in the United  
6 States, to adopt those technologies as soon as prac-  
7 ticable after the technologies are developed, in con-  
8 junction with private industry partners.

9           (b) FEDERAL LEASES AND PURCHASES.—

10           (1) REQUIREMENT.—

11           (A) IN GENERAL.—Not later than January  
12 1, 2010, the head of any Federal agency that  
13 uses a light-duty or heavy-duty vehicle fleet  
14 shall lease or purchase fuel cell vehicles and hy-  
15 drogen energy systems to meet any applicable  
16 energy savings goal described in subsection (c).

17           (B) LEARNING DEMONSTRATION VEHI-  
18 CLES.—The Secretary may lease or purchase  
19 appropriate vehicles developed under sub-  
20 sections (a)(10) and (b)(1)(A) of section 808 to  
21 meet the requirement in subparagraph (A).

1 (2) COSTS OF LEASES AND PURCHASES.—

2 (A) IN GENERAL.—The Secretary, in co-  
3 operation with the Task Force and the Tech-  
4 nical Advisory Committee, shall pay to Federal  
5 agencies (or share the cost under interagency  
6 agreements) the difference in cost between—

7 (i) the cost to the agencies of leasing  
8 or purchasing fuel cell vehicles and hydro-  
9 gen energy systems under paragraph (1);  
10 and

11 (ii) the cost to the agencies of a fea-  
12 sible alternative to leasing or purchasing  
13 fuel cell vehicles and hydrogen energy sys-  
14 tems, as determined by the Secretary.

15 (B) COMPETITIVE COSTS AND MANAGE-  
16 MENT STRUCTURES.—In carrying out subpara-  
17 graph (A), the Secretary, in consultation with  
18 the agency, may use the General Services Ad-  
19 ministration or any commercial vendor to  
20 ensure—

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- 1 (i) a cost-effective purchase of a fuel
- 2 cell vehicle or hydrogen energy system; or
- 3 (ii) a cost-effective management struc-
- 4 ture of the lease of a fuel cell vehicle or hy-
- 5 drogen energy system.

6 (3) EXCEPTION.—

7 (A) IN GENERAL.—If the Secretary deter-

8 mines that the head of an agency described in

9 paragraph (1) cannot find an appropriately effi-

10 cient and reliable fuel cell vehicle or hydrogen

11 energy system in accordance with paragraph

12 (1), that agency shall be excepted from compli-

13 ance with paragraph (1).

14 (B) CONSIDERATION.—In making a deter-

15 mination under subparagraph (A), the Sec-

16 retary shall consider—

- 17 (i) the needs of the agency; and
- 18 (ii) an evaluation performed by—
  - 19 (I) the Task Force; or
  - 20 (II) the Technical Advisory Com-
  - 21 mittee.

1 (c) ENERGY SAVINGS GOALS.—

2 (1) IN GENERAL.—

3 (A) REGULATIONS.—Not later than De-  
4 cember 31, 2006, the Secretary shall—

5 (i) in cooperation with the Task  
6 Force, promulgate regulations for the pe-  
7 riod of 2008 through 2010 that extend and  
8 augment energy savings goals for each  
9 Federal agency, in accordance with any  
10 Executive order issued after March 2000;  
11 and

12 (ii) promulgate regulations to expand  
13 the minimum Federal fleet requirement  
14 and credit allowances for fuel cell vehicle  
15 systems under section 303 of the Energy  
16 Policy Act of 1992 (42 U.S.C. 13212).

17 (B) REVIEW, EVALUATION, AND NEW REG-  
18 ULATIONS.—Not later than December 31,  
19 2010, the Secretary shall—

20 (i) review the regulations promulgated  
21 under subparagraph (A);

1 (ii) evaluate any progress made to-  
2 ward achieving energy savings by Federal  
3 agencies; and

4 (iii) promulgate new regulations for  
5 the period of 2011 through 2015 to  
6 achieve additional energy savings by Fed-  
7 eral agencies relating to technical and cost-  
8 performance standards.

9 (2) OFFSETTING ENERGY SAVINGS GOALS.—An  
10 agency that leases or purchases a fuel cell vehicle or  
11 hydrogen energy system in accordance with sub-  
12 section (b)(1) may use that lease or purchase to  
13 count toward an energy savings goal of the agency.

14 (d) COOPERATIVE PROGRAM WITH STATE AGEN-  
15 CIES.—

16 (1) IN GENERAL.—The Secretary may establish  
17 a cooperative program with State agencies managing  
18 motor vehicle fleets to encourage purchase of fuel  
19 cell vehicles by the agencies.

20 (2) INCENTIVES.—In carrying out the coopera-  
21 tive program, the Secretary may offer incentive pay-



1       ments to a State agency to assist with the cost of  
2       planning, differential purchases, and administration.

3       (e) AUTHORIZATION OF APPROPRIATIONS.—There is  
4       authorized to be appropriated to carry out this section—

5             (1) \$15,000,000 for fiscal year 2008;

6             (2) \$25,000,000 for fiscal year 2009;

7             (3) \$65,000,000 for fiscal year 2010; and

8             (4) such sums as are necessary for each of fis-  
9       cal years 2011 through 2015.

10   **SEC. 783. FEDERAL PROCUREMENT OF STATIONARY, PORT-**  
11                   **ABLE, AND MICRO FUEL CELLS.**

12       (a) PURPOSES.—The purposes of this section are—

13             (1) to stimulate acceptance by the market of  
14       stationary, portable, and micro fuel cells; and

15             (2) to support development of technologies re-  
16       lating to stationary, portable, and micro fuel cells.

17       (b) FEDERAL LEASES AND PURCHASES.—

18             (1) IN GENERAL.—Not later than January 1,  
19       2006, the head of any Federal agency that uses elec-  
20       trical power from stationary, portable, or microport-  
21       able devices shall lease or purchase a stationary,

1       portable, or micro fuel cell to meet any applicable  
2       energy savings goal described in subsection (c).

3           (2) COSTS OF LEASES AND PURCHASES.—

4           (A) IN GENERAL.—The Secretary, in co-  
5       operation with the Task Force and the Tech-  
6       nical Advisory Committee, shall pay the cost to  
7       Federal agencies (or share the cost under inter-  
8       agency agreements) of leasing or purchasing  
9       stationary, portable, and micro fuel cells under  
10      paragraph (1).

11          (B) COMPETITIVE COSTS AND MANAGE-  
12      MENT STRUCTURES.—In carrying out subpara-  
13      graph (A), the Secretary, in consultation with  
14      the agency, may use the General Services Ad-  
15      ministration or any commercial vendor to  
16      ensure—

17           (i) a cost-effective purchase of a sta-  
18           tionary, portable, or micro fuel cell; or

19           (ii) a cost-effective management struc-  
20           ture of the lease of a stationary, portable,  
21           or micro fuel cell.

1           (3) EXCEPTION.—

2           (A) IN GENERAL.—If the Secretary deter-  
3 mines that the head of an agency described in  
4 paragraph (1) cannot find an appropriately effi-  
5 cient and reliable stationary, portable, or micro  
6 fuel cell in accordance with paragraph (1), that  
7 agency shall be excepted from compliance with  
8 paragraph (1).

9           (B) CONSIDERATION.—In making a deter-  
10 mination under subparagraph (A), the Sec-  
11 retary shall consider—

12                   (i) the needs of the agency; and

13                   (ii) an evaluation performed by—

14                           (I) the Task Force; or

15                           (II) the Technical Advisory Com-  
16 mittee of the Task Force.

17           (c) ENERGY SAVINGS GOALS.—An agency that leases  
18 or purchases a stationary, portable, or micro fuel cell in  
19 accordance with subsection (b)(1) may use that lease or  
20 purchase to count toward an energy savings goal described  
21 in section 808 of this Act that is applicable to the agency.

- 1 (d) AUTHORIZATION OF APPROPRIATIONS.—There is  
2 authorized to be appropriated to carry out this section—
- 3 (1) \$20,000,000 for fiscal year 2006;
  - 4 (2) \$50,000,000 for fiscal year 2007;
  - 5 (3) \$75,000,000 for fiscal year 2008;
  - 6 (4) \$100,000,000 for fiscal year 2009;
  - 7 (5) \$100,000,000 for fiscal year 2010; and
  - 8 (6) such sums as are necessary for each of fis-  
9 cal years 2011 through 2015.

10 **Subtitle G—Diesel Emissions**  
11 **Reduction**

12 **SEC. 791. DEFINITIONS.**

13 In this subtitle:

- 14 (1) ADMINISTRATOR.—The term “Adminis-  
15 trator” means the Administrator of the Environ-  
16 mental Protection Agency.
- 17 (2) CERTIFIED ENGINE CONFIGURATION.—The  
18 term “certified engine configuration” means a new,  
19 rebuilt, or remanufactured engine configuration—  
20 (A) that has been certified or verified by—  
21 (i) the Administrator; or

1 (ii) the California Air Resources  
2 Board;

3 (B) that meets or is rebuilt or remanufac-  
4 tured to a more stringent set of engine emission  
5 standards, as determined by the Administrator;  
6 and

7 (C) in the case of a certified engine con-  
8 figuration involving the replacement of an exist-  
9 ing engine or vehicle, an engine configuration  
10 that replaced an engine that was—

11 (i) removed from the vehicle; and

12 (ii) returned to the supplier for re-  
13 manufacturing to a more stringent set of  
14 engine emissions standards or for  
15 scrappage.

16 (3) ELIGIBLE ENTITY.—The term “eligible enti-  
17 ty” means—

18 (A) a regional, State, local, or tribal agen-  
19 cy or port authority with jurisdiction over  
20 transportation or air quality; and

1 (B) a nonprofit organization or institution  
2 that—

3 (i) represents or provides pollution re-  
4 duction or educational services to persons  
5 or organizations that own or operate diesel  
6 fleets; or

7 (ii) has, as its principal purpose, the  
8 promotion of transportation or air quality.

9 (4) EMERGING TECHNOLOGY.—The term  
10 “emerging technology” means a technology that is  
11 not certified or verified by the Administrator or the  
12 California Air Resources Board but for which an ap-  
13 provable application and test plan has been sub-  
14 mitted for verification to the Administrator or the  
15 California Air Resources Board.

16 (5) FLEET.—The term “fleet” means 1 or more  
17 diesel vehicles or mobile or stationary diesel engines.

18 (6) HEAVY-DUTY TRUCK.—The term “heavy-  
19 duty truck” has the meaning given the term “heavy  
20 duty vehicle” in section 202 of the Clean Air Act  
21 (42 U.S.C. 7521).

1           (7) MEDIUM-DUTY TRUCK.—The term “me-  
2           dium-duty truck” has such meaning as shall be de-  
3           termined by the Administrator, by regulation.

4           (8) VERIFIED TECHNOLOGY.—The term  
5           “verified technology” means a pollution control tech-  
6           nology, including a retrofit technology, advanced  
7           truckstop electrification system, or auxiliary power  
8           unit, that has been verified by—

9                       (A) the Administrator; or

10                      (B) the California Air Resources Board.

11 **SEC. 792. NATIONAL GRANT AND LOAN PROGRAMS.**

12           (a) IN GENERAL.—The Administrator shall use 70  
13           percent of the funds made available to carry out this sub-  
14           title for each fiscal year to provide grants and low-cost  
15           revolving loans, as determined by the Administrator, on  
16           a competitive basis, to eligible entities to achieve signifi-  
17           cant reductions in diesel emissions in terms of—

18                      (1) tons of pollution produced; and

19                      (2) diesel emissions exposure, particularly from  
20           fleets operating in areas designated by the Adminis-  
21           trator as poor air quality areas.

1 (b) DISTRIBUTION.—

2 (1) IN GENERAL.—The Administrator shall dis-  
3 tribute funds made available for a fiscal year under  
4 this subtitle in accordance with this section.

5 (2) FLEETS.—The Administrator shall provide  
6 not less than 50 percent of funds available for a fis-  
7 cal year under this section to eligible entities for the  
8 benefit of public fleets.

9 (3) ENGINE CONFIGURATIONS AND TECH-  
10 NOLOGIES.—

11 (A) CERTIFIED ENGINE CONFIGURATIONS  
12 AND VERIFIED TECHNOLOGIES.—The Adminis-  
13 trator shall provide not less than 90 percent of  
14 funds available for a fiscal year under this sec-  
15 tion to eligible entities for projects using—

- 16 (i) a certified engine configuration; or  
17 (ii) a verified technology.

18 (B) EMERGING TECHNOLOGIES.—

19 (i) IN GENERAL.—The Administrator  
20 shall provide not more than 10 percent of  
21 funds available for a fiscal year under this



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1 section to eligible entities for the develop-  
2 ment and commercialization of emerging  
3 technologies.

4 (ii) APPLICATION AND TEST PLAN.—  
5 To receive funds under clause (i), a manu-  
6 facturer, in consultation with an eligible  
7 entity, shall submit for verification to the  
8 Administrator or the California Air Re-  
9 sources Board a test plan for the emerging  
10 technology, together with the application  
11 under subsection (c).

12 (c) APPLICATIONS.—

13 (1) IN GENERAL.—To receive a grant or loan  
14 under this section, an eligible entity shall submit to  
15 the Administrator an application at a time, in a  
16 manner, and including such information as the Ad-  
17 ministrator may require.

18 (2) INCLUSIONS.—An application under this  
19 subsection shall include—

20 (A) a description of the air quality of the  
21 area served by the eligible entity;

1 (B) the quantity of air pollution produced  
2 by the diesel fleets in the area served by the eli-  
3 gible entity;

4 (C) a description of the project proposed  
5 by the eligible entity, including—

6 (i) any certified engine configuration,  
7 verified technology, or emerging technology  
8 to be used or funded by the eligible entity;  
9 and

10 (ii) the means by which the project  
11 will achieve a significant reduction in diesel  
12 emissions;

13 (D) an evaluation (using methodology ap-  
14 proved by the Administrator or the National  
15 Academy of Sciences) of the quantifiable and  
16 unquantifiable benefits of the emissions reduc-  
17 tions of the proposed project;

18 (E) an estimate of the cost of the proposed  
19 project;

1 (F) a description of the age and expected  
2 lifetime control of the equipment used or fund-  
3 ed by the eligible entity;

4 (G) a description of the diesel fuel avail-  
5 able in the areas to be served by the eligible en-  
6 tity, including the sulfur content of the fuel;  
7 and

8 (H) provisions for the monitoring and  
9 verification of the project.

10 (3) PRIORITY.—In providing a grant or loan  
11 under this section, the Administrator shall give pri-  
12 ority to proposed projects that, as determined by the  
13 Administrator—

14 (A) maximize public health benefits;

15 (B) are the most cost-effective;

16 (C) serve areas—

17 (i) with the highest population den-  
18 sity;

19 (ii) that are poor air quality areas, in-  
20 cluding areas identified by the Adminis-  
21 trator as—

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- 1 (I) in nonattainment or maintenance of national ambient air quality
- 2 standards for a criteria pollutant;
- 3 (II) Federal Class I areas; or
- 4 (III) areas with toxic air pollutant concerns;
- 5 (iii) that receive a disproportionate
- 6 quantity of air pollution from a diesel
- 7 fleets, including truckstops, ports, rail
- 8 yards, terminals, and distribution centers;
- 9 or
- 10 (iv) that use a community-based
- 11 multistakeholder collaborative process to
- 12 reduce toxic emissions;
- 13 (D) include a certified engine configura-
- 14 tion, verified technology, or emerging tech-
- 15 nology that has a long expected useful life;
- 16 (E) will maximize the useful life of any
- 17 certified engine configuration, verified tech-
- 18 nology, or emerging technology used or funded
- 19 by the eligible entity;
- 20
- 21

1 (F) conserve diesel fuel; and

2 (G) use diesel fuel with a sulfur content of  
3 less than or equal to 15 parts per million, as  
4 the Administrator determines to be appropriate.

5 (d) USE OF FUNDS.—

6 (1) IN GENERAL.—An eligible entity may use a  
7 grant or loan provided under this section to fund the  
8 costs of—

9 (A) a retrofit technology (including any in-  
10 cremental costs of a repowered or new diesel  
11 engine) that significantly reduces emissions  
12 through development and implementation of a  
13 certified engine configuration, verified tech-  
14 nology, or emerging technology for—

15 (i) a bus;

16 (ii) a medium-duty truck or a heavy-  
17 duty truck;

18 (iii) a marine engine;

19 (iv) a locomotive; or

20 (v) a nonroad engine or vehicle used  
21 in—

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- 1 (I) construction;  
2 (II) handling of cargo (including  
3 at a port or airport);  
4 (III) agriculture;  
5 (IV) mining; or  
6 (V) energy production; or

7 (B) programs or projects to reduce long-  
8 duration idling using verified technology involv-  
9 ing a vehicle or equipment described in sub-  
10 paragraph (A).

11 (2) REGULATORY PROGRAMS.—

12 (A) IN GENERAL.—Notwithstanding para-  
13 graph (1), no grant or loan provided under this  
14 section shall be used to fund the costs of emis-  
15 sions reductions that are mandated under Fed-  
16 eral, State or local law.

17 (B) MANDATED.—For purposes of sub-  
18 paragraph (A), voluntary or elective emission  
19 reduction measures shall not be considered  
20 “mandated”, regardless of whether the reduc-

1           tions are included in the State implementation  
2           plan of a State.

3 **SEC. 793. STATE GRANT AND LOAN PROGRAMS.**

4       (a) IN GENERAL.—Subject to the availability of ade-  
5       quate appropriations, the Administrator shall use 30 per-  
6       cent of the funds made available for a fiscal year under  
7       this subtitle to support grant and loan programs adminis-  
8       tered by States that are designed to achieve significant  
9       reductions in diesel emissions.

10       (b) APPLICATIONS.—The Administrator shall—

11           (1) provide to States guidance for use in apply-  
12           ing for grant or loan funds under this section, in-  
13           cluding information regarding—

14                   (A) the process and forms for applications;

15                   (B) permissible uses of funds received; and

16                   (C) the cost-effectiveness of various emis-  
17                   sion reduction technologies eligible to be carried

18                   out using funds provided under this section;

19                   and

20           (2) establish, for applications described in para-  
21           graph (1)—

1 (A) an annual deadline for submission of  
2 the applications;

3 (B) a process by which the Administrator  
4 shall approve or disapprove each application;  
5 and

6 (C) a streamlined process by which a State  
7 may renew an application described in para-  
8 graph (1) for subsequent fiscal years.

9 (c) ALLOCATION OF FUNDS.—

10 (1) IN GENERAL.—For each fiscal year, the Ad-  
11 ministrator shall allocate among States for which  
12 applications are approved by the Administrator  
13 under subsection (b)(2)(B) funds made available to  
14 carry out this section for the fiscal year.

15 (2) ALLOCATION.—Using not more than 20  
16 percent of the funds made available to carry out this  
17 subtitle for a fiscal year, the Administrator shall  
18 provide to each State described in paragraph (1) for  
19 the fiscal year an allocation of funds that is equal  
20 to—



1           (A) if each of the 50 States qualifies for  
2           an allocation, an amount equal to 2 percent of  
3           the funds made available to carry out this sec-  
4           tion; or

5           (B) if fewer than 50 States qualifies for an  
6           allocation, an amount equal to the amount de-  
7           scribed in subparagraph (A), plus an additional  
8           amount equal to the product obtained by  
9           multiplying—

10           (i) the proportion that—

11                 (I) the population of the State;  
12                 bears to

13                 (II) the population of all States  
14                 described in paragraph (1); by

15           (ii) the amount of funds remaining  
16           after each State described in paragraph (1)  
17           receives the 2-percent allocation under this  
18           paragraph.

19           (3) STATE MATCHING INCENTIVE.—

20           (A) IN GENERAL.—If a State agrees to  
21           match the allocation provided to the State

1           under paragraph (2) for a fiscal year, the Ad-  
2           ministrator shall provide to the State for the  
3           fiscal year an additional amount equal to 50  
4           percent of the allocation of the State under  
5           paragraph (2).

6                   (B) REQUIREMENTS.—A State—

7                           (i) may not use funds received under  
8                           this subtitle to pay a matching share re-  
9                           quired under this subsection; and

10                           (ii) shall not be required to provide a  
11                           matching share for any additional amount  
12                           received under subparagraph (A).

13           (4) UNCLAIMED FUNDS.—Any funds that are  
14           not claimed by a State for a fiscal year under this  
15           subsection shall be used to carry out section 792.

16           (d) ADMINISTRATION.—

17                   (1) IN GENERAL.—Subject to paragraphs (2)  
18                   and (3) and, to the extent practicable, the priority  
19                   areas listed in section 792(c)(3), a State shall use  
20                   any funds provided under this section to develop and  
21                   implement such grant and low-cost revolving loan

1 programs in the State as are appropriate to meet  
2 State needs and goals relating to the reduction of  
3 diesel emissions.

4 (2) APPORTIONMENT OF FUNDS.—The Gov-  
5 ernor of a State that receives funding under this  
6 section may determine the portion of funds to be  
7 provided as grants or loans.

8 (3) USE OF FUNDS.—A grant or loan provided  
9 under this section may be used for a project relating  
10 to—

11 (A) a certified engine configuration; or

12 (B) a verified technology.

13 **SEC. 794. EVALUATION AND REPORT.**

14 (a) IN GENERAL.—Not later than 1 year after the  
15 date on which funds are made available under this sub-  
16 title, and biennially thereafter, the Administrator shall  
17 submit to Congress a report evaluating the implementa-  
18 tion of the programs under this subtitle.

19 (b) INCLUSIONS.—The report shall include a descrip-  
20 tion of—

1           (1) the total number of grant applications re-  
2           ceived;

3           (2) each grant or loan made under this subtitle,  
4           including the amount of the grant or loan;

5           (3) each project for which a grant or loan is  
6           provided under this subtitle, including the criteria  
7           used to select the grant or loan recipients;

8           (4) the actual and estimated air quality and  
9           diesel fuel conservation benefits, cost-effectiveness,  
10          and cost-benefits of the grant and loan programs  
11          under this subtitle;

12          (5) the problems encountered by projects for  
13          which a grant or loan is provided under this subtitle;  
14          and

15          (6) any other information the Administrator  
16          considers to be appropriate.

17 **SEC. 795. OUTREACH AND INCENTIVES.**

18          (a) **DEFINITION OF ELIGIBLE TECHNOLOGY.**—In  
19          this section, the term “eligible technology” means—

20                 (1) a verified technology; or

21                 (2) an emerging technology.

1 (b) TECHNOLOGY TRANSFER PROGRAM.—

2 (1) IN GENERAL.—The Administrator shall es-  
3 tablish a program under which the Administrator—

4 (A) informs stakeholders of the benefits of  
5 eligible technologies; and

6 (B) develops nonfinancial incentives to pro-  
7 mote the use of eligible technologies.

8 (2) ELIGIBLE STAKEHOLDERS.—Eligible stake-  
9 holders under this section include—

10 (A) equipment owners and operators;

11 (B) emission and pollution control tech-  
12 nology manufacturers;

13 (C) engine and equipment manufacturers;

14 (D) State and local officials responsible for  
15 air quality management;

16 (E) community organizations; and

17 (F) public health, educational, and envi-  
18 ronmental organizations.

19 (c) STATE IMPLEMENTATION PLANS.—The Adminis-  
20 trator shall develop appropriate guidance to provide credit  
21 to a State for emission reductions in the State created

1 by the use of eligible technologies through a State imple-  
2 mentation plan under section 110 of the Clean Air Act  
3 (42 U.S.C. 7410).

4 (d) INTERNATIONAL MARKETS.—The Administrator,  
5 in coordination with the Department of Commerce and in-  
6 dustry stakeholders, shall inform foreign countries with  
7 air quality problems of the potential of technology devel-  
8 oped or used in the United States to provide emission re-  
9 ductions in those countries.

10 **SEC. 796. EFFECT OF SUBTITLE.**

11 Nothing in this subtitle affects any authority under  
12 the Clean Air Act (42 U.S.C. 7401 et seq.) in existence  
13 on the day before the date of enactment of this Act.

14 **SEC. 797. AUTHORIZATION OF APPROPRIATIONS.**

15 There is authorized to be appropriated to carry out  
16 this subtitle \$200,000,000 for each of fiscal years 2007  
17 through 2011, to remain available until expended.

18 **TITLE VIII—HYDROGEN**

19 **SEC. 801. HYDROGEN AND FUEL CELL PROGRAM.**

20 This title may be cited as the “Spark M. Matsunaga  
21 Hydrogen Act of 2005”.

1 **SEC. 802. PURPOSES.**

2 The purposes of this title are—

3 (1) to enable and promote comprehensive devel-  
4 opment, demonstration, and commercialization of  
5 hydrogen and fuel cell technology in partnership  
6 with industry;

7 (2) to make critical public investments in build-  
8 ing strong links to private industry, institutions of  
9 higher education, National Laboratories, and re-  
10 search institutions to expand innovation and indus-  
11 trial growth;

12 (3) to build a mature hydrogen economy that  
13 creates fuel diversity in the massive transportation  
14 sector of the United States;

15 (4) to sharply decrease the dependency of the  
16 United States on imported oil, eliminate most emis-  
17 sions from the transportation sector, and greatly en-  
18 hance our energy security; and

19 (5) to create, strengthen, and protect a sustain-  
20 able national energy economy.

1 **SEC. 803. DEFINITIONS.**

2 In this title:

3 (1) **FUEL CELL.**—The term “fuel cell” means a  
4 device that directly converts the chemical energy of  
5 a fuel, which is supplied from an external source,  
6 and an oxidant into electricity by electrochemical  
7 processes occurring at separate electrodes in the de-  
8 vice.

9 (2) **HEAVY-DUTY VEHICLE.**—The term “heavy-  
10 duty vehicle” means a motor vehicle that—

11 (A) is rated at more than 8,500 pounds  
12 gross vehicle weight;

13 (B) has a curb weight of more than 6,000  
14 pounds; or

15 (C) has a basic vehicle frontal area in ex-  
16 cess of 45 square feet.

17 (3) **INFRASTRUCTURE.**—The term “infrastruc-  
18 ture” means the equipment, systems, or facilities  
19 used to produce, distribute, deliver, or store hydro-  
20 gen (except for onboard storage).



1           (4) LIGHT-DUTY VEHICLE.—The term “light-  
2           duty vehicle” means a motor vehicle that is rated at  
3           8,500 or less pounds gross vehicle weight.

4           (5) STATIONARY; PORTABLE.—The terms “sta-  
5           tionary” and “portable”, when used in reference to  
6           a fuel cell, include—

7                   (A) continuous electric power; and

8                   (B) backup electric power.

9           (6) TASK FORCE.—The term “Task Force”  
10          means the Hydrogen and Fuel Cell Technical Task  
11          Force established under section 806.

12          (7) TECHNICAL ADVISORY COMMITTEE.—The  
13          term “Technical Advisory Committee” means the  
14          independent Technical Advisory Committee estab-  
15          lished under section 807.

16   **SEC. 804. PLAN.**

17          Not later than 6 months after the date of enactment  
18          of this Act, the Secretary shall transmit to Congress a  
19          coordinated plan for the programs described in this title  
20          and any other programs of the Department that are di-

1 rectly related to fuel cells or hydrogen. The plan shall de-  
2 scribe, at a minimum—

3 (1) the agenda for the next 5 years for the pro-  
4 grams authorized under this title, including the  
5 agenda for each activity enumerated in section  
6 805(e);

7 (2) the types of entities that will carry out the  
8 activities under this title and what role each entity  
9 is expected to play;

10 (3) the milestones that will be used to evaluate  
11 the programs for the next 5 years;

12 (4) the most significant technical and nontech-  
13 nical hurdles that stand in the way of achieving the  
14 goals described in section 805, and how the pro-  
15 grams will address those hurdles; and

16 (5) the policy assumptions that are implicit in  
17 the plan, including any assumptions that would af-  
18 fect the sources of hydrogen or the marketability of  
19 hydrogen-related products.

1 **SEC. 805. PROGRAMS.**

2 (a) IN GENERAL.—The Secretary, in consultation  
3 with other Federal agencies and the private sector, shall  
4 conduct a research and development program on tech-  
5 nologies relating to the production, purification, distribu-  
6 tion, storage, and use of hydrogen energy, fuel cells, and  
7 related infrastructure.

8 (b) GOAL.—The goal of the program shall be to dem-  
9 onstrate and commercialize the use of hydrogen for trans-  
10 portation (in light-duty vehicles and heavy-duty vehicles),  
11 utility, industrial, commercial, and residential applica-  
12 tions.

13 (c) FOCUS.—In carrying out activities under this sec-  
14 tion, the Secretary shall focus on factors that are common  
15 to the development of hydrogen infrastructure and the  
16 supply of vehicle and electric power for critical consumer  
17 and commercial applications, and that achieve continuous  
18 technical evolution and cost reduction, particularly for hy-  
19 drogen production, the supply of hydrogen, storage of hy-  
20 drogen, and end uses of hydrogen that—

1           (1) steadily increase production, distribution,  
2           and end use efficiency and reduce life-cycle emis-  
3           sions;

4           (2) resolve critical problems relating to cata-  
5           lysts, membranes, storage, lightweight materials,  
6           electronic controls, manufacturability, and other  
7           problems that emerge from the program;

8           (3) enhance sources of renewable fuels and  
9           biofuels for hydrogen production; and

10          (4) enable widespread use of distributed elec-  
11          tricity generation and storage.

12          (d) PUBLIC EDUCATION AND RESEARCH.—In car-  
13          rying out this section, the Secretary shall support en-  
14          hanced public education and research conducted at institu-  
15          tions of higher education in fundamental sciences, applica-  
16          tion design, and systems concepts (including education  
17          and research relating to materials, subsystems,  
18          manufacturability, maintenance, and safety) relating to  
19          hydrogen and fuel cells.

20          (e) ACTIVITIES.—The Secretary, in partnership with  
21          the private sector, shall conduct programs to address—

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- 1           (1) production of hydrogen from diverse energy
- 2 sources, including—
  - 3           (A) fossil fuels, which may include carbon
  - 4 capture and sequestration;
  - 5           (B) hydrogen-carrier fuels (including eth-
  - 6 anol and methanol);
  - 7           (C) renewable energy resources, including
  - 8 biomass; and
  - 9           (D) nuclear energy;
- 10          (2) use of hydrogen for commercial, industrial,
- 11 and residential electric power generation;
- 12          (3) safe delivery of hydrogen or hydrogen-car-
- 13 rier fuels, including—
  - 14           (A) transmission by pipeline and other dis-
  - 15 tribution methods; and
  - 16           (B) convenient and economic refueling of
  - 17 vehicles either at central refueling stations or
  - 18 through distributed onsite generation;
- 19          (4) advanced vehicle technologies, including—
  - 20           (A) engine and emission control systems;

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1 (B) energy storage, electric propulsion, and  
2 hybrid systems;

3 (C) automotive materials; and

4 (D) other advanced vehicle technologies;

5 (5) storage of hydrogen or hydrogen-carrier  
6 fuels, including development of materials for safe  
7 and economic storage in gaseous, liquid, or solid  
8 form at refueling facilities and onboard vehicles;

9 (6) development of safe, durable, affordable,  
10 and efficient fuel cells, including fuel-flexible fuel cell  
11 power systems, improved manufacturing processes,  
12 high-temperature membranes, cost-effective fuel  
13 processing for natural gas, fuel cell stack and system  
14 reliability, low temperature operation, and cold start  
15 capability; and

16 (7) the ability of domestic automobile manufac-  
17 turers to manufacture commercially available com-  
18 petitive hybrid vehicle technologies in the United  
19 States.

20 (f) PROGRAM GOALS.—

1           (1) VEHICLES.—For vehicles, the goals of the  
2           program are—

3                   (A) to enable a commitment by auto-  
4                   makers no later than year 2015 to offer safe,  
5                   affordable, and technically viable hydrogen fuel  
6                   cell vehicles in the mass consumer market; and

7                   (B) to enable production, delivery, and ac-  
8                   ceptance by consumers of model year 2020 hy-  
9                   drogen fuel cell and other hydrogen-powered ve-  
10                  hicles that will have, when compared to light  
11                  duty vehicles in model year 2005—

12                           (i) fuel economy that is substantially  
13                           higher;

14                           (ii) substantially lower emissions of  
15                           air pollutants; and

16                           (iii) equivalent or improved vehicle  
17                           fuel system crash integrity and occupant  
18                           protection.

19           (2) HYDROGEN ENERGY AND ENERGY INFRA-  
20           STRUCTURE.—For hydrogen energy and energy in-  
21           frastructure, the goals of the program are to enable

1 a commitment not later than 2015 that will lead to  
2 infrastructure by 2020 that will provide—

3 (A) safe and convenient refueling;

4 (B) improved overall efficiency;

5 (C) widespread availability of hydrogen  
6 from domestic energy sources through—

7 (i) production, with consideration of  
8 emissions levels;

9 (ii) delivery, including transmission by  
10 pipeline and other distribution methods for  
11 hydrogen; and

12 (iii) storage, including storage in sur-  
13 face transportation vehicles;

14 (D) hydrogen for fuel cells, internal com-  
15 bustion engines, and other energy conversion  
16 devices for portable, stationary, micro, critical  
17 needs facilities, and transportation applications;  
18 and

19 (E) other technologies consistent with the  
20 Department's plan.



1           (3) FUEL CELLS.—The goals for fuel cells and  
2           their portable, stationary, and transportation appli-  
3           cations are to enable—

4                   (A) safe, economical, and environmentally  
5                   sound hydrogen fuel cells;

6                   (B) fuel cells for light duty and other vehi-  
7                   cles; and

8                   (C) other technologies consistent with the  
9                   Department's plan.

10          (g) FUNDING.—

11           (1) IN GENERAL.—The Secretary shall carry  
12           out the programs under this section using a competi-  
13           tive, merit-based review process and consistent with  
14           the generally applicable Federal laws and regulations  
15           governing awards of financial assistance, contracts,  
16           or other agreements.

17           (2) RESEARCH CENTERS.—Activities under this  
18           section may be carried out by funding nationally rec-  
19           ognized university-based or Federal laboratory re-  
20           search centers.

1 (h) HYDROGEN SUPPLY.—There are authorized to be  
2 appropriated to carry out projects and activities relating  
3 to hydrogen production, storage, distribution and dis-  
4 pensing, transport, education and coordination, and tech-  
5 nology transfer under this section—

6 (1) \$160,000,000 for fiscal year 2006;

7 (2) \$200,000,000 for fiscal year 2007;

8 (3) \$220,000,000 for fiscal year 2008;

9 (4) \$230,000,000 for fiscal year 2009;

10 (5) \$250,000,000 for fiscal year 2010; and

11 (6) such sums as are necessary for each of fis-  
12 cal years 2011 through 2020.

13 (i) FUEL CELL TECHNOLOGIES.—There are author-  
14 ized to be appropriated to carry out projects and activities  
15 relating to fuel cell technologies under this section—

16 (1) \$150,000,000 for fiscal year 2006;

17 (2) \$160,000,000 for fiscal year 2007;

18 (3) \$170,000,000 for fiscal year 2008;

19 (4) \$180,000,000 for fiscal year 2009;

20 (5) \$200,000,000 for fiscal year 2010; and



1 (b) DUTIES.—

2 (1) PLANNING.—The Task Force shall work  
3 toward—

4 (A) a safe, economical, and environ-  
5 mentally sound fuel infrastructure for hydrogen  
6 and hydrogen-carrier fuels, including an infra-  
7 structure that supports buses and other fleet  
8 transportation;

9 (B) fuel cells in government and other ap-  
10 plications, including portable, stationary, and  
11 transportation applications;

12 (C) distributed power generation, including  
13 the generation of combined heat, power, and  
14 clean fuels including hydrogen;

15 (D) uniform hydrogen codes, standards,  
16 and safety protocols; and

17 (E) vehicle hydrogen fuel system integrity  
18 safety performance.

19 (2) ACTIVITIES.—The Task Force may organize  
20 workshops and conferences, may issue publications,

1 and may create databases to carry out its duties.

2 The Task Force shall—

3 (A) foster the exchange of generic, non-  
4 proprietary information and technology among  
5 industry, academia, and government;

6 (B) develop and maintain an inventory and  
7 assessment of hydrogen, fuel cells, and other  
8 advanced technologies, including the commercial  
9 capability of each technology for the economic  
10 and environmentally safe production, distribu-  
11 tion, delivery, storage, and use of hydrogen;

12 (C) integrate technical and other informa-  
13 tion made available as a result of the programs  
14 and activities under this title;

15 (D) promote the marketplace introduction  
16 of infrastructure for hydrogen fuel vehicles; and

17 (E) conduct an education program to pro-  
18 vide hydrogen and fuel cell information to po-  
19 tential end-users.

20 (c) AGENCY COOPERATION.—The heads of all agen-  
21 cies, including those whose agencies are not represented

1 on the Task Force, shall cooperate with and furnish infor-  
2 mation to the Task Force, the Technical Advisory Com-  
3 mittee, and the Department.

4 **SEC. 807. TECHNICAL ADVISORY COMMITTEE.**

5 (a) **ESTABLISHMENT.**—The Hydrogen Technical and  
6 Fuel Cell Advisory Committee is established to advise the  
7 Secretary on the programs and activities under this title.

8 (b) **MEMBERSHIP.**—

9 (1) **MEMBERS.**—The Technical Advisory Com-  
10 mittee shall be comprised of not fewer than 12 nor  
11 more than 25 members. The members shall be ap-  
12 pointed by the Secretary to represent domestic in-  
13 dustry, academia, professional societies, government  
14 agencies, Federal laboratories, previous advisory  
15 panels, and financial, environmental, and other ap-  
16 propriate organizations based on the Department's  
17 assessment of the technical and other qualifications  
18 of Technical Advisory Committee members and the  
19 needs of the Technical Advisory Committee.

20 (2) **TERMS.**—The term of a member of the  
21 Technical Advisory Committee shall not be more

1 than 3 years. The Secretary may appoint members  
2 of the Technical Advisory Committee in a manner  
3 that allows the terms of the members serving at any  
4 time to expire at spaced intervals so as to ensure  
5 continuity in the functioning of the Technical Advi-  
6 sory Committee. A member of the Technical Advi-  
7 sory Committee whose term is expiring may be re-  
8 appointed.

9 (3) CHAIRPERSON.—The Technical Advisory  
10 Committee shall have a chairperson, who shall be  
11 elected by the members from among their number.

12 (c) REVIEW.—The Technical Advisory Committee  
13 shall review and make recommendations to the Secretary  
14 on—

15 (1) the implementation of programs and activi-  
16 ties under this title;

17 (2) the safety, economical, and environmental  
18 consequences of technologies for the production, dis-  
19 tribution, delivery, storage, or use of hydrogen en-  
20 ergy and fuel cells; and

21 (3) the plan under section 804.

1 (d) RESPONSE.—

2 (1) CONSIDERATION OF RECOMMENDATIONS.—

3 The Secretary shall consider, but need not adopt,  
4 any recommendations of the Technical Advisory  
5 Committee under subsection (c).

6 (2) BIENNIAL REPORT.—The Secretary shall  
7 transmit a biennial report to Congress describing  
8 any recommendations made by the Technical Advi-  
9 sory Committee since the previous report. The re-  
10 port shall include a description of how the Secretary  
11 has implemented or plans to implement the rec-  
12 ommendations, or an explanation of the reasons that  
13 a recommendation will not be implemented. The re-  
14 port shall be transmitted along with the President's  
15 budget proposal.

16 (e) SUPPORT.—The Secretary shall provide resources  
17 necessary in the judgment of the Secretary for the Tech-  
18 nical Advisory Committee to carry out its responsibilities  
19 under this title.



1 **SEC. 808. DEMONSTRATION.**

2 (a) IN GENERAL.—In carrying out the programs  
3 under this section, the Secretary shall fund a limited num-  
4 ber of demonstration projects, consistent with this title  
5 and a determination of the maturity, cost-effectiveness,  
6 and environmental impacts of technologies supporting  
7 each project. In selecting projects under this subsection,  
8 the Secretary shall, to the extent practicable and in the  
9 public interest, select projects that—

10 (1) involve using hydrogen and related products  
11 at existing facilities or installations, such as existing  
12 office buildings, military bases, vehicle fleet centers,  
13 transit bus authorities, or units of the National Park  
14 System;

15 (2) depend on reliable power from hydrogen to  
16 carry out essential activities;

17 (3) lead to the replication of hydrogen tech-  
18 nologies and draw such technologies into the market-  
19 place;

1           (4) include vehicle, portable, and stationary  
2           demonstrations of fuel cell and hydrogen-based en-  
3           ergy technologies;

4           (5) address the interdependency of demand for  
5           hydrogen fuel cell applications and hydrogen fuel in-  
6           frastructure;

7           (6) raise awareness of hydrogen technology  
8           among the public;

9           (7) facilitate identification of an optimum tech-  
10          nology among competing alternatives;

11          (8) address distributed generation using renew-  
12          able sources;

13          (9) carry out demonstrations of evolving hydro-  
14          gen and fuel cell technologies in national parks, re-  
15          mote island areas, and on Indian tribal land, as se-  
16          lected by the Secretary;

17          (10) carry out a program to demonstrate devel-  
18          opmental hydrogen and fuel cell systems for mobile,  
19          portable, and stationary uses, using improved  
20          versions of the learning demonstrations program

1 concept of the Department including demonstrations  
2 involving—

3 (A) light-duty vehicles;

4 (B) heavy-duty vehicles;

5 (C) fleet vehicles;

6 (D) specialty industrial and farm vehicles;

7 and

8 (E) commercial and residential portable,

9 continuous, and backup electric power genera-  
10 tion;

11 (11) in accordance with any code or standards  
12 developed in a region, fund prototype, pilot fleet,  
13 and infrastructure regional hydrogen supply cor-  
14 ridors along the interstate highway system in varied  
15 climates across the United States; and

16 (12) fund demonstration programs that explore  
17 the use of hydrogen blends, hybrid hydrogen, and  
18 hydrogen reformed from renewable agricultural  
19 fuels, including the use of hydrogen in hybrid elec-  
20 tric, heavier duty, and advanced internal combus-  
21 tion-powered vehicles.

1 The Secretary shall give preference to projects which ad-  
2 dress multiple elements contained in paragraphs (1)  
3 through (12).

4 (b) SYSTEM DEMONSTRATIONS.—

5 (1) IN GENERAL.—As a component of the dem-  
6 onstration program under this section, the Secretary  
7 shall provide grants, on a cost share basis as appro-  
8 priate, to eligible entities (as determined by the Sec-  
9 retary) for use in—

10 (A) devising system design concepts that  
11 provide for the use of advanced composite vehi-  
12 cles in programs under section 782 that—

13 (i) have as a primary goal the reduc-  
14 tion of drive energy requirements;

15 (ii) after 2010, add another research  
16 and development phase, as defined in sub-  
17 section (c), including the vehicle and infra-  
18 structure partnerships developed under the  
19 learning demonstrations program concept  
20 of the Department; and

1 (iii) are managed through an en-  
2 hanced FreedomCAR program within the  
3 Department that encourages involvement  
4 in cost-shared projects by manufacturers  
5 and governments; and

6 (B) designing a local distributed energy  
7 system that—

8 (i) incorporates renewable hydrogen  
9 production, off-grid electricity production,  
10 and fleet applications in industrial or com-  
11 mercial service;

12 (ii) integrates energy or applications  
13 described in clause (i), such as stationary,  
14 portable, micro, and mobile fuel cells, into  
15 a high-density commercial or residential  
16 building complex or agricultural commu-  
17 nity; and

18 (iii) is managed in cooperation with  
19 industry, State, tribal, and local govern-  
20 ments, agricultural organizations, and non-

1                   profit generators and distributors of elec-  
2                   tricity.

3           (c) IDENTIFICATION OF NEW PROGRAM REQUIRE-  
4 MENTS.—In carrying out the demonstrations under sub-  
5 section (a), the Secretary, in consultation with the Task  
6 Force and the Technical Advisory Committee, shall—

7                   (1) after 2008 for stationary and portable ap-  
8                   plications, and after 2010 for vehicles, identify new  
9                   requirements that refine technological concepts,  
10                  planning, and applications; and

11                  (2) during the second phase of the learning  
12                  demonstrations under subsection (b)(1)(A)(ii), rede-  
13                  sign subsequent program work to incorporate those  
14                  requirements.

15           (d) AUTHORIZATION OF APPROPRIATIONS.—There  
16 are authorized to be appropriated to carry out this  
17 section—

18                   (1) \$185,000,000 for fiscal year 2006;

19                   (2) \$200,000,000 for fiscal year 2007;

20                   (3) \$250,000,000 for fiscal year 2008;

21                   (4) \$300,000,000 for fiscal year 2009;

- 1           (5) \$375,000,000 for fiscal year 2010; and  
2           (6) such sums as are necessary for each of fis-  
3           cal years 2011 through 2020.

4 **SEC. 809. CODES AND STANDARDS.**

5           (a) **IN GENERAL.**—The Secretary, in cooperation  
6 with the Task Force, shall provide grants to, or offer to  
7 enter into contracts with, such professional organizations,  
8 public service organizations, and government agencies as  
9 the Secretary determines appropriate to support timely  
10 and extensive development of safety codes and standards  
11 relating to fuel cell vehicles, hydrogen energy systems, and  
12 stationary, portable, and micro fuel cells.

13           (b) **EDUCATIONAL EFFORTS.**—The Secretary shall  
14 support educational efforts by organizations and agencies  
15 described in subsection (a) to share information, including  
16 information relating to best practices, among those organi-  
17 zations and agencies.

18           (c) **AUTHORIZATION OF APPROPRIATIONS.**—There  
19 are authorized to be appropriated to carry out this  
20 section—

- 21           (1) \$4,000,000 for fiscal year 2006;

- 1 (2) \$7,000,000 for fiscal year 2007;
- 2 (3) \$8,000,000 for fiscal year 2008;
- 3 (4) \$10,000,000 for fiscal year 2009;
- 4 (5) \$9,000,000 for fiscal year 2010; and
- 5 (6) such sums as are necessary for each of fis-
- 6 cal years 2011 through 2020.

7 **SEC. 810. DISCLOSURE.**

8 Section 623 of the Energy Policy Act of 1992 (42  
9 U.S.C. 13293) shall apply to any project carried out  
10 through a grant, cooperative agreement, or contract under  
11 this title.

12 **SEC. 811. REPORTS.**

13 (a) SECRETARY.—Subject to subsection (c), not later  
14 than 2 years after the date of enactment of this Act, and  
15 triennially thereafter, the Secretary shall submit to Con-  
16 gress a report describing—

17 (1) activities carried out by the Department  
18 under this title, for hydrogen and fuel cell tech-  
19 nology;

20 (2) measures the Secretary has taken during  
21 the preceding 3 years to support the transition of



1 primary industry (or a related industry) to a fully  
2 commercialized hydrogen economy;

3 (3) any change made to the strategy relating to  
4 hydrogen and fuel cell technology to reflect the re-  
5 sults of a learning demonstrations;

6 (4) progress, including progress in infrastruc-  
7 ture, made toward achieving the goal of producing  
8 and deploying not less than—

9 (A) 100,000 hydrogen-fueled vehicles in  
10 the United States by 2010; and

11 (B) 2,500,000 hydrogen-fueled vehicles in  
12 the United States by 2020;

13 (5) progress made toward achieving the goal of  
14 supplying hydrogen at a sufficient number of fueling  
15 stations in the United States by 2010 including by  
16 integrating—

17 (A) hydrogen activities; and

18 (B) associated targets and timetables for  
19 the development of hydrogen technologies;

20 (6) any problem relating to the design, execu-  
21 tion, or funding of a program under this title;

1           (7) progress made toward and goals achieved in  
2           carrying out this title and updates to the develop-  
3           mental roadmap, including the results of the reviews  
4           conducted by the National Academy of Sciences  
5           under subsection (b) for the fiscal years covered by  
6           the report; and

7           (8) any updates to strategic plans that are nec-  
8           essary to meet the goals described in paragraph (4).

9           (b) **EXTERNAL REVIEW.**—The Secretary shall enter  
10          into an arrangement with the National Academy of  
11          Sciences under which the Academy will review the pro-  
12          grams under sections 805 and 808 every fourth year fol-  
13          lowing the date of enactment of this Act. The Academy’s  
14          review shall include the program priorities and technical  
15          milestones, and evaluate the progress toward achieving  
16          them. The first review shall be completed not later than  
17          5 years after the date of enactment of this Act. Not later  
18          than 45 days after receiving the review, the Secretary shall  
19          transmit the review to Congress along with a plan to im-  
20          plement the review’s recommendations or an explanation

1 for the reasons that a recommendation will not be imple-  
2 mented.

3 (c) AUTHORIZATION OF APPROPRIATIONS.—There is  
4 authorized to be appropriated to carry out this section  
5 \$1,500,000 for each of fiscal years 2006 through 2020.

6 **SEC. 812. SOLAR AND WIND TECHNOLOGIES.**

7 (a) SOLAR ENERGY TECHNOLOGIES.—The Secretary  
8 shall—

9 (1) prepare a detailed roadmap for carrying out  
10 the provisions in this title related to solar energy  
11 technologies and for implementing the recommenda-  
12 tions related to solar energy technologies that are in-  
13 cluded in the report transmitted under subsection  
14 (e);

15 (2) provide for the establishment of 5 projects  
16 in geographic areas that are regionally and climati-  
17 cally diverse to demonstrate the production of hydro-  
18 gen at solar energy facilities, including one dem-  
19 onstration project at a National Laboratory or insti-  
20 tution of higher education;

21 (3) establish a program—

1           (A) to develop optimized concentrating  
2           solar power devices that may be used for the  
3           production of both electricity and hydrogen; and

4           (B) to evaluate the use of thermochemical  
5           cycles for hydrogen production at the tempera-  
6           tures attainable with concentrating solar power  
7           devices;

8           (4) coordinate with activities sponsored by the  
9           Department's Office of Nuclear Energy, Science,  
10          and Technology on high-temperature materials,  
11          thermochemical cycles, and economic issues related  
12          to solar energy;

13          (5) provide for the construction and operation  
14          of new concentrating solar power devices or solar  
15          power cogeneration facilities that produce hydrogen  
16          either concurrently with, or independently of, the  
17          production of electricity;

18          (6) support existing facilities and programs of  
19          study related to concentrating solar power devices;  
20          and

21          (7) establish a program—

1           (A) to develop methods that use electricity  
2           from photovoltaic devices for the onsite produc-  
3           tion of hydrogen, such that no intermediate  
4           transmission or distribution infrastructure is re-  
5           quired or used and future demand growth may  
6           be accommodated;

7           (B) to evaluate the economics of small-  
8           scale electrolysis for hydrogen production; and

9           (C) to study the potential of modular pho-  
10          tovoltaic devices for the development of a hy-  
11          drogen infrastructure, the security implications  
12          of a hydrogen infrastructure, and the benefits  
13          potentially derived from a hydrogen infrastruc-  
14          ture.

15          (b) WIND ENERGY TECHNOLOGIES.—The Secretary  
16          shall—

17               (1) prepare a detailed roadmap for carrying out  
18          the provisions in this title related to wind energy  
19          technologies and for implementing the recommenda-  
20          tions related to wind energy technologies that are in-

1       cluded in the report transmitted under subsection  
2       (e); and

3           (2) provide for the establishment of 5 projects  
4       in geographic areas that are regionally and climati-  
5       cally diverse to demonstrate the production of hydro-  
6       gen at existing wind energy facilities, including one  
7       demonstration project at a National Laboratory or  
8       institution of higher education.

9       (c) PROGRAM SUPPORT.—The Secretary shall sup-  
10      port programs at institutions of higher education for the  
11      development of solar energy technologies and wind energy  
12      technologies for the production of hydrogen. The programs  
13      supported under this subsection shall—

14           (1) enhance fellowship and faculty assistance  
15      programs;

16           (2) provide support for fundamental research;

17           (3) encourage collaborative research among in-  
18      dustry, National Laboratories, and institutions of  
19      higher education;

20           (4) support communication and outreach; and

21           (5) to the greatest extent possible—

1 (A) be located in geographic areas that are  
2 regionally and climatically diverse; and

3 (B) be located at part B institutions, mi-  
4 nority institutions, and institutions of higher  
5 education located in States participating in the  
6 Experimental Program to Stimulate Competi-  
7 tive Research of the Department.

8 (d) INSTITUTIONS OF HIGHER EDUCATION AND NA-  
9 TIONAL LABORATORY INTERACTIONS.—In conjunction  
10 with the programs supported under this section, the Sec-  
11 retary shall develop sabbatical, fellowship, and visiting sci-  
12 entist programs to encourage National Laboratories and  
13 institutions of higher education to share and exchange  
14 personnel.

15 (e) REPORT.—The Secretary shall transmit to the  
16 Congress not later than 120 days after the date of enact-  
17 ment of this Act a report containing detailed summaries  
18 of the roadmaps prepared under subsections (a)(1) and  
19 (b)(1), descriptions of the Secretary's progress in estab-  
20 lishing the projects and other programs required under  
21 this section, and recommendations for promoting the

1 availability of advanced solar and wind energy technologies  
2 for the production of hydrogen.

3 (f) DEFINITIONS.—For purposes of this section—

4 (1) the term “concentrating solar power de-  
5 vices” means devices that concentrate the power of  
6 the sun by reflection or refraction to improve the ef-  
7 ficiency of a photovoltaic or thermal generation proc-  
8 ess;

9 (2) the term “minority institution” has the  
10 meaning given to that term in section 365 of the  
11 Higher Education Act of 1965 (20 U.S.C. 1067k);

12 (3) the term “part B institution” has the mean-  
13 ing given to that term in section 322 of the Higher  
14 Education Act of 1965 (20 U.S.C. 1061); and

15 (4) the term “photovoltaic devices” means de-  
16 vices that convert light directly into electricity  
17 through a solid-state, semiconductor process.

18 (g) AUTHORIZATION OF APPROPRIATIONS.—There is  
19 authorized to be appropriated such sums as are necessary  
20 for carrying out the activities under this section for each  
21 of fiscal years 2006 through 2020.



1 **SEC. 813. TECHNOLOGY TRANSFER.**

2 In carrying out this title, the Secretary shall carry  
3 out programs that—

4 (1) provide for the transfer of critical hydrogen  
5 and fuel cell technologies to the private sector;

6 (2) accelerate wider application of those tech-  
7 nologies in the global market;

8 (3) foster the exchange of generic, nonpropri-  
9 etary information; and

10 (4) assess technical and commercial viability of  
11 technologies relating to the production, distribution,  
12 storage, and use of hydrogen energy and fuel cells.

13 **SEC. 814. MISCELLANEOUS PROVISIONS.**

14 (a) REPRESENTATION.—The Secretary may rep-  
15 resent the United States interests with respect to activities  
16 and programs under this title, in coordination with the  
17 Department of Transportation, the National Institute of  
18 Standards and Technology, and other relevant Federal  
19 agencies, before governments and nongovernmental orga-  
20 nizations including—

1           (1) other Federal, State, regional, and local  
2 governments and their representatives;

3           (2) industry and its representatives, including  
4 members of the energy and transportation indus-  
5 tries; and

6           (3) in consultation with the Department of  
7 State, foreign governments and their representatives  
8 including international organizations.

9           (b) REGULATORY AUTHORITY.—Nothing in this title  
10 shall be construed to alter the regulatory authority of the  
11 Department.

12 **SEC. 815. COST SHARING.**

13           The costs of carrying out projects and activities  
14 under this title shall be shared in accordance with section  
15 988.

16 **SEC. 816. SAVINGS CLAUSE.**

17           Nothing in this title shall be construed to affect the  
18 authority of the Secretary of Transportation that may  
19 exist prior to the date of enactment of this Act with re-  
20 spect to—

1           (1) research into, and regulation of, hydrogen-  
2           powered vehicles fuel systems integrity, standards,  
3           and safety under subtitle VI of title 49, United  
4           States Code;

5           (2) regulation of hazardous materials transpor-  
6           tation under chapter 51 of title 49, United States  
7           Code;

8           (3) regulation of pipeline safety under chapter  
9           601 of title 49, United States Code;

10          (4) encouragement and promotion of research,  
11          development, and deployment activities relating to  
12          advanced vehicle technologies under section 5506 of  
13          title 49, United States Code;

14          (5) regulation of motor vehicle safety under  
15          chapter 301 of title 49, United States Code;

16          (6) automobile fuel economy under chapter 329  
17          of title 49, United States Code; or

18          (7) representation of the interests of the United  
19          States with respect to the activities and programs  
20          under the authority of title 49, United States Code.

1           **TITLE IX—RESEARCH AND**  
2                           **DEVELOPMENT**

3   **SEC. 901. SHORT TITLE.**

4           This title may be cited as the “Energy Research, De-  
5   velopment, Demonstration, and Commercial Application  
6   Act of 2005”.

7   **SEC. 902. GOALS.**

8           (a) **IN GENERAL.**—In order to achieve the purposes  
9   of this title, the Secretary shall conduct a balanced set  
10 of programs of energy research, development, demonstra-  
11 tion, and commercial application with the general goals  
12 of—

13                   (1) increasing the efficiency of all energy inten-  
14                   sive sectors through conservation and improved tech-  
15                   nologies;

16                   (2) promoting diversity of energy supply;

17                   (3) decreasing the dependence of the United  
18                   States on foreign energy supplies;

19                   (4) improving the energy security of the United  
20                   States; and

1           (5) decreasing the environmental impact of en-  
2           ergy-related activities.

3           (b) GOALS.—The Secretary shall publish measurable  
4           cost and performance-based goals, comparable over time,  
5           with each annual budget submission in at least the fol-  
6           lowing areas:

7           (1) Energy efficiency for buildings, energy-con-  
8           suming industries, and vehicles.

9           (2) Electric energy generation (including dis-  
10          tributed generation), transmission, and storage.

11          (3) Renewable energy technologies, including  
12          wind power, photovoltaics, solar thermal systems,  
13          geothermal energy, hydrogen-fueled systems, bio-  
14          mass-based systems, biofuels, and hydropower.

15          (4) Fossil energy, including power generation,  
16          onshore and offshore oil and gas resource recovery,  
17          and transportation fuels.

18          (5) Nuclear energy, including programs for ex-  
19          isting and advanced reactors, and education of fu-  
20          ture specialists.

1 (c) PUBLIC COMMENT.—The Secretary shall provide  
2 mechanisms for input on the annually published goals  
3 from industry, institutions of higher education, and other  
4 public sources.

5 (d) EFFECT OF GOALS.—Nothing in subsection (a)  
6 or the annually published goals creates any new authority  
7 for any Federal agency, or may be used by any Federal  
8 agency, to support the establishment of regulatory stand-  
9 ards or regulatory requirements.

10 **SEC. 903. DEFINITIONS.**

11 In this title:

12 (1) DEPARTMENTAL MISSION.—The term “de-  
13 partmental mission” means any of the functions  
14 vested in the Secretary by the Department of En-  
15 ergy Organization Act (42 U.S.C. 7101 et seq.) or  
16 other law.

17 (2) HISPANIC-SERVING INSTITUTION.—The  
18 term “Hispanic-serving institution” has the meaning  
19 given the term in section 502(a) of the Higher Edu-  
20 cation Act of 1965 (20 U.S.C. 1101a(a)).

1           (3) NONMILITARY ENERGY LABORATORY.—The  
2           term “nonmilitary energy laboratory” means a Na-  
3           tional Laboratory other than a National Laboratory  
4           listed in subparagraph (G), (H), or (N) of section  
5           2(3).

6           (4) PART B INSTITUTION.—The term “part B  
7           institution” has the meaning given the term in sec-  
8           tion 322 of the Higher Education Act of 1965 (20  
9           U.S.C. 1061).

10          (5) SINGLE-PURPOSE RESEARCH FACILITY.—  
11          The term “single-purpose research facility” means—

12                 (A) any of the primarily single-purpose en-  
13                 tities owned by the Department; or

14                 (B) any other organization of the Depart-  
15                 ment designated by the Secretary.

16          (6) UNIVERSITY.—The term “university” has  
17          the meaning given the term “institution of higher  
18          education” in section 101 of the Higher Education  
19          Act of 1965 (20 U.S.C. 1001).

1           **Subtitle A—Energy Efficiency**

2   **SEC. 911. ENERGY EFFICIENCY.**

3           (a) IN GENERAL.—

4                   (1) OBJECTIVES.—The Secretary shall conduct  
5           programs of energy efficiency research, development,  
6           demonstration, and commercial application, includ-  
7           ing activities described in this subtitle. Such pro-  
8           grams shall take into consideration the following ob-  
9           jectives:

10                           (A) Increasing the energy efficiency of ve-  
11                           hicles, buildings, and industrial processes.

12                           (B) Reducing the demand of the United  
13                           States for energy, especially energy from for-  
14                           eign sources.

15                           (C) Reducing the cost of energy and mak-  
16                           ing the economy more efficient and competitive.

17                           (D) Improving the energy security of the  
18                           United States.

19                           (E) Reducing the environmental impact of  
20                           energy-related activities.



1           (2) PROGRAMS.—Programs under this subtitle  
2 shall include research, development, demonstration,  
3 and commercial application of—

4           (A) advanced, cost-effective technologies to  
5 improve the energy efficiency and environ-  
6 mental performance of vehicles, including—

7           (i) hybrid and electric propulsion sys-  
8 tems;

9           (ii) plug-in hybrid systems;

10           (iii) advanced combustion engines;

11           (iv) weight and drag reduction tech-  
12 nologies;

13           (v) whole-vehicle design optimization;

14           and

15           (vi) advanced drive trains;

16           (B) cost-effective technologies, for new  
17 construction and retrofit, to improve the energy  
18 efficiency and environmental performance of  
19 buildings, using a whole-buildings approach, in-  
20 cluding onsite renewable energy generation;

1           (C) advanced technologies to improve the  
2           energy efficiency, environmental performance,  
3           and process efficiency of energy-intensive and  
4           waste-intensive industries; and

5           (D) advanced control devices to improve  
6           the energy efficiency of electric motors, includ-  
7           ing those used in industrial processes, heating,  
8           ventilation, and cooling.

9           (b) AUTHORIZATION OF APPROPRIATIONS.—There  
10          are authorized to be appropriated to the Secretary to carry  
11          out energy efficiency and conservation research, develop-  
12          ment, demonstration, and commercial application activi-  
13          ties, including activities authorized under this subtitle—

14               (1) \$783,000,000 for fiscal year 2007;

15               (2) \$865,000,000 for fiscal year 2008; and

16               (3) \$952,000,000 for fiscal year 2009.

17           (c) ALLOCATIONS.—From amounts authorized under  
18          subsection (b), the following sums are authorized:

19               (1) For activities under section 912,  
20          \$50,000,000 for each of fiscal years 2007 through  
21          2009.

1           (2) For activities under section 915,  
2           \$7,000,000 for each of fiscal years 2007 through  
3           2009.

4           (3) For activities under subsection (a)(2)(A)—  
5                 (A) \$200,000,000 for fiscal year 2007;  
6                 (B) \$270,000,000 for fiscal year 2008; and  
7                 (C) \$310,000,000 for fiscal year 2009.

8           (4) For activities under subsection (a)(2)(D),  
9           \$2,000,000 for each of fiscal years 2007 and 2008.

10          (d) EXTENDED AUTHORIZATION.—There are author-  
11 ized to be appropriated to the Secretary to carry out sec-  
12 tion 912 \$50,000,000 for each of fiscal years 2010  
13 through 2013.

14          (e) LIMITATIONS.—None of the funds authorized to  
15 be appropriated under this section may be used for—

16                 (1) the issuance or implementation of energy ef-  
17                 ficiency regulations;

18                 (2) the weatherization program established  
19                 under part A of title IV of the Energy Conservation  
20                 and Production Act (42 U.S.C. 6861 et seq.);

1           (3) a State energy conservation plan established  
2           under part D of title III of the Energy Policy and  
3           Conservation Act (42 U.S.C. 6321 et seq.); or

4           (4) a Federal energy management measure car-  
5           ried out under part 3 of title V of the National En-  
6           ergy Conservation Policy Act (42 U.S.C. 8251 et  
7           seq.).

8 **SEC. 912. NEXT GENERATION LIGHTING INITIATIVE.**

9           (a) DEFINITIONS.—In this section:

10           (1) ADVANCED SOLID-STATE LIGHTING.—The  
11           term “advanced solid-state lighting” means a  
12           semiconducting device package and delivery system  
13           that produces white light using externally applied  
14           voltage.

15           (2) INDUSTRY ALLIANCE.—The term “Industry  
16           Alliance” means an entity selected by the Secretary  
17           under subsection (d).

18           (3) INITIATIVE.—The term “Initiative” means  
19           the Next Generation Lighting Initiative carried out  
20           under this section.

1           (4) RESEARCH.—The term “research” includes  
2           research on the technologies, materials, and manu-  
3           facturing processes required for white light emitting  
4           diodes.

5           (5) WHITE LIGHT EMITTING DIODE.—The term  
6           “white light emitting diode” means a  
7           semiconducting package, using either organic or in-  
8           organic materials, that produces white light using  
9           externally applied voltage.

10          (b) INITIATIVE.—The Secretary shall carry out a  
11          Next Generation Lighting Initiative in accordance with  
12          this section to support research, development, demonstra-  
13          tion, and commercial application activities related to ad-  
14          vanced solid-state lighting technologies based on white  
15          light emitting diodes.

16          (c) OBJECTIVES.—The objectives of the Initiative  
17          shall be to develop advanced solid-state organic and inor-  
18          ganic lighting technologies based on white light emitting  
19          diodes that, compared to incandescent and fluorescent  
20          lighting technologies, are longer lasting, are more energy-

1 efficient and cost-competitive, and have less environmental  
2 impact.

3 (d) INDUSTRY ALLIANCE.—Not later than 90 days  
4 after the date of enactment of this Act, the Secretary shall  
5 competitively select an Industry Alliance to represent par-  
6 ticipants who are private, for-profit firms, open to large  
7 and small businesses, that, as a group, are broadly rep-  
8 resentative of United States solid state lighting research,  
9 development, infrastructure, and manufacturing expertise  
10 as a whole.

11 (e) RESEARCH.—

12 (1) GRANTS.—The Secretary shall carry out the  
13 research activities of the Initiative through competi-  
14 tively awarded grants to—

15 (A) researchers, including Industry Alli-  
16 ance participants;

17 (B) small businesses;

18 (C) National Laboratories; and

19 (D) institutions of higher education.

20 (2) INDUSTRY ALLIANCE.—The Secretary shall  
21 annually solicit from the Industry Alliance—

1 (A) comments to identify solid-state light-  
2 ing technology needs;

3 (B) an assessment of the progress of the  
4 research activities of the Initiative; and

5 (C) assistance in annually updating solid-  
6 state lighting technology roadmaps.

7 (3) AVAILABILITY TO PUBLIC.—The informa-  
8 tion and roadmaps under paragraph (2) shall be  
9 available to the public.

10 (f) DEVELOPMENT, DEMONSTRATION, AND COMMER-  
11 CIAL APPLICATION.—

12 (1) IN GENERAL.—The Secretary shall carry  
13 out a development, demonstration, and commercial  
14 application program for the Initiative through com-  
15 petitively selected awards.

16 (2) PREFERENCE.—In making the awards, the  
17 Secretary may give preference to participants in the  
18 Industry Alliance.

19 (g) COST SHARING.—In carrying out this section, the  
20 Secretary shall require cost sharing in accordance with  
21 section 988.

1 (h) INTELLECTUAL PROPERTY.—The Secretary may  
2 require (in accordance with section 202(a)(ii) of title 35,  
3 United States Code, section 152 of the Atomic Energy Act  
4 of 1954 (42 U.S.C. 2182), and section 9 of the Federal  
5 Nonnuclear Energy Research and Development Act of  
6 1974 (42 U.S.C. 5908)) that for any new invention devel-  
7 oped under subsection (e)—

8 (1) that the Industry Alliance participants who  
9 are active participants in research, development, and  
10 demonstration activities related to the advanced  
11 solid-state lighting technologies that are covered by  
12 this section shall be granted the first option to nego-  
13 tiate with the invention owner, at least in the field  
14 of solid-state lighting, nonexclusive licenses and roy-  
15 alties on terms that are reasonable under the cir-  
16 cumstances;

17 (2)(A) that, for 1 year after a United States  
18 patent is issued for the invention, the patent holder  
19 shall not negotiate any license or royalty with any  
20 entity that is not a participant in the Industry Alli-  
21 ance described in paragraph (1); and



1 (B) that, during the year described in subpara-  
2 graph (A), the patent holder shall negotiate non-  
3 exclusive licenses and royalties in good faith with  
4 any interested participant in the Industry Alliance  
5 described in paragraph (1); and

6 (3) such other terms as the Secretary deter-  
7 mines are required to promote accelerated commer-  
8 cialization of inventions made under the Initiative.

9 (i) NATIONAL ACADEMY REVIEW.—The Secretary  
10 shall enter into an arrangement with the National Acad-  
11 emy of Sciences to conduct periodic reviews of the Initia-  
12 tive.

13 **SEC. 913. NATIONAL BUILDING PERFORMANCE INITIATIVE.**

14 (a) INTERAGENCY GROUP.—

15 (1) IN GENERAL.—Not later than 90 days after  
16 the date of enactment of this Act, the Director of  
17 the Office of Science and Technology Policy shall es-  
18 tablish an interagency group to develop, in coordina-  
19 tion with the advisory committee established under  
20 subsection (e), a National Building Performance Ini-

1 initiative (referred to in this section as the “Initia-  
2 tive”).

3 (2) COCHAIRS.—The interagency group shall be  
4 co-chaired by appropriate officials of the Depart-  
5 ment and the Department of Commerce, who shall  
6 jointly arrange for the provision of necessary admin-  
7 istrative support to the group.

8 (b) INTEGRATION OF EFFORTS.—The Initiative shall  
9 integrate Federal, State, and voluntary private sector ef-  
10 forts to reduce the costs of construction, operation, main-  
11 tenance, and renovation of commercial, industrial, institu-  
12 tional, and residential buildings.

13 (c) PLAN.—

14 (1) IN GENERAL.—Not later than 1 year after  
15 the date of enactment of this Act, the interagency  
16 group shall submit to Congress a plan for carrying  
17 out the appropriate Federal role in the Initiative.

18 (2) INCLUSIONS.—The plan shall include—

19 (A) research, development, demonstration,  
20 and commercial application of energy tech-  
21 nology systems and materials for new construc-

1           tion and retrofit relating to the building enve-  
2           lope and building system components;

3                   (B) research, development, demonstration,  
4           and commercial application of energy tech-  
5           nology and infrastructure enabling the energy  
6           efficient, automated operation of buildings and  
7           building equipment; and

8                   (C) the collection, analysis, and dissemina-  
9           tion of research results and other pertinent in-  
10          formation on enhancing building performance to  
11          industry, government entities, and the public.

12          (d) DEPARTMENT OF ENERGY ROLE.—Within the  
13          Federal portion of the Initiative, the Department shall be  
14          the lead agency for all aspects of building performance re-  
15          lated to use and conservation of energy.

16          (e) ADVISORY COMMITTEE.—The Director of the Of-  
17          fice of Science and Technology Policy shall establish an  
18          advisory committee to—

19                   (1) analyze and provide recommendations on  
20          potential private sector roles and participation in the  
21          Initiative; and

1           (2) review and provide recommendations on the  
2           plan described in subsection (c).

3           (f) ADMINISTRATION.—Nothing in this section pro-  
4           vides any Federal agency with new authority to regulate  
5           building performance.

6           **SEC. 914. BUILDING STANDARDS.**

7           (a) DEFINITION OF HIGH PERFORMANCE BUILD-  
8           ING.—In this section, the term “high performance build-  
9           ing” means a building that integrates and optimizes all  
10          major high-performance building attributes, including en-  
11          ergy efficiency, durability, life-cycle performance, and oc-  
12          cupant productivity.

13          (b) ASSESSMENT.—Not later than 120 days after the  
14          date of enactment of this Act, the Secretary shall enter  
15          into an agreement with the National Institute of Building  
16          Sciences to—

17                 (1) conduct an assessment (in cooperation with  
18                 industry, standards development organizations, and  
19                 other entities, as appropriate) of whether the current  
20                 voluntary consensus standards and rating systems  
21                 for high performance buildings are consistent with

1 the current technological state of the art, including  
2 relevant results from the research, development and  
3 demonstration activities of the Department;

4 (2) determine if additional research is required,  
5 based on the findings of the assessment; and

6 (3) recommend steps for the Secretary to accel-  
7 erate the development of voluntary consensus-based  
8 standards for high performance buildings that are  
9 based on the findings of the assessment.

10 (c) GRANT AND TECHNICAL ASSISTANCE PRO-  
11 GRAM.—Consistent with subsection (b) and section 12(d)  
12 of the National Technology Transfer and Advancement  
13 Act of 1995 (15 U.S.C. 272 note), the Secretary shall es-  
14 tablish a grant and technical assistance program to sup-  
15 port the development of voluntary consensus-based stand-  
16 ards for high performance buildings.

17 **SEC. 915. SECONDARY ELECTRIC VEHICLE BATTERY USE**  
18 **PROGRAM.**

19 (a) DEFINITIONS.—In this section:

20 (1) BATTERY.—The term “battery” means an  
21 energy storage device that previously has been used

1 to provide motive power in a vehicle powered in  
2 whole or in part by electricity.

3 (2) ASSOCIATED EQUIPMENT.—The term “asso-  
4 ciated equipment” means equipment located where  
5 the batteries will be used that is necessary to enable  
6 the use of the energy stored in the batteries.

7 (b) PROGRAM.—

8 (1) IN GENERAL.—The Secretary shall establish  
9 and conduct a program of research, development,  
10 demonstration, and commercial application of energy  
11 technology for the secondary use of batteries, if the  
12 Secretary finds that there are sufficient numbers of  
13 batteries to support the program.

14 (2) ADMINISTRATION.—The program shall be—

15 (A) designed to demonstrate the use of  
16 batteries in secondary applications, including  
17 utility and commercial power storage and power  
18 quality;

19 (B) structured to evaluate the perform-  
20 ance, including useful service life and costs, of  
21 such batteries in field operations, and the nec-

1           essary supporting infrastructure, including  
2           reuse and disposal of batteries; and

3                   (C) coordinated with ongoing secondary  
4           battery use programs at the National Labora-  
5           tories and in industry.

6       (c) SOLICITATION.—

7           (1) IN GENERAL.—Not later than 180 days  
8           after the date of enactment of this Act, the Sec-  
9           retary shall solicit proposals to demonstrate the sec-  
10          ondary use of batteries and associated equipment  
11          and supporting infrastructure in geographic loca-  
12          tions throughout the United States.

13          (2) ADDITIONAL SOLICITATIONS.—The Sec-  
14          retary may make additional solicitations for pro-  
15          posals if the Secretary determines that the solicita-  
16          tions are necessary to carry out this section.

17       (d) SELECTION OF PROPOSALS.—

18           (1) IN GENERAL.—Not later than 90 days after  
19           the closing date established by the Secretary for re-  
20           ceipt of proposals under subsection (c), the Sec-  
21           retary shall select up to 5 proposals that may receive

1 financial assistance under this section once the De-  
2 partment receives appropriated funds to carry out  
3 this section.

4 (2) FACTORS.—In selecting proposals, the Sec-  
5 retary shall consider—

6 (A) the diversity of battery type;

7 (B) geographic and climatic diversity; and

8 (C) life-cycle environmental effects of the  
9 approaches.

10 (3) LIMITATION.—No 1 project selected under  
11 this section shall receive more than 25 percent of the  
12 funds made available to carry out the program  
13 under this section.

14 (4) NON-FEDERAL INVOLVEMENT.—In selecting  
15 proposals, the Secretary shall consider the extent of  
16 involvement of State or local government and other  
17 persons in each demonstration project to optimize  
18 use of Federal resources.

19 (5) OTHER CRITERIA.—In selecting proposals,  
20 the Secretary may consider such other criteria as the  
21 Secretary considers appropriate.



1 (e) CONDITIONS.—In carrying out this section, the  
2 Secretary shall require that—

3 (1) relevant information be provided to—

4 (A) the Department;

5 (B) the users of the batteries;

6 (C) the proposers of a project under this  
7 section; and

8 (D) the battery manufacturers; and

9 (2) the costs of carrying out projects and activi-  
10 ties under this section are shared in accordance with  
11 section 988.

12 **SEC. 916. ENERGY EFFICIENCY SCIENCE INITIATIVE.**

13 (a) ESTABLISHMENT.—The Secretary shall establish  
14 an Energy Efficiency Science Initiative to be managed by  
15 the Assistant Secretary in the Department with responsi-  
16 bility for energy conservation under section 203(a)(9) of  
17 the Department of Energy Organization Act (42 U.S.C.  
18 7133(a)(9)), in consultation with the Director of the Of-  
19 fice of Science, for grants to be competitively awarded and  
20 subject to peer review for research relating to energy effi-  
21 ciency.

1 (b) REPORT.—The Secretary shall submit to Con-  
2 gress, along with the annual budget request of the Presi-  
3 dent submitted to Congress, a report on the activities of  
4 the Energy Efficiency Science Initiative, including a de-  
5 scription of the process used to award the funds and an  
6 explanation of how the research relates to energy effi-  
7 ciency.

8 **SEC. 917. ADVANCED ENERGY EFFICIENCY TECHNOLOGY**  
9 **TRANSFER CENTERS.**

10 (a) GRANTS.—Not later than 18 months after the  
11 date of enactment of this Act, the Secretary shall make  
12 grants to nonprofit institutions, State and local govern-  
13 ments, or universities (or consortia thereof), to establish  
14 a geographically dispersed network of Advanced Energy  
15 Efficiency Technology Transfer Centers, to be located in  
16 areas the Secretary determines have the greatest need of  
17 the services of such Centers. In establishing the network,  
18 the Secretary shall consider the special needs and opportu-  
19 nities for increased energy efficiency for manufactured  
20 and site-built housing.

21 (b) ACTIVITIES.—

1           (1) IN GENERAL.—Each Center shall operate a  
2           program to encourage demonstration and commer-  
3           cial application of advanced energy methods and  
4           technologies through education and outreach to  
5           building and industrial professionals, and to other  
6           individuals and organizations with an interest in ef-  
7           ficient energy use.

8           (2) ADVISORY PANEL.—Each Center shall es-  
9           tablish an advisory panel to advise the Center on  
10          how best to accomplish the activities under para-  
11          graph (1).

12          (c) APPLICATION.—A person seeking a grant under  
13          this section shall submit to the Secretary an application  
14          in such form and containing such information as the Sec-  
15          retary may require. The Secretary may award a grant  
16          under this section to an entity already in existence if the  
17          entity is otherwise eligible under this section.

18          (d) SELECTION CRITERIA.—The Secretary shall  
19          award grants under this section on the basis of the fol-  
20          lowing criteria, at a minimum:

1           (1) The ability of the applicant to carry out the  
2           activities described in subsection (b)(1).

3           (2) The extent to which the applicant will co-  
4           ordinate the activities of the Center with other enti-  
5           ties, such as State and local governments, utilities,  
6           and educational and research institutions.

7           (e) COST-SHARING.—In carrying out this section, the  
8           Secretary shall require cost-sharing in accordance with the  
9           requirements of section 988 for commercial application ac-  
10          tivities.

11          (f) ADVISORY COMMITTEE.—The Secretary shall es-  
12          tablish an advisory committee to advise the Secretary on  
13          the establishment of Centers under this section. The advi-  
14          sory committee shall be composed of individuals with ex-  
15          pertise in the area of advanced energy methods and tech-  
16          nologies, including at least 1 representative from—

17                 (1) State or local energy offices;

18                 (2) energy professionals;

19                 (3) trade or professional associations;

20                 (4) architects, engineers, or construction profes-  
21          sionals;

- 1           (5) manufacturers;
- 2           (6) the research community; and
- 3           (7) nonprofit energy or environmental organiza-
- 4           tions.

5           (g) DEFINITIONS.—For purposes of this section:

6           (1) ADVANCED ENERGY METHODS AND TECH-

7           NOLOGIES.—The term “advanced energy methods

8           and technologies” means all methods and tech-

9           nologies that promote energy efficiency and con-

10          servation, including distributed generation tech-

11          nologies, and life-cycle analysis of energy use.

12          (2) CENTER.—The term “Center” means an

13          Advanced Energy Technology Transfer Center estab-

14          lished pursuant to this section.

15          (3) DISTRIBUTED GENERATION.—The term

16          “distributed generation” means an electric power

17          generation facility that is designed to serve retail

18          electric consumers at or near the facility site.

19          (h) AUTHORIZATION OF APPROPRIATIONS.—In addi-

20          tion to amounts otherwise authorized to be appropriated

21          in section 911, there are authorized to be appropriated

1 for the program under this section such sums as may be  
2 appropriated.

3 **Subtitle B—Distributed Energy and**  
4 **Electric Energy Systems**

5 **SEC. 921. DISTRIBUTED ENERGY AND ELECTRIC ENERGY**  
6 **SYSTEMS.**

7 (a) IN GENERAL.—The Secretary shall carry out pro-  
8 grams of research, development, demonstration, and com-  
9 mercial application on distributed energy resources and  
10 systems reliability and efficiency, to improve the reliability  
11 and efficiency of distributed energy resources and systems,  
12 integrating advanced energy technologies with grid  
13 connectivity, including activities described in this subtitle.  
14 The programs shall address advanced energy technologies  
15 and systems and advanced grid reliability technologies.

16 (b) AUTHORIZATION OF APPROPRIATIONS.—

17 (1) DISTRIBUTED ENERGY AND ELECTRIC EN-  
18 ERGY SYSTEMS ACTIVITIES.—There are authorized  
19 to be appropriated to the Secretary to carry out dis-  
20 tributed energy and electric energy systems activi-

1 ties, including activities authorized under this  
2 subtitle—

3 (A) \$240,000,000 for fiscal year 2007;

4 (B) \$255,000,000 for fiscal year 2008; and

5 (C) \$273,000,000 for fiscal year 2009.

6 (2) POWER DELIVERY RESEARCH INITIATIVE.—

7 There are authorized to be appropriated to the Sec-  
8 retary to carry out the Power Delivery Research Ini-  
9 tiative under subsection 925(e) such sums as may be  
10 necessary for each of fiscal years 2007 through  
11 2009.

12 (c) MICRO-COGENERATION ENERGY TECHNOLOGY.—

13 From amounts authorized under subsection (b),  
14 \$20,000,000 for each of fiscal years 2007 and 2008 shall  
15 be available to carry out activities under section 923.

16 (d) HIGH-VOLTAGE TRANSMISSION LINES.—From

17 amounts authorized under subsection (b), \$2,000,000 for  
18 fiscal year 2007 shall be available to carry out activities  
19 under section 925(g).

1 **SEC. 922. HIGH POWER DENSITY INDUSTRY PROGRAM.**

2 (a) IN GENERAL.—The Secretary shall establish a  
3 comprehensive research, development, demonstration, and  
4 commercial application to improve the energy efficiency of  
5 high power density facilities, including data centers, server  
6 farms, and telecommunications facilities.

7 (b) TECHNOLOGIES.—The program shall consider  
8 technologies that provide significant improvement in ther-  
9 mal controls, metering, load management, peak load re-  
10 duction, or the efficient cooling of electronics.

11 **SEC. 923. MICRO-COGENERATION ENERGY TECHNOLOGY.**

12 (a) IN GENERAL.—The Secretary shall make com-  
13 petitive, merit-based grants to consortia for the develop-  
14 ment of micro-cogeneration energy technology.

15 (b) USES.—The consortia shall explore—

16 (1) the use of small-scale combined heat and  
17 power in residential heating appliances;

18 (2) the use of excess power to operate other ap-  
19 pliances within the residence; and

20 (3) the supply of excess generated power to the  
21 power grid.



1 **SEC. 924. DISTRIBUTED ENERGY TECHNOLOGY DEM-**  
2 **ONSTRATION PROGRAMS.**

3 (a) COORDINATING CONSORTIA PROGRAM.—The Sec-  
4 retary may provide financial assistance to coordinating  
5 consortia of interdisciplinary participants for demonstra-  
6 tions designed to accelerate the use of distributed energy  
7 technologies (such as fuel cells, microturbines, reciprocating  
8 engines, thermally activated technologies, and combined  
9 heat and power systems) in highly energy intensive  
10 commercial applications.

11 (b) SMALL-SCALE PORTABLE POWER PROGRAM.—

12 (1) IN GENERAL.—The Secretary shall—

13 (A) establish a research, development, and  
14 demonstration program to develop working  
15 models of small scale portable power devices;  
16 and

17 (B) to the fullest extent practicable, identify  
18 and utilize the resources of universities that  
19 have shown expertise with respect to advanced  
20 portable power devices for either civilian or  
21 military use.

1           (2) ORGANIZATION.—The universities identified  
2           and utilized under paragraph (1)(B) are authorized  
3           to establish an organization to promote small scale  
4           portable power devices.

5           (3) DEFINITION.—For purposes of this sub-  
6           section, the term “small scale portable power device”  
7           means a field-deployable portable mechanical or  
8           electromechanical device that can be used for appli-  
9           cations such as communications, computation, mobil-  
10          ity enhancement, weapons systems, optical devices,  
11          cooling, sensors, medical devices, and active biologi-  
12          cal agent detection systems.

13 **SEC. 925. ELECTRIC TRANSMISSION AND DISTRIBUTION**  
14 **PROGRAMS.**

15          (a) PROGRAM.—The Secretary shall establish a com-  
16          prehensive research, development, and demonstration pro-  
17          gram to ensure the reliability, efficiency, and environ-  
18          mental integrity of electrical transmission and distribution  
19          systems, which shall include—

20                (1) advanced energy delivery technologies, en-  
21                ergy storage technologies, materials, and systems,

1 giving priority to new transmission technologies, in-  
2 cluding composite conductor materials and other  
3 technologies that enhance reliability, operational  
4 flexibility, or power-carrying capability;

5 (2) advanced grid reliability and efficiency tech-  
6 nology development;

7 (3) technologies contributing to significant load  
8 reductions;

9 (4) advanced metering, load management, and  
10 control technologies;

11 (5) technologies to enhance existing grid compo-  
12 nents;

13 (6) the development and use of high-tempera-  
14 ture superconductors to—

15 (A) enhance the reliability, operational  
16 flexibility, or power-carrying capability of elec-  
17 tric transmission or distribution systems; or

18 (B) increase the efficiency of electric en-  
19 ergy generation, transmission, distribution, or  
20 storage systems;

1           (7) integration of power systems, including sys-  
2           tems to deliver high-quality electric power, electric  
3           power reliability, and combined heat and power;

4           (8) supply of electricity to the power grid by  
5           small scale, distributed and residential-based power  
6           generators;

7           (9) the development and use of advanced grid  
8           design, operation, and planning tools;

9           (10) any other infrastructure technologies, as  
10          appropriate; and

11          (11) technology transfer and education.

12          (b) PROGRAM PLAN.—

13           (1) IN GENERAL.—Not later than 1 year after  
14           the date of enactment of this Act, the Secretary, in  
15           consultation with other appropriate Federal agen-  
16           cies, shall prepare and submit to Congress a 5-year  
17           program plan to guide activities under this section.

18           (2) CONSULTATION.—In preparing the program  
19           plan, the Secretary shall consult with—

20                   (A) utilities;

21                   (B) energy service providers;

- 1 (C) manufacturers;
- 2 (D) institutions of higher education;
- 3 (E) other appropriate State and local
- 4 agencies;
- 5 (F) environmental organizations;
- 6 (G) professional and technical societies;
- 7 and
- 8 (H) any other persons the Secretary con-
- 9 siders appropriate.

10 (c) IMPLEMENTATION.—The Secretary shall consider

11 implementing the program under this section using a con-

12 sortium of participants from industry, institutions of high-

13 er education, and National Laboratories.

14 (d) REPORT.—Not later than 2 years after the sub-

15 mission of the plan under subsection (b), the Secretary

16 shall submit to Congress a report—

17 (1) describing the progress made under this

18 section; and

19 (2) identifying any additional resources needed

20 to continue the development and commercial applica-

1       tion of transmission and distribution of infrastruc-  
2       ture technologies.

3       (e) POWER DELIVERY RESEARCH INITIATIVE.—

4           (1) IN GENERAL.—The Secretary shall establish  
5       a research, development, and demonstration initia-  
6       tive specifically focused on power delivery using com-  
7       ponents incorporating high temperature super-  
8       conductivity.

9           (2) GOALS.—The goals of the Initiative shall  
10      be—

11           (A) to establish world-class facilities to de-  
12      velop high temperature superconductivity power  
13      applications in partnership with manufacturers  
14      and utilities;

15           (B) to provide technical leadership for es-  
16      tablishing reliability for high temperature  
17      superconductivity power applications, including  
18      suitable modeling and analysis;

19           (C) to facilitate the commercial transition  
20      toward direct current power transmission, stor-

1           age, and use for high power systems using high  
2           temperature superconductivity; and

3                   (D) to facilitate the integration of very low  
4           impedance high temperature superconducting  
5           wires and cables in existing electric networks to  
6           improve system performance, power flow con-  
7           trol, and reliability.

8           (3) INCLUSIONS.—The Initiative shall include—

9                   (A) feasibility analysis, planning, research,  
10           and design to construct demonstrations of  
11           superconducting links in high power, direct cur-  
12           rent, and controllable alternating current trans-  
13           mission systems;

14                   (B) public-private partnerships to dem-  
15           onstrate deployment of high temperature super-  
16           conducting cable into testbeds simulating a re-  
17           alistic transmission grid and under varying  
18           transmission conditions, including actual grid  
19           insertions; and

1 (C) testbeds developed in cooperation with  
2 National Laboratories, industries, and institu-  
3 tions of higher education to—

4 (i) demonstrate those technologies;

5 (ii) prepare the technologies for com-  
6 mercial introduction; and

7 (iii) address cost or performance road-  
8 blocks to successful commercial use.

9 (f) TRANSMISSION AND DISTRIBUTION GRID PLAN-  
10 NING AND OPERATIONS INITIATIVE.—

11 (1) IN GENERAL.—The Secretary shall establish  
12 a research, development, and demonstration initia-  
13 tive specifically focused on tools needed to plan, op-  
14 erate, and expand the transmission and distribution  
15 grids in the presence of competitive market mecha-  
16 nisms for energy, load demand, customer response,  
17 and ancillary services.

18 (2) GOALS.—The goals of the Initiative shall  
19 be—

20 (A)(i) to develop and use a geographically  
21 distributed center, consisting of institutions of



1 higher education, and National Laboratories,  
2 with expertise and facilities to develop the un-  
3 derlying theory and software for power system  
4 application; and

5 (ii) to ensure commercial development in  
6 partnership with software vendors and utilities;

7 (B) to provide technical leadership in engi-  
8 neering and economic analysis for the reliability  
9 and efficiency of power systems planning and  
10 operations in the presence of competitive mar-  
11 kets for electricity;

12 (C) to model, simulate, and experiment  
13 with new market mechanisms and operating  
14 practices to understand and optimize those new  
15 methods before actual use; and

16 (D) to provide technical support and tech-  
17 nology transfer to electric utilities and other  
18 participants in the domestic electric industry  
19 and marketplace.

20 (g) HIGH-VOLTAGE TRANSMISSION LINES.—As part  
21 of the program described in subsection (a), the Secretary

1 shall award a grant to a university research program to  
2 design and test, in consultation with the Tennessee Valley  
3 Authority, state-of-the-art optimization techniques for  
4 power flow through existing high voltage transmission  
5 lines.

## 6 **Subtitle C—Renewable Energy**

### 7 **SEC. 931. RENEWABLE ENERGY.**

8 (a) IN GENERAL.—

9 (1) OBJECTIVES.—The Secretary shall conduct  
10 programs of renewable energy research, develop-  
11 ment, demonstration, and commercial application,  
12 including activities described in this subtitle. Such  
13 programs shall take into consideration the following  
14 objectives:

15 (A) Increasing the conversion efficiency of  
16 all forms of renewable energy through improved  
17 technologies.

18 (B) Decreasing the cost of renewable en-  
19 ergy generation and delivery.

20 (C) Promoting the diversity of the energy  
21 supply.

1 (D) Decreasing the dependence of the  
2 United States on foreign energy supplies.

3 (E) Improving United States energy secu-  
4 rity.

5 (F) Decreasing the environmental impact  
6 of energy-related activities.

7 (G) Increasing the export of renewable  
8 generation equipment from the United States.

9 (2) PROGRAMS.—

10 (A) SOLAR ENERGY.—The Secretary shall  
11 conduct a program of research, development,  
12 demonstration, and commercial application for  
13 solar energy, including—

14 (i) photovoltaics;

15 (ii) solar hot water and solar space  
16 heating;

17 (iii) concentrating solar power;

18 (iv) lighting systems that integrate  
19 sunlight and electrical lighting in com-  
20 plement to each other in common lighting

1 fixtures for the purpose of improving en-  
2 ergy efficiency;

3 (v) manufacturability of low cost high,  
4 quality solar systems; and

5 (vi) development of products that can  
6 be easily integrated into new and existing  
7 buildings.

8 (B) WIND ENERGY.—The Secretary shall  
9 conduct a program of research, development,  
10 demonstration, and commercial application for  
11 wind energy, including—

12 (i) low speed wind energy;

13 (ii) offshore wind energy;

14 (iii) testing and verification (including  
15 construction and operation of a research  
16 and testing facility capable of testing wind  
17 turbines); and

18 (iv) distributed wind energy genera-  
19 tion.

20 (C) GEOTHERMAL.—The Secretary shall  
21 conduct a program of research, development,

1 demonstration, and commercial application for  
2 geothermal energy. The program shall focus on  
3 developing improved technologies for reducing  
4 the costs of geothermal energy installations, in-  
5 cluding technologies for—

6 (i) improving detection of geothermal  
7 resources;

8 (ii) decreasing drilling costs;

9 (iii) decreasing maintenance costs  
10 through improved materials;

11 (iv) increasing the potential for other  
12 revenue sources, such as mineral produc-  
13 tion; and

14 (v) increasing the understanding of  
15 reservoir life cycle and management.

16 (D) HYDROPOWER.—The Secretary shall  
17 conduct a program of research, development,  
18 demonstration, and commercial application for  
19 cost competitive technologies that enable the de-  
20 velopment of new and incremental hydropower

1 capacity, adding to the diversity of the energy  
2 supply of the United States, including:

3 (i) Fish-friendly large turbines.

4 (ii) Advanced technologies to enhance  
5 environmental performance and yield  
6 greater energy efficiencies.

7 (E) MISCELLANEOUS PROJECTS.—The  
8 Secretary shall conduct research, development,  
9 demonstration, and commercial application pro-  
10 grams for—

11 (i) ocean energy, including wave en-  
12 ergy;

13 (ii) the combined use of renewable en-  
14 ergy technologies with one another and  
15 with other energy technologies, including  
16 the combined use of wind power and coal  
17 gasification technologies;

18 (iii) renewable energy technologies for  
19 cogeneration of hydrogen and electricity;  
20 and

21 (iv) kinetic hydro turbines.

1 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated to the Secretary to carry  
3 out renewable energy research, development, demonstra-  
4 tion, and commercial application activities, including ac-  
5 tivities authorized under this subtitle—

6 (1) \$632,000,000 for fiscal year 2007;

7 (2) \$743,000,000 for fiscal year 2008; and

8 (3) \$852,000,000 for fiscal year 2009.

9 (c) BIOENERGY.—From the amounts authorized  
10 under subsection (b), there are authorized to be appro-  
11 priated to carry out section 932—

12 (1) \$213,000,000 for fiscal year 2007, of which  
13 \$100,000,000 shall be for section 932 (d);

14 (2) \$251,000,000 for fiscal year 2008, of which  
15 \$125,000,000 shall be for section 932 (d); and

16 (3) \$274,000,000 for fiscal year 2009, of which  
17 \$150,000,000 shall be for section 932 (d) .

18 (d) SOLAR POWER.—From amounts authorized  
19 under subsection (b), there is authorized to be appro-  
20 priated to carry out activities under subsection  
21 (a)(2)(A)—

1           (1) \$140,000,000 for fiscal year 2007, of which  
2           \$40,000,000 shall be for activities under section  
3           935;

4           (2) \$200,000,000 for fiscal year 2008, of which  
5           \$50,000,000 shall be for activities under section  
6           935; and

7           (3) \$250,000,000 for fiscal year 2009, of which  
8           \$50,000,000 shall be for activities under section  
9           935.

10          (e) ADMINISTRATION.—Of the funds authorized  
11 under subsection (c), not less than \$5,000,000 for each  
12 fiscal year shall be made available for grants to—

13           (1) part B institutions;

14           (2) Tribal Colleges or Universities (as defined  
15 in section 316(b) of the Higher Education Act of  
16 1965 (20 U.S.C. 1059c(b))); and

17           (3) Hispanic-serving institutions.

18          (f) RURAL DEMONSTRATION PROJECTS.—In car-  
19 rying out this section, the Secretary, in consultation with  
20 the Secretary of Agriculture, shall demonstrate the use of



1 renewable energy technologies to assist in delivering elec-  
2 tricity to rural and remote locations including —

- 3 (1) advanced wind power technology, including  
4 combined use with coal gasification;
- 5 (2) biomass; and
- 6 (3) geothermal energy systems.

7 (g) ANALYSIS AND EVALUATION.—

8 (1) IN GENERAL.—The Secretary shall conduct  
9 analysis and evaluation in support of the renewable  
10 energy programs under this subtitle. These activities  
11 shall be used to guide budget and program decisions,  
12 and shall include—

13 (A) economic and technical analysis of re-  
14 newable energy potential, including resource as-  
15 sessment;

16 (B) analysis of past program performance,  
17 both in terms of technical advances and in mar-  
18 ket introduction of renewable energy; and

19 (C) any other analysis or evaluation that  
20 the Secretary considers appropriate.

1           (2) FUNDING.—The Secretary may designate  
2           up to 1 percent of the funds appropriated for car-  
3           rying out this subtitle for analysis and evaluation ac-  
4           tivities under this subsection.

5 **SEC. 932. BIOENERGY PROGRAM.**

6           (a) DEFINITIONS.—In this section:

7           (1) BIOMASS.—The term “biomass” means—

8                   (A) any organic material grown for the  
9                   purpose of being converted to energy;

10                   (B) any organic byproduct of agriculture  
11                   (including wastes from food production and  
12                   processing) that can be converted into energy;  
13                   or

14                   (C) any waste material that can be con-  
15                   verted to energy, is segregated from other waste  
16                   materials, and is derived from—

17                           (i) any of the following forest-related  
18                           resources: mill residues, precommercial  
19                           thinnings, slash, brush, or otherwise non-  
20                           merchantable material; or

1 (ii) wood waste materials, including  
2 waste pallets, crates, dunnage, manufac-  
3 turing and construction wood wastes (other  
4 than pressure-treated, chemically-treated,  
5 or painted wood wastes), and landscape or  
6 right-of-way tree trimmings, but not in-  
7 cluding municipal solid waste, gas derived  
8 from the biodegradation of municipal solid  
9 waste, or paper that is commonly recycled.

10 (2) LIGNOCELLULOSIC FEEDSTOCK.—The term  
11 “lignocellulosic feedstock” means any portion of a  
12 plant or coproduct from conversion, including crops,  
13 trees, forest residues, and agricultural residues not  
14 specifically grown for food, including from barley  
15 grain, grapeseed, rice bran, rice hulls, rice straw,  
16 soybean matter, and sugarcane bagasse.

17 (b) PROGRAM.—The Secretary shall conduct a pro-  
18 gram of research, development, demonstration, and com-  
19 mercial application for bioenergy, including—

20 (1) biopower energy systems;

21 (2) biofuels;

- 1 (3) bioproducts;
- 2 (4) integrated biorefineries that may produce
- 3 biopower, biofuels, and bioproducts;
- 4 (5) cross-cutting research and development in
- 5 feedstocks; and
- 6 (6) economic analysis.

7 (c) BIOFUELS AND BIOPRODUCTS.—The goals of the  
8 biofuels and bioproducts programs shall be to develop, in  
9 partnership with industry and institutions of higher  
10 education—

- 11 (1) advanced biochemical and thermochemical
- 12 conversion technologies capable of making fuels from
- 13 lignocellulosic feedstocks that are price-competitive
- 14 with gasoline or diesel in either internal combustion
- 15 engines or fuel cell-powered vehicles;
- 16 (2) advanced biotechnology processes capable of
- 17 making biofuels and bioproducts with emphasis on
- 18 development of biorefinery technologies using en-
- 19 zyme-based processing systems;
- 20 (3) advanced biotechnology processes capable of
- 21 increasing energy production from lignocellulosic

1 feedstocks, with emphasis on reducing the depend-  
2 ence of industry on fossil fuels in manufacturing fa-  
3 cilities; and

4 (4) other advanced processes that will enable  
5 the development of cost-effective bioproducts, includ-  
6 ing biofuels.

7 (d) INTEGRATED BIOREFINERY DEMONSTRATION  
8 PROJECTS.—

9 (1) IN GENERAL.—The Secretary shall carry  
10 out a program to demonstrate the commercial appli-  
11 cation of integrated biorefineries. The Secretary  
12 shall ensure geographical distribution of biorefinery  
13 demonstrations under this subsection. The Secretary  
14 shall not provide more than \$100,000,000 under  
15 this subsection for any single biorefinery demonstra-  
16 tion. In making awards under this subsection, the  
17 Secretary shall encourage—

18 (A) the demonstration of a wide variety of  
19 lignocellulosic feedstocks;

20 (B) the commercial application of biomass  
21 technologies for a variety of uses, including—

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- 1 (i) liquid transportation fuels;  
2 (ii) high-value biobased chemicals;  
3 (iii) substitutes for petroleum-based  
4 feedstocks and products; and  
5 (iv) energy in the form of electricity  
6 or useful heat; and

7 (C) the demonstration of the collection and  
8 treatment of a variety of biomass feedstocks.

9 (2) PROPOSALS.—Not later than 6 months  
10 after the date of enactment of this Act, the Sec-  
11 retary shall solicit proposals for demonstration of  
12 advanced biorefineries. The Secretary shall select  
13 only proposals that—

14 (A) demonstrate that the project will be  
15 able to operate profitably without direct Federal  
16 subsidy after initial construction costs are paid;  
17 and

18 (B) enable the biorefinery to be easily rep-  
19 licated.

20 (e) UNIVERSITY BIODIESEL PROGRAM.—The Sec-  
21 retary shall establish a demonstration program to deter-

1 mine the feasibility of the operation of diesel electric power  
2 generators, using biodiesel fuels with ratings as high as  
3 B100, at electric generation facilities owned by institu-  
4 tions of higher education. The program shall examine—

5 (1) heat rates of diesel fuels with large quan-  
6 tities of cellulosic content;

7 (2) the reliability of operation of various fuel  
8 blends;

9 (3) performance in cold or freezing weather;

10 (4) stability of fuel after extended storage; and

11 (5) other criteria, as determined by the Sec-  
12 retary.

13 **SEC. 933. LOW-COST RENEWABLE HYDROGEN AND INFRA-**  
14 **STRUCTURE FOR VEHICLE PROPULSION.**

15 The Secretary shall—

16 (1) establish a research, development, and dem-  
17 onstration program to determine the feasibility of  
18 using hydrogen propulsion in light-weight vehicles  
19 and the integration of the associated hydrogen pro-  
20 duction infrastructure using off-the-shelf compo-  
21 nents; and

- 1           (2) identify universities and institutions that—
- 2                 (A) have expertise in researching and test-
- 3                 ing vehicles fueled by hydrogen, methane, and
- 4                 other fuels;
- 5                 (B) have expertise in integrating off-the-
- 6                 shelf components to minimize cost; and
- 7                 (C) within 2 years can test a vehicle based
- 8                 on an existing commercially available platform
- 9                 with a curb weight of not less than 2,000
- 10                pounds before modifications, that—
- 11                         (i) operates solely on hydrogen;
- 12                         (ii) qualifies as a light-duty passenger
- 13                         vehicle; and
- 14                         (iii) uses hydrogen produced from
- 15                         water using only solar energy.

16 **SEC. 934. CONCENTRATING SOLAR POWER RESEARCH PRO-**

17 **GRAM.**

- 18         (a) **IN GENERAL.**—The Secretary shall conduct a
- 19 program of research and development to evaluate the po-
- 20 tential for concentrating solar power for hydrogen produc-



1 tion, including cogeneration approaches for both hydrogen  
2 and electricity.

3 (b) ADMINISTRATION.—The program shall take ad-  
4 vantage of existing facilities to the extent practicable and  
5 shall include—

6 (1) development of optimized technologies that  
7 are common to both electricity and hydrogen produc-  
8 tion;

9 (2) evaluation of thermochemical cycles for hy-  
10 drogen production at the temperatures attainable  
11 with concentrating solar power;

12 (3) evaluation of materials issues for the  
13 thermochemical cycles described in paragraph (2);

14 (4) cogeneration of solar thermal electric power  
15 and photo-synthetic-based hydrogen production;

16 (5) system architectures and economics studies;  
17 and

18 (6) coordination with activities under the Next  
19 Generation Nuclear Plant Project established under  
20 subtitle C of title VI on high temperature materials,  
21 thermochemical cycles, and economic issues.

1 (c) ASSESSMENT.—In carrying out the program  
2 under this section, the Secretary shall—

3 (1) assess conflicting guidance on the economic  
4 potential of concentrating solar power for electricity  
5 production received from the National Research  
6 Council in the report entitled “Renewable Power  
7 Pathways: A Review of the U.S. Department of En-  
8 ergy’s Renewable Energy Programs” and dated  
9 2000 and subsequent reviews of that report funded  
10 by the Department; and

11 (2) provide an assessment of the potential im-  
12 pact of technology used to concentrate solar power  
13 for electricity before, or concurrent with, submission  
14 of the budget for fiscal year 2008.

15 (d) REPORT.—Not later than 5 years after the date  
16 of enactment of this Act, the Secretary shall provide to  
17 Congress a report on the economic and technical potential  
18 for electricity or hydrogen production, with or without co-  
19 generation, with concentrating solar power, including the  
20 economic and technical feasibility of potential construction  
21 of a pilot demonstration facility suitable for commercial

1 production of electricity or hydrogen from concentrating  
2 solar power.

3 **SEC. 935. RENEWABLE ENERGY IN PUBLIC BUILDINGS.**

4 (a) **DEMONSTRATION AND TECHNOLOGY TRANSFER**  
5 **PROGRAM.**—The Secretary shall establish a program for  
6 the demonstration of innovative technologies for solar and  
7 other renewable energy sources in buildings owned or op-  
8 erated by a State or local government, and for the dissemi-  
9 nation of information resulting from such demonstration  
10 to interested parties.

11 (b) **LIMIT ON FEDERAL FUNDING.**—Notwithstanding  
12 section 988, the Secretary shall provide under this section  
13 no more than 40 percent of the incremental costs of the  
14 solar or other renewable energy source project funded.

15 (c) **REQUIREMENTS.**—As part of the application for  
16 awards under this section, the Secretary shall require all  
17 applicants—

18 (1) to demonstrate a continuing commitment to  
19 the use of solar and other renewable energy sources  
20 in buildings they own or operate; and

1           (2) to state how they expect any award to fur-  
2           ther their transition to the significant use of renew-  
3           able energy.

4       **Subtitle D—Agricultural Biomass**  
5       **Research and Development Pro-**  
6       **grams**

7       **SEC. 941. AMENDMENTS TO THE BIOMASS RESEARCH AND**  
8                               **DEVELOPMENT ACT OF 2000.**

9           (a) DEFINITIONS.—Section 303 of the Biomass Re-  
10          search and Development Act of 2000 (Public Law 106–  
11          224; 7 U.S.C. 8101 note) is amended—

12               (1) by striking paragraphs (2), (9), and (10);

13               (2) by redesignating paragraphs (3), (4), (5),  
14               (6), (7), and (8) as paragraphs (4), (5), (7), (8),  
15               (9), and (10), respectively;

16               (3) by inserting after paragraph (1) the fol-  
17          lowing:

18                       “(2) BIOBASED FUEL.—The term ‘biobased  
19          fuel’ means any transportation fuel produced from  
20          biomass.

1           “(3) BIOBASED PRODUCT.—The term ‘biobased  
2           product’ means an industrial product (including  
3           chemicals, materials, and polymers) produced from  
4           biomass, or a commercial or industrial product (in-  
5           cluding animal feed and electric power) derived in  
6           connection with the conversion of biomass to fuel.”;

7           (4) by inserting after paragraph (5) (as redesign-  
8           ated by paragraph (2)) the following:

9           “(6) DEMONSTRATION.—The term ‘demonstra-  
10          tion’ means demonstration of technology in a pilot  
11          plant or semi-works scale facility.”; and

12          (5) by striking paragraph (9) (as redesignated  
13          by paragraph (2)) and inserting the following:

14          “(9) NATIONAL LABORATORY.—The term ‘Na-  
15          tional Laboratory’ has the meaning given that term  
16          in section 2 of the Energy Policy Act of 2005.”

17          (b) COOPERATION AND COORDINATION IN BIOMASS  
18          RESEARCH AND DEVELOPMENT.—Section 304 of the Bio-  
19          mass Research and Development Act of 2000 (Public Law  
20          106–224; 7 U.S.C. 8101 note) is amended—

1           (1) in subsections (a) and (d), by striking “in-  
2           dustrial products” each place it appears and insert-  
3           ing “fuels and biobased products”;

4           (2) by striking subsections (b) and (c); and

5           (3) by redesignating subsection (d) as sub-  
6           section (b).

7           (c) BIOMASS RESEARCH AND DEVELOPMENT  
8 BOARD.—Section 305 of the Biomass Research and De-  
9 velopment Act of 2000 (Public Law 106–224; 7 U.S.C.  
10 8101 note) is amended—

11           (1) in subsections (a) and (c), by striking “in-  
12           dustrial products” each place it appears and insert-  
13           ing “fuels and biobased products”;

14           (2) in subsection (b)—

15                 (A) in paragraph (1), by striking  
16                 “304(d)(1)(B)” and inserting “304(b)(1)(B)”;  
17                 and

18                 (B) in paragraph (2), by striking  
19                 “304(d)(1)(A)” and inserting “304(b)(1)(A)”;  
20                 and

21           (3) in subsection (c)—

1 (A) in paragraph (1)(B), by striking “and”  
2 at the end;

3 (B) in paragraph (2), by striking the pe-  
4 riod at the end and inserting a semicolon; and

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

6 “(3) ensure that—

7 “(A) solicitations are open and competitive  
8 with awards made annually; and

9 “(B) objectives and evaluation criteria of  
10 the solicitations are clearly stated and mini-  
11 mally prescriptive, with no areas of special in-  
12 terest; and

13 “(4) ensure that the panel of scientific and  
14 technical peers assembled under section  
15 307(g)(1)(C) to review proposals is composed pre-  
16 dominantly of independent experts selected from out-  
17 side the Departments of Agriculture and Energy.”.

18 (d) BIOMASS RESEARCH AND DEVELOPMENT TECH-  
19 NICAL ADVISORY COMMITTEE.—Section 306 of the Bio-  
20 mass Research and Development Act of 2000 (Public Law  
21 106–224; 7 U.S.C. 8101 note) is amended—

1 (1) in subsection (b)(1)—  
2 (A) in subparagraph (A), by striking  
3 “biobased industrial products” and inserting  
4 “biofuels”;  
5 (B) by redesignating subparagraphs (B)  
6 through (J) as subparagraphs (C) through (K),  
7 respectively;  
8 (C) by inserting after subparagraph (A)  
9 the following:  
10 “(B) an individual affiliated with the  
11 biobased industrial and commercial products in-  
12 dustry;”;  
13 (D) in subparagraph (F) (as redesignated  
14 by subparagraph (B)) by striking “an indi-  
15 vidual has” and inserting “2 individuals have”;  
16 (E) in subparagraphs (C), (D), (G), and  
17 (I) (as redesignated by subparagraph (B)) by  
18 striking “industrial products” each place it ap-  
19 pears and inserting “fuels and biobased prod-  
20 ucts”; and



1 (F) in subparagraph (H) (as redesignated  
2 by subparagraph (B)), by inserting “and envi-  
3 ronmental” before “analysis”;

4 (2) in subsection (c)(2)—

5 (A) in subparagraph (A), by striking  
6 “goals” and inserting “objectives, purposes, and  
7 considerations”;

8 (B) by redesignating subparagraphs (B)  
9 and (C) as subparagraphs (C) and (D), respec-  
10 tively;

11 (C) by inserting after subparagraph (A)  
12 the following:

13 “(B) solicitations are open and competitive  
14 with awards made annually and that objectives  
15 and evaluation criteria of the solicitations are  
16 clearly stated and minimally prescriptive, with  
17 no areas of special interest;” and

18 (D) in subparagraph (C) (as redesignated  
19 by subparagraph (B)) by inserting “predomi-  
20 nantly from outside the Departments of Agri-  
21 culture and Energy” after “technical peers”.

1 (e) BIOMASS RESEARCH AND DEVELOPMENT INITIA-  
2 TIVE.—Section 307 of the Biomass Research and Develop-  
3 ment Act of 2000 (Public Law 106–224; 7 U.S.C. 8101  
4 note) is amended—

5 (1) in subsection (a), by striking “research on  
6 biobased industrial products” and inserting “re-  
7 search on, and development and demonstration of,  
8 biobased fuels and biobased products, and the meth-  
9 ods, practices and technologies, for their produc-  
10 tion”; and

11 (2) by striking subsections (b) through (e) and  
12 inserting the following:

13 “(b) OBJECTIVES.—The objectives of the Initiative  
14 are to develop—

15 “(1) technologies and processes necessary for  
16 abundant commercial production of biobased fuels at  
17 prices competitive with fossil fuels;

18 “(2) high-value biobased products—

19 “(A) to enhance the economic viability of  
20 biobased fuels and power; and

1                   “(B) as substitutes for petroleum-based  
2                   feedstocks and products; and

3                   “(3) a diversity of sustainable domestic sources  
4                   of biomass for conversion to biobased fuels and  
5                   biobased products.

6                   “(c) PURPOSES.—The purposes of the Initiative  
7                   are—

8                   “(1) to increase the energy security of the  
9                   United States;

10                   “(2) to create jobs and enhance the economic  
11                   development of the rural economy;

12                   “(3) to enhance the environment and public  
13                   health; and

14                   “(4) to diversify markets for raw agricultural  
15                   and forestry products.

16                   “(d) TECHNICAL AREAS.—To advance the objectives  
17                   and purposes of the Initiative, the Secretary of Agriculture  
18                   and the Secretary of Energy, in consultation with the Ad-  
19                   ministrators of the Environmental Protection Agency and  
20                   heads of other appropriate departments and agencies (re-

1 ferred to in this section as the ‘Secretaries’), shall direct  
2 research and development toward—

3 “(1) feedstock production through the develop-  
4 ment of crops and cropping systems relevant to pro-  
5 duction of raw materials for conversion to biobased  
6 fuels and biobased products, including—

7 “(A) development of advanced and dedi-  
8 cated crops with desired features, including en-  
9 hanced productivity, broader site range, low re-  
10 quirements for chemical inputs, and enhanced  
11 processing;

12 “(B) advanced crop production methods to  
13 achieve the features described in subparagraph  
14 (A);

15 “(C) feedstock harvest, handling, trans-  
16 port, and storage; and

17 “(D) strategies for integrating feedstock  
18 production into existing managed land;

19 “(2) overcoming recalcitrance of cellulosic bio-  
20 mass through developing technologies for converting  
21 cellulosic biomass into intermediates that can subse-

1       quently be converted into biobased fuels and  
2       biobased products, including—

3               “(A) pretreatment in combination with en-  
4               zymatic or microbial hydrolysis; and

5               “(B) thermochemical approaches, including  
6               gasification and pyrolysis;

7               “(3) product diversification through tech-  
8       nologies relevant to production of a range of  
9       biobased products (including chemicals, animal  
10      feeds, and cogenerated power) that eventually can  
11      increase the feasibility of fuel production in a bio-  
12      refinery, including—

13              “(A) catalytic processing, including  
14              thermochemical fuel production;

15              “(B) metabolic engineering, enzyme engi-  
16              neering, and fermentation systems for biological  
17              production of desired products or cogeneration  
18              of power;

19              “(C) product recovery;

20              “(D) power production technologies; and

1                   “(E) integration into existing biomass  
2                   processing facilities, including starch ethanol  
3                   plants, paper mills, and power plants; and

4                   “(4) analysis that provides strategic guidance  
5                   for the application of biomass technologies in accord-  
6                   ance with realization of improved sustainability and  
7                   environmental quality, cost effectiveness, security,  
8                   and rural economic development, usually featuring  
9                   system-wide approaches.

10                  “(e) ADDITIONAL CONSIDERATIONS.—Within the  
11                  technical areas described in subsection (d), and in addition  
12                  to advancing the purposes described in subsection (c) and  
13                  the objectives described in subsection (b), the Secretaries  
14                  shall support research and development—

15                         “(1) to create continuously expanding opportu-  
16                         nities for participants in existing biofuels production  
17                         by seeking synergies and continuity with current  
18                         technologies and practices, such as the use of dried  
19                         distillers grains as a bridge feedstock;

20                         “(2) to maximize the environmental, economic,  
21                         and social benefits of production of biobased fuels

1 and biobased products on a large scale through life-  
2 cycle economic and environmental analysis and other  
3 means; and

4 “(3) to assess the potential of Federal land and  
5 land management programs as feedstock resources  
6 for biobased fuels and biobased products, consistent  
7 with the integrity of soil and water resources and  
8 with other environmental considerations.

9 “(f) ELIGIBLE ENTITIES.—To be eligible for a grant,  
10 contract, or assistance under this section, an applicant  
11 shall be—

12 “(1) an institution of higher education;

13 “(2) a National Laboratory;

14 “(3) a Federal research agency;

15 “(4) a State research agency;

16 “(5) a private sector entity;

17 “(6) a nonprofit organization; or

18 “(7) a consortium of 2 or more entities de-  
19 scribed in paragraphs (1) through (6).

20 “(g) ADMINISTRATION.—

1           “(1) IN GENERAL.—After consultation with the  
2           Board, the points of contact shall—

3                   “(A) publish annually 1 or more joint re-  
4                   quests for proposals for grants, contracts, and  
5                   assistance under this section;

6                   “(B) require that grants, contracts, and  
7                   assistance under this section be awarded com-  
8                   petitively, on the basis of merit, after the estab-  
9                   lishment of procedures that provide for sci-  
10                  entific peer review by an independent panel of  
11                  scientific and technical peers; and

12                  “(C) give some preference to applications  
13                  that—

14                          “(i) involve a consortia of experts  
15                          from multiple institutions;

16                          “(ii) encourage the integration of dis-  
17                          ciplines and application of the best tech-  
18                          nical resources; and

19                          “(iii) increase the geographic diversity  
20                          of demonstration projects.



1           “(2) DISTRIBUTION OF FUNDING BY TECH-  
2           NICAL AREA.—Of the funds authorized to be appro-  
3           priated for activities described in this section, funds  
4           shall be distributed for each of fiscal years 2007  
5           through 2010 so as to achieve an approximate dis-  
6           tribution of—

7                   “(A) 20 percent of the funds to carry out  
8                   activities for feedstock production under sub-  
9                   section (d)(1);

10                   “(B) 45 percent of the funds to carry out  
11                   activities for overcoming recalcitrance of cel-  
12                   lulosic biomass under subsection (d)(2);

13                   “(C) 30 percent of the funds to carry out  
14                   activities for product diversification under sub-  
15                   section (d)(3); and

16                   “(D) 5 percent of the funds to carry out  
17                   activities for strategic guidance under sub-  
18                   section (d)(4).

19           “(3) DISTRIBUTION OF FUNDING WITHIN EACH  
20           TECHNICAL AREA.—Within each technical area de-  
21           scribed in paragraphs (1) through (3) of subsection

1 (d), funds shall be distributed for each of fiscal  
2 years 2007 through 2010 so as to achieve an ap-  
3 proximate distribution of—

4 “(A) 15 percent of the funds for applied  
5 fundamentals;

6 “(B) 35 percent of the funds for innova-  
7 tion; and

8 “(C) 50 percent of the funds for dem-  
9 onstration.

10 “(4) MATCHING FUNDS.—

11 “(A) IN GENERAL.—A minimum 20 per-  
12 cent funding match shall be required for dem-  
13 onstration projects under this title.

14 “(B) COMMERCIAL APPLICATIONS.—A  
15 minimum of 50 percent funding match shall be  
16 required for commercial application projects  
17 under this title.

18 “(5) TECHNOLOGY AND INFORMATION TRANS-  
19 FER TO AGRICULTURAL USERS.—The Administrator  
20 of the Cooperative State Research, Education, and  
21 Extension Service and the Chief of the Natural Re-

1 sources Conservation Service shall ensure that appli-  
2 cable research results and technologies from the Ini-  
3 tiative are adapted, made available, and dissemi-  
4 nated through those services, as appropriate.”.

5 (f) ANNUAL REPORTS.—Section 309 of the Biomass  
6 Research and Development Act of 2000 (Public Law 106–  
7 224; 7 U.S.C. 8101 note) is amended—

8 (1) in subsection (b)—

9 (A) in paragraph (1)—

10 (i) in subparagraph (A), by striking  
11 “purposes described in section 307(b)” and  
12 inserting “objectives, purposes, and addi-  
13 tional considerations described in sub-  
14 sections (b) through (e) of section 307”;

15 (ii) in subparagraph (B), by striking  
16 “and” at the end;

17 (iii) by redesignating subparagraph  
18 (C) as subparagraph (D); and

19 (iv) by inserting after subparagraph  
20 (B) the following:

1           “(C) achieves the distribution of funds de-  
2           scribed in paragraphs (2) and (3) of section  
3           307(g); and”;

4           (B) in paragraph (2), by striking “indus-  
5           trial products” and inserting “fuels and  
6           biobased products”;

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

8           “(c) UPDATES.—The Secretary and the Secretary of  
9           Energy shall update the Vision and Roadmap documents  
10          prepared for Federal biomass research and development  
11          activities.”.

12          (g) AUTHORIZATION OF APPROPRIATIONS.—Section  
13          310(b) of the Biomass Research and Development Act of  
14          2000 (Public Law 106–224; 7 U.S.C. 8101 note) is  
15          amended by striking “title \$54,000,000 for each of fiscal  
16          years 2002 through 2007” and inserting “title  
17          \$200,000,000 for each of fiscal years 2006 through  
18          2015”.

19          (h) REPEAL OF SUNSET PROVISION.—Section 311 of  
20          the Biomass Research and Development Act of 2000  
21          (Public Law 106–224; 7 U.S.C. 8101 note) is repealed.

1 **SEC. 942. PRODUCTION INCENTIVES FOR CELLULOSIC**  
2 **BIOFUELS.**

3 (a) **PURPOSE.**—The purpose of this section is to—

4 (1) accelerate deployment and commercializa-  
5 tion of biofuels;

6 (2) deliver the first 1,000,000,000 gallons in  
7 annual cellulosic biofuels production by 2015;

8 (3) ensure biofuels produced after 2015 are  
9 cost competitive with gasoline and diesel; and

10 (4) ensure that small feedstock producers and  
11 rural small businesses are full participants in the de-  
12 velopment of the cellulosic biofuels industry.

13 (b) **DEFINITIONS.**—In this section:

14 (1) **CELLULOSIC BIOFUELS.**—The term “cel-  
15 lulosic biofuels” means any fuel that is produced  
16 from cellulosic feedstocks.

17 (2) **ELIGIBLE ENTITY.**—The term “eligible enti-  
18 ty” means a producer of fuel from cellulosic biofuels  
19 the production facility of which—

20 (A) is located in the United States;

1 (B) meets all applicable Federal and State  
2 permitting requirements; and

3 (C) meets any financial criteria established  
4 by the Secretary.

5 (c) PROGRAM.—

6 (1) ESTABLISHMENT.—The Secretary, in con-  
7 sultation with the Secretary of Agriculture, the Sec-  
8 retary of Defense, and the Administrator of the En-  
9 vironmental Protection Agency, shall establish an in-  
10 centive program for the production of cellulosic  
11 biofuels.

12 (2) BASIS OF INCENTIVES.—Under the pro-  
13 gram, the Secretary shall award production incen-  
14 tives on a per gallon basis of cellulosic biofuels from  
15 eligible entities, through—

16 (A) set payments per gallon of cellulosic  
17 biofuels produced in an amount determined by  
18 the Secretary, until initiation of the first re-  
19 verse auction; and

20 (B) reverse auction thereafter.

1           (3) FIRST REVERSE AUCTION.—The first re-  
2       verse auction shall be held on the earlier of—

3           (A) not later than 1 year after the first  
4       year of annual production in the United States  
5       of 100,000,000 gallons of cellulosic biofuels, as  
6       determined by the Secretary; or

7           (B) not later than 3 years after the date  
8       of enactment of this Act.

9           (4) REVERSE AUCTION PROCEDURE.—

10          (A) IN GENERAL.—On initiation of the  
11       first reverse auction, and each year thereafter  
12       until the earlier of the first year of annual pro-  
13       duction in the United States of 1,000,000,000  
14       gallons of cellulosic biofuels, as determined by  
15       the Secretary, or 10 years after the date of en-  
16       actment of this Act, the Secretary shall conduct  
17       a reverse auction at which—

18           (i) the Secretary shall solicit bids  
19       from eligible entities;

20           (ii) eligible entities shall submit—

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1 (I) a desired level of production  
2 incentive on a per gallon basis; and

3 (II) an estimated annual produc-  
4 tion amount in gallons; and

5 (iii) the Secretary shall issue awards  
6 for the production amount submitted, be-  
7 ginning with the eligible entity submitting  
8 the bid for the lowest level of production  
9 incentive on a per gallon basis and meeting  
10 such other criteria as are established by  
11 the Secretary, until the amount of funds  
12 available for the reverse auction is com-  
13 mitted.

14 (B) AMOUNT OF INCENTIVE RECEIVED.—  
15 An eligible entity selected by the Secretary  
16 through a reverse auction shall receive the  
17 amount of performance incentive requested in  
18 the auction for each gallon produced and sold  
19 by the entity during the first 6 years of oper-  
20 ation.



1           (C) COMMENCEMENT OF PRODUCTION OF  
2           CELLULOSIC BIOFUELS.—As a condition of the  
3           receipt of an award under this section, an eligi-  
4           ble entity shall enter into an agreement with  
5           the Secretary under which the eligible entity  
6           agrees to begin production of cellulosic biofuels  
7           not later than 3 years after the date of the re-  
8           verse auction in which the eligible entity partici-  
9           pates.

10          (d) LIMITATIONS.—Awards under this section shall  
11          be limited to—

12               (1) a per gallon amount determined by the Sec-  
13               retary during the first 4 years of the program;

14               (2) a declining per gallon cap over the remain-  
15               ing lifetime of the program, to be established by the  
16               Secretary so that cellulosic biofuels produced after  
17               the first year of annual cellulosic biofuels production  
18               in the United States in excess of 1,000,000,000 gal-  
19               lons are cost competitive with gasoline and diesel;

20               (3) not more than 25 percent of the funds com-  
21               mitted within each reverse auction to any 1 project;

1 (4) not more than \$100,000,000 in any 1 year;

2 and

3 (5) not more than \$1,000,000,000 over the life-  
4 time of the program.

5 (e) PRIORITY.—In selecting a project under the pro-  
6 gram, the Secretary shall give priority to projects that—

7 (1) demonstrate outstanding potential for local  
8 and regional economic development;

9 (2) include agricultural producers or coopera-  
10 tives of agricultural producers as equity partners in  
11 the ventures; and

12 (3) have a strategic agreement in place to fairly  
13 reward feedstock suppliers.

14 (f) AUTHORIZATIONS OF APPROPRIATIONS.—There  
15 is authorized to be appropriated to carry out this section  
16 \$250,000,000.

17 **SEC. 943. PROCUREMENT OF BIOBASED PRODUCTS.**

18 (a) FEDERAL PROCUREMENT.—

19 (1) DEFINITION OF PROCURING AGENCY.—Sec-  
20 tion 9001 of the Farm Security and Rural Invest-  
21 ment Act of 2002 (7 U.S.C. 8101) is amended—

1 (A) by redesignating paragraphs (4), (5),  
2 and (6) as paragraphs (5), (6), and (7), respec-  
3 tively; and

4 (B) by inserting after paragraph (3) the  
5 following:

6 “(4) PROCURING AGENCY.—The term ‘pro-  
7 curing agency’ means—

8 “(A) any Federal agency that is using  
9 Federal funds for procurement; or

10 “(B) any person contracting with any Fed-  
11 eral agency with respect to work performed  
12 under the contract.”.

13 (2) PROCUREMENT.—Section 9002 of the Farm  
14 Security and Rural Investment Act of 2002 (7  
15 U.S.C. 8102) is amended—

16 (A) by striking “Federal agency” each  
17 place it appears (other than in subsections (f)  
18 and (g)) and inserting “procuring agency”;

19 (B) in subsection (c)(2)—

1 (i) by striking “(2)” and all that fol-  
2 lows through “Notwithstanding” and in-  
3 serting the following:

4 “(2) FLEXIBILITY.—Notwithstanding”;

5 (ii) by striking “an agency” and in-  
6 serting “a procuring agency”; and

7 (iii) by striking “the agency” and in-  
8 serting “the procuring agency”;

9 (C) in subsection (d), by striking “pro-  
10 cured by Federal agencies” and inserting “pro-  
11 cured by procuring agencies”; and

12 (D) in subsection (f), by striking “Federal  
13 agencies” and inserting “procuring agencies” .

14 (b) CAPITOL COMPLEX PROCUREMENT.—Section  
15 9002 of the Farm Security and Rural Investment Act of  
16 2002 (7 U.S.C. 8102) (as amended by subsection (a)(2))  
17 is amended—

18 (1) by redesignating subsection (j) as sub-  
19 section (k); and

20 (2) by inserting after subsection (i) the fol-  
21 lowing:

1       “(j) INCLUSION.—Not later than 90 days after the  
2 date of enactment of the Energy Policy Act of 2005, the  
3 Architect of the Capitol, the Sergeant at Arms of the Sen-  
4 ate, and the Chief Administrative Officer of the House of  
5 Representatives shall establish procedures that apply the  
6 requirements of this section to procurement for the Cap-  
7 itol Complex.”.

8       (c) EDUCATION.—

9           (1) IN GENERAL.—The Architect of the Capitol  
10 shall establish in the Capitol Complex a program of  
11 public education regarding use by the Architect of  
12 the Capitol of biobased products.

13           (2) PURPOSES.—The purposes of the program  
14 shall be—

15               (A) to establish the Capitol Complex as a  
16 showcase for the existence and benefits of  
17 biobased products; and

18               (B) to provide access to further informa-  
19 tion on biobased products to occupants and visi-  
20 tors.

1 (d) PROCEDURE.—Requirements issued under the  
2 amendments made by subsection (b) shall be made in ac-  
3 cordance with directives issued by the Committee on Rules  
4 and Administration of the Senate and the Committee on  
5 House Administration of the House of Representatives.

6 **SEC. 944. SMALL BUSINESS BIOPRODUCT MARKETING AND**  
7 **CERTIFICATION GRANTS.**

8 (a) IN GENERAL.—Using amounts made available  
9 under subsection (g), the Secretary of Agriculture (re-  
10 ferred to in this section as the “Secretary”) shall make  
11 available on a competitive basis grants to eligible entities  
12 described in subsection (b) for the biobased product mar-  
13 keting and certification purposes described in subsection  
14 (c).

15 (b) ELIGIBLE ENTITIES.—

16 (1) IN GENERAL.—An entity eligible for a grant  
17 under this section is any manufacturer of biobased  
18 products that—

19 (A) proposes to use the grant for the  
20 biobased product marketing and certification  
21 purposes described in subsection (c); and

1           (B) has not previously received a grant  
2           under this section.

3           (2) PREFERENCE.—In making grants under  
4           this section, the Secretary shall provide a preference  
5           to an eligible entity that has fewer than 50 employ-  
6           ees.

7           (c) BIOBASED PRODUCT MARKETING AND CERTIFI-  
8           CATION GRANT PURPOSES.—A grant made under this sec-  
9           tion shall be used—

10           (1) to provide working capital for marketing of  
11           biobased products; and

12           (2) to provide for the certification of biobased  
13           products to—

14           (A) qualify for the label described in sec-  
15           tion 9002(h)(1) of the Farm Security and  
16           Rural Investment Act of 2002 (7 U.S.C.  
17           8102(h)(1)); or

18           (B) meet other biobased standards deter-  
19           mined appropriate by the Secretary.

20           (d) MATCHING FUNDS.—

1           (1) IN GENERAL.—Grant recipients shall pro-  
2           vide matching non-Federal funds equal to the  
3           amount of the grant received.

4           (2) EXPENDITURE.—Matching funds shall be  
5           expended in advance of grant funding, so that for  
6           every dollar of grant that is advanced, an equal  
7           amount of matching funds shall have been funded  
8           prior to submitting the request for reimbursement.

9           (e) AMOUNT.—A grant made under this section shall  
10          not exceed \$100,000.

11          (f) ADMINISTRATION.—The Secretary shall establish  
12          such administrative requirements for grants under this  
13          section, including requirements for applications for the  
14          grants, as the Secretary considers appropriate.

15          (g) AUTHORIZATIONS OF APPROPRIATIONS.—There  
16          are authorized to be appropriated to make grants under  
17          this section—

18                 (1) \$1,000,000 for fiscal year 2006; and

19                 (2) such sums as are necessary for each of fis-  
20          cal years 2007 through 2015.



1 **SEC. 945. REGIONAL BIOECONOMY DEVELOPMENT GRANTS.**

2 (a) IN GENERAL.—Using amounts made available  
3 under subsection (g), the Secretary of Agriculture (re-  
4 ferred to in this section as the “Secretary”) shall make  
5 available on a competitive basis grants to eligible entities  
6 described in subsection (b) for the purposes described in  
7 subsection (c).

8 (b) ELIGIBLE ENTITIES.—An entity eligible for a  
9 grant under this section is any regional bioeconomy devel-  
10 opment association, agricultural or energy trade associa-  
11 tion, or Land Grant institution that—

12 (1) proposes to use the grant for the purposes  
13 described in subsection (c); and

14 (2) has not previously received a grant under  
15 this section.

16 (c) REGIONAL BIOECONOMY DEVELOPMENT ASSO-  
17 CIATION GRANT PURPOSES.—A grant made under this  
18 section shall be used to support and promote the growth  
19 and development of the bioeconomy within the region  
20 served by the eligible entity, through coordination, edu-

1 cation, outreach, and other endeavors by the eligible enti-  
2 ty.

3 (d) MATCHING FUNDS.—

4 (1) IN GENERAL.—Grant recipients shall pro-  
5 vide matching non-Federal funds equal to the  
6 amount of the grant received.

7 (2) EXPENDITURE.—Matching funds shall be  
8 expended in advance of grant funding, so that for  
9 every dollar of grant that is advanced, an equal  
10 amount of matching funds shall have been funded  
11 prior to submitting the request for reimbursement.

12 (e) ADMINISTRATION.—The Secretary shall establish  
13 such administrative requirements for grants under this  
14 section, including requirements for applications for the  
15 grants, as the Secretary considers appropriate.

16 (f) AMOUNT.—A grant made under this section shall  
17 not exceed \$500,000.

18 (g) AUTHORIZATIONS OF APPROPRIATIONS.—There  
19 are authorized to be appropriated to make grants under  
20 this section—

21 (1) \$1,000,000 for fiscal year 2006; and

1           (2) such sums as are necessary for each of fis-  
2           cal years 2007 through 2015.

3 **SEC. 946. PREPROCESSING AND HARVESTING DEMONSTRA-**  
4 **TION GRANTS.**

5           (a) IN GENERAL.—The Secretary of Agriculture (re-  
6           ferred to in this section as the “Secretary”) shall make  
7           grants available on a competitive basis to enterprises  
8           owned by agricultural producers, for the purposes of dem-  
9           onstrating cost-effective, cellulosic biomass innovations  
10          in—

11           (1) preprocessing of feedstocks, including clean-  
12           ing, separating and sorting, mixing or blending, and  
13           chemical or biochemical treatments, to add value  
14           and lower the cost of feedstock processing at a bio-  
15           refinery; or

16           (2) 1-pass or other efficient, multiple crop har-  
17           vesting techniques.

18          (b) LIMITATIONS ON GRANTS.—

19           (1) NUMBER OF GRANTS.—Not more than 5  
20           demonstration projects per fiscal year shall be fund-  
21           ed under this section.

1           (2) NON-FEDERAL COST SHARE.—The non-  
2       Federal cost share of a project under this section  
3       shall be not less than 20 percent, as determined by  
4       the Secretary.

5       (c) CONDITION OF GRANT.—To be eligible for a  
6       grant for a project under this section, a recipient of a  
7       grant or a participating entity shall agree to use the mate-  
8       rial harvested under the project—

9           (1) to produce ethanol; or

10          (2) for another energy purpose, such as the  
11       generation of heat or electricity.

12       (d) AUTHORIZATION FOR APPROPRIATIONS.—There  
13       is authorized to be appropriated to carry out this section  
14       \$5,000,000 for each of fiscal years 2006 through 2010.

15       **SEC. 947. EDUCATION AND OUTREACH.**

16       (a) IN GENERAL.—The Secretary of Agriculture shall  
17       establish, within the Department of Agriculture or  
18       through an independent contracting entity, a program of  
19       education and outreach on biobased fuels and biobased  
20       products consisting of—

1           (1) training and technical assistance programs  
2           for feedstock producers to promote producer owner-  
3           ship, investment, and participation in the operation  
4           of processing facilities; and

5           (2) public education and outreach to familiarize  
6           consumers with the biobased fuels and biobased  
7           products.

8           (b) AUTHORIZATION OF APPROPRIATIONS.—There is  
9           authorized to be appropriated to carry out this section  
10          \$1,000,000 for each of fiscal years 2006 through 2010.

11          **SEC. 948. REPORTS.**

12          (a) BIOBASED PRODUCT POTENTIAL.—Not later  
13          than 1 year after the date of enactment of this Act, the  
14          Secretary of Agriculture (referred to in this section as the  
15          “Secretary”) shall submit to the Committee on Agri-  
16          culture of the House of Representatives and the Com-  
17          mittee on Agriculture, Nutrition, and Forestry of the Sen-  
18          ate a report that—

19                  (1) describes the economic potential for the  
20          United States of the widespread production and use

1 of commercial and industrial biobased products  
2 through calendar year 2025; and

3 (2) as the maximum extent practicable, identi-  
4 fies the economic potential by product area.

5 (b) ANALYSIS OF ECONOMIC INDICATORS.—Not later  
6 than 2 years after the date of enactment of this Act, the  
7 Secretary shall submit to Congress an analysis of eco-  
8 nomic indicators of the biobased economy.

## 9 **Subtitle E—Nuclear Energy**

### 10 **SEC. 951. NUCLEAR ENERGY.**

11 (a) IN GENERAL.—The Secretary shall conduct pro-  
12 grams of civilian nuclear energy research, development,  
13 demonstration, and commercial application, including ac-  
14 tivities described in this subtitle. Programs under this sub-  
15 title shall take into consideration the following objectives:

16 (1) Enhancing nuclear power's viability as part  
17 of the United States energy portfolio.

18 (2) Providing the technical means to reduce the  
19 likelihood of nuclear proliferation.

20 (3) Maintaining a cadre of nuclear scientists  
21 and engineers.

1           (4) Maintaining National Laboratory and uni-  
2           versity nuclear programs, including their infrastruc-  
3           ture.

4           (5) Supporting both individual researchers and  
5           multidisciplinary teams of researchers to pioneer  
6           new approaches in nuclear energy, science, and tech-  
7           nology.

8           (6) Developing, planning, constructing, acquir-  
9           ing, and operating special equipment and facilities  
10          for the use of researchers.

11          (7) Supporting technology transfer and other  
12          appropriate activities to assist the nuclear energy in-  
13          dustry, and other users of nuclear science and engi-  
14          neering, including activities addressing reliability,  
15          availability, productivity, component aging, safety,  
16          and security of nuclear power plants.

17          (8) Reducing the environmental impact of nu-  
18          clear energy-related activities.

19          (b) AUTHORIZATION OF APPROPRIATIONS FOR CORE  
20          PROGRAMS.—There are authorized to be appropriated to  
21          the Secretary to carry out nuclear energy research, devel-

1 opment, demonstration, and commercial application activi-  
2 ties, including activities authorized under this subtitle,  
3 other than those described in subsection (c)—

4 (1) \$330,000,000 for fiscal year 2007;

5 (2) \$355,000,000 for fiscal year 2008; and

6 (3) \$495,000,000 for fiscal year 2009.

7 (c) NUCLEAR INFRASTRUCTURE AND FACILITIES.—

8 There are authorized to be appropriated to the Secretary  
9 to carry out activities under section 955—

10 (1) \$135,000,000 for fiscal year 2007;

11 (2) \$140,000,000 for fiscal year 2008; and

12 (3) \$145,000,000 for fiscal year 2009.

13 (d) ALLOCATIONS.—From amounts authorized under  
14 subsection (a), the following sums are authorized:

15 (1) For activities under section 953—

16 (A) \$150,000,000 for fiscal year 2007;

17 (B) \$155,000,000 for fiscal year 2008; and

18 (C) \$275,000,000 for fiscal year 2009.

19 (2) For activities under section 954—

20 (A) \$43,600,000 for fiscal year 2007;

21 (B) \$50,100,000 for fiscal year 2008; and



1 (C) \$56,000,000 for fiscal year 2009.

2 (3) For activities under section 957,  
3 \$6,000,000 for each of fiscal years 2007 through  
4 2009.

5 (e) LIMITATION.—None of the funds authorized  
6 under this section may be used to decommission the Fast  
7 Flux Test Facility.

8 **SEC. 952. NUCLEAR ENERGY RESEARCH PROGRAMS.**

9 (a) NUCLEAR ENERGY RESEARCH INITIATIVE.—The  
10 Secretary shall carry out a Nuclear Energy Research Ini-  
11 tiative for research and development related to nuclear en-  
12 ergy.

13 (b) NUCLEAR ENERGY SYSTEMS SUPPORT PRO-  
14 GRAM.—The Secretary shall carry out a Nuclear Energy  
15 Systems Support Program to support research and devel-  
16 opment activities addressing reliability, availability, pro-  
17 ductivity, component aging, safety, and security of existing  
18 nuclear power plants.

19 (c) NUCLEAR POWER 2010 PROGRAM.—

20 (1) IN GENERAL.—The Secretary shall carry  
21 out a Nuclear Power 2010 Program, consistent with

1        recommendations of the Nuclear Energy Research  
2        Advisory Committee of the Department in the report  
3        entitled “A Roadmap to Deploy New Nuclear Power  
4        Plants in the United States by 2010” and dated Oc-  
5        tober 2001.

6            (2) ADMINISTRATION.—The Program shall  
7        include—

8                    (A) use of the expertise and capabilities of  
9                    industry, institutions of higher education, and  
10                   National Laboratories in evaluation of advanced  
11                   nuclear fuel cycles and fuels testing;

12                   (B) consideration of a variety of reactor  
13                   designs suitable for both developed and devel-  
14                   oping nations;

15                   (C) participation of international collabo-  
16                   rators in research, development, and design ef-  
17                   forts, as appropriate; and

18                   (D) encouragement for participation by in-  
19                   stitutions of higher education and industry.

20        (d) GENERATION IV NUCLEAR ENERGY SYSTEMS  
21 INITIATIVE.—

1           (1) IN GENERAL.—The Secretary shall carry  
2           out a Generation IV Nuclear Energy Systems Initia-  
3           tive to develop an overall technology plan for and to  
4           support research and development necessary to make  
5           an informed technical decision about the most prom-  
6           ising candidates for eventual commercial application.

7           (2) ADMINISTRATION.—In conducting the Ini-  
8           tiative, the Secretary shall examine advanced pro-  
9           liferation-resistant and passively safe reactor de-  
10          signs, including designs that—

11                   (A) are economically competitive with other  
12                   electric power generation plants;

13                   (B) have higher efficiency, lower cost, and  
14                   improved safety compared to reactors in oper-  
15                   ation on the date of enactment of this Act;

16                   (C) use fuels that are proliferation resist-  
17                   ant and have substantially reduced production  
18                   of high-level waste per unit of output; and

19                   (D) use improved instrumentation.

20          (e) REACTOR PRODUCTION OF HYDROGEN.—The  
21          Secretary shall carry out research to examine designs for

1 high-temperature reactors capable of producing large-scale  
2 quantities of hydrogen.

3 **SEC. 953. ADVANCED FUEL CYCLE INITIATIVE.**

4 (a) IN GENERAL.—The Secretary, acting through the  
5 Director of the Office of Nuclear Energy, Science and  
6 Technology, shall conduct an advanced fuel recycling tech-  
7 nology research, development, and demonstration program  
8 (referred to in this section as the “program”) to evaluate  
9 proliferation-resistant fuel recycling and transmutation  
10 technologies that minimize environmental and public  
11 health and safety impacts as an alternative to aqueous re-  
12 processing technologies deployed as of the date of enact-  
13 ment of this Act in support of evaluation of alternative  
14 national strategies for spent nuclear fuel and the Genera-  
15 tion IV advanced reactor concepts.

16 (b) ANNUAL REVIEW.—The program shall be subject  
17 to annual review by the Nuclear Energy Research Advi-  
18 sory Committee of the Department or other independent  
19 entity, as appropriate.

20 (c) INTERNATIONAL COOPERATION.—In carrying out  
21 the program, the Secretary is encouraged to seek opportu-

1 nities to enhance the progress of the program through  
2 international cooperation.

3 (d) REPORTS.—The Secretary shall submit, as part  
4 of the annual budget submission of the Department, a re-  
5 port on the activities of the program.

6 **SEC. 954. UNIVERSITY NUCLEAR SCIENCE AND ENGINEER-**  
7 **ING SUPPORT.**

8 (a) IN GENERAL.—The Secretary shall conduct a  
9 program to invest in human resources and infrastructure  
10 in the nuclear sciences and related fields, including health  
11 physics, nuclear engineering, and radiochemistry, con-  
12 sistent with missions of the Department related to civilian  
13 nuclear research, development, demonstration, and com-  
14 mercial application.

15 (b) REQUIREMENTS.—In carrying out the program  
16 under this section, the Secretary shall—

17 (1) conduct a graduate and undergraduate fel-  
18 lowship program to attract new and talented stu-  
19 dents, which may include fellowships for students to  
20 spend time at National Laboratories in the areas of  
21 nuclear science, engineering, and health physics with

1 a member of the National Laboratory staff acting as  
2 a mentor;

3 (2) conduct a junior faculty research initiation  
4 grant program to assist universities in recruiting  
5 and retaining new faculty in the nuclear sciences  
6 and engineering by awarding grants to junior faculty  
7 for research on issues related to nuclear energy engi-  
8 neering and science;

9 (3) support fundamental nuclear sciences, engi-  
10 neering, and health physics research through a nu-  
11 clear engineering education and research program;

12 (4) encourage collaborative nuclear research  
13 among industry, National Laboratories, and univer-  
14 sities; and

15 (5) support communication and outreach re-  
16 lated to nuclear science, engineering, and health  
17 physics.

18 (c) UNIVERSITY-NATIONAL LABORATORY INTER-  
19 ACTIONS.—The Secretary shall conduct—

20 (1) a fellowship program for professors at uni-  
21 versities to spend sabbaticals at National Labora-

1        ories in the areas of nuclear science and technology;  
2        and

3               (2) a visiting scientist program in which Na-  
4        tional Laboratory staff can spend time in academic  
5        nuclear science and engineering departments.

6        (d) STRENGTHENING UNIVERSITY RESEARCH AND  
7        TRAINING REACTORS AND ASSOCIATED INFRASTRUC-  
8        TURE.—In carrying out the program under this section,  
9        the Secretary may support—

10               (1) converting research reactors from high-en-  
11        richment fuels to low-enrichment fuels and upgrad-  
12        ing operational instrumentation;

13               (2) consortia of universities to broaden access  
14        to university research reactors;

15               (3) student training programs, in collaboration  
16        with the United States nuclear industry, in reli-  
17        censing and upgrading reactors, including through  
18        the provision of technical assistance; and

19               (4) reactor improvements as part of a taking  
20        into consideration effort that emphasizes research,  
21        training, and education, including through the Inno-

1 vations in Nuclear Infrastructure and Education  
2 Program or any similar program.

3 (e) OPERATIONS AND MAINTENANCE.—Funding for  
4 a project provided under this section may be used for a  
5 portion of the operating and maintenance costs of a re-  
6 search reactor at a university used in the project.

7 (f) DEFINITION.—In this section, the term “junior  
8 faculty” means a faculty member who was awarded a doc-  
9 torate less than 10 years before receipt of an award from  
10 the grant program described in subsection (b)(2).

11 **SEC. 955. DEPARTMENT OF ENERGY CIVILIAN NUCLEAR IN-**  
12 **FRAStructure AND FACILITIES.**

13 (a) IN GENERAL.—The Secretary shall operate and  
14 maintain infrastructure and facilities to support the nu-  
15 clear energy research, development, demonstration, and  
16 commercial application programs, including radiological  
17 facilities management, isotope production, and facilities  
18 management.

19 (b) DUTIES.—In carrying this section, the Secretary  
20 shall—



1           (1) develop an inventory of nuclear science and  
2           engineering facilities, equipment, expertise, and  
3           other assets at all of the National Laboratories;

4           (2) develop a prioritized list of nuclear science  
5           and engineering plant and equipment improvements  
6           needed at each of the National Laboratories;

7           (3) consider the available facilities and expertise  
8           at all National Laboratories and emphasize invest-  
9           ments which complement rather than duplicate capa-  
10          bilities; and

11          (4) develop a timeline and a proposed budget  
12          for the completion of deferred maintenance on plant  
13          and equipment, with the goal of ensuring that De-  
14          partment programs under this subtitle will be gen-  
15          erally recognized to be among the best in the world.

16          (c) PLAN.—The Secretary shall develop a comprehen-  
17          sive plan for the facilities at the Idaho National Labora-  
18          tory, especially taking into account the resources available  
19          at other National Laboratories. In developing the plan, the  
20          Secretary shall—

1           (1) evaluate the facilities planning processes  
2           utilized by other physical science and engineering re-  
3           search and development institutions, both in the  
4           United States and abroad, that are generally recog-  
5           nized as being among the best in the world, and con-  
6           sider how those processes might be adapted toward  
7           developing such facilities plan;

8           (2) avoid duplicating, moving, or transferring  
9           nuclear science and engineering facilities, equipment,  
10          expertise, and other assets that currently exist at  
11          other National Laboratories;

12          (3) consider the establishment of a national  
13          transuranic analytic chemistry laboratory as a user  
14          facility at the Idaho National Laboratory;

15          (4) include a plan to develop, if feasible, the  
16          Advanced Test Reactor and Test Reactor Area into  
17          a user facility that is more readily accessible to aca-  
18          demic and industrial researchers;

19          (5) consider the establishment of a fast neutron  
20          source as a user facility;

1           (6) consider the establishment of new hot cells  
2           and the configuration of hot cells most likely to ad-  
3           vance research, development, demonstration, and  
4           commercial application in nuclear science and engi-  
5           neering, especially in the context of the condition  
6           and availability of these facilities elsewhere in the  
7           National Laboratories; and

8           (7) include a timeline and a proposed budget  
9           for the completion of deferred maintenance on plant  
10          and equipment.

11          (d) TRANSMITTAL TO CONGRESS.—Not later than 1  
12         year after the date of enactment of this Act, the Secretary  
13         shall transmit the plan under subsection (c) to Congress.

14         **SEC. 956. SECURITY OF NUCLEAR FACILITIES.**

15         The Secretary, acting through the Director of the Of-  
16         fice of Nuclear Energy, Science and Technology, shall con-  
17         duct a research and development program on cost-effective  
18         technologies for increasing—

19                 (1) the safety of nuclear facilities from natural  
20                 phenomena; and

1           (2) the security of nuclear facilities from delib-  
2           erate attacks.

3 **SEC. 957. ALTERNATIVES TO INDUSTRIAL RADIOACTIVE**  
4           **SOURCES.**

5           (a) SURVEY.—

6           (1) IN GENERAL.—Not later than August 1,  
7           2006, the Secretary shall submit to Congress the re-  
8           sults of a survey of industrial applications of large  
9           radioactive sources.

10          (2) ADMINISTRATION.—The survey shall—

11           (A) consider well-logging sources as 1 class  
12           of industrial sources;

13           (B) include information on current domes-  
14           tic and international Department, Department  
15           of Defense, State Department, and commercial  
16           programs to manage and dispose of radioactive  
17           sources; and

18           (C) analyze available disposal options for  
19           currently deployed or future sources and, if de-  
20           ficiencies are noted for either deployed or future  
21           sources, recommend legislative options that

1 Congress may consider to remedy identified de-  
2 ficiencies.

3 (b) PLAN.—

4 (1) IN GENERAL.—In conjunction with the sur-  
5 vey conducted under subsection (a), the Secretary  
6 shall establish a research and development program  
7 to develop alternatives to sources described in sub-  
8 section (a) that reduce safety, environmental, or pro-  
9 liferation risks to either workers using the sources or  
10 the public.

11 (2) ACCELERATORS.—Miniaturized particle ac-  
12 celerators for well-logging or other industrial appli-  
13 cations and portable accelerators for production of  
14 short-lived radioactive materials at an industrial site  
15 shall be considered as part of the research and de-  
16 velopment efforts.

17 (3) REPORT.—Not later than August 1, 2006,  
18 the Secretary shall submit to Congress a report de-  
19 scribing the details of the program plan.

## 1                   **Subtitle F—Fossil Energy**

### 2   **SEC. 961. FOSSIL ENERGY.**

3           (a) IN GENERAL.—The Secretary shall carry out re-  
4 search, development, demonstration, and commercial ap-  
5 plication programs in fossil energy, including activities  
6 under this subtitle, with the goal of improving the effi-  
7 ciency, effectiveness, and environmental performance of  
8 fossil energy production, upgrading, conversion, and con-  
9 sumption. Such programs take into consideration the fol-  
10 lowing objectives:

11           (1) Increasing the energy conversion efficiency  
12           of all forms of fossil energy through improved tech-  
13           nologies.

14           (2) Decreasing the cost of all fossil energy pro-  
15           duction, generation, and delivery.

16           (3) Promoting diversity of energy supply.

17           (4) Decreasing the dependence of the United  
18           States on foreign energy supplies.

19           (5) Improving United States energy security.

20           (6) Decreasing the environmental impact of en-  
21           ergy-related activities.

1           (7) Increasing the export of fossil energy-re-  
2           lated equipment, technology, and services from the  
3           United States.

4           (b) AUTHORIZATION OF APPROPRIATIONS.—There  
5           are authorized to be appropriated to the Secretary to carry  
6           out fossil energy research, development, demonstration,  
7           and commercial application activities, including activities  
8           authorized under this subtitle—

9                   (1) \$611,000,000 for fiscal year 2007;

10                   (2) \$626,000,000 for fiscal year 2008; and

11                   (3) \$641,000,000 for fiscal year 2009.

12           (c) ALLOCATIONS.—From amounts authorized under  
13           subsection (a), the following sums are authorized:

14                   (1) For activities under section 962—

15                           (A) \$367,000,000 for fiscal year 2007;

16                           (B) \$376,000,000 for fiscal year 2008; and

17                           (C) \$394,000,000 for fiscal year 2009.

18                   (2) For activities under section 964—

19                           (A) \$20,000,000 for fiscal year 2007;

20                           (B) \$25,000,000 for fiscal year 2008; and

21                           (C) \$30,000,000 for fiscal year 2009.

1           (3) For activities under section 966—  
2                 (A) \$1,500,000 for fiscal year 2007; and  
3                 (B) \$450,000 for each of fiscal years 2008  
4           and 2009.

5           (4) For the Office of Arctic Energy under sec-  
6           tion 3197 of the Floyd D. Spence National Defense  
7           Authorization Act for Fiscal Year 2001 (42 U.S.C.  
8           7144d) \$25,000,000 for each of fiscal years 2007  
9           through 2009.

10          (d) EXTENDED AUTHORIZATION.—There are author-  
11          ized to be appropriated to the Secretary for the Office of  
12          Arctic Energy established under section 3197 of the Floyd  
13          D. Spence National Defense Authorization Act for Fiscal  
14          Year 2001 (42 U.S.C. 7144d) \$25,000,000 for each of  
15          fiscal years 2010 through 2012.

16          (e) LIMITATIONS.—

17                 (1) USES.—None of the funds authorized under  
18                 this section may be used for Fossil Energy Environ-  
19                 mental Restoration or Import/Export Authorization.

20                 (2) INSTITUTIONS OF HIGHER EDUCATION.—Of  
21                 the funds authorized under subsection (c)(2), not



1 less than 20 percent of the funds appropriated for  
2 each fiscal year shall be dedicated to research and  
3 development carried out at institutions of higher  
4 education.

5 **SEC. 962. COAL AND RELATED TECHNOLOGIES PROGRAM.**

6 (a) IN GENERAL.—In addition to the programs au-  
7 thorized under title IV, the Secretary shall conduct a pro-  
8 gram of technology research, development, demonstration,  
9 and commercial application for coal and power systems,  
10 including programs to facilitate production and generation  
11 of coal-based power through—

12 (1) innovations for existing plants (including  
13 mercury removal);

14 (2) gasification systems;

15 (3) advanced combustion systems;

16 (4) turbines for synthesis gas derived from coal;

17 (5) carbon capture and sequestration research  
18 and development;

19 (6) coal-derived chemicals and transportation  
20 fuels;

1           (7) liquid fuels derived from low rank coal  
2 water slurry;

3           (8) solid fuels and feedstocks;

4           (9) advanced coal-related research;

5           (10) advanced separation technologies; and

6           (11) fuel cells for the operation of synthesis gas  
7 derived from coal.

8           (b) COST AND PERFORMANCE GOALS.—

9           (1) IN GENERAL.—In carrying out programs  
10 authorized by this section, during each of calendar  
11 years 2008, 2010, 2012, and 2016, and during each  
12 fiscal year beginning after September 30, 2021, the  
13 Secretary shall identify cost and performance goals  
14 for coal-based technologies that would permit the  
15 continued cost-competitive use of coal for the pro-  
16 duction of electricity, chemical feedstocks, and trans-  
17 portation fuels.

18           (2) ADMINISTRATION.—In establishing the cost  
19 and performance goals, the Secretary shall—

20                   (A) consider activities and studies under-  
21 taken as of the date of enactment of this Act

1 by industry in cooperation with the Department  
2 in support of the identification of the goals;

3 (B) consult with interested entities,  
4 including—

5 (i) coal producers;

6 (ii) industries using coal;

7 (iii) organizations that promote coal  
8 and advanced coal technologies;

9 (iv) environmental organizations;

10 (v) organizations representing work-  
11 ers; and

12 (vi) organizations representing con-  
13 sumers;

14 (C) not later than 120 days after the date  
15 of enactment of this Act, publish in the Federal  
16 Register proposed draft cost and performance  
17 goals for public comments; and

18 (D) not later than 180 days after the date  
19 of enactment of this Act and every 4 years  
20 thereafter, submit to Congress a report describ-

1           ing the final cost and performance goals for the  
2           technologies that includes—

- 3                   (i) a list of technical milestones; and  
4                   (ii) an explanation of how programs  
5                   authorized in this section will not duplicate  
6                   the activities authorized under the Clean  
7                   Coal Power Initiative authorized under  
8                   title IV.

9           (c) POWDER RIVER BASIN AND FORT UNION LIG-  
10       NITE COAL MERCURY REMOVAL.—

11           (1) IN GENERAL.—In addition to the programs  
12           authorized by subsection (a), the Secretary shall es-  
13           tablish a program to test and develop technologies to  
14           control and remove mercury emissions from subbitu-  
15           minous coal mined in the Powder River Basin, and  
16           Fort Union lignite coals, that are used for the gen-  
17           eration of electricity.

18           (2) EFFICACY OF MERCURY REMOVAL TECH-  
19           NOLOGY.—In carrying out the program under para-  
20           graph (1), the Secretary shall examine the efficacy  
21           of mercury removal technologies on coals described

1 in that paragraph that are blended with other types  
2 of coal.

3 (d) FUEL CELLS.—

4 (1) IN GENERAL.—The Secretary shall conduct  
5 a program of research, development, demonstration,  
6 and commercial application on fuel cells for low-cost,  
7 high-efficiency, fuel-flexible, modular power systems.

8 (2) DEMONSTRATIONS.—The demonstrations  
9 referred to in paragraph (1) shall include solid oxide  
10 fuel cell technology for commercial, residential, and  
11 transportation applications, and distributed genera-  
12 tion systems, using improved manufacturing produc-  
13 tion and processes.

14 **SEC. 963. CARBON CAPTURE RESEARCH AND DEVELOP-**  
15 **MENT PROGRAM.**

16 (a) IN GENERAL.—The Secretary shall carry out a  
17 10-year carbon capture research and development pro-  
18 gram to develop carbon dioxide capture technologies on  
19 combustion-based systems for use—

20 (1) in new coal utilization facilities; and

1           (2) on the fleet of coal-based units in existence  
2           on the date of enactment of this Act.

3           (b) OBJECTIVES.—The objectives of the program  
4           under subsection (a) shall be—

5           (1) to develop carbon dioxide capture tech-  
6           nologies, including adsorption and absorption tech-  
7           niques and chemical processes, to remove the carbon  
8           dioxide from gas streams containing carbon dioxide  
9           potentially amenable to sequestration;

10           (2) to develop technologies that would directly  
11           produce concentrated streams of carbon dioxide po-  
12           tentially amenable to sequestration;

13           (3) to increase the efficiency of the overall sys-  
14           tem to reduce the quantity of carbon dioxide emis-  
15           sions released from the system per megawatt gen-  
16           erated; and

17           (4) in accordance with the carbon dioxide cap-  
18           ture program, to promote a robust carbon sequestra-  
19           tion program and continue the work of the Depart-  
20           ment, in conjunction with the private sector, through  
21           regional carbon sequestration partnerships.

1 (c) AUTHORIZATION OF APPROPRIATIONS.—From  
2 amounts authorized under section 961(b), the following  
3 sums are authorized for activities described in subsection  
4 (a)(2):

5 (1) \$25,000,000 for fiscal year 2006;

6 (2) \$30,000,000 for fiscal year 2007; and

7 (3) \$35,000,000 for fiscal year 2008

8 **SEC. 964. RESEARCH AND DEVELOPMENT FOR COAL MIN-**  
9 **ING TECHNOLOGIES.**

10 (a) ESTABLISHMENT.—The Secretary shall carry out  
11 a program for research and development on coal mining  
12 technologies.

13 (b) COOPERATION.—In carrying out the program, the  
14 Secretary shall cooperate with appropriate Federal agen-  
15 cies, coal producers, trade associations, equipment manu-  
16 facturers, institutions of higher education with mining en-  
17 gineering departments, and other relevant entities.

18 (c) PROGRAM.—The research and development activi-  
19 ties carried out under this section shall—

20 (1) be guided by the mining research and devel-  
21 opment priorities identified by the Mining Industry

1 of the Future Program and in the recommendations  
2 from relevant reports of the National Academy of  
3 Sciences on mining technologies;

4 (2) include activities exploring minimization of  
5 contaminants in mined coal that contribute to envi-  
6 ronmental concerns including development and dem-  
7 onstration of electromagnetic wave imaging ahead of  
8 mining operations;

9 (3) develop and demonstrate coal bed electro-  
10 magnetic wave imaging, spectroscopic reservoir anal-  
11 ysis technology, and techniques for horizontal drill-  
12 ing in order to—

13 (A) identify areas of high coal gas content;

14 (B) increase methane recovery efficiency;

15 (C) prevent spoilage of domestic coal re-  
16 serves; and

17 (D) minimize water disposal associated  
18 with methane extraction; and

19 (4) expand mining research capabilities at insti-  
20 tutions of higher education.



1 **SEC. 965. OIL AND GAS RESEARCH PROGRAMS.**

2 (a) IN GENERAL.—The Secretary shall conduct a  
3 program of research, development, demonstration, and  
4 commercial application of oil and gas, including—

5 (1) exploration and production;

6 (2) gas hydrates;

7 (3) reservoir life and extension;

8 (4) transportation and distribution infrastruc-  
9 ture;

10 (5) ultraclean fuels;

11 (6) heavy oil, oil shale, and tar sands; and

12 (7) related environmental research.

13 (b) OBJECTIVES.—The objectives of this program  
14 shall include advancing the science and technology avail-  
15 able to domestic petroleum producers, particularly inde-  
16 pendent operators, to minimize the economic dislocation  
17 caused by the decline of domestic supplies of oil and nat-  
18 ural gas resources.

19 (c) NATURAL GAS AND OIL DEPOSITS REPORT.—

20 Not later than 2 years after the date of enactment of this  
21 Act and every 2 years thereafter, the Secretary of the Inte-

1 rior, in consultation with other appropriate Federal agen-  
2 cies, shall submit to Congress a report on the latest esti-  
3 mates of natural gas and oil reserves, reserves growth, and  
4 undiscovered resources in Federal and State waters off the  
5 coast of Louisiana, Texas, Alabama, and Mississippi.

6 (d) INTEGRATED CLEAN POWER AND ENERGY RE-  
7 SEARCH.—

8 (1) ESTABLISHMENT OF CENTER.—The Sec-  
9 retary shall establish a national center or consortium  
10 of excellence in clean energy and power generation,  
11 using the resources of the Clean Power and Energy  
12 Research Consortium in existence on the date of en-  
13 actment of this Act, to address the critical depend-  
14 ence of the United States on energy and the need  
15 to reduce emissions.

16 (2) FOCUS AREAS.—The center or consortium  
17 shall conduct a program of research, development,  
18 demonstration, and commercial application on inte-  
19 grating the following 6 focus areas:

20 (A) Efficiency and reliability of gas tur-  
21 bines for power generation.

1 (B) Reduction in emissions from power  
2 generation.

3 (C) Promotion of energy conservation  
4 issues.

5 (D) Effectively using alternative fuels and  
6 renewable energy.

7 (E) Development of advanced materials  
8 technology for oil and gas exploration and use  
9 in harsh environments.

10 (F) Education on energy and power gen-  
11 eration issues.

12 **SEC. 966. LOW-VOLUME OIL AND GAS RESERVOIR RE-**  
13 **SEARCH PROGRAM.**

14 (a) DEFINITIONS OF GIS.—In this section, the term  
15 “GIS” means geographic information systems technology  
16 that facilitates the organization and management of data  
17 with a geographic component.

18 (b) PROGRAM.—The Secretary shall establish a pro-  
19 gram of research, development, demonstration, and com-  
20 mercial application to maximize the productive capacity of  
21 marginal wells and reservoirs.

1 (c) DATA COLLECTION.—Under the program, the  
2 Secretary shall collect data on—

3 (1) the status and location of marginal wells  
4 and oil and gas reservoirs;

5 (2) the production capacity of marginal wells  
6 and oil and gas reservoirs;

7 (3) the location of low-pressure gathering facili-  
8 ties and pipelines; and

9 (4) the quantity of natural gas vented or flared  
10 in association with crude oil production.

11 (d) ANALYSIS.—Under the program, the Secretary  
12 shall—

13 (1) estimate the remaining producible reserves  
14 based on variable pipeline pressures; and

15 (2) recommend measures that will enable the  
16 continued production of those resources.

17 (e) STUDY.—

18 (1) IN GENERAL.—The Secretary may award a  
19 grant to an organization of States that contain sig-  
20 nificant numbers of marginal oil and natural gas

1 wells to conduct an annual study of low-volume nat-  
2 ural gas reservoirs.

3 (2) ORGANIZATION WITH NO GIS CAPABILI-  
4 TIES.—If an organization receiving a grant under  
5 paragraph (1) does not have GIS capabilities, the or-  
6 ganization shall contract with an institution of high-  
7 er education with GIS capabilities.

8 (3) STATE GEOLOGISTS.—The organization re-  
9 ceiving a grant under paragraph (1) shall collaborate  
10 with the State geologist of each State being studied.

11 (f) PUBLIC INFORMATION.—The Secretary may use  
12 the data collected and analyzed under this section to  
13 produce maps and literature to disseminate to States to  
14 promote conservation of natural gas reserves.

15 **SEC. 967. COMPLEX WELL TECHNOLOGY TESTING FACIL-**  
16 **ITY.**

17 The Secretary, in coordination with industry leaders  
18 in extended research drilling technology, shall establish a  
19 Complex Well Technology Testing Facility at the Rocky  
20 Mountain Oilfield Testing Center to increase the range of  
21 extended drilling technologies.

1 **SEC. 968. METHANE HYDRATE RESEARCH.**

2 (a) IN GENERAL.—The Methane Hydrate Research  
3 and Development Act of 2000 (30 U.S.C. 1902 note; Pub-  
4 lic Law 106–193) is amended to read as follows:

5 **“SECTION 1. SHORT TITLE.**

6 “This Act may be cited as the ‘Methane Hydrate Re-  
7 search and Development Act of 2000’.

8 **“SEC. 2. FINDINGS.**

9 “Congress finds that—

10 “(1) in order to promote energy independence  
11 and meet the increasing demand for energy, the  
12 United States will require a diversified portfolio of  
13 substantially increased quantities of electricity, nat-  
14 ural gas, and transportation fuels;

15 “(2) according to the report submitted to Con-  
16 gress by the National Research Council entitled  
17 ‘Charting the Future of Methane Hydrate Research  
18 in the United States’, the total United States re-  
19 sources of gas hydrates have been estimated to be on  
20 the order of 200,000 trillion cubic feet;

1           “(3) according to the report of the National  
2           Commission on Energy Policy entitled ‘Ending the  
3           Energy Stalemate—A Bipartisan Strategy to Meet  
4           America’s Energy Challenge’, and dated December  
5           2004, the United States may be endowed with over  
6           1/4 of the methane hydrate deposits in the world;

7           “(4) according to the Energy Information Ad-  
8           ministration, a shortfall in natural gas supply from  
9           conventional and unconventional sources is expected  
10          to occur in or about 2020; and

11          “(5) the National Academy of Sciences states  
12          that methane hydrate may have the potential to al-  
13          leviate the projected shortfall in the natural gas sup-  
14          ply.

15       **“SEC. 3. DEFINITIONS.**

16       “In this Act:

17           “(1) CONTRACT.—The term ‘contract’ means a  
18           procurement contract within the meaning of section  
19           6303 of title 31, United States Code.

20           “(2) COOPERATIVE AGREEMENT.—The term  
21           ‘cooperative agreement’ means a cooperative agree-

1       ment within the meaning of section 6305 of title 31,  
2       United States Code.

3           “(3) DIRECTOR.—The term ‘Director’ means  
4       the Director of the National Science Foundation.

5           “(4) GRANT.—The term ‘grant’ means a grant  
6       awarded under a grant agreement (within the mean-  
7       ing of section 6304 of title 31, United States Code).

8           “(5) INDUSTRIAL ENTERPRISE.—The term ‘in-  
9       dustrial enterprise’ means a private, nongovern-  
10      mental enterprise that has an expertise or capability  
11      that relates to methane hydrate research and devel-  
12      opment.

13          “(6) INSTITUTION OF HIGHER EDUCATION.—  
14      The term ‘institution of higher education’ means an  
15      institution of higher education (as defined in section  
16      102 of the Higher Education Act of 1965 (20  
17      U.S.C. 1002)).

18          “(7) SECRETARY.—The term ‘Secretary’ means  
19      the Secretary of Energy, acting through the Assist-  
20      ant Secretary for Fossil Energy.



1           “(8) SECRETARY OF COMMERCE.—The term  
2           ‘Secretary of Commerce’ means the Secretary of  
3           Commerce, acting through the Administrator of the  
4           National Oceanic and Atmospheric Administration.

5           “(9) SECRETARY OF DEFENSE.—The term  
6           ‘Secretary of Defense’ means the Secretary of De-  
7           fense, acting through the Secretary of the Navy.

8           “(10) SECRETARY OF THE INTERIOR.—The  
9           term ‘Secretary of the Interior’ means the Secretary  
10          of the Interior, acting through the Director of the  
11          United States Geological Survey, the Director of the  
12          Bureau of Land Management, and the Director of  
13          the Minerals Management Service.

14   **“SEC. 4. METHANE HYDRATE RESEARCH AND DEVELOP-**  
15                           **MENT PROGRAM.**

16          “(a) IN GENERAL.—

17               “(1) COMMENCEMENT OF PROGRAM.—Not later  
18               than 90 days after the date of enactment of the En-  
19               ergy Research, Development, Demonstration, and  
20               Commercial Application Act of 2005, the Secretary,  
21               in consultation with the Secretary of Commerce, the

1 Secretary of Defense, the Secretary of the Interior,  
2 and the Director, shall commence a program of  
3 methane hydrate research and development in ac-  
4 cordance with this section.

5 “(2) DESIGNATIONS.—The Secretary, the Sec-  
6 retary of Commerce, the Secretary of Defense, the  
7 Secretary of the Interior, and the Director shall des-  
8 ignate individuals to carry out this section.

9 “(3) COORDINATION.—The individual des-  
10 ignated by the Secretary shall coordinate all activi-  
11 ties within the Department of Energy relating to  
12 methane hydrate research and development.

13 “(4) MEETINGS.—The individuals designated  
14 under paragraph (2) shall meet not later than 180  
15 days after the date of enactment of the Energy Re-  
16 search, Development, Demonstration, and Commer-  
17 cial Application Act of 2005 and not less frequently  
18 than every 180 days thereafter to—

19 “(A) review the progress of the program  
20 under paragraph (1); and

1                   “(B) coordinate interagency research and  
2                   partnership efforts in carrying out the program.

3           “(b) GRANTS, CONTRACTS, COOPERATIVE AGREE-  
4 MENTS, INTERAGENCY FUNDS TRANSFER AGREEMENTS,  
5 AND FIELD WORK PROPOSALS.—

6                   “(1) ASSISTANCE AND COORDINATION.—In car-  
7                   rying out the program of methane hydrate research  
8                   and development authorized by this section, the Sec-  
9                   retary may award grants to, or enter into contracts  
10                  or cooperative agreements with, institutions of high-  
11                  er education, oceanographic institutions, and indus-  
12                  trial enterprises to—

13                   “(A) conduct basic and applied research to  
14                   identify, explore, assess, and develop methane  
15                   hydrate as a commercially viable source of en-  
16                   ergy;

17                   “(B) identify methane hydrate resources  
18                   through remote sensing;

19                   “(C) acquire and reprocess seismic data  
20                   suitable for characterizing methane hydrate ac-  
21                   cumulations;

1           “(D) assist in developing technologies re-  
2           quired for efficient and environmentally sound  
3           development of methane hydrate resources;

4           “(E) promote education and training in  
5           methane hydrate resource research and re-  
6           source development through fellowships or other  
7           means for graduate education and training;

8           “(F) conduct basic and applied research to  
9           assess and mitigate the environmental impact of  
10          hydrate degassing (including both natural  
11          degassing and degassing associated with com-  
12          mercial development);

13          “(G) develop technologies to reduce the  
14          risks of drilling through methane hydrates; and

15          “(H) conduct exploratory drilling, well  
16          testing, and production testing operations on  
17          permafrost and non-permafrost gas hydrates in  
18          support of the activities authorized by this  
19          paragraph, including drilling of 1 or more full-  
20          scale production test wells.

1           “(2) COMPETITIVE PEER REVIEW.—Funds  
2           made available under paragraph (1) shall be made  
3           available based on a competitive process using exter-  
4           nal scientific peer review of proposed research.

5           “(c) METHANE HYDRATES ADVISORY PANEL.—

6           “(1) IN GENERAL.—The Secretary shall estab-  
7           lish an advisory panel (including the hiring of appro-  
8           priate staff) consisting of representatives of indus-  
9           trial enterprises, institutions of higher education,  
10          oceanographic institutions, State agencies, and envi-  
11          ronmental organizations with knowledge and exper-  
12          tise in the natural gas hydrates field, to—

13                   “(A) assist in developing recommendations  
14                   and broad programmatic priorities for the  
15                   methane hydrate research and development pro-  
16                   gram carried out under subsection (a)(1);

17                   “(B) provide scientific oversight for the  
18                   methane hydrates program, including assessing  
19                   progress toward program goals, evaluating pro-  
20                   gram balance, and providing recommendations

1 to enhance the quality of the program over  
2 time; and

3 “(C) not later than 2 years after the date  
4 of enactment of the Energy Research, Develop-  
5 ment, Demonstration, and Commercial Applica-  
6 tion Act of 2005, and at such later dates as the  
7 panel considers advisable, submit to Congress—

8 “(i) an assessment of the methane hy-  
9 drate research program; and

10 “(ii) an assessment of the 5-year re-  
11 search plan of the Department of Energy.

12 “(2) CONFLICTS OF INTEREST.—In appointing  
13 each member of the advisory panel established under  
14 paragraph (1), the Secretary shall ensure, to the  
15 maximum extent practicable, that the appointment  
16 of the member does not pose a conflict of interest  
17 with respect to the duties of the member under this  
18 Act.

19 “(3) MEETINGS.—The advisory panel shall—

1           “(A) hold the initial meeting of the advisory panel not later than 180 days after the date of establishment of the advisory panel; and

2           “(B) meet biennially thereafter.

3           “(4) COORDINATION.—The advisory panel shall coordinate activities of the advisory panel with program managers of the Department of Energy at appropriate National Laboratories.

4           “(d) CONSTRUCTION COSTS.—None of the funds made available to carry out this section may be used for the construction of a new building or the acquisition, expansion, remodeling, or alteration of an existing building (including site grading and improvement and architect fees).

5           “(e) RESPONSIBILITIES OF THE SECRETARY.—In carrying out subsection (b)(1), the Secretary shall—

6           “(1) facilitate and develop partnerships among government, industrial enterprises, and institutions of higher education to research, identify, assess, and explore methane hydrate resources;

1           “(2) undertake programs to develop basic infor-  
2           mation necessary for promoting long-term interest in  
3           methane hydrate resources as an energy source;

4           “(3) ensure that the data and information de-  
5           veloped through the program are accessible and  
6           widely disseminated as needed and appropriate;

7           “(4) promote cooperation among agencies that  
8           are developing technologies that may hold promise  
9           for methane hydrate resource development;

10          “(5) report annually to Congress on the results  
11          of actions taken to carry out this Act; and

12          “(6) ensure, to the maximum extent prac-  
13          ticable, greater participation by the Department of  
14          Energy in international cooperative efforts.

15   **“SEC. 5. NATIONAL RESEARCH COUNCIL STUDY.**

16          “(a) AGREEMENT FOR STUDY.—The Secretary shall  
17          offer to enter into an agreement with the National Re-  
18          search Council under which the National Research Council  
19          shall—



1           “(1) conduct a study of the progress made  
2           under the methane hydrate research and develop-  
3           ment program implemented under this Act; and

4           “(2) make recommendations for future methane  
5           hydrate research and development needs.

6           “(b) REPORT.—Not later than September 30, 2009,  
7           the Secretary shall submit to Congress a report containing  
8           the findings and recommendations of the National Re-  
9           search Council under this section.

10   **“SEC. 6. REPORTS AND STUDIES FOR CONGRESS.**

11           “The Secretary shall provide to the Committee on  
12           Science of the House of Representatives and the Com-  
13           mittee on Energy and Natural Resources of the Senate  
14           copies of any report or study that the Department of En-  
15           ergy prepares at the direction of any committee of Con-  
16           gress relating to the methane hydrate research and devel-  
17           opment program implemented under this Act.

18   **“SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

19           “There are authorized to be appropriated to the Sec-  
20           retary to carry out this Act, to remain available until  
21           expended—



1 cation, outreach, information, analysis, and coordination  
2 activities.

3 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
4 are authorized to be appropriated to the Secretary to carry  
5 out research, development, demonstration, and commercial  
6 application activities of the Office of Science, including ac-  
7 tivities authorized under this subtitle (including the  
8 amounts authorized under the amendment made by sec-  
9 tion 976(b) and including basic energy sciences, advanced  
10 scientific and computing research, biological and environ-  
11 mental research, fusion energy sciences, high energy phys-  
12 ics, nuclear physics, research analysis, and infrastructure  
13 support)—

14 (1) \$4,153,000,000 for fiscal year 2007;

15 (2) \$4,586,000,000 for fiscal year 2008; and

16 (3) \$5,200,000,000 for fiscal year 2009.

17 (c) ALLOCATIONS.—From amounts authorized under  
18 subsection (b), the following sums are authorized:

19 (1) For activities under the Fusion Energy  
20 Sciences program (including activities under section  
21 972)—

1 (A) \$355,500,000 for fiscal year 2007;  
2 (B) \$369,500,000 for fiscal year 2008;  
3 (C) \$384,800,000 for fiscal year 2009; and  
4 (D) in addition to the amounts authorized  
5 under subparagraphs (A), (B), and (C), such  
6 sums as may be necessary for ITER construc-  
7 tion, consistent with the limitations of section  
8 972(c)(5).

9 (2) For activities under the catalysis research  
10 program under section 973—

11 (A) \$36,500,000 for fiscal year 2007;  
12 (B) \$38,200,000 for fiscal year 2008; and  
13 (C) such sums as may be necessary for fis-  
14 cal year 2009.

15 (3) For activities under the Systems Biology  
16 Program under section 977 such sums as may be  
17 necessary for each of fiscal years 2007 through  
18 2009.

19 (4) For activities under the Energy and Water  
20 Supplies program under section 979, \$30,000,000  
21 for each of fiscal years 2007 through 2009.

1           (5) For the energy research fellowships pro-  
2           grams under section 984, \$40,000,000 for each of  
3           fiscal years 2007 through 2009.

4           (6) For the advanced scientific computing ac-  
5           tivities under section 976—

6                   (A) \$270,000,000 for fiscal year 2007;

7                   (B) \$350,000,000 for fiscal year 2008; and

8                   (C) \$375,000,000 for fiscal year 2009.

9           (7) For the science and engineering education  
10          pilot program under section 983—

11                   (A) \$4,000,000 for each of fiscal years  
12                   2007 and 2008; and

13                   (B) \$8,000,000 for fiscal year 2009.

14          (d) INTEGRATED BIOENERGY RESEARCH AND DE-  
15          VELOPMENT.—In addition to amounts otherwise author-  
16          ized by this section, there are authorized to be appro-  
17          priated to the Secretary for integrated bioenergy research  
18          and development programs, projects, and activities,  
19          \$49,000,000 for each of the fiscal years 2005 through  
20          2009. Activities funded under this subsection shall be co-  
21          ordinated with ongoing related programs of other Federal

1 agencies, including the Plant Genome Program of the Na-  
2 tional Science Foundation. Of the funds authorized under  
3 this subsection, at least \$5,000,000 for each fiscal year  
4 shall be for training and education targeted to minority  
5 and socially disadvantaged farmers and ranchers.

6 **SEC. 972. FUSION ENERGY SCIENCES PROGRAM.**

7 (a) DECLARATION OF POLICY.—It shall be the policy  
8 of the United States to conduct research, development,  
9 demonstration, and commercial applications to provide for  
10 the scientific, engineering, and commercial infrastructure  
11 necessary to ensure that the United States is competitive  
12 with other countries in providing fusion energy for its own  
13 needs and the needs of other countries, including by dem-  
14 onstrating electric power or hydrogen production for the  
15 United States energy grid using fusion energy at the ear-  
16 liest date.

17 (b) PLANNING.—

18 (1) IN GENERAL.—Not later than 180 days  
19 after the date of enactment of this Act, the Sec-  
20 retary shall submit to Congress a plan (with pro-  
21 posed cost estimates, budgets, and lists of potential

1 international partners) for the implementation of the  
2 policy described in subsection (a) in a manner that  
3 ensures that—

4 (A) existing fusion research facilities are  
5 more fully used;

6 (B) fusion science, technology, theory, ad-  
7 vanced computation, modeling, and simulation  
8 are strengthened;

9 (C) new magnetic and inertial fusion re-  
10 search and development facilities are selected  
11 based on scientific innovation and cost effective-  
12 ness, and the potential of the facilities to ad-  
13 vance the goal of practical fusion energy at the  
14 earliest date practicable;

15 (D) facilities that are selected are funded  
16 at a cost-effective rate;

17 (E) communication of scientific results and  
18 methods between the fusion energy science com-  
19 munity and the broader scientific and tech-  
20 nology communities is improved;

1           (F) inertial confinement fusion facilities  
2           are used to the extent practicable for the pur-  
3           pose of inertial fusion energy research and de-  
4           velopment;

5           (G) attractive alternative inertial and mag-  
6           netic fusion energy approaches are more fully  
7           explored; and

8           (H) to the extent practicable, the rec-  
9           ommendations of the Fusion Energy Sciences  
10          Advisory Committee in the report on workforce  
11          planning, dated March 2004, are carried out,  
12          including periodic reassessment of program  
13          needs.

14          (2) COSTS AND SCHEDULES.—The plan shall  
15          also address the status of and, to the extent prac-  
16          ticable, costs and schedules for—

17                (A) the design and implementation of  
18                international or national facilities for the test-  
19                ing of fusion materials; and



1           (B) the design and implementation of  
2           international or national facilities for the test-  
3           ing and development of key fusion technologies.

4       (c) UNITED STATES PARTICIPATION IN ITER.—

5           (1) DEFINITIONS.—In this subsection:

6               (A) CONSTRUCTION.—

7                   (i) IN GENERAL.—The term “con-  
8                   struction” means—

9                       (I) the physical construction of  
10                      the ITER facility; and

11                      (II) the physical construction,  
12                      purchase, or manufacture of equip-  
13                      ment or components that are specifi-  
14                      cally designed for the ITER facility.

15                      (ii) EXCLUSIONS.—The term “con-  
16                      struction” does not include the design of  
17                      the facility, equipment, or components.

18               (B) ITER.—The term “ITER” means the  
19               international burning plasma fusion research  
20               project in which the President announced

1 United States participation on January 30,  
2 2003, or any similar international project.

3 (2) PARTICIPATION.—The United States may  
4 participate in the ITER only in accordance with this  
5 subsection.

6 (3) AGREEMENT.—

7 (A) IN GENERAL.—The Secretary may ne-  
8 gotiate an agreement for United States partici-  
9 pation in the ITER.

10 (B) CONTENTS.—Any agreement for  
11 United States participation in the ITER shall,  
12 at a minimum—

13 (i) clearly define the United States fi-  
14 nancial contribution to construction and  
15 operating costs, as well as any other costs  
16 associated with a project;

17 (ii) ensure that the share of high-tech-  
18 nology components of the ITER manufac-  
19 tured in the United States is at least pro-  
20 portionate to the United States financial  
21 contribution to the ITER;

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1 (iii) ensure that the United States will  
2 not be financially responsible for cost over-  
3 runs in components manufactured in other  
4 ITER participating countries;

5 (iv) guarantee the United States full  
6 access to all data generated by the ITER;

7 (v) enable United States researchers  
8 to propose and carry out an equitable  
9 share of the experiments at the ITER;

10 (vi) provide the United States with a  
11 role in all collective decisionmaking related  
12 to the ITER; and

13 (vii) describe the process for dis-  
14 continuing or decommissioning the ITER  
15 and any United States role in that process.

16 (4) PLAN.—

17 (A) DEVELOPMENT.—The Secretary, in  
18 consultation with the Fusion Energy Sciences  
19 Advisory Committee, shall develop a plan for  
20 the participation of United States scientists in  
21 the ITER that shall include—

1 (i) the United States research agenda  
2 for the ITER;

3 (ii) methods to evaluate whether the  
4 ITER is promoting progress toward mak-  
5 ing fusion a reliable and affordable source  
6 of power; and

7 (iii) a description of how work at the  
8 ITER will relate to other elements of the  
9 United States fusion program.

10 (B) REVIEW.—The Secretary shall request  
11 a review of the plan by the National Academy  
12 of Sciences.

13 (5) LIMITATION.—No Federal funds shall be  
14 expended for the construction of the ITER until the  
15 Secretary has submitted to Congress—

16 (A) the agreement negotiated in accord-  
17 ance with paragraph (3) and 120 days have  
18 elapsed since that submission;

19 (B) a report describing the management  
20 structure of the ITER and providing a fixed  
21 dollar estimate of the cost of United States par-

1 participation in the construction of the ITER, and  
2 120 days have elapsed since that submission;

3 (C) a report describing how United States  
4 participation in the ITER will be funded with-  
5 out reducing funding for other programs in the  
6 Office of Science (including other fusion pro-  
7 grams), and 60 days have elapsed since that  
8 submission; and

9 (D) the plan required by paragraph (4)  
10 (but not the National Academy of Sciences re-  
11 view of that plan), and 60 days have elapsed  
12 since that submission.

13 (6) ALTERNATIVE TO ITER.—

14 (A) IN GENERAL.—If at any time during  
15 the negotiations on the ITER, the Secretary de-  
16 termines that construction and operation of the  
17 ITER is unlikely or infeasible, the Secretary  
18 shall submit to Congress, along with the budget  
19 request of the President submitted to Congress  
20 for the following fiscal year, a plan for imple-  
21 menting a domestic burning plasma experiment

1           such as the Fusion Ignition Research Experi-  
2           ment, including costs and schedules for the  
3           plan.

4           (B) ADMINISTRATION.—The Secretary  
5           shall—

6                   (i) refine the plan in full consultation  
7                   with the Fusion Energy Sciences Advisory  
8                   Committee; and

9                   (ii) transmit the plan to the National  
10           Academy of Sciences for review.

11 **SEC. 973. CATALYSIS RESEARCH PROGRAM.**

12       (a) ESTABLISHMENT.—The Secretary, acting  
13 through the Office of Science, shall support a program of  
14 research and development in catalysis science consistent  
15 with the statutory authorities of the Department related  
16 to research and development.

17       (b) COMPONENTS.—The program shall include ef-  
18 ferts to—

19           (1) enable catalyst design using combinations of  
20           experimental and mechanistic methodologies coupled

1 with computational modeling of catalytic reactions at  
2 the molecular level;

3 (2) develop techniques for high throughput syn-  
4 thesis, assay, and characterization at nanometer and  
5 subnanometer scales in-situ under actual operating  
6 conditions;

7 (3) synthesize catalysts with specific site archi-  
8 tectures;

9 (4) conduct research on the use of precious  
10 metals for catalysis; and

11 (5) translate molecular understanding to the  
12 design of catalytic compounds.

13 (c) DUTIES OF THE OFFICE OF SCIENCE.—In car-  
14 rying out the program, the Director of the Office of  
15 Science shall—

16 (1) support both individual investigators and  
17 multidisciplinary teams of investigators to pioneer  
18 new approaches in catalytic design;

19 (2) develop, plan, construct, acquire, share, or  
20 operate special equipment or facilities for the use of

1       investigators in collaboration with national user fa-  
2       cilities, such as nanoscience and engineering centers;

3           (3) support technology transfer activities to  
4       benefit industry and other users of catalysis science  
5       and engineering; and

6           (4) coordinate research and development activi-  
7       ties with industry and other Federal agencies.

8       (d) ASSESSMENT.—Not later than 3 years after the  
9       date of enactment of this Act, the Secretary shall enter  
10      into an arrangement with the National Academy of  
11      Sciences to—

12           (1) review the catalysis program to measure—

13                   (A) gains made in the fundamental science  
14                   of catalysis; and

15                   (B) progress towards developing new fuels  
16                   for energy production and material fabrication  
17                   processes; and

18           (2) submit to Congress a report describing the  
19      results of the review.



1 **SEC. 974. HYDROGEN.**

2 (a) IN GENERAL.—The Secretary shall conduct a  
3 program of fundamental research and development in sup-  
4 port of programs authorized under title VIII.

5 (b) METHODS.—The program shall include support  
6 for methods of generating hydrogen without the use of  
7 natural gas.

8 **SEC. 975. SOLID STATE LIGHTING.**

9 The Secretary shall conduct a program of funda-  
10 mental research on solid state lighting in support of the  
11 Next Generation Lighting Initiative carried out under sec-  
12 tion 912.

13 **SEC. 976. ADVANCED SCIENTIFIC COMPUTING FOR ENERGY**  
14 **MISSIONS.**

15 (a) PROGRAM.—

16 (1) IN GENERAL.—The Secretary shall conduct  
17 an advanced scientific computing research and devel-  
18 opment program that includes activities related to  
19 applied mathematics and activities authorized by the  
20 Department of Energy High-End Computing Revi-  
21 talization Act of 2004 (15 U.S.C. 5541 et seq.).

1           (2) GOAL.—The Secretary shall carry out the  
2           program with the goal of supporting departmental  
3           missions, and providing the high-performance com-  
4           putational, networking, advanced visualization tech-  
5           nologies, and workforce resources, that are required  
6           for world leadership in science.

7           (b) HIGH-PERFORMANCE COMPUTING.—Section 203  
8           of the High-Performance Computing Act of 1991 (15  
9           U.S.C. 5523) is amended to read as follows:

10       **“SEC. 203. DEPARTMENT OF ENERGY ACTIVITIES.**

11       “(a) GENERAL RESPONSIBILITIES.—As part of the  
12       Program described in title I, the Secretary of Energy  
13       shall—

14           “(1) conduct and support basic and applied re-  
15           search in high-performance computing and net-  
16           working to support fundamental research in science  
17           and engineering disciplines related to energy applica-  
18           tions; and

19           “(2) provide computing and networking infra-  
20           structure support, including—

1           “(A) the provision of high-performance  
2           computing systems that are among the most  
3           advanced in the world in terms of performance  
4           in solving scientific and engineering problems;  
5           and

6           “(B) support for advanced software and  
7           applications development for science and engi-  
8           neering disciplines related to energy applica-  
9           tions.

10          “(b) AUTHORIZATION OF APPROPRIATIONS.—There  
11          are authorized to be appropriated to the Secretary of En-  
12          ergy such sums as are necessary to carry out this sec-  
13          tion.”.

14          **SEC. 977. SYSTEMS BIOLOGY PROGRAM.**

15          (a) PROGRAM.—

16                 (1) ESTABLISHMENT.—The Secretary shall es-  
17                 tablish a research, development, and demonstration  
18                 program in microbial and plant systems biology, pro-  
19                 tein science, and computational biology to support  
20                 the energy, national security, and environmental  
21                 missions of the Department.

1           (2) GRANTS.—The program shall support indi-  
2           vidual researchers and multidisciplinary teams of re-  
3           searchers through competitive, merit-reviewed  
4           grants.

5           (3) CONSULTATION.—In carrying out the pro-  
6           gram, the Secretary shall consult with other Federal  
7           agencies that conduct genetic and protein research.

8           (b) GOALS.—The program shall have the goal of de-  
9           veloping technologies and methods based on the biological  
10          functions of genomes, microbes, and plants that—

11          (1) can facilitate the production of fuels, includ-  
12          ing hydrogen;

13          (2) convert carbon dioxide to organic carbon;

14          (3) detoxify soils and water, including at facili-  
15          ties of the Department, contaminated with heavy  
16          metals and radiological materials; and

17          (4) address other Department missions as iden-  
18          tified by the Secretary.

19          (c) PLAN.—

20          (1) DEVELOPMENT OF PLAN.—Not later than 1  
21          year after the date of enactment of this Act, the

1 Secretary shall prepare and transmit to Congress a  
2 research plan describing how the program author-  
3 ized pursuant to this section will be undertaken to  
4 accomplish the program goals established in sub-  
5 section (b).

6 (2) REVIEW OF PLAN.—The Secretary shall  
7 contract with the National Academy of Sciences to  
8 review the research plan developed under this sub-  
9 section. The Secretary shall transmit the review to  
10 Congress not later than 18 months after transmittal  
11 of the research plan under paragraph (1), along with  
12 the Secretary's response to the recommendations  
13 contained in the review.

14 (d) USER FACILITIES AND ANCILLARY EQUIP-  
15 MENT.—Within the funds authorized to be appropriated  
16 pursuant to this subtitle, amounts shall be available for  
17 projects to develop, plan, construct, acquire, or operate  
18 special equipment, instrumentation, or facilities, including  
19 user facilities at National Laboratories, for researchers  
20 conducting research, development, demonstration, and

1 commercial application in systems biology and proteomics  
2 and associated biological disciplines.

3 (e) PROHIBITION ON BIOMEDICAL AND HUMAN CELL  
4 AND HUMAN SUBJECT RESEARCH.—

5 (1) NO BIOMEDICAL RESEARCH.—In carrying  
6 out the program under this section, the Secretary  
7 shall not conduct biomedical research.

8 (2) LIMITATIONS.—Nothing in this section shall  
9 authorize the Secretary to conduct any research or  
10 demonstrations—

11 (A) on human cells or human subjects; or

12 (B) designed to have direct application  
13 with respect to human cells or human subjects.

14 **SEC. 978. FISSION AND FUSION ENERGY MATERIALS RE-**  
15 **SEARCH PROGRAM.**

16 (a) IN GENERAL.—Along with the budget request of  
17 the President submitted to Congress for fiscal year 2007,  
18 the Secretary shall establish a research and development  
19 program on material science issues presented by advanced  
20 fission reactors and the fusion energy program of the De-  
21 partment.

1 (b) ADMINISTRATION.—In carrying out the program,  
2 the Secretary shall develop—

3 (1) a catalog of material properties required for  
4 applications described in subsection (a);

5 (2) theoretical models for materials possessing  
6 the required properties;

7 (3) benchmark models against existing data;  
8 and

9 (4) a roadmap to guide further research and  
10 development in the area covered by the program.

11 **SEC. 979. ENERGY AND WATER SUPPLIES.**

12 (a) IN GENERAL.—The Secretary shall carry out a  
13 program of research, development, demonstration, and  
14 commercial application to—

15 (1) address energy-related issues associated  
16 with provision of adequate water supplies, optimal  
17 management, and efficient use of water;

18 (2) address water-related issues associated with  
19 the provision of adequate supplies, optimal manage-  
20 ment, and efficient use of energy; and

1           (3) assess the effectiveness of existing programs  
2           within the Department and other Federal agencies  
3           to address these energy and water related issues.

4           (b) PROGRAM ELEMENTS.—The program under this  
5 section shall include—

6           (1) arsenic treatment;

7           (2) desalination; and

8           (3) planning, analysis, and modeling of energy  
9           and water supply and demand.

10          (c) COLLABORATION.—In carrying out this section,  
11 the Secretary shall consult with the Administrator of the  
12 Environmental Protection Agency, the Secretary of the In-  
13 terior, the Chief Engineer of the Army Corps of Engi-  
14 neers, the Secretary of Commerce, the Secretary of De-  
15 fense, and other Federal agencies as appropriate.

16          (d) FACILITIES.—The Secretary may utilize all exist-  
17 ing facilities within the Department and may design and  
18 construct additional facilities as needed to carry out the  
19 purposes of this program.



1 (e) ADVISORY COMMITTEE.—The Secretary shall es-  
2 tablish or utilize an advisory committee to provide inde-  
3 pendent advice and review of the program.

4 (f) REPORTS.—Not later than 2 years after the date  
5 of enactment of this Act, the Secretary shall submit to  
6 Congress a report on the assessment described in sub-  
7 section (b) and recommendations for future actions.

8 **SEC. 980. SPALLATION NEUTRON SOURCE.**

9 (a) DEFINITIONS.—In this section:

10 (1) SING.—The term “SING” means the  
11 Spallation Neutron Source Instruments Next Gen-  
12 eration major item of equipment.

13 (2) SNS POWER UPGRADE.—The term “SNS  
14 power upgrade” means the Spallation Neutron  
15 Source power upgrade described in the 20-year fa-  
16 cilities plan of the Office of Science of the Depart-  
17 ment.

18 (3) SNS SECOND TARGET STATION.—The term  
19 “SNS second target station” the Spallation Neutron  
20 Source second target station described in the 20-

1 year facilities plan of the Office of Science of the  
2 Department.

3 (4) SPALLATION NEUTRON SOURCE FACILITY.—  
4 The terms “Spallation Neutron Source Facility” and  
5 “Facility” mean the completed Spallation Neutron  
6 Source scientific user facility located at Oak Ridge  
7 National Laboratory, Oak Ridge, Tennessee.

8 (5) SPALLATION NEUTRON SOURCE PROJECT.—  
9 The terms “Spallation Neutron Source Project” and  
10 “Project” means Department Project 99–E–334,  
11 Oak Ridge National Laboratory, Oak Ridge, Ten-  
12 nessee.

13 (b) SPALLATION NEUTRON SOURCE PROJECT.—

14 (1) IN GENERAL.—The Secretary shall submit  
15 to Congress, as part of the annual budget request of  
16 the President submitted to Congress, a report on  
17 progress on the Spallation Neutron Source Project.

18 (2) CONTENTS.—The report shall include for  
19 the Project—

20 (A) a description of the achievement of  
21 milestones;

1 (B) a comparison of actual costs to esti-  
2 mated costs; and

3 (C) any changes in estimated Project costs  
4 or schedule.

5 (c) SPALLATION NEUTRON SOURCE FACILITY  
6 PLAN.—

7 (1) IN GENERAL.—The Secretary shall develop  
8 an operational plan for the Spallation Neutron  
9 Source Facility that ensures that the Facility is em-  
10 ployed to the full capability of the Facility in sup-  
11 port of the study of advanced materials, nanoscience,  
12 and other missions of the Office of Science of the  
13 Department.

14 (2) PLAN.—The operational plan shall—

15 (A) include a plan for the operation of an  
16 effective scientific user program that—

17 (i) is based on peer review of pro-  
18 posals submitted for use of the Facility;

19 (ii) includes scientific and technical  
20 support to ensure that external users, in-  
21 cluding researchers based at institutions of

1 higher education, are able to make full use  
2 of a variety of high quality scientific in-  
3 struments; and

4 (iii) phases in systems upgrades to en-  
5 sure that the Facility remains at the fore-  
6 front of international scientific endeavors  
7 in the field of the Facility throughout the  
8 operating life of the Facility;

9 (B) include an ongoing program to develop  
10 new instruments that builds on the high per-  
11 formance neutron source and that allows neu-  
12 tron scattering techniques to be applied to a  
13 growing range of scientific problems and dis-  
14 ciplines; and

15 (C) address the status of and, to the max-  
16 imum extent practicable, costs and schedules  
17 for—

18 (i) full user mode operations of the  
19 Facility;

20 (ii) instrumentation built at the Facil-  
21 ity during the operating phase through full

1 use of the experimental hall, including the  
2 SING;

3 (iii) the SNS power upgrade; and

4 (iv) the SNS second target station.

5 (d) AUTHORIZATION OF APPROPRIATIONS.—

6 (1) SPALLATION NEUTRON SOURCE PROJECT.—

7 There is authorized to be appropriated to carry out  
8 the Spallation Neutron Source Project for the life-  
9 time of the Project \$1,411,700,000 for total project  
10 costs, of which—

11 (A) \$1,192,700,000 shall be used for the  
12 costs of construction; and

13 (B) \$219,000,000 shall be used for other  
14 Project costs.

15 (2) SPALLATION NEUTRON SOURCE FACILITY.—

16 (A) IN GENERAL.—Except as provided in  
17 subparagraph (B), there is authorized to be ap-  
18 propriated for the Spallation Neutron Source  
19 Facility for—

20 (i) the SING, \$75,000,000 for each of  
21 fiscal year 2007 through 2009; and

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1                   (ii) the SNS power upgrade,  
2                   \$160,000,000, to remain available until ex-  
3                   pended.

4                   (B) INSUFFICIENT STOCKPILES OF HEAVY  
5                   WATER.—If stockpiles of heavy water of the  
6                   Department are insufficient to meet the needs  
7                   of the Facility, there is authorized to be appro-  
8                   priated for the Facility \$12,000,000 for fiscal  
9                   year 2007.

10 **SEC. 981. RARE ISOTOPE ACCELERATOR.**

11           (a) ESTABLISHMENT.—The Secretary shall construct  
12 and operate a Rare Isotope Accelerator. The Secretary  
13 shall commence construction no later than September 30,  
14 2008.

15           (b) AUTHORIZATION OF APPROPRIATIONS.—There  
16 are authorized to be appropriated to the Secretary such  
17 sums as may be necessary to carry out this section. The  
18 Secretary shall not spend more than \$1,100,000,000 in  
19 Federal funds for all activities associated with the Rare  
20 Isotope Accelerator, prior to operation of the Accelerator.

1 **SEC. 982. OFFICE OF SCIENTIFIC AND TECHNICAL INFOR-**  
2 **MATION.**

3 The Secretary, through the Office of Scientific and  
4 Technical Information, shall maintain within the Depart-  
5 ment publicly available collections of scientific and tech-  
6 nical information resulting from research, development,  
7 demonstration, and commercial applications activities sup-  
8 ported by the Department.

9 **SEC. 983. SCIENCE AND ENGINEERING EDUCATION PILOT**  
10 **PROGRAM.**

11 (a) **ESTABLISHMENT OF PILOT PROGRAM.**—The Sec-  
12 retary shall award a grant to a Southeastern United  
13 States consortium of major research universities that cur-  
14 rently advances science and education by partnering with  
15 National Laboratories, to establish a regional pilot pro-  
16 gram of its SEEK-16 program for enhancing scientific,  
17 technological, engineering, and mathematical literacy, cre-  
18 ativity, and decision-making. The consortium shall include  
19 leading research universities, 1 or more universities that  
20 train substantial numbers of elementary and secondary

1 school teachers, and (where appropriate) National Labora-  
2 tories.

3 (b) PROGRAM ELEMENTS.—The regional pilot pro-  
4 gram shall include—

5 (1) expanding strategic, formal partnerships  
6 among universities with strength in research, univer-  
7 sities that train substantial numbers of elementary  
8 and secondary school teachers, and the private sec-  
9 tor;

10 (2) combining Department expertise with 1 or  
11 more National Aeronautics and Space Administra-  
12 tion Educator Resource Centers;

13 (3) developing programs to permit current and  
14 future teachers to participate in ongoing research  
15 projects at National Laboratories and research uni-  
16 versities and to adapt lessons learned to the class-  
17 room;

18 (4) designing and implementing course work;

19 (5) designing and implementing a strategy for  
20 measuring and assessing progress under the pro-  
21 gram; and



1           (6) developing models for transferring knowl-  
2           edge gained under the pilot program to other insti-  
3           tutions and areas of the United States.

4           (c) CATEGORIZATION.—A grant under this section  
5 shall be considered an authorized activity under section  
6 3165 of the Department of Energy Science Education En-  
7 hancement Act (42 U.S.C. 7381b).

8           (d) REPORT.—No later than 2 years after the award  
9 of the grant, the Secretary shall transmit to Congress a  
10 report outlining lessons learned and, if determined appro-  
11 priate by the Secretary, containing a plan for expanding  
12 the program throughout the United States.

13 **SEC. 984. ENERGY RESEARCH FELLOWSHIPS.**

14           (a) POSTDOCTORAL FELLOWSHIP PROGRAM.—The  
15 Secretary shall establish a program under which the Sec-  
16 retary provides fellowships to encourage outstanding  
17 young scientists and engineers to pursue postdoctoral re-  
18 search appointments in energy research and development  
19 at institutions of higher education of their choice.

20           (b) SENIOR RESEARCH FELLOWSHIPS.—

1           (1) IN GENERAL.—The Secretary shall establish  
2           a program under which the Secretary provides fel-  
3           lowships to allow outstanding senior researchers and  
4           their research groups in energy research and devel-  
5           opment to explore research and development topics  
6           of their choosing for a period of not less than 3  
7           years, to be determined by the Secretary.

8           (2) CONSIDERATION.—In providing a fellowship  
9           under the program described in paragraph (1), the  
10          Secretary shall consider—

11                   (A) the past scientific or technical accom-  
12                   plishment of a senior researcher; and

13                   (B) the potential for continued accomplish-  
14                   ment by the researcher during the period of the  
15                   fellowship.

16   **SEC. 984A. SCIENCE AND TECHNOLOGY SCHOLARSHIP PRO-**  
17                   **GRAM.**

18          (a) IN GENERAL.—The Secretary is authorized to es-  
19          tablish a Science and Technology Scholarship Program to  
20          award scholarships to individuals that is designed to re-

1    recruit and prepare students for careers in the Department  
2    and National Laboratories.

3           (b) **SERVICE REQUIREMENT.**—The Secretary may re-  
4    quire that an individual receiving a scholarship under this  
5    section serve as a full-time employee of the Department  
6    or a National Laboratory for a fixed period in return for  
7    receiving the scholarship.

8                           **Subtitle H—International**  
9                           **Cooperation**

10   **SEC. 985. WESTERN HEMISPHERE ENERGY COOPERATION.**

11           (a) **PROGRAM.**—The Secretary shall carry out a pro-  
12    gram to promote cooperation on energy issues with coun-  
13    tries of the Western Hemisphere.

14           (b) **ACTIVITIES.**—Under the program, the Secretary  
15    shall fund activities to work with countries of the Western  
16    Hemisphere to—

17                   (1) increase the production of energy supplies;

18                   (2) improve energy efficiency; and

19                   (3) assist in the development and transfer of  
20    energy supply and efficiency technologies that would  
21    have a beneficial impact on world energy markets.

1           (c) PARTICIPATION BY INSTITUTIONS OF HIGHER  
2 EDUCATION.—To the extent practicable, the Secretary  
3 shall carry out the program under this section with the  
4 participation of institutions of higher education so as to  
5 take advantage of the acceptance of institutions of higher  
6 education by countries of the Western Hemisphere as  
7 sources of unbiased technical and policy expertise when  
8 assisting the Secretary in—

9                   (1) evaluating new technologies;

10                   (2) resolving technical issues;

11                   (3) working with those countries in the develop-  
12           ment of new policies; and

13                   (4) training policymakers, particularly in the  
14           case of institutions of higher education that involve  
15           the participation of minority students, such as—

16                           (A) Hispanic-serving institutions; and

17                           (B) part B institutions.

18           (d) AUTHORIZATION OF APPROPRIATIONS.—There  
19 are authorized to be appropriated to carry out this  
20 section—

21                   (1) \$10,000,000 for fiscal year 2007;

1 (2) \$13,000,000 for fiscal year 2008; and

2 (3) \$16,000,000 for fiscal year 2009.

3 **SEC. 986. COOPERATION BETWEEN UNITED STATES AND**  
4 **ISRAEL.**

5 (a) FINDINGS.—Congress finds that—

6 (1) on February 1, 1996, the United States and  
7 Israel signed the agreement entitled “Agreement be-  
8 tween the Department of Energy of the United  
9 States of America and the Ministry of Energy and  
10 Infrastructure of Israel Concerning Energy Coopera-  
11 tion”, (referred to in this section as the “Agree-  
12 ment”) to establish a framework for collaboration  
13 between the United States and Israel in energy re-  
14 search and development activities;

15 (2) the Agreement entered into force in Feb-  
16 ruary 2000;

17 (3) in February 2005, the Agreement was auto-  
18 matically renewed for 1 additional 5-year period pur-  
19 suant to Article X of the Agreement; and

20 (4) under the Agreement, the United States  
21 and Israel may cooperate in energy research and de-

1       velopment in a variety of alternative and advanced  
2       energy sectors.

3       (b) REPORT TO CONGRESS.—Not later than 90 days  
4 after the date of enactment of this Act, the Secretary shall  
5 submit to the Committee on Energy and Natural Re-  
6 sources and the Committee on Foreign Relations of the  
7 Senate and the Committee on Energy and Commerce and  
8 the Committee on International Relations of the House  
9 of Representatives a report that describes—

10           (1) the ways in which the United States and  
11       Israel have cooperated on energy research and devel-  
12       opment activities under the Agreement;

13           (2) projects initiated pursuant to the Agree-  
14       ment; and

15           (3) plans for future cooperation and joint  
16       projects under the Agreement.

17       (c) SENSE OF CONGRESS.—It is the sense of Con-  
18 gress that energy cooperation between the Governments  
19 of the United States and Israel is mutually beneficial in  
20 the development of energy technology.

1 **SEC. 986A. INTERNATIONAL ENERGY TRAINING.**

2 (a) IN GENERAL.—The Secretary, in consultation  
3 with the Secretary of Commerce, the Secretary of the Inte-  
4 rior, and Secretary of State, and the Federal Energy Reg-  
5 ulatory Commission, shall coordinate training and out-  
6 reach efforts for international commercial energy markets  
7 in countries with developing and restructuring economies.

8 (b) COMPONENTS.—The training and outreach ef-  
9 forts referred to in subsection (a) may include—

- 10 (1) production-related fiscal regimes;
- 11 (2) grid and network issues;
- 12 (3) energy user and demand side response;
- 13 (4) international trade of energy; and
- 14 (5) international transportation of energy.

15 (c) AUTHORIZATION OF APPROPRIATIONS.—There is  
16 authorized to be appropriated to carry out this section  
17 \$1,500,000 for each of fiscal years 2007 through 2010.

1                   **Subtitle I—Research**  
2                   **Administration and Operations**

3 **SEC. 987. AVAILABILITY OF FUNDS.**

4           Funds authorized to be appropriated to the Depart-  
5 ment under this Act or an amendment made by this Act  
6 shall remain available until expended.

7 **SEC. 988. COST SHARING.**

8           (a) **APPLICABILITY.**—Notwithstanding any other pro-  
9 vision of law, in carrying out a research, development,  
10 demonstration, or commercial application program or ac-  
11 tivity that is initiated after the date of enactment of this  
12 section, the Secretary shall require cost-sharing in accord-  
13 ance with this section.

14           (b) **RESEARCH AND DEVELOPMENT.**—

15               (1) **IN GENERAL.**—Except as provided in para-  
16 graphs (2) and (3) and subsection (f), the Secretary  
17 shall require not less than 20 percent of the cost of  
18 a research or development activity described in sub-  
19 section (a) to be provided by a non-Federal source.

20               (2) **EXCLUSION.**—Paragraph (1) shall not apply  
21 to a research or development activity described in



1 subsection (a) that is of a basic or fundamental na-  
2 ture, as determined by the appropriate officer of the  
3 Department.

4 (3) REDUCTION.—The Secretary may reduce or  
5 eliminate the requirement of paragraph (1) for a re-  
6 search and development activity of an applied nature  
7 if the Secretary determines that the reduction is nec-  
8 essary and appropriate.

9 (c) DEMONSTRATION AND COMMERCIAL APPLICA-  
10 TION.—

11 (1) IN GENERAL.—Except as provided in para-  
12 graph (2) and subsection (f), the Secretary shall re-  
13 quire that not less than 50 percent of the cost of a  
14 demonstration or commercial application activity de-  
15 scribed in subsection (a) to be provided by a non-  
16 Federal source.

17 (2) REDUCTION OF NON-FEDERAL SHARE.—  
18 The Secretary may reduce the non-Federal share re-  
19 quired under paragraph (1) if the Secretary deter-  
20 mines the reduction to be necessary and appropriate,

1 taking into consideration any technological risk re-  
2 lating to the activity.

3 (d) CALCULATION OF AMOUNT.—In calculating the  
4 amount of a non-Federal contribution under this section,  
5 the Secretary—

6 (1) may include allowable costs in accordance  
7 with the applicable cost principles, including—

8 (A) cash;

9 (B) personnel costs;

10 (C) the value of a service, other resource,  
11 or third party in-kind contribution determined  
12 in accordance with the applicable circular of the  
13 Office of Management and Budget;

14 (D) indirect costs or facilities and adminis-  
15 trative costs; or

16 (E) any funds received under the power  
17 program of the Tennessee Valley Authority (ex-  
18 cept to the extent that such funds are made  
19 available under an annual appropriation Acts);  
20 and

21 (2) shall not include—

1           (A) revenues or royalties from the prospec-  
2           tive operation of an activity beyond the time  
3           considered in the award;

4           (B) proceeds from the prospective sale of  
5           an asset of an activity; or

6           (C) other appropriated Federal funds.

7       (e) REPAYMENT OF FEDERAL SHARE.—The Sec-  
8       retary shall not require repayment of the Federal share  
9       of a cost-shared activity under this section as a condition  
10      of making an award.

11      (f) EXCLUSIONS.—This section shall not apply to—

12           (1) a cooperative research and development  
13           agreement under the Stevenson-Wydler Technology  
14           Innovation Act of 1980 (15 U.S.C. 3701 et seq.);

15           (2) a fee charged for the use of a Department  
16           facility; or

17           (3) an award under—

18                   (A) the small business innovation research  
19                   program under section 9 of the Small Business  
20                   Act (15 U.S.C. 638); or

1 (B) the small business technology transfer  
2 program under that section.

3 **SEC. 989. MERIT REVIEW OF PROPOSALS.**

4 (a) AWARDS.—Awards of funds authorized under this  
5 Act or an amendment made by this Act shall be made only  
6 after an impartial review of the scientific and technical  
7 merit of the proposals for the awards has been carried out  
8 by or for the Department.

9 (b) COMPETITION.—Competitive awards under this  
10 Act shall involve competitions open to all qualified entities  
11 within 1 or more of the following categories:

12 (1) Institutions of higher education.

13 (2) National Laboratories.

14 (3) Nonprofit and for-profit private entities.

15 (4) State and local governments.

16 (5) Consortia of entities described in para-  
17 graphs (1) through (4).

18 (c) SENSE OF CONGRESS.—It is the sense of Con-  
19 gress that research, development, demonstration, and  
20 commercial application activities carried out by the De-

1 partment should be awarded using competitive procedures,  
2 to the maximum extent practicable.

3 **SEC. 990. EXTERNAL TECHNICAL REVIEW OF DEPART-**  
4 **MENTAL PROGRAMS.**

5 (a) NATIONAL ENERGY RESEARCH AND DEVELOP-  
6 MENT ADVISORY BOARDS.—

7 (1) ESTABLISHMENT.—The Secretary shall es-  
8 tablish 1 or more advisory boards to review research,  
9 development, demonstration, and commercial appli-  
10 cation programs of the Department in energy effi-  
11 ciency, renewable energy, nuclear energy, and fossil  
12 energy.

13 (2) ALTERNATIVES.—The Secretary may—

14 (A) designate an existing advisory board  
15 within the Department to fulfill the responsibil-  
16 ities of an advisory board under this section;  
17 and

18 (B) enter into appropriate arrangements  
19 with the National Academy of Sciences to es-  
20 tablish such an advisory board.

1 (b) USE OF EXISTING COMMITTEES.—The Secretary  
2 shall continue to use the scientific program advisory com-  
3 mittees chartered under the Federal Advisory Committee  
4 Act (5 U.S.C. App.) by the Office of Science to oversee  
5 research and development programs under that Office.

6 (c) MEMBERSHIP.—Each advisory board under this  
7 section shall consist of persons with appropriate expertise  
8 representing a diverse range of interests.

9 (d) MEETINGS AND GOALS.—

10 (1) MEETINGS.—Each advisory board under  
11 this section shall meet at least semiannually to re-  
12 view and advise on the progress made by the respec-  
13 tive 1 or more research, development, demonstration,  
14 and commercial application programs.

15 (2) GOALS.—The advisory board shall review  
16 the measurable cost and performance-based goals for  
17 the programs as established under section 902, and  
18 the progress on meeting the goals.

19 (e) PERIODIC REVIEWS AND ASSESSMENTS.—

20 (1) IN GENERAL.—The Secretary shall enter  
21 into appropriate arrangements with the National

1 Academy of Sciences to conduct periodic reviews and  
2 assessments of—

3 (A) the research, development, demonstra-  
4 tion, and commercial application programs au-  
5 thorized by this Act and amendments made by  
6 this Act;

7 (B) the measurable cost and performance-  
8 based goals for the programs as established  
9 under section 902, if any; and

10 (C) the progress on meeting the goals.

11 (2) TIMING.—The reviews and assessments  
12 shall be conducted every 5 years or more often as  
13 the Secretary considers necessary.

14 (3) REPORTS.—The Secretary shall submit to  
15 Congress reports describing the results of all the re-  
16 views and assessments.

17 **SEC. 991. NATIONAL LABORATORY DESIGNATION.**

18 After the date of enactment of this Act, the Secretary  
19 shall not designate a facility that is not listed in section  
20 2(3) as a National Laboratory.

1 **SEC. 992. REPORT ON EQUAL EMPLOYMENT OPPORTUNITY**  
2 **PRACTICES.**

3 Not later than 12 months after the date of enactment  
4 of this Act, and biennially thereafter, the Secretary shall  
5 transmit to Congress a report on the equal employment  
6 opportunity practices at National Laboratories. Such re-  
7 port shall include—

8 (1) a thorough review of each National Labora-  
9 tory contractor's equal employment opportunity poli-  
10 cies, including promotion to management and profes-  
11 sional positions and pay raises;

12 (2) a statistical report on complaints and their  
13 disposition in the National Laboratories;

14 (3) a description of how equal employment op-  
15 portunity practices at the National Laboratories are  
16 treated in the contract and in calculating award fees  
17 for each contractor;

18 (4) a summary of disciplinary actions and their  
19 disposition by either the Department or the relevant  
20 contractors for each National Laboratory;



1           (5) a summary of outreach efforts to attract  
2 women and minorities to the National Laboratories;

3           (6) a summary of efforts to retain women and  
4 minorities in the National Laboratories; and

5           (7) a summary of collaboration efforts with the  
6 Office of Federal Contract Compliance Programs to  
7 improve equal employment opportunity practices at  
8 the National Laboratories.

9 **SEC. 993. STRATEGY AND PLAN FOR SCIENCE AND ENERGY**  
10 **FACILITIES AND INFRASTRUCTURE.**

11 (a) FACILITY AND INFRASTRUCTURE POLICY.—

12           (1) IN GENERAL.—The Secretary shall develop  
13 and implement a strategy for facilities and infra-  
14 structure supported primarily from the Office of  
15 Science, the Office of Energy Efficiency and Renew-  
16 able Energy, the Office of Fossil Energy, or the Of-  
17 fice of Nuclear Energy, Science and Technology Pro-  
18 grams at all National Laboratories and single-pur-  
19 pose research facilities.

20           (2) STRATEGY.—The strategy shall provide  
21 cost-effective means for—

- 1 (A) maintaining existing facilities and in-  
2 frastructure;  
3 (B) closing unneeded facilities;  
4 (C) making facility modifications; and  
5 (D) building new facilities.

6 (b) REPORT.—

7 (1) IN GENERAL.—The Secretary shall prepare  
8 and submit, along with the budget request of the  
9 President submitted to Congress for fiscal year  
10 2008, a report describing the strategy developed  
11 under subsection (a).

12 (2) CONTENTS.—For each National Laboratory  
13 and single-purpose research facility that is primarily  
14 used for science and energy research, the report  
15 shall contain—

16 (A) the current priority list of proposed fa-  
17 cilities and infrastructure projects, including  
18 cost and schedule requirements;

19 (B) a current 10-year plan that dem-  
20 onstrates the reconfiguration of its facilities and  
21 infrastructure to meet its missions and to ad-

1 dress its long-term operational costs and return  
2 on investment;

3 (C) the total current budget for all facili-  
4 ties and infrastructure funding; and

5 (D) the current status of each facility and  
6 infrastructure project compared to the original  
7 baseline cost, schedule, and scope.

8 **SEC. 994. STRATEGIC RESEARCH PORTFOLIO ANALYSIS**  
9 **AND COORDINATION PLAN.**

10 (a) IN GENERAL.—The Secretary shall periodically  
11 review all of the science and technology activities of the  
12 Department in a strategic framework that takes into ac-  
13 count both the frontiers of science to which the Depart-  
14 ment can contribute and the national needs relevant to  
15 the Department's statutory missions.

16 (b) COORDINATION ANALYSIS AND PLAN.—As part  
17 of the review under subsection (a), the Secretary shall de-  
18 velop a coordination plan to improve coordination and col-  
19 laboration in research, development, demonstration, and  
20 commercial application activities across Department orga-  
21 nizational boundaries.

1 (c) PLAN CONTENTS.—The plan shall describe—

2 (1) cross-cutting scientific and technical issues  
3 and research questions that span more than 1 pro-  
4 gram or major office of the Department;

5 (2) how the applied technology programs of the  
6 Department are coordinating their activities, and ad-  
7 dressing those questions;

8 (3) ways in which the technical interchange  
9 within the Department, particularly between the Of-  
10 fice of Science and the applied technology programs,  
11 can be enhanced, including ways in which the re-  
12 search agendas of the Office of Science and the ap-  
13 plied programs can interact and assist each other;

14 (4) a description of how the Secretary will en-  
15 sure that the Department's overall research agenda  
16 include, in addition to fundamental, curiosity-driven  
17 research, fundamental research related to topics of  
18 concern to the applied programs, and applications in  
19 Departmental technology programs of research re-  
20 sults generated by fundamental, curiosity-driven re-  
21 search.

1 (d) PLAN TRANSMITTAL.—Not later than 12 months  
2 after the date of enactment of this Act, and every 4 years  
3 thereafter, the Secretary shall transmit to Congress the  
4 results of the review under subsection (a) and the coordi-  
5 nation plan under subsection (b).

6 **SEC. 995. COMPETITIVE AWARD OF MANAGEMENT CON-**  
7 **TRACTS.**

8 None of the funds authorized to be appropriated to  
9 the Secretary by this title may be used to award a manage-  
10 ment and operating contract for a National Laboratory  
11 (excluding those named in subparagraphs (G), (H), (N),  
12 and (O) of section 2 (3)), unless such contract is competi-  
13 tively awarded, or the Secretary grants, on a case-by-case  
14 basis, a waiver. The Secretary may not delegate the au-  
15 thority to grant such a waiver and shall submit to Con-  
16 gress a report notifying it of the waiver, and setting forth  
17 the reasons for the waiver, at least 60 days prior to the  
18 date of the award of such contract.

19 **SEC. 996. WESTERN MICHIGAN DEMONSTRATION PROJECT.**

20 The Administrator of the Environmental Protection  
21 Agency, in consultation with the State of Michigan and

1 affected local officials, shall conduct a demonstration  
2 project to address the effect of transported ozone and  
3 ozone precursors in Southwestern Michigan. The dem-  
4 onstration program shall address projected nonattainment  
5 areas in Southwestern Michigan that include counties with  
6 design values for ozone of less than .095 based on years  
7 2000 to 2002 or the most current 3-year period of air  
8 quality data. The Administrator shall assess any difficul-  
9 ties such areas may experience in meeting the 8-hour na-  
10 tional ambient air quality standard for ozone due to the  
11 effect of transported ozone or ozone precursors into the  
12 areas. The Administrator shall work with State and local  
13 officials to determine the extent of ozone and ozone pre-  
14 cursor transport, to assess alternatives to achieve compli-  
15 ance with the 8-hour standard apart from local controls,  
16 and to determine the timeframe in which such compliance  
17 could take place. The Administrator shall complete this  
18 demonstration project no later than 2 years after the date  
19 of enactment of this section and shall not impose any re-  
20 quirement or sanction under the Clean Air Act (42 U.S.C.

1 7401 et seq.) that might otherwise apply during the pend-  
2 ency of the demonstration project.

3 **SEC. 997. ARCTIC ENGINEERING RESEARCH CENTER.**

4 (a) IN GENERAL.—The Secretary of Transportation,  
5 in consultation with the Secretary and the United States  
6 Arctic Research Commission, shall provide annual grants  
7 to a university located adjacent to the Arctic Energy Of-  
8 fice of the Department of Energy, to establish and operate  
9 a university research center to be headquartered in Fair-  
10 banks and to be known as the “Arctic Engineering Re-  
11 search Center” (referred to in this section as the “Cen-  
12 ter”).

13 (b) PURPOSE.—The purpose of the Center shall be  
14 to conduct research on, and develop improved methods of,  
15 construction and use of materials to improve the overall  
16 performance of roads, bridges, residential, commercial,  
17 and industrial structures, and other infrastructure in the  
18 Arctic region, with an emphasis on developing—

19 (1) new construction techniques for roads,  
20 bridges, rail, and related transportation infrastruc-  
21 ture and residential, commercial, and industrial in-

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1        frastructure that are capable of withstanding the  
2        Arctic environment and using limited energy re-  
3        sources as efficiently as practicable;

4            (2) technologies and procedures for increasing  
5        road, bridge, rail, and related transportation infra-  
6        structure and residential, commercial, and industrial  
7        infrastructure safety, reliability, and integrity in the  
8        Arctic region;

9            (3) new materials and improving the perform-  
10        ance and energy efficiency of existing materials for  
11        the construction of roads, bridges, rail, and related  
12        transportation infrastructure and residential, com-  
13        mercial, and industrial infrastructure in the Arctic  
14        region; and

15            (4) recommendations for new local, regional,  
16        and State permitting and building codes to ensure  
17        transportation and building safety and efficient en-  
18        ergy use when constructing, using, and occupying  
19        such infrastructure in the Arctic region.

20        (c) OBJECTIVES.—The Center shall carry out—



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1           (1) basic and applied research in the subjects  
2           described in subsection (b), the products of which  
3           shall be judged by peers or other experts in the field  
4           to advance the body of knowledge in road, bridge,  
5           rail, and infrastructure engineering in the Arctic re-  
6           gion; and

7           (2) an ongoing program of technology transfer  
8           that makes research results available to potential  
9           users in a form that can be implemented.

10          (d) AMOUNT OF GRANT.—For each of fiscal years  
11 2006 through 2011, the Secretary shall provide a grant  
12 in the amount of \$3,000,000 to the institution specified  
13 in subsection (a) to carry out this section.

14          (e) AUTHORIZATION OF APPROPRIATIONS.—There  
15 are authorized to be appropriated to carry out this section  
16 \$3,000,000 for each of fiscal years 2006 through 2011.

17 **SEC. 998. BARROW GEOPHYSICAL RESEARCH FACILITY.**

18          (a) ESTABLISHMENT.—The Secretary of Commerce,  
19 in consultation with the Secretaries of Energy and the In-  
20 terior, the Director of the National Science Foundation,  
21 and the Administrator of the Environmental Protection

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1 Agency, shall establish a joint research facility in Barrow,  
2 Alaska, to be known as the “Barrow Geophysical Research  
3 Facility”, to support scientific research activities in the  
4 Arctic.

5 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
6 are authorized to be appropriated to the Secretaries of  
7 Commerce, Energy, and the Interior, the Director of the  
8 National Science Foundation, and the Administrator of  
9 the Environmental Protection Agency for the planning,  
10 design, construction, and support of the Barrow Geo-  
11 physical Research Facility, \$61,000,000.

12 **Subtitle J—Ultra-Deepwater and**  
13 **Unconventional Natural Gas**  
14 **and Other Petroleum Resources**

15 **SEC. 999A. PROGRAM AUTHORITY.**

16 (a) IN GENERAL.—The Secretary shall carry out a  
17 program under this subtitle of research, development,  
18 demonstration, and commercial application of technologies  
19 for ultra-deepwater and unconventional natural gas and  
20 other petroleum resource exploration and production, in-  
21 cluding addressing the technology challenges for small

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1 producers, safe operations, and environmental mitigation  
2 (including reduction of greenhouse gas emissions and se-  
3 questration of carbon).

4 (b) PROGRAM ELEMENTS.—The program under this  
5 subtitle shall address the following areas, including im-  
6 proving safety and minimizing environmental impacts of  
7 activities within each area:

8 (1) Ultra-deepwater architecture and tech-  
9 nology, including drilling to formations in the Outer  
10 Continental Shelf to depths greater than 15,000  
11 feet.

12 (2) Unconventional natural gas and other petro-  
13 leum resource exploration and production tech-  
14 nology.

15 (3) The technology challenges of small pro-  
16 ducers.

17 (4) Complementary research performed by the  
18 National Energy Technology Laboratory for the De-  
19 partment.

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1 (c) LIMITATION ON LOCATION OF FIELD ACTIVI-  
2 TIES.—Field activities under the program under this sub-  
3 title shall be carried out only—

4 (1) in—

5 (A) areas in the territorial waters of the  
6 United States not under any Outer Continental  
7 Shelf moratorium as of September 30, 2002;

8 (B) areas onshore in the United States on  
9 public land administered by the Secretary of the  
10 Interior available for oil and gas leasing, where  
11 consistent with applicable law and land use  
12 plans; and

13 (C) areas onshore in the United States on  
14 State or private land, subject to applicable law;  
15 and

16 (2) with the approval of the appropriate Fed-  
17 eral or State land management agency or private  
18 land owner.

19 (d) ACTIVITIES AT THE NATIONAL ENERGY TECH-  
20 NOLOGY LABORATORY.—The Secretary, through the Na-  
21 tional Energy Technology Laboratory, shall carry out a

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1 program of research and other activities complementary  
2 to and supportive of the research programs under sub-  
3 section (b).

4 (e) CONSULTATION WITH SECRETARY OF THE INTE-  
5 RIOR.—In carrying out this subtitle, the Secretary shall  
6 consult regularly with the Secretary of the Interior.

7 **SEC. 999B. ULTRA-DEEPWATER AND UNCONVENTIONAL ON-**  
8 **SHORE NATURAL GAS AND OTHER PETRO-**  
9 **LEUM RESEARCH AND DEVELOPMENT PRO-**  
10 **GRAM.**

11 (a) IN GENERAL.—The Secretary shall carry out the  
12 activities under section 999A, to maximize the value of  
13 natural gas and other petroleum resources of the United  
14 States, by increasing the supply of such resources, through  
15 reducing the cost and increasing the efficiency of explo-  
16 ration for and production of such resources, while improv-  
17 ing safety and minimizing environmental impacts.

18 (b) ROLE OF THE SECRETARY.—The Secretary shall  
19 have ultimate responsibility for, and oversight of, all as-  
20 pects of the program under this section.

21 (c) ROLE OF THE PROGRAM CONSORTIUM.—

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1           (1) IN GENERAL.—The Secretary shall contract  
2           with a corporation that is structured as a consor-  
3           tium to administer the programmatic activities out-  
4           lined in this chapter. The program consortium  
5           shall—

6                   (A) administer the program pursuant to  
7                   subsection (f)(3), utilizing program administra-  
8                   tion funds only ;

9                   (B) issue research project solicitations  
10                  upon approval of the Secretary or the Sec-  
11                  retary's designee;

12                  (C) make project awards to research per-  
13                  formers upon approval of the Secretary or the  
14                  Secretary's designee;

15                  (D) disburse research funds to research  
16                  performers awarded under subsection (f) as di-  
17                  rected by the Secretary in accordance with the  
18                  annual plan under subsection (e); and

19                  (E) carry out other activities assigned to  
20                  the program consortium by this section.

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1           (2) LIMITATION.—The Secretary may not as-  
2           sign any activities to the program consortium except  
3           as specifically authorized under this section.

4           (3) CONFLICT OF INTEREST.—

5                 (A) PROCEDURES.—The Secretary shall  
6                 establish procedures—

7                         (i) to ensure that each board member,  
8                         officer, or employee of the program consor-  
9                         tium who is in a decisionmaking capacity  
10                        under subsection (f)(3) shall disclose to the  
11                        Secretary any financial interests in, or fi-  
12                        nancial relationships with, applicants for or  
13                        recipients of awards under this section, in-  
14                        cluding those of his or her spouse or minor  
15                        child, unless such relationships or interests  
16                        would be considered to be remote or incon-  
17                        sequential; and

18                       (ii) to require any board member, offi-  
19                        cer, or employee with a financial relation-  
20                        ship or interest disclosed under clause (i)  
21                        to recuse himself or herself from any over-

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1           sight under subsection (f)(4) with respect  
2           to such applicant or recipient.

3           (B) FAILURE TO COMPLY.—The Secretary  
4           may disqualify an application or revoke an  
5           award under this section if a board member, of-  
6           ficer, or employee has failed to comply with pro-  
7           cedures required under subparagraph (A)(ii).

8           (d) SELECTION OF THE PROGRAM CONSORTIUM.—

9           (1) IN GENERAL.—The Secretary shall select  
10          the program consortium through an open, competi-  
11          tive process.

12          (2) MEMBERS.—The program consortium may  
13          include corporations, trade associations, institutions  
14          of higher education, National Laboratories, or other  
15          research institutions. After submitting a proposal  
16          under paragraph (4), the program consortium may  
17          not add members without the consent of the Sec-  
18          retary.

19          (3) REQUIREMENT OF SECTION 501(c)(3) STA-  
20          TUS.—The Secretary shall not select a consortium  
21          under this section unless such consortium is an or-



1 organization described in section 501(c)(3) of the In-  
2 ternal Revenue Code of 1986 and exempt from tax  
3 under such section 501(a) of such Code.

4 (4) SCHEDULE.—Not later than 90 days after  
5 the date of enactment of this Act, the Secretary  
6 shall solicit proposals from eligible consortia to per-  
7 form the duties in subsection (c)(1), which shall be  
8 submitted not later than 180 days after the date of  
9 enactment of this Act. The Secretary shall select the  
10 program consortium not later than 270 days after  
11 such date of enactment.

12 (5) APPLICATION.—Applicants shall submit a  
13 proposal including such information as the Secretary  
14 may require. At a minimum, each proposal shall—

15 (A) list all members of the consortium;

16 (B) fully describe the structure of the con-  
17 sortium, including any provisions relating to in-  
18 tellectual property; and

19 (C) describe how the applicant would carry  
20 out the activities of the program consortium  
21 under this section.

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1           (6) ELIGIBILITY.—To be eligible to be selected  
2           as the program consortium, an applicant must be an  
3           entity whose members have collectively demonstrated  
4           capabilities and experience in planning and man-  
5           aging research, development, demonstration, and  
6           commercial application programs for ultra-deepwater  
7           and unconventional natural gas or other petroleum  
8           exploration or production.

9           (7) FOCUS AREAS FOR AWARDS.—

10           (A) ULTRA-DEEPWATER RESOURCES.—  
11           Awards from allocations under section  
12           999H(d)(1) shall focus on the development and  
13           demonstration of individual exploration and  
14           production technologies as well as integrated  
15           systems technologies including new architec-  
16           tures for production in ultra-deepwater.

17           (B) UNCONVENTIONAL RESOURCES.—  
18           Awards from allocations under section  
19           999H(d)(2) shall focus on areas including ad-  
20           vanced coalbed methane, deep drilling, natural  
21           gas production from tight sands, natural gas

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1 production from gas shales, stranded gas, inno-  
2 vative exploration and production techniques,  
3 enhanced recovery techniques, and environ-  
4 mental mitigation of unconventional natural gas  
5 and other petroleum resources exploration and  
6 production.

7 (C) SMALL PRODUCERS.—Awards from al-  
8 locations under section 999H(d)(3) shall be  
9 made to consortia consisting of small producers  
10 or organized primarily for the benefit of small  
11 producers, and shall focus on areas including  
12 complex geology involving rapid changes in the  
13 type and quality of the oil and gas reservoirs  
14 across the reservoir; low reservoir pressure; un-  
15 conventional natural gas reservoirs in coalbeds,  
16 deep reservoirs, tight sands, or shales; and un-  
17 conventional oil reservoirs in tar sands and oil  
18 shales.

19 (e) ANNUAL PLAN.—

20 (1) IN GENERAL.—The program under this sec-  
21 tion shall be carried out pursuant to an annual plan

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1 prepared by the Secretary in accordance with para-  
2 graph (2).

3 (2) DEVELOPMENT.—

4 (A) SOLICITATION OF RECOMMENDA-  
5 TIONS.—Before drafting an annual plan under  
6 this subsection, the Secretary shall solicit spe-  
7 cific written recommendations from the pro-  
8 gram consortium for each element to be ad-  
9 dressed in the plan, including those described in  
10 paragraph (4). The program consortium shall  
11 submit its recommendations in the form of a  
12 draft annual plan.

13 (B) SUBMISSION OF RECOMMENDATIONS;  
14 OTHER COMMENT.—The Secretary shall submit  
15 the recommendations of the program consor-  
16 tium under subparagraph (A) to the Ultra-  
17 Deepwater Advisory Committee established  
18 under section 999D(a) and to the Unconven-  
19 tional Resources Technology Advisory Com-  
20 mittee established under section 999D(b), and  
21 such Advisory Committees shall provide to the

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1 Secretary written comments by a date deter-  
2 mined by the Secretary. The Secretary may also  
3 solicit comments from any other experts.

4 (C) CONSULTATION.—The Secretary shall  
5 consult regularly with the program consortium  
6 throughout the preparation of the annual plan.

7 (3) PUBLICATION.—The Secretary shall trans-  
8 mit to Congress and publish in the Federal Register  
9 the annual plan, along with any written comments  
10 received under paragraph (2)(A) and (B).

11 (4) CONTENTS.—The annual plan shall describe  
12 the ongoing and prospective activities of the pro-  
13 gram under this section and shall include—

14 (A) a list of any solicitations for awards to  
15 carry out research, development, demonstration,  
16 or commercial application activities, including  
17 the topics for such work, who would be eligible  
18 to apply, selection criteria, and the duration of  
19 awards; and

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1 (B) a description of the activities expected  
2 of the program consortium to carry out sub-  
3 section (f)(3).

4 (5) ESTIMATES OF INCREASED ROYALTY RE-  
5 CEIPTS.—The Secretary, in consultation with the  
6 Secretary of the Interior, shall provide an annual re-  
7 port to Congress with the President’s budget on the  
8 estimated cumulative increase in Federal royalty re-  
9 ceipts (if any) resulting from the implementation of  
10 this subtitle. The initial report under this paragraph  
11 shall be submitted in the first President’s budget fol-  
12 lowing the completion of the first annual plan re-  
13 quired under this subsection.

14 (f) AWARDS.—

15 (1) IN GENERAL.—Upon approval of the Sec-  
16 retary the program consortium shall make awards to  
17 research performers to carry out research, develop-  
18 ment, demonstration, and commercial application ac-  
19 tivities under the program under this section. The  
20 program consortium shall not be eligible to receive  
21 such awards, but provided that conflict of interest

1 procedures in section 999B(c)(3) are followed, enti-  
2 ties who are members of the program consortium are  
3 not precluded from receiving research awards as ei-  
4 ther individual research performers or as research  
5 performers who are members of a research collabo-  
6 ration.

7 (2) PROPOSALS.—Upon approval of the Sec-  
8 retary the program consortium shall solicit proposals  
9 for awards under this subsection in such manner  
10 and at such time as the Secretary may prescribe, in  
11 consultation with the program consortium.

12 (3) OVERSIGHT.—

13 (A) IN GENERAL.—The program consor-  
14 tium shall oversee the implementation of  
15 awards under this subsection, consistent with  
16 the annual plan under subsection (e), including  
17 disbursing funds and monitoring activities car-  
18 ried out under such awards for compliance with  
19 the terms and conditions of the awards.

20 (B) EFFECT.—Nothing in subparagraph  
21 (A) shall limit the authority or responsibility of

1           the Secretary to oversee awards, or limit the  
2           authority of the Secretary to review or revoke  
3           awards.

4       (g) ADMINISTRATIVE COSTS.—

5           (1) IN GENERAL.—To compensate the program  
6           consortium for carrying out its activities under this  
7           section, the Secretary shall provide to the program  
8           consortium funds sufficient to administer the pro-  
9           gram. This compensation may include a manage-  
10          ment fee consistent with Department of Energy con-  
11          tracting practices and procedures.

12          (2) ADVANCE.—The Secretary shall advance  
13          funds to the program consortium upon selection of  
14          the consortium, which shall be deducted from  
15          amounts to be provided under paragraph (1).

16       (h) AUDIT.—The Secretary shall retain an inde-  
17       pendent auditor, which shall include a review by the Gen-  
18       eral Accountability Office, to determine the extent to  
19       which funds provided to the program consortium, and  
20       funds provided under awards made under subsection (f),  
21       have been expended in a manner consistent with the pur-



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1 poses and requirements of this subtitle. The auditor shall  
2 transmit a report (including any review by the General  
3 Accountability Office) annually to the Secretary, who shall  
4 transmit the report to Congress, along with a plan to rem-  
5 edy any deficiencies cited in the report.

6 (i) ACTIVITIES BY THE UNITED STATES GEOLOGICAL  
7 SURVEY.—The Secretary of the Interior, through the  
8 United States Geological Survey, shall, where appropriate,  
9 carry out programs of long-term research to complement  
10 the programs under this section.

11 (j) PROGRAM REVIEW AND OVERSIGHT.—The Na-  
12 tional Energy Technology Laboratory, on behalf of the  
13 Secretary, shall (1) issue a competitive solicitation for the  
14 program consortium, (2) evaluate, select, and award a  
15 contract or other agreement to a qualified program con-  
16 sortium, and (3) have primary review and oversight re-  
17 sponsibility for the program consortium, including review  
18 and approval of research awards proposed to be made by  
19 the program consortium, to ensure that its activities are  
20 consistent with the purposes and requirements described  
21 in this subtitle. Up to 5 percent of program funds allo-

1 cated under paragraphs (1) through (3) of section  
2 999H(d) may be used for this purpose, including program  
3 direction and the establishment of a site office if deter-  
4 mined to be necessary to carry out the purposes of this  
5 subsection.

6 **SEC. 999C. ADDITIONAL REQUIREMENTS FOR AWARDS.**

7 (a) **DEMONSTRATION PROJECTS.**—An application for  
8 an award under this subtitle for a demonstration project  
9 shall describe with specificity the intended commercial use  
10 of the technology to be demonstrated.

11 (b) **FLEXIBILITY IN LOCATING DEMONSTRATION**  
12 **PROJECTS.**—Subject to the limitation in section 999A(c),  
13 a demonstration project under this subtitle relating to an  
14 ultra-deepwater technology or an ultra-deepwater architec-  
15 ture may be conducted in deepwater depths.

16 (c) **INTELLECTUAL PROPERTY AGREEMENTS.**—If an  
17 award under this subtitle is made to a consortium (other  
18 than the program consortium), the consortium shall pro-  
19 vide to the Secretary a signed contract agreed to by all  
20 members of the consortium describing the rights of each

1 member to intellectual property used or developed under  
2 the award.

3 (d) TECHNOLOGY TRANSFER.—2.5 percent of the  
4 amount of each award made under this subtitle shall be  
5 designated for technology transfer and outreach activities  
6 under this subtitle.

7 (e) COST SHARING REDUCTION FOR INDEPENDENT  
8 PRODUCERS.—In applying the cost sharing requirements  
9 under section 988 to an award under this subtitle the Sec-  
10 retary may reduce or eliminate the non-Federal require-  
11 ment if the Secretary determines that the reduction is nec-  
12 essary and appropriate considering the technological risks  
13 involved in the project.

14 (f) INFORMATION SHARING.—All results of the re-  
15 search administered by the program consortium shall be  
16 made available to the public consistent with Department  
17 policy and practice on information sharing and intellectual  
18 property agreements.

19 **SEC. 999D. ADVISORY COMMITTEES.**

20 (a) ULTRA-DEEPWATER ADVISORY COMMITTEE.—

1           (1) ESTABLISHMENT.—Not later than 270 days  
2           after the date of enactment of this Act, the Sec-  
3           retary shall establish an advisory committee to be  
4           known as the Ultra-Deepwater Advisory Committee.

5           (2) MEMBERSHIP.—The Advisory Committee  
6           under this subsection shall be composed of members  
7           appointed by the Secretary, including—

8                   (A) individuals with extensive research ex-  
9                   perience or operational knowledge of offshore  
10                  natural gas and other petroleum exploration  
11                  and production;

12                  (B) individuals broadly representative of  
13                  the affected interests in ultra-deepwater natural  
14                  gas and other petroleum production, including  
15                  interests in environmental protection and safe  
16                  operations;

17                  (C) no individuals who are Federal employ-  
18                  ees; and

19                  (D) no individuals who are board members,  
20                  officers, or employees of the program consor-  
21                  tium.

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1           (3) DUTIES.—The Advisory Committee under  
2 this subsection shall—

3                   (A) advise the Secretary on the develop-  
4 ment and implementation of programs under  
5 this subtitle related to ultra-deepwater natural  
6 gas and other petroleum resources; and

7                   (B) carry out section 999B(e)(2)(B).

8           (4) COMPENSATION.—A member of the Advi-  
9 sory Committee under this subsection shall serve  
10 without compensation but shall receive travel ex-  
11 penses in accordance with applicable provisions  
12 under subchapter I of chapter 57 of title 5, United  
13 States Code.

14           (b) UNCONVENTIONAL RESOURCES TECHNOLOGY  
15 ADVISORY COMMITTEE.—

16                   (1) ESTABLISHMENT.—Not later than 270 days  
17 after the date of enactment of this Act, the Sec-  
18 retary shall establish an advisory committee to be  
19 known as the Unconventional Resources Technology  
20 Advisory Committee.

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1           (2) MEMBERSHIP.—The Secretary shall endeavor to have a balanced representation of members on the Advisory Committee to reflect the breadth of geographic areas of potential gas supply. The Advisory Committee under this subsection shall be composed of members appointed by the Secretary, including—

7           (A) a majority of members who are employees or representatives of independent producers of natural gas and other petroleum, including small producers;

11           (B) individuals with extensive research experience or operational knowledge of unconventional natural gas and other petroleum resource exploration and production;

15           (C) individuals broadly representative of the affected interests in unconventional natural gas and other petroleum resource exploration and production, including interests in environmental protection and safe operations;

20           (D) individuals with expertise in the various geographic areas of potential supply of un-

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1 conventional onshore natural gas and other pe-  
2 troleum in the United States;

3 (E) no individuals who are Federal em-  
4 ployees; and

5 (F) no individuals who are board members,  
6 officers, or employees of the program consor-  
7 tium.

8 (3) DUTIES.—The Advisory Committee under  
9 this subsection shall—

10 (A) advise the Secretary on the develop-  
11 ment and implementation of activities under  
12 this subtitle related to unconventional natural  
13 gas and other petroleum resources; and

14 (B) carry out section 999B(e)(2)(B).

15 (4) COMPENSATION.—A member of the Advi-  
16 sory Committee under this subsection shall serve  
17 without compensation but shall receive travel ex-  
18 penses in accordance with applicable provisions  
19 under subchapter I of chapter 57 of title 5, United  
20 States Code.

1       (c) PROHIBITION.—No advisory committee estab-  
2 lished under this section shall make recommendations on  
3 funding awards to particular consortia or other entities,  
4 or for specific projects.

5 **SEC. 999E. LIMITS ON PARTICIPATION.**

6       An entity shall be eligible to receive an award under  
7 this subtitle only if the Secretary finds—

8           (1) that the entity’s participation in the pro-  
9 gram under this subtitle would be in the economic  
10 interest of the United States; and

11          (2) that either—

12           (A) the entity is a United States-owned en-  
13 tity organized under the laws of the United  
14 States; or

15           (B) the entity is organized under the laws  
16 of the United States and has a parent entity or-  
17 ganized under the laws of a country that  
18 affords—

19           (i) to United States-owned entities op-  
20 portunities, comparable to those afforded  
21 to any other entity, to participate in any



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1 cooperative research venture similar to  
2 those authorized under this subtitle;

3 (ii) to United States-owned entities  
4 local investment opportunities comparable  
5 to those afforded to any other entity; and

6 (iii) adequate and effective protection  
7 for the intellectual property rights of  
8 United States-owned entities.

9 **SEC. 999F. SUNSET.**

10 The authority provided by this subtitle shall termi-  
11 nate on September 30, 2014.

12 **SEC. 999G. DEFINITIONS.**

13 In this subtitle:

14 (1) DEEPWATER.—The term “deepwater”  
15 means a water depth that is greater than 200 but  
16 less than 1,500 meters.

17 (2) INDEPENDENT PRODUCER OF OIL OR  
18 GAS.—

19 (A) IN GENERAL.—The term “independent  
20 producer of oil or gas” means any person that  
21 produces oil or gas other than a person to

1           whom subsection (c) of section 613A of the In-  
2           ternal Revenue Code of 1986 does not apply by  
3           reason of paragraph (2) (relating to certain re-  
4           tailers) or paragraph (4) (relating to certain re-  
5           finers) of section 613A(d) of such Code.

6                   (B) RULES FOR APPLYING PARAGRAPHS (2)  
7           AND (4) OF SECTION 613A(d).—For purposes of  
8           subparagraph (A), paragraphs (2) and (4) of  
9           section 613A(d) of the Internal Revenue Code  
10          of 1986 shall be applied by substituting “cal-  
11          endar year” for “taxable year” each place it ap-  
12          pears in such paragraphs.

13                   (3) PROGRAM ADMINISTRATION FUNDS.—The  
14          term “program administration funds” means funds  
15          used by the program consortium to administer the  
16          program under this subtitle, but not to exceed 10  
17          percent of the total funds allocated under para-  
18          graphs (1) through (3) of section 999H(d).

19                   (4) PROGRAM CONSORTIUM.—The term “pro-  
20          gram consortium” means the consortium selected  
21          under section 999B(d).

1           (5) PROGRAM RESEARCH FUNDS.—The term  
2           “program research funds” means funds awarded to  
3           research performers by the program consortium con-  
4           sistent with the annual plan.

5           (6) REMOTE OR INCONSEQUENTIAL.—The term  
6           “remote or inconsequential” has the meaning given  
7           that term in regulations issued by the Office of Gov-  
8           ernment Ethics under section 208(b)(2) of title 18,  
9           United States Code.

10          (7) SMALL PRODUCER.—The term “small pro-  
11          ducer” means an entity organized under the laws of  
12          the United States with production levels of less than  
13          1,000 barrels per day of oil equivalent.

14          (8) ULTRA-DEEPWATER.—The term “ultra-  
15          deepwater” means a water depth that is equal to or  
16          greater than 1,500 meters.

17          (9) ULTRA-DEEPWATER ARCHITECTURE.—The  
18          term “ultra-deepwater architecture” means the inte-  
19          gration of technologies for the exploration for, or  
20          production of, natural gas or other petroleum re-  
21          sources located at ultra-deepwater depths.

1           (10) ULTRA-DEEPWATER TECHNOLOGY.—The  
2           term “ultra-deepwater technology” means a discrete  
3           technology that is specially suited to address 1 or  
4           more challenges associated with the exploration for,  
5           or production of, natural gas or other petroleum re-  
6           sources located at ultra-deepwater depths.

7           (11) UNCONVENTIONAL NATURAL GAS AND  
8           OTHER PETROLEUM RESOURCE.—The term “uncon-  
9           ventional natural gas and other petroleum resource”  
10          means natural gas and other petroleum resource lo-  
11          cated onshore in an economically inaccessible geo-  
12          logical formation, including resources of small pro-  
13          ducers.

14 **SEC. 999H. FUNDING.**

15          (a) OIL AND GAS LEASE INCOME.—For each of fiscal  
16          years 2007 through 2017, from any Federal royalties,  
17          rents, and bonuses derived from Federal onshore and off-  
18          shore oil and gas leases issued under the Outer Conti-  
19          nental Shelf Lands Act (43 U.S.C. 1331 et seq.) and the  
20          Mineral Leasing Act (30 U.S.C. 181 et seq.) which are  
21          deposited in the Treasury, and after distribution of any

1 such funds as described in subsection (c), \$50,000,000  
2 shall be deposited into the Ultra-Deepwater and Uncon-  
3 ventional Natural Gas and Other Petroleum Research  
4 Fund (in this section referred to as the “Fund”). For pur-  
5 poses of this section, the term “royalties” excludes pro-  
6 ceeds from the sale of royalty production taken in kind  
7 and royalty production that is transferred under section  
8 27(a)(3) of the Outer Continental Shelf Lands Act (43  
9 U.S.C. 1353(a)(3)).

10 (b) OBLIGATIONAL AUTHORITY.—Monies in the  
11 Fund shall be available to the Secretary for obligation  
12 under this part without fiscal year limitation, to remain  
13 available until expended.

14 (c) PRIOR DISTRIBUTIONS.—The distributions de-  
15 scribed in subsection (a) are those required by law—

16 (1) to States and to the Reclamation Fund  
17 under the Mineral Leasing Act (30 U.S.C. 191(a));  
18 and

19 (2) to other funds receiving monies from Fed-  
20 eral oil and gas leasing programs, including—

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1 (A) any recipients pursuant to section 8(g)  
2 of the Outer Continental Shelf Lands Act (43  
3 U.S.C. 1337(g));

4 (B) the Land and Water Conservation  
5 Fund, pursuant to section 2(c) of the Land and  
6 Water Conservation Fund Act of 1965 (16  
7 U.S.C. 4601–5(c));

8 (C) the Historic Preservation Fund, pursu-  
9 ant to section 108 of the National Historic  
10 Preservation Act (16 U.S.C. 470h); and

11 (D) the coastal impact assistance program  
12 established under section 31 of the Outer Conti-  
13 nental Shelf Lands Act (as amended by section  
14 384).

15 (d) ALLOCATION.—Amounts obligated from the Fund  
16 under subsection (a)(1) in each fiscal year shall be allo-  
17 cated as follows:

18 (1) 35 percent shall be for activities under sec-  
19 tion 999A(b)(1).

20 (2) 32.5 percent shall be for activities under  
21 section 999A(b)(2).

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1           (3) 7.5 percent shall be for activities under sec-  
2           tion 999A(b)(3).

3           (4) 25 percent shall be for complementary re-  
4           search under section 999A(b)(4) and other activities  
5           under section 999A(b) to include program direction  
6           funds, overall program oversight, contract manage-  
7           ment, and the establishment and operation of a tech-  
8           nical committee to ensure that in-house research ac-  
9           tivities funded under section 999A(b)(4) are tech-  
10          nically complementary to, and not duplicative of, re-  
11          search conducted under paragraphs (1), (2), and (3)  
12          of section 999A(b).

13          (e) AUTHORIZATION OF APPROPRIATIONS.—In addi-  
14          tion to other amounts that are made available to carry  
15          out this section, there is authorized to be appropriated to  
16          carry out this section \$100,000,000 for each of fiscal  
17          years 2007 through 2016.

18          (f) FUND.—There is hereby established in the Treas-  
19          ury of the United States a separate fund to be known as  
20          the “Ultra-Deepwater and Unconventional Natural Gas  
21          and Other Petroleum Research Fund”.

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1           **TITLE X—DEPARTMENT OF**  
2           **ENERGY MANAGEMENT**  
3   **SEC. 1001. IMPROVED TECHNOLOGY TRANSFER OF ENERGY**  
4           **TECHNOLOGIES.**

5           (a) **TECHNOLOGY TRANSFER COORDINATOR.**—The  
6 Secretary shall appoint a Technology Transfer Coordi-  
7 nator to be the principal advisor to the Secretary on all  
8 matters relating to technology transfer and commercializa-  
9 tion.

10          (b) **QUALIFICATIONS.**—The Coordinator shall be an  
11 individual who, by reason of professional background and  
12 experience, is specially qualified to advise the Secretary  
13 on matters pertaining to technology transfer at the De-  
14 partment.

15          (c) **DUTIES OF THE COORDINATOR.**—The Coordi-  
16 nator shall oversee—

17               (1) the activities of the Technology Transfer  
18 Working Group established under subsection (d);

19               (2) the expenditure of funds allocated for tech-  
20 nology transfer within the Department;



1           (3) the activities of each technology partnership  
2           ombudsman appointed under section 11 of the Tech-  
3           nology Transfer Commercialization Act of 2000 (42  
4           U.S.C. 7261e); and

5           (4) efforts to engage private sector entities, in-  
6           cluding venture capital companies.

7           (d) TECHNOLOGY TRANSFER WORKING GROUP.—  
8           The Secretary shall establish a Technology Transfer  
9           Working Group, which shall consist of representatives of  
10          the National Laboratories and single-purpose research fa-  
11          cilities, to—

12           (1) coordinate technology transfer activities oc-  
13           curring at National Laboratories and single-purpose  
14           research facilities;

15           (2) exchange information about technology  
16           transfer practices, including alternative approaches  
17           to resolution of disputes involving intellectual prop-  
18           erty rights and other technology transfer matters;  
19           and

20           (3) develop and disseminate to the public and  
21           prospective technology partners information about

1 opportunities and procedures for technology transfer  
2 with the Department, including opportunities and  
3 procedures related to alternative approaches to reso-  
4 lution of disputes involving intellectual property  
5 rights and other technology transfer matters.

6 (e) TECHNOLOGY COMMERCIALIZATION FUND.—The  
7 Secretary shall establish an Energy Technology Commer-  
8 cialization Fund, using 0.9 percent of the amount made  
9 available to the Department for applied energy research,  
10 development, demonstration, and commercial application  
11 for each fiscal year, to be used to provide matching funds  
12 with private partners to promote promising energy tech-  
13 nologies for commercial purposes.

14 (f) TECHNOLOGY TRANSFER RESPONSIBILITY.—  
15 Nothing in this section affects the technology transfer re-  
16 sponsibilities of Federal employees under the Stevenson-  
17 Wydler Technology Innovation Act of 1980 (15 U.S.C.  
18 3701 et seq.).

19 (g) PLANNING AND REPORTING.—

20 (1) IN GENERAL.—Not later than 180 days  
21 after the date of enactment of this Act, the Sec-

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1       retary shall submit to Congress a technology trans-  
2       fer execution plan.

3           (2) UPDATES.—Each year after the submission  
4       of the plan under paragraph (1), the Secretary shall  
5       submit to Congress an updated execution plan and  
6       reports that describe progress toward meeting goals  
7       set forth in the execution plan and the funds ex-  
8       pended under subsection (e).

9       **SEC. 1002. TECHNOLOGY INFRASTRUCTURE PROGRAM.**

10       (a) DEFINITIONS.—In this section:

11           (1) PROGRAM.—The term “Program” means  
12       the Technology Infrastructure Program established  
13       under subsection (b).

14           (2) TECHNOLOGY CLUSTER.—The term “tech-  
15       nology cluster” means a concentration of technology-  
16       related business concerns, institutions of higher edu-  
17       cation, or nonprofit institutions, that reinforce each  
18       other’s performance in the areas of technology devel-  
19       opment through formal or informal relationships.

20           (3) TECHNOLOGY-RELATED BUSINESS CON-  
21       CERN.—The term “technology-related business con-

cern” means a for-profit corporation, company, association, firm, partnership, or small business concern that—

(A) conducts scientific or engineering research;

(B) develops new technologies;

(C) manufactures products based on new technologies; or

(D) performs technological services.

(b) ESTABLISHMENT.—The Secretary shall establish a Technology Infrastructure Program in accordance with this section.

(c) PURPOSE.—The purpose of the Program shall be to improve the ability of National Laboratories and single-purpose research facilities to support departmental missions by—

(1) stimulating the development of technology clusters that can support departmental missions at the National Laboratories or single-purpose research facilities;

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1           (2) improving the ability of National Labora-  
2           tories and single-purpose research facilities to lever-  
3           age and benefit from commercial research, tech-  
4           nology, products, processes, and services; and

5           (3) encouraging the exchange of scientific and  
6           technological expertise between—

7                   (A) National Laboratories or single-pur-  
8                   pose research facilities; and

9                   (B) entities that can support departmental  
10                  missions at the National Laboratories or single-  
11                  purpose research facilities, such as—

12                           (i) institutions of higher education;

13                           (ii) technology-related business con-  
14                           cerns;

15                           (iii) nonprofit institutions; and

16                           (iv) agencies of State, tribal, or local  
17                           governments.

18           (d) PROJECTS.—The Secretary shall authorize the di-  
19           rector of each National Laboratory or single-purpose re-  
20           search facility to implement the Program at the National

1 Laboratory or facility through 1 or more projects that  
2 meet the requirements of subsections (e) and (f).

3 (e) PROGRAM REQUIREMENTS.—

4 (1) IN GENERAL.—Each project funded under  
5 this section shall meet the requirements of this sub-  
6 section.

7 (2) ENTITIES.—Each project shall include at  
8 least 1 of each of the following entities:

9 (A) A business.

10 (B) An institution of higher education.

11 (C) A nonprofit institution.

12 (D) An agency of a State, local, or tribal  
13 government.

14 (3) COST-SHARING.—

15 (A) IN GENERAL.—The costs of carrying  
16 out projects under this section shall be shared  
17 in accordance with section 988.

18 (B) SOURCES.—The calculation of costs  
19 paid by the non-Federal sources for a project  
20 shall include cash, personnel, services, equip-

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1           ment, and other resources expended on the  
2           project after the commencement of the project.

3           (C) RESEARCH AND DEVELOPMENT EX-  
4           PENSES.—Independent research and develop-  
5           ment expenses of Government contractors that  
6           qualify for reimbursement under section  
7           31.205–18(e) of title 48, Code of Federal Regu-  
8           lations, issued pursuant to section 25(c)(1) of  
9           the Office of Federal Procurement Policy Act  
10          (41 U.S.C. 421(c)(1)), may be credited towards  
11          costs paid by non-Federal sources to a project,  
12          if the expenses meet the other requirements of  
13          this section.

14          (4) COMPETITIVE SELECTION.—A project under  
15          this section shall be competitively selected using pro-  
16          cedures determined by the Secretary.

17          (5) ACCOUNTING.—Any participant that re-  
18          ceives funds under this section may use generally ac-  
19          cepted accounting principles for maintaining ac-  
20          counts, books, and records relating to the project.

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1           (6) DURATION.—No Federal funds shall be  
2           made available under this section for a construction  
3           project or for any project with a duration of more  
4           than 5 years.

5           (f) SELECTION CRITERIA.—

6           (1) DEPARTMENTAL MISSIONS.—The Secretary  
7           shall allocate funds under this section only if the Di-  
8           rector of the National Laboratory or single-purpose  
9           research facility managing the project determines  
10          that the project is likely to improve the ability of the  
11          National Laboratory or single-purpose research facil-  
12          ity to achieve technical success in meeting depart-  
13          mental missions.

14          (2) OTHER CRITERIA.—In selecting a project to  
15          receive Federal funds, the Secretary shall consider—

16                (A) the potential of the project to promote  
17                the development of a commercially sustainable  
18                technology cluster following the period of invest-  
19                ment by the Department, which will derive most  
20                of the demand for its products or services from  
21                the private sector, and which will support de-



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1           partmental missions at the participating Na-  
2           tional Laboratory or single-purpose research fa-  
3           cility;

4           (B) the potential of the project to promote  
5           the use of commercial research, technology,  
6           products, processes, and services by the partici-  
7           pating National Laboratory or single-purpose  
8           research facility to achieve its mission or the  
9           commercial development of technological inno-  
10          vations made at the participating National Lab-  
11          oratory or single-purpose research facility;

12          (C) the extent to which the project involves  
13          a wide variety and number of institutions of  
14          higher education, nonprofit institutions, and  
15          technology-related business concerns that can  
16          support the missions of the participating Na-  
17          tional Laboratory or single-purpose research fa-  
18          cility and that will make substantive contribu-  
19          tions to achieving the goals of the project;

20          (D) the extent to which the project focuses  
21          on promoting the development of technology-re-

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1           lated business concerns that are small busi-  
2           nesses or involves such small businesses sub-  
3           stantively in the project; and

4                   (E) such other criteria as the Secretary de-  
5           termines to be appropriate.

6       (g) ALLOCATION.—In allocating funds for projects  
7 approved under this section, the Secretary shall provide—

8           (1) the Federal share of the project costs; and

9           (2) additional funds to the National Laboratory  
10 or single-purpose research facility managing the  
11 project to permit the National Laboratory or single-  
12 purpose research facility to carry out activities relat-  
13 ing to the project, and to coordinate the activities  
14 with the project.

15       (h) REPORT TO CONGRESS.—Not later than July 1,  
16 2008, the Secretary shall submit to Congress a report on  
17 whether the Program should be continued and, if so, how  
18 the program should be managed.

19       (i) AUTHORIZATION OF APPROPRIATIONS.—There  
20 are authorized to be appropriated to the Secretary for ac-

1 tivities under this section \$10,000,000 for each of fiscal  
2 years 2006 through 2008.

3 **SEC. 1003. SMALL BUSINESS ADVOCACY AND ASSISTANCE.**

4 (a) SMALL BUSINESS ADVOCATE.—The Secretary  
5 shall require the Director of each National Laboratory,  
6 and may require the Director of a single-purpose research  
7 facility, to designate a small business advocate to—

8 (1) increase the participation of small business  
9 concerns, including socially and economically dis-  
10 advantaged small business concerns (as defined in  
11 section 8(a)(4) of the Small Business Act (15 U.S.C.  
12 637(a)(4))), in procurement, collaborative research,  
13 technology licensing, and technology transfer activi-  
14 ties conducted by the National Laboratory or single-  
15 purpose research facility;

16 (2) report to the Director of the National Lab-  
17 oratory or single-purpose research facility on the ac-  
18 tual participation of small business concerns in pro-  
19 curement and collaborative research along with rec-  
20 ommendations, if appropriate, on how to improve  
21 participation;

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1           (3) make available to small business concerns  
2           training, mentoring, and information on how to par-  
3           ticipate in procurement and collaborative research  
4           activities;

5           (4) increase the awareness inside the National  
6           Laboratory or single-purpose research facility of the  
7           capabilities and opportunities presented by small  
8           business concerns; and

9           (5) establish guidelines for the program under  
10          subsection (b) and report on the effectiveness of the  
11          program to the Director of the National Laboratory  
12          or single-purpose research facility.

13          (b) ESTABLISHMENT OF SMALL BUSINESS ASSIST-  
14          ANCE PROGRAM.—The Secretary shall require the Direc-  
15          tor of each National Laboratory, and may require the Di-  
16          rector of a single-purpose research facility, to establish a  
17          program to provide small business concerns with—

18               (1) assistance directed at making the small  
19               business concerns more effective and efficient sub-  
20               contractors or suppliers to the National Laboratory  
21               or single-purpose research facilities; or

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1           (2) general technical assistance, the cost of  
2           which shall not exceed \$10,000 per instance of as-  
3           sistance, to improve the products or services of the  
4           small business concern.

5           (c) USE OF FUNDS.—None of the funds expended  
6           under subsection (b) may be used for direct grants to  
7           small business concerns.

8           (d) AUTHORIZATION OF APPROPRIATIONS.—There is  
9           authorized to be appropriated to the Secretary for activi-  
10          ties under this section \$5,000,000 for each of fiscal years  
11          2006 through 2008.

12       **SEC. 1004. OUTREACH.**

13          The Secretary shall ensure that each program au-  
14          thorized by this Act or an amendment made by this Act  
15          includes an outreach component to provide information,  
16          as appropriate, to manufacturers, consumers, engineers,  
17          architects, builders, energy service companies, institutions  
18          of higher education, facility planners and managers, State  
19          and local governments, and other entities.

1 **SEC. 1005. RELATIONSHIP TO OTHER LAWS.**

2 Except as otherwise provided in this Act or an  
3 amendment made by this Act, the Secretary shall carry  
4 out the research, development, demonstration, and com-  
5 mercial application programs, projects, and activities au-  
6 thorized by this Act or an amendment made by this Act  
7 in accordance with the applicable provisions of—

8 (1) the Atomic Energy Act of 1954 (42 U.S.C.  
9 2011 et seq.);

10 (2) the Federal Nonnuclear Energy Research  
11 and Development Act of 1974 (42 U.S.C. 5901 et  
12 seq.);

13 (3) the Energy Policy Act of 1992 (42 U.S.C.  
14 13201 et seq.);

15 (4) the Stevenson-Wydler Technology Innova-  
16 tion Act of 1980 (15 U.S.C. 3701 et seq.);

17 (5) chapter 18 of title 35, United States Code  
18 (commonly known as the “Bayh-Dole Act”); and

19 (6) any other Act under which the Secretary is  
20 authorized to carry out the programs, projects, and  
21 activities.

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1 **SEC. 1006. IMPROVED COORDINATION AND MANAGEMENT**  
2 **OF CIVILIAN SCIENCE AND TECHNOLOGY**  
3 **PROGRAMS.**

4 (a) EFFECTIVE TOP-LEVEL COORDINATION OF RE-  
5 SEARCH AND DEVELOPMENT PROGRAMS.—Section 202 of  
6 the Department of Energy Organization Act (42 U.S.C.  
7 7132) is amended by striking subsection (b) and inserting  
8 the following:

9 “(b)(1) There shall be in the Department an Under  
10 Secretary for Science, who shall be appointed by the Presi-  
11 dent, by and with the advice and consent of the Senate.

12 “(2) The Under Secretary shall be compensated at  
13 the rate provided for level III of the Executive Schedule  
14 under section 5314 of title 5, United States Code.

15 “(3) The Under Secretary for Science shall be ap-  
16 pointed from among persons who—

17 “(A) have extensive background in scientific or  
18 engineering fields; and

19 “(B) are well qualified to manage the civilian  
20 research and development programs of the Depart-  
21 ment.

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1 “(4) The Under Secretary for Science shall—

2 “(A) serve as the Science and Technology Advi-  
3 sor to the Secretary;

4 “(B) monitor the research and development  
5 programs of the Department in order to advise the  
6 Secretary with respect to any undesirable duplication  
7 or gaps in the programs;

8 “(C) advise the Secretary with respect to the  
9 well-being and management of the multipurpose lab-  
10 oratories under the jurisdiction of the Department;

11 “(D) advise the Secretary with respect to edu-  
12 cation and training activities required for effective  
13 short- and long-term basic and applied research ac-  
14 tivities of the Department;

15 “(E) advise the Secretary with respect to grants  
16 and other forms of financial assistance required for  
17 effective short- and long-term basic and applied re-  
18 search activities of the Department;

19 “(F) advise the Secretary with respect to long-  
20 term planning, coordination, and development of a



1 strategic framework for Department research and  
2 development activities; and

3 “(G) carry out such additional duties assigned  
4 to the Under Secretary by the Secretary relating to  
5 basic and applied research, including supervision or  
6 support of research activities carried out by any of  
7 the Assistant Secretaries designated by section 203  
8 of this Act, as the Secretary considers advan-  
9 tageous.”.

10 (b) ADDITIONAL ASSISTANT SECRETARY POSI-  
11 TION.—

12 (1) IN GENERAL.—Section 203(a) of the De-  
13 partment of Energy Organization Act (42 U.S.C.  
14 7133(a)) is amended in the first sentence by striking  
15 “six Assistant Secretaries” and inserting “7 Assist-  
16 ant Secretaries”.

17 (2) ASSISTANT SECRETARY LEVEL.—It is the  
18 sense of Congress that the leadership for depart-  
19 mental missions in nuclear energy should be at the  
20 Assistant Secretary level.

21 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

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1           (1) Section 202 of the Department of Energy  
2           Organization Act (42 U.S.C. 7132) is amended by  
3           adding at the end the following:

4           “(d)(1) There shall be in the Department an Under  
5           Secretary, who shall be appointed by the President, by and  
6           with the advice and consent of the Senate, and who shall  
7           perform such functions and duties as the Secretary shall  
8           prescribe, consistent with this section.

9           “(2) The Under Secretary shall be compensated at  
10          the rate provided for level III of the Executive Schedule  
11          under section 5314 of title 5, United States Code.

12          “(e)(1) There shall be in the Department a General  
13          Counsel, who shall be appointed by the President, by and  
14          with the advice and consent of the Senate, and who shall  
15          perform such functions and duties as the Secretary shall  
16          prescribe.

17          “(2) The General Counsel shall be compensated at  
18          the rate provided for level IV of the Executive Schedule  
19          under section 5315 of title 5, United States Code.”.

20                 (2) Section 5314 of title 5, United States Code,  
21                 is amended by striking “Under Secretaries of En-

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1       ergy (2)” and inserting “Under Secretaries of En-  
2       ergy (3)”.

3           (3) Section 5315 of title 5, United States Code,  
4       is amended by striking “Assistant Secretaries of En-  
5       ergy (6)” and inserting “Assistant Secretaries of  
6       Energy (7)”.

7           (4) Section 209(b) of the Department of En-  
8       ergy Organization Act (42 U.S.C. 7139(b)) is  
9       amended by striking paragraph (6) and inserting the  
10      following:

11           “(6) to carry out such additional duties as-  
12      signed to the Office by the Secretary.”.

13   **SEC. 1007. OTHER TRANSACTIONS AUTHORITY.**

14       Section 646 of the Department of Energy Organiza-  
15      tion Act (42 U.S.C. 7256) is amended by adding at the  
16      end the following:

17           “(g)(1) In addition to authority granted to the Sec-  
18      retary under any other provision of law, the Secretary may  
19      exercise the same authority to enter into transactions  
20      (other than contracts, cooperative agreements, and  
21      grants), subject to the same terms and conditions as the

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1 Secretary of Defense under section 2371 of title 10,  
2 United States Code (other than subsections (b) and (f)  
3 of that section).

4 “(2) In applying section 2371 of title 10, United  
5 States Code, to the Secretary under paragraph (1)—

6 “(A) the term ‘basic’ shall be replaced by the  
7 term ‘research’;

8 “(B) the term ‘applied’ shall be replaced by the  
9 term ‘development’; and

10 “(C) the terms ‘advanced research projects’ and  
11 ‘advanced research’ shall be replaced by the term  
12 ‘demonstration projects’.

13 “(3) The authority of the Secretary under paragraph  
14 (1) shall not be subject to—

15 “(A) section 9 of the Federal Nonnuclear En-  
16 ergy Research and Development Act of 1974 (42  
17 U.S.C. 5908); or

18 “(B) section 152 of the Atomic Energy Act of  
19 1954 (42 U.S.C. 2182).

20 “(4)(A) The Secretary shall use such competitive,  
21 merit-based selection procedures in entering into trans-

1 actions under paragraph (1), as the Secretary determines  
2 in writing to be practicable.

3 “(B) A transaction under paragraph (1) shall relate  
4 to a research, development, or demonstration project only  
5 if the Secretary determines in writing that the use of a  
6 standard contract, grant, or cooperative agreement for the  
7 project is not feasible or appropriate.

8 “(5) The Secretary may protect from disclosure, for  
9 up to 5 years after the date on which the information is  
10 developed, any information developed pursuant to a trans-  
11 action under paragraph (1) that would be protected from  
12 disclosure under section 552(b)(4) of title 5, United States  
13 Code, if obtained from a person other than a Federal  
14 agency.

15 “(6)(A) Not later than 90 days after the date of en-  
16 actment of this subsection, the Secretary shall issue guide-  
17 lines for transactions under paragraph (1).

18 “(B) The guidelines shall be published in the Federal  
19 Register for public comment in accordance with rule-  
20 making procedures of the Department.

1       “(C) The Secretary shall not have authority to carry  
2 out transactions under paragraph (1) until the guidelines  
3 for transactions required under subparagraph (A) are  
4 final.

5       “(7) The annual report of the head of an executive  
6 agency under section 2371(h) of title 10, United States  
7 Code, shall be submitted to Congress.

8       “(8)(A) In this paragraph, the term ‘nontraditional  
9 Government contractor’ has the meaning given the term  
10 ‘nontraditional defense contractor’ in section 845(f) of the  
11 National Defense Authorization Act for Fiscal Year 1994  
12 (Public Law 103–160; 10 U.S.C. 2371 note).

13       “(B) Not later than 1 year after the date on which  
14 the final guidelines are published under paragraph (6), the  
15 Comptroller General of the United States shall submit to  
16 Congress a report describing—

17               “(i) the use by the Department of authorities  
18               under this section, including the ability to attract  
19               nontraditional Government contractors; and

20               “(ii) whether additional safeguards are nec-  
21               essary to carry out the authorities.



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1           (c) PRIZES FOR PROCESSES AND TECHNOLOGIES TO  
2 REDUCE DEPENDENCE ON IMPORTED OIL.—The Sec-  
3 retary, in cooperation with the Freedom Prize Foundation,  
4 shall support a program of awarding prizes, to be known  
5 as Freedom Prizes, to encourage and recognize the devel-  
6 opment and deployment of processes and technologies that  
7 serve to reduce the dependence of the United States on  
8 imported oil.

9           (d) RELATIONSHIP TO OTHER AUTHORITY.—The  
10 program under subsection (a) may be carried out in con-  
11 junction with or in addition to the exercise of any other  
12 authority of the Secretary to acquire, support, or stimulate  
13 research, development, demonstration, or commercial ap-  
14 plication projects.

15           (e) AUTHORIZATION OF APPROPRIATIONS.—There  
16 are authorized to be appropriated—

17                 (1) \$10,000,000 to carry out the program  
18                 under subsection (a); and

19                 (2) \$5,000,000 to carry out the program under  
20                 subsection (c).



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1 **SEC. 1009. TECHNICAL CORRECTIONS.**

2 (a) COAL RESEARCH AND DEVELOPMENT.—

3 (1) IN GENERAL.—Public Law 86–599 (30  
4 U.S.C. 661 et seq.) is amended—

5 (A) by striking the first section (30 U.S.C.  
6 661) and inserting the following:

7 “SEC. 1.(a) This Act may be cited as the ‘Coal Re-  
8 search and Development Act of 1960’.

9 “(b) In this Act:

10 “(1) The term ‘research’ means scientific, tech-  
11 nical, and economic research and the practical appli-  
12 cation of that research.

13 “(2) The term ‘Secretary’ means the Secretary  
14 of Energy.”;

15 (B) in section 2 (30 U.S.C. 662), by strik-  
16 ing “shall establish within” and all that follows  
17 through “such Office”;

18 (C) by striking sections 3, 4, and 7 (30  
19 U.S.C. 663, 664, 667); and

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1 (D) by redesignating sections 5, 6, and 8  
2 (30 U.S.C. 665, 666, 668) as sections 3, 4, and  
3 5, respectively.

4 (2) PATENTS.—Section 210(a)(8) of title 35,  
5 United States Code, is amended by striking “Coal  
6 Research Development Act of 1960” and inserting  
7 “Coal Research and Development Act of 1960”.

8 (b) NONNUCLEAR ENERGY RESEARCH AND DEVEL-  
9 OPMENT.—

10 (1) SHORT TITLE; DEFINITIONS.—Section 1 of  
11 the Federal Nonnuclear Energy Research and Devel-  
12 opment Act of 1974 (42 U.S.C. 5902) is amended  
13 to read as follows:

14 “SHORT TITLE AND DEFINITIONS

15 “SEC. 1. (a) This Act may be cited as the ‘Federal  
16 Nonnuclear Energy Research and Development Act of  
17 1974’.

18 “(b) In this Act:

19 “(1) The term ‘Department’ means the Depart-  
20 ment of Energy.

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1           “(2) The term ‘Secretary’ means the Secretary  
2 of Energy.”.

3           (2) STATEMENT OF POLICY.—Section 3(b) of  
4 the Federal Nonnuclear Energy Research and Devel-  
5 opment Act of 1974 (42 U.S.C. 5902(b)) is  
6 amended—

7           (A) in paragraph (1), by striking “Energy  
8 Research and Development Administration”  
9 and inserting “Department”;

10           (B) in paragraph (2), by striking “Admin-  
11 istrator of the Energy Research and Develop-  
12 ment Administration (hereinafter in this Act re-  
13 ferred to as the ‘Administrator’)” and inserting  
14 “Secretary”; and

15           (C) in paragraph (3)—

16           (i) by striking “Administrator” and  
17 inserting “Secretary”; and

18           (ii) by inserting “Demonstration”  
19 after “Cooling”.

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1           (3) DUTIES AND AUTHORITIES.—Section 4 of  
2           the Federal Nonnuclear Energy Research and Devel-  
3           opment Act of 1974 (42 U.S.C. 5903) is amended—

4                   (A) by striking the section heading and in-  
5                   serting the following: “DUTIES AND AUTHORI-  
6                   TIES OF THE SECRETARY”; and

7                   (B) in the matter preceding subsection (a),  
8                   by striking “Administrator” and inserting “Sec-  
9                   retary”.

10          (4) COMPREHENSIVE PLANNING AND PROGRAM-  
11          MING.—Section 6 of the Federal Nonnuclear Energy  
12          Research and Development Act of 1974 (42 U.S.C.  
13          5905) is amended—

14                   (A) by striking “Administrator” each place  
15                   it appears and inserting “Secretary”; and

16                   (B) in subsection (b)(3)—

17                           (i) in subparagraph (I), by inserting  
18                           “Demonstration” after “Cooling”; and

19                           (ii) in subparagraph (L), by inserting  
20                           “Energy” after “Solar”.

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1           (5) FORMS OF FEDERAL ASSISTANCE.—Section  
2       7 of the Federal Nonnuclear Energy Research and  
3       Development Act of 1974 (42 U.S.C. 5906) is  
4       amended—

5           (A) by striking “Administrator” each place  
6       it appears and inserting “Secretary”; and

7           (B) in subsection (a)(4), by striking “of  
8       the section”.

9           (6) DEMONSTRATIONS.—Section 8 of the Fed-  
10      eral Nonnuclear Energy Research and Development  
11      Act of 1974 (42 U.S.C. 5907) is amended—

12          (A) in subsections (a) through (c), by  
13      striking “Administrator” each place it appears  
14      and inserting “Secretary”;

15          (B) in subsection (d)—

16              (i) in the first sentence of paragraph  
17          (1), by inserting “of the Energy Research  
18          and Development Administration” after  
19          “Administrator”; and

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1 (ii) in paragraph (3), by striking “Ad-  
2 ministrator” and inserting “Secretary”;  
3 and

4 (C) in subsection (f)—

5 (i) by striking “Administrator” each  
6 place it appears and inserting “Secretary”;  
7 and

8 (ii) in the proviso of the first sen-  
9 tence, by striking “Administrator’s” and  
10 inserting “Secretary’s”.

11 (7) PATENT POLICY.—Section 9 of the Federal  
12 Nonnuclear Energy Research and Development Act  
13 of 1974 (42 U.S.C. 5908) is amended—

14 (A) by striking “Administration” each  
15 place it appears and inserting “Department”;

16 (B) by striking “Administrator” each place  
17 it appears and inserting “Secretary”; and

18 (C) in subsection (c)(3), by striking “Ad-  
19 ministration’s” and inserting “Department’s”.

20 (8) ACQUISITION OF ESSENTIAL MATERIALS.—  
21 Section 12 of the Federal Nonnuclear Energy Re-

1 search and Development Act of 1974 (42 U.S.C.  
2 5911) is amended by striking subsection (b) and in-  
3 sserting the following:

4 “(b) A rule or order under subsection (a) shall be  
5 considered to be a major rule subject to chapter 8 of title  
6 5, United States Code.”.

7 (9) WATER RESOURCE EVALUATION.—Section  
8 13 of the Federal Nonnuclear Energy Research and  
9 Development Act of 1974 (42 U.S.C. 5912) is  
10 amended by striking “Administrator” each place it  
11 appears and inserting “Secretary”.

12 (10) AUTHORIZATION OF APPROPRIATIONS.—  
13 Section 16 of the Federal Nonnuclear Energy Re-  
14 search and Development Act of 1974 (42 U.S.C.  
15 5915) is amended—

16 (A) by striking the section heading and in-  
17 sserting the following: “AUTHORIZATION OF AP-  
18 PROPRIATIONS”;

19 (B) by striking “(a) There may be appro-  
20 priated to the Administrator” and inserting

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1 “There may be appropriated to the Secretary”;

2 and

3 (C) by striking subsections (b) and (c).

4 (11) CENTRAL SOURCE OF NONNUCLEAR EN-  
5 ERGY INFORMATION.—Section 17 of the Federal  
6 Nonnuclear Energy Research and Development Act  
7 of 1974 (42 U.S.C. 5916) is amended—

8 (A) by striking “Administrator” each place  
9 it appears and inserting “Secretary”;

10 (B) in the first sentence, by striking “Ad-  
11 ministrator’s”;

12 (C) in the second sentence, by striking  
13 “he” and inserting “the Secretary”;

14 (D) in the third sentence—

15 (i) in paragraph (2) of the first pro-  
16 viso, by striking “section 1905 or title 18”  
17 and inserting “section 1905 of title 18”;  
18 and

19 (ii) in subparagraph (B) of the second  
20 proviso—



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1 (I) by striking “the Federal En-  
2 ergy Administration,”;

3 (II) by striking “the Federal  
4 Power Commission,” and inserting  
5 “the Federal Energy Regulatory Com-  
6 mission”; and

7 (III) by striking “General Ac-  
8 counting Office” and inserting “Gov-  
9 ernment Accountability Office”; and

10 (E) in the last sentence, by inserting “or  
11 ranking minority member” after “chairman”.

12 (12) ENERGY INFORMATION, LOAN GUARAN-  
13 TEES, AND FINANCIAL SUPPORT.—Sections 18  
14 through 20 of the Federal Nonnuclear Energy Re-  
15 search and Development Act of 1974 (42 U.S.C.  
16 5917 through 5920) are repealed.

17 (c) STEVENSON-WYDLER TECHNOLOGY INNOVATION  
18 ACT OF 1980.—Section 20 of the Stevenson-Wydler Tech-  
19 nology Innovation Act of 1980 (15 U.S.C. 3712) is  
20 amended by striking “and the National Science Founda-

1 tion” and inserting “, the Secretary of Energy, and the  
2 Director of the National Science Foundation”.

3 **SEC. 1010. UNIVERSITY COLLABORATION.**

4 Not later than 2 years after the date of enactment  
5 of this Act, the Secretary shall transmit to the Congress  
6 a report that examines the feasibility of promoting collabo-  
7 rations between major universities and other colleges and  
8 universities in grants, contracts, and cooperative agree-  
9 ments made by the Secretary for energy projects. For pur-  
10 poses of this section, major universities are schools listed  
11 by the Carnegie Foundation as Doctoral Research Exten-  
12 sive Universities. The Secretary shall also consider pro-  
13 viding incentives to increase the inclusion of small institu-  
14 tions of higher education, including minority-serving insti-  
15 tutions, in energy grants, contracts, and cooperative  
16 agreements.

17 **SEC. 1011. SENSE OF CONGRESS.**

18 It is the sense of Congress that—

19 (1) the Secretary should develop and implement  
20 more stringent procurement and inventory controls,  
21 including controls on the purchase card program, to

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1 prevent waste, fraud, and abuse of taxpayer funds  
2 by employees and contractors of the Department;  
3 and

4 (2) the Department's Inspector General should  
5 continue to closely review purchase card purchases  
6 and other procurement and inventory practices at  
7 the Department.

8 **TITLE XI—PERSONNEL AND**  
9 **TRAINING**

10 **SEC. 1101. WORKFORCE TRENDS AND TRAINEESHIP**  
11 **GRANTS.**

12 (a) DEFINITIONS.—In this section:

13 (1) ENERGY TECHNOLOGY INDUSTRY.—The  
14 term “energy technology industry” includes—

15 (A) a renewable energy industry;

16 (B) a company that develops or commer-  
17 cializes a device to increase energy efficiency;

18 (C) the oil and gas industry;

19 (D) the nuclear power industry;

20 (E) the coal industry;

21 (F) the electric utility industry; and

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1 (G) any other industrial sector, as the Sec-  
2 retary determines to be appropriate.

3 (2) SKILLED TECHNICAL PERSONNEL.—The  
4 term “skilled technical personnel” means—

5 (A) journey- and apprentice-level workers  
6 who are enrolled in, or have completed, a feder-  
7 ally-recognized or State-recognized apprentice-  
8 ship program; and

9 (B) other skilled workers in energy tech-  
10 nology industries, as determined by the Sec-  
11 retary.

12 (b) WORKFORCE TRENDS.—

13 (1) MONITORING.—The Secretary, in consulta-  
14 tion with, and using data collected by, the Secretary  
15 of Labor, shall monitor trends in the workforce of—

16 (A) skilled technical personnel that support  
17 energy technology industries; and

18 (B) electric power and transmission engi-  
19 neers.

20 (2) REPORT ON TRENDS.—Not later than 1  
21 year after the date of enactment of this Act, the

1 Secretary shall submit to Congress a report on cur-  
2 rent trends under paragraph (1), with recommenda-  
3 tions (as appropriate) to meet the future labor re-  
4 quirements for the energy technology industries.

5 (3) REPORT ON SHORTAGE.—As soon as prac-  
6 ticable after the date on which the Secretary identi-  
7 fies or predicts a significant national shortage of  
8 skilled technical personnel in 1 or more energy tech-  
9 nology industries, the Secretary shall submit to Con-  
10 gress a report describing the shortage.

11 (c) TRAINEESHIP GRANTS FOR SKILLED TECHNICAL  
12 PERSONNEL.—The Secretary, in consultation with the  
13 Secretary of Labor, may establish programs in the appro-  
14 priate offices of the Department under which the Sec-  
15 retary provides grants to enhance training (including dis-  
16 tance learning) for any workforce category for which a  
17 shortage is identified or predicted under subsection (b)(2).

18 (d) AUTHORIZATION OF APPROPRIATIONS.—There is  
19 authorized to be appropriated to carry out this section  
20 \$20,000,000 for each of fiscal years 2006 through 2008.

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1 **SEC. 1102. EDUCATIONAL PROGRAMS IN SCIENCE AND**  
2 **MATHEMATICS.**

3 (a) SCIENCE EDUCATION ENHANCEMENT FUND.—  
4 Section 3164 of the Department of Energy Science Edu-  
5 cation Enhancement Act (42 U.S.C. 7381a) is amended  
6 by adding at the end:

7 “(c) SCIENCE EDUCATION ENHANCEMENT FUND.—  
8 The Secretary shall use not less than 0.3 percent of the  
9 amount made available to the Department for research,  
10 development, demonstration, and commercial application  
11 for fiscal year 2006 and each fiscal year thereafter to  
12 carry out activities authorized by this part.”.

13 (b) AUTHORIZED EDUCATION ACTIVITIES.—Section  
14 3165 of the Department of Energy Science Education En-  
15 hancement Act (42 U.S.C. 7381b) is amended by adding  
16 at the end the following:

17 “(14) Support competitive events for students  
18 under the supervision of teachers, designed to en-  
19 courage student interest and knowledge in science  
20 and mathematics.

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1           “(15) Support competitively-awarded, peer-re-  
2           viewed programs to promote professional develop-  
3           ment for mathematics teachers and science teachers  
4           who teach in grades from kindergarten through  
5           grade 12 at Department research and development  
6           facilities.

7           “(16) Support summer internships at Depart-  
8           ment research and development facilities, for mathe-  
9           matics teachers and science teachers who teach in  
10          grades from kindergarten through grade 12.

11          “(17) Sponsor and assist in educational and  
12          training activities identified as critical skills needs  
13          for future workforce development at Department re-  
14          search and development facilities.”.

15          (c) EDUCATIONAL PARTNERSHIPS.—Section 3166(b)  
16          of the Department of Energy Science Education Enhance-  
17          ment Act (42 U.S.C. 7381e(b)) is amended—

18                 (1) by striking paragraph (1) and inserting the  
19                 following:

20                 “(1) loaning or transferring equipment to the  
21                 institution;”;

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

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

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

6           “(7) providing funds to educational institutions  
7           to hire personnel to facilitate interactions between  
8           local school systems, Department research and devel-  
9           opment facilities, and corporate and governmental  
10          entities.”.

11          (d) DEFINITION OF DEPARTMENT RESEARCH AND  
12          DEVELOPMENT FACILITIES.—Section 3167(3) of the De-  
13          partment of Energy Science Education Enhancement Act  
14          (42 U.S.C. 7381d(3)) is amended by striking “from the  
15          Office of Science of the Department of Energy” and in-  
16          serting “by the Department of Energy”.

17          (e) STUDY.—

18                 (1) IN GENERAL.—The Secretary, in consulta-  
19                 tion with the Secretary of Education, shall enter into  
20                 an arrangement with the National Academy of Pub-  
21                 lic Administration to conduct a study of the prior-



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1 ities, quality, local and regional flexibility, and plans  
2 for educational programs at Department research  
3 and development facilities.

4 (2) INCLUSION.—The study shall recommend  
5 measures that the Secretary may take to improve  
6 Department-wide coordination of educational, work-  
7 force development, and critical skills development ac-  
8 tivities.

9 (3) REPORT.—Not later than 2 years after the  
10 date of enactment of this Act, the Secretary shall  
11 submit to Congress a report on the results of the  
12 study conducted under this subsection.

13 **SEC. 1103. TRAINING GUIDELINES FOR NONNUCLEAR ELEC-**  
14 **TRIC ENERGY INDUSTRY PERSONNEL.**

15 (a) IN GENERAL.—The Secretary of Labor, in con-  
16 sultation with the Secretary and in conjunction with the  
17 electric industry and recognized employee representatives,  
18 shall develop model personnel training guidelines to sup-  
19 port the reliability and safety of the nonnuclear electric  
20 system.

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1 (b) REQUIREMENTS.—The training guidelines under  
2 subsection (a) shall, at a minimum—

3 (1) include training requirements for workers  
4 engaged in the construction, operation, inspection, or  
5 maintenance of nonnuclear electric generation,  
6 transmission, or distribution systems, including re-  
7 quirements relating to—

8 (A) competency;

9 (B) certification; and

10 (C) assessment, including—

11 (i) initial and continuous evaluation of  
12 workers;

13 (ii) recertification procedures; and

14 (iii) methods for examining or testing  
15 the qualification of an individual who per-  
16 forms a covered task; and

17 (2) consolidate training guidelines in existence  
18 on the date on which the guidelines under subsection  
19 (a) are developed relating to the construction, oper-  
20 ation, maintenance, and inspection of nonnuclear  
21 electric generation, transmission, and distribution fa-

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1 facilities, such as guidelines established by the Na-  
2 tional Electric Safety Code and other industry con-  
3 sensus standards.

4 **SEC. 1104. NATIONAL CENTER FOR ENERGY MANAGEMENT**  
5 **AND BUILDING TECHNOLOGIES.**

6 The Secretary shall support the ongoing activities of  
7 and explore opportunities for expansion of the National  
8 Center for Energy Management and Building Tech-  
9 nologies to carry out research, education, and training ac-  
10 tivities to facilitate the improvement of energy efficiency,  
11 indoor environmental quality, and security of industrial,  
12 commercial, residential, and public buildings.

13 **SEC. 1105. IMPROVED ACCESS TO ENERGY-RELATED SCI-**  
14 **ENTIFIC AND TECHNICAL CAREERS.**

15 (a) SCIENCE EDUCATION PROGRAMS.—Section 3164  
16 of the Department of Energy Science Education Enhance-  
17 ment Act (42 U.S.C. 7381a) (as amended by section  
18 1102(a)) is amended by adding at the end the following:

19 “(d) PROGRAMS FOR STUDENTS FROM UNDER-REP-  
20 RESENTED GROUPS.—In carrying out a program under  
21 subsection (a), the Secretary shall give priority to activi-

1 ties that are designed to encourage students from under-  
2 represented groups to pursue scientific and technical ca-  
3 reers.”.

4 (b) PARTNERSHIPS WITH HISTORICALLY BLACK  
5 COLLEGES AND UNIVERSITIES, HISPANIC-SERVICING IN-  
6 STITUTIONS, AND TRIBAL COLLEGES.—The Department  
7 of Energy Science Education Enhancement Act (42  
8 U.S.C. 7381 et seq.) is amended—

9 (1) by redesignating sections 3167 and 3168 as  
10 sections 3168 and 3169, respectively; and

11 (2) by inserting after section 3166 the fol-  
12 lowing:

13 **“SEC. 3167. PARTNERSHIPS WITH HISTORICALLY BLACK**  
14 **COLLEGES AND UNIVERSITIES, HISPANIC-**  
15 **SERVING INSTITUTIONS, AND TRIBAL COL-**  
16 **LEGES.**

17 **“(a) DEFINITIONS.—In this section:**

18 **“(1) HISPANIC-SERVING INSTITUTION.—The**  
19 **term ‘Hispanic-serving institution’ has the meaning**  
20 **given the term in section 502(a) of the Higher Edu-**  
21 **cation Act of 1965 (20 U.S.C. 1101a(a)).**

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1           “(2) HISTORICALLY BLACK COLLEGE OR UNI-  
2           VERSITY.—The term ‘historically Black college or  
3           university’ has the meaning given the term ‘part B  
4           institution’ in section 322 of the Higher Education  
5           Act of 1965 (20 U.S.C. 1061).

6           “(3) NATIONAL LABORATORY.—The term ‘Na-  
7           tional Laboratory’ has the meaning given the term  
8           in section 2 of the Energy Policy Act of 2005.

9           “(4) SCIENCE FACILITY.—The term ‘science fa-  
10          cility’ has the meaning given the term ‘single-pur-  
11          pose research facility’ in section 903 of the Energy  
12          Policy Act of 2005.

13          “(5) TRIBAL COLLEGE.—The term ‘tribal col-  
14          lege’ has the meaning given the term ‘tribally con-  
15          trolled college or university’ in section 2(a) of the  
16          Tribally Controlled College Assistance Act of 1978  
17          (25 U.S.C. 1801(a)).

18          “(b) EDUCATION PARTNERSHIP.—The Secretary  
19          shall require the director of each National Laboratory, and  
20          may require the head of any science facility, to increase  
21          the participation of historically Black colleges or univer-

1 sities, Hispanic-serving institutions, or tribal colleges in  
2 any activity that increases the capacity of the historically  
3 Black colleges or universities, Hispanic-serving institu-  
4 tions, or tribal colleges to train personnel in science or  
5 engineering.

6 “(c) ACTIVITIES.—An activity described in subsection  
7 (b) includes—

8 “(1) collaborative research;

9 “(2) equipment transfer;

10 “(3) training activities carried out at a National  
11 Laboratory or science facility; and

12 “(4) mentoring activities carried out at a Na-  
13 tional Laboratory or science facility.

14 “(d) REPORT.—Not later than 2 years after the date  
15 of enactment of this subsection, the Secretary shall submit  
16 to Congress a report describing the activities carried out  
17 under this section.”.

18 **SEC. 1106. NATIONAL POWER PLANT OPERATIONS TECH-**  
19 **NOLOGY AND EDUCATIONAL CENTER.**

20 (a) ESTABLISHMENT.—The Secretary shall support  
21 the establishment of a National Power Plant Operations

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1 Technology and Education Center (referred to in this sec-  
2 tion as the “Center”), to address the need for training  
3 and educating certified operators and technicians for the  
4 electric power industry.

5 (b) LOCATION OF CENTER.—The Secretary shall  
6 support the establishment of the Center at an institution  
7 of higher education that has—

8 (1) expertise in providing degree programs in  
9 electric power generation, transmission, and dis-  
10 tribution technologies;

11 (2) expertise in providing onsite and Internet-  
12 based training; and

13 (3) demonstrated responsiveness to workforce  
14 and training requirements in the electric power in-  
15 dustry.

16 (c) TRAINING AND CONTINUING EDUCATION.—

17 (1) IN GENERAL.—The Center shall provide  
18 training and continuing education in electric power  
19 generation, transmission, and distribution tech-  
20 nologies and operations.

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1           (2) LOCATION.—The Center shall carry out  
2 training and education activities under paragraph  
3 (1)—  
4           (A) at the Center; and  
5           (B) through Internet-based information  
6 technologies that allow for learning at remote  
7 sites.

## 8           **TITLE XII—ELECTRICITY**

### 9           **SEC. 1201. SHORT TITLE.**

10           This title may be cited as the “Electricity Moderniza-  
11 tion Act of 2005”.

## 12           **Subtitle A—Reliability Standards**

### 13           **SEC. 1211. ELECTRIC RELIABILITY STANDARDS.**

14           (a) IN GENERAL.—Part II of the Federal Power Act  
15 (16 U.S.C 824 et seq.) is amended by adding at the end  
16 the following:

#### 17           **“SEC. 215. ELECTRIC RELIABILITY.**

18           “(a) DEFINITIONS.—For purposes of this section:

19           “(1) The term ‘bulk-power system’ means—

20           “(A) facilities and control systems nec-  
21           essary for operating an interconnected electric



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1 energy transmission network (or any portion  
2 thereof); and

3 “(B) electric energy from generation facili-  
4 ties needed to maintain transmission system re-  
5 liability.

6 The term does not include facilities used in the local  
7 distribution of electric energy.

8 “(2) The terms ‘Electric Reliability Organiza-  
9 tion’ and ‘ERO’ mean the organization certified by  
10 the Commission under subsection (c) the purpose of  
11 which is to establish and enforce reliability stand-  
12 ards for the bulk-power system, subject to Commis-  
13 sion review.

14 “(3) The term ‘reliability standard’ means a re-  
15 quirement, approved by the Commission under this  
16 section, to provide for reliable operation of the bulk-  
17 power system. The term includes requirements for  
18 the operation of existing bulk-power system facilities,  
19 including cybersecurity protection, and the design of  
20 planned additions or modifications to such facilities  
21 to the extent necessary to provide for reliable oper-

1       ation of the bulk-power system, but the term does  
2       not include any requirement to enlarge such facilities  
3       or to construct new transmission capacity or genera-  
4       tion capacity.

5           “(4) The term ‘reliable operation’ means oper-  
6       ating the elements of the bulk-power system within  
7       equipment and electric system thermal, voltage, and  
8       stability limits so that instability, uncontrolled sepa-  
9       ration, or cascading failures of such system will not  
10      occur as a result of a sudden disturbance, including  
11      a cybersecurity incident, or unanticipated failure of  
12      system elements.

13          “(5) The term ‘Interconnection’ means a geo-  
14      graphic area in which the operation of bulk-power  
15      system components is synchronized such that the  
16      failure of 1 or more of such components may ad-  
17      versely affect the ability of the operators of other  
18      components within the system to maintain reliable  
19      operation of the facilities within their control.

20          “(6) The term ‘transmission organization’  
21      means a Regional Transmission Organization, Inde-

1        pendent System Operator, independent transmission  
2        provider, or other transmission organization finally  
3        approved by the Commission for the operation of  
4        transmission facilities.

5            “(7) The term ‘regional entity’ means an entity  
6        having enforcement authority pursuant to subsection  
7        (e)(4).

8            “(8) The term ‘cybersecurity incident’ means a  
9        malicious act or suspicious event that disrupts, or  
10       was an attempt to disrupt, the operation of those  
11       programmable electronic devices and communication  
12       networks including hardware, software and data that  
13       are essential to the reliable operation of the bulk  
14       power system.

15           “(b) JURISDICTION AND APPLICABILITY.—(1) The  
16       Commission shall have jurisdiction, within the United  
17       States, over the ERO certified by the Commission under  
18       subsection (c), any regional entities, and all users, owners  
19       and operators of the bulk-power system, including but not  
20       limited to the entities described in section 201(f), for pur-  
21       poses of approving reliability standards established under

1 this section and enforcing compliance with this section. All  
2 users, owners and operators of the bulk-power system  
3 shall comply with reliability standards that take effect  
4 under this section.

5 “(2) The Commission shall issue a final rule to imple-  
6 ment the requirements of this section not later than 180  
7 days after the date of enactment of this section.

8 “(c) CERTIFICATION.—Following the issuance of a  
9 Commission rule under subsection (b)(2), any person may  
10 submit an application to the Commission for certification  
11 as the Electric Reliability Organization. The Commission  
12 may certify 1 such ERO if the Commission determines  
13 that such ERO—

14 “(1) has the ability to develop and enforce, sub-  
15 ject to subsection (e)(2), reliability standards that  
16 provide for an adequate level of reliability of the  
17 bulk-power system; and

18 “(2) has established rules that—

19 “(A) assure its independence of the users  
20 and owners and operators of the bulk-power  
21 system, while assuring fair stakeholder rep-

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1           resentation in the selection of its directors and  
2           balanced decisionmaking in any ERO com-  
3           mittee or subordinate organizational structure;

4                   “(B) allocate equitably reasonable dues,  
5           fees, and other charges among end users for all  
6           activities under this section;

7                   “(C) provide fair and impartial procedures  
8           for enforcement of reliability standards through  
9           the imposition of penalties in accordance with  
10          subsection (e) (including limitations on activi-  
11          ties, functions, or operations, or other appro-  
12          priate sanctions);

13                   “(D) provide for reasonable notice and op-  
14          portunity for public comment, due process,  
15          openness, and balance of interests in developing  
16          reliability standards and otherwise exercising its  
17          duties; and

18                   “(E) provide for taking, after certification,  
19          appropriate steps to gain recognition in Canada  
20          and Mexico.

1       “(d) RELIABILITY STANDARDS.—(1) The Electric  
2 Reliability Organization shall file each reliability standard  
3 or modification to a reliability standard that it proposes  
4 to be made effective under this section with the Commis-  
5 sion.

6       “(2) The Commission may approve, by rule or order,  
7 a proposed reliability standard or modification to a reli-  
8 ability standard if it determines that the standard is just,  
9 reasonable, not unduly discriminatory or preferential, and  
10 in the public interest. The Commission shall give due  
11 weight to the technical expertise of the Electric Reliability  
12 Organization with respect to the content of a proposed  
13 standard or modification to a reliability standard and to  
14 the technical expertise of a regional entity organized on  
15 an Interconnection-wide basis with respect to a reliability  
16 standard to be applicable within that Interconnection, but  
17 shall not defer with respect to the effect of a standard  
18 on competition. A proposed standard or modification shall  
19 take effect upon approval by the Commission.

20       “(3) The Electric Reliability Organization shall  
21 rebuttably presume that a proposal from a regional entity

1 organized on an Interconnection-wide basis for a reliability  
2 standard or modification to a reliability standard to be ap-  
3 plicable on an Interconnection-wide basis is just, reason-  
4 able, and not unduly discriminatory or preferential, and  
5 in the public interest.

6 “(4) The Commission shall remand to the Electric  
7 Reliability Organization for further consideration a pro-  
8 posed reliability standard or a modification to a reliability  
9 standard that the Commission disapproves in whole or in  
10 part.

11 “(5) The Commission, upon its own motion or upon  
12 complaint, may order the Electric Reliability Organization  
13 to submit to the Commission a proposed reliability stand-  
14 ard or a modification to a reliability standard that ad-  
15 dresses a specific matter if the Commission considers such  
16 a new or modified reliability standard appropriate to carry  
17 out this section.

18 “(6) The final rule adopted under subsection (b)(2)  
19 shall include fair processes for the identification and time-  
20 ly resolution of any conflict between a reliability standard  
21 and any function, rule, order, tariff, rate schedule, or

1 agreement accepted, approved, or ordered by the Commis-  
2 sion applicable to a transmission organization. Such trans-  
3 mission organization shall continue to comply with such  
4 function, rule, order, tariff, rate schedule or agreement ac-  
5 cepted approved, or ordered by the Commission until—

6           “(A) the Commission finds a conflict exists be-  
7           tween a reliability standard and any such provision;

8           “(B) the Commission orders a change to such  
9           provision pursuant to section 206 of this part; and

10           “(C) the ordered change becomes effective  
11           under this part.

12 If the Commission determines that a reliability standard  
13 needs to be changed as a result of such a conflict, it shall  
14 order the ERO to develop and file with the Commission  
15 a modified reliability standard under paragraph (4) or (5)  
16 of this subsection.

17           “(e) ENFORCEMENT.—(1) The ERO may impose,  
18 subject to paragraph (2), a penalty on a user or owner  
19 or operator of the bulk-power system for a violation of a  
20 reliability standard approved by the Commission under



1 subsection (d) if the ERO, after notice and an opportunity  
2 for a hearing—

3           “(A) finds that the user or owner or operator  
4           has violated a reliability standard approved by the  
5           Commission under subsection (d); and

6           “(B) files notice and the record of the pro-  
7           ceeding with the Commission.

8           “(2) A penalty imposed under paragraph (1) may  
9 take effect not earlier than the 31st day after the ERO  
10 files with the Commission notice of the penalty and the  
11 record of proceedings. Such penalty shall be subject to re-  
12 view by the Commission, on its own motion or upon appli-  
13 cation by the user, owner or operator that is the subject  
14 of the penalty filed within 30 days after the date such  
15 notice is filed with the Commission. Application to the  
16 Commission for review, or the initiation of review by the  
17 Commission on its own motion, shall not operate as a stay  
18 of such penalty unless the Commission otherwise orders  
19 upon its own motion or upon application by the user,  
20 owner or operator that is the subject of such penalty. In  
21 any proceeding to review a penalty imposed under para-

1 graph (1), the Commission, after notice and opportunity  
2 for hearing (which hearing may consist solely of the record  
3 before the ERO and opportunity for the presentation of  
4 supporting reasons to affirm, modify, or set aside the pen-  
5 alty), shall by order affirm, set aside, reinstate, or modify  
6 the penalty, and, if appropriate, remand to the ERO for  
7 further proceedings. The Commission shall implement ex-  
8 pedited procedures for such hearings.

9       “(3) On its own motion or upon complaint, the Com-  
10 mission may order compliance with a reliability standard  
11 and may impose a penalty against a user or owner or oper-  
12 ator of the bulk-power system if the Commission finds,  
13 after notice and opportunity for a hearing, that the user  
14 or owner or operator of the bulk-power system has en-  
15 gaged or is about to engage in any acts or practices that  
16 constitute or will constitute a violation of a reliability  
17 standard.

18       “(4) The Commission shall issue regulations author-  
19 izing the ERO to enter into an agreement to delegate au-  
20 thority to a regional entity for the purpose of proposing

1 reliability standards to the ERO and enforcing reliability  
2 standards under paragraph (1) if—

3 “(A) the regional entity is governed by—

4 “(i) an independent board;

5 “(ii) a balanced stakeholder board; or

6 “(iii) a combination independent and bal-  
7 anced stakeholder board.

8 “(B) the regional entity otherwise satisfies the  
9 provisions of subsection (c)(1) and (2); and

10 “(C) the agreement promotes effective and effi-  
11 cient administration of bulk-power system reliability.

12 The Commission may modify such delegation. The ERO  
13 and the Commission shall rebuttably presume that a pro-  
14 posal for delegation to a regional entity organized on an  
15 Interconnection-wide basis promotes effective and efficient  
16 administration of bulk-power system reliability and should  
17 be approved. Such regulation may provide that the Com-  
18 mission may assign the ERO’s authority to enforce reli-  
19 ability standards under paragraph (1) directly to a re-  
20 gional entity consistent with the requirements of this para-  
21 graph.

1           “(5) The Commission may take such action as is nec-  
2    essary or appropriate against the ERO or a regional entity  
3    to ensure compliance with a reliability standard or any  
4    Commission order affecting the ERO or a regional entity.

5           “(6) Any penalty imposed under this section shall  
6    bear a reasonable relation to the seriousness of the viola-  
7    tion and shall take into consideration the efforts of such  
8    user, owner, or operator to remedy the violation in a time-  
9    ly manner.

10          “(f) CHANGES IN ELECTRIC RELIABILITY ORGANIZA-  
11    TION RULES.—The Electric Reliability Organization shall  
12    file with the Commission for approval any proposed rule  
13    or proposed rule change, accompanied by an explanation  
14    of its basis and purpose. The Commission, upon its own  
15    motion or complaint, may propose a change to the rules  
16    of the ERO. A proposed rule or proposed rule change shall  
17    take effect upon a finding by the Commission, after notice  
18    and opportunity for comment, that the change is just, rea-  
19    sonable, not unduly discriminatory or preferential, is in  
20    the public interest, and satisfies the requirements of sub-  
21    section (c).

1           “(g) RELIABILITY REPORTS.—The ERO shall con-  
2 duct periodic assessments of the reliability and adequacy  
3 of the bulk-power system in North America.

4           “(h) COORDINATION WITH CANADA AND MEXICO.—  
5 The President is urged to negotiate international agree-  
6 ments with the governments of Canada and Mexico to pro-  
7 vide for effective compliance with reliability standards and  
8 the effectiveness of the ERO in the United States and  
9 Canada or Mexico.

10           “(i) SAVINGS PROVISIONS.—(1) The ERO shall have  
11 authority to develop and enforce compliance with reli-  
12 ability standards for only the bulk-power system.

13           “(2) This section does not authorize the ERO or the  
14 Commission to order the construction of additional gen-  
15 eration or transmission capacity or to set and enforce com-  
16 pliance with standards for adequacy or safety of electric  
17 facilities or services.

18           “(3) Nothing in this section shall be construed to pre-  
19 empt any authority of any State to take action to ensure  
20 the safety, adequacy, and reliability of electric service  
21 within that State, as long as such action is not incon-

1 sistent with any reliability standard, except that the State  
2 of New York may establish rules that result in greater  
3 reliability within that State, as long as such action does  
4 not result in lesser reliability outside the State than that  
5 provided by the reliability standards.

6       “(4) Within 90 days of the application of the Electric  
7 Reliability Organization or other affected party, and after  
8 notice and opportunity for comment, the Commission shall  
9 issue a final order determining whether a State action is  
10 inconsistent with a reliability standard, taking into consid-  
11 eration any recommendation of the ERO.

12       “(5) The Commission, after consultation with the  
13 ERO and the State taking action, may stay the effective-  
14 ness of any State action, pending the Commission’s  
15 issuance of a final order.

16       “(j) REGIONAL ADVISORY BODIES.—The Commis-  
17 sion shall establish a regional advisory body on the petition  
18 of at least  $\frac{2}{3}$  of the States within a region that have more  
19 than  $\frac{1}{2}$  of their electric load served within the region. A  
20 regional advisory body shall be composed of 1 member  
21 from each participating State in the region, appointed by

1 the Governor of each State, and may include representa-  
2 tives of agencies, States, and provinces outside the United  
3 States. A regional advisory body may provide advice to the  
4 Electric Reliability Organization, a regional entity, or the  
5 Commission regarding the governance of an existing or  
6 proposed regional entity within the same region, whether  
7 a standard proposed to apply within the region is just,  
8 reasonable, not unduly discriminatory or preferential, and  
9 in the public interest, whether fees proposed to be assessed  
10 within the region are just, reasonable, not unduly discrimi-  
11 natory or preferential, and in the public interest and any  
12 other responsibilities requested by the Commission. The  
13 Commission may give deference to the advice of any such  
14 regional advisory body if that body is organized on an  
15 Interconnection-wide basis.

16       “(k) ALASKA AND HAWAII.—The provisions of this  
17 section do not apply to Alaska or Hawaii.”.

18       (b) STATUS OF ERO.—The Electric Reliability Orga-  
19 nization certified by the Federal Energy Regulatory Com-  
20 mission under section 215(e) of the Federal Power Act  
21 and any regional entity delegated enforcement authority

1 pursuant to section 215(e)(4) of that Act are not depart-  
2 ments, agencies, or instrumentalities of the United States  
3 Government.

4 (c) ACCESS APPROVALS BY FEDERAL AGENCIES.—  
5 Federal agencies responsible for approving access to elec-  
6 tric transmission or distribution facilities located on lands  
7 within the United States shall, in accordance with applica-  
8 ble law, expedite any Federal agency approvals that are  
9 necessary to allow the owners or operators of such facili-  
10 ties to comply with any reliability standard, approved by  
11 the Commission under section 215 of the Federal Power  
12 Act, that pertains to vegetation management, electric serv-  
13 ice restoration, or resolution of situations that imminently  
14 endanger the reliability or safety of the facilities.

15 **Subtitle B—Transmission**  
16 **Infrastructure Modernization**

17 **SEC. 1221. SITING OF INTERSTATE ELECTRIC TRANS-**  
18 **MISSION FACILITIES.**

19 (a) IN GENERAL.—Part II of the Federal Power Act  
20 (16 U.S.C. 824 et seq.) is amended by adding at the end  
21 the following:



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1 **“SEC. 216. SITING OF INTERSTATE ELECTRIC TRANS-**  
2 **MISSION FACILITIES.**

3 “(a) DESIGNATION OF NATIONAL INTEREST ELEC-  
4 TRIC TRANSMISSION CORRIDORS.—(1) Not later than 1  
5 year after the date of enactment of this section and every  
6 3 years thereafter, the Secretary of Energy (referred to  
7 in this section as the ‘Secretary’), in consultation with af-  
8 fected States, shall conduct a study of electric trans-  
9 mission congestion.

10 “(2) After considering alternatives and recommenda-  
11 tions from interested parties (including an opportunity for  
12 comment from affected States), the Secretary shall issue  
13 a report, based on the study, which may designate any  
14 geographic area experiencing electric energy transmission  
15 capacity constraints or congestion that adversely affects  
16 consumers as a national interest electric transmission cor-  
17 ridor.

18 “(3) The Secretary shall conduct the study and issue  
19 the report in consultation with any appropriate regional  
20 entity referred to in section 215.

1       “(4) In determining whether to designate a national  
2 interest electric transmission corridor under paragraph  
3 (2), the Secretary may consider whether—

4           “(A) the economic vitality and development of  
5 the corridor, or the end markets served by the cor-  
6 ridor, may be constrained by lack of adequate or  
7 reasonably priced electricity;

8           “(B)(i) economic growth in the corridor, or the  
9 end markets served by the corridor, may be jeopard-  
10 ized by reliance on limited sources of energy; and

11           “(ii) a diversification of supply is warranted;

12           “(C) the energy independence of the United  
13 States would be served by the designation;

14           “(D) the designation would be in the interest of  
15 national energy policy; and

16           “(E) the designation would enhance national  
17 defense and homeland security.

18       “(b) CONSTRUCTION PERMIT.—Except as provided  
19 in subsection (i), the Commission may, after notice and  
20 an opportunity for hearing, issue 1 or more permits for  
21 the construction or modification of electric transmission

1 facilities in a national interest electric transmission cor-  
2 ridor designated by the Secretary under subsection (a) if  
3 the Commission finds that—

4 “(1)(A) a State in which the transmission fa-  
5 cilities are to be constructed or modified does not  
6 have authority to—

7 “(i) approve the siting of the facilities; or

8 “(ii) consider the interstate benefits ex-  
9 pected to be achieved by the proposed construc-  
10 tion or modification of transmission facilities in  
11 the State;

12 “(B) the applicant for a permit is a transmit-  
13 ting utility under this Act but does not qualify to  
14 apply for a permit or siting approval for the pro-  
15 posed project in a State because the applicant does  
16 not serve end-use customers in the State; or

17 “(C) a State commission or other entity that  
18 has authority to approve the siting of the facilities  
19 has—

20 “(i) withheld approval for more than 1  
21 year after the filing of an application seeking

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1 approval pursuant to applicable law or 1 year  
2 after the designation of the relevant national in-  
3 terest electric transmission corridor, whichever  
4 is later; or

5 “(ii) conditioned its approval in such a  
6 manner that the proposed construction or modi-  
7 fication will not significantly reduce trans-  
8 mission congestion in interstate commerce or is  
9 not economically feasible;

10 “(2) the facilities to be authorized by the per-  
11 mit will be used for the transmission of electric en-  
12 ergy in interstate commerce;

13 “(3) the proposed construction or modification  
14 is consistent with the public interest;

15 “(4) the proposed construction or modification  
16 will significantly reduce transmission congestion in  
17 interstate commerce and protects or benefits con-  
18 sumers;

19 “(5) the proposed construction or modification  
20 is consistent with sound national energy policy and  
21 will enhance energy independence; and

1           “(6) the proposed modification will maximize,  
2           to the extent reasonable and economical, the trans-  
3           mission capabilities of existing towers or structures.

4           “(c) PERMIT APPLICATIONS.—(1) Permit applica-  
5           tions under subsection (b) shall be made in writing to the  
6           Commission.

7           “(2) The Commission shall issue rules specifying—

8           “(A) the form of the application;

9           “(B) the information to be contained in the ap-  
10          plication; and

11          “(C) the manner of service of notice of the per-  
12          mit application on interested persons.

13          “(d) COMMENTS.—In any proceeding before the  
14          Commission under subsection (b), the Commission shall  
15          afford each State in which a transmission facility covered  
16          by the permit is or will be located, each affected Federal  
17          agency and Indian tribe, private property owners, and  
18          other interested persons, a reasonable opportunity to  
19          present their views and recommendations with respect to  
20          the need for and impact of a facility covered by the permit.

1           “(e) RIGHTS-OF-WAY.—(1) In the case of a permit  
2 under subsection (b) for electric transmission facilities to  
3 be located on property other than property owned by the  
4 United States or a State, if the permit holder cannot ac-  
5 quire by contract, or is unable to agree with the owner  
6 of the property to the compensation to be paid for, the  
7 necessary right-of-way to construct or modify the trans-  
8 mission facilities, the permit holder may acquire the right-  
9 of-way by the exercise of the right of eminent domain in  
10 the district court of the United States for the district in  
11 which the property concerned is located, or in the appro-  
12 priate court of the State in which the property is located.

13           “(2) Any right-of-way acquired under paragraph (1)  
14 shall be used exclusively for the construction or modifica-  
15 tion of electric transmission facilities within a reasonable  
16 period of time after the acquisition.

17           “(3) The practice and procedure in any action or pro-  
18 ceeding under this subsection in the district court of the  
19 United States shall conform as nearly as practicable to  
20 the practice and procedure in a similar action or pro-

1 ceeding in the courts of the State in which the property  
2 is located.

3       “(4) Nothing in this subsection shall be construed to  
4 authorize the use of eminent domain to acquire a right-  
5 of-way for any purpose other than the construction, modi-  
6 fication, operation, or maintenance of electric transmission  
7 facilities and related facilities. The right-of-way cannot be  
8 used for any other purpose, and the right-of-way shall ter-  
9minate upon the termination of the use for which the  
10 right-of-way was acquired.

11       “(f) COMPENSATION.—(1) Any right-of-way acquired  
12 pursuant to subsection (e) shall be considered a taking of  
13 private property for which just compensation is due.

14       “(2) Just compensation shall be an amount equal to  
15 the fair market value (including applicable severance dam-  
16 ages) of the property taken on the date of the exercise  
17 of eminent domain authority.

18       “(g) STATE LAW.—Nothing in this section precludes  
19 any person from constructing or modifying any trans-  
20 mission facility in accordance with State law.

1       “(h) COORDINATION OF FEDERAL AUTHORIZATIONS  
2 FOR TRANSMISSION FACILITIES.—(1) In this subsection:

3           “(A) The term ‘Federal authorization’ means  
4 any authorization required under Federal law in  
5 order to site a transmission facility.

6           “(B) The term ‘Federal authorization’ includes  
7 such permits, special use authorizations, certifi-  
8 cations, opinions, or other approvals as may be re-  
9 quired under Federal law in order to site a trans-  
10 mission facility.

11       “(2) The Department of Energy shall act as the lead  
12 agency for purposes of coordinating all applicable Federal  
13 authorizations and related environmental reviews of the  
14 facility.

15       “(3) To the maximum extent practicable under appli-  
16 cable Federal law, the Secretary shall coordinate the Fed-  
17 eral authorization and review process under this sub-  
18 section with any Indian tribes, multistate entities, and  
19 State agencies that are responsible for conducting any sep-  
20 arate permitting and environmental reviews of the facility,  
21 to ensure timely and efficient review and permit decisions.



1       “(4)(A) As head of the lead agency, the Secretary,  
2 in consultation with agencies responsible for Federal au-  
3 thorizations and, as appropriate, with Indian tribes,  
4 multistate entities, and State agencies that are willing to  
5 coordinate their own separate permitting and environ-  
6 mental reviews with the Federal authorization and envi-  
7 ronmental reviews, shall establish prompt and binding in-  
8 termediate milestones and ultimate deadlines for the re-  
9 view of, and Federal authorization decisions relating to,  
10 the proposed facility.

11       “(B) The Secretary shall ensure that, once an appli-  
12 cation has been submitted with such data as the Secretary  
13 considers necessary, all permit decisions and related envi-  
14 ronmental reviews under all applicable Federal laws shall  
15 be completed—

16               “(i) within 1 year; or

17               “(ii) if a requirement of another provision of  
18 Federal law does not permit compliance with clause  
19 (i), as soon thereafter as is practicable.

20       “(C) The Secretary shall provide an expeditious pre-  
21 application mechanism for prospective applicants to confer

1 with the agencies involved to have each such agency deter-  
2 mine and communicate to the prospective applicant not  
3 later than 60 days after the prospective applicant submits  
4 a request for such information concerning—

5           “(i) the likelihood of approval for a potential fa-  
6           cility; and

7           “(ii) key issues of concern to the agencies and  
8           public.

9           “(5)(A) As lead agency head, the Secretary, in con-  
10 sultation with the affected agencies, shall prepare a single  
11 environmental review document, which shall be used as the  
12 basis for all decisions on the proposed project under Fed-  
13 eral law.

14           “(B) The Secretary and the heads of other agencies  
15 shall streamline the review and permitting of transmission  
16 within corridors designated under section 503 of the Fed-  
17 eral Land Policy and Management Act (43 U.S.C. 1763)  
18 by fully taking into account prior analyses and decisions  
19 relating to the corridors.

1       “(C) The document shall include consideration by the  
2 relevant agencies of any applicable criteria or other mat-  
3 ters as required under applicable law.

4       “(6)(A) If any agency has denied a Federal author-  
5 ization required for a transmission facility, or has failed  
6 to act by the deadline established by the Secretary pursu-  
7 ant to this section for deciding whether to issue the au-  
8 thorization, the applicant or any State in which the facility  
9 would be located may file an appeal with the President,  
10 who shall, in consultation with the affected agency, review  
11 the denial or failure to take action on the pending applica-  
12 tion.

13       “(B) Based on the overall record and in consultation  
14 with the affected agency, the President may—

15               “(i) issue the necessary authorization with any  
16 appropriate conditions; or

17               “(ii) deny the application.

18       “(C) The President shall issue a decision not later  
19 than 90 days after the date of the filing of the appeal.

1       “(D) In making a decision under this paragraph, the  
2 President shall comply with applicable requirements of  
3 Federal law, including any requirements of—

4               “(i) the National Forest Management Act of  
5 1976 (16 U.S.C. 472a et seq.);

6               “(ii) the Endangered Species Act of 1973 (16  
7 U.S.C. 1531 et seq.);

8               “(iii) the Federal Water Pollution Control Act  
9 (33 U.S.C. 1251 et seq.);

10              “(iv) the National Environmental Policy Act of  
11 1969 (42 U.S.C. 4321 et seq.); and

12              “(v) the Federal Land Policy and Management  
13 Act of 1976 (43 U.S.C. 1701 et seq.).

14       “(7)(A) Not later than 18 months after the date of  
15 enactment of this section, the Secretary shall issue any  
16 regulations necessary to implement this subsection.

17       “(B)(i) Not later than 1 year after the date of enact-  
18 ment of this section, the Secretary and the heads of all  
19 Federal agencies with authority to issue Federal author-  
20 izations shall enter into a memorandum of understanding

1 to ensure the timely and coordinated review and permit-  
2 ting of electricity transmission facilities.

3 “(ii) Interested Indian tribes, multistate entities, and  
4 State agencies may enter the memorandum of under-  
5 standing.

6 “(C) The head of each Federal agency with authority  
7 to issue a Federal authorization shall designate a senior  
8 official responsible for, and dedicate sufficient other staff  
9 and resources to ensure, full implementation of the regula-  
10 tions and memorandum required under this paragraph.

11 “(8)(A) Each Federal land use authorization for an  
12 electricity transmission facility shall be issued—

13 “(i) for a duration, as determined by the Sec-  
14 retary, commensurate with the anticipated use of the  
15 facility; and

16 “(ii) with appropriate authority to manage the  
17 right-of-way for reliability and environmental protec-  
18 tion.

19 “(B) On the expiration of the authorization (includ-  
20 ing an authorization issued before the date of enactment  
21 of this section), the authorization shall be reviewed for re-

1 newal taking fully into account reliance on such electricity  
2 infrastructure, recognizing the importance of the author-  
3 ization for public health, safety, and economic welfare and  
4 as a legitimate use of Federal land.

5 “(9) In exercising the responsibilities under this sec-  
6 tion, the Secretary shall consult regularly with—

7 “(A) the Federal Energy Regulatory Commis-  
8 sion;

9 “(B) electric reliability organizations (including  
10 related regional entities) approved by the Commis-  
11 sion; and

12 “(C) Transmission Organizations approved by  
13 the Commission.

14 “(i) INTERSTATE COMPACTS.—(1) The consent of  
15 Congress is given for 3 or more contiguous States to enter  
16 into an interstate compact, subject to approval by Con-  
17 gress, establishing regional transmission siting agencies  
18 to—

19 “(A) facilitate siting of future electric energy  
20 transmission facilities within those States; and

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1           “(B) carry out the electric energy transmission  
2           siting responsibilities of those States.

3           “(2) The Secretary may provide technical assistance  
4 to regional transmission siting agencies established under  
5 this subsection.

6           “(3) The regional transmission siting agencies shall  
7 have the authority to review, certify, and permit siting of  
8 transmission facilities, including facilities in national in-  
9 terest electric transmission corridors (other than facilities  
10 on property owned by the United States).

11           “(4) The Commission shall have no authority to issue  
12 a permit for the construction or modification of an electric  
13 transmission facility within a State that is a party to a  
14 compact, unless the members of the compact are in dis-  
15 agreement and the Secretary makes, after notice and an  
16 opportunity for a hearing, the finding described in sub-  
17 section (b)(1)(C).

18           “(j) RELATIONSHIP TO OTHER LAWS.—(1) Except  
19 as specifically provided, nothing in this section affects any  
20 requirement of an environmental law of the United States,

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1 including the National Environmental Policy Act of 1969  
2 (42 U.S.C. 4321 et seq.).

3 “(2) Subsection (h)(6) shall not apply to any unit of  
4 the National Park System, the National Wildlife Refuge  
5 System, the National Wild and Scenic Rivers System, the  
6 National Trails System, the National Wilderness Preser-  
7 vation System, or a National Monument.

8 “(k) ERCOT.—This section shall not apply within  
9 the area referred to in section 212(k)(2)(A).”.

10 (b) REPORTS TO CONGRESS ON CORRIDORS AND  
11 RIGHTS OF WAY ON FEDERAL LANDS.—Not later than  
12 90 days after the date of enactment of this Act, the Sec-  
13 retary of the Interior, the Secretary, the Secretary of Agri-  
14 culture, and the Chairman of the Council on Environ-  
15 mental Quality shall submit to Congress a joint report  
16 identifying—

17 (1)(A) all existing designated transmission and  
18 distribution corridors on Federal land and the status  
19 of work related to proposed transmission and dis-  
20 tribution corridor designations under title V of the



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1 Federal Land Policy and Management Act of 1976  
2 (43 U.S.C. 1761 et seq.);

3 (B) the schedule for completing the work;

4 (C) any impediments to completing the work;

5 and

6 (D) steps that Congress could take to expedite  
7 the process;

8 (2)(A) the number of pending applications to  
9 locate transmission facilities on Federal land;

10 (B) key information relating to each such facil-  
11 ity;

12 (C) how long each application has been pend-  
13 ing;

14 (D) the schedule for issuing a timely decision as  
15 to each facility; and

16 (E) progress in incorporating existing and new  
17 such rights-of-way into relevant land use and re-  
18 source management plans or the equivalent of those  
19 plans; and

20 (3)(A) the number of existing transmission and  
21 distribution rights-of-way on Federal land that will

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1           come up for renewal within the following 5-, 10-,  
2           and 15-year periods; and

3                   (B) a description of how the Secretaries plan to  
4           manage the renewals.

5 **SEC. 1222. THIRD-PARTY FINANCE.**

6           (a) EXISTING FACILITIES.—The Secretary, acting  
7 through the Administrator of the Western Area Power Ad-  
8 ministration (hereinafter in this section referred to as  
9 “WAPA”), or through the Administrator of the South-  
10 western Power Administration (hereinafter in this section  
11 referred to as “SWPA”), or both, may design, develop,  
12 construct, operate, maintain, or own, or participate with  
13 other entities in designing, developing, constructing, oper-  
14 ating, maintaining, or owning, an electric power trans-  
15 mission facility and related facilities (“Project”) needed  
16 to upgrade existing transmission facilities owned by  
17 SWPA or WAPA if the Secretary, in consultation with the  
18 applicable Administrator, determines that the proposed  
19 Project—

20                   (1)(A) is located in a national interest electric  
21           transmission corridor designated under section

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1 216(a) of the Federal Power Act and will reduce  
2 congestion of electric transmission in interstate com-  
3 merce; or

4 (B) is necessary to accommodate an actual or  
5 projected increase in demand for electric trans-  
6 mission capacity;

7 (2) is consistent with—

8 (A) transmission needs identified, in a  
9 transmission expansion plan or otherwise, by  
10 the appropriate Transmission Organization (as  
11 defined in the Federal Power Act), if any, or  
12 approved regional reliability organization; and

13 (B) efficient and reliable operation of the  
14 transmission grid; and

15 (3) would be operated in conformance with pru-  
16 dent utility practice.

17 (b) NEW FACILITIES.—The Secretary, acting  
18 through WAPA or SWPA, or both, may design, develop,  
19 construct, operate, maintain, or own, or participate with  
20 other entities in designing, developing, constructing, oper-  
21 ating, maintaining, or owning, a new electric power trans-

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1 mission facility and related facilities (“Project”) located  
2 within any State in which WAPA or SWPA operates if  
3 the Secretary, in consultation with the applicable Adminis-  
4 trator, determines that the proposed Project—

5 (1)(A) is located in an area designated under  
6 section 216(a) of the Federal Power Act and will re-  
7 duce congestion of electric transmission in interstate  
8 commerce; or

9 (B) is necessary to accommodate an actual or  
10 projected increase in demand for electric trans-  
11 mission capacity;

12 (2) is consistent with—

13 (A) transmission needs identified, in a  
14 transmission expansion plan or otherwise, by  
15 the appropriate Transmission Organization (as  
16 defined in the Federal Power Act) if any, or ap-  
17 proved regional reliability organization; and

18 (B) efficient and reliable operation of the  
19 transmission grid;

20 (3) will be operated in conformance with pru-  
21 dent utility practice;

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1           (4) will be operated by, or in conformance with  
2           the rules of, the appropriate (A) Transmission Orga-  
3           nization, if any, or (B) if such an organization does  
4           not exist, regional reliability organization; and

5           (5) will not duplicate the functions of existing  
6           transmission facilities or proposed facilities which  
7           are the subject of ongoing or approved siting and re-  
8           lated permitting proceedings.

9           (c) OTHER FUNDS.—

10           (1) IN GENERAL.—In carrying out a Project  
11           under subsection (a) or (b), the Secretary may ac-  
12           cept and use funds contributed by another entity for  
13           the purpose of carrying out the Project.

14           (2) AVAILABILITY.—The contributed funds  
15           shall be available for expenditure for the purpose of  
16           carrying out the Project—

17                   (A) without fiscal year limitation; and

18                   (B) as if the funds had been appropriated  
19                   specifically for that Project.

20           (3) ALLOCATION OF COSTS.—In carrying out a  
21           Project under subsection (a) or (b), any costs of the

1 Project not paid for by contributions from another  
2 entity shall be collected through rates charged to  
3 customers using the new transmission capability pro-  
4 vided by the Project and allocated equitably among  
5 these project beneficiaries using the new trans-  
6 mission capability.

7 (d) RELATIONSHIP TO OTHER LAWS.—Nothing in  
8 this section affects any requirement of—

9 (1) any Federal environmental law, including  
10 the National Environmental Policy Act of 1969 (42  
11 U.S.C. 4321 et seq.);

12 (2) any Federal or State law relating to the  
13 siting of energy facilities; or

14 (3) any existing authorizing statutes.

15 (e) SAVINGS CLAUSE.—Nothing in this section shall  
16 constrain or restrict an Administrator in the utilization  
17 of other authority delegated to the Administrator of  
18 WAPA or SWPA.

19 (f) SECRETARIAL DETERMINATIONS.—Any deter-  
20 mination made pursuant to subsections (a) or (b) shall

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1 be based on findings by the Secretary using the best avail-  
2 able data.

3 (g) MAXIMUM FUNDING AMOUNT.—The Secretary  
4 shall not accept and use more than \$100,000,000 under  
5 subsection (c)(1) for the period encompassing fiscal years  
6 2006 through 2015.

7 **SEC. 1223. ADVANCED TRANSMISSION TECHNOLOGIES.**

8 (a) DEFINITION OF ADVANCED TRANSMISSION  
9 TECHNOLOGY.—In this section, the term “advanced  
10 transmission technology” means a technology that in-  
11 creases the capacity, efficiency, or reliability of an existing  
12 or new transmission facility, including—

13 (1) high-temperature lines (including super-  
14 conducting cables);

15 (2) underground cables;

16 (3) advanced conductor technology (including  
17 advanced composite conductors, high-temperature  
18 low-sag conductors, and fiber optic temperature  
19 sensing conductors);

20 (4) high-capacity ceramic electric wire, connec-  
21 tors, and insulators;

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- 1 (5) optimized transmission line configurations
- 2 (including multiple phased transmission lines);
- 3 (6) modular equipment;
- 4 (7) wireless power transmission;
- 5 (8) ultra-high voltage lines;
- 6 (9) high-voltage DC technology;
- 7 (10) flexible AC transmission systems;
- 8 (11) energy storage devices (including pumped
- 9 hydro, compressed air, superconducting magnetic en-
- 10 ergy storage, flywheels, and batteries);
- 11 (12) controllable load;
- 12 (13) distributed generation (including PV, fuel
- 13 cells, and microturbines);
- 14 (14) enhanced power device monitoring;
- 15 (15) direct system state sensors;
- 16 (16) fiber optic technologies;
- 17 (17) power electronics and related software (in-
- 18 cluding real time monitoring and analytical soft-
- 19 ware);
- 20 (18) mobile transformers and mobile sub-
- 21 stations; and



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1           (19) any other technologies the Commission  
2           considers appropriate.

3           (b) **AUTHORITY.**—In carrying out the Federal Power  
4 Act (16 U.S.C. 791a et seq.) and the Public Utility Regu-  
5 latory Policies Act of 1978 (16 U.S.C. 2601 et seq.), the  
6 Commission shall encourage, as appropriate, the deploy-  
7 ment of advanced transmission technologies.

8 **SEC. 1224. ADVANCED POWER SYSTEM TECHNOLOGY IN-**  
9 **CENTIVE PROGRAM.**

10           (a) **PROGRAM.**—The Secretary is authorized to estab-  
11 lish an Advanced Power System Technology Incentive Pro-  
12 gram to support the deployment of certain advanced power  
13 system technologies and to improve and protect certain  
14 critical governmental, industrial, and commercial proc-  
15 esses. Funds provided under this section shall be used by  
16 the Secretary to make incentive payments to eligible own-  
17 ers or operators of advanced power system technologies  
18 to increase power generation through enhanced oper-  
19 ational, economic, and environmental performance. Pay-  
20 ments under this section may only be made upon receipt

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1 by the Secretary of an incentive payment application es-  
2 tablishing an applicant as either—

3 (1) a qualifying advanced power system tech-  
4 nology facility; or

5 (2) a qualifying security and assured power fa-  
6 cility.

7 (b) INCENTIVES.—Subject to availability of funds, a  
8 payment of 1.8 cents per kilowatt-hour shall be paid to  
9 the owner or operator of a qualifying advanced power sys-  
10 tem technology facility under this section for electricity  
11 generated at such facility. An additional 0.7 cents per kilo-  
12 watt-hour shall be paid to the owner or operator of a quali-  
13 fying security and assured power facility for electricity  
14 generated at such facility. Any facility qualifying under  
15 this section shall be eligible for an incentive payment for  
16 up to, but not more than, the first 10,000,000 kilowatt-  
17 hours produced in any fiscal year.

18 (c) ELIGIBILITY.—For purposes of this section:

19 (1) QUALIFYING ADVANCED POWER SYSTEM  
20 TECHNOLOGY FACILITY.—The term “qualifying ad-  
21 vanced power system technology facility” means a

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1 facility using an advanced fuel cell, turbine, or hy-  
2 brid power system or power storage system to gen-  
3 erate or store electric energy.

4 (2) QUALIFYING SECURITY AND ASSURED  
5 POWER FACILITY.—The term “qualifying security  
6 and assured power facility” means a qualifying ad-  
7 vanced power system technology facility determined  
8 by the Secretary, in consultation with the Secretary  
9 of Homeland Security, to be in critical need of se-  
10 cure, reliable, rapidly available, high-quality power  
11 for critical governmental, industrial, or commercial  
12 applications.

13 (d) AUTHORIZATION.—There are authorized to be ap-  
14 propriated to the Secretary for the purposes of this sec-  
15 tion, \$10,000,000 for each of the fiscal years 2006  
16 through 2012.

1                   **Subtitle C—Transmission**  
2                   **Operation Improvements**

3   **SEC. 1231. OPEN NONDISCRIMINATORY ACCESS.**

4           Part II of the Federal Power Act (16 U.S.C. 824 et  
5 seq.) is amended by inserting after section 211 (16 U.S.C.  
6 824j) the following:

7   **“SEC. 211A. OPEN ACCESS BY UNREGULATED TRANSMIT-**  
8                   **TING UTILITIES.**

9           “(a) **DEFINITION OF UNREGULATED TRANSMITTING**  
10 **UTILITY.**—In this section, the term ‘unregulated trans-  
11 mitting utility’ means an entity that—

12                   “(1) owns or operates facilities used for the  
13 transmission of electric energy in interstate com-  
14 merce; and

15                   “(2) is an entity described in section 201(f).

16           “(b) **TRANSMISSION OPERATION SERVICES.**—Subject  
17 to section 212(h), the Commission may, by rule or order,  
18 require an unregulated transmitting utility to provide  
19 transmission services—

1           “(1) at rates that are comparable to those that  
2           the unregulated transmitting utility charges itself;  
3           and

4           “(2) on terms and conditions (not relating to  
5           rates) that are comparable to those under which the  
6           unregulated transmitting utility provides trans-  
7           mission services to itself and that are not unduly  
8           discriminatory or preferential.

9           “(c) EXEMPTION.—The Commission shall exempt  
10          from any rule or order under this section any unregulated  
11          transmitting utility that—

12           “(1) sells not more than 4,000,000 megawatt  
13           hours of electricity per year;

14           “(2) does not own or operate any transmission  
15           facilities that are necessary for operating an inter-  
16           connected transmission system (or any portion of the  
17           system); or

18           “(3) meets other criteria the Commission deter-  
19           mines to be in the public interest.

1       “(d) LOCAL DISTRIBUTION FACILITIES.—The re-  
2       quirements of subsection (b) shall not apply to facilities  
3       used in local distribution.

4       “(e) EXEMPTION TERMINATION.—If the Commis-  
5       sion, after an evidentiary hearing held on a complaint and  
6       after giving consideration to reliability standards estab-  
7       lished under section 215, finds on the basis of a prepon-  
8       derance of the evidence that any exemption granted pursu-  
9       ant to subsection (c) unreasonably impairs the continued  
10      reliability of an interconnected transmission system, the  
11      Commission shall revoke the exemption granted to the  
12      transmitting utility.

13      “(f) APPLICATION TO UNREGULATED TRANSMITTING  
14      UTILITIES.—The rate changing procedures applicable to  
15      public utilities under subsections (c) and (d) of section 205  
16      are applicable to unregulated transmitting utilities for  
17      purposes of this section.

18      “(g) REMAND.—In exercising authority under sub-  
19      section (b)(1), the Commission may remand transmission  
20      rates to an unregulated transmitting utility for review and

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1 revision if necessary to meet the requirements of sub-  
2 section (b).

3 “(h) OTHER REQUESTS.—The provision of trans-  
4 mission services under subsection (b) does not preclude  
5 a request for transmission services under section 211.

6 “(i) LIMITATION.—The Commission may not require  
7 a State or municipality to take action under this section  
8 that would violate a private activity bond rule for purposes  
9 of section 141 of the Internal Revenue Code of 1986.

10 “(j) TRANSFER OF CONTROL OF TRANSMITTING FA-  
11 CILITIES.—Nothing in this section authorizes the Commis-  
12 sion to require an unregulated transmitting utility to  
13 transfer control or operational control of its transmitting  
14 facilities to a Transmission Organization that is des-  
15 ignated to provide nondiscriminatory transmission ac-  
16 cess.”.

17 **SEC. 1232. FEDERAL UTILITY PARTICIPATION IN TRANS-**  
18 **MISSION ORGANIZATIONS.**

19 (a) DEFINITIONS.—In this section:

1           (1) APPROPRIATE FEDERAL REGULATORY AU-  
2           THORITY.—The term “appropriate Federal regu-  
3           latory authority” means—

4                   (A) in the case of a Federal power mar-  
5                   keting agency, the Secretary, except that the  
6                   Secretary may designate the Administrator of a  
7                   Federal power marketing agency to act as the  
8                   appropriate Federal regulatory authority with  
9                   respect to the transmission system of the Fed-  
10                  eral power marketing agency; and

11                  (B) in the case of the Tennessee Valley  
12                  Authority, the Board of Directors of the Ten-  
13                  nessee Valley Authority.

14           (2) FEDERAL POWER MARKETING AGENCY.—  
15           The term “Federal power marketing agency” has  
16           the meaning given the term in section 3 of the Fed-  
17           eral Power Act (16 U.S.C. 796).

18           (3) FEDERAL UTILITY.—The term “Federal  
19           utility” means—

20                   (A) a Federal power marketing agency; or

21                   (B) the Tennessee Valley Authority.



1           (4) TRANSMISSION ORGANIZATION.—The term  
2           “Transmission Organization” has the meaning given  
3           the term in section 3 of the Federal Power Act (16  
4           U.S.C. 796).

5           (5) TRANSMISSION SYSTEM.—The term “trans-  
6           mission system” means an electric transmission fa-  
7           cility owned, leased, or contracted for by the United  
8           States and operated by a Federal utility.

9           (b) TRANSFER.—The appropriate Federal regulatory  
10          authority may enter into a contract, agreement, or other  
11          arrangement transferring control and use of all or part  
12          of the transmission system of a Federal utility to a Trans-  
13          mission Organization.

14          (c) CONTENTS.—The contract, agreement, or ar-  
15          rangement shall include—

16                (1) performance standards for operation and  
17                use of the transmission system that the head of the  
18                Federal utility determines are necessary or appro-  
19                priate, including standards that ensure—

20                        (A) recovery of all of the costs and ex-  
21                        penses of the Federal utility related to the

1 transmission facilities that are the subject of  
2 the contract, agreement, or other arrangement;

3 (B) consistency with existing contracts and  
4 third-party financing arrangements; and

5 (C) consistency with the statutory authori-  
6 ties, obligations, and limitations of the Federal  
7 utility;

8 (2) provisions for monitoring and oversight by  
9 the Federal utility of the Transmission Organiza-  
10 tion's terms and conditions of the contract, agree-  
11 ment, or other arrangement, including a provision  
12 for the resolution of disputes through arbitration or  
13 other means with the Transmission Organization or  
14 with other participants, notwithstanding the obliga-  
15 tions and limitations of any other law regarding ar-  
16 bitration; and

17 (3) a provision that allows the Federal utility to  
18 withdraw from the Transmission Organization and  
19 terminate the contract, agreement, or other arrange-  
20 ment in accordance with its terms.

1 (d) COMMISSION.—Neither this section, actions taken  
2 pursuant to this section, nor any other transaction of a  
3 Federal utility participating in a Transmission Organiza-  
4 tion shall confer on the Commission jurisdiction or author-  
5 ity over—

6 (1) the electric generation assets, electric capac-  
7 ity, or energy of the Federal utility that the Federal  
8 utility is authorized by law to market; or

9 (2) the power sales activities of the Federal  
10 utility.

11 (e) EXISTING STATUTORY AND OTHER OBLIGA-  
12 TIONS.—

13 (1) SYSTEM OPERATION REQUIREMENTS.—No  
14 statutory provision requiring or authorizing a Fed-  
15 eral utility to transmit electric power or to construct,  
16 operate, or maintain the transmission system of the  
17 Federal utility prohibits a transfer of control and  
18 use of the transmission system pursuant to, and  
19 subject to, the requirements of this section.

20 (2) OTHER OBLIGATIONS.—This subsection  
21 does not—

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1 (A) suspend, or exempt any Federal utility  
2 from, any provision of Federal law in effect on  
3 the date of enactment of this Act, including any  
4 requirement or direction relating to the use of  
5 the transmission system of the Federal utility,  
6 environmental protection, fish and wildlife pro-  
7 tection, flood control, navigation, water delivery,  
8 or recreation; or

9 (B) authorize abrogation of any contract  
10 or treaty obligation.

11 (3) CONFORMING AMENDMENT.—Section 311  
12 of the Energy and Water Development Appropria-  
13 tions Act, 2001 (16 U.S.C. 824n) is repealed.

14 **SEC. 1233. NATIVE LOAD SERVICE OBLIGATION.**

15 (a) IN GENERAL.—Part II of the Federal Power Act  
16 (16 U.S.C. 824 et seq.) is amended by adding at the end  
17 the following:

18 **“SEC. 217. NATIVE LOAD SERVICE OBLIGATION.**

19 “(a) DEFINITIONS.—In this section:

20 “(1) The term ‘distribution utility’ means an  
21 electric utility that has a service obligation to end-

1 users or to a State utility or electric cooperative  
2 that, directly or indirectly, through 1 or more addi-  
3 tional State utilities or electric cooperatives, provides  
4 electric service to end-users.

5 “(2) The term ‘load-serving entity’ means a dis-  
6 tribution utility or an electric utility that has a serv-  
7 ice obligation.

8 “(3) The term ‘service obligation’ means a re-  
9 quirement applicable to, or the exercise of authority  
10 granted to, an electric utility under Federal, State,  
11 or local law or under long-term contracts to provide  
12 electric service to end-users or to a distribution util-  
13 ity.

14 “(4) The term ‘State utility’ means a State or  
15 any political subdivision of a State, or any agency,  
16 authority, or instrumentality of any 1 or more of the  
17 foregoing, or a corporation that is wholly owned, di-  
18 rectly or indirectly, by any 1 or more of the fore-  
19 going, competent to carry on the business of devel-  
20 oping, transmitting, utilizing, or distributing power.

1       “(b) MEETING SERVICE OBLIGATIONS.—(1) Para-  
2 graph (2) applies to any load-serving entity that, as of  
3 the date of enactment of this section—

4           “(A) owns generation facilities, markets the  
5 output of Federal generation facilities, or holds  
6 rights under 1 or more wholesale contracts to pur-  
7 chase electric energy, for the purpose of meeting a  
8 service obligation; and

9           “(B) by reason of ownership of transmission fa-  
10 cilities, or 1 or more contracts or service agreements  
11 for firm transmission service, holds firm trans-  
12 mission rights for delivery of the output of the gen-  
13 eration facilities or the purchased energy to meet the  
14 service obligation.

15       “(2) Any load-serving entity described in paragraph  
16 (1) is entitled to use the firm transmission rights, or,  
17 equivalent tradable or financial transmission rights, in  
18 order to deliver the output or purchased energy, or the  
19 output of other generating facilities or purchased energy  
20 to the extent deliverable using the rights, to the extent

1 required to meet the service obligation of the load-serving  
2 entity.

3       “(3)(A) To the extent that all or a portion of the  
4 service obligation covered by the firm transmission rights  
5 or equivalent tradable or financial transmission rights is  
6 transferred to another load-serving entity, the successor  
7 load-serving entity shall be entitled to use the firm trans-  
8 mission rights or equivalent tradable or financial trans-  
9 mission rights associated with the transferred service obli-  
10 gation.

11       “(B) Subsequent transfers to another load-serving  
12 entity, or back to the original load-serving entity, shall be  
13 entitled to the same rights.

14       “(4) The Commission shall exercise the authority of  
15 the Commission under this Act in a manner that facili-  
16 tates the planning and expansion of transmission facilities  
17 to meet the reasonable needs of load-serving entities to  
18 satisfy the service obligations of the load-serving entities,  
19 and enables load-serving entities to secure firm trans-  
20 mission rights (or equivalent tradable or financial rights)

1 on a long term basis for long term power supply arrange-  
2 ments made, or planned, to meet such needs.

3       “(c) ALLOCATION OF TRANSMISSION RIGHTS.—  
4 Nothing in subsections (b)(1), (b)(2) and (b)(3) of this  
5 section shall affect any existing or future methodology em-  
6 ployed by a Transmission Organization for allocating or  
7 auctioning transmission rights if such Transmission Orga-  
8 nization was authorized by the Commission to allocate or  
9 auction financial transmission rights on its system as of  
10 January 1, 2005, and the Commission determines that  
11 any future allocation or auction is just, reasonable and  
12 not unduly discriminatory or preferential, provided, how-  
13 ever, that if such a Transmission Organization never allo-  
14 cated financial transmission rights on its system that per-  
15 tained to a period before January 1, 2005, with respect  
16 to any application by such Transmission Organization that  
17 would change its methodology the Commission shall exer-  
18 cise its authority in a manner consistent with the Act and  
19 that takes into account the policies expressed in sub-  
20 sections (b)(1), (b)(2) and (b)(3) as applied to firm trans-  
21 mission rights held by a load-serving entity as of January



1 1, 2005, to the extent the associated generation ownership  
2 or power purchase arrangements remain in effect.

3 “(d) CERTAIN TRANSMISSION RIGHTS.—The Com-  
4 mission may exercise authority under this Act to make  
5 transmission rights not used to meet an obligation covered  
6 by subsection (b) available to other entities in a manner  
7 determined by the Commission to be just, reasonable, and  
8 not unduly discriminatory or preferential.

9 “(e) OBLIGATION TO BUILD.—Nothing in this Act re-  
10 lieves a load-serving entity from any obligation under  
11 State or local law to build transmission or distribution fa-  
12 cilities adequate to meet the service obligations of the load-  
13 serving entity.

14 “(f) CONTRACTS.—Nothing in this section shall pro-  
15 vide a basis for abrogating any contract or service agree-  
16 ment for firm transmission service or rights in effect as  
17 of the date of the enactment of this subsection. If an ISO  
18 in the Western Interconnection had allocated financial  
19 transmission rights prior to the date of enactment of this  
20 section but had not done so with respect to one or more  
21 load-serving entities’ firm transmission rights held under

1 contracts to which the preceding sentence applies (or held  
2 by reason of ownership or future ownership of trans-  
3 mission facilities), such load-serving entities may not be  
4 required, without their consent, to convert such firm  
5 transmission rights to tradable or financial rights, except  
6 where the load-serving entity has voluntarily joined the  
7 ISO as a participating transmission owner (or its suc-  
8 cessor) in accordance with the ISO tariff.

9       “(g) WATER PUMPING FACILITIES.—The Commis-  
10 sion shall ensure that any entity described in section  
11 201(f) that owns transmission facilities used predomi-  
12 nately to support its own water pumping facilities shall  
13 have, with respect to the facilities, protections for trans-  
14 mission service comparable to those provided to load-serv-  
15 ing entities pursuant to this section.

16       “(h) ERCOT.—This section shall not apply within  
17 the area referred to in section 212(k)(2)(A).

18       “(i) JURISDICTION.—This section does not authorize  
19 the Commission to take any action not otherwise within  
20 the jurisdiction of the Commission.

1       “(j) TVA AREA.—(1) Subject to paragraphs (2) and  
2 (3), for purposes of subsection (b)(1)(B), a load-serving  
3 entity that is located within the service area of the Ten-  
4 nessee Valley Authority and that has a firm wholesale  
5 power supply contract with the Tennessee Valley Author-  
6 ity shall be considered to hold firm transmission rights  
7 for the transmission of the power provided.

8       “(2) Nothing in this subsection affects the require-  
9 ments of section 212(j).

10       “(3) The Commission shall not issue an order on the  
11 basis of this subsection that is contrary to the purposes  
12 of section 212(j).

13       “(k) EFFECT OF EXERCISING RIGHTS.—An entity  
14 that to the extent required to meet its service obligations  
15 exercises rights described in subsection (b) shall not be  
16 considered by such action as engaging in undue discrimi-  
17 nation or preference under this Act”.

18       (b) FERC RULEMAKING ON LONG-TERM TRANS-  
19 MISSION RIGHTS IN ORGANIZED MARKETS.—Within one  
20 year after the date of enactment of this section and after  
21 notice and an opportunity for comment, the Commission

1 shall by rule or order, implement section 217(b)(4) of the  
2 Federal Power Act in Transmission Organizations, as de-  
3 fined by that Act with organized electricity markets.

4 **SEC. 1234. STUDY ON THE BENEFITS OF ECONOMIC DIS-**  
5 **PATCH.**

6 (a) **STUDY.**—The Secretary, in coordination and con-  
7 sultation with the States, shall conduct a study on—

8 (1) the procedures currently used by electric  
9 utilities to perform economic dispatch;

10 (2) identifying possible revisions to those proce-  
11 dures to improve the ability of nonutility generation  
12 resources to offer their output for sale for the pur-  
13 pose of inclusion in economic dispatch; and

14 (3) the potential benefits to residential, com-  
15 mercial, and industrial electricity consumers nation-  
16 ally and in each state if economic dispatch proce-  
17 dures were revised to improve the ability of non-  
18 utility generation resources to offer their output for  
19 inclusion in economic dispatch.

20 (b) **DEFINITION.**—The term “economic dispatch”  
21 when used in this section means the operation of genera-

1 tion facilities to produce energy at the lowest cost to reli-  
2 ably serve consumers, recognizing any operational limits  
3 of generation and transmission facilities.

4 (c) REPORT TO CONGRESS AND THE STATES.—Not  
5 later than 90 days after the date of enactment of this Act,  
6 and on a yearly basis following, the Secretary shall submit  
7 a report to Congress and the States on the results of the  
8 study conducted under subsection (a), including rec-  
9 ommendations to Congress and the States for any sug-  
10 gested legislative or regulatory changes.

11 **SEC. 1235. PROTECTION OF TRANSMISSION CONTRACTS IN**  
12 **THE PACIFIC NORTHWEST.**

13 Part II of the Federal Power Act (16 U.S.C. 824 et  
14 seq.) is amended by adding at the end the following:

15 **“SEC. 218. PROTECTION OF TRANSMISSION CONTRACTS IN**  
16 **THE PACIFIC NORTHWEST.**

17 “(a) DEFINITION OF ELECTRIC UTILITY OR PER-  
18 SON.—In this section, the term ‘electric utility or person’  
19 means an electric utility or person that—

20 “(1) as of the date of enactment of the Energy  
21 Policy Act of 2005 holds firm transmission rights

1       pursuant to contract or by reason of ownership of  
2       transmission facilities; and

3           “(2) is located—

4               “(A) in the Pacific Northwest, as that re-  
5               gion is defined in section 3 of the Pacific  
6               Northwest Electric Power Planning and Con-  
7               servation Act (16 U.S.C. 839a); or

8               “(B) in that portion of a State included in  
9               the geographic area proposed for a regional  
10              transmission organization in Commission Dock-  
11              et Number RT01–35 on the date on which that  
12              docket was opened.

13       “(b) PROTECTION OF TRANSMISSION CONTRACTS.—  
14       Nothing in this Act confers on the Commission the author-  
15       ity to require an electric utility or person to convert to  
16       tradable or financial rights—

17           “(1) firm transmission rights described in sub-  
18       section (a); or

19           “(2) firm transmission rights obtained by exer-  
20       cising contract or tariff rights associated with the

1 firm transmission rights described in subsection  
2 (a).”.

3 **SEC. 1236. SENSE OF CONGRESS REGARDING LOCATIONAL**  
4 **INSTALLED CAPACITY MECHANISM.**

5 (a) FINDINGS.—Congress finds that—

6 (1) in regard to a proposal to develop and im-  
7 plement a specific type of locational installed capac-  
8 ity mechanism in New England pending before the  
9 Federal Energy Regulatory Commission; and

10 (2) the Governors of the States have objected to  
11 the proposed mechanism, arguing that the  
12 mechanism—

13 (A) would not provide adequate assurance  
14 that necessary electric generation capacity or  
15 reliability will be provided; and

16 (B) would impose a high cost on con-  
17 sumers and have a significant negative eco-  
18 nomic impact.

19 (b) SENSE OF CONGRESS.—Congress—

20 (1) notes the concerns of the New England  
21 States to the proposed mechanism; and

1           (2) declares that it is the sense of Congress  
2           that the Federal Energy Regulatory Commission  
3           should carefully consider the States' objections.

4           **Subtitle D—Transmission Rate**  
5           **Reform**

6           **SEC. 1241. TRANSMISSION INFRASTRUCTURE INVESTMENT.**

7           Part II of the Federal Power Act (16 U.S.C. 824 et  
8           seq.) is amended by adding at the end the following:

9           **“SEC. 219. TRANSMISSION INFRASTRUCTURE INVESTMENT.**

10           “(a) **RULEMAKING REQUIREMENT.**—Not later than  
11           1 year after the date of enactment of this section, the  
12           Commission shall establish, by rule, incentive-based (in-  
13           cluding performance-based) rate treatments for the trans-  
14           mission of electric energy in interstate commerce by public  
15           utilities for the purpose of benefitting consumers by ensur-  
16           ing reliability and reducing the cost of delivered power by  
17           reducing transmission congestion.

18           “(b) **CONTENTS.**—The rule shall—

19                   “(1) promote reliable and economically efficient  
20                   transmission and generation of electricity by pro-  
21                   moting capital investment in the enlargement, im-



1       provement, maintenance, and operation of all facili-  
2       ties for the transmission of electric energy in inter-  
3       state commerce, regardless of the ownership of the  
4       facilities;

5           “(2) provide a return on equity that attracts  
6       new investment in transmission facilities (including  
7       related transmission technologies);

8           “(3) encourage deployment of transmission  
9       technologies and other measures to increase the ca-  
10      pacity and efficiency of existing transmission facili-  
11      ties and improve the operation of the facilities; and

12          “(4) allow recovery of—

13           “(A) all prudently incurred costs necessary  
14      to comply with mandatory reliability standards  
15      issued pursuant to section 215; and

16           “(B) all prudently incurred costs related to  
17      transmission infrastructure development pursu-  
18      ant to section 216.

19          “(c) INCENTIVES.—In the rule issued under this sec-  
20      tion, the Commission shall, to the extent within its juris-  
21      diction, provide for incentives to each transmitting utility

1 or electric utility that joins a Transmission Organization.  
2 The Commission shall ensure that any costs recoverable  
3 pursuant to this subsection may be recovered by such util-  
4 ity through the transmission rates charged by such utility  
5 or through the transmission rates charged by the Trans-  
6 mission Organization that provides transmission service to  
7 such utility.

8 “(d) **JUST AND REASONABLE RATES.**—All rates ap-  
9 proved under the rules adopted pursuant to this section,  
10 including any revisions to the rules, are subject to the re-  
11 quirements of sections 205 and 206 that all rates, charges,  
12 terms, and conditions be just and reasonable and not un-  
13 duly discriminatory or preferential.”.

14 **SEC. 1242. FUNDING NEW INTERCONNECTION AND TRANS-**  
15 **MISSION UPGRADES.**

16 The Commission may approve a participant funding  
17 plan that allocates costs related to transmission upgrades  
18 or new generator interconnection, without regard to  
19 whether an applicant is a member of a Commission-ap-  
20 proved Transmission Organization, if the plan results in  
21 rates that—

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- 1           (1) are just and reasonable;
- 2           (2) are not unduly discriminatory or pref-
- 3           erential; and
- 4           (3) are otherwise consistent with sections 205
- 5           and 206 of the Federal Power Act (16 U.S.C. 824d,
- 6           824e).

## 7 **Subtitle E—Amendments to PURPA**

### 8 **SEC. 1251. NET METERING AND ADDITIONAL STANDARDS.**

9           (a) ADOPTION OF STANDARDS.—Section 111(d) of

10 the Public Utility Regulatory Policies Act of 1978 (16

11 U.S.C. 2621(d)) is amended by adding at the end the fol-

12 lowing:

13           “(11) NET METERING.—Each electric utility

14           shall make available upon request net metering serv-

15           ice to any electric consumer that the electric utility

16           serves. For purposes of this paragraph, the term

17           ‘net metering service’ means service to an electric

18           consumer under which electric energy generated by

19           that electric consumer from an eligible on-site gener-

20           ating facility and delivered to the local distribution

21           facilities may be used to offset electric energy pro-

1       vided by the electric utility to the electric consumer  
2       during the applicable billing period.

3           “(12) FUEL SOURCES.—Each electric utility  
4       shall develop a plan to minimize dependence on 1  
5       fuel source and to ensure that the electric energy it  
6       sells to consumers is generated using a diverse range  
7       of fuels and technologies, including renewable tech-  
8       nologies.

9           “(13) FOSSIL FUEL GENERATION EFFI-  
10       CIENCY.—Each electric utility shall develop and im-  
11       plement a 10-year plan to increase the efficiency of  
12       its fossil fuel generation.”.

13       (b) COMPLIANCE.—

14           (1) TIME LIMITATIONS.—Section 112(b) of the  
15       Public Utility Regulatory Policies Act of 1978 (16  
16       U.S.C. 2622(b)) is amended by adding at the end  
17       the following:

18           “(3)(A) Not later than 2 years after the enactment  
19       of this paragraph, each State regulatory authority (with  
20       respect to each electric utility for which it has ratemaking  
21       authority) and each nonregulated electric utility shall com-

1 mence the consideration referred to in section 111, or set  
2 a hearing date for such consideration, with respect to each  
3 standard established by paragraphs (11) through (13) of  
4 section 111(d).

5 “(B) Not later than 3 years after the date of the en-  
6 actment of this paragraph, each State regulatory authority  
7 (with respect to each electric utility for which it has rate-  
8 making authority), and each nonregulated electric utility,  
9 shall complete the consideration, and shall make the deter-  
10 mination, referred to in section 111 with respect to each  
11 standard established by paragraphs (11) through (13) of  
12 section 111(d).”.

13 (2) FAILURE TO COMPLY.—Section 112(c) of  
14 the Public Utility Regulatory Policies Act of 1978  
15 (16 U.S.C. 2622(c)) is amended by adding at the  
16 end the following: “In the case of each standard es-  
17 tablished by paragraphs (11) through (13) of section  
18 111(d), the reference contained in this subsection to  
19 the date of enactment of this Act shall be deemed  
20 to be a reference to the date of enactment of such  
21 paragraphs (11) through (13).” .

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1 (3) PRIOR STATE ACTIONS.—

2 (A) IN GENERAL.—Section 112 of the  
3 Public Utility Regulatory Policies Act of 1978  
4 (16 U.S.C. 2622) is amended by adding at the  
5 end the following:

6 “(d) PRIOR STATE ACTIONS.—Subsections (b) and  
7 (e) of this section shall not apply to the standards estab-  
8 lished by paragraphs (11) through (13) of section 111(d)  
9 in the case of any electric utility in a State if, before the  
10 enactment of this subsection—

11 “(1) the State has implemented for such utility  
12 the standard concerned (or a comparable standard);

13 “(2) the State regulatory authority for such  
14 State or relevant nonregulated electric utility has  
15 conducted a proceeding to consider implementation  
16 of the standard concerned (or a comparable stand-  
17 ard) for such utility; or

18 “(3) the State legislature has voted on the im-  
19 plementation of such standard (or a comparable  
20 standard) for such utility.”.

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1 (B) CROSS REFERENCE.—Section 124 of  
2 such Act (16 U.S.C. 2634) is amended by add-  
3 ing the following at the end thereof: “In the  
4 case of each standard established by paragraphs  
5 (11) through (13) of section 111(d), the ref-  
6 erence contained in this subsection to the date  
7 of enactment of this Act shall be deemed to be  
8 a reference to the date of enactment of such  
9 paragraphs (11) through (13).”.

10 **SEC. 1252. SMART METERING.**

11 (a) IN GENERAL.—Section 111(d) of the Public Util-  
12 ity Regulatory Policies Act of 1978 (16 U.S.C. 2621(d))  
13 is amended by adding at the end the following:

14 “(14) TIME-BASED METERING AND COMMU-  
15 NICATIONS.—(A) Not later than 18 months after the  
16 date of enactment of this paragraph, each electric  
17 utility shall offer each of its customer classes, and  
18 provide individual customers upon customer request,  
19 a time-based rate schedule under which the rate  
20 charged by the electric utility varies during different  
21 time periods and reflects the variance, if any, in the

1 utility's costs of generating and purchasing elec-  
2 tricity at the wholesale level. The time-based rate  
3 schedule shall enable the electric consumer to man-  
4 age energy use and cost through advanced metering  
5 and communications technology.

6 “(B) The types of time-based rate schedules  
7 that may be offered under the schedule referred to  
8 in subparagraph (A) include, among others—

9 “(i) time-of-use pricing whereby electricity  
10 prices are set for a specific time period on an  
11 advance or forward basis, typically not changing  
12 more often than twice a year, based on the util-  
13 ity's cost of generating and/or purchasing such  
14 electricity at the wholesale level for the benefit  
15 of the consumer. Prices paid for energy con-  
16 sumed during these periods shall be pre-estab-  
17 lished and known to consumers in advance of  
18 such consumption, allowing them to vary their  
19 demand and usage in response to such prices  
20 and manage their energy costs by shifting



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1 usage to a lower cost period or reducing their  
2 consumption overall;

3 “(ii) critical peak pricing whereby time-of-  
4 use prices are in effect except for certain peak  
5 days, when prices may reflect the costs of gen-  
6 erating and/or purchasing electricity at the  
7 wholesale level and when consumers may receive  
8 additional discounts for reducing peak period  
9 energy consumption;

10 “(iii) real-time pricing whereby electricity  
11 prices are set for a specific time period on an  
12 advanced or forward basis, reflecting the util-  
13 ity’s cost of generating and/or purchasing elec-  
14 tricity at the wholesale level, and may change  
15 as often as hourly; and

16 “(iv) credits for consumers with large loads  
17 who enter into pre-established peak load reduc-  
18 tion agreements that reduce a utility’s planned  
19 capacity obligations.

20 “(C) Each electric utility subject to subpara-  
21 graph (A) shall provide each customer requesting a

1 time-based rate with a time-based meter capable of  
2 enabling the utility and customer to offer and re-  
3 ceive such rate, respectively.

4 “(D) For purposes of implementing this para-  
5 graph, any reference contained in this section to the  
6 date of enactment of the Public Utility Regulatory  
7 Policies Act of 1978 shall be deemed to be a ref-  
8 erence to the date of enactment of this paragraph.

9 “(E) In a State that permits third-party mar-  
10 keters to sell electric energy to retail electric con-  
11 sumers, such consumers shall be entitled to receive  
12 the same time-based metering and communications  
13 device and service as a retail electric consumer of  
14 the electric utility.

15 “(F) Notwithstanding subsections (b) and (c) of  
16 section 112, each State regulatory authority shall,  
17 not later than 18 months after the date of enact-  
18 ment of this paragraph conduct an investigation in  
19 accordance with section 115(i) and issue a decision  
20 whether it is appropriate to implement the standards  
21 set out in subparagraphs (A) and (C).”.

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1 (b) STATE INVESTIGATION OF DEMAND RESPONSE  
2 AND TIME-BASED METERING.—Section 115 of the Public  
3 Utility Regulatory Policies Act of 1978 (16 U.S.C. 2625)  
4 is amended as follows:

5 (1) By inserting in subsection (b) after the  
6 phrase “the standard for time-of-day rates estab-  
7 lished by section 111(d)(3)” the following: “and the  
8 standard for time-based metering and communica-  
9 tions established by section 111(d)(14)”.

10 (2) By inserting in subsection (b) after the  
11 phrase “are likely to exceed the metering” the fol-  
12 lowing: “and communications”.

13 (3) By adding the at the end the following:

14 “(i) TIME-BASED METERING AND COMMUNICA-  
15 TIONS.—In making a determination with respect to the  
16 standard established by section 111(d)(14), the investiga-  
17 tion requirement of section 111(d)(14)(F) shall be as fol-  
18 lows: Each State regulatory authority shall conduct an in-  
19 vestigation and issue a decision whether or not it is appro-  
20 priate for electric utilities to provide and install time-based  
21 meters and communications devices for each of their cus-

1 tomers which enable such customers to participate in time-  
2 based pricing rate schedules and other demand response  
3 programs.”.

4 (c) FEDERAL ASSISTANCE ON DEMAND RE-  
5 SPONSE.—Section 132(a) of the Public Utility Regulatory  
6 Policies Act of 1978 (16 U.S.C. 2642(a)) is amended by  
7 striking “and” at the end of paragraph (3), striking the  
8 period at the end of paragraph (4) and inserting “; and”,  
9 and by adding the following at the end thereof:

10 “(5) technologies, techniques, and rate-making  
11 methods related to advanced metering and commu-  
12 nications and the use of these technologies, tech-  
13 niques and methods in demand response programs.”.

14 (d) FEDERAL GUIDANCE.—Section 132 of the Public  
15 Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642)  
16 is amended by adding the following at the end thereof:

17 “(d) DEMAND RESPONSE.—The Secretary shall be  
18 responsible for—

19 “(1) educating consumers on the availability,  
20 advantages, and benefits of advanced metering and

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1 communications technologies, including the funding  
2 of demonstration or pilot projects;

3 “(2) working with States, utilities, other energy  
4 providers and advanced metering and communica-  
5 tions experts to identify and address barriers to the  
6 adoption of demand response programs; and

7 “(3) not later than 180 days after the date of  
8 enactment of the Energy Policy Act of 2005, pro-  
9 viding Congress with a report that identifies and  
10 quantifies the national benefits of demand response  
11 and makes a recommendation on achieving specific  
12 levels of such benefits by January 1, 2007.”.

13 (e) DEMAND RESPONSE AND REGIONAL COORDINA-  
14 TION.—

15 (1) IN GENERAL.—It is the policy of the United  
16 States to encourage States to coordinate, on a re-  
17 gional basis, State energy policies to provide reliable  
18 and affordable demand response services to the pub-  
19 lic.

20 (2) TECHNICAL ASSISTANCE.—The Secretary  
21 shall provide technical assistance to States and re-

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1 regional organizations formed by 2 or more States to  
2 assist them in—

3 (A) identifying the areas with the greatest  
4 demand response potential;

5 (B) identifying and resolving problems in  
6 transmission and distribution networks, includ-  
7 ing through the use of demand response;

8 (C) developing plans and programs to use  
9 demand response to respond to peak demand or  
10 emergency needs; and

11 (D) identifying specific measures con-  
12 sumers can take to participate in these demand  
13 response programs.

14 (3) REPORT.—Not later than 1 year after the  
15 date of enactment of the Energy Policy Act of 2005,  
16 the Commission shall prepare and publish an annual  
17 report, by appropriate region, that assesses demand  
18 response resources, including those available from all  
19 consumer classes, and which identifies and reviews—

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1 (A) saturation and penetration rate of ad-  
2 vanced meters and communications tech-  
3 nologies, devices and systems;

4 (B) existing demand response programs  
5 and time-based rate programs;

6 (C) the annual resource contribution of de-  
7 mand resources;

8 (D) the potential for demand response as  
9 a quantifiable, reliable resource for regional  
10 planning purposes;

11 (E) steps taken to ensure that, in regional  
12 transmission planning and operations, demand  
13 resources are provided equitable treatment as a  
14 quantifiable, reliable resource relative to the re-  
15 source obligations of any load-serving entity,  
16 transmission provider, or transmitting party;  
17 and

18 (F) regulatory barriers to improved cus-  
19 tomer participation in demand response, peak  
20 reduction and critical period pricing programs.

1 (f) FEDERAL ENCOURAGEMENT OF DEMAND RE-  
2 SPONSE DEVICES.—It is the policy of the United States  
3 that time-based pricing and other forms of demand re-  
4 sponse, whereby electricity customers are provided with  
5 electricity price signals and the ability to benefit by re-  
6 sponding to them, shall be encouraged, the deployment of  
7 such technology and devices that enable electricity cus-  
8 tomers to participate in such pricing and demand response  
9 systems shall be facilitated, and unnecessary barriers to  
10 demand response participation in energy, capacity and an-  
11 cillary service markets shall be eliminated. It is further  
12 the policy of the United States that the benefits of such  
13 demand response that accrue to those not deploying such  
14 technology and devices, but who are part of the same re-  
15 gional electricity entity, shall be recognized.

16 (g) TIME LIMITATIONS.—Section 112(b) of the Pub-  
17 lic Utility Regulatory Policies Act of 1978 (16 U.S.C.  
18 2622(b)) is amended by adding at the end the following:

19 “(4)(A) Not later than 1 year after the enact-  
20 ment of this paragraph, each State regulatory au-  
21 thority (with respect to each electric utility for which



1 it has ratemaking authority) and each nonregulated  
2 electric utility shall commence the consideration re-  
3 ferred to in section 111, or set a hearing date for  
4 such consideration, with respect to the standard es-  
5 tablished by paragraph (14) of section 111(d).

6 “(B) Not later than 2 years after the date of  
7 the enactment of this paragraph, each State regu-  
8 latory authority (with respect to each electric utility  
9 for which it has ratemaking authority), and each  
10 nonregulated electric utility, shall complete the con-  
11 sideration, and shall make the determination, re-  
12 ferred to in section 111 with respect to the standard  
13 established by paragraph (14) of section 111(d).”.

14 (h) FAILURE TO COMPLY.—Section 112(c) of the  
15 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.  
16 2622(c)) is amended by adding at the end the following:

17 “In the case of the standard established by paragraph  
18 (14) of section 111(d), the reference contained in this sub-  
19 section to the date of enactment of this Act shall be  
20 deemed to be a reference to the date of enactment of such  
21 paragraph (14).”.

1 (i) PRIOR STATE ACTIONS REGARDING SMART ME-  
2 TERING STANDARDS.—

3 (1) IN GENERAL.—Section 112 of the Public  
4 Utility Regulatory Policies Act of 1978 (16 U.S.C.  
5 2622) is amended by adding at the end the fol-  
6 lowing:

7 “(e) PRIOR STATE ACTIONS.—Subsections (b) and  
8 (c) of this section shall not apply to the standard estab-  
9 lished by paragraph (14) of section 111(d) in the case of  
10 any electric utility in a State if, before the enactment of  
11 this subsection—

12 “(1) the State has implemented for such utility  
13 the standard concerned (or a comparable standard);

14 “(2) the State regulatory authority for such  
15 State or relevant nonregulated electric utility has  
16 conducted a proceeding to consider implementation  
17 of the standard concerned (or a comparable stand-  
18 ard) for such utility within the previous 3 years; or

19 “(3) the State legislature has voted on the im-  
20 plementation of such standard (or a comparable

1 standard) for such utility within the previous 3  
2 years.”.

3 (2) CROSS REFERENCE.—Section 124 of such  
4 Act (16 U.S.C. 2634) is amended by adding the fol-  
5 lowing at the end thereof: “In the case of the stand-  
6 ard established by paragraph (14) of section 111(d),  
7 the reference contained in this subsection to the date  
8 of enactment of this Act shall be deemed to be a ref-  
9 erence to the date of enactment of such paragraph  
10 (14).”.

11 **SEC. 1253. COGENERATION AND SMALL POWER PRODUC-**  
12 **TION PURCHASE AND SALE REQUIREMENTS.**

13 (a) TERMINATION OF MANDATORY PURCHASE AND  
14 SALE REQUIREMENTS.—Section 210 of the Public Utility  
15 Regulatory Policies Act of 1978 (16 U.S.C. 824a-3) is  
16 amended by adding at the end the following:

17 “(m) TERMINATION OF MANDATORY PURCHASE AND  
18 SALE REQUIREMENTS.—

19 “(1) OBLIGATION TO PURCHASE.—After the  
20 date of enactment of this subsection, no electric util-  
21 ity shall be required to enter into a new contract or

1 obligation to purchase electric energy from a quali-  
2 fying cogeneration facility or a qualifying small  
3 power production facility under this section if the  
4 Commission finds that the qualifying cogeneration  
5 facility or qualifying small power production facility  
6 has nondiscriminatory access to—

7 “(A)(i) independently administered, auc-  
8 tion-based day ahead and real time wholesale  
9 markets for the sale of electric energy; and (ii)  
10 wholesale markets for long-term sales of capac-  
11 ity and electric energy; or

12 “(B)(i) transmission and interconnection  
13 services that are provided by a Commission-ap-  
14 proved regional transmission entity and admin-  
15 istered pursuant to an open access transmission  
16 tariff that affords nondiscriminatory treatment  
17 to all customers; and (ii) competitive wholesale  
18 markets that provide a meaningful opportunity  
19 to sell capacity, including long-term and short-  
20 term sales, and electric energy, including long-  
21 term, short-term and real-time sales, to buyers

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1 other than the utility to which the qualifying fa-  
2 cility is interconnected. In determining whether  
3 a meaningful opportunity to sell exists, the  
4 Commission shall consider, among other fac-  
5 tors, evidence of transactions within the rel-  
6 evant market; or

7 “(C) wholesale markets for the sale of ca-  
8 pacity and electric energy that are, at a min-  
9 imum, of comparable competitive quality as  
10 markets described in subparagraphs (A) and  
11 (B).

12 “(2) REVISED PURCHASE AND SALE OBLIGA-  
13 TION FOR NEW FACILITIES.—(A) After the date of  
14 enactment of this subsection, no electric utility shall  
15 be required pursuant to this section to enter into a  
16 new contract or obligation to purchase from or sell  
17 electric energy to a facility that is not an existing  
18 qualifying cogeneration facility unless the facility  
19 meets the criteria for qualifying cogeneration facili-  
20 ties established by the Commission pursuant to the  
21 rulemaking required by subsection (n).

1           “(B) For the purposes of this paragraph, the  
2           term ‘existing qualifying cogeneration facility’ means  
3           a facility that—

4                   “(i) was a qualifying cogeneration facility  
5                   on the date of enactment of subsection (m); or

6                   “(ii) had filed with the Commission a no-  
7                   tice of self-certification, self recertification or  
8                   an application for Commission certification  
9                   under 18 C.F.R. 292.207 prior to the date on  
10                  which the Commission issues the final rule re-  
11                  quired by subsection (n).

12           “(3) COMMISSION REVIEW.—Any electric utility  
13           may file an application with the Commission for re-  
14           lief from the mandatory purchase obligation pursu-  
15           ant to this subsection on a service territory-wide  
16           basis. Such application shall set forth the factual  
17           basis upon which relief is requested and describe  
18           why the conditions set forth in subparagraphs (A),  
19           (B) or (C) of paragraph (1) of this subsection have  
20           been met. After notice, including sufficient notice to  
21           potentially affected qualifying cogeneration facilities

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1 and qualifying small power production facilities, and  
2 an opportunity for comment, the Commission shall  
3 make a final determination within 90 days of such  
4 application regarding whether the conditions set  
5 forth in subparagraphs (A), (B) or (C) of paragraph  
6 (1) have been met.

7 “(4) REINSTATEMENT OF OBLIGATION TO PUR-  
8 CHASE.—At any time after the Commission makes a  
9 finding under paragraph (3) relieving an electric  
10 utility of its obligation to purchase electric energy,  
11 a qualifying cogeneration facility, a qualifying small  
12 power production facility, a State agency, or any  
13 other affected person may apply to the Commission  
14 for an order reinstating the electric utility’s obliga-  
15 tion to purchase electric energy under this section.  
16 Such application shall set forth the factual basis  
17 upon which the application is based and describe  
18 why the conditions set forth in subparagraphs (A),  
19 (B) or (C) of paragraph (1) of this subsection are  
20 no longer met. After notice, including sufficient no-  
21 tice to potentially affected utilities, and opportunity

1 for comment, the Commission shall issue an order  
2 within 90 days of such application reinstating the  
3 electric utility's obligation to purchase electric en-  
4 ergy under this section if the Commission finds that  
5 the conditions set forth in subparagraphs (A), (B) or  
6 (C) of paragraph (1) which relieved the obligation to  
7 purchase, are no longer met.

8 “(5) OBLIGATION TO SELL.—After the date of  
9 enactment of this subsection, no electric utility shall  
10 be required to enter into a new contract or obliga-  
11 tion to sell electric energy to a qualifying cogenera-  
12 tion facility or a qualifying small power production  
13 facility under this section if the Commission finds  
14 that—

15 “(A) competing retail electric suppliers are  
16 willing and able to sell and deliver electric en-  
17 ergy to the qualifying cogeneration facility or  
18 qualifying small power production facility; and

19 “(B) the electric utility is not required by  
20 State law to sell electric energy in its service  
21 territory.



1           “(6) NO EFFECT ON EXISTING RIGHTS AND  
2           REMEDIES.—Nothing in this subsection affects the  
3           rights or remedies of any party under any contract  
4           or obligation, in effect or pending approval before  
5           the appropriate State regulatory authority or non-  
6           regulated electric utility on the date of enactment of  
7           this subsection, to purchase electric energy or capac-  
8           ity from or to sell electric energy or capacity to a  
9           qualifying cogeneration facility or qualifying small  
10          power production facility under this Act (including  
11          the right to recover costs of purchasing electric en-  
12          ergy or capacity).

13          “(7) RECOVERY OF COSTS.—(A) The Commis-  
14          sion shall issue and enforce such regulations as are  
15          necessary to ensure that an electric utility that pur-  
16          chases electric energy or capacity from a qualifying  
17          cogeneration facility or qualifying small power pro-  
18          duction facility in accordance with any legally en-  
19          forceable obligation entered into or imposed under  
20          this section recovers all prudently incurred costs as-  
21          sociated with the purchase.

1           “(B) A regulation under subparagraph (A) shall  
2           be enforceable in accordance with the provisions of  
3           law applicable to enforcement of regulations under  
4           the Federal Power Act (16 U.S.C. 791a et seq.).

5           “(n) RULEMAKING FOR NEW QUALIFYING FACILI-  
6           TIES.—(1)(A) Not later than 180 days after the date of  
7           enactment of this section, the Commission shall issue a  
8           rule revising the criteria in 18 C.F.R. 292.205 for new  
9           qualifying cogeneration facilities seeking to sell electric en-  
10          ergy pursuant to section 210 of this Act to ensure—

11           “(i) that the thermal energy output of a new  
12          qualifying cogeneration facility is used in a produc-  
13          tive and beneficial manner;

14           “(ii) the electrical, thermal, and chemical out-  
15          put of the cogeneration facility is used fundamen-  
16          tally for industrial, commercial, or institutional pur-  
17          poses and is not intended fundamentally for sale to  
18          an electric utility, taking into account technological,  
19          efficiency, economic, and variable thermal energy re-  
20          quirements, as well as State laws applicable to sales

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1 of electric energy from a qualifying facility to its  
2 host facility; and

3 “(iii) continuing progress in the development of  
4 efficient electric energy generating technology.

5 “(B) The rule issued pursuant to paragraph (1)(A)  
6 of this subsection shall be applicable only to facilities that  
7 seek to sell electric energy pursuant to section 210 of this  
8 Act. For all other purposes, except as specifically provided  
9 in subsection (m)(2)(A), qualifying facility status shall be  
10 determined in accordance with the rules and regulations  
11 of this Act.

12 “(2) Notwithstanding rule revisions under paragraph  
13 (1), the Commission’s criteria for qualifying cogeneration  
14 facilities in effect prior to the date on which the Commis-  
15 sion issues the final rule required by paragraph (1) shall  
16 continue to apply to any cogeneration facility that—

17 “(A) was a qualifying cogeneration facility on  
18 the date of enactment of subsection (m), or

19 “(B) had filed with the Commission a notice of  
20 self-certification, self-recertification or an application  
21 for Commission certification under 18 C.F.R.

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1 292.207 prior to the date on which the Commission  
2 issues the final rule required by paragraph (1).”.

3 (b) ELIMINATION OF OWNERSHIP LIMITATIONS.—

4 (1) QUALIFYING SMALL POWER PRODUCTION  
5 FACILITY.—Section 3(17)(C) of the Federal Power  
6 Act (16 U.S.C. 796(17)(C)) is amended to read as  
7 follows:

8 “(C) ‘qualifying small power production fa-  
9 cility’ means a small power production facility  
10 that the Commission determines, by rule, meets  
11 such requirements (including requirements re-  
12 specting fuel use, fuel efficiency, and reliability)  
13 as the Commission may, by rule, prescribe;”.

14 (2) QUALIFYING COGENERATION FACILITY.—  
15 Section 3(18)(B) of the Federal Power Act (16  
16 U.S.C. 796(18)(B)) is amended to read as follows:

17 “(B) ‘qualifying cogeneration facility’  
18 means a cogeneration facility that the Commis-  
19 sion determines, by rule, meets such require-  
20 ments (including requirements respecting min-

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1           imum size, fuel use, and fuel efficiency) as the  
2           Commission may, by rule, prescribe;”.

3 **SEC. 1254. INTERCONNECTION.**

4       (a) ADOPTION OF STANDARDS.—Section 111(d) of  
5 the Public Utility Regulatory Policies Act of 1978 (16  
6 U.S.C. 2621 (d) ) is amended by adding at the end the  
7 following:

8           “(15) INTERCONNECTION.—Each electric utility  
9           shall make available, upon request, interconnection  
10          service to any electric consumer that the electric  
11          utility serves. For purposes of this paragraph, the  
12          term ‘interconnection service’ means service to an  
13          electric consumer under which an on-site generating  
14          facility on the consumer’s premises shall be con-  
15          nected to the local distribution facilities. Inter-  
16          connection services shall be offered based upon the  
17          standards developed by the Institute of Electrical  
18          and Electronics Engineers: IEEE Standard 1547 for  
19          Interconnecting Distributed Resources with Electric  
20          Power Systems, as they may be amended from time  
21          to time. In addition, agreements and procedures

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1 shall be established whereby the services are offered  
2 shall promote current best practices of interconnec-  
3 tion for distributed generation, including but not  
4 limited to practices stipulated in model codes adopt-  
5 ed by associations of state regulatory agencies. All  
6 such agreements and procedures shall be just and  
7 reasonable, and not unduly discriminatory or pref-  
8 erential.”.

9 (b) COMPLIANCE.—

10 (1) TIME LIMITATIONS.—Section 112(b) of the  
11 Public Utility Regulatory Policies Act of 1978 (16  
12 U.S.C. 2622(b)) is amended by adding at the end  
13 the following:

14 “(5)(A) Not later than one year after the enact-  
15 ment of this paragraph, each State regulatory au-  
16 thority (with respect to each electric utility for which  
17 it has ratemaking authority) and each nonregulated  
18 utility shall commence the consideration referred to  
19 in section 111, or set a hearing date for consider-  
20 ation, with respect to the standard established by  
21 paragraph (15) of section 111(d).

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1           “(B) Not later than two years after the date of  
2           the enactment of the this paragraph, each State reg-  
3           ulatory authority (with respect to each electric utility  
4           for which it has ratemaking authority), and each  
5           nonregulated electric utility, shall complete the con-  
6           sideration, and shall make the determination, re-  
7           ferred to in section 111 with respect to each stand-  
8           ard established by paragraph (15) of section  
9           111(d).”.

10           (2) FAILURE TO COMPLY.—Section 112(d) of  
11           the Public Utility Regulatory Policies Act of 1978  
12           (16 U.S.C. 2622 (c)) is amended by adding at the  
13           end the following: “In the case of the standard es-  
14           tablished by paragraph (15), the reference contained  
15           in this subsection to the date of enactment of this  
16           Act shall be deemed to be a reference to the date of  
17           enactment of paragraph (15).”.

18           (3) PRIOR STATE ACTIONS.—

19                   (A) IN GENERAL.—Section 112 of the  
20           Public Utility Regulatory Policies Act of 1978

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1 (16 U.S.C. 2622) is amended by adding at the  
2 end the following:

3 “(f) PRIOR STATE ACTIONS.—Subsections (b) and  
4 (c) of this section shall not apply to the standard estab-  
5 lished by paragraph (15) of section 111(d) in the case of  
6 any electric utility in a State if, before the enactment of  
7 this subsection—

8 “(1) the State has implemented for such utility  
9 the standard concerned (or a comparable standard);

10 “(2) the State regulatory authority for such  
11 State or relevant nonregulated electric utility has  
12 conducted a proceeding to consider implementation  
13 of the standard concerned (or a comparable stand-  
14 ard) for such utility; or

15 “(3) the State legislature has voted on the im-  
16 plementation of such standard (or a comparable  
17 standard) for such utility.”.

18 (B) CROSS REFERENCE.—Section 124 of  
19 such Act (16 U.S.C. 2634) is amended by add-  
20 ing the following at the end thereof: “In the  
21 case of each standard established by paragraph



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1 (15) of section 111(d), the reference contained  
2 in this subsection to the date of enactment of  
3 the Act shall be deemed to be a reference to the  
4 date of enactment of paragraph (15).”.

## 5 **Subtitle F—Repeal of PUHCA**

### 6 **SEC. 1261. SHORT TITLE.**

7 This subtitle may be cited as the “Public Utility  
8 Holding Company Act of 2005”.

### 9 **SEC. 1262. DEFINITIONS.**

10 For purposes of this subtitle:

11 (1) **AFFILIATE.**—The term “affiliate” of a com-  
12 pany means any company, 5 percent or more of the  
13 outstanding voting securities of which are owned,  
14 controlled, or held with power to vote, directly or in-  
15 directly, by such company.

16 (2) **ASSOCIATE COMPANY.**—The term “associate  
17 company” of a company means any company in the  
18 same holding company system with such company.

19 (3) **COMMISSION.**—The term “Commission”  
20 means the Federal Energy Regulatory Commission.

1           (4) COMPANY.—The term “company” means a  
2 corporation, partnership, association, joint stock  
3 company, business trust, or any organized group of  
4 persons, whether incorporated or not, or a receiver,  
5 trustee, or other liquidating agent of any of the fore-  
6 going.

7           (5) ELECTRIC UTILITY COMPANY.—The term  
8 “electric utility company” means any company that  
9 owns or operates facilities used for the generation,  
10 transmission, or distribution of electric energy for  
11 sale.

12           (6) EXEMPT WHOLESALE GENERATOR AND  
13 FOREIGN UTILITY COMPANY.—The terms “exempt  
14 wholesale generator” and “foreign utility company”  
15 have the same meanings as in sections 32 and 33,  
16 respectively, of the Public Utility Holding Company  
17 Act of 1935 (15 U.S.C. 79z-5a, 79z-5b), as those  
18 sections existed on the day before the effective date  
19 of this subtitle.

20           (7) GAS UTILITY COMPANY.—The term “gas  
21 utility company” means any company that owns or

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1 operates facilities used for distribution at retail  
2 (other than the distribution only in enclosed portable  
3 containers or distribution to tenants or employees of  
4 the company operating such facilities for their own  
5 use and not for resale) of natural or manufactured  
6 gas for heat, light, or power.

7 (8) HOLDING COMPANY.—

8 (A) IN GENERAL.—The term “holding  
9 company” means—

10 (i) any company that directly or indi-  
11 rectly owns, controls, or holds, with power  
12 to vote, 10 percent or more of the out-  
13 standing voting securities of a public-utility  
14 company or of a holding company of any  
15 public-utility company; and

16 (ii) any person, determined by the  
17 Commission, after notice and opportunity  
18 for hearing, to exercise directly or indi-  
19 rectly (either alone or pursuant to an ar-  
20 rangement or understanding with 1 or  
21 more persons) such a controlling influence

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1 over the management or policies of any  
2 public-utility company or holding company  
3 as to make it necessary or appropriate for  
4 the rate protection of utility customers  
5 with respect to rates that such person be  
6 subject to the obligations, duties, and li-  
7 abilities imposed by this subtitle upon  
8 holding companies.

9 (B) EXCLUSIONS.—The term “holding  
10 company” shall not include—

11 (i) a bank, savings association, or  
12 trust company, or their operating subsidi-  
13 aries that own, control, or hold, with the  
14 power to vote, public utility or public util-  
15 ity holding company securities so long as  
16 the securities are—

17 (I) held as collateral for a loan;

18 (II) held in the ordinary course  
19 of business as a fiduciary; or

20 (III) acquired solely for purposes  
21 of liquidation and in connection with

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1 a loan previously contracted for and  
2 owned beneficially for a period of not  
3 more than two years; or

4 (ii) a broker or dealer that owns, con-  
5 trols, or holds with the power to vote pub-  
6 lic utility or public utility holding company  
7 securities so long as the securities are—

8 (I) not beneficially owned by the  
9 broker or dealer and are subject to  
10 any voting instructions which may be  
11 given by customers or their assigns;  
12 or

13 (II) acquired within 12 months  
14 in the ordinary course of business as  
15 a broker, dealer, or underwriter with  
16 the bona fide intention of effecting  
17 distribution of the specific securities  
18 so acquired.

19 (9) HOLDING COMPANY SYSTEM.—The term  
20 “holding company system” means a holding com-  
21 pany, together with its subsidiary companies.

1           (10) JURISDICTIONAL RATES.—The term “ju-  
2           risditional rates” means rates accepted or estab-  
3           lished by the Commission for the transmission of  
4           electric energy in interstate commerce, the sale of  
5           electric energy at wholesale in interstate commerce,  
6           the transportation of natural gas in interstate com-  
7           merce, and the sale in interstate commerce of nat-  
8           ural gas for resale for ultimate public consumption  
9           for domestic, commercial, industrial, or any other  
10          use.

11          (11) NATURAL GAS COMPANY.—The term “nat-  
12          ural gas company” means a person engaged in the  
13          transportation of natural gas in interstate commerce  
14          or the sale of such gas in interstate commerce for  
15          resale.

16          (12) PERSON.—The term “person” means an  
17          individual or company.

18          (13) PUBLIC UTILITY.—The term “public util-  
19          ity” means any person who owns or operates facili-  
20          ties used for transmission of electric energy in inter-

1 state commerce or sales of electric energy at whole-  
2 sale in interstate commerce.

3 (14) PUBLIC-UTILITY COMPANY.—The term  
4 “public-utility company” means an electric utility  
5 company or a gas utility company.

6 (15) STATE COMMISSION.—The term “State  
7 commission” means any commission, board, agency,  
8 or officer, by whatever name designated, of a State,  
9 municipality, or other political subdivision of a State  
10 that, under the laws of such State, has jurisdiction  
11 to regulate public utility companies.

12 (16) SUBSIDIARY COMPANY.—The term “sub-  
13 sidiary company” of a holding company means—

14 (A) any company, 10 percent or more of  
15 the outstanding voting securities of which are  
16 directly or indirectly owned, controlled, or held  
17 with power to vote, by such holding company;  
18 and

19 (B) any person, the management or poli-  
20 cies of which the Commission, after notice and  
21 opportunity for hearing, determines to be sub-

1           ject to a controlling influence, directly or indi-  
2           rectly, by such holding company (either alone or  
3           pursuant to an arrangement or understanding  
4           with 1 or more other persons) so as to make it  
5           necessary for the rate protection of utility cus-  
6           tomers with respect to rates that such person  
7           be subject to the obligations, duties, and liabil-  
8           ities imposed by this subtitle upon subsidiary  
9           companies of holding companies.

10           (17) VOTING SECURITY.—The term “voting se-  
11           curity” means any security presently entitling the  
12           owner or holder thereof to vote in the direction or  
13           management of the affairs of a company.

14   **SEC. 1263. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**  
15                           **PANY ACT OF 1935.**

16           The Public Utility Holding Company Act of 1935 (15  
17   U.S.C. 79 et seq.) is repealed.

18   **SEC. 1264. FEDERAL ACCESS TO BOOKS AND RECORDS.**

19           (a) IN GENERAL.—Each holding company and each  
20   associate company thereof shall maintain, and shall make  
21   available to the Commission, such books, accounts, memo-



1 randa, and other records as the Commission determines  
2 are relevant to costs incurred by a public utility or natural  
3 gas company that is an associate company of such holding  
4 company and necessary or appropriate for the protection  
5 of utility customers with respect to jurisdictional rates.

6 (b) AFFILIATE COMPANIES.—Each affiliate of a hold-  
7 ing company or of any subsidiary company of a holding  
8 company shall maintain, and shall make available to the  
9 Commission, such books, accounts, memoranda, and other  
10 records with respect to any transaction with another affil-  
11 iate, as the Commission determines are relevant to costs  
12 incurred by a public utility or natural gas company that  
13 is an associate company of such holding company and nec-  
14 essary or appropriate for the protection of utility cus-  
15 tomers with respect to jurisdictional rates.

16 (c) HOLDING COMPANY SYSTEMS.—The Commission  
17 may examine the books, accounts, memoranda, and other  
18 records of any company in a holding company system, or  
19 any affiliate thereof, as the Commission determines are  
20 relevant to costs incurred by a public utility or natural  
21 gas company within such holding company system and

1 necessary or appropriate for the protection of utility cus-  
2 tomers with respect to jurisdictional rates.

3 (d) CONFIDENTIALITY.—No member, officer, or em-  
4 ployee of the Commission shall divulge any fact or infor-  
5 mation that may come to his or her knowledge during the  
6 course of examination of books, accounts, memoranda, or  
7 other records as provided in this section, except as may  
8 be directed by the Commission or by a court of competent  
9 jurisdiction.

10 **SEC. 1265. STATE ACCESS TO BOOKS AND RECORDS.**

11 (a) IN GENERAL.—Upon the written request of a  
12 State commission having jurisdiction to regulate a public-  
13 utility company in a holding company system, the holding  
14 company or any associate company or affiliate thereof,  
15 other than such public-utility company, wherever located,  
16 shall produce for inspection books, accounts, memoranda,  
17 and other records that—

18 (1) have been identified in reasonable detail in  
19 a proceeding before the State commission;

1           (2) the State commission determines are rel-  
2           evant to costs incurred by such public-utility com-  
3           pany; and

4           (3) are necessary for the effective discharge of  
5           the responsibilities of the State commission with re-  
6           spect to such proceeding.

7           (b) LIMITATION.—Subsection (a) does not apply to  
8           any person that is a holding company solely by reason of  
9           ownership of 1 or more qualifying facilities under the Pub-  
10          lic Utility Regulatory Policies Act of 1978 (16 U.S.C.  
11          2601 et seq.).

12          (c) CONFIDENTIALITY OF INFORMATION.—The pro-  
13          duction of books, accounts, memoranda, and other records  
14          under subsection (a) shall be subject to such terms and  
15          conditions as may be necessary and appropriate to safe-  
16          guard against unwarranted disclosure to the public of any  
17          trade secrets or sensitive commercial information.

18          (d) EFFECT ON STATE LAW.—Nothing in this sec-  
19          tion shall preempt applicable State law concerning the pro-  
20          vision of books, accounts, memoranda, and other records,  
21          or in any way limit the rights of any State to obtain books,

1 accounts, memoranda, and other records under any other  
2 Federal law, contract, or otherwise.

3 (e) COURT JURISDICTION.—Any United States dis-  
4 trict court located in the State in which the State commis-  
5 sion referred to in subsection (a) is located shall have ju-  
6 risdiction to enforce compliance with this section.

7 **SEC. 1266. EXEMPTION AUTHORITY.**

8 (a) RULEMAKING.—Not later than 90 days after the  
9 effective date of this subtitle, the Commission shall issue  
10 a final rule to exempt from the requirements of section  
11 1264 (relating to Federal access to books and records) any  
12 person that is a holding company, solely with respect to  
13 1 or more—

14 (1) qualifying facilities under the Public Utility  
15 Regulatory Policies Act of 1978 (16 U.S.C. 2601 et  
16 seq.);

17 (2) exempt wholesale generators; or

18 (3) foreign utility companies.

19 (b) OTHER AUTHORITY.—The Commission shall ex-  
20 empt a person or transaction from the requirements of  
21 section 1264 (relating to Federal access to books and

1 records) if, upon application or upon the motion of the  
2 Commission—

3           (1) the Commission finds that the books, ac-  
4 counts, memoranda, and other records of any person  
5 are not relevant to the jurisdictional rates of a pub-  
6 lic utility or natural gas company; or

7           (2) the Commission finds that any class of  
8 transactions is not relevant to the jurisdictional  
9 rates of a public utility or natural gas company.

10 **SEC. 1267. AFFILIATE TRANSACTIONS.**

11           (a) **COMMISSION AUTHORITY UNAFFECTED.**—Noth-  
12 ing in this subtitle shall limit the authority of the Commis-  
13 sion under the Federal Power Act (16 U.S.C. 791a et seq.)  
14 to require that jurisdictional rates are just and reasonable,  
15 including the ability to deny or approve the pass through  
16 of costs, the prevention of cross-subsidization, and the  
17 issuance of such rules and regulations as are necessary  
18 or appropriate for the protection of utility consumers.

19           (b) **RECOVERY OF COSTS.**—Nothing in this subtitle  
20 shall preclude the Commission or a State commission from  
21 exercising its jurisdiction under otherwise applicable law

1 to determine whether a public-utility company, public util-  
2 ity, or natural gas company may recover in rates any costs  
3 of an activity performed by an associate company, or any  
4 costs of goods or services acquired by such public-utility  
5 company from an associate company.

6 **SEC. 1268. APPLICABILITY.**

7 Except as otherwise specifically provided in this sub-  
8 title, no provision of this subtitle shall apply to, or be  
9 deemed to include—

10 (1) the United States;

11 (2) a State or any political subdivision of a  
12 State;

13 (3) any foreign governmental authority not op-  
14 erating in the United States;

15 (4) any agency, authority, or instrumentality of  
16 any entity referred to in paragraph (1), (2), or (3);  
17 or

18 (5) any officer, agent, or employee of any entity  
19 referred to in paragraph (1), (2), (3), or (4) acting  
20 as such in the course of his or her official duty.

1 **SEC. 1269. EFFECT ON OTHER REGULATIONS.**

2       Nothing in this subtitle precludes the Commission or  
3 a State commission from exercising its jurisdiction under  
4 otherwise applicable law to protect utility customers.

5 **SEC. 1270. ENFORCEMENT.**

6       The Commission shall have the same powers as set  
7 forth in sections 306 through 317 of the Federal Power  
8 Act (16 U.S.C. 825e–825p) to enforce the provisions of  
9 this subtitle.

10 **SEC. 1271. SAVINGS PROVISIONS.**

11       (a) **IN GENERAL.**—Nothing in this subtitle, or other-  
12 wise in the Public Utility Holding Company Act of 1935,  
13 or rules, regulations, or orders thereunder, prohibits a per-  
14 son from engaging in or continuing to engage in activities  
15 or transactions in which it is legally engaged or authorized  
16 to engage on the date of enactment of this Act, if that  
17 person continues to comply with the terms (other than an  
18 expiration date or termination date) of any such author-  
19 ization, whether by rule or by order.

20       (b) **EFFECT ON OTHER COMMISSION AUTHORITY.**—  
21 Nothing in this subtitle limits the authority of the Com-

1 mission under the Federal Power Act (16 U.S.C. 791a et  
2 seq.) or the Natural Gas Act (15 U.S.C. 717 et seq.).

3 (c) TAX TREATMENT.—Tax treatment under section  
4 1081 of the Internal Revenue Code of 1986 as a result  
5 of transactions ordered in compliance with the Public Util-  
6 ity Holding Company Act of 1935 (15 U.S.C. 79 et seq.)  
7 shall not be affected in any manner due to the repeal of  
8 that Act and the enactment of the Public Utility Holding  
9 Company Act of 2005.

10 **SEC. 1272. IMPLEMENTATION.**

11 Not later than 4 months after the date of enactment  
12 of this subtitle, the Commission shall—

13 (1) issue such regulations as may be necessary  
14 or appropriate to implement this subtitle (other than  
15 section 1265, relating to State access to books and  
16 records); and

17 (2) submit to Congress detailed recommenda-  
18 tions on technical and conforming amendments to  
19 Federal law necessary to carry out this subtitle and  
20 the amendments made by this subtitle.



1 **SEC. 1273. TRANSFER OF RESOURCES.**

2 All books and records that relate primarily to the  
3 functions transferred to the Commission under this sub-  
4 title shall be transferred from the Securities and Exchange  
5 Commission to the Commission.

6 **SEC. 1274. EFFECTIVE DATE.**

7 (a) IN GENERAL.—Except for section 1272 (relating  
8 to implementation), this subtitle shall take effect 6 months  
9 after the date of enactment of this subtitle.

10 (b) COMPLIANCE WITH CERTAIN RULES.—If the  
11 Commission approves and makes effective any final rule-  
12 making modifying the standards of conduct governing en-  
13 tities that own, operate, or control facilities for trans-  
14 mission of electricity in interstate commerce or transpor-  
15 tation of natural gas in interstate commerce prior to the  
16 effective date of this subtitle, any action taken by a public-  
17 utility company or utility holding company to comply with  
18 the requirements of such rulemaking shall not subject  
19 such public-utility company or utility holding company to  
20 any regulatory requirement applicable to a holding com-

1 pany under the Public Utility Holding Company Act of  
2 1935 (15 U.S.C. 79 et seq.).

3 **SEC. 1275. SERVICE ALLOCATION.**

4 (a) DEFINITION OF PUBLIC UTILITY.—In this sec-  
5 tion, the term “public utility” has the meaning given the  
6 term in section 201(e) of the Federal Power Act (16  
7 U.S.C. 824(e)).

8 (b) FERC REVIEW.—In the case of non-power goods  
9 or administrative or management services provided by an  
10 associate company organized specifically for the purpose  
11 of providing such goods or services to any public utility  
12 in the same holding company system, at the election of  
13 the system or a State commission having jurisdiction over  
14 the public utility, the Commission, after the effective date  
15 of this subtitle, shall review and authorize the allocation  
16 of the costs for such goods or services to the extent rel-  
17 evant to that associate company.

18 (c) EFFECT ON FEDERAL AND STATE LAW.—Noth-  
19 ing in this section shall affect the authority of the Com-  
20 mission or a State commission under other applicable law.

1 (d) RULES.—Not later than 4 months after the date  
2 of enactment of this Act, the Commission shall issue rules  
3 (which rules shall be effective no earlier than the effective  
4 date of this subtitle) to exempt from the requirements of  
5 this section any company in a holding company system  
6 whose public utility operations are confined substantially  
7 to a single State and any other class of transactions that  
8 the Commission finds is not relevant to the jurisdictional  
9 rates of a public utility.

10 **SEC. 1276. AUTHORIZATION OF APPROPRIATIONS.**

11 There are authorized to be appropriated such funds  
12 as may be necessary to carry out this subtitle.

13 **SEC. 1277. CONFORMING AMENDMENTS TO THE FEDERAL**  
14 **POWER ACT.**

15 (a) CONFLICT OF JURISDICTION.—Section 318 of the  
16 Federal Power Act (16 U.S.C. 825q) is repealed.

17 (b) DEFINITIONS.—(1) Section 201(g)(5) of the Fed-  
18 eral Power Act (16 U.S.C. 824(g)(5)) is amended by strik-  
19 ing “1935” and inserting “2005”.

1 (2) Section 214 of the Federal Power Act (16 U.S.C.  
2 824m) is amended by striking “1935” and inserting  
3 “2005”.

4 **Subtitle G—Market Transparency,**  
5 **Enforcement, and Consumer**  
6 **Protection**

7 **SEC. 1281. ELECTRICITY MARKET TRANSPARENCY.**

8 Part II of the Federal Power Act is amended by add-  
9 ing at the end the following:

10 **“SEC. 220. ELECTRICITY MARKET TRANSPARENCY RULES.**

11 “(a)(1) The Commission is directed to facilitate price  
12 transparency in markets for the sale and transmission of  
13 electric energy in interstate commerce, having due regard  
14 for the public interest, the integrity of those markets, fair  
15 competition, and the protection of consumers.

16 “(2) The Commission may prescribe such rules as the  
17 Commission determines necessary and appropriate to  
18 carry out the purposes of this section. The rules shall pro-  
19 vide for the dissemination, on a timely basis, of informa-  
20 tion about the availability and prices of wholesale electric  
21 energy and transmission service to the Commission, State

1 commissions, buyers and sellers of wholesale electric en-  
2 ergy, users of transmission services, and the public.

3 “(3) The Commission may—

4 “(A) obtain the information described in para-  
5 graph (2) from any market participant; and

6 “(B) rely on entities other than the Commission  
7 to receive and make public the information, subject  
8 to the disclosure rules in subsection (b).

9 “(4) In carrying out this section, the Commission  
10 shall consider the degree of price transparency provided  
11 by existing price publishers and providers of trade proc-  
12 essing services, and shall rely on such publishers and serv-  
13 ices to the maximum extent possible. The Commission may  
14 establish an electronic information system if it determines  
15 that existing price publications are not adequately pro-  
16 viding price discovery or market transparency. Nothing in  
17 this section, however, shall affect any electronic informa-  
18 tion filing requirements in effect under this Act as of the  
19 date of enactment of this section.

20 “(b)(1) Rules described in subsection (a)(2), if adopt-  
21 ed, shall exempt from disclosure information the Commis-

1 sion determines would, if disclosed, be detrimental to the  
2 operation of an effective market or jeopardize system secu-  
3 rity.

4       “(2) In determining the information to be made avail-  
5 able under this section and time to make the information  
6 available, the Commission shall seek to ensure that con-  
7 sumers and competitive markets are protected from the  
8 adverse effects of potential collusion or other anticompeti-  
9 tive behaviors that can be facilitated by untimely public  
10 disclosure of transaction-specific information.

11       “(c)(1) Within 180 days of enactment of this section,  
12 the Commission shall conclude a memorandum of under-  
13 standing with the Commodity Futures Trading Commis-  
14 sion relating to information sharing, which shall include,  
15 among other things, provisions ensuring that information  
16 requests to markets within the respective jurisdiction of  
17 each agency are properly coordinated to minimize duplica-  
18 tive information requests, and provisions regarding the  
19 treatment of proprietary trading information.

20       “(2) Nothing in this section may be construed to limit  
21 or affect the exclusive jurisdiction of the Commodity Fu-

1 tures Trading Commission under the Commodity Ex-  
2 change Act (7 U.S.C. 1 et seq.).

3 “(d) The Commission shall not require entities who  
4 have a de minimis market presence to comply with the  
5 reporting requirements of this section.

6 “(e)(1) Except as provided in paragraph (2), no per-  
7 son shall be subject to any civil penalty under this section  
8 with respect to any violation occurring more than 3 years  
9 before the date on which the person is provided notice of  
10 the proposed penalty under section 316A.

11 “(2) Paragraph (1) shall not apply in any case in  
12 which the Commission finds that a seller that has entered  
13 into a contract for the sale of electric energy at wholesale  
14 or transmission service subject to the jurisdiction of the  
15 Commission has engaged in fraudulent market manipula-  
16 tion activities materially affecting the contract in violation  
17 of section 222.

18 “(f) This section shall not apply to a transaction for  
19 the purchase or sale of wholesale electric energy or trans-  
20 mission services within the area described in section  
21 212(k)(2)(A).”.

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**1 SEC. 1282. FALSE STATEMENTS.**

2 Part II of the Federal Power Act (16 U.S.C. 824 et  
3 seq.) is amended by adding at the end the following:

**4 “SEC. 221. PROHIBITION ON FILING FALSE INFORMATION.**

5 “No entity (including an entity described in section  
6 201(f)) shall willfully and knowingly report any informa-  
7 tion relating to the price of electricity sold at wholesale  
8 or the availability of transmission capacity, which informa-  
9 tion the person or any other entity knew to be false at  
10 the time of the reporting, to a Federal agency with intent  
11 to fraudulently affect the data being compiled by the Fed-  
12 eral agency.”.

**13 SEC. 1283. MARKET MANIPULATION.**

14 Part II of the Federal Power Act (16 U.S.C. 824 et  
15 seq.) is amended by adding at the end the following:

**16 “SEC. 222. PROHIBITION OF ENERGY MARKET MANIPULA-  
17 TION.**

18 “(a) IN GENERAL.—It shall be unlawful for any enti-  
19 ty (including an entity described in section 201(f)), di-  
20 rectly or indirectly, to use or employ, in connection with  
21 the purchase or sale of electric energy or the purchase or



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1 sale of transmission services subject to the jurisdiction of  
2 the Commission, any manipulative or deceptive device or  
3 contrivance (as those terms are used in section 10(b) of  
4 the Securities Exchange Act of 1934 (15 U.S.C. 78j(b))),  
5 in contravention of such rules and regulations as the Com-  
6 mission may prescribe as necessary or appropriate in the  
7 public interest or for the protection of electric ratepayers.

8 “(b) NO PRIVATE RIGHT OF ACTION.—Nothing in  
9 this section shall be construed to create a private right  
10 of action.”

11 **SEC. 1284. ENFORCEMENT.**

12 (a) COMPLAINTS.—Section 306 of the Federal Power  
13 Act (16 U.S.C. 825e) is amended—

14 (1) by inserting “electric utility,” after “Any  
15 person,”; and

16 (2) by inserting “, transmitting utility,” after  
17 “licensee” each place it appears.

18 (b) INVESTIGATIONS.—Section 307(a) of the Federal  
19 Power Act (16 U.S.C. 825f(a)) is amended—

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1           (1) by inserting “, electric utility, transmitting  
2           utility, or other entity” after “person” each place it  
3           appears; and

4           (2) in the first sentence, by inserting before the  
5           period at the end the following: “, or in obtaining in-  
6           formation about the sale of electric energy at whole-  
7           sale in interstate commerce and the transmission of  
8           electric energy in interstate commerce”.

9           (c) REVIEW OF COMMISSION ORDERS.—Section  
10          313(a) of the Federal Power Act (16 U.S.C. 825l) is  
11          amended by inserting “electric utility,” after “person,” in  
12          the first 2 places it appears and by striking “any person  
13          unless such person” and inserting “any entity unless such  
14          entity”.

15          (d) CRIMINAL PENALTIES.—Section 316 of the Fed-  
16          eral Power Act (16 U.S.C. 825o) is amended—

17                 (1) in subsection (a)—

18                         (A) by striking “\$5,000” and inserting  
19                         “\$1,000,000”; and

20                         (B) by striking “two years” and inserting  
21                         “5 years”;

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1 (2) in subsection (b), by striking “\$500” and  
2 inserting “\$25,000”; and

3 (3) by striking subsection (c).

4 (e) CIVIL PENALTIES.—Section 316A of the Federal  
5 Power Act (16 U.S.C. 825o-1) is amended—

6 (1) by striking “section 211, 212, 213, or 214”  
7 each place it appears and inserting “part II”; and

8 (2) in subsection (b), by striking “\$10,000”  
9 and inserting “\$1,000,000”.

10 **SEC. 1285. REFUND EFFECTIVE DATE.**

11 Section 206(b) of the Federal Power Act (16 U.S.C.  
12 824e(b)) is amended as follows:

13 (1) By striking “the date 60 days after the fil-  
14 ing of such complaint nor later than 5 months after  
15 the expiration of such 60-day period” in the second  
16 sentence and inserting “the date of the filing of such  
17 complaint nor later than 5 months after the filing of  
18 such complaint”.

19 (2) By striking “60 days after” in the third  
20 sentence and inserting “of”.

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1           (3) By striking “expiration of such 60-day pe-  
2           riod” in the third sentence and inserting “publica-  
3           tion date”.

4           (4) By striking the fifth sentence and inserting  
5           the following: “If no final decision is rendered by the  
6           conclusion of the 180-day period commencing upon  
7           initiation of a proceeding pursuant to this section,  
8           the Commission shall state the reasons why it has  
9           failed to do so and shall state its best estimate as  
10          to when it reasonably expects to make such deci-  
11          sion.”.

12 **SEC. 1286. REFUND AUTHORITY.**

13          Section 206 of the Federal Power Act (16 U.S.C.  
14 824e) is amended by adding at the end the following:

15          “(e)(1) In this subsection:

16                 “(A) The term ‘short-term sale’ means an  
17                 agreement for the sale of electric energy at wholesale  
18                 in interstate commerce that is for a period of 31  
19                 days or less (excluding monthly contracts subject to  
20                 automatic renewal).

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1           “(B) The term ‘applicable Commission rule’  
2           means a Commission rule applicable to sales at  
3           wholesale by public utilities that the Commission de-  
4           termines after notice and comment should also be  
5           applicable to entities subject to this subsection.

6           “(2) If an entity described in section 201(f) volun-  
7           tarily makes a short-term sale of electric energy through  
8           an organized market in which the rates for the sale are  
9           established by Commission-approved tariff (rather than by  
10          contract) and the sale violates the terms of the tariff or  
11          applicable Commission rules in effect at the time of the  
12          sale, the entity shall be subject to the refund authority  
13          of the Commission under this section with respect to the  
14          violation.

15          “(3) This section shall not apply to—

16                 “(A) any entity that sells in total (including af-  
17                 filiates of the entity) less than 8,000,000 megawatt  
18                 hours of electricity per year; or

19                 “(B) an electric cooperative.

20          “(4)(A) The Commission shall have refund authority  
21          under paragraph (2) with respect to a voluntary short

1 term sale of electric energy by the Bonneville Power Ad-  
2 ministration only if the sale is at an unjust and unreason-  
3 able rate.

4 “(B) The Commission may order a refund under sub-  
5 paragraph (A) only for short-term sales made by the Bon-  
6 neville Power Administration at rates that are higher than  
7 the highest just and reasonable rate charged by any other  
8 entity for a short-term sale of electric energy in the same  
9 geographic market for the same, or most nearly com-  
10 parable, period as the sale by the Bonneville Power Ad-  
11 ministration.

12 “(C) In the case of any Federal power marketing  
13 agency or the Tennessee Valley Authority, the Commission  
14 shall not assert or exercise any regulatory authority or  
15 power under paragraph (2) other than the ordering of re-  
16 funds to achieve a just and reasonable rate.”.

17 **SEC. 1287. CONSUMER PRIVACY AND UNFAIR TRADE PRAC-**  
18 **TICES.**

19 (a) **PRIVACY.**—The Federal Trade Commission may  
20 issue rules protecting the privacy of electric consumers  
21 from the disclosure of consumer information obtained in

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1 connection with the sale or delivery of electric energy to  
2 electric consumers.

3 (b) SLAMMING.—The Federal Trade Commission  
4 may issue rules prohibiting the change of selection of an  
5 electric utility except with the informed consent of the  
6 electric consumer or if approved by the appropriate State  
7 regulatory authority.

8 (c) CRAMMING.—The Federal Trade Commission  
9 may issue rules prohibiting the sale of goods and services  
10 to an electric consumer unless expressly authorized by law  
11 or the electric consumer.

12 (d) RULEMAKING.—The Federal Trade Commission  
13 shall proceed in accordance with section 553 of title 5,  
14 United States Code, when prescribing a rule under this  
15 section.

16 (e) STATE AUTHORITY.—If the Federal Trade Com-  
17 mission determines that a State's regulations provide  
18 equivalent or greater protection than the provisions of this  
19 section, such State regulations shall apply in that State  
20 in lieu of the regulations issued by the Commission under  
21 this section.

1 (f) DEFINITIONS.—For purposes of this section:

2 (1) STATE REGULATORY AUTHORITY.—The  
3 term “State regulatory authority” has the meaning  
4 given that term in section 3(21) of the Federal  
5 Power Act (16 U.S.C. 796(21)).

6 (2) ELECTRIC CONSUMER AND ELECTRIC UTIL-  
7 ITY.—The terms “electric consumer” and “electric  
8 utility” have the meanings given those terms in sec-  
9 tion 3 of the Public Utility Regulatory Policies Act  
10 of 1978 (16 U.S.C. 2602).

11 **SEC. 1288. AUTHORITY OF COURT TO PROHIBIT INDIVID-**  
12 **UALS FROM SERVING AS OFFICERS, DIREC-**  
13 **TORS, AND ENERGY TRADERS.**

14 Section 314 of the Federal Power Act (16 U.S.C.  
15 825m) is amended by adding at the end the following:

16 “(d) In any proceedings under subsection (a), the  
17 court may prohibit, conditionally or unconditionally, and  
18 permanently or for such period of time as the court deter-  
19 mines, any individual who is engaged or has engaged in  
20 practices constituting a violation of section 221 (and re-  
21 lated rules and regulations) from—



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1           “(1) acting as an officer or director of an elec-  
2       tric utility; or

3           “(2) engaging in the business of purchasing or  
4       selling—

5                   “(A) electric energy; or

6                   “(B) transmission services subject to the  
7       jurisdiction of the Commission.”.

8       **SEC. 1289. MERGER REVIEW REFORM.**

9       (a) IN GENERAL.—Section 203(a) of the Federal  
10      Power Act (16 U.S.C. 824b(a)) is amended to read as fol-  
11      lows:

12           “(a)(1) No public utility shall, without first having  
13      secured an order of the Commission authorizing it to do  
14      so—

15                   “(A) sell, lease, or otherwise dispose of the  
16                   whole of its facilities subject to the jurisdiction  
17                   of the Commission, or any part thereof of a  
18                   value in excess of \$10,000,000;

19                   “(B) merge or consolidate, directly or indi-  
20                   rectly, such facilities or any part thereof with

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1 those of any other person, by any means what-  
2 soever;

3 “(C) purchase, acquire, or take any secu-  
4 rity with a value in excess of \$10,000,000 of  
5 any other public utility; or

6 “(D) purchase, lease, or otherwise acquire  
7 an existing generation facility—

8 “(i) that has a value in excess of  
9 \$10,000,000; and

10 “(ii) that is used for interstate whole-  
11 sale sales and over which the Commission  
12 has jurisdiction for ratemaking purposes.

13 “(2) No holding company in a holding company  
14 system that includes a transmitting utility or an  
15 electric utility shall purchase, acquire, or take any  
16 security with a value in excess of \$10,000,000 of, or,  
17 by any means whatsoever, directly or indirectly,  
18 merge or consolidate with, a transmitting utility, an  
19 electric utility company, or a holding company in a  
20 holding company system that includes a transmitting  
21 utility, or an electric utility company, with a value

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1 in excess of \$10,000,000 without first having se-  
2 cured an order of the Commission authorizing it to  
3 do so.

4 “(3) Upon receipt of an application for such ap-  
5 proval the Commission shall give reasonable notice  
6 in writing to the Governor and State commission of  
7 each of the States in which the physical property af-  
8 fected, or any part thereof, is situated, and to such  
9 other persons as it may deem advisable.

10 “(4) After notice and opportunity for hearing,  
11 the Commission shall approve the proposed disposi-  
12 tion, consolidation, acquisition, or change in control,  
13 if it finds that the proposed transaction will be con-  
14 sistent with the public interest, and will not result  
15 in cross-subsidization of a non-utility associate com-  
16 pany or the pledge or encumbrance of utility assets  
17 for the benefit of an associate company, unless the  
18 Commission determines that the cross-subsidization,  
19 pledge, or encumbrance will be consistent with the  
20 public interest.

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1           “(5) The Commission shall, by rule, adopt pro-  
2           cedures for the expeditious consideration of applica-  
3           tions for the approval of dispositions, consolidations,  
4           or acquisitions, under this section. Such rules shall  
5           identify classes of transactions, or specify criteria for  
6           transactions, that normally meet the standards es-  
7           tablished in paragraph (4). The Commission shall  
8           provide expedited review for such transactions. The  
9           Commission shall grant or deny any other applica-  
10          tion for approval of a transaction not later than 180  
11          days after the application is filed. If the Commission  
12          does not act within 180 days, such application shall  
13          be deemed granted unless the Commission finds,  
14          based on good cause, that further consideration is  
15          required to determine whether the proposed trans-  
16          action meets the standards of paragraph (4) and  
17          issues an order tolling the time for acting on the ap-  
18          plication for not more than 180 days, at the end of  
19          which additional period the Commission shall grant  
20          or deny the application.

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1           “(6) For purposes of this subsection, the terms  
2           ‘associate company’, ‘holding company’, and ‘holding  
3           company system’ have the meaning given those  
4           terms in the Public Utility Holding Company Act of  
5           2005.”.

6           (b) **EFFECTIVE DATE.**—The amendments made by  
7           this section shall take effect 6 months after the date of  
8           enactment of this Act.

9           (c) **TRANSITION PROVISION.**—The amendments  
10          made by subsection (a) shall not apply to any application  
11          under section 203 of the Federal Power Act (16 U.S.C.  
12          824b) that was filed on or before the date of enactment  
13          of this Act.

14          **SEC. 1290. RELIEF FOR EXTRAORDINARY VIOLATIONS.**

15          (a) **APPLICATION.**—This section applies to any con-  
16          tract entered into the Western Interconnection prior to  
17          June 20, 2001, with a seller of wholesale electricity that  
18          the Commission has—

19                  (1) found to have manipulated the electricity  
20                  market resulting in unjust and unreasonable rates;  
21                  and

1           (2) revoked the seller's authority to sell any  
2           electricity at market-based rates.

3           (b) RELIEF.—Notwithstanding section 222 of the  
4 Federal Power Act (as added by section 1262), any provi-  
5 sion of title 11, United States Code, or any other provision  
6 of law, in the case of a contract described in subsection  
7 (a), the Commission shall have exclusive jurisdiction under  
8 the Federal Power Act (16 U.S.C. 791a et seq.) to deter-  
9 mine whether a requirement to make termination pay-  
10 ments for power not delivered by the seller, or any suc-  
11 cessor in interest of the seller, is not permitted under a  
12 rate schedule (or contract under such a schedule) or is  
13 otherwise unlawful on the grounds that the contract is un-  
14 just and unreasonable or contrary to the public interest.

15           (c) APPLICABILITY.—This section applies to any pro-  
16 ceeding pending on the date of enactment of this section  
17 involving a seller described in subsection (a) in which there  
18 is not a final, nonappealable order by the Commission or  
19 any other jurisdiction determining the respective rights of  
20 the seller.

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## 1                   **Subtitle H—Definitions**

### 2   **SEC. 1291. DEFINITIONS.**

3           (a) COMMISSION.—In this title, the term “Commis-  
4 sion” means the Federal Energy Regulatory Commission.

5           (b) AMENDMENT.—Section 3 of the Federal Power  
6 Act (16 U.S.C. 796) is amended—

7                   (1) by striking paragraphs (22) and (23) and  
8 inserting the following:

9                   “(22) ELECTRIC UTILITY.—(A) The term ‘elec-  
10 tric utility’ means a person or Federal or State  
11 agency (including an entity described in section  
12 201(f)) that sells electric energy.

13                   “(B) The term ‘electric utility’ includes the  
14 Tennessee Valley Authority and each Federal power  
15 marketing administration.

16                   “(23) TRANSMITTING UTILITY.—The term  
17 ‘transmitting utility’ means an entity (including an  
18 entity described in section 201(f)) that owns, oper-  
19 ates, or controls facilities used for the transmission  
20 of electric energy—

21                                   “(A) in interstate commerce;

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1           “(B) for the sale of electric energy at  
2           wholesale.”; and

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

4           “(26) ELECTRIC COOPERATIVE.—The term  
5           ‘electric cooperative’ means a cooperatively owned  
6           electric utility.

7           “(27) RTO.—The term ‘Regional Transmission  
8           Organization’ or ‘RTO’ means an entity of sufficient  
9           regional scope approved by the Commission—

10           “(A) to exercise operational or functional  
11           control of facilities used for the transmission of  
12           electric energy in interstate commerce; and

13           “(B) to ensure nondiscriminatory access to  
14           the facilities.

15           “(28) ISO.—The term ‘Independent System  
16           Operator’ or ‘ISO’ means an entity approved by the  
17           Commission—

18           “(A) to exercise operational or functional  
19           control of facilities used for the transmission of  
20           electric energy in interstate commerce; and



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1                   “(B) to ensure nondiscriminatory access to  
2                   the facilities.

3                   “(29) TRANSMISSION ORGANIZATION.—The  
4                   term ‘Transmission Organization’ means a Regional  
5                   Transmission Organization, Independent System Op-  
6                   erator, independent transmission provider, or other  
7                   transmission organization finally approved by the  
8                   Commission for the operation of transmission facili-  
9                   ties.”.

10                  (c) APPLICABILITY.—Section 201(f) of the Federal  
11                  Power Act (16 U.S.C. 824(f)) is amended by striking “po-  
12                  litical subdivision of a state,” and inserting “political sub-  
13                  division of a State, an electric cooperative that receives  
14                  financing under the Rural Electrification Act of 1936 (7  
15                  U.S.C. 901 et seq.) or that sells less than 4,000,000 mega-  
16                  watt hours of electricity per year,”.

17                                   **Subtitle I—Technical and**  
18                                   **Conforming Amendments**

19                   **SEC. 1295. CONFORMING AMENDMENTS.**

20                  (a) Section 201 of the Federal Power Act (16 U.S.C.  
21                  824) is amended—

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- 1 (1) in subsection (b)(2)—
- 2 (A) in the first sentence—
- 3 (i) by striking “The” and inserting
- 4 “Notwithstanding section 201(f), the”; and
- 5 (ii) by striking “210, 211, and 212”
- 6 and inserting “203(a)(2), 206(e), 210,
- 7 211, 211A, 212, 215, 216, 217, 218, 219,
- 8 220, 221, and 222”; and
- 9 (B) in the second sentence—
- 10 (i) by inserting “or rule” after “any
- 11 order”; and
- 12 (ii) by striking “210 or 211” and in-
- 13 sserting “203(a)(2), 206(e), 210, 211,
- 14 211A, 212, 215, 216, 217, 218, 219, 220,
- 15 221, or 222”; and
- 16 (2) in subsection (e), by striking “210, 211, or
- 17 212” and inserting “206(e), 206(f), 210, 211, 211A,
- 18 212, 215, 216, 217, 218, 219, 220, 221, or 222”.
- 19 (b) Section 206 of the Federal Power Act (16 U.S.C.
- 20 824e) is amended—

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1 (1) in the first sentence of subsection (a), by  
2 striking “hearing had” and inserting “hearing held”;  
3 and

4 (2) in the seventh sentence of subsection (b), by  
5 striking “the public utility to make”.

6 (c) Section 211 of the Federal Power Act (16 U.S.C.  
7 824j) is amended—

8 (1) in subsection (c)—

9 (A) by striking “(2)”;

10 (B) by striking “(A)” and inserting “(1)”

11 (C) by striking “(B)” and inserting “(2)”;

12 and

13 (D) by striking “termination of modifica-  
14 tion” and inserting “termination or modifica-  
15 tion”; and

16 (2) in the second sentence of subsection (d)(1),  
17 by striking “electric utility” the second place it ap-  
18 pears and inserting “transmitting utility”.

19 (d) Section 315(c) of the Federal Power Act (16  
20 U.S.C. 825n(e)) is amended by striking “subsection” and  
21 inserting “section”.

1       **Subtitle J—Economic Dispatch**

2       **SEC. 1298. ECONOMIC DISPATCH.**

3       Part II of the Federal Power Act (16 U.S.C. 824 et  
4 seq.) is amended by adding at the end the following:

5       **“SEC. 223. JOINT BOARDS ON ECONOMIC DISPATCH.**

6       “(a) IN GENERAL.—The Commission shall convene  
7 joint boards on a regional basis pursuant to section 209  
8 of this Act to study the issue of security constrained eco-  
9 nomic dispatch for the various market regions. The Com-  
10 mission shall designate the appropriate regions to be cov-  
11 ered by each such joint board for purposes of this section.

12       “(b) MEMBERSHIP.—The Commission shall request  
13 each State to nominate a representative for the appro-  
14 priate regional joint board, and shall designate a member  
15 of the Commission to chair and participate as a member  
16 of each such board.

17       “(c) POWERS.—The sole authority of each joint  
18 board convened under this section shall be to consider  
19 issues relevant to what constitutes ‘security constrained  
20 economic dispatch’ and how such a mode of operating an  
21 electric energy system affects or enhances the reliability

1 and affordability of service to customers in the region con-  
2 cerned and to make recommendations to the Commission  
3 regarding such issues.

4 “(d) REPORT TO THE CONGRESS.—Within one year  
5 after enactment of this section, the Commission shall issue  
6 a report and submit such report to the Congress regarding  
7 the recommendations of the joint boards under this section  
8 and the Commission may consolidate the recommenda-  
9 tions of more than one such regional joint board, including  
10 any consensus recommendations for statutory or regu-  
11 latory reform.”.

12 **TITLE XIII—ENERGY POLICY TAX**  
13 **INCENTIVES**

14 **SEC. 1300. SHORT TITLE; AMENDMENT OF 1986 CODE.**

15 (a) SHORT TITLE.—This title may be cited as the  
16 “Energy Tax Incentives Act of 2005”.

17 (b) AMENDMENT OF 1986 CODE.—Except as other-  
18 wise expressly provided, whenever in this title an amend-  
19 ment or repeal is expressed in terms of an amendment  
20 to, or repeal of, a section or other provision, the reference

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1 shall be considered to be made to a section or other provi-  
2 sion of the Internal Revenue Code of 1986.

### 3 **Subtitle A—Electricity** 4 **Infrastructure**

#### 5 **SEC. 1301. EXTENSION AND MODIFICATION OF RENEWABLE** 6 **ELECTRICITY PRODUCTION CREDIT.**

7 (a) 2-YEAR EXTENSION FOR CERTAIN FACILITIES.—  
8 Section 45(d) (relating to qualified facilities) is  
9 amended—

10 (1) by striking “January 1, 2006” each place  
11 it appears in paragraphs (1), (2), (3), (5), (6), and  
12 (7) and inserting “January 1, 2008”, and

13 (2) by striking “January 1, 2006” in paragraph  
14 (4) and inserting “January 1, 2008 (January 1,  
15 2006, in the case of a facility using solar energy)”.

16 (b) INCREASE IN CREDIT PERIOD.—Section  
17 45(b)(4)(B) (relating to credit period) is amended—

18 (1) by inserting “or clause (iii)” after “clause  
19 (ii)” in clause (i), and

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

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1                   “(iii) TERMINATION.—Clause (i) shall  
2                   not apply to any facility placed in service  
3                   after the date of the enactment of this  
4                   clause.”.

5           (c) EXPANSION OF QUALIFIED RESOURCES TO CER-  
6 TAIN HYDROPOWER.—

7           (1) IN GENERAL.—Section 45(c)(1) (defining  
8           qualified energy resources) is amended by striking  
9           “and” at the end of subparagraph (F), by striking  
10           the period at the end of subparagraph (G) and in-  
11           serting “, and”, and by adding at the end the fol-  
12           lowing new subparagraph:

13                   “(H) qualified hydropower production.”.

14           (2) CREDIT RATE.—Section 45(b)(4)(A) (relat-  
15           ing to credit rate) is amended by striking “or (7)”  
16           and inserting “(7), or (9)”.

17           (3) DEFINITION OF RESOURCES.—Section 45(c)  
18           (relating to qualified energy resources and refined  
19           coal) is amended by adding at the end the following  
20           new paragraph:

21                   “(8) QUALIFIED HYDROPOWER PRODUCTION.—

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1           “(A) IN GENERAL.—The term ‘qualified  
2           hydropower production’ means—

3                   “(i) in the case of any hydroelectric  
4                   dam which was placed in service on or be-  
5                   fore the date of the enactment of this  
6                   paragraph, the incremental hydropower  
7                   production for the taxable year, and

8                   “(ii) in the case of any nonhydro-  
9                   electric dam described in subparagraph  
10                  (C), the hydropower production from the  
11                  facility for the taxable year.

12           “(B) DETERMINATION OF INCREMENTAL  
13           HYDROPOWER PRODUCTION.—

14                   “(i) IN GENERAL.—For purposes of  
15                   subparagraph (A), incremental hydropower  
16                   production for any taxable year shall be  
17                   equal to the percentage of average annual  
18                   hydropower production at the facility at-  
19                   tributable to the efficiency improvements  
20                   or additions of capacity placed in service  
21                   after the date of the enactment of this



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1 paragraph, determined by using the same  
2 water flow information used to determine  
3 an historic average annual hydropower pro-  
4 duction baseline for such facility. Such per-  
5 centage and baseline shall be certified by  
6 the Federal Energy Regulatory Commis-  
7 sion.

8 “(ii) OPERATIONAL CHANGES DIS-  
9 REGARDED.—For purposes of clause (i),  
10 the determination of incremental hydro-  
11 power production shall not be based on any  
12 operational changes at such facility not di-  
13 rectly associated with the efficiency im-  
14 provements or additions of capacity.

15 “(C) NONHYDROELECTRIC DAM.—For pur-  
16 poses of subparagraph (A), a facility is de-  
17 scribed in this subparagraph if—

18 “(i) the facility is licensed by the Fed-  
19 eral Energy Regulatory Commission and  
20 meets all other applicable environmental,  
21 licensing, and regulatory requirements,

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1           “(ii) the facility was placed in service  
2           before the date of the enactment of this  
3           paragraph and did not produce hydro-  
4           electric power on the date of the enactment  
5           of this paragraph, and

6           “(iii) turbines or other generating de-  
7           vices are to be added to the facility after  
8           such date to produce hydroelectric power,  
9           but only if there is not any enlargement of  
10          the diversion structure, or construction or  
11          enlargement of a bypass channel, or the  
12          impoundment or any withholding of any  
13          additional water from the natural stream  
14          channel.”.

15           (4) FACILITIES.—Section 45(d) (relating to  
16          qualified facilities) is amended by adding at the end  
17          the following new paragraph:

18           “(9) QUALIFIED HYDROPOWER FACILITY.—In  
19          the case of a facility producing qualified hydro-  
20          electric production described in subsection (c)(8), the  
21          term ‘qualified facility’ means—

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1           “(A) in the case of any facility producing  
2           incremental hydropower production, such facil-  
3           ity but only to the extent of its incremental hy-  
4           dropower production attributable to efficiency  
5           improvements or additions to capacity described  
6           in subsection (c)(8)(B) placed in service after  
7           the date of the enactment of this paragraph  
8           and before January 1, 2008, and

9           “(B) any other facility placed in service  
10          after the date of the enactment of this para-  
11          graph and before January 1, 2008.

12          “(C) CREDIT PERIOD.—In the case of a  
13          qualified facility described in subparagraph (A),  
14          the 10-year period referred to in subsection (a)  
15          shall be treated as beginning on the date the ef-  
16          ficiency improvements or additions to capacity  
17          are placed in service.”.

18          (d) INDIAN COAL.—

19                 (1) PRODUCTION FACILITIES.—Subsection (e)  
20          of section 45 (relating to definitions and special

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1 rules) is amended by adding at the end the following  
2 new paragraph:

3 “(10) INDIAN COAL PRODUCTION FACILITIES.—

4 “(A) DETERMINATION OF CREDIT  
5 AMOUNT.—In the case of a producer of Indian  
6 coal, the credit determined under this section  
7 (without regard to this paragraph) for any tax-  
8 able year shall be increased by an amount equal  
9 to the applicable dollar amount per ton of In-  
10 dian coal—

11 “(i) produced by the taxpayer at an  
12 Indian coal production facility during the  
13 7-year period beginning on January 1,  
14 2006, and

15 “(ii) sold by the taxpayer—

16 “(I) to an unrelated person, and

17 “(II) during such 7-year period

18 and such taxable year.

19 “(B) APPLICABLE DOLLAR AMOUNT.—

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1           “(i) IN GENERAL.—The term ‘applica-  
2           ble dollar amount’ for any taxable year be-  
3           ginning in a calendar year means—

4                   “(I) \$1.50 in the case of calendar  
5                   years 2006 through 2009, and

6                   “(II) \$2.00 in the case of cal-  
7                   endar years beginning after 2009.

8           “(ii) INFLATION ADJUSTMENT.—In  
9           the case of any calendar year after 2006,  
10          each of the dollar amounts under clause (i)  
11          shall be equal to the product of such dollar  
12          amount and the inflation adjustment factor  
13          determined under paragraph (2)(B) for the  
14          calendar year, except that such paragraph  
15          shall be applied by substituting ‘2005’ for  
16          ‘1992’.

17          “(C) APPLICATION OF RULES.—Rules  
18          similar to the rules of the subsection (b)(3) and  
19          paragraphs (1), (3), (4), and (5) of this sub-  
20          section shall apply for purposes of determining

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1           the amount of any increase under this para-  
2           graph.

3           “(D) TREATMENT AS SPECIFIED CRED-  
4           IT.—The increase in the credit determined  
5           under subsection (a) by reason of this para-  
6           graph with respect to any facility shall be treat-  
7           ed as a specified credit for purposes of section  
8           38(c)(4)(A) during the 4-year period beginning  
9           on the later of January 1, 2006, or the date on  
10          which such facility is placed in service by the  
11          taxpayer.”.

12          (2) RESOURCE.—Subsection (c) of section 45  
13          (relating to qualified energy resources and refined  
14          coal), as amended by this Act, is amended by adding  
15          at the end the following new paragraph:

16          “(9) INDIAN COAL.—

17                  “(A) IN GENERAL.—The term ‘Indian coal’  
18                  means coal which is produced from coal re-  
19                  serves which, on June 14, 2005—

20                          “(i) were owned by an Indian tribe, or

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1                   “(ii) were held in trust by the United  
2                   States for the benefit of an Indian tribe or  
3                   its members.

4                   “(B) INDIAN TRIBE.—For purposes of this  
5                   paragraph, the term ‘Indian tribe’ has the  
6                   meaning given such term by section  
7                   7871(c)(3)(E)(ii).”.

8                   (3) INDIAN COAL PRODUCTION FACILITY.—Sub-  
9                   section (d) of section 45, as amended by this Act,  
10                  is amended by adding at the end the following new  
11                  paragraph:

12                  “(10) INDIAN COAL PRODUCTION FACILITY.—  
13                  The term ‘Indian coal production facility’ means a  
14                  facility which is placed in service before January 1,  
15                  2009.”.

16                  (4) CONFORMING AMENDMENT.—The heading  
17                  for section 45(c) is amended by striking “QUALI-  
18                  FIED ENERGY RESOURCES AND REFINED COAL”  
19                  and inserting “RESOURCES”.

20                  (e) TECHNICAL AMENDMENT RELATED TO TRASH  
21                  COMBUSTION FACILITIES.—Section 45(d)(7) (relating to

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1 trash combustion facilities) is amended by adding at the  
2 end the following: “Such term shall include a new unit  
3 placed in service in connection with a facility placed in  
4 service on or before the date of the enactment of this para-  
5 graph, but only to the extent of the increased amount of  
6 electricity produced at the facility by reason of such new  
7 unit.”.

8 (f) ADDITIONAL TECHNICAL AMENDMENTS RE-  
9 LATED TO SECTION 710 OF THE AMERICAN JOBS CRE-  
10 ATION ACT OF 2004.—

11 (1) Clause (ii) of section 45(b)(4)(B) is amend-  
12 ed by striking “the date of the enactment of this  
13 Act” and inserting “January 1, 2005,”.

14 (2) Clause (ii) of section 45(c)(3)(A) is amend-  
15 ed by inserting “or any nonhazardous lignin waste  
16 material” after “cellulosic waste material”.

17 (3) Subsection (e) of section 45 is amended by  
18 striking paragraph (6).

19 (4)(A) Paragraph (9) of section 45(e) is amend-  
20 ed to read as follows:



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1           “(9) COORDINATION WITH CREDIT FOR PRO-  
2           DUCING FUEL FROM A NONCONVENTIONAL  
3           SOURCE.—

4                   “(A) IN GENERAL.—The term ‘qualified  
5           facility’ shall not include any facility which pro-  
6           duces electricity from gas derived from the bio-  
7           degradation of municipal solid waste if such  
8           biodegradation occurred in a facility (within the  
9           meaning of section 29) the production from  
10          which is allowed as a credit under section 29  
11          for the taxable year or any prior taxable year.

12                   “(B) REFINED COAL FACILITIES.—The  
13          term ‘refined coal production facility’ shall not  
14          include any facility the production from which  
15          is allowed as a credit under section 29 for the  
16          taxable year or any prior taxable year.”.

17           (B) Subparagraph (C) of section 45(e)(8) is  
18          amended by striking “and (9)”.

19           (5) Subclause (I) of section 168(e)(3)(B)(vi) is  
20          amended to read as follows:

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1           “(I) is described in subparagraph  
2           (A) of section 48(a)(3) (or would be  
3           so described if ‘solar and wind’ were  
4           substituted for ‘solar’ in clause (i)  
5           thereof and the last sentence of such  
6           section did not apply to such subpara-  
7           graph),”.

8           (6) Paragraph (4) of section 710(g) of the  
9           American Jobs Creation Act of 2004 is amended by  
10          striking “January 1, 2004” and inserting “January  
11          1, 2005”.

12          (g) EFFECTIVE DATES.—

13           (1) IN GENERAL.—Except as provided in para-  
14           graph (2), the amendments made by this section  
15           shall take effect of the date of the enactment of this  
16           Act.

17           (2) TECHNICAL AMENDMENTS.—The amend-  
18           ments made by subsections (e) and (f) shall take ef-  
19           fect as if included in the amendments made by sec-  
20           tion 710 of the American Jobs Creation Act of  
21           2004.

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1 **SEC. 1302. APPLICATION OF SECTION 45 CREDIT TO AGRI-**  
2 **CULTURAL COOPERATIVES.**

3 (a) IN GENERAL.—Section 45(e) (relating to defini-  
4 tions and special rules), as amended by this Act, is amend-  
5 ed by adding at the end the following:

6 “(11) ALLOCATION OF CREDIT TO PATRONS OF  
7 AGRICULTURAL COOPERATIVE.—

8 “(A) ELECTION TO ALLOCATE.—

9 “(i) IN GENERAL.—In the case of an  
10 eligible cooperative organization, any por-  
11 tion of the credit determined under sub-  
12 section (a) for the taxable year may, at the  
13 election of the organization, be apportioned  
14 among patrons of the organization on the  
15 basis of the amount of business done by  
16 the patrons during the taxable year.

17 “(ii) FORM AND EFFECT OF ELEC-  
18 TION.—An election under clause (i) for any  
19 taxable year shall be made on a timely  
20 filed return for such year. Such election,  
21 once made, shall be irrevocable for such

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1 taxable year. Such election shall not take  
2 effect unless the organization designates  
3 the apportionment as such in a written no-  
4 tice mailed to its patrons during the pay-  
5 ment period described in section 1382(d).

6 “(B) TREATMENT OF ORGANIZATIONS AND  
7 PATRONS.—The amount of the credit appor-  
8 tioned to any patrons under subparagraph  
9 (A)—

10 “(i) shall not be included in the  
11 amount determined under subsection (a)  
12 with respect to the organization for the  
13 taxable year, and

14 “(ii) shall be included in the amount  
15 determined under subsection (a) for the  
16 first taxable year of each patron ending on  
17 or after the last day of the payment period  
18 (as defined in section 1382(d)) for the tax-  
19 able year of the organization or, if earlier,  
20 for the taxable year of each patron ending  
21 on or after the date on which the patron

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1 receives notice from the cooperative of the  
2 appportionment.

3 “(C) SPECIAL RULES FOR DECREASE IN  
4 CREDITS FOR TAXABLE YEAR.—If the amount  
5 of the credit of a cooperative organization de-  
6 termined under subsection (a) for a taxable  
7 year is less than the amount of such credit  
8 shown on the return of the cooperative organi-  
9 zation for such year, an amount equal to the  
10 excess of—

11 “(i) such reduction, over

12 “(ii) the amount not appportioned to  
13 such patrons under subparagraph (A) for  
14 the taxable year,

15 shall be treated as an increase in tax imposed  
16 by this chapter on the organization. Such in-  
17 crease shall not be treated as tax imposed by  
18 this chapter for purposes of determining the  
19 amount of any credit under this chapter.

20 “(D) ELIGIBLE COOPERATIVE DEFINED.—  
21 For purposes of this section the term ‘eligible

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1 cooperative' means a cooperative organization  
2 described in section 1381(a) which is owned  
3 more than 50 percent by agricultural producers  
4 or by entities owned by agricultural producers.  
5 For this purpose an entity owned by an agricul-  
6 tural producer is one that is more than 50 per-  
7 cent owned by agricultural producers.”.

8 (b) CONFORMING AMENDMENT.—The last sentence  
9 of section 55(c)(1) is amended by inserting  
10 “45(e)(11)(C),” after “section”.

11 (c) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to taxable years of cooperative or-  
13 ganizations ending after the date of the enactment of this  
14 Act.

15 **SEC. 1303. CLEAN RENEWABLE ENERGY BONDS.**

16 (a) IN GENERAL.—Part IV of subchapter A of chap-  
17 ter 1 (relating to credits against tax) is amended by add-  
18 ing at the end the following new subpart:

1     **“Subpart H—Nonrefundable Credit to Holders of**  
2                                   **Certain Bonds**

“Sec. 54. Credit to holders of clean renewable energy bonds.

3     **“SEC. 54. CREDIT TO HOLDERS OF CLEAN RENEWABLE EN-**  
4                                   **ERGY BONDS.**

5             “(a) ALLOWANCE OF CREDIT.—If a taxpayer holds  
6 a clean renewable energy bond on 1 or more credit allow-  
7 ance dates of the bond occurring during any taxable year,  
8 there shall be allowed as a credit against the tax imposed  
9 by this chapter for the taxable year an amount equal to  
10 the sum of the credits determined under subsection (b)  
11 with respect to such dates.

12             “(b) AMOUNT OF CREDIT.—

13                 “(1) IN GENERAL.—The amount of the credit  
14 determined under this subsection with respect to any  
15 credit allowance date for a clean renewable energy  
16 bond is 25 percent of the annual credit determined  
17 with respect to such bond.

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1           “(2) ANNUAL CREDIT.—The annual credit de-  
2           termined with respect to any clean renewable energy  
3           bond is the product of—

4                   “(A) the credit rate determined by the Sec-  
5                   retary under paragraph (3) for the day on  
6                   which such bond was sold, multiplied by

7                   “(B) the outstanding face amount of the  
8                   bond.

9           “(3) DETERMINATION.—For purposes of para-  
10           graph (2), with respect to any clean renewable en-  
11           ergy bond, the Secretary shall determine daily or  
12           cause to be determined daily a credit rate which  
13           shall apply to the first day on which there is a bind-  
14           ing, written contract for the sale or exchange of the  
15           bond. The credit rate for any day is the credit rate  
16           which the Secretary or the Secretary’s designee esti-  
17           mates will permit the issuance of clean renewable  
18           energy bonds with a specified maturity or redemp-  
19           tion date without discount and without interest cost  
20           to the qualified issuer.



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1           “(4) CREDIT ALLOWANCE DATE.—For purposes  
2           of this section, the term ‘credit allowance date’  
3           means—

4                     “(A) March 15,

5                     “(B) June 15,

6                     “(C) September 15, and

7                     “(D) December 15.

8           Such term also includes the last day on which the  
9           bond is outstanding.

10           “(5) SPECIAL RULE FOR ISSUANCE AND RE-  
11           DEMPTION.—In the case of a bond which is issued  
12           during the 3-month period ending on a credit allow-  
13           ance date, the amount of the credit determined  
14           under this subsection with respect to such credit al-  
15           lowance date shall be a ratable portion of the credit  
16           otherwise determined based on the portion of the 3-  
17           month period during which the bond is outstanding.  
18           A similar rule shall apply when the bond is redeemed  
19           or matures.

1           “(c) LIMITATION BASED ON AMOUNT OF TAX.—The  
2 credit allowed under subsection (a) for any taxable year  
3 shall not exceed the excess of—

4           “(1) the sum of the regular tax liability (as de-  
5 fined in section 26(b)) plus the tax imposed by sec-  
6 tion 55, over

7           “(2) the sum of the credits allowable under this  
8 part (other than subpart C and this section).

9           “(d) CLEAN RENEWABLE ENERGY BOND.—For pur-  
10 poses of this section—

11           “(1) IN GENERAL.—The term ‘clean renewable  
12 energy bond’ means any bond issued as part of an  
13 issue if—

14           “(A) the bond is issued by a qualified  
15 issuer pursuant to an allocation by the Sec-  
16 retary to such issuer of a portion of the na-  
17 tional clean renewable energy bond limitation  
18 under subsection (f)(2),

19           “(B) 95 percent or more of the proceeds of  
20 such issue are to be used for capital expendi-

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1           tures incurred by qualified borrowers for 1 or  
2           more qualified projects,

3                   “(C) the qualified issuer designates such  
4           bond for purposes of this section and the bond  
5           is in registered form, and

6                   “(D) the issue meets the requirements of  
7           subsection (h).

8           “(2) QUALIFIED PROJECT; SPECIAL USE  
9           RULES.—

10                   “(A) IN GENERAL.—The term ‘qualified  
11           project’ means any qualified facility (as deter-  
12           mined under section 45(d) without regard to  
13           paragraph (10) and to any placed in service  
14           date) owned by a qualified borrower.

15                   “(B) REFINANCING RULES.—For purposes  
16           of paragraph (1)(B), a qualified project may be  
17           refinanced with proceeds of a clean renewable  
18           energy bond only if the indebtedness being refi-  
19           nanced (including any obligation directly or in-  
20           directly refinanced by such indebtedness) was

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1 originally incurred by a qualified borrower after  
2 the date of the enactment of this section.

3 “(C) REIMBURSEMENT.—For purposes of  
4 paragraph (1)(B), a clean renewable energy  
5 bond may be issued to reimburse a qualified  
6 borrower for amounts paid after the date of the  
7 enactment of this section with respect to a  
8 qualified project, but only if—

9 “(i) prior to the payment of the origi-  
10 nal expenditure, the qualified borrower de-  
11 clared its intent to reimburse such expendi-  
12 ture with the proceeds of a clean renewable  
13 energy bond,

14 “(ii) not later than 60 days after pay-  
15 ment of the original expenditure, the quali-  
16 fied issuer adopts an official intent to re-  
17 imburse the original expenditure with such  
18 proceeds, and

19 “(iii) the reimbursement is made not  
20 later than 18 months after the date the  
21 original expenditure is paid.

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1           “(D) TREATMENT OF CHANGES IN USE.—

2           For purposes of paragraph (1)(B), the proceeds  
3           of an issue shall not be treated as used for a  
4           qualified project to the extent that a qualified  
5           borrower or qualified issuer takes any action  
6           within its control which causes such proceeds  
7           not to be used for a qualified project. The Sec-  
8           retary shall prescribe regulations specifying re-  
9           medial actions that may be taken (including  
10          conditions to taking such remedial actions) to  
11          prevent an action described in the preceding  
12          sentence from causing a bond to fail to be a  
13          clean renewable energy bond.

14          “(e) MATURITY LIMITATIONS.—

15                 “(1) DURATION OF TERM.—A bond shall not be  
16                 treated as a clean renewable energy bond if the ma-  
17                 turity of such bond exceeds the maximum term de-  
18                 termined by the Secretary under paragraph (2) with  
19                 respect to such bond.

20                 “(2) MAXIMUM TERM.—During each calendar  
21                 month, the Secretary shall determine the maximum

1 term permitted under this paragraph for bonds  
2 issued during the following calendar month. Such  
3 maximum term shall be the term which the Sec-  
4 retary estimates will result in the present value of  
5 the obligation to repay the principal on the bond  
6 being equal to 50 percent of the face amount of such  
7 bond. Such present value shall be determined with-  
8 out regard to the requirements of subsection (l)(6)  
9 and using as a discount rate the average annual in-  
10 terest rate of tax-exempt obligations having a term  
11 of 10 years or more which are issued during the  
12 month. If the term as so determined is not a mul-  
13 tiple of a whole year, such term shall be rounded to  
14 the next highest whole year.

15 “(f) LIMITATION ON AMOUNT OF BONDS DES-  
16 IGNATED.—

17 “(1) NATIONAL LIMITATION.—There is a na-  
18 tional clean renewable energy bond limitation of  
19 \$800,000,000.

20 “(2) ALLOCATION BY SECRETARY.—The Sec-  
21 retary shall allocate the amount described in para-

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1 graph (1) among qualified projects in such manner  
2 as the Secretary determines appropriate, except that  
3 the Secretary may not allocate more than  
4 \$500,000,000 of the national clean renewable energy  
5 bond limitation to finance qualified projects of quali-  
6 fied borrowers which are governmental bodies.

7 “(g) CREDIT INCLUDED IN GROSS INCOME.—Gross  
8 income includes the amount of the credit allowed to the  
9 taxpayer under this section (determined without regard to  
10 subsection (c)) and the amount so included shall be treat-  
11 ed as interest income.

12 “(h) SPECIAL RULES RELATING TO EXPENDI-  
13 TURES.—

14 “(1) IN GENERAL.—An issue shall be treated as  
15 meeting the requirements of this subsection if, as of  
16 the date of issuance, the qualified issuer reasonably  
17 expects—

18 “(A) at least 95 percent of the proceeds of  
19 such issue are to be spent for 1 or more quali-  
20 fied projects within the 5-year period beginning

1           on the date of issuance of the clean energy  
2           bond,

3           “(B) a binding commitment with a third  
4           party to spend at least 10 percent of the pro-  
5           ceeds of such issue will be incurred within the  
6           6-month period beginning on the date of  
7           issuance of the clean energy bond or, in the  
8           case of a clean energy bond the proceeds of  
9           which are to be loaned to 2 or more qualified  
10          borrowers, such binding commitment will be in-  
11          curred within the 6-month period beginning on  
12          the date of the loan of such proceeds to a quali-  
13          fied borrower, and

14          “(C) such projects will be completed with  
15          due diligence and the proceeds of such issue will  
16          be spent with due diligence.

17          “(2) EXTENSION OF PERIOD.—Upon submis-  
18          sion of a request prior to the expiration of the period  
19          described in paragraph (1)(A), the Secretary may  
20          extend such period if the qualified issuer establishes  
21          that the failure to satisfy the 5-year requirement is



1 due to reasonable cause and the related projects will  
2 continue to proceed with due diligence.

3 “(3) FAILURE TO SPEND REQUIRED AMOUNT  
4 OF BOND PROCEEDS WITHIN 5 YEARS.—To the ex-  
5 tent that less than 95 percent of the proceeds of  
6 such issue are expended by the close of the 5-year  
7 period beginning on the date of issuance (or if an  
8 extension has been obtained under paragraph (2), by  
9 the close of the extended period), the qualified issuer  
10 shall redeem all of the nonqualified bonds within 90  
11 days after the end of such period. For purposes of  
12 this paragraph, the amount of the nonqualified  
13 bonds required to be redeemed shall be determined  
14 in the same manner as under section 142.

15 “(i) SPECIAL RULES RELATING TO ARBITRAGE.—A  
16 bond which is part of an issue shall not be treated as a  
17 clean renewable energy bond unless, with respect to the  
18 issue of which the bond is a part, the qualified issuer satis-  
19 fies the arbitrage requirements of section 148 with respect  
20 to proceeds of the issue.

1       “(j) COOPERATIVE ELECTRIC COMPANY; QUALIFIED  
2 ENERGY TAX CREDIT BOND LENDER; GOVERNMENTAL  
3 BODY; QUALIFIED BORROWER.—For purposes of this  
4 section—

5           “(1) COOPERATIVE ELECTRIC COMPANY.—The  
6 term ‘cooperative electric company’ means a mutual  
7 or cooperative electric company described in section  
8 501(e)(12) or section 1381(a)(2)(C), or a not-for-  
9 profit electric utility which has received a loan or  
10 loan guarantee under the Rural Electrification Act.

11           “(2) CLEAN RENEWABLE ENERGY BOND LEND-  
12 ER.—The term ‘clean renewable energy bond lender’  
13 means a lender which is a cooperative which is  
14 owned by, or has outstanding loans to, 100 or more  
15 cooperative electric companies and is in existence on  
16 February 1, 2002, and shall include any affiliated  
17 entity which is controlled by such lender.

18           “(3) GOVERNMENTAL BODY.—The term ‘gov-  
19 ernmental body’ means any State, territory, posses-  
20 sion of the United States, the District of Columbia,

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1 Indian tribal government, and any political subdivi-  
2 sion thereof.

3 “(4) QUALIFIED ISSUER.—The term ‘qualified  
4 issuer’ means—

5 “(A) a clean renewable energy bond lender,

6 “(B) a cooperative electric company, or

7 “(C) a governmental body.

8 “(5) QUALIFIED BORROWER.—The term ‘quali-  
9 fied borrower’ means—

10 “(A) a mutual or cooperative electric com-  
11 pany described in section 501(c)(12) or  
12 1381(a)(2)(C), or

13 “(B) a governmental body.

14 “(k) SPECIAL RULES RELATING TO POOL BONDS.—

15 No portion of a pooled financing bond may be allocable  
16 to any loan unless the borrower has entered into a written  
17 loan commitment for such portion prior to the issue date  
18 of such issue.

19 “(l) OTHER DEFINITIONS AND SPECIAL RULES.—

20 For purposes of this section—

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1           “(1) BOND.—The term ‘bond’ includes any ob-  
2           ligation.

3           “(2) POOLED FINANCING BOND.—The term  
4           ‘pooled financing bond’ shall have the meaning given  
5           such term by section 149(f)(4)(A).

6           “(3) PARTNERSHIP; S CORPORATION; AND  
7           OTHER PASS-THRU ENTITIES.—

8                   “(A) IN GENERAL.—Under regulations  
9                   prescribed by the Secretary, in the case of a  
10                  partnership, trust, S corporation, or other pass-  
11                  thru entity, rules similar to the rules of section  
12                  41(g) shall apply with respect to the credit al-  
13                  lowable under subsection (a).

14                   “(B) NO BASIS ADJUSTMENT.—In the case  
15                  of a bond held by a partnership or an S cor-  
16                  poration, rules similar to the rules under sec-  
17                  tion 1397E(i) shall apply.

18           “(4) BONDS HELD BY REGULATED INVEST-  
19           MENT COMPANIES.—If any clean renewable energy  
20           bond is held by a regulated investment company, the  
21           credit determined under subsection (a) shall be al-

1       lowed to shareholders of such company under proce-  
2       dures prescribed by the Secretary.

3           “(5) TREATMENT FOR ESTIMATED TAX PUR-  
4       POSES.—Solely for purposes of sections 6654 and  
5       6655, the credit allowed by this section (determined  
6       without regard to subsection (c)) to a taxpayer by  
7       reason of holding a clean renewable energy bond on  
8       a credit allowance date shall be treated as if it were  
9       a payment of estimated tax made by the taxpayer on  
10      such date.

11          “(6) RATABLE PRINCIPAL AMORTIZATION RE-  
12      QUIRED.—A bond shall not be treated as a clean re-  
13      newable energy bond unless it is part of an issue  
14      which provides for an equal amount of principal to  
15      be paid by the qualified issuer during each calendar  
16      year that the issue is outstanding.

17          “(7) REPORTING.—Issuers of clean renewable  
18      energy bonds shall submit reports similar to the re-  
19      ports required under section 149(e).

1       “(m) TERMINATION.—This section shall not apply  
2 with respect to any bond issued after December 31,  
3 2007.”.

4       (b) REPORTING.—Subsection (d) of section 6049 (re-  
5 lating to returns regarding payments of interest) is  
6 amended by adding at the end the following new para-  
7 graph:

8               “(8) REPORTING OF CREDIT ON CLEAN RENEW-  
9       ABLE ENERGY BONDS.—

10               “(A) IN GENERAL.—For purposes of sub-  
11       section (a), the term ‘interest’ includes amounts  
12       includible in gross income under section 54(g)  
13       and such amounts shall be treated as paid on  
14       the credit allowance date (as defined in section  
15       54(b)(4)).

16               “(B) REPORTING TO CORPORATIONS,  
17       ETC.—Except as otherwise provided in regula-  
18       tions, in the case of any interest described in  
19       subparagraph (A), subsection (b)(4) shall be  
20       applied without regard to subparagraphs (A),  
21       (H), (I), (J), (K), and (L)(i) of such subsection.

1           “(C) REGULATORY AUTHORITY.—The Sec-  
2           retary may prescribe such regulations as are  
3           necessary or appropriate to carry out the pur-  
4           poses of this paragraph, including regulations  
5           which require more frequent or more detailed  
6           reporting.”.

7           (c) CONFORMING AMENDMENTS.—

8           (1) The table of subparts for part IV of sub-  
9           chapter A of chapter 1 is amended by adding at the  
10          end the following new item:

          “SUBPART H. NONREFUNDABLE CREDIT TO HOLDERS OF CERTAIN BONDS.”.

11          (2) Section 1397E(c)(2) is amended by insert-  
12          ing “, and subpart H thereof” after “refundable  
13          credits”.

14          (3) Subsection (h) of section 1397E is amended  
15          to read as follows:

16          “(h) CREDIT TREATED AS NONREFUNDABLE BOND-  
17          HOLDER CREDIT.—For purposes of this title, the credit  
18          allowed by this section shall be treated as a credit allow-  
19          able under subpart H of part IV of subchapter A of this  
20          chapter.”.

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1           (4) Section 6401(b)(1) is amended by striking  
2           “and G” and inserting “G, and H”.

3           (d) ISSUANCE OF REGULATIONS.—The Secretary of  
4 Treasury shall issue regulations required under section 54  
5 of the Internal Revenue Code of 1986 (as added by this  
6 section) not later than 120 days after the date of the en-  
7 actment of this Act.

8           (e) EFFECTIVE DATE.—The amendments made by  
9 this section shall apply to bonds issued after December  
10 31, 2005.

11 **SEC. 1304. TREATMENT OF INCOME OF CERTAIN ELECTRIC**  
12 **COOPERATIVES.**

13           (a) ELIMINATION OF SUNSET ON TREATMENT OF IN-  
14 COME FROM OPEN ACCESS AND NUCLEAR DECOMMISS-  
15 SIONING TRANSACTIONS.—Section 501(c)(12)(C) is  
16 amended by striking the last sentence.

17           (b) ELIMINATION OF SUNSET ON TREATMENT OF IN-  
18 COME FROM LOAD LOSS TRANSACTIONS.—Section  
19 501(c)(12)(H) is amended by striking clause (x).



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1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall take effect on the date of the enactment  
3 of this Act.

4 **SEC. 1305. DISPOSITIONS OF TRANSMISSION PROPERTY TO**  
5 **IMPLEMENT FERC RESTRUCTURING POLICY.**

6 (a) IN GENERAL.—Section 451(i)(3) (defining quali-  
7 fying electric transmission transaction) is amended by  
8 striking “2007” and inserting “2008”.

9 (b) TECHNICAL AMENDMENT RELATED TO SECTION  
10 909 OF THE AMERICAN JOBS CREATION ACT OF 2004.—  
11 Clause (ii) of section 451(i)(4)(B) is amended by striking  
12 “the close of the period applicable under subsection  
13 (a)(2)(B) as extended under paragraph (2)” and inserting  
14 “December 31, 2007”.

15 (c) EFFECTIVE DATES.—

16 (1) IN GENERAL.—The amendment made by  
17 subsection (a) shall apply to transactions occurring  
18 after the date of the enactment of this Act.

19 (2) TECHNICAL AMENDMENT.—The amendment  
20 made by subsection (b) shall take effect as if in-

1       cluded in the amendments made by section 909 of  
2       the American Jobs Creation Act of 2004.

3       **SEC. 1306. CREDIT FOR PRODUCTION FROM ADVANCED NU-**  
4                                   **CLEAR POWER FACILITIES.**

5       (a) IN GENERAL.—Subpart D of part IV of sub-  
6       chapter A of chapter 1 (relating to business related cred-  
7       its) is amended by adding after section 45I the following  
8       new section:

9       **“SEC. 45J. CREDIT FOR PRODUCTION FROM ADVANCED NU-**  
10                                   **CLEAR POWER FACILITIES.**

11       “(a) GENERAL RULE.—For purposes of section 38,  
12       the advanced nuclear power facility production credit of  
13       any taxpayer for any taxable year is equal to the product  
14       of—

15                   “(1) 1.8 cents, multiplied by

16                   “(2) the kilowatt hours of electricity—

17                                   “(A) produced by the taxpayer at an ad-  
18                   vanced nuclear power facility during the 8-year  
19                   period beginning on the date the facility was  
20                   originally placed in service, and

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1                   “(B) sold by the taxpayer to an unrelated  
2                   person during the taxable year.

3                   “(b) NATIONAL LIMITATION.—

4                   “(1) IN GENERAL.—The amount of credit  
5                   which would (but for this subsection and subsection  
6                   (c)) be allowed with respect to any facility for any  
7                   taxable year shall not exceed the amount which  
8                   bears the same ratio to such amount of credit as—

9                   “(A) the national megawatt capacity limi-  
10                   tation allocated to the facility, bears to

11                   “(B) the total megawatt nameplate capac-  
12                   ity of such facility.

13                   “(2) AMOUNT OF NATIONAL LIMITATION.—The  
14                   national megawatt capacity limitation shall be 6,000  
15                   megawatts.

16                   “(3) ALLOCATION OF LIMITATION.—The Sec-  
17                   retary shall allocate the national megawatt capacity  
18                   limitation in such manner as the Secretary may pre-  
19                   scribe.

20                   “(4) REGULATIONS.—Not later than 6 months  
21                   after the date of the enactment of this section, the

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1 Secretary shall prescribe such regulations as may be  
2 necessary or appropriate to carry out the purposes  
3 of this subsection. Such regulations shall provide a  
4 certification process under which the Secretary, after  
5 consultation with the Secretary of Energy, shall ap-  
6 prove and allocate the national megawatt capacity  
7 limitation.

8 “(c) OTHER LIMITATIONS.—

9 “(1) ANNUAL LIMITATION.—The amount of the  
10 credit allowable under subsection (a) (after the ap-  
11 plication of subsection (b)) for any taxable year with  
12 respect to any facility shall not exceed an amount  
13 which bears the same ratio to \$125,000,000 as—

14 “(A) the national megawatt capacity limi-  
15 tation allocated under subsection (b) to the fa-  
16 cility, bears to

17 “(B) 1,000.

18 “(2) OTHER LIMITATIONS.—Rules similar to  
19 the rules of section 45(b)(1) shall apply for purposes  
20 of this section.

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1 “(d) ADVANCED NUCLEAR POWER FACILITY.—For  
2 purposes of this section—

3 “(1) IN GENERAL.—The term ‘advanced nu-  
4 clear power facility’ means any advanced nuclear  
5 facility—

6 “(A) which is owned by the taxpayer and  
7 which uses nuclear energy to produce elec-  
8 tricity, and

9 “(B) which is placed in service after the  
10 date of the enactment of this paragraph and be-  
11 fore January 1, 2021.

12 “(2) ADVANCED NUCLEAR FACILITY.—For pur-  
13 poses of paragraph (1), the term ‘advanced nuclear  
14 facility’ means any nuclear facility the reactor design  
15 for which is approved after December 31, 1993, by  
16 the Nuclear Regulatory Commission (and such de-  
17 sign or a substantially similar design of comparable  
18 capacity was not approved on or before such date).

19 “(e) OTHER RULES TO APPLY.—Rules similar to the  
20 rules of paragraphs (1), (2), (3), (4), and (5) of section  
21 45(e) shall apply for purposes of this section.”.

1 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-  
2 tion 38(b), as amended by the Transportation Equity Act:  
3 A Legacy for Users, is amended by striking “plus” at the  
4 end of paragraph (19), by striking the period at the end  
5 of paragraph (20) and inserting “, plus”, and by adding  
6 at the end the following:

7 “(21) the advanced nuclear power facility pro-  
8 duction credit determined under section 45J(a).”.

9 (c) CLERICAL AMENDMENT.—The table of sections  
10 for subpart D of part IV of subchapter A of chapter 1  
11 is amended by adding at the end the following:

“Sec. 45J. Credit for production from advanced nuclear power facilities.”.

12 (d) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to production in taxable years be-  
14 ginning after the date of the enactment of this Act.

15 **SEC. 1307. CREDIT FOR INVESTMENT IN CLEAN COAL FA-**  
16 **CILITIES.**

17 (a) IN GENERAL.—Section 46 (relating to amount of  
18 credit) is amended by striking “and” at the end of para-  
19 graph (1), by striking the period at the end of paragraph

1 (2), and by adding at the end the following new para-  
2 graphs:

3 “(3) the qualifying advanced coal project credit,

4 and

5 “(4) the qualifying gasification project credit.”.

6 (b) AMOUNT OF CREDITS.—Subpart E of part IV of  
7 subchapter A of chapter 1 (relating to rules for computing  
8 investment credit) is amended by inserting after section  
9 48 the following new sections:

10 **“SEC. 48A. QUALIFYING ADVANCED COAL PROJECT CRED-**

11 **IT.**

12 “(a) IN GENERAL.—For purposes of section 46, the  
13 qualifying advanced coal project credit for any taxable  
14 year is an amount equal to—

15 “(1) 20 percent of the qualified investment for  
16 such taxable year in the case of projects described  
17 in subsection (d)(3)(B)(i), and

18 “(2) 15 percent of the qualified investment for  
19 such taxable year in the case of projects described  
20 in subsection (d)(3)(B)(ii).

21 “(b) QUALIFIED INVESTMENT.—

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1           “(1) IN GENERAL.—For purposes of subsection  
2           (a), the qualified investment for any taxable year is  
3           the basis of eligible property placed in service by the  
4           taxpayer during such taxable year which is part of  
5           a qualifying advanced coal project—

6                   “(A)(i) the construction, reconstruction, or  
7                   erection of which is completed by the taxpayer,  
8                   or

9                   “(ii) which is acquired by the taxpayer if  
10                  the original use of such property commences  
11                  with the taxpayer, and

12                  “(B) with respect to which depreciation (or  
13                  amortization in lieu of depreciation) is allow-  
14                  able.

15           “(2) SPECIAL RULE FOR CERTAIN SUBSIDIZED  
16           PROPERTY.—Rules similar to section 48(a)(4) shall  
17           apply for purposes of this section.

18           “(3) CERTAIN QUALIFIED PROGRESS EXPENDI-  
19           TURES RULES MADE APPLICABLE.—Rules similar to  
20           the rules of subsections (c)(4) and (d) of section 46  
21           (as in effect on the day before the enactment of the



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1 Revenue Reconciliation Act of 1990) shall apply for  
2 purposes of this section.

3 “(c) DEFINITIONS.—For purposes of this section—

4 “(1) QUALIFYING ADVANCED COAL PROJECT.—

5 The term ‘qualifying advanced coal project’ means a  
6 project which meets the requirements of subsection  
7 (e).

8 “(2) ADVANCED COAL-BASED GENERATION

9 TECHNOLOGY.—The term ‘advanced coal-based gen-  
10 eration technology’ means a technology which meets  
11 the requirements of subsection (f).

12 “(3) ELIGIBLE PROPERTY.—The term ‘eligible  
13 property’ means—

14 “(A) in the case of any qualifying ad-  
15 vanced coal project using an integrated gasifi-  
16 cation combined cycle, any property which is a  
17 part of such project and is necessary for the  
18 gasification of coal, including any coal handling  
19 and gas separation equipment, and

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1           “(B) in the case of any other qualifying  
2           advanced coal project, any property which is a  
3           part of such project.

4           “(4) COAL.—The term ‘coal’ means anthracite,  
5           bituminous coal, subbituminous coal, lignite, and  
6           peat.

7           “(5) GREENHOUSE GAS CAPTURE CAPA-  
8           BILITY.—The term ‘greenhouse gas capture capa-  
9           bility’ means an integrated gasification combined  
10          cycle technology facility capable of adding compo-  
11          nents which can capture, separate on a long-term  
12          basis, isolate, remove, and sequester greenhouse  
13          gases which result from the generation of electricity.

14          “(6) ELECTRIC GENERATION UNIT.—The term  
15          ‘electric generation unit’ means any facility at least  
16          50 percent of the total annual net output of which  
17          is electrical power, including an otherwise eligible fa-  
18          cility which is used in an industrial application.

19          “(7) INTEGRATED GASIFICATION COMBINED  
20          CYCLE.—The term ‘integrated gasification combined  
21          cycle’ means an electric generation unit which pro-

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1       duces electricity by converting coal to synthesis gas  
2       which is used to fuel a combined-cycle plant which  
3       produces electricity from both a combustion turbine  
4       (including a combustion turbine/fuel cell hybrid) and  
5       a steam turbine.

6       “(d) QUALIFYING ADVANCED COAL PROJECT PRO-  
7       GRAM.—

8               “(1) ESTABLISHMENT.—Not later than 180  
9       days after the date of enactment of this section, the  
10       Secretary, in consultation with the Secretary of En-  
11       ergy, shall establish a qualifying advanced coal  
12       project program for the deployment of advanced  
13       coal-based generation technologies.

14               “(2) CERTIFICATION.—

15                       “(A) APPLICATION PERIOD.—Each appli-  
16       cant for certification under this paragraph shall  
17       submit an application meeting the requirements  
18       of subparagraph (B). An applicant may only  
19       submit an application during the 3-year period  
20       beginning on the date the Secretary establishes  
21       the program under paragraph (1).

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1           “(B) REQUIREMENTS FOR APPLICATIONS  
2           FOR CERTIFICATION.—An application under  
3           subparagraph (A) shall contain such informa-  
4           tion as the Secretary may require in order to  
5           make a determination to accept or reject an ap-  
6           plication for certification as meeting the re-  
7           quirements under subsection (e)(1). Any infor-  
8           mation contained in the application shall be  
9           protected as provided in section 552(b)(4) of  
10          title 5, United States Code.

11          “(C) TIME TO ACT UPON APPLICATIONS  
12          FOR CERTIFICATION.—The Secretary shall issue  
13          a determination as to whether an applicant has  
14          met the requirements under subsection (e)(1)  
15          within 60 days following the date of submittal  
16          of the application for certification.

17          “(D) TIME TO MEET CRITERIA FOR CER-  
18          TIFICATION.—Each applicant for certification  
19          shall have 2 years from the date of acceptance  
20          by the Secretary of the application during  
21          which to provide to the Secretary evidence that

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1 the criteria set forth in subsection (e)(2) have  
2 been met.

3 “(E) PERIOD OF ISSUANCE.—An applicant  
4 which receives a certification shall have 5 years  
5 from the date of issuance of the certification in  
6 order to place the project in service and if such  
7 project is not placed in service by that time pe-  
8 riod then the certification shall no longer be  
9 valid.

10 “(3) AGGREGATE CREDITS.—

11 “(A) IN GENERAL.—The aggregate credits  
12 allowed under subsection (a) for projects cer-  
13 tified by the Secretary under paragraph (2)  
14 may not exceed \$1,300,000,000.

15 “(B) PARTICULAR PROJECTS.—Of the dol-  
16 lar amount in subparagraph (A), the Secretary  
17 is authorized to certify—

18 “(i) \$800,000,000 for integrated gas-  
19 ification combined cycle projects, and

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1                   “(ii) \$500,000,000 for projects which  
2                   use other advanced coal-based generation  
3                   technologies.

4                   “(4) REVIEW AND REDISTRIBUTION.—

5                   “(A) REVIEW.—Not later than 6 years  
6                   after the date of enactment of this section, the  
7                   Secretary shall review the credits allocated  
8                   under this section as of the date which is 6  
9                   years after the date of enactment of this sec-  
10                  tion.

11                  “(B) REDISTRIBUTION.—The Secretary  
12                  may reallocate credits available under clauses  
13                  (i) and (ii) of paragraph (3)(B) if the Secretary  
14                  determines that—

15                         “(i) there is an insufficient quantity  
16                         of qualifying applications for certification  
17                         pending at the time of the review, or

18                         “(ii) any certification made pursuant  
19                         to subsection paragraph (2) has been re-  
20                         voked pursuant to subsection paragraph  
21                         (2)(D) because the project subject to the

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1 certification has been delayed as a result of  
2 third party opposition or litigation to the  
3 proposed project.

4 “(C) REALLOCATION.—If the Secretary de-  
5 termines that credits under clause (i) or (ii) of  
6 paragraph (3)(B) are available for reallocation  
7 pursuant to the requirements set forth in para-  
8 graph (2), the Secretary is authorized to con-  
9 duct an additional program for applications for  
10 certification.

11 “(e) QUALIFYING ADVANCED COAL PROJECTS.—

12 “(1) REQUIREMENTS.—For purposes of sub-  
13 section (c)(1), a project shall be considered a quali-  
14 fying advanced coal project that the Secretary may  
15 certify under subsection (d)(2) if the Secretary de-  
16 termines that, at a minimum—

17 “(A) the project uses an advanced coal-  
18 based generation technology—

19 “(i) to power a new electric generation  
20 unit, or

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1           “(ii) to retrofit or repower an existing  
2           electric generation unit (including an exist-  
3           ing natural gas-fired combined cycle unit),

4           “(B) the fuel input for the project, when  
5           completed, is at least 75 percent coal,

6           “(C) the project, consisting of one or more  
7           electric generation units at one site, will have a  
8           total nameplate generating capacity of at least  
9           400 megawatts;

10          “(D) the applicant provides evidence that a  
11          majority of the output of the project is reason-  
12          ably expected to be acquired or utilized;

13          “(E) the applicant provides evidence of  
14          ownership or control of a site of sufficient size  
15          to allow the proposed project to be constructed  
16          and to operate on a long-term basis; and

17          “(F) the project will be located in the  
18          United States.

19          “(2) REQUIREMENTS FOR CERTIFICATION.—

20          For the purpose of subsection (d)(2)(D), a project



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1 shall be eligible for certification only if the Secretary  
2 determines that—

3 “(A) the applicant for certification has re-  
4 ceived all Federal and State environmental au-  
5 thorizations or reviews necessary to commence  
6 construction of the project; and

7 “(B) the applicant for certification, except  
8 in the case of a retrofit or repower of an exist-  
9 ing electric generation unit, has purchased or  
10 entered into a binding contract for the purchase  
11 of the main steam turbine or turbines for the  
12 project, except that such contract may be con-  
13 tingent upon receipt of a certification under  
14 subsection (d)(2).

15 “(3) PRIORITY FOR INTEGRATED GASIFICATION  
16 COMBINED CYCLE PROJECTS.—In determining which  
17 qualifying advanced coal projects to certify under  
18 subsection (d)(2), the Secretary shall—

19 “(A) certify capacity, in accordance with  
20 the procedures set forth in subsection (d), in  
21 relatively equal amounts to—

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1 “(i) projects using bituminous coal as  
2 a primary feedstock,

3 “(ii) projects using subbituminous  
4 coal as a primary feedstock, and

5 “(iii) projects using lignite as a pri-  
6 mary feedstock, and

7 “(B) give high priority to projects which  
8 include, as determined by the Secretary—

9 “(i) greenhouse gas capture capa-  
10 bility,

11 “(ii) increased by-product utilization,  
12 and

13 “(iii) other benefits.

14 “(f) ADVANCED COAL-BASED GENERATION TECH-  
15 NOLOGY.—

16 “(1) IN GENERAL.—For the purpose of this  
17 section, an electric generation unit uses advanced  
18 coal-based generation technology if—

19 “(A) the unit—

20 “(i) uses integrated gasification com-  
21 bined cycle technology, or

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1                   “(ii) except as provided in paragraph  
 2                   (3), has a design net heat rate of 8530  
 3                   Btu/kWh (40 percent efficiency), and  
 4                   “(B) the unit is designed to meet the per-  
 5                   formance requirements in the following table:

<b>Performance characteristic:</b>	<b>Design level for project:</b>
SO <sub>2</sub> (percent removal) .....	99 percent
NO <sub>x</sub> (emissions) .....	0.07 lbs/MMBTU
PM* (emissions) .....	0.015 lbs/MMBTU
Hg (percent removal) .....	90 percent

6                   “(2) DESIGN NET HEAT RATE.—For purposes  
 7                   of this subsection, design net heat rate with respect  
 8                   to an electric generation unit shall—

9                   “(A) be measured in Btu per kilowatt hour  
 10                   (higher heating value),

11                   “(B) be based on the design annual heat  
 12                   input to the unit and the rated net electrical  
 13                   power, fuels, and chemicals output of the unit  
 14                   (determined without regard to the cogeneration  
 15                   of steam by the unit),

16                   “(C) be adjusted for the heat content of  
 17                   the design coal to be used by the unit—

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1           “(i) if the heat content is less than  
2           13,500 Btu per pound, but greater than  
3           7,000 Btu per pound, according to the fol-  
4           lowing formula: design net heat rate =  
5           unit net heat rate x [1-[(13,500-design  
6           coal heat content, Btu per pound)/1,000]\*  
7           0.013]], and

8           “(ii) if the heat content is less than or  
9           equal to 7,000 Btu per pound, according  
10          to the following formula: design net heat  
11          rate = unit net heat rate x [1-[(13,500-  
12          design coal heat content, Btu per pound)/  
13          1,000)\* 0.018]], and

14          “(D) be corrected for the site reference  
15          conditions of—

16                 “(i) elevation above sea level of 500  
17                 feet,

18                 “(ii) air pressure of 14.4 pounds per  
19                 square inch absolute,

20                 “(iii) temperature, dry bulb of 63°/F,

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1                   “(iv) temperature, wet bulb of 54/o/F,  
2                   and  
3                   “(v) relative humidity of 55 percent.

4                   “(3) EXISTING UNITS.—In the case of any elec-  
5                   tric generation unit in existence on the date of the  
6                   enactment of this section, such unit uses advanced  
7                   coal-based generation technology if, in lieu of the re-  
8                   quirements under paragraph (1)(A)(ii), such unit  
9                   achieves a minimum efficiency of 35 percent and an  
10                  overall thermal design efficiency improvement, com-  
11                  pared to the efficiency of the unit as operated, of not  
12                  less than—

13                  “(A) 7 percentage points for coal of more  
14                  than 9,000 Btu,

15                  “(B) 6 percentage points for coal of 7,000  
16                  to 9,000 Btu, or

17                  “(C) 4 percentage points for coal of less  
18                  than 7,000 Btu.

19                  “(g) APPLICABILITY.—No use of technology (or level  
20                  of emission reduction solely by reason of the use of the  
21                  technology), and no achievement of any emission reduction

1 by the demonstration of any technology or performance  
2 level, by or at one or more facilities with respect to which  
3 a credit is allowed under this section, shall be considered  
4 to indicate that the technology or performance level is—

5           “(1) adequately demonstrated for purposes of  
6           section 111 of the Clean Air Act (42 U.S. C. 7411);

7           “(2) achievable for purposes of section 169 of  
8           that Act (42 U.S. C. 7479); or

9           “(3) achievable in practice for purposes of sec-  
10          tion 171 of such Act (42 U.S.C. 7501).

11 **“SEC. 48B. QUALIFYING GASIFICATION PROJECT CREDIT.**

12          “(a) IN GENERAL.—For purposes of section 46, the  
13 qualifying gasification project credit for any taxable year  
14 is an amount equal to 20 percent of the qualified invest-  
15 ment for such taxable year.

16          “(b) QUALIFIED INVESTMENT.—

17                 “(1) IN GENERAL.—For purposes of subsection  
18 (a), the qualified investment for any taxable year is  
19 the basis of eligible property placed in service by the  
20 taxpayer during such taxable year which is part of  
21 a qualifying gasification project—

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1           “(A)(i) the construction, reconstruction, or  
2           erection of which is completed by the taxpayer,  
3           or

4           “(ii) which is acquired by the taxpayer if  
5           the original use of such property commences  
6           with the taxpayer, and

7           “(B) with respect to which depreciation (or  
8           amortization in lieu of depreciation) is allow-  
9           able.

10          “(2) SPECIAL RULE FOR CERTAIN SUBSIDIZED  
11          PROPERTY.—Rules similar to section 48(a)(4) shall  
12          apply for purposes of this section.

13          “(3) CERTAIN QUALIFIED PROGRESS EXPENDI-  
14          TURES RULES MADE APPLICABLE.—Rules similar to  
15          the rules of subsections (c)(4) and (d) of section 46  
16          (as in effect on the day before the enactment of the  
17          Revenue Reconciliation Act of 1990) shall apply for  
18          purposes of this section.

19          “(c) DEFINITIONS.—For purposes of this section—

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1           “(1) QUALIFYING GASIFICATION PROJECT.—

2           The term ‘qualifying gasification project’ means any  
3           project which—

4                   “(A) employs gasification technology,

5                   “(B) will be carried out by an eligible enti-  
6           ty, and

7                   “(C) any portion of the qualified invest-  
8           ment of which is certified under the qualifying  
9           gasification program as eligible for credit under  
10          this section in an amount (not to exceed  
11          \$650,000,000) determined by the Secretary.

12          “(2) GASIFICATION TECHNOLOGY.—The term  
13          ‘gasification technology’ means any process which  
14          converts a solid or liquid product from coal, petro-  
15          leum residue, biomass, or other materials which are  
16          recovered for their energy or feedstock value into a  
17          synthesis gas composed primarily of carbon mon-  
18          oxide and hydrogen for direct use or subsequent  
19          chemical or physical conversion.

20          “(3) ELIGIBLE PROPERTY.—The term ‘eligible  
21          property’ means any property which is a part of a



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1       qualifying gasification project and is necessary for  
2       the gasification technology of such project.

3           “(4) BIOMASS.—

4               “(A) IN GENERAL.—The term ‘biomass’  
5               means any—

6                   “(i) agricultural or plant waste,

7                   “(ii) byproduct of wood or paper mill  
8                   operations, including lignin in spent  
9                   pulping liquors, and

10                  “(iii) other products of forestry main-  
11                  tenance.

12               “(B) EXCLUSION.—The term ‘biomass’  
13               does not include paper which is commonly recy-  
14               cled.

15               “(5) CARBON CAPTURE CAPABILITY.—The term  
16               ‘carbon capture capability’ means a gasification  
17               plant design which is determined by the Secretary to  
18               reflect reasonable consideration for, and be capable  
19               of, accommodating the equipment likely to be nec-  
20               essary to capture carbon dioxide from the gaseous  
21               stream, for later use or sequestration, which would

1 otherwise be emitted in the flue gas from a project  
2 which uses a nonrenewable fuel.

3 “(6) COAL.—The term ‘coal’ means anthracite,  
4 bituminous coal, subbituminous coal, lignite, and  
5 peat.

6 “(7) ELIGIBLE ENTITY.—The term ‘eligible en-  
7 tity’ means any person whose application for certifi-  
8 cation is principally intended for use in a domestic  
9 project which employs domestic gasification applica-  
10 tions related to—

11 “(A) chemicals,

12 “(B) fertilizers,

13 “(C) glass,

14 “(D) steel,

15 “(E) petroleum residues,

16 “(F) forest products, and

17 “(G) agriculture, including feedlots and  
18 dairy operations.

19 “(8) PETROLEUM RESIDUE.—The term ‘petro-  
20 leum residue’ means the carbonized product of high-

1 boiling hydrocarbon fractions obtained in petroleum  
2 processing.

3 “(d) QUALIFYING GASIFICATION PROJECT PRO-  
4 GRAM.—

5 “(1) IN GENERAL.—Not later than 180 days  
6 after the date of the enactment of this section, the  
7 Secretary, in consultation with the Secretary of En-  
8 ergy, shall establish a qualifying gasification project  
9 program to consider and award certifications for  
10 qualified investment eligible for credits under this  
11 section to qualifying gasification project sponsors  
12 under this section. The total amounts of credit that  
13 may be allocated under the program shall not exceed  
14 \$350,000,000 under rules similar to the rules of sec-  
15 tion 48A(d)(4).

16 “(2) PERIOD OF ISSUANCE.—A certificate of  
17 eligibility under paragraph (1) may be issued only  
18 during the 10-fiscal year period beginning on Octo-  
19 ber 1, 2005.

20 “(3) SELECTION CRITERIA.—The Secretary  
21 shall not make a competitive certification award for

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1 qualified investment for credit eligibility under this  
2 section unless the recipient has documented to the  
3 satisfaction of the Secretary that—

4 “(A) the award recipient is financially via-  
5 ble without the receipt of additional Federal  
6 funding associated with the proposed project,

7 “(B) the recipient will provide sufficient  
8 information to the Secretary for the Secretary  
9 to ensure that the qualified investment is spent  
10 efficiently and effectively,

11 “(C) a market exists for the products of  
12 the proposed project as evidenced by contracts  
13 or written statements of intent from potential  
14 customers,

15 “(D) the fuels identified with respect to  
16 the gasification technology for such project will  
17 comprise at least 90 percent of the fuels re-  
18 quired by the project for the production of  
19 chemical feedstocks, liquid transportation fuels,  
20 or coproduction of electricity,

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1           “(E) the award recipient’s project team is  
2           competent in the construction and operation of  
3           the gasification technology proposed, with pref-  
4           erence given to those recipients with experience  
5           which demonstrates successful and reliable op-  
6           erations of the technology on domestic fuels so  
7           identified, and

8           “(F) the award recipient has met other cri-  
9           teria established and published by the Sec-  
10          retary.

11          “(e) DENIAL OF DOUBLE BENEFIT.—A credit shall  
12          not be allowed under this section for any qualified invest-  
13          ment for which a credit is allowed under section 48A.”.

14          (c) CONFORMING AMENDMENTS.—

15                 (1) Section 49(a)(1)(C) is amended by striking  
16                 “and” at the end of clause (ii), by striking clause  
17                 (iii), and by adding after clause (ii) the following  
18                 new clauses:

19                         “(iii) the basis of any property which  
20                         is part of a qualifying advanced coal  
21                         project under section 48A, and



1 “, and”, and by adding at the end the following new  
2 clause:

3 “(vii) any section 1245 property (as  
4 defined in section 1245(a)(3)) used in the  
5 transmission at 69 or more kilovolts of  
6 electricity for sale and the original use of  
7 which commences with the taxpayer after  
8 April 11, 2005.”.

9 (b) ALTERNATIVE SYSTEM.—The table contained in  
10 section 168(g)(3)(B) (relating to special rule for certain  
11 property assigned to classes) is amended by inserting after  
12 the item relating to subparagraph (E)(vi) the following  
13 new item:

“(E)(vii) ..... 30”.

14 (c) EFFECTIVE DATE.—

15 (1) IN GENERAL.—The amendments made by  
16 this section shall apply to property placed in service  
17 after April 11, 2005.

18 (2) EXCEPTION.—The amendments made by  
19 this section shall not apply to any property with re-

1 spect to which the taxpayer or a related party has  
2 entered into a binding contract for the construction  
3 thereof on or before April 11, 2005, or, in the case  
4 of self-constructed property, has started construction  
5 on or before such date.

6 **SEC. 1309. EXPANSION OF AMORTIZATION FOR CERTAIN**  
7 **ATMOSPHERIC POLLUTION CONTROL FACILI-**  
8 **TIES IN CONNECTION WITH PLANTS FIRST**  
9 **PLACED IN SERVICE AFTER 1975.**

10 (a) ELIGIBILITY OF POST-1975 POLLUTION CON-  
11 TROL FACILITIES.—Subsection (d) of section 169 (relat-  
12 ing to definitions) is amended by adding at the end the  
13 following:

14 “(5) SPECIAL RULE RELATING TO CERTAIN AT-  
15 MOSPHERIC POLLUTION CONTROL FACILITIES.—In  
16 the case of any atmospheric pollution control facility  
17 which is placed in service after April 11, 2005, and  
18 used in connection with an electric generation plant  
19 or other property which is primarily coal fired—



1           “(A) paragraph (1) shall be applied with-  
2           out regard to the phrase ‘in operation before  
3           January 1, 1976’, and

4           “(B) this section shall be applied by sub-  
5           stituting ‘84’ for ‘60’ each place it appears in  
6           subsections (a) and (b).”.

7           (b) TREATMENT AS NEW IDENTIFIABLE TREATMENT  
8 FACILITY.—Subparagraph (B) of section 169(d)(4) is  
9 amended to read as follows:

10           “(B) CERTAIN FACILITIES PLACED IN OP-  
11           ERATION AFTER APRIL 11, 2005.—In the case of  
12           any facility described in paragraph (1) solely by  
13           reason of paragraph (5), subparagraph (A)  
14           shall be applied by substituting ‘April 11, 2005’  
15           for ‘December 31, 1968’ each place it appears  
16           therein.”.

17           (c) CONFORMING AMENDMENT.—The heading for  
18 section 169(d) is amended by inserting “AND SPECIAL  
19 RULES” after “DEFINITIONS”.

1 (d) TECHNICAL AMENDMENT.—Section 169(d)(3) is  
2 amended by striking “Health, Education, and Welfare”  
3 and inserting “Health and Human Services”.

4 (e) EFFECTIVE DATE.—The amendments made by  
5 this section shall apply to facilities placed in service after  
6 April 11, 2005.

7 **SEC. 1310. MODIFICATIONS TO SPECIAL RULES FOR NU-**  
8 **CLEAR DECOMMISSIONING COSTS.**

9 (a) REPEAL OF LIMITATION ON DEPOSITS INTO  
10 FUND BASED ON COST OF SERVICE; CONTRIBUTIONS  
11 AFTER FUNDING PERIOD.—Subsection (b) of section  
12 468A (relating to special rules for nuclear decommis-  
13 sioning costs) is amended to read as follows:

14 “(b) LIMITATION ON AMOUNTS PAID INTO FUND.—  
15 The amount which a taxpayer may pay into the Fund for  
16 any taxable year shall not exceed the ruling amount appli-  
17 cable to such taxable year.”.

18 (b) TREATMENT OF CERTAIN DECOMMISSIONING  
19 COSTS.—

20 (1) IN GENERAL.—Section 468A is amended by  
21 redesignating subsections (f) and (g) as subsections

1 (g) and (h), respectively, and by inserting after sub-  
2 section (e) the following new subsection:

3 “(f) TRANSFERS INTO QUALIFIED FUNDS.—

4 “(1) IN GENERAL.—Notwithstanding subsection  
5 (b), any taxpayer maintaining a Fund to which this  
6 section applies with respect to a nuclear power plant  
7 may transfer into such Fund not more than an  
8 amount equal to the present value of the portion of  
9 the total nuclear decommissioning costs with respect  
10 to such nuclear power plant previously excluded for  
11 such nuclear power plant under subsection (d)(2)(A)  
12 as in effect immediately before the date of the enact-  
13 ment of this subsection.

14 “(2) DEDUCTION FOR AMOUNTS TRANS-  
15 FERRED.—

16 “(A) IN GENERAL.—Except as provided in  
17 subparagraph (C), the deduction allowed by  
18 subsection (a) for any transfer permitted by  
19 this subsection shall be allowed ratably over the  
20 remaining estimated useful life (within the  
21 meaning of subsection (d)(2)(A)) of the nuclear

1 power plant beginning with the taxable year  
2 during which the transfer is made.

3 “(B) DENIAL OF DEDUCTION FOR PRE-  
4 VIOUSLY DEDUCTED AMOUNTS.—No deduction  
5 shall be allowed for any transfer under this sub-  
6 section of an amount for which a deduction was  
7 previously allowed to the taxpayer (or a prede-  
8 cessor) or a corresponding amount was not in-  
9 cluded in gross income of the taxpayer (or a  
10 predecessor). For purposes of the preceding  
11 sentence, a ratable portion of each transfer  
12 shall be treated as being from previously de-  
13 ducted or excluded amounts to the extent there-  
14 of.

15 “(C) TRANSFERS OF QUALIFIED FUNDS.—  
16 If—

17 “(i) any transfer permitted by this  
18 subsection is made to any Fund to which  
19 this section applies, and

20 “(ii) such Fund is transferred there-  
21 after,

1           any deduction under this subsection for taxable  
2           years ending after the date that such Fund is  
3           transferred shall be allowed to the transferor  
4           for the taxable year which includes such date.

5           “(D) SPECIAL RULES.—

6                   “(i) GAIN OR LOSS NOT RECOGNIZED  
7                   ON TRANSFERS TO FUND.—No gain or loss  
8                   shall be recognized on any transfer de-  
9                   scribed in paragraph (1).

10                   “(ii) TRANSFERS OF APPRECIATED  
11                   PROPERTY TO FUND.—If appreciated prop-  
12                   erty is transferred in a transfer described  
13                   in paragraph (1), the amount of the deduc-  
14                   tion shall not exceed the adjusted basis of  
15                   such property.

16           “(3) NEW RULING AMOUNT REQUIRED.—Para-  
17           graph (1) shall not apply to any transfer unless the  
18           taxpayer requests from the Secretary a new schedule  
19           of ruling amounts in connection with such transfer.

20           “(4) NO BASIS IN QUALIFIED FUNDS.—Not-  
21           withstanding any other provision of law, the tax-

1 payer's basis in any Fund to which this section ap-  
2 plies shall not be increased by reason of any transfer  
3 permitted by this subsection.”.

4 (2) NEW RULING AMOUNT TO TAKE INTO AC-  
5 COUNT TOTAL COSTS.—Subparagraph (A) of section  
6 468A(d)(2) (defining ruling amount) is amended to  
7 read as follows:

8 “(A) fund the total nuclear decommis-  
9 sioning costs with respect to such power plant  
10 over the estimated useful life of such power  
11 plant, and”.

12 (c) NEW RULING AMOUNT REQUIRED UPON LI-  
13 CENSE RENEWAL.—Paragraph (1) of section 468A(d) (re-  
14 lating to request required) is amended by adding at the  
15 end the following new sentence: “For purposes of the pre-  
16 ceding sentence, the taxpayer shall request a schedule of  
17 ruling amounts upon each renewal of the operating license  
18 of the nuclear powerplant.”.

19 (d) CONFORMING AMENDMENT.—Section 468A(e)(3)  
20 (relating to review of amount) is amended by striking

1 “The Fund” and inserting “Except as provided in sub-  
2 section (f), the Fund”.

3 (e) TECHNICAL AMENDMENTS.—Section 468A(e)(2)  
4 (relating to taxation of Fund) is amended—

5 (1) by striking “rate set forth in subparagraph  
6 (B)” in subparagraph (A) and inserting “rate of 20  
7 percent”,

8 (2) by striking subparagraph (B), and

9 (3) by redesignating subparagraphs (C) and  
10 (D) as subparagraphs (B) and (C), respectively.

11 (f) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to taxable years beginning after  
13 December 31, 2005.

14 **SEC. 1311. 5-YEAR NET OPERATING LOSS CARRYOVER FOR**  
15 **CERTAIN LOSSES.**

16 Paragraph (1) of section 172(b) (relating to net oper-  
17 ating loss carrybacks and carryovers) is amended by add-  
18 ing at the end the following new subparagraph:

19 “(I) TRANSMISSION PROPERTY AND POL-  
20 LUTION CONTROL INVESTMENT.—

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1           “(i) IN GENERAL.—At the election of  
2           the taxpayer in any taxable year ending  
3           after December 31, 2005, and before Jan-  
4           uary 1, 2009, in the case of a net oper-  
5           ating loss in a taxable year ending after  
6           December 31, 2002, and before January 1,  
7           2006, there shall be a net operating loss  
8           carryback to each of the 5 years preceding  
9           the taxable year of such loss to the extent  
10          that such loss does not exceed 20 percent  
11          of the sum of electric transmission prop-  
12          erty capital expenditures and pollution con-  
13          trol facility capital expenditures of the tax-  
14          payer for the taxable year preceding the  
15          taxable year in which such election is  
16          made.

17           “(ii) LIMITATIONS.—For purposes of  
18          this subsection—

19                   “(I) not more than one election  
20                   may be made under clause (i) with re-



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1           spect to any net operating loss in a  
2           taxable year, and

3                   “(II) an election may not be  
4           made under clause (i) for more than  
5           1 taxable year beginning in any cal-  
6           endar year.

7                   “(iii) COORDINATION WITH ORDERING  
8           RULE.—For purposes of applying sub-  
9           section (b)(2), the portion of any loss  
10          which is carried back 5 years by reason of  
11          clause (i) shall be treated in a manner  
12          similar to the manner in which a specified  
13          liability loss is treated.

14                   “(iv) APPLICATION FOR ADJUST-  
15          MENT.—In the case of any portion of a net  
16          operating loss to which an election under  
17          clause (i) applies, an application under sec-  
18          tion 6411(a) with respect to such loss shall  
19          not fail to be treated as timely filed if filed  
20          within 24 months after the due date speci-  
21          fied under such section.

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1           “(v) SPECIAL RULES RELATING TO  
2 REFUND.—For purposes of a net operating  
3 loss to which an election under clause (i)  
4 applies, references in sections 6501(h),  
5 6511(d)(2)(A), and 6611(f)(1) to the tax-  
6 able year in which such net operating loss  
7 arises or result in a net loss carryback  
8 shall be treated as references to the tax-  
9 able year in which such election occurs.

10           “(vi) DEFINITIONS.—For purposes of  
11 this subparagraph—

12           “(I) ELECTRIC TRANSMISSION  
13 PROPERTY CAPITAL EXPENDI-  
14 TURES.—The term ‘electric trans-  
15 mission property capital expenditures’  
16 means any expenditure, chargeable to  
17 capital account, made by the taxpayer  
18 which is attributable to electric trans-  
19 mission property used by the taxpayer  
20 in the transmission at 69 or more  
21 kilovolts of electricity for sale. Such

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1 term shall not include any expenditure  
2 which may be refunded or the purpose  
3 of which may be modified at the op-  
4 tion of the taxpayer so as to cease to  
5 be treated as an expenditure within  
6 the meaning of such term.

7 “(II) POLLUTION CONTROL FA-  
8 CILITY CAPITAL EXPENDITURES.—  
9 The term ‘pollution control facility  
10 capital expenditures’ means any ex-  
11 penditure, chargeable to capital ac-  
12 count, made by an electric utility com-  
13 pany (as defined in section 2(3) of the  
14 Public Utility Holding Company Act  
15 (15 U.S.C. 79b(3)), as in effect on the  
16 day before the date of the enactment  
17 of the Energy Tax Incentives Act of  
18 2005) which is attributable to a facil-  
19 ity which will qualify as a certified  
20 pollution control facility as determined  
21 under section 169(d)(1) by striking

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1 'before January 1, 1976,' and by sub-  
2 stituting 'an identifiable' for 'a new  
3 identifiable'. Such term shall not in-  
4 clude any expenditure which may be  
5 refunded or the purpose of which may  
6 be modified at the option of the tax-  
7 payer so as to cease to be treated as  
8 an expenditure within the meaning of  
9 such term."

10 **Subtitle B—Domestic Fossil Fuel**  
11 **Security**

12 **SEC. 1321. EXTENSION OF CREDIT FOR PRODUCING FUEL**  
13 **FROM A NONCONVENTIONAL SOURCE FOR**  
14 **FACILITIES PRODUCING COKE OR COKE GAS.**

15 (a) IN GENERAL.—Section 29 (relating to credit for  
16 producing fuel from a nonconventional source) is amended  
17 by adding at the end the following new subsection:

18 “(h) EXTENSION FOR FACILITIES PRODUCING COKE  
19 OR COKE GAS.—Notwithstanding subsection (f)—

20 “(1) IN GENERAL.—In the case of a facility for  
21 producing coke or coke gas which was placed in

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1 service before January 1, 1993, or after June 30,  
2 1998, and before January 1, 2010, this section shall  
3 apply with respect to coke and coke gas produced in  
4 such facility and sold during the period—

5 “(A) beginning on the later of January 1,  
6 2006, or the date that such facility is placed in  
7 service, and

8 “(B) ending on the date which is 4 years  
9 after the date such period began.

10 “(2) SPECIAL RULES.—In determining the  
11 amount of credit allowable under this section solely  
12 by reason of this subsection—

13 “(A) DAILY LIMIT.—The amount of quali-  
14 fied fuels sold during any taxable year which  
15 may be taken into account by reason of this  
16 subsection with respect to any facility shall not  
17 exceed an average barrel-of-oil equivalent of  
18 4,000 barrels per day. Days before the date the  
19 facility is placed in service shall not be taken  
20 into account in determining such average.



1        enue Code of 1986 is amended by redesignating sec-  
2        tion 29 as section 45K and by moving section 45K  
3        (as so redesignated) from subpart B of part IV of  
4        subchapter A of chapter 1 to the end of subpart D  
5        of part IV of subchapter A of chapter 1.

6            (2) CREDIT TREATED AS BUSINESS CREDIT.—  
7        Section 38(b), as amended by this Act, is amended  
8        by striking “plus” at the end of paragraph (20), by  
9        striking the period at the end of paragraph (21) and  
10       inserting “, plus”, and by adding at the end the fol-  
11       lowing:

12            “(22) the nonconventional source production  
13       credit determined under section 45K(a).”.

14            (3) CONFORMING AMENDMENTS.—

15            (A) Section 30(b)(3)(A) is amended by  
16       striking “sections 27 and 29” and inserting  
17       “section 27”.

18            (B) Sections 43(b)(2), 45I(b)(2)(C)(i), and  
19       613A(c)(6)(C) are each amended by striking  
20       “section 29(d)(2)(C)” and inserting “section  
21       45K(d)(2)(C)”.

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1 (C) Section 45(e)(9), as added by this Act,  
2 is amended—

3 (i) by striking “section 29” each place  
4 it appears and inserting “section 45K”,  
5 and

6 (ii) by inserting “(or under section 29,  
7 as in effect on the day before the date of  
8 enactment of the Energy Tax Incentives  
9 Act of 2005, for any prior taxable year)”  
10 before the period at the end thereof.

11 (D) Section 45I is amended—

12 (i) in subsection (c)(2)(A) by striking  
13 “section 29(d)(5))” and inserting “section  
14 45K(d)(5))”, and

15 (ii) in subsection (d)(3) by striking  
16 “section 29” both places it appears and in-  
17 serting “section 45K”.

18 (E) Section 45K(a), as redesignated by  
19 paragraph (1), is amended by striking “There  
20 shall be allowed as a credit against the tax im-  
21 posed by this chapter for the taxable year” and



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1 inserting “For purposes of section 38, if the  
2 taxpayer elects to have this section apply, the  
3 nonconventional source production credit deter-  
4 mined under this section for the taxable year  
5 is”.

6 (F) Section 45K(b), as so redesignated, is  
7 amended by striking paragraph (6).

8 (G) Section 53(d)(1)(B)(iii) is amended by  
9 striking “under section 29” and all that follows  
10 through “or not allowed”.

11 (H) Section 55(c)(3) is amended by strik-  
12 ing “29(b)(6),”.

13 (I) Subsection (a) of section 772 is amend-  
14 ed by inserting “and” at the end of paragraph  
15 (9), by striking paragraph (10), and by redesign-  
16 ating paragraph (11) as paragraph (10).

17 (J) Paragraph (5) of section 772(d) is  
18 amended by striking “the foreign tax credit,  
19 and the credit allowable under section 29” and  
20 inserting “and the foreign tax credit”.

1 (K) The table of sections for subpart B of  
2 part IV of subchapter A of chapter 1 is amend-  
3 ed by striking the item relating to section 29.

4 (L) The table of sections for subpart D of  
5 part IV of subchapter A of chapter 1 is amend-  
6 ed by inserting after the item relating to section  
7 45I the following new item:

“Sec. 45K. Credit for producing fuel from a nonconventional source.”.

8 (b) AMENDMENTS CONFORMING TO THE REPEAL OF  
9 THE NATURAL GAS POLICY ACT OF 1978.—

10 (1) IN GENERAL.—Section 29(c)(2)(A) (before  
11 redesignation under subsection (a) and as amended  
12 by section 1321) is amended—

13 (A) by inserting “(as in effect before the  
14 repeal of such section)” after “1978”, and

15 (B) by striking subsection (e) and redesign-  
16 ating subsections (f), (g), and (h) as sub-  
17 sections (e), (f), and (g), respectively.

18 (2) CONFORMING AMENDMENTS.—Section  
19 29(g)(1)(before redesignation under subsection (a)  
20 and paragraph (1) of this subsection) is amended—

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1 (A) in subparagraph (A) by striking “sub-  
2 section (f)(1)(B)” and inserting “subsection  
3 (e)(1)(B)”, and

4 (B) in subparagraph (B) by striking “sub-  
5 section (f)” and inserting “subsection (e)”.

6 (c) EFFECTIVE DATES.—

7 (1) IN GENERAL.—Except as provided in para-  
8 graph (2), the amendments made by this section  
9 shall apply to credits determined under the Internal  
10 Revenue Code of 1986 for taxable years ending after  
11 December 31, 2005.

12 (2) SUBSECTION (b).—The amendments made  
13 by subsection (b) shall take effect on the date of the  
14 enactment of this Act.

15 **SEC. 1323. TEMPORARY EXPENSING FOR EQUIPMENT USED**  
16 **IN REFINING OF LIQUID FUELS.**

17 (a) IN GENERAL.—Part VI of subchapter B of chap-  
18 ter 1 is amended by inserting after section 179B the fol-  
19 lowing new section:

1 **“SEC. 179C. ELECTION TO EXPENSE CERTAIN REFINERIES.**

2       “(a) TREATMENT AS EXPENSES.—A taxpayer may  
3 elect to treat 50 percent of the cost of any qualified refin-  
4 ery property as an expense which is not chargeable to cap-  
5 ital account. Any cost so treated shall be allowed as a de-  
6 duction for the taxable year in which the qualified refinery  
7 property is placed in service.

8       “(b) ELECTION.—

9           “(1) IN GENERAL.—An election under this sec-  
10 tion for any taxable year shall be made on the tax-  
11 payer’s return of the tax imposed by this chapter for  
12 the taxable year. Such election shall be made in such  
13 manner as the Secretary may by regulations pre-  
14 scribe.

15           “(2) ELECTION IRREVOCABLE.—Any election  
16 made under this section may not be revoked except  
17 with the consent of the Secretary.

18       “(c) QUALIFIED REFINERY PROPERTY.—

19           “(1) IN GENERAL.—The term ‘qualified refin-  
20 ery property’ means any portion of a qualified  
21 refinery—

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1           “(A) the original use of which commences  
2           with the taxpayer,

3           “(B) which is placed in service by the tax-  
4           payer after the date of the enactment of this  
5           section and before January 1, 2012,

6           “(C) in the case any portion of a qualified  
7           refinery (other than a qualified refinery which  
8           is separate from any existing refinery), which  
9           meets the requirements of subsection (e),

10          “(D) which meets all applicable environ-  
11          mental laws in effect on the date such portion  
12          was placed in service,

13          “(E) no written binding contract for the  
14          construction of which was in effect on or before  
15          June 14, 2005, and

16          “(F)(i) the construction of which is subject  
17          to a written binding construction contract en-  
18          tered into before January 1, 2008,

19          “(ii) which is placed in service before Jan-  
20          uary 1, 2008, or

1           “(iii) in the case of self-constructed prop-  
2           erty, the construction of which began after  
3           June 14, 2005, and before January 1, 2008.

4           “(2) SPECIAL RULE FOR SALE-LEASEBACKS.—  
5           For purposes of paragraph (1)(A), if property is—

6           “(A) originally placed in service after the  
7           date of the enactment of this section by a per-  
8           son, and

9           “(B) sold and leased back by such person  
10          within 3 months after the date such property  
11          was originally placed in service,

12          such property shall be treated as originally placed in  
13          service not earlier than the date on which such prop-  
14          erty is used under the leaseback referred to in sub-  
15          paragraph (B).

16          “(3) EFFECT OF WAIVER UNDER CLEAN AIR  
17          ACT.—A waiver under the Clean Air Act shall not be  
18          taken into account in determining whether the re-  
19          quirements of paragraph (1)(D) are met.

20          “(d) QUALIFIED REFINERY.—For purposes of this  
21          section, the term ‘qualified refinery’ means any refinery

1 located in the United States which is designed to serve  
2 the primary purpose of processing liquid fuel from crude  
3 oil or qualified fuels (as defined in section 45K(c)).

4 “(e) PRODUCTION CAPACITY.—The requirements of  
5 this subsection are met if the portion of the qualified  
6 refinery—

7 “(1) enables the existing qualified refinery to  
8 increase total volume output (determined without re-  
9 gard to asphalt or lube oil) by 5 percent or more on  
10 an average daily basis, or

11 “(2) enables the existing qualified refinery to  
12 process qualified fuels (as defined in section 45K(c))  
13 at a rate which is equal to or greater than 25 per-  
14 cent of the total throughput of such qualified refin-  
15 ery on an average daily basis.

16 “(f) INELIGIBLE REFINERY PROPERTY.—No deduc-  
17 tion shall be allowed under subsection (a) for any qualified  
18 refinery property—

19 “(1) the primary purpose of which is for use as  
20 a topping plant, asphalt plant, lube oil facility, crude  
21 or product terminal, or blending facility, or

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1           “(2) which is built solely to comply with consent  
2       decrees or projects mandated by Federal, State, or  
3       local governments.

4       “(g) ELECTION TO ALLOCATE DEDUCTION TO COOP-  
5       ERATIVE OWNER.—

6           “(1) IN GENERAL.—If—

7           “(A) a taxpayer to which subsection (a)  
8       applies is an organization to which part I of  
9       subchapter T applies, and

10          “(B) one or more persons directly holding  
11       an ownership interest in the taxpayer are orga-  
12       nizations to which part I of subchapter T apply,  
13       the taxpayer may elect to allocate all or a portion of  
14       the deduction allowable under subsection (a) to such  
15       persons. Such allocation shall be equal to the per-  
16       son’s ratable share of the total amount allocated, de-  
17       termined on the basis of the person’s ownership in-  
18       terest in the taxpayer. The taxable income of the  
19       taxpayer shall not be reduced under section 1382 by  
20       reason of any amount to which the preceding sen-  
21       tence applies.



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1           “(2) FORM AND EFFECT OF ELECTION.—An  
2           election under paragraph (1) for any taxable year  
3           shall be made on a timely filed return for such year.  
4           Such election, once made, shall be irrevocable for  
5           such taxable year.

6           “(3) WRITTEN NOTICE TO OWNERS.—If any  
7           portion of the deduction available under subsection  
8           (a) is allocated to owners under paragraph (1), the  
9           cooperative shall provide any owner receiving an al-  
10          location written notice of the amount of the alloca-  
11          tion. Such notice shall be provided before the date  
12          on which the return described in paragraph (2) is  
13          due.

14          “(h) REPORTING.—No deduction shall be allowed  
15          under subsection (a) to any taxpayer for any taxable year  
16          unless such taxpayer files with the Secretary a report con-  
17          taining such information with respect to the operation of  
18          the refineries of the taxpayer as the Secretary shall re-  
19          quire.”.

20          (b) CONFORMING AMENDMENTS.—

1           (1) Section 1245(a) is amended by inserting  
2           “179C,” after “179B,” both places it appears in  
3           paragraphs (2)(C) and (3)(C).

4           (2) Section 263(a)(1) is amended by striking  
5           “or” at the end of subparagraph (H), by striking  
6           the period at the end of subparagraph (I) and in-  
7           serting “, or”, and by inserting after subparagraph  
8           (I) the following new subparagraph:

9                       “(J) expenditures for which a deduction is  
10                      allowed under section 179C.”.

11           (3) Section 312(k)(3)(B) is amended by strik-  
12           ing “179 179A, or 179B” each place it appears in  
13           the heading and text and inserting “179, 179A,  
14           179B, or 179C”.

15           (4) The table of sections for part VI of sub-  
16           chapter B of chapter 1 is amended by inserting after  
17           the item relating to section 179B the following new  
18           item:

          “Sec. 179C. Election to expense certain refineries.”.

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1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to properties placed in service after  
3 the date of the enactment of this Act.

4 **SEC. 1324. PASS THROUGH TO OWNERS OF DEDUCTION FOR**  
5 **CAPITAL COSTS INCURRED BY SMALL RE-**  
6 **FINER COOPERATIVES IN COMPLYING WITH**  
7 **ENVIRONMENTAL PROTECTION AGENCY SUL-**  
8 **FUR REGULATIONS.**

9 (a) IN GENERAL.—Section 179B (relating to deduc-  
10 tion for capital costs incurred in complying with Environ-  
11 mental Protection Agency sulfur regulations) is amended  
12 by adding at the end the following new subsection:

13 “(e) ELECTION TO ALLOCATE DEDUCTION TO COOP-  
14 ERATIVE OWNER.—

15 “(1) IN GENERAL.—If—

16 “(A) a small business refiner to which sub-  
17 section (a) applies is an organization to which  
18 part I of subchapter T applies, and

19 “(B) one or more persons directly holding  
20 an ownership interest in the refiner are organi-  
21 zations to which part I of subchapter T apply,

1 the refiner may elect to allocate all or a portion of  
2 the deduction allowable under subsection (a) to such  
3 persons. Such allocation shall be equal to the per-  
4 son's ratable share of the total amount allocated, de-  
5 termined on the basis of the person's ownership in-  
6 terest in the taxpayer. The taxable income of the re-  
7 finer shall not be reduced under section 1382 by  
8 reason of any amount to which the preceding sen-  
9 tence applies.

10 “(2) FORM AND EFFECT OF ELECTION.—An  
11 election under paragraph (1) for any taxable year  
12 shall be made on a timely filed return for such year.  
13 Such election, once made, shall be irrevocable for  
14 such taxable year.

15 “(3) WRITTEN NOTICE TO OWNERS.—If any  
16 portion of the deduction available under subsection  
17 (a) is allocated to owners under paragraph (1), the  
18 cooperative shall provide any owner receiving an al-  
19 location written notice of the amount of the alloca-  
20 tion. Such notice shall be provided before the date

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1 on which the return described in paragraph (2) is  
2 due.”.

3 (b) EFFECTIVE DATE.—The amendment made by  
4 this section shall take effect as if included in the amend-  
5 ment made by section 338(a) of the American Jobs Cre-  
6 ation Act of 2004.

7 **SEC. 1325. NATURAL GAS DISTRIBUTION LINES TREATED**  
8 **AS 15-YEAR PROPERTY.**

9 (a) IN GENERAL.—Section 168(e)(3)(E) (defining  
10 15-year property), as amended by this Act, is amended  
11 by striking “and” at the end of clause (vi), by striking  
12 the period at the end of clause (vii) and by inserting “,  
13 and”, and by adding at the end the following new clause:

14 “(viii) any natural gas distribution  
15 line the original use of which commences  
16 with the taxpayer after April 11, 2005,  
17 and which is placed in service before Janu-  
18 ary 1, 2011.”.

19 (b) ALTERNATIVE SYSTEM.—The table contained in  
20 section 168(g)(3)(B) (relating to special rule for certain  
21 property assigned to classes), as amended by this Act, is

1 amended by inserting after the item relating to subpara-  
2 graph (E)(vii) the following new item:

“(E)(viii) ..... 35”.

3 (c) EFFECTIVE DATE.—

4 (1) IN GENERAL.—The amendments made by  
5 this section shall apply to property placed in service  
6 after April 11, 2005.

7 (2) EXCEPTION.—The amendments made by  
8 this section shall not apply to any property with re-  
9 spect to which the taxpayer or a related party has  
10 entered into a binding contract for the construction  
11 thereof on or before April 11, 2005, or, in the case  
12 of self-constructed property, has started construction  
13 on or before such date.

14 **SEC. 1326. NATURAL GAS GATHERING LINES TREATED AS 7-**  
15 **YEAR PROPERTY.**

16 (a) IN GENERAL.—Subparagraph (C) of section  
17 168(e)(3) (relating to classification of certain property) is  
18 amended by striking “and” at the end of clause (iii), by

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1 redesignating clause (iv) as clause (v), and by inserting  
2 after clause (iii) the following new clause:

3                   “(iv) any natural gas gathering line  
4                   the original use of which commences with  
5                   the taxpayer after April 11, 2005, and”.

6           (b) NATURAL GAS GATHERING LINE.—Subsection (i)  
7 of section 168 is amended by inserting after paragraph  
8 (16) the following new paragraph:

9                   “(17) NATURAL GAS GATHERING LINE.—The  
10                   term ‘natural gas gathering line’ means—

11                   “(A) the pipe, equipment, and appur-  
12                   tenances determined to be a gathering line by  
13                   the Federal Energy Regulatory Commission,  
14                   and

15                   “(B) the pipe, equipment, and appur-  
16                   tenances used to deliver natural gas from the  
17                   wellhead or a commonpoint to the point at  
18                   which such gas first reaches—

19                   “(i) a gas processing plant,

20                   “(ii) an interconnection with a trans-  
21                   mission pipeline for which a certificate as

1 an interstate transmission pipeline has  
2 been issued by the Federal Energy Regu-  
3 latory Commission,

4 “(iii) an interconnection with an  
5 intrastate transmission pipeline, or

6 “(iv) a direct interconnection with a  
7 local distribution company, a gas storage  
8 facility, or an industrial consumer.”.

9 (c) ALTERNATIVE SYSTEM.—The table contained in  
10 section 168(g)(3)(B) (relating to special rule for certain  
11 property assigned to classes), as amended by this Act, is  
12 amended by inserting after the item relating to subpara-  
13 graph (C)(iii) the following new item:

“(C)(iv) ..... 14”.

14 (d) ALTERNATIVE MINIMUM TAX EXCEPTION.—Sub-  
15 paragraph (B) of section 56(a)(1) is amended by inserting  
16 before the period the following: “, or in section  
17 168(e)(3)(C)(iv)”.

18 (e) EFFECTIVE DATE.—



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1           (1) IN GENERAL.—The amendments made by  
2           this section shall apply to property placed in service  
3           after April 11, 2005.

4           (2) EXCEPTION.—The amendments made by  
5           this section shall not apply to any property with re-  
6           spect to which the taxpayer or a related party has  
7           entered into a binding contract for the construction  
8           thereof on or before April 11, 2005, or, in the case  
9           of self-constructed property, has started construction  
10          on or before such date.

11 **SEC. 1327. ARBITRAGE RULES NOT TO APPLY TO PREPAY-**  
12 **MENTS FOR NATURAL GAS.**

13          (a) IN GENERAL.—Subsection (b) of section 148 (re-  
14          lating to higher yielding investments) is amended by add-  
15          ing at the end the following new paragraph:

16                 “(4) SAFE HARBOR FOR PREPAID NATURAL  
17          GAS.—

18                         “(A) IN GENERAL.—The term ‘investment-  
19                         type property’ does not include a prepayment  
20                         under a qualified natural gas supply contract.

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1           “(B) QUALIFIED NATURAL GAS SUPPLY  
2           CONTRACT.—For purposes of this paragraph,  
3           the term ‘qualified natural gas supply contract’  
4           means any contract to acquire natural gas for  
5           resale by a utility owned by a governmental  
6           unit if the amount of gas permitted to be ac-  
7           quired under the contract by the utility during  
8           any year does not exceed the sum of—

9                   “(i) the annual average amount dur-  
10                  ing the testing period of natural gas pur-  
11                  chased (other than for resale) by cus-  
12                  tomers of such utility who are located  
13                  within the service area of such utility, and

14                   “(ii) the amount of natural gas to be  
15                  used to transport the prepaid natural gas  
16                  to the utility during such year.

17           “(C) NATURAL GAS USED TO GENERATE  
18           ELECTRICITY.—Natural gas used to generate  
19           electricity shall be taken into account in deter-  
20           mining the average under subparagraph  
21           (B)(i)—

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1           “(i) only if the electricity is generated  
2           by a utility owned by a governmental unit,  
3           and

4           “(ii) only to the extent that the elec-  
5           tricity is sold (other than for resale) to  
6           customers of such utility who are located  
7           within the service area of such utility.

8           “(D) ADJUSTMENTS FOR CHANGES IN  
9           CUSTOMER BASE.—

10           “(i) NEW BUSINESS CUSTOMERS.—  
11           If—

12           “(I) after the close of the testing  
13           period and before the date of issuance  
14           of the issue, the utility owned by a  
15           governmental unit enters into a con-  
16           tract to supply natural gas (other  
17           than for resale) for a business use at  
18           a property within the service area of  
19           such utility, and

20           “(II) the utility did not supply  
21           natural gas to such property during

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1 the testing period or the ratable  
2 amount of natural gas to be supplied  
3 under the contract is significantly  
4 greater than the ratable amount of  
5 gas supplied to such property during  
6 the testing period,

7 then a contract shall not fail to be treated  
8 as a qualified natural gas supply contract  
9 by reason of supplying the additional nat-  
10 ural gas under the contract referred to in  
11 subclause (I).

12 “(ii) LOST CUSTOMERS.—The average  
13 under subparagraph (B)(i) shall not exceed  
14 the annual amount of natural gas reason-  
15 ably expected to be purchased (other than  
16 for resale) by persons who are located  
17 within the service area of such utility and  
18 who, as of the date of issuance of the  
19 issue, are customers of such utility.

20 “(E) RULING REQUESTS.—The Secretary  
21 may increase the average under subparagraph

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1 (B)(i) for any period if the utility owned by the  
2 governmental unit establishes to the satisfaction  
3 of the Secretary that, based on objective evi-  
4 dence of growth in natural gas consumption or  
5 population, such average would otherwise be in-  
6 sufficient for such period.

7 “(F) ADJUSTMENT FOR NATURAL GAS  
8 OTHERWISE ON HAND.—

9 “(i) IN GENERAL.—The amount oth-  
10 erwise permitted to be acquired under the  
11 contract for any period shall be reduced  
12 by—

13 “(I) the applicable share of nat-  
14 ural gas held by the utility on the  
15 date of issuance of the issue, and

16 “(II) the natural gas (not taken  
17 into account under subclause (I))  
18 which the utility has a right to ac-  
19 quire during such period (determined  
20 as of the date of issuance of the  
21 issue).

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1           “(ii) APPLICABLE SHARE.—For pur-  
2           poses of the clause (i), the term ‘applicable  
3           share’ means, with respect to any period,  
4           the natural gas allocable to such period if  
5           the gas were allocated ratably over the pe-  
6           riod to which the prepayment relates.

7           “(G) INTENTIONAL ACTS.—Subparagraph  
8           (A) shall cease to apply to any issue if the util-  
9           ity owned by the governmental unit engages in  
10          any intentional act to render the volume of nat-  
11          ural gas acquired by such prepayment to be in  
12          excess of the sum of—

13                 “(i) the amount of natural gas needed  
14                 (other than for resale) by customers of  
15                 such utility who are located within the  
16                 service area of such utility, and

17                 “(ii) the amount of natural gas used  
18                 to transport such natural gas to the utility.

19           “(H) TESTING PERIOD.—For purposes of  
20           this paragraph, the term ‘testing period’ means,  
21           with respect to an issue, the most recent 5 cal-

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1           endar years ending before the date of issuance  
2           of the issue.

3                   “(I) SERVICE AREA.—For purposes of this  
4           paragraph, the service area of a utility owned  
5           by a governmental unit shall be comprised of—

6                           “(i) any area throughout which such  
7           utility provided at all times during the  
8           testing period—

9                                   “(I) in the case of a natural gas  
10           utility, natural gas transmission or  
11           distribution services, and

12                                   “(II) in the case of an electric  
13           utility, electricity distribution services,

14                                   “(ii) any area within a county contig-  
15           uous to the area described in clause (i) in  
16           which retail customers of such utility are  
17           located if such area is not also served by  
18           another utility providing natural gas or  
19           electricity services, as the case may be, and

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1                   “(iii) any area recognized as the serv-  
2                   ice area of such utility under State or Fed-  
3                   eral law.”.

4           (b) PRIVATE LOAN FINANCING TEST NOT TO APPLY  
5 TO PREPAYMENTS FOR NATURAL GAS.—Paragraph (2) of  
6 section 141(c) (providing exceptions to the private loan fi-  
7 nancing test) is amended by striking “or” at the end of  
8 subparagraph (A), by striking the period at the end of  
9 subparagraph (B) and inserting “, or”, and by adding at  
10 the end the following new subparagraph:

11                   “(C) is a qualified natural gas supply con-  
12                   tract (as defined in section 148(b)(4)).”.

13           (c) EXCEPTION FOR QUALIFIED ELECTRIC AND NAT-  
14 URAL GAS SUPPLY CONTRACTS.—Section 141(d) is  
15 amended by adding at the end the following new para-  
16 graph:

17                   “(7) EXCEPTION FOR QUALIFIED ELECTRIC  
18                   AND NATURAL GAS SUPPLY CONTRACTS.—The term  
19                   ‘nongovernmental output property’ shall not include  
20                   any contract for the prepayment of electricity or nat-



1        ural gas which is not investment property under sec-  
2        tion 148(b)(2).”.

3        (d) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to obligations issued after the date  
5 of the enactment of this Act.

6 **SEC. 1328. DETERMINATION OF SMALL REFINER EXCEP-**  
7 **TION TO OIL DEPLETION DEDUCTION.**

8        (a) IN GENERAL.—Paragraph (4) of section 613A(d)  
9 (relating to limitations on application of subsection (c))  
10 is amended to read as follows:

11           “(4) CERTAIN REFINERS EXCLUDED.—If the  
12 taxpayer or 1 or more related persons engages in the  
13 refining of crude oil, subsection (c) shall not apply  
14 to the taxpayer for a taxable year if the average  
15 daily refinery runs of the taxpayer and such persons  
16 for the taxable year exceed 75,000 barrels. For pur-  
17 poses of this paragraph, the average daily refinery  
18 runs for any taxable year shall be determined by di-  
19 viding the aggregate refinery runs for the taxable  
20 year by the number of days in the taxable year.”.

1 (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall apply to taxable years ending after the  
3 date of the enactment of this Act.

4 **SEC. 1329. AMORTIZATION OF GEOLOGICAL AND GEO-**  
5 **PHYSICAL EXPENDITURES.**

6 (a) IN GENERAL.—Section 167 (relating to deprecia-  
7 tion) is amended by redesignating subsection (h) as sub-  
8 section (i) and by inserting after subsection (g) the fol-  
9 lowing new subsection:

10 “(h) AMORTIZATION OF GEOLOGICAL AND GEO-  
11 PHYSICAL EXPENDITURES.—

12 “(1) IN GENERAL.—Any geological and geo-  
13 physical expenses paid or incurred in connection  
14 with the exploration for, or development of, oil or  
15 gas within the United States (as defined in section  
16 638) shall be allowed as a deduction ratably over the  
17 24-month period beginning on the date that such ex-  
18 pense was paid or incurred.

19 “(2) HALF-YEAR CONVENTION.—For purposes  
20 of paragraph (1), any payment paid or incurred dur-

1       ing the taxable year shall be treated as paid or in-  
2       curred on the mid-point of such taxable year.

3           “(3) EXCLUSIVE METHOD.—Except as provided  
4       in this subsection, no depreciation or amortization  
5       deduction shall be allowed with respect to such pay-  
6       ments.

7           “(4) TREATMENT UPON ABANDONMENT.—If  
8       any property with respect to which geological and  
9       geophysical expenses are paid or incurred is retired  
10      or abandoned during the 24-month period described  
11      in paragraph (1), no deduction shall be allowed on  
12      account of such retirement or abandonment and the  
13      amortization deduction under this subsection shall  
14      continue with respect to such payment.”.

15      (b) CONFORMING AMENDMENT.—Section 263A(c)(3)  
16      is amended by inserting “167(h),” after “under section”.

17      (c) EFFECTIVE DATE.—The amendments made by  
18      this section shall apply to amounts paid or incurred in tax-  
19      able years beginning after the date of the enactment of  
20      this Act.

1           **Subtitle C—Conservation and**  
2           **Energy Efficiency Provisions**

3   **SEC. 1331. ENERGY EFFICIENT COMMERCIAL BUILDINGS**  
4           **DEDUCTION.**

5           (a) IN GENERAL.—Part VI of subchapter B of chap-  
6   ter 1 (relating to itemized deductions for individuals and  
7   corporations), as amended by this Act, is amended by in-  
8   serting after section 179C the following new section:

9   **“SEC. 179D. ENERGY EFFICIENT COMMERCIAL BUILDINGS**  
10           **DEDUCTION.**

11           “(a) IN GENERAL.—There shall be allowed as a de-  
12   duction an amount equal to the cost of energy efficient  
13   commercial building property placed in service during the  
14   taxable year.

15           “(b) MAXIMUM AMOUNT OF DEDUCTION.—The de-  
16   duction under subsection (a) with respect to any building  
17   for any taxable year shall not exceed the excess (if any)  
18   of—

19                   “(1) the product of—

20                           “(A) \$1.80, and

1                   “(B) the square footage of the building,  
2                   over

3                   “(2) the aggregate amount of the deductions  
4                   under subsection (a) with respect to the building for  
5                   all prior taxable years.

6                   “(c) DEFINITIONS.—For purposes of this section—

7                   “(1) ENERGY EFFICIENT COMMERCIAL BUILD-  
8                   ING PROPERTY.—The term ‘energy efficient commer-  
9                   cial building property’ means property—

10                   “(A) with respect to which depreciation (or  
11                   amortization in lieu of depreciation) is allow-  
12                   able,

13                   “(B) which is installed on or in any build-  
14                   ing which is—

15                   “(i) located in the United States, and

16                   “(ii) within the scope of Standard  
17                   90.1–2001,

18                   “(C) which is installed as part of—

19                   “(i) the interior lighting systems,

20                   “(ii) the heating, cooling, ventilation,  
21                   and hot water systems, or

1                   “(iii) the building envelope, and  
2                   “(D) which is certified in accordance with  
3                   subsection (d)(6) as being installed as part of  
4                   a plan designed to reduce the total annual en-  
5                   ergy and power costs with respect to the inte-  
6                   rior lighting systems, heating, cooling, ventila-  
7                   tion, and hot water systems of the building by  
8                   50 percent or more in comparison to a ref-  
9                   erence building which meets the minimum re-  
10                  quirements of Standard 90.1–2001 using meth-  
11                  ods of calculation under subsection (d)(2).

12                  “(2) STANDARD 90.1–2001.—The term ‘Stand-  
13                  ard 90.1–2001’ means Standard 90.1–2001 of the  
14                  American Society of Heating, Refrigerating, and Air  
15                  Conditioning Engineers and the Illuminating Engi-  
16                  neering Society of North America (as in effect on  
17                  April 2, 2003).

18                  “(d) SPECIAL RULES.—

19                         “(1) PARTIAL ALLOWANCE.—

20                                 “(A) IN GENERAL.—Except as provided in  
21                                 subsection (f), if—

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1           “(i) the requirement of subsection  
2           (c)(1)(D) is not met, but

3           “(ii) there is a certification in accord-  
4           ance with paragraph (6) that any system  
5           referred to in subsection (c)(1)(C) satisfies  
6           the energy-savings targets established by  
7           the Secretary under subparagraph (B)  
8           with respect to such system,

9           then the requirement of subsection (c)(1)(D)  
10          shall be treated as met with respect to such sys-  
11          tem, and the deduction under subsection (a)  
12          shall be allowed with respect to energy efficient  
13          commercial building property installed as part  
14          of such system and as part of a plan to meet  
15          such targets, except that subsection (b) shall be  
16          applied to such property by substituting ‘\$.60’  
17          for ‘\$1.80’.

18          “(B) REGULATIONS.—The Secretary, after  
19          consultation with the Secretary of Energy, shall  
20          establish a target for each system described in  
21          subsection (c)(1)(C) which, if such targets were

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1 met for all such systems, the building would  
2 meet the requirements of subsection (c)(1)(D).

3 “(2) METHODS OF CALCULATION.—The Sec-  
4 retary, after consultation with the Secretary of En-  
5 ergy, shall promulgate regulations which describe in  
6 detail methods for calculating and verifying energy  
7 and power consumption and cost, based on the pro-  
8 visions of the 2005 California Nonresidential Alter-  
9 native Calculation Method Approval Manual.

10 “(3) COMPUTER SOFTWARE.—

11 “(A) IN GENERAL.—Any calculation under  
12 paragraph (2) shall be prepared by qualified  
13 computer software.

14 “(B) QUALIFIED COMPUTER SOFTWARE.—  
15 For purposes of this paragraph, the term  
16 ‘qualified computer software’ means software—

17 “(i) for which the software designer  
18 has certified that the software meets all  
19 procedures and detailed methods for calcu-  
20 lating energy and power consumption and  
21 costs as required by the Secretary,



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1           “(ii) which provides such forms as re-  
2           quired to be filed by the Secretary in con-  
3           nection with energy efficiency of property  
4           and the deduction allowed under this sec-  
5           tion, and

6           “(iii) which provides a notice form  
7           which documents the energy efficiency fea-  
8           tures of the building and its projected an-  
9           nual energy costs.

10           “(4) ALLOCATION OF DEDUCTION FOR PUBLIC  
11           PROPERTY.—In the case of energy efficient commer-  
12           cial building property installed on or in property  
13           owned by a Federal, State, or local government or  
14           a political subdivision thereof, the Secretary shall  
15           promulgate a regulation to allow the allocation of  
16           the deduction to the person primarily responsible for  
17           designing the property in lieu of the owner of such  
18           property. Such person shall be treated as the tax-  
19           payer for purposes of this section.

20           “(5) NOTICE TO OWNER.—Each certification  
21           required under this section shall include an expla-

1 nation to the building owner regarding the energy  
2 efficiency features of the building and its projected  
3 annual energy costs as provided in the notice under  
4 paragraph (3)(B)(iii).

5 “(6) CERTIFICATION.—

6 “(A) IN GENERAL.—The Secretary shall  
7 prescribe the manner and method for the mak-  
8 ing of certifications under this section.

9 “(B) PROCEDURES.—The Secretary shall  
10 include as part of the certification process pro-  
11 cedures for inspection and testing by qualified  
12 individuals described in subparagraph (C) to  
13 ensure compliance of buildings with energy-sav-  
14 ings plans and targets. Such procedures shall  
15 be comparable, given the difference between  
16 commercial and residential buildings, to the re-  
17 quirements in the Mortgage Industry National  
18 Accreditation Procedures for Home Energy  
19 Rating Systems.

20 “(C) QUALIFIED INDIVIDUALS.—Individ-  
21 uals qualified to determine compliance shall be

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1           only those individuals who are recognized by an  
2           organization certified by the Secretary for such  
3           purposes.

4           “(e) BASIS REDUCTION.—For purposes of this sub-  
5 title, if a deduction is allowed under this section with re-  
6 spect to any energy efficient commercial building property,  
7 the basis of such property shall be reduced by the amount  
8 of the deduction so allowed.

9           “(f) INTERIM RULES FOR LIGHTING SYSTEMS.—  
10 Until such time as the Secretary issues final regulations  
11 under subsection (d)(1)(B) with respect to property which  
12 is part of a lighting system—

13           “(1) IN GENERAL.—The lighting system target  
14 under subsection (d)(1)(A)(ii) shall be a reduction in  
15 lighting power density of 25 percent (50 percent in  
16 the case of a warehouse) of the minimum require-  
17 ments in Table 9.3.1.1 or Table 9.3.1.2 (not includ-  
18 ing additional interior lighting power allowances) of  
19 Standard 90.1–2001.

20           “(2) REDUCTION IN DEDUCTION IF REDUCTION  
21 LESS THAN 40 PERCENT.—

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1           “(A) IN GENERAL.—If, with respect to the  
2           lighting system of any building other than a  
3           warehouse, the reduction in lighting power den-  
4           sity of the lighting system is not at least 40  
5           percent, only the applicable percentage of the  
6           amount of deduction otherwise allowable under  
7           this section with respect to such property shall  
8           be allowed.

9           “(B) APPLICABLE PERCENTAGE.—For  
10          purposes of subparagraph (A), the applicable  
11          percentage is the number of percentage points  
12          (not greater than 100) equal to the sum of—

13                   “(i) 50, and

14                   “(ii) the amount which bears the same  
15                   ratio to 50 as the excess of the reduction  
16                   of lighting power density of the lighting  
17                   system over 25 percentage points bears to  
18                   15.

19          “(C) EXCEPTIONS.—This subsection shall  
20          not apply to any system—

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1           “(i) the controls and circuiting of  
2           which do not comply fully with the manda-  
3           tory and prescriptive requirements of  
4           Standard 90.1–2001 and which do not in-  
5           clude provision for bilevel switching in all  
6           occupancies except hotel and motel guest  
7           rooms, store rooms, restrooms, and public  
8           lobbies, or

9           “(ii) which does not meet the min-  
10          imum requirements for calculated lighting  
11          levels as set forth in the Illuminating Engi-  
12          neering Society of North America Lighting  
13          Handbook, Performance and Application,  
14          Ninth Edition, 2000.

15          “(g) REGULATIONS.—The Secretary shall promul-  
16          gate such regulations as necessary—

17                 “(1) to take into account new technologies re-  
18                 garding energy efficiency and renewable energy for  
19                 purposes of determining energy efficiency and sav-  
20                 ings under this section, and

1           “(2) to provide for a recapture of the deduction  
2           allowed under this section if the plan described in  
3           subsection (c)(1)(D) or (d)(1)(A) is not fully imple-  
4           mented.

5           “(h) TERMINATION.—This section shall not apply  
6 with respect to property placed in service after December  
7 31, 2007.”.

8           (b) CONFORMING AMENDMENTS.—

9           (1) Section 1016(a) is amended by striking  
10           “and” at the end of paragraph (30), by striking the  
11           period at the end of paragraph (31) and inserting “,  
12           and”, and by adding at the end the following new  
13           paragraph:

14           “(32) to the extent provided in section  
15           179D(e).”.

16           (2) Section 1245(a), as amended by this Act, is  
17           amended by inserting “179D,” after “179C,” both  
18           places it appears in paragraphs (2)(C) and (3)(C).

19           (3) Section 1250(b)(3) is amended by inserting  
20           before the period at the end of the first sentence “or  
21           by section 179D”.

1           (4) Section 263(a)(1), as amended by this Act,  
2           is amended by striking “or” at the end of subpara-  
3           graph (I), by striking the period at the end of sub-  
4           paragraph (J) and inserting “, or”, and by inserting  
5           after subparagraph (J) the following new subpara-  
6           graph:

7                         “(K) expenditures for which a deduction is  
8                         allowed under section 179D.”.

9           (5) Section 312(k)(3)(B), as amended by this  
10          Act, is amended by striking “179, 179A, 179B, or  
11          179C” each place it appears in the heading and text  
12          and inserting “179, 179A, 179B, 179C, or 179D”.

13          (c) CLERICAL AMENDMENT.—The table of sections  
14          for part VI of subchapter B of chapter 1, as amended by  
15          this Act, is amended by inserting after section 179C the  
16          following new item:

                          “Sec. 179D. Energy efficient commercial buildings deduction.”.

17          (d) EFFECTIVE DATE.—The amendments made by  
18          this section shall apply to property placed in service after  
19          December 31, 2005.

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1 **SEC. 1332. CREDIT FOR CONSTRUCTION OF NEW ENERGY**  
2 **EFFICIENT HOMES.**

3 (a) IN GENERAL.—Subpart D of part IV of sub-  
4 chapter A of chapter 1 (relating to business related cred-  
5 its), as amended by this Act, is amended by adding at  
6 the end the following new section:

7 **“SEC. 45L. NEW ENERGY EFFICIENT HOME CREDIT.**

8 “(a) ALLOWANCE OF CREDIT.—

9 “(1) IN GENERAL.—For purposes of section 38,  
10 in the case of an eligible contractor, the new energy  
11 efficient home credit for the taxable year is the ap-  
12 plicable amount for each qualified new energy effi-  
13 cient home which is—

14 “(A) constructed by the eligible contractor,  
15 and

16 “(B) acquired by a person from such eligi-  
17 ble contractor for use as a residence during the  
18 taxable year.

19 “(2) APPLICABLE AMOUNT.—For purposes of  
20 paragraph (1), the applicable amount is an amount  
21 equal to—



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1           “(A) in the case of a dwelling unit de-  
2           scribed in paragraph (1) or (2) of subsection  
3           (c), \$2,000, and

4           “(B) in the case of a dwelling unit de-  
5           scribed in paragraph (3) of subsection (c),  
6           \$1,000.

7           “(b) DEFINITIONS.—For purposes of this section—

8           “(1) ELIGIBLE CONTRACTOR.—The term ‘eligi-  
9           ble contractor’ means—

10           “(A) the person who constructed the quali-  
11           fied new energy efficient home, or

12           “(B) in the case of a qualified new energy  
13           efficient home which is a manufactured home,  
14           the manufactured home producer of such home.

15           “(2) QUALIFIED NEW ENERGY EFFICIENT  
16           HOME.—The term ‘qualified new energy efficient  
17           home’ means a dwelling unit—

18           “(A) located in the United States,

19           “(B) the construction of which is substan-  
20           tially completed after the date of the enactment  
21           of this section, and

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1           “(C) which meets the energy saving re-  
2           quirements of subsection (c).

3           “(3) CONSTRUCTION.—The term ‘construction’  
4           includes substantial reconstruction and rehabilita-  
5           tion.

6           “(4) ACQUIRE.—The term ‘acquire’ includes  
7           purchase.

8           “(c) ENERGY SAVING REQUIREMENTS.—A dwelling  
9           unit meets the energy saving requirements of this sub-  
10          section if such unit is—

11          “(1) certified—

12                  “(A) to have a level of annual heating and  
13                  cooling energy consumption which is at least 50  
14                  percent below the annual level of heating and  
15                  cooling energy consumption of a comparable  
16                  dwelling unit—

17                          “(i) which is constructed in accord-  
18                          ance with the standards of chapter 4 of the  
19                          2003 International Energy Conservation  
20                          Code, as such Code (including supple-

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1           ments) is in effect on the date of the en-  
2           actment of this section, and

3                   “(ii) for which the heating and cooling  
4           equipment efficiencies correspond to the  
5           minimum allowed under the regulations es-  
6           tablished by the Department of Energy  
7           pursuant to the National Appliance Energy  
8           Conservation Act of 1987 and in effect at  
9           the time of completion of construction, and

10                   “(B) to have building envelope component  
11           improvements account for at least  $\frac{1}{5}$  of such  
12           50 percent,

13                   “(2) a manufactured home which conforms to  
14           Federal Manufactured Home Construction and Safe-  
15           ty Standards (section 3280 of title 24, Code of Fed-  
16           eral Regulations) and which meets the requirements  
17           of paragraph (1), or

18                   “(3) a manufactured home which conforms to  
19           Federal Manufactured Home Construction and Safe-  
20           ty Standards (section 3280 of title 24, Code of Fed-  
21           eral Regulations) and which—

1           “(A) meets the requirements of paragraph  
2           (1) applied by substituting ‘30 percent’ for ‘50  
3           percent’ both places it appears therein and by  
4           substituting ‘ $\frac{1}{3}$ ’ for ‘ $\frac{1}{5}$ ’ in subparagraph (B)  
5           thereof, or

6           “(B) meets the requirements established  
7           by the Administrator of the Environmental Pro-  
8           tection Agency under the Energy Star Labeled  
9           Homes program.

10          “(d) CERTIFICATION.—

11           “(1) METHOD OF CERTIFICATION.—A certifi-  
12           cation described in subsection (c) shall be made in  
13           accordance with guidance prescribed by the Sec-  
14           retary, after consultation with the Secretary of En-  
15           ergy. Such guidance shall specify procedures and  
16           methods for calculating energy and cost savings.

17           “(2) FORM.—Any certification described in sub-  
18           section (c) shall be made in writing in a manner  
19           which specifies in readily verifiable fashion the en-  
20           ergy efficient building envelope components and en-  
21           ergy efficient heating or cooling equipment installed

1 and their respective rated energy efficiency perform-  
2 ance.

3 “(e) BASIS ADJUSTMENT.—For purposes of this sub-  
4 title, if a credit is allowed under this section in connection  
5 with any expenditure for any property, the increase in the  
6 basis of such property which would (but for this sub-  
7 section) result from such expenditure shall be reduced by  
8 the amount of the credit so determined.

9 “(f) COORDINATION WITH INVESTMENT CREDIT.—  
10 For purposes of this section, expenditures taken into ac-  
11 count under section 47 or 48(a) shall not be taken into  
12 account under this section.

13 “(g) TERMINATION.—This section shall not apply to  
14 any qualified new energy efficient home acquired after De-  
15 cember 31, 2007.”.

16 (b) CREDIT MADE PART OF GENERAL BUSINESS  
17 CREDIT.—Section 38(b) (relating to current year business  
18 credit), as amended by this Act, is amended by striking  
19 “plus” at the end of paragraph (21), by striking the period  
20 at the end of paragraph (22) and inserting “, plus”, and  
21 by adding at the end the following new paragraph:

1           “(23) the new energy efficient home credit de-  
2           termined under section 45L(a).”.

3           (c) BASIS ADJUSTMENT.—Subsection (a) of section  
4 1016, as amended by this Act, is amended by striking  
5 “and” at the end of paragraph (31), by striking the period  
6 at the end of paragraph (32) and inserting “, and”, and  
7 by adding at the end the following new paragraph:

8           “(33) to the extent provided in section 45L(e),  
9           in the case of amounts with respect to which a credit  
10          has been allowed under section 45L.”.

11          (d) DEDUCTION FOR CERTAIN UNUSED BUSINESS  
12 CREDITS.—Section 196(c) (defining qualified business  
13 credits) is amended by striking “and” at the end of para-  
14 graph (11), by striking the period at the end of paragraph  
15 (12) and inserting “, and”, and by adding after paragraph  
16 (12) the following new paragraph:

17          “(13) the new energy efficient home credit de-  
18          termined under section 45L(a).”.

19          (e) CLERICAL AMENDMENT.—The table of sections  
20 for subpart D of part IV of subchapter A of chapter 1,

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1 as amended by this Act, is amended by adding at the end  
2 the following new item:

“Sec. 45L. New energy efficient home credit.”.

3 (f) **EFFECTIVE DATE.**—The amendments made by  
4 this section shall apply to qualified new energy efficient  
5 homes acquired after December 31, 2005, in taxable years  
6 ending after such date.

7 **SEC. 1333. CREDIT FOR CERTAIN NONBUSINESS ENERGY**  
8 **PROPERTY.**

9 (a) **IN GENERAL.**—Subpart A of part IV of sub-  
10 chapter A of chapter 1 (relating to nonrefundable personal  
11 credits) is amended by inserting after section 25B the fol-  
12 lowing new section:

13 **“SEC. 25C. NONBUSINESS ENERGY PROPERTY.**

14 “(a) **ALLOWANCE OF CREDIT.**—In the case of an in-  
15 dividual, there shall be allowed as a credit against the tax  
16 imposed by this chapter for the taxable year an amount  
17 equal to the sum of—

18 “(1) 10 percent of the amount paid or incurred  
19 by the taxpayer for qualified energy efficiency im-  
20 provements installed during such taxable year, and

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1           “(2) the amount of the residential energy prop-  
2           erty expenditures paid or incurred by the taxpayer  
3           during such taxable year.

4           “(b) LIMITATIONS.—

5           “(1) LIFETIME LIMITATION.—The credit al-  
6           lowed under this section with respect to any tax-  
7           payer for any taxable year shall not exceed the ex-  
8           cess (if any) of \$500 over the aggregate credits al-  
9           lowed under this section with respect to such tax-  
10          payer for all prior taxable years.

11          “(2) WINDOWS.—In the case of amounts paid  
12          or incurred for components described in subsection  
13          (c)(3)(B) by any taxpayer for any taxable year, the  
14          credit allowed under this section with respect to such  
15          amounts for such year shall not exceed the excess (if  
16          any) of \$200 over the aggregate credits allowed  
17          under this section with respect to such amounts for  
18          all prior taxable years.

19          “(3) LIMITATION ON RESIDENTIAL ENERGY  
20          PROPERTY EXPENDITURES.—The amount of the



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1 credit allowed under this section by reason of sub-  
2 section (a)(2) shall not exceed—

3 “(A) \$50 for any advanced main air circu-  
4 lating fan,

5 “(B) \$150 for any qualified natural gas,  
6 propane, or oil furnace or hot water boiler, and

7 “(C) \$300 for any item of energy-efficient  
8 building property.

9 “(c) QUALIFIED ENERGY EFFICIENCY IMPROVE-  
10 MENTS.—For purposes of this section—

11 “(1) IN GENERAL.—The term ‘qualified energy  
12 efficiency improvements’ means any energy efficient  
13 building envelope component which meets the pre-  
14 scriptive criteria for such component established by  
15 the 2000 International Energy Conservation Code,  
16 as such Code (including supplements) is in effect on  
17 the date of the enactment of this section (or, in the  
18 case of a metal roof with appropriate pigmented  
19 coatings which meet the Energy Star program re-  
20 quirements), if—

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1           “(A) such component is installed in or on  
2           a dwelling unit located in the United States and  
3           owned and used by the taxpayer as the tax-  
4           payer’s principal residence (within the meaning  
5           of section 121),

6           “(B) the original use of such component  
7           commences with the taxpayer, and

8           “(C) such component reasonably can be ex-  
9           pected to remain in use for at least 5 years.

10          “(2) BUILDING ENVELOPE COMPONENT.—The  
11          term ‘building envelope component’ means—

12           “(A) any insulation material or system  
13           which is specifically and primarily designed to  
14           reduce the heat loss or gain of a dwelling unit  
15           when installed in or on such dwelling unit,

16           “(B) exterior windows (including sky-  
17           lights),

18           “(C) exterior doors, and

19           “(D) any metal roof installed on a dwelling  
20           unit, but only if such roof has appropriate pig-  
21           mented coatings which are specifically and pri-

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1           marily designed to reduce the heat gain of such  
2           dwelling unit.

3           “(3) MANUFACTURED HOMES INCLUDED.—The  
4           term ‘dwelling unit’ includes a manufactured home  
5           which conforms to Federal Manufactured Home  
6           Construction and Safety Standards (section 3280 of  
7           title 24, Code of Federal Regulations).

8           “(d) RESIDENTIAL ENERGY PROPERTY EXPENDI-  
9           TURES.—For purposes of this section—

10           “(1) IN GENERAL.—The term ‘residential en-  
11           ergy property expenditures’ means expenditures  
12           made by the taxpayer for qualified energy property  
13           which is—

14                   “(A) installed on or in connection with a  
15                   dwelling unit located in the United States and  
16                   owned and used by the taxpayer as the tax-  
17                   payer’s principal residence (within the meaning  
18                   of section 121), and

19                   “(B) originally placed in service by the tax-  
20                   payer.

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1       Such term includes expenditures for labor costs  
2       properly allocable to the onsite preparation, assem-  
3       bly, or original installation of the property.

4           “(2) QUALIFIED ENERGY PROPERTY.—

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

7                   “(i) energy-efficient building property,

8                   “(ii) a qualified natural gas, propane,  
9       or oil furnace or hot water boiler, or

10                  “(iii) an advanced main air circulating  
11       fan.

12               “(B) PERFORMANCE AND QUALITY STAND-  
13       ARDS.—Property described under subparagraph  
14       (A) shall meet the performance and quality  
15       standards, and the certification requirements (if  
16       any), which—

17                   “(i) have been prescribed by the Sec-  
18       retary by regulations (after consultation  
19       with the Secretary of Energy or the Ad-  
20       ministrators of the Environmental Protec-  
21       tion Agency, as appropriate), and

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1           “(ii) are in effect at the time of the  
2           acquisition of the property, or at the time  
3           of the completion of the construction, re-  
4           construction, or erection of the property,  
5           as the case may be.

6           “(C) REQUIREMENTS FOR STANDARDS.—  
7           The standards and requirements prescribed by  
8           the Secretary under subparagraph (B)—

9           “(i) in the case of the energy effi-  
10          ciency ratio (EER) for central air condi-  
11          tioners and electric heat pumps—

12          “(I) shall require measurements  
13          to be based on published data which is  
14          tested by manufacturers at 95 degrees  
15          Fahrenheit, and

16          “(II) may be based on the cer-  
17          tified data of the Air Conditioning  
18          and Refrigeration Institute that are  
19          prepared in partnership with the Con-  
20          sortium for Energy Efficiency, and

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1                   “(ii) in the case of geothermal heat  
2                   pumps—

3                   “(I) shall be based on testing  
4                   under the conditions of ARI/ISO  
5                   Standard 13256–1 for Water Source  
6                   Heat Pumps or ARI 870 for Direct  
7                   Expansion GeoExchange Heat Pumps  
8                   (DX), as appropriate, and

9                   “(II) shall include evidence that  
10                   water heating services have been pro-  
11                   vided through a desuperheater or inte-  
12                   grated water heating system con-  
13                   nected to the storage water heater  
14                   tank.

15                   “(3) ENERGY-EFFICIENT BUILDING PROP-  
16                   ERTY.—The term ‘energy-efficient building property’  
17                   means—

18                   “(A) an electric heat pump water heater  
19                   which yields an energy factor of at least 2.0 in  
20                   the standard Department of Energy test proce-  
21                   dure,

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1           “(B) an electric heat pump which has a  
2           heating seasonal performance factor (HSPF) of  
3           at least 9, a seasonal energy efficiency ratio  
4           (SEER) of at least 15, and an energy efficiency  
5           ratio (EER) of at least 13,

6           “(C) a geothermal heat pump which—

7                   “(i) in the case of a closed loop prod-  
8                   uct, has an energy efficiency ratio (EER)  
9                   of at least 14.1 and a heating coefficient of  
10                  performance (COP) of at least 3.3,

11                   “(ii) in the case of an open loop prod-  
12                   uct, has an energy efficiency ratio (EER)  
13                   of at least 16.2 and a heating coefficient of  
14                  performance (COP) of at least 3.6, and

15                   “(iii) in the case of a direct expansion  
16                   (DX) product, has an energy efficiency  
17                   ratio (EER) of at least 15 and a heating  
18                   coefficient of performance (COP) of at  
19                  least 3.5,

20           “(D) a central air conditioner which  
21           achieves the highest efficiency tier established

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1 by the Consortium for Energy Efficiency, as in  
2 effect on January 1, 2006, and

3 “(E) a natural gas, propane, or oil water  
4 heater which has an energy factor of at least  
5 0.80.

6 “(4) QUALIFIED NATURAL GAS, PROPANE, OR  
7 OIL FURNACE OR HOT WATER BOILER.—The term  
8 ‘qualified natural gas, propane, or oil furnace or hot  
9 water boiler’ means a natural gas, propane, or oil  
10 furnace or hot water boiler which achieves an annual  
11 fuel utilization efficiency rate of not less than 95.

12 “(5) ADVANCED MAIN AIR CIRCULATING FAN.—  
13 The term ‘advanced main air circulating fan’ means  
14 a fan used in a natural gas, propane, or oil furnace  
15 and which has an annual electricity use of no more  
16 than 2 percent of the total annual energy use of the  
17 furnace (as determined in the standard Department  
18 of Energy test procedures).

19 “(e) SPECIAL RULES.—For purposes of this  
20 section—



## 1361

1           “(1) APPLICATION OF RULES.—Rules similar to  
2           the rules under paragraphs (4), (5), (6), (7), (8),  
3           and (9) of section 25D(e) shall apply.

4           “(2) JOINT OWNERSHIP OF ENERGY ITEMS.—

5                 “(A) IN GENERAL.—Any expenditure oth-  
6                 erwise qualifying as an expenditure under this  
7                 section shall not be treated as failing to so  
8                 qualify merely because such expenditure was  
9                 made with respect to 2 or more dwelling units.

10                “(B) LIMITS APPLIED SEPARATELY.—In  
11                the case of any expenditure described in sub-  
12                paragraph (A), the amount of the credit allow-  
13                able under subsection (a) shall (subject to para-  
14                graph (1)) be computed separately with respect  
15                to the amount of the expenditure made for each  
16                dwelling unit.

17           “(f) BASIS ADJUSTMENTS.—For purposes of this  
18           subtitle, if a credit is allowed under this section for any  
19           expenditure with respect to any property, the increase in  
20           the basis of such property which would (but for this sub-

1 section) result from such expenditure shall be reduced by  
2 the amount of the credit so allowed.

3 “(g) TERMINATION.—This section shall not apply  
4 with respect to any property placed in service after Decem-  
5 ber 31, 2007.”.

6 (b) CONFORMING AMENDMENTS.—

7 (1) Subsection (a) of section 1016, as amended  
8 by this Act, is amended by striking “and” at the end  
9 of paragraph (32), by striking the period at the end  
10 of paragraph (33) and inserting “, and”, and by  
11 adding at the end the following new paragraph:

12 “(34) to the extent provided in section 25C(e),  
13 in the case of amounts with respect to which a credit  
14 has been allowed under section 25C.”.

15 (2) The table of sections for subpart A of part  
16 IV of subchapter A of chapter 1 is amended by in-  
17 serting after the item relating to section 25B the fol-  
18 lowing new item:

“Sec. 25C. Nonbusiness energy property.”.

1 (c) EFFECTIVE DATES.—The amendments made by  
2 this section shall apply to property placed in service after  
3 December 31, 2005.

4 **SEC. 1334. CREDIT FOR ENERGY EFFICIENT APPLIANCES.**

5 (a) IN GENERAL.—Subpart D of part IV of sub-  
6 chapter A of chapter 1 (relating to business-related cred-  
7 its), as amended by this Act, is amended by adding at  
8 the end the following new section:

9 **“SEC. 45M. ENERGY EFFICIENT APPLIANCE CREDIT.**

10 “(a) GENERAL RULE.—

11 “(1) IN GENERAL.—For purposes of section 38,  
12 the energy efficient appliance credit determined  
13 under this section for any taxable year is an amount  
14 equal to the sum of the credit amounts determined  
15 under paragraph (2) for each type of qualified en-  
16 ergy efficient appliance produced by the taxpayer  
17 during the calendar year ending with or within the  
18 taxable year.

19 “(2) CREDIT AMOUNTS.—The credit amount  
20 determined for any type of qualified energy efficient  
21 appliance is—

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1           “(A) the applicable amount determined  
2           under subsection (b) with respect to such type,  
3           multiplied by

4           “(B) the eligible production for such type.

5           “(b) APPLICABLE AMOUNT.—

6           “(1) IN GENERAL.—For purposes of subsection  
7           (a)—

8           “(A) DISHWASHERS.—The applicable  
9           amount is the energy savings amount in the  
10          case of a dishwasher which—

11           “(i) is manufactured in calendar year  
12           2006 or 2007, and

13           “(ii) meets the requirements of the  
14           Energy Star program which are in effect  
15           for dishwashers in 2007.

16           “(B) CLOTHES WASHERS.—The applicable  
17           amount is \$100 in the case of a clothes washer  
18           which—

19           “(i) is manufactured in calendar year  
20           2006 or 2007, and

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1           “(ii) meets the requirements of the  
2           Energy Star program which are in effect  
3           for clothes washers in 2007.

4           “(C) REFRIGERATORS.—

5           “(i) 15 PERCENT SAVINGS.—The ap-  
6           plicable amount is \$75 in the case of a re-  
7           frigerator which—

8                   “(I) is manufactured in calendar  
9                   year 2006, and

10                   “(II) consumes at least 15 per-  
11                   cent but not more than 20 percent  
12                   less kilowatt hours per year than the  
13                   2001 energy conservation standards.

14           “(ii) 20 PERCENT SAVINGS.—The ap-  
15           plicable amount is \$125 in the case of a  
16           refrigerator which—

17                   “(I) is manufactured in calendar  
18                   year 2006 or 2007, and

19                   “(II) consumes at least 20 per-  
20                   cent but not more than 25 percent

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1 less kilowatt hours per year than the  
2 2001 energy conservation standards.

3 “(iii) 25 PERCENT SAVINGS.—The ap-  
4 plicable amount is \$175 in the case of a  
5 refrigerator which—

6 “(I) is manufactured in calendar  
7 year 2006 or 2007, and

8 “(II) consumes at least 25 per-  
9 cent less kilowatt hours per year than  
10 the 2001 energy conservation stand-  
11 ards.

12 “(2) ENERGY SAVINGS AMOUNT.—For purposes  
13 of paragraph (1)(A)—

14 “(A) IN GENERAL.—The energy savings  
15 amount is the lesser of—

16 “(i) the product of—

17 “(I) \$3, and

18 “(II) 100 multiplied by the en-  
19 ergy savings percentage, or

20 “(ii) \$100.

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1 “(B) ENERGY SAVINGS PERCENTAGE.—

2 For purposes of subparagraph (A), the energy  
3 savings percentage is the ratio of—

4 “(i) the EF required by the Energy  
5 Star program for dishwashers in 2007  
6 minus the EF required by the Energy Star  
7 program for dishwashers in 2005, to

8 “(ii) the EF required by the Energy  
9 Star program for dishwashers in 2007.

10 “(c) ELIGIBLE PRODUCTION.—

11 “(1) IN GENERAL.—Except as provided in para-  
12 graphs (2), the eligible production in a calendar year  
13 with respect to each type of energy efficient appli-  
14 ance is the excess of—

15 “(A) the number of appliances of such type  
16 which are produced by the taxpayer in the  
17 United States during such calendar year, over

18 “(B) the average number of appliances of  
19 such type which were produced by the taxpayer  
20 (or any predecessor) in the United States dur-  
21 ing the preceding 3-calendar year period.

1           “(2) SPECIAL RULE FOR REFRIGERATORS.—

2           The eligible production in a calendar year with re-  
3           spect to each type of refrigerator described in sub-  
4           section (b)(1)(C) is the excess of—

5                   “(A) the number of appliances of such type  
6                   which are produced by the taxpayer in the  
7                   United States during such calendar year, over

8                   “(B) 110 percent of the average number of  
9                   appliances of such type which were produced by  
10                  the taxpayer (or any predecessor) in the United  
11                  States during the preceding 3-calendar year pe-  
12                  riod.

13          “(d) TYPES OF ENERGY EFFICIENT APPLIANCE.—

14          For purposes of this section, the types of energy efficient  
15          appliances are—

16                  “(1) dishwashers described in subsection  
17                  (b)(1)(A),

18                  “(2) clothes washers described in subsection  
19                  (b)(1)(B),

20                  “(3) refrigerators described in subsection  
21                  (b)(1)(C)(i),



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1           “(4) refrigerators described in subsection  
2           (b)(1)(C)(ii), and

3           “(5) refrigerators described in subsection  
4           (b)(1)(C)(iii).

5           “(e) LIMITATIONS.—

6           “(1) AGGREGATE CREDIT AMOUNT ALLOWED.—

7           The aggregate amount of credit allowed under sub-  
8           section (a) with respect to a taxpayer for any tax-  
9           able year shall not exceed \$75,000,000 reduced by  
10          the amount of the credit allowed under subsection  
11          (a) to the taxpayer (or any predecessor) for all prior  
12          taxable years.

13          “(2) AMOUNT ALLOWED FOR 15 PERCENT SAV-

14          INGS REFRIGERATORS.—In the case of refrigerators  
15          described in subsection (b)(1)(C)(i), the aggregate  
16          amount of the credit allowed under subsection (a)  
17          with respect to a taxpayer for any taxable year shall  
18          not exceed \$20,000,000.

19          “(3) LIMITATION BASED ON GROSS RE-

20          CEIPTS.—The credit allowed under subsection (a)  
21          with respect to a taxpayer for the taxable year shall

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1 not exceed an amount equal to 2 percent of the aver-  
2 age annual gross receipts of the taxpayer for the 3  
3 taxable years preceding the taxable year in which  
4 the credit is determined.

5 “(4) GROSS RECEIPTS.—For purposes of this  
6 subsection, the rules of paragraphs (2) and (3) of  
7 section 448(c) shall apply.

8 “(f) DEFINITIONS.—For purposes of this section—

9 “(1) QUALIFIED ENERGY EFFICIENT APPLI-  
10 ANCE.—The term ‘qualified energy efficient appli-  
11 ance’ means—

12 “(A) any dishwasher described in sub-  
13 section (b)(1)(A),

14 “(B) any clothes washer described in sub-  
15 section (b)(1)(B), and

16 “(C) any refrigerator described in sub-  
17 section (b)(1)(C).

18 “(2) DISHWASHER.—The term ‘dishwasher’  
19 means a residential dishwasher subject to the energy  
20 conservation standards established by the Depart-  
21 ment of Energy.

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1           “(3) CLOTHES WASHER.—The term ‘clothes  
2 washer’ means a residential model clothes washer,  
3 including a residential style coin operated washer.

4           “(4) REFRIGERATOR.—The term ‘refrigerator’  
5 means a residential model automatic defrost refrig-  
6 erator-freezer which has an internal volume of at  
7 least 16.5 cubic feet.

8           “(5) EF.—The term ‘EF’ means the energy  
9 factor established by the Department of Energy for  
10 compliance with the Federal energy conservation  
11 standards.

12           “(6) PRODUCED.—The term ‘produced’ in-  
13 cludes manufactured.

14           “(7) 2001 ENERGY CONSERVATION STAND-  
15 ARD.—The term ‘2001 energy conservation stand-  
16 ard’ means the energy conservation standards pro-  
17 mulgated by the Department of Energy and effective  
18 July 1, 2001.

19           “(g) SPECIAL RULES.—For purposes of this  
20 section—

1           “(1) IN GENERAL.—Rules similar to the rules  
2 of subsections (c), (d), and (e) of section 52 shall  
3 apply.

4           “(2) CONTROLLED GROUP.—

5                 “(A) IN GENERAL.—All persons treated as  
6 a single employer under subsection (a) or (b) of  
7 section 52 or subsection (m) or (o) of section  
8 414 shall be treated as a single producer.

9                 “(B) INCLUSION OF FOREIGN CORPORA-  
10 TIONS.—For purposes of subparagraph (A), in  
11 applying subsections (a) and (b) of section 52  
12 to this section, section 1563 shall be applied  
13 without regard to subsection (b)(2)(C) thereof.

14           “(3) VERIFICATION.—No amount shall be al-  
15 lowed as a credit under subsection (a) with respect  
16 to which the taxpayer has not submitted such infor-  
17 mation or certification as the Secretary, in consulta-  
18 tion with the Secretary of Energy, determines nec-  
19 essary.”.

20           (b) CONFORMING AMENDMENT.—Section 38(b) (re-  
21 lating to general business credit), as amended by this Act,

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1 is amended by striking “plus” at the end of paragraph  
2 (22), by striking the period at the end of paragraph (23)  
3 and inserting “, plus”, and by adding at the end the fol-  
4 lowing new paragraph:

5           “(24) the energy efficient appliance credit de-  
6           termined under section 45M(a).”.

7           (c) CLERICAL AMENDMENT.—The table of sections  
8 for subpart D of part IV of subchapter A of chapter 1,  
9 as amended by this Act, is amended by adding at the end  
10 the following new item:

          “Sec. 45M. Energy efficient appliance credit.”.

11           (d) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to appliances produced after De-  
13 cember 31, 2005.

14 **SEC. 1335. CREDIT FOR RESIDENTIAL ENERGY EFFICIENT**  
15 **PROPERTY.**

16           (a) IN GENERAL.—Subpart A of part IV of sub-  
17 chapter A of chapter 1 (relating to nonrefundable personal  
18 credits), as amended by this Act, is amended by inserting  
19 after section 25C the following new section:

1 **“SEC. 25D. RESIDENTIAL ENERGY EFFICIENT PROPERTY.**

2 “(a) ALLOWANCE OF CREDIT.—In the case of an in-  
3 dividual, there shall be allowed as a credit against the tax  
4 imposed by this chapter for the taxable year an amount  
5 equal to the sum of—

6 “(1) 30 percent of the qualified photovoltaic  
7 property expenditures made by the taxpayer during  
8 such year,

9 “(2) 30 percent of the qualified solar water  
10 heating property expenditures made by the taxpayer  
11 during such year, and

12 “(3) 30 percent of the qualified fuel cell prop-  
13 erty expenditures made by the taxpayer during such  
14 year.

15 “(b) LIMITATIONS.—

16 “(1) MAXIMUM CREDIT.—The credit allowed  
17 under subsection (a) for any taxable year shall not  
18 exceed—

19 “(A) \$2,000 with respect to any qualified  
20 photovoltaic property expenditures,

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1           “(B) \$2,000 with respect to any qualified  
2           solar water heating property expenditures, and

3           “(C) \$500 with respect to each half kilo-  
4           watt of capacity of qualified fuel cell property  
5           (as defined in section 48(c)(1)) for which quali-  
6           fied fuel cell property expenditures are made.

7           “(2) CERTIFICATION OF SOLAR WATER HEAT-  
8           ING PROPERTY.—No credit shall be allowed under  
9           this section for an item of property described in sub-  
10          section (d)(1) unless such property is certified for  
11          performance by the non-profit Solar Rating Certifi-  
12          cation Corporation or a comparable entity endorsed  
13          by the government of the State in which such prop-  
14          erty is installed.

15          “(c) CARRYFORWARD OF UNUSED CREDIT.—If the  
16          credit allowable under subsection (a) exceeds the limita-  
17          tion imposed by section 26(a) for such taxable year re-  
18          duced by the sum of the credits allowable under this sub-  
19          part (other than this section), such excess shall be carried  
20          to the succeeding taxable year and added to the credit al-

1 lowable under subsection (a) for such succeeding taxable  
2 year.

3 “(d) DEFINITIONS.—For purposes of this section—

4 “(1) QUALIFIED SOLAR WATER HEATING PROP-  
5 ERTY EXPENDITURE.—The term ‘qualified solar  
6 water heating property expenditure’ means an ex-  
7 penditure for property to heat water for use in a  
8 dwelling unit located in the United States and used  
9 as a residence by the taxpayer if at least half of the  
10 energy used by such property for such purpose is de-  
11 rived from the sun.

12 “(2) QUALIFIED PHOTOVOLTAIC PROPERTY EX-  
13 PENDITURE.—The term ‘qualified photovoltaic prop-  
14 erty expenditure’ means an expenditure for property  
15 which uses solar energy to generate electricity for  
16 use in a dwelling unit located in the United States  
17 and used as a residence by the taxpayer.

18 “(3) QUALIFIED FUEL CELL PROPERTY EX-  
19 PENDITURE.—The term ‘qualified fuel cell property  
20 expenditure’ means an expenditure for qualified fuel  
21 cell property (as defined in section 48(c)(1)) in-



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1       stalled on or in connection with a dwelling unit lo-  
2       cated in the United States and used as a principal  
3       residence (within the meaning of section 121) by the  
4       taxpayer.

5       “(e) SPECIAL RULES.—For purposes of this  
6 section—

7           “(1) LABOR COSTS.—Expenditures for labor  
8       costs properly allocable to the onsite preparation, as-  
9       sembly, or original installation of the property de-  
10      scribed in subsection (d) and for piping or wiring to  
11      interconnect such property to the dwelling unit shall  
12      be taken into account for purposes of this section.

13           “(2) SOLAR PANELS.—No expenditure relating  
14      to a solar panel or other property installed as a roof  
15      (or portion thereof) shall fail to be treated as prop-  
16      erty described in paragraph (1) or (2) of subsection  
17      (d) solely because it constitutes a structural compo-  
18      nent of the structure on which it is installed.

19           “(3) SWIMMING POOLS, ETC., USED AS STOR-  
20      AGE MEDIUM.—Expenditures which are properly al-  
21      locable to a swimming pool, hot tub, or any other

1 energy storage medium which has a function other  
2 than the function of such storage shall not be taken  
3 into account for purposes of this section.

4 “(4) DOLLAR AMOUNTS IN CASE OF JOINT OC-  
5 CUPANCY.—In the case of any dwelling unit which is  
6 jointly occupied and used during any calendar year  
7 as a residence by 2 or more individuals the following  
8 rules shall apply:

9 “(A) The amount of the credit allowable,  
10 under subsection (a) by reason of expenditures  
11 (as the case may be) made during such cal-  
12 endar year by any of such individuals with re-  
13 spect to such dwelling unit shall be determined  
14 by treating all of such individuals as 1 taxpayer  
15 whose taxable year is such calendar year.

16 “(B) There shall be allowable, with respect  
17 to such expenditures to each of such individ-  
18 uals, a credit under subsection (a) for the tax-  
19 able year in which such calendar year ends in  
20 an amount which bears the same ratio to the  
21 amount determined under subparagraph (A) as

1           the amount of such expenditures made by such  
2           individual during such calendar year bears to  
3           the aggregate of such expenditures made by all  
4           of such individuals during such calendar year.

5           “(C) Subparagraphs (A) and (B) shall be  
6           applied separately with respect to expenditures  
7           described in paragraphs (1), (2), and (3) of  
8           subsection (d).

9           “(5) TENANT-STOCKHOLDER IN COOPERATIVE  
10          HOUSING CORPORATION.—In the case of an indi-  
11          vidual who is a tenant-stockholder (as defined in sec-  
12          tion 216) in a cooperative housing corporation (as  
13          defined in such section), such individual shall be  
14          treated as having made his tenant-stockholder’s pro-  
15          portionate share (as defined in section 216(b)(3)) of  
16          any expenditures of such corporation.

17          “(6) CONDOMINIUMS.—

18                 “(A) IN GENERAL.—In the case of an indi-  
19          vidual who is a member of a condominium man-  
20          agement association with respect to a condo-  
21          minium which the individual owns, such indi-

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1           vidual shall be treated as having made the indi-  
2           vidual's proportionate share of any expenditures  
3           of such association.

4           “(B) CONDOMINIUM MANAGEMENT ASSO-  
5           CIATION.—For purposes of this paragraph, the  
6           term ‘condominium management association’  
7           means an organization which meets the require-  
8           ments of paragraph (1) of section 528(c) (other  
9           than subparagraph (E) thereof) with respect to  
10          a condominium project substantially all of the  
11          units of which are used as residences.

12          “(7) ALLOCATION IN CERTAIN CASES.—If less  
13          than 80 percent of the use of an item is for nonbusi-  
14          ness purposes, only that portion of the expenditures  
15          for such item which is properly allocable to use for  
16          nonbusiness purposes shall be taken into account.

17          “(8) WHEN EXPENDITURE MADE; AMOUNT OF  
18          EXPENDITURE.—

19                 “(A) IN GENERAL.—Except as provided in  
20                 subparagraph (B), an expenditure with respect

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1 to an item shall be treated as made when the  
2 original installation of the item is completed.

3 “(B) EXPENDITURES PART OF BUILDING  
4 CONSTRUCTION.—In the case of an expenditure  
5 in connection with the construction or recon-  
6 struction of a structure, such expenditure shall  
7 be treated as made when the original use of the  
8 constructed or reconstructed structure by the  
9 taxpayer begins.

10 “(9) PROPERTY FINANCED BY SUBSIDIZED EN-  
11 ERGY FINANCING.—For purposes of determining the  
12 amount of expenditures made by any individual with  
13 respect to any dwelling unit, there shall not be taken  
14 into account expenditures which are made from sub-  
15 sidized energy financing (as defined in section  
16 48(a)(4)(C)).

17 “(f) BASIS ADJUSTMENTS.—For purposes of this  
18 subtitle, if a credit is allowed under this section for any  
19 expenditure with respect to any property, the increase in  
20 the basis of such property which would (but for this sub-

1 section) result from such expenditure shall be reduced by  
2 the amount of the credit so allowed.

3 “(g) TERMINATION.—The credit allowed under this  
4 section shall not apply to property placed in service after  
5 December 31, 2007.”.

6 (b) CONFORMING AMENDMENTS.—

7 (1) Section 23(c) is amended by striking “this  
8 section and section 1400C” and inserting “this sec-  
9 tion, section 25D, and section 1400C”.

10 (2) Section 25(e)(1)(C) is amended by striking  
11 “this section and sections 23 and 1400C” and in-  
12 sserting “other than this section, section 23, section  
13 25D, and section 1400C”.

14 (3) Section 1400C(d) is amended by striking  
15 “this section” and inserting “this section and section  
16 25D”.

17 (4) Section 1016(a), as amended by this Act, is  
18 amended by striking “and” at the end of paragraph  
19 (33), by striking the period at the end of paragraph  
20 (34) and inserting “, and”, and by adding at the  
21 end the following new paragraph:



1 (b) QUALIFIED FUEL CELL PROPERTY; QUALIFIED  
2 MICROTURBINE PROPERTY.—Section 48 (relating to en-  
3 ergy credit) is amended by adding at the end the following  
4 new subsection:

5 “(c) QUALIFIED FUEL CELL PROPERTY; QUALIFIED  
6 MICROTURBINE PROPERTY.—For purposes of this  
7 subsection—

8 “(1) QUALIFIED FUEL CELL PROPERTY.—

9 “(A) IN GENERAL.—The term ‘qualified  
10 fuel cell property’ means a fuel cell power plant  
11 which—

12 “(i) has a nameplate capacity of at  
13 least 0.5 kilowatt of electricity using an  
14 electrochemical process, and

15 “(ii) has an electricity-only generation  
16 efficiency greater than 30 percent.

17 “(B) LIMITATION.—In the case of quali-  
18 fied fuel cell property placed in service during  
19 the taxable year, the credit otherwise deter-  
20 mined under paragraph (1) for such year with  
21 respect to such property shall not exceed an



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1 amount equal to \$500 for each 0.5 kilowatt of  
2 capacity of such property.

3 “(C) FUEL CELL POWER PLANT.—The  
4 term ‘fuel cell power plant’ means an integrated  
5 system comprised of a fuel cell stack assembly  
6 and associated balance of plant components  
7 which converts a fuel into electricity using elec-  
8 trochemical means.

9 “(D) SPECIAL RULE.—The first sentence  
10 of the matter in subsection (a)(3) which follows  
11 subparagraph (D) thereof shall not apply to  
12 qualified fuel cell property which is used pre-  
13 dominantly in the trade or business of the fur-  
14 nishing or sale of telephone service, telegraph  
15 service by means of domestic telegraph oper-  
16 ations, or other telegraph services (other than  
17 international telegraph services).

18 “(E) TERMINATION.—The term ‘qualified  
19 fuel cell property’ shall not include any property  
20 for any period after December 31, 2007.

21 “(2) QUALIFIED MICROTURBINE PROPERTY.—

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1           “(A) IN GENERAL.—The term ‘qualified  
2           microturbine property’ means a stationary  
3           microturbine power plant which—

4                   “(i) has a nameplate capacity of less  
5                   than 2,000 kilowatts, and

6                   “(ii) has an electricity-only generation  
7                   efficiency of not less than 26 percent at  
8                   International Standard Organization condi-  
9                   tions.

10           “(B) LIMITATION.—In the case of quali-  
11           fied microturbine property placed in service  
12           during the taxable year, the credit otherwise de-  
13           termined under paragraph (1) for such year  
14           with respect to such property shall not exceed  
15           an amount equal \$200 for each kilowatt of ca-  
16           pacity of such property.

17           “(C) STATIONARY MICROTURBINE POWER  
18           PLANT.—The term ‘stationary microturbine  
19           power plant’ means an integrated system com-  
20           prised of a gas turbine engine, a combustor, a  
21           recuperator or regenerator, a generator or alter-

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1 nator, and associated balance of plant compo-  
2 nents which converts a fuel into electricity and  
3 thermal energy. Such term also includes all sec-  
4 ondary components located between the existing  
5 infrastructure for fuel delivery and the existing  
6 infrastructure for power distribution, including  
7 equipment and controls for meeting relevant  
8 power standards, such as voltage, frequency,  
9 and power factors.

10 “(D) SPECIAL RULE.—The first sentence  
11 of the matter in subsection (a)(3) which follows  
12 subparagraph (D) thereof shall not apply to  
13 qualified microturbine property which is used  
14 predominantly in the trade or business of the  
15 furnishing or sale of telephone service, tele-  
16 graph service by means of domestic telegraph  
17 operations, or other telegraph services (other  
18 than international telegraph services).

19 “(E) TERMINATION.—The term ‘qualified  
20 microturbine property’ shall not include any

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1           property for any period after December 31,  
2           2007.”.

3           (c) ENERGY PERCENTAGE.—Section 48(a)(2)(A) (re-  
4 relating to energy percentage) is amended to read as follows:

5                   “(A) IN GENERAL.—The energy percent-  
6                   age is—

7                           “(i) in the case of qualified fuel cell  
8                           property, 30 percent, and

9                           “(ii) in the case of any other energy  
10                          property, 10 percent.”.

11          (d) CONFORMING AMENDMENT.—Section 48(a)(1) is  
12 amended by inserting “except as provided in paragraph  
13 (1)(B) or (2)(B) of subsection (d),” before “the energy”.

14          (e) EFFECTIVE DATE.—The amendments made by  
15 this section shall apply to periods after December 31,  
16 2005, in taxable years ending after such date, under rules  
17 similar to the rules of section 48(m) of the Internal Rev-  
18 enue Code of 1986 (as in effect on the day before the date  
19 of the enactment of the Revenue Reconciliation Act of  
20 1990).

1 **SEC. 1337. BUSINESS SOLAR INVESTMENT TAX CREDIT.**

2 (a) INCREASE IN ENERGY PERCENTAGE.—Section  
3 48(a)(2)(A) (relating to energy percentage), as amended  
4 by this Act, is amended to read as follows:

5 “(A) IN GENERAL.—The energy percent-  
6 age is—

7 “(i) 30 percent in the case of—

8 “(I) qualified fuel cell property,

9 “(II) energy property described  
10 in paragraph (3)(A)(i) but only with  
11 respect to periods ending before Janu-  
12 ary 1, 2008, and

13 “(III) energy property described  
14 in paragraph (3)(A)(ii), and

15 “(ii) in the case of any energy prop-  
16 erty to which clause (i) does not apply, 10  
17 percent.”.

18 (b) HYBRID SOLAR LIGHTING SYSTEMS.—Subpara-  
19 graph (A) of section 48(a)(3) is amended by striking “or”  
20 at the end of clause (i), by redesignating clause (ii) as

1390

1 clause (iii), and by inserting after clause (i) the following  
2 new clause:

3                   “(ii) equipment which uses solar en-  
4                   ergy to illuminate the inside of a structure  
5                   using fiber-optic distributed sunlight but  
6                   only with respect to periods ending before  
7                   January 1, 2008, or”.

8           (c) LIMITATION ON USE OF SOLAR ENERGY TO  
9 HEAT SWIMMING POOLS.—Clause (i) of section  
10 48(a)(3)(A) is amended by inserting “excepting property  
11 used to generate energy for the purposes of heating a  
12 swimming pool,” after “solar process heat,”.

13           (d) EFFECTIVE DATE.—The amendments made by  
14 this section shall apply to periods after December 31,  
15 2005, in taxable years ending after such date, under rules  
16 similar to the rules of section 48(m) of the Internal Rev-  
17 enue Code of 1986 (as in effect on the day before the date  
18 of the enactment of the Revenue Reconciliation Act of  
19 1990).

1           **Subtitle D—Alternative Motor**  
2           **Vehicles and Fuels Incentives**

3   **SEC. 1341. ALTERNATIVE MOTOR VEHICLE CREDIT.**

4           (a) IN GENERAL.—Subpart B of part IV of sub-  
5 chapter A of chapter 1 (relating to foreign tax credit, etc.)  
6 is amended by adding at the end the following new section:

7   **“SEC. 30B. ALTERNATIVE MOTOR VEHICLE CREDIT.**

8           “(a) ALLOWANCE OF CREDIT.—There shall be al-  
9 lowed as a credit against the tax imposed by this chapter  
10 for the taxable year an amount equal to the sum of—

11           “(1) the new qualified fuel cell motor vehicle  
12 credit determined under subsection (b),

13           “(2) the new advanced lean burn technology  
14 motor vehicle credit determined under subsection (c),

15           “(3) the new qualified hybrid motor vehicle  
16 credit determined under subsection (d), and

17           “(4) the new qualified alternative fuel motor ve-  
18 hicle credit determined under subsection (e).

19           “(b) NEW QUALIFIED FUEL CELL MOTOR VEHICLE  
20 CREDIT.—

1392

1           “(1) IN GENERAL.—For purposes of subsection  
2           (a), the new qualified fuel cell motor vehicle credit  
3           determined under this subsection with respect to a  
4           new qualified fuel cell motor vehicle placed in service  
5           by the taxpayer during the taxable year is—

6                   “(A) \$8,000 (\$4,000 in the case of a vehi-  
7                   cle placed in service after December 31, 2009),  
8                   if such vehicle has a gross vehicle weight rating  
9                   of not more than 8,500 pounds,

10                   “(B) \$10,000, if such vehicle has a gross  
11                   vehicle weight rating of more than 8,500  
12                   pounds but not more than 14,000 pounds,

13                   “(C) \$20,000, if such vehicle has a gross  
14                   vehicle weight rating of more than 14,000  
15                   pounds but not more than 26,000 pounds, and

16                   “(D) \$40,000, if such vehicle has a gross  
17                   vehicle weight rating of more than 26,000  
18                   pounds.

19           “(2) INCREASE FOR FUEL EFFICIENCY.—

20                   “(A) IN GENERAL.—The amount deter-  
21                   mined under paragraph (1)(A) with respect to



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1 a new qualified fuel cell motor vehicle which is  
2 a passenger automobile or light truck shall be  
3 increased by—

4 “(i) \$1,000, if such vehicle achieves at  
5 least 150 percent but less than 175 per-  
6 cent of the 2002 model year city fuel econ-  
7 omy,

8 “(ii) \$1,500, if such vehicle achieves  
9 at least 175 percent but less than 200 per-  
10 cent of the 2002 model year city fuel econ-  
11 omy,

12 “(iii) \$2,000, if such vehicle achieves  
13 at least 200 percent but less than 225 per-  
14 cent of the 2002 model year city fuel econ-  
15 omy,

16 “(iv) \$2,500, if such vehicle achieves  
17 at least 225 percent but less than 250 per-  
18 cent of the 2002 model year city fuel econ-  
19 omy,

20 “(v) \$3,000, if such vehicle achieves  
21 at least 250 percent but less than 275 per-

1394

1 cent of the 2002 model year city fuel econ-  
 2 omy,

3 “(vi) \$3,500, if such vehicle achieves  
 4 at least 275 percent but less than 300 per-  
 5 cent of the 2002 model year city fuel econ-  
 6 omy, and

7 “(vii) \$4,000, if such vehicle achieves  
 8 at least 300 percent of the 2002 model  
 9 year city fuel economy.

10 “(B) 2002 MODEL YEAR CITY FUEL ECON-  
 11 OMY.—For purposes of subparagraph (A), the  
 12 2002 model year city fuel economy with respect  
 13 to a vehicle shall be determined in accordance  
 14 with the following tables:

15 “(i) In the case of a passenger auto-  
 16 mobile:

<b>If vehicle inertia weight class is:</b>	<b>The 2002 model year city fuel economy is:</b>
1,500 or 1,750 lbs .....	45.2 mpg
2,000 lbs .....	39.6 mpg
2,250 lbs .....	35.2 mpg
2,500 lbs .....	31.7 mpg
2,750 lbs .....	28.8 mpg
3,000 lbs .....	26.4 mpg
3,500 lbs .....	22.6 mpg
4,000 lbs .....	19.8 mpg
4,500 lbs .....	17.6 mpg

1395

<b>If vehicle inertia weight class is:</b>	<b>The 2002 model year city fuel economy is:</b>
5,000 lbs .....	15.9 mpg
5,500 lbs .....	14.4 mpg
6,000 lbs .....	13.2 mpg
6,500 lbs .....	12.2 mpg
7,000 to 8,500 lbs .....	11.3 mpg.

1

“(ii) In the case of a light truck:

<b>If vehicle inertia weight class is:</b>	<b>The 2002 model year city fuel economy is:</b>
1,500 or 1,750 lbs .....	39.4 mpg
2,000 lbs .....	35.2 mpg
2,250 lbs .....	31.8 mpg
2,500 lbs .....	29.0 mpg
2,750 lbs .....	26.8 mpg
3,000 lbs .....	24.9 mpg
3,500 lbs .....	21.8 mpg
4,000 lbs .....	19.4 mpg
4,500 lbs .....	17.6 mpg
5,000 lbs .....	16.1 mpg
5,500 lbs .....	14.8 mpg
6,000 lbs .....	13.7 mpg
6,500 lbs .....	12.8 mpg
7,000 to 8,500 lbs .....	12.1 mpg.

2

“(C) VEHICLE INERTIA WEIGHT CLASS.—

3

For purposes of subparagraph (B), the term

4

‘vehicle inertia weight class’ has the same

5

meaning as when defined in regulations pre-

6

scribed by the Administrator of the Environ-

7

mental Protection Agency for purposes of the

8

administration of title II of the Clean Air Act

9

(42 U.S.C. 7521 et seq.).

1396

1           “(3) NEW QUALIFIED FUEL CELL MOTOR VEHI-  
2           CLE.—For purposes of this subsection, the term  
3           ‘new qualified fuel cell motor vehicle’ means a motor  
4           vehicle—

5                   “(A) which is propelled by power derived  
6                   from 1 or more cells which convert chemical en-  
7                   ergy directly into electricity by combining oxy-  
8                   gen with hydrogen fuel which is stored on board  
9                   the vehicle in any form and may or may not re-  
10                  quire reformation prior to use,

11                   “(B) which, in the case of a passenger  
12                   automobile or light truck, has received on or  
13                   after the date of the enactment of this section  
14                   a certificate that such vehicle meets or exceeds  
15                   the Bin 5 Tier II emission level established in  
16                   regulations prescribed by the Administrator of  
17                   the Environmental Protection Agency under  
18                   section 202(i) of the Clean Air Act for that  
19                   make and model year vehicle,

20                   “(C) the original use of which commences  
21                   with the taxpayer,

1                   “(D) which is acquired for use or lease by  
2                   the taxpayer and not for resale, and

3                   “(E) which is made by a manufacturer.

4           “(c) NEW ADVANCED LEAN BURN TECHNOLOGY  
5 MOTOR VEHICLE CREDIT.—

6                   “(1) IN GENERAL.—For purposes of subsection  
7                   (a), the new advanced lean burn technology motor  
8                   vehicle credit determined under this subsection for  
9                   the taxable year is the credit amount determined  
10                  under paragraph (2) with respect to a new advanced  
11                  lean burn technology motor vehicle placed in service  
12                  by the taxpayer during the taxable year.

13                  “(2) CREDIT AMOUNT.—

14                         “(A) FUEL ECONOMY.—

15                                 “(i) IN GENERAL.—The credit amount  
16                                 determined under this paragraph shall be  
17                                 determined in accordance with the fol-

18                                 lowing table:

<b>In the case of a vehicle which achieves a fuel economy (expressed as a percentage of the 2002 model year city fuel economy) of—</b>	<b>The credit amount is—</b>
At least 125 percent but less than 150 percent .....	\$400
At least 150 percent but less than 175 percent .....	\$800

<b>In the case of a vehicle which achieves a fuel economy (expressed as a percentage of the 2002 model year city fuel economy) of—</b>	<b>The credit amount is—</b>
At least 175 percent but less than 200 percent .....	\$1,200
At least 200 percent but less than 225 percent .....	\$1,600
At least 225 percent but less than 250 percent .....	\$2,000
At least 250 percent .....	\$2,400.

1                                   “(ii) 2002 MODEL YEAR CITY FUEL  
2                                   ECONOMY.—For purposes of clause (i), the  
3                                   2002 model year city fuel economy with re-  
4                                   spect to a vehicle shall be determined on a  
5                                   gasoline gallon equivalent basis as deter-  
6                                   mined by the Administrator of the Envi-  
7                                   ronmental Protection Agency using the ta-  
8                                   bles provided in subsection (b)(2)(B) with  
9                                   respect to such vehicle.

10                                  “(B) CONSERVATION CREDIT.—The  
11                                  amount determined under subparagraph (A)  
12                                  with respect to a new advanced lean burn tech-  
13                                  nology motor vehicle shall be increased by the  
14                                  conservation credit amount determined in ac-  
15                                  cordance with the following table:

1399

<b>In the case of a vehicle which achieves a lifetime fuel savings (expressed in gallons of gasoline) of—</b>	<b>The conservation credit amount is—</b>
At least 1,200 but less than 1,800 .....	\$250
At least 1,800 but less than 2,400 .....	\$500
At least 2,400 but less than 3,000 .....	\$750
At least 3,000 .....	\$1,000.

1           “(3) NEW ADVANCED LEAN BURN TECHNOLOGY  
2           MOTOR VEHICLE.—For purposes of this subsection,  
3           the term ‘new advanced lean burn technology motor  
4           vehicle’ means a passenger automobile or a light  
5           truck—

6                   “(A) with an internal combustion engine  
7           which—

8                           “(i) is designed to operate primarily  
9                           using more air than is necessary for com-  
10                           plete combustion of the fuel,

11                           “(ii) incorporates direct injection,

12                           “(iii) achieves at least 125 percent of  
13                           the 2002 model year city fuel economy,

14                           “(iv) for 2004 and later model vehi-  
15                           cles, has received a certificate that such ve-  
16                           hicle meets or exceeds—

1400

1           “(I) in the case of a vehicle hav-  
2           ing a gross vehicle weight rating of  
3           6,000 pounds or less, the Bin 5 Tier  
4           II emission standard established in  
5           regulations prescribed by the Adminis-  
6           trator of the Environmental Protec-  
7           tion Agency under section 202(i) of  
8           the Clean Air Act for that make and  
9           model year vehicle, and

10           “(II) in the case of a vehicle hav-  
11           ing a gross vehicle weight rating of  
12           more than 6,000 pounds but not more  
13           than 8,500 pounds, the Bin 8 Tier II  
14           emission standard which is so estab-  
15           lished.

16           “(B) the original use of which commences  
17           with the taxpayer,

18           “(C) which is acquired for use or lease by  
19           the taxpayer and not for resale, and

20           “(D) which is made by a manufacturer.



1401

1           “(4) LIFETIME FUEL SAVINGS.—For purposes  
2           of this subsection, the term ‘lifetime fuel savings’  
3           means, in the case of any new advanced lean burn  
4           technology motor vehicle, an amount equal to the ex-  
5           cess (if any) of—

6                   “(A) 120,000 divided by the 2002 model  
7                   year city fuel economy for the vehicle inertia  
8                   weight class, over

9                   “(B) 120,000 divided by the city fuel econ-  
10                  omy for such vehicle.

11          “(d) NEW QUALIFIED HYBRID MOTOR VEHICLE  
12          CREDIT.—

13               “(1) IN GENERAL.—For purposes of subsection  
14               (a), the new qualified hybrid motor vehicle credit de-  
15               termined under this subsection for the taxable year  
16               is the credit amount determined under paragraph  
17               (2) with respect to a new qualified hybrid motor ve-  
18               hicle placed in service by the taxpayer during the  
19               taxable year.

20               “(2) CREDIT AMOUNT.—

1402

1           “(A) CREDIT AMOUNT FOR PASSENGER  
2           AUTOMOBILES AND LIGHT TRUCKS.—In the  
3           case of a new qualified hybrid motor vehicle  
4           which is a passenger automobile or light truck  
5           and which has a gross vehicle weight rating of  
6           not more than 8,500 pounds, the amount deter-  
7           mined under this paragraph is the sum of the  
8           amounts determined under clauses (i) and (ii).

9           “(i) FUEL ECONOMY.—The amount  
10           determined under this clause is the amount  
11           which would be determined under sub-  
12           section (c)(2)(A) if such vehicle were a ve-  
13           hicle referred to in such subsection.

14           “(ii) CONSERVATION CREDIT.—The  
15           amount determined under this clause is the  
16           amount which would be determined under  
17           subsection (c)(2)(B) if such vehicle were a  
18           vehicle referred to in such subsection.

19           “(B) CREDIT AMOUNT FOR OTHER MOTOR  
20           VEHICLES.—

1403

1           “(i) IN GENERAL.—In the case of any  
2           new qualified hybrid motor vehicle to which  
3           subparagraph (A) does not apply, the  
4           amount determined under this paragraph  
5           is the amount equal to the applicable per-  
6           centage of the qualified incremental hybrid  
7           cost of the vehicle as certified under clause  
8           (v).

9           “(ii) APPLICABLE PERCENTAGE.—For  
10          purposes of clause (i), the applicable per-  
11          centage is—

12               “(I) 20 percent if the vehicle  
13               achieves an increase in city fuel econ-  
14               omy relative to a comparable vehicle  
15               of at least 30 percent but less than 40  
16               percent,

17               “(II) 30 percent if the vehicle  
18               achieves such an increase of at least  
19               40 percent but less than 50 percent,  
20               and

1404

1                   “(III) 40 percent if the vehicle  
2                   achieves such an increase of at least  
3                   50 percent.

4                   “(iii) QUALIFIED INCREMENTAL HY-  
5                   BRID COST.—For purposes of this subpara-  
6                   graph, the qualified incremental hybrid  
7                   cost of any vehicle is equal to the amount  
8                   of the excess of the manufacturer’s sug-  
9                   gested retail price for such vehicle over  
10                  such price for a comparable vehicle, to the  
11                  extent such amount does not exceed—

12                  “(I) \$7,500, if such vehicle has a  
13                  gross vehicle weight rating of not  
14                  more than 14,000 pounds,

15                  “(II) \$15,000, if such vehicle has  
16                  a gross vehicle weight rating of more  
17                  than 14,000 pounds but not more  
18                  than 26,000 pounds, and

19                  “(III) \$30,000, if such vehicle  
20                  has a gross vehicle weight rating of  
21                  more than 26,000 pounds.

1405

1           “(iv) COMPARABLE VEHICLE.—For  
2 purposes of this subparagraph, the term  
3 ‘comparable vehicle’ means, with respect to  
4 any new qualified hybrid motor vehicle,  
5 any vehicle which is powered solely by a  
6 gasoline or diesel internal combustion en-  
7 gine and which is comparable in weight,  
8 size, and use to such vehicle.

9           “(v) CERTIFICATION.—A certification  
10 described in clause (i) shall be made by the  
11 manufacturer and shall be determined in  
12 accordance with guidance prescribed by the  
13 Secretary. Such guidance shall specify pro-  
14 cedures and methods for calculating fuel  
15 economy savings and incremental hybrid  
16 costs.

17           “(3) NEW QUALIFIED HYBRID MOTOR VEHI-  
18 CLE.—For purposes of this subsection—

19           “(A) IN GENERAL.—The term ‘new quali-  
20 fied hybrid motor vehicle’ means a motor  
21 vehicle—

1406

1           “(i) which draws propulsion energy  
2           from onboard sources of stored energy  
3           which are both—

4                   “(I) an internal combustion or  
5                   heat engine using consumable fuel,  
6                   and

7                   “(II) a rechargeable energy stor-  
8                   age system,

9           “(ii) which, in the case of a vehicle to  
10           which paragraph (2)(A) applies, has re-  
11           ceived a certificate of conformity under the  
12           Clean Air Act and meets or exceeds the  
13           equivalent qualifying California low emis-  
14           sion vehicle standard under section  
15           243(e)(2) of the Clean Air Act for that  
16           make and model year, and

17                   “(I) in the case of a vehicle hav-  
18                   ing a gross vehicle weight rating of  
19                   6,000 pounds or less, the Bin 5 Tier  
20                   II emission standard established in  
21                   regulations prescribed by the Adminis-

1407

1           trator of the Environmental Protec-  
2           tion Agency under section 202(i) of  
3           the Clean Air Act for that make and  
4           model year vehicle, and

5                   “(II) in the case of a vehicle hav-  
6                   ing a gross vehicle weight rating of  
7                   more than 6,000 pounds but not more  
8                   than 8,500 pounds, the Bin 8 Tier II  
9                   emission standard which is so estab-  
10                  lished,

11                   “(iii) which has a maximum available  
12                  power of at least—

13                           “(I) 4 percent in the case of a ve-  
14                           hicle to which paragraph (2)(A) ap-  
15                           plies,

16                           “(II) 10 percent in the case of a  
17                           vehicle which has a gross vehicle  
18                           weight rating or more than 8,500  
19                           pounds and not than 14,000 pounds,  
20                           and

1408

1                   “(III) 15 percent in the case of a  
2                   vehicle in excess of 14,000 pounds,

3                   “(iv) which, in the case of a vehicle to  
4                   which paragraph (2)(B) applies, has an in-  
5                   ternal combustion or heat engine which  
6                   has received a certificate of conformity  
7                   under the Clean Air Act as meeting the  
8                   emission standards set in the regulations  
9                   prescribed by the Administrator of the En-  
10                  vironmental Protection Agency for 2004  
11                  through 2007 model year diesel heavy duty  
12                  engines or ottocycle heavy duty engines, as  
13                  applicable,

14                  “(v) the original use of which com-  
15                  mences with the taxpayer,

16                  “(vi) which is acquired for use or  
17                  lease by the taxpayer and not for resale,  
18                  and

19                  “(vii) which is made by a manufac-  
20                  turer.



1409

1           Such term shall not include any vehicle which  
2           is not a passenger automobile or light truck if  
3           such vehicle has a gross vehicle weight rating of  
4           less than 8,500 pounds.

5           “(B) CONSUMABLE FUEL.—For purposes  
6           of subparagraph (A)(i)(I), the term ‘consumable  
7           fuel’ means any solid, liquid, or gaseous matter  
8           which releases energy when consumed by an  
9           auxiliary power unit.

10           “(C) MAXIMUM AVAILABLE POWER.—

11           “(i) CERTAIN PASSENGER AUTO-  
12           MOBILES AND LIGHT TRUCKS.—In the case  
13           of a vehicle to which paragraph (2)(A) ap-  
14           plies, the term ‘maximum available power’  
15           means the maximum power available from  
16           the rechargeable energy storage system,  
17           during a standard 10 second pulse power  
18           or equivalent test, divided by such max-  
19           imum power and the SAE net power of the  
20           heat engine.

1410

1           “(ii) OTHER MOTOR VEHICLES.—In  
2           the case of a vehicle to which paragraph  
3           (2)(B) applies, the term ‘maximum avail-  
4           able power’ means the maximum power  
5           available from the rechargeable energy  
6           storage system, during a standard 10 sec-  
7           ond pulse power or equivalent test, divided  
8           by the vehicle’s total traction power. For  
9           purposes of the preceding sentence, the  
10          term ‘total traction power’ means the sum  
11          of the peak power from the rechargeable  
12          energy storage system and the heat engine  
13          peak power of the vehicle, except that if  
14          such storage system is the sole means by  
15          which the vehicle can be driven, the total  
16          traction power is the peak power of such  
17          storage system.

18          “(e) NEW QUALIFIED ALTERNATIVE FUEL MOTOR  
19          VEHICLE CREDIT.—

20                 “(1) ALLOWANCE OF CREDIT.—Except as pro-  
21          vided in paragraph (5), the new qualified alternative

1411

1 fuel motor vehicle credit determined under this sub-  
2 section is an amount equal to the applicable percent-  
3 age of the incremental cost of any new qualified al-  
4 ternative fuel motor vehicle placed in service by the  
5 taxpayer during the taxable year.

6 “(2) APPLICABLE PERCENTAGE.—For purposes  
7 of paragraph (1), the applicable percentage with re-  
8 spect to any new qualified alternative fuel motor ve-  
9 hicle is—

10 “(A) 50 percent, plus

11 “(B) 30 percent, if such vehicle—

12 “(i) has received a certificate of con-  
13 formity under the Clean Air Act and meets  
14 or exceeds the most stringent standard  
15 available for certification under the Clean  
16 Air Act for that make and model year vehi-  
17 cle (other than a zero emission standard),  
18 or

19 “(ii) has received an order certifying  
20 the vehicle as meeting the same require-  
21 ments as vehicles which may be sold or

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1 leased in California and meets or exceeds  
2 the most stringent standard available for  
3 certification under the State laws of Cali-  
4 fornia (enacted in accordance with a waiv-  
5 er granted under section 209(b) of the  
6 Clean Air Act) for that make and model  
7 year vehicle (other than a zero emission  
8 standard).

9 For purposes of the preceding sentence, in the case  
10 of any new qualified alternative fuel motor vehicle  
11 which weighs more than 14,000 pounds gross vehicle  
12 weight rating, the most stringent standard available  
13 shall be such standard available for certification on  
14 the date of the enactment of the Energy Tax Incen-  
15 tives Act of 2005.

16 “(3) INCREMENTAL COST.—For purposes of  
17 this subsection, the incremental cost of any new  
18 qualified alternative fuel motor vehicle is equal to  
19 the amount of the excess of the manufacturer’s sug-  
20 gested retail price for such vehicle over such price  
21 for a gasoline or diesel fuel motor vehicle of the

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1 same model, to the extent such amount does not  
2 exceed—

3 “(A) \$5,000, if such vehicle has a gross ve-  
4 hicle weight rating of not more than 8,500  
5 pounds,

6 “(B) \$10,000, if such vehicle has a gross  
7 vehicle weight rating of more than 8,500  
8 pounds but not more than 14,000 pounds,

9 “(C) \$25,000, if such vehicle has a gross  
10 vehicle weight rating of more than 14,000  
11 pounds but not more than 26,000 pounds, and

12 “(D) \$40,000, if such vehicle has a gross  
13 vehicle weight rating of more than 26,000  
14 pounds.

15 “(4) NEW QUALIFIED ALTERNATIVE FUEL  
16 MOTOR VEHICLE.—For purposes of this  
17 subsection—

18 “(A) IN GENERAL.—The term ‘new quali-  
19 fied alternative fuel motor vehicle’ means any  
20 motor vehicle—

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1           “(i) which is only capable of operating  
2           on an alternative fuel,

3           “(ii) the original use of which com-  
4           mences with the taxpayer,

5           “(iii) which is acquired by the tax-  
6           payer for use or lease, but not for resale,  
7           and

8           “(iv) which is made by a manufac-  
9           turer.

10           “(B) ALTERNATIVE FUEL.—The term ‘al-  
11           ternative fuel’ means compressed natural gas,  
12           liquefied natural gas, liquefied petroleum gas,  
13           hydrogen, and any liquid at least 85 percent of  
14           the volume of which consists of methanol.

15           “(5) CREDIT FOR MIXED-FUEL VEHICLES.—

16           “(A) IN GENERAL.—In the case of a  
17           mixed-fuel vehicle placed in service by the tax-  
18           payer during the taxable year, the credit deter-  
19           mined under this subsection is an amount equal  
20           to—

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1           “(i) in the case of a 75/25 mixed-fuel  
2           vehicle, 70 percent of the credit which  
3           would have been allowed under this sub-  
4           section if such vehicle was a qualified alter-  
5           native fuel motor vehicle, and

6           “(ii) in the case of a 90/10 mixed-fuel  
7           vehicle, 90 percent of the credit which  
8           would have been allowed under this sub-  
9           section if such vehicle was a qualified alter-  
10          native fuel motor vehicle.

11          “(B) MIXED-FUEL VEHICLE.—For pur-  
12          poses of this subsection, the term ‘mixed-fuel  
13          vehicle’ means any motor vehicle described in  
14          subparagraph (C) or (D) of paragraph (3),  
15          which—

16                 “(i) is certified by the manufacturer  
17                 as being able to perform efficiently in nor-  
18                 mal operation on a combination of an al-  
19                 ternative fuel and a petroleum-based fuel,

20                 “(ii) either—

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1           “(I) has received a certificate of  
2 conformity under the Clean Air Act,  
3 or

4           “(II) has received an order certi-  
5 fying the vehicle as meeting the same  
6 requirements as vehicles which may be  
7 sold or leased in California and meets  
8 or exceeds the low emission vehicle  
9 standard under section 88.105–94 of  
10 title 40, Code of Federal Regulations,  
11 for that make and model year vehicle,

12           “(iii) the original use of which com-  
13 mences with the taxpayer,

14           “(iv) which is acquired by the tax-  
15 payer for use or lease, but not for resale,  
16 and

17           “(v) which is made by a manufac-  
18 turer.

19           “(C) 75/25 MIXED-FUEL VEHICLE.—For  
20 purposes of this subsection, the term ‘75/25  
21 mixed-fuel vehicle’ means a mixed-fuel vehicle



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1           which operates using at least 75 percent alter-  
2           native fuel and not more than 25 percent petro-  
3           leum-based fuel.

4           “(D) 90/10 MIXED-FUEL VEHICLE.—For  
5           purposes of this subsection, the term ‘90/10  
6           mixed-fuel vehicle’ means a mixed-fuel vehicle  
7           which operates using at least 90 percent alter-  
8           native fuel and not more than 10 percent petro-  
9           leum-based fuel.

10          “(f) LIMITATION ON NUMBER OF NEW QUALIFIED  
11          HYBRID AND ADVANCED LEAN-BURN TECHNOLOGY VE-  
12          HICLES ELIGIBLE FOR CREDIT.—

13                 “(1) IN GENERAL.—In the case of a qualified  
14                 vehicle sold during the phaseout period, only the ap-  
15                 plicable percentage of the credit otherwise allowable  
16                 under subsection (c) or (d) shall be allowed.

17                 “(2) PHASEOUT PERIOD.—For purposes of this  
18                 subsection, the phaseout period is the period begin-  
19                 ning with the second calendar quarter following the  
20                 calendar quarter which includes the first date on  
21                 which the number of qualified vehicles manufactured

1 by the manufacturer of the vehicle referred to in  
2 paragraph (1) sold for use in the United States after  
3 December 31, 2005, is at least 60,000.

4 “(3) APPLICABLE PERCENTAGE.—For purposes  
5 of paragraph (1), the applicable percentage is—

6 “(A) 50 percent for the first 2 calendar  
7 quarters of the phaseout period,

8 “(B) 25 percent for the 3d and 4th cal-  
9 endar quarters of the phaseout period, and

10 “(C) 0 percent for each calendar quarter  
11 thereafter.

12 “(4) CONTROLLED GROUPS.—

13 “(A) IN GENERAL.—For purposes of this  
14 subsection, all persons treated as a single em-  
15 ployer under subsection (a) or (b) of section 52  
16 or subsection (m) or (o) of section 414 shall be  
17 treated as a single manufacturer.

18 “(B) INCLUSION OF FOREIGN CORPORA-  
19 TIONS.—For purposes of subparagraph (A), in  
20 applying subsections (a) and (b) of section 52

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1 to this section, section 1563 shall be applied  
2 without regard to subsection (b)(2)(C) thereof.

3 “(5) QUALIFIED VEHICLE.—For purposes of  
4 this subsection, the term ‘qualified vehicle’ means  
5 any new qualified hybrid motor vehicle (described in  
6 subsection (d)(2)(A)) and any new advanced lean  
7 burn technology motor vehicle.

8 “(g) APPLICATION WITH OTHER CREDITS.—

9 “(1) BUSINESS CREDIT TREATED AS PART OF  
10 GENERAL BUSINESS CREDIT.—So much of the credit  
11 which would be allowed under subsection (a) for any  
12 taxable year (determined without regard to this sub-  
13 section) that is attributable to property of a char-  
14 acter subject to an allowance for depreciation shall  
15 be treated as a credit listed in section 38(b) for such  
16 taxable year (and not allowed under subsection (a)).

17 “(2) PERSONAL CREDIT.—The credit allowed  
18 under subsection (a) (after the application of para-  
19 graph (1)) for any taxable year shall not exceed the  
20 excess (if any) of—

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1           “(A) the regular tax reduced by the sum of  
2           the credits allowable under subpart A and sec-  
3           tions 27 and 30, over

4           “(B) the tentative minimum tax for the  
5           taxable year.

6           “(h) OTHER DEFINITIONS AND SPECIAL RULES.—

7 For purposes of this section—

8           “(1) MOTOR VEHICLE.—The term ‘motor vehi-  
9           cle’ has the meaning given such term by section  
10          30(e)(2).

11          “(2) CITY FUEL ECONOMY.—The city fuel econ-  
12          omy with respect to any vehicle shall be measured in  
13          a manner which is substantially similar to the man-  
14          ner city fuel economy is measured in accordance  
15          with procedures under part 600 of subchapter Q of  
16          chapter I of title 40, Code of Federal Regulations,  
17          as in effect on the date of the enactment of this sec-  
18          tion.

19          “(3) OTHER TERMS.—The terms ‘automobile’,  
20          ‘passenger automobile’, ‘medium duty passenger ve-  
21          hicle’, ‘light truck’, and ‘manufacturer’ have the

1 meanings given such terms in regulations prescribed  
2 by the Administrator of the Environmental Protec-  
3 tion Agency for purposes of the administration of  
4 title II of the Clean Air Act (42 U.S.C. 7521 et  
5 seq.).

6 “(4) REDUCTION IN BASIS.—For purposes of  
7 this subtitle, the basis of any property for which a  
8 credit is allowable under subsection (a) shall be re-  
9 duced by the amount of such credit so allowed (de-  
10 termined without regard to subsection (g)).

11 “(5) NO DOUBLE BENEFIT.—The amount of  
12 any deduction or other credit allowable under this  
13 chapter—

14 “(A) for any incremental cost taken into  
15 account in computing the amount of the credit  
16 determined under subsection (e) shall be re-  
17 duced by the amount of such credit attributable  
18 to such cost, and

19 “(B) with respect to a vehicle described  
20 under subsection (b) or (c), shall be reduced by

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1           the amount of credit allowed under subsection  
2           (a) for such vehicle for the taxable year.

3           “(6) PROPERTY USED BY TAX-EXEMPT ENTI-  
4           TY.—In the case of a vehicle whose use is described  
5           in paragraph (3) or (4) of section 50(b) and which  
6           is not subject to a lease, the person who sold such  
7           vehicle to the person or entity using such vehicle  
8           shall be treated as the taxpayer that placed such ve-  
9           hicle in service, but only if such person clearly dis-  
10          closes to such person or entity in a document the  
11          amount of any credit allowable under subsection (a)  
12          with respect to such vehicle (determined without re-  
13          gard to subsection (g)).

14          “(7) PROPERTY USED OUTSIDE UNITED  
15          STATES, ETC., NOT QUALIFIED.—No credit shall be  
16          allowable under subsection (a) with respect to any  
17          property referred to in section 50(b)(1) or with re-  
18          spect to the portion of the cost of any property  
19          taken into account under section 179.

20          “(8) RECAPTURE.—The Secretary shall, by reg-  
21          ulations, provide for recapturing the benefit of any

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1 credit allowable under subsection (a) with respect to  
2 any property which ceases to be property eligible for  
3 such credit (including recapture in the case of a  
4 lease period of less than the economic life of a vehi-  
5 cle).

6 “(9) ELECTION TO NOT TAKE CREDIT.—No  
7 credit shall be allowed under subsection (a) for any  
8 vehicle if the taxpayer elects to not have this section  
9 apply to such vehicle.

10 “(10) INTERACTION WITH AIR QUALITY AND  
11 MOTOR VEHICLE SAFETY STANDARDS.—Unless oth-  
12 erwise provided in this section, a motor vehicle shall  
13 not be considered eligible for a credit under this sec-  
14 tion unless such vehicle is in compliance with—

15 “(A) the applicable provisions of the Clean  
16 Air Act for the applicable make and model year  
17 of the vehicle (or applicable air quality provi-  
18 sions of State law in the case of a State which  
19 has adopted such provision under a waiver  
20 under section 209(b) of the Clean Air Act), and

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1           “(B) the motor vehicle safety provisions of  
2           sections 30101 through 30169 of title 49,  
3           United States Code.

4           “(i) REGULATIONS.—

5           “(1) IN GENERAL.—Except as provided in para-  
6           graph (2), the Secretary shall promulgate such regu-  
7           lations as necessary to carry out the provisions of  
8           this section.

9           “(2) COORDINATION IN PRESCRIPTION OF CER-  
10          TAIN REGULATIONS.—The Secretary of the Treas-  
11          ury, in coordination with the Secretary of Transpor-  
12          tation and the Administrator of the Environmental  
13          Protection Agency, shall prescribe such regulations  
14          as necessary to determine whether a motor vehicle  
15          meets the requirements to be eligible for a credit  
16          under this section.

17          “(j) TERMINATION.—This section shall not apply to  
18          any property purchased after—

19                 “(1) in the case of a new qualified fuel cell  
20                 motor vehicle (as described in subsection (b)), De-  
21                 cember 31, 2014,



1           “(2) in the case of a new advanced lean burn  
2           technology motor vehicle (as described in subsection  
3           (c)) or a new qualified hybrid motor vehicle (as de-  
4           scribed in subsection (d)(2)(A)), December 31,  
5           2010,

6           “(3) in the case of a new qualified hybrid motor  
7           vehicle (as described in subsection (d)(2)(B)), De-  
8           cember 31, 2009, and

9           “(4) in the case of a new qualified alternative  
10          fuel vehicle (as described in subsection (e)), Decem-  
11          ber 31, 2010.”.

12          (b) CONFORMING AMENDMENTS.—

13                 (1) Section 38(b), as amended by this Act, is  
14                 amended by striking “plus” at the end of paragraph  
15                 (23), by striking the period at the end of paragraph  
16                 (24) and inserting “, and”, and by adding at the  
17                 end the following new paragraph:

18                 “(25) the portion of the alternative motor vehi-  
19                 cle credit to which section 30B(g)(1) applies.”.

20                 (2) Section 1016(a), as amended by this Act, is  
21                 amended by striking “and” at the end of paragraph

1 (34), by striking the period at the end of paragraph  
2 (35) and inserting “, and”, and by adding at the  
3 end the following new paragraph:

4 “(36) to the extent provided in section  
5 30B(h)(4).”.

6 (3) Section 55(c)(2), as amended by this Act, is  
7 amended by inserting “30B(g)(2),” after  
8 “30(b)(2),”.

9 (4) Section 6501(m) is amended by inserting  
10 “30B(h)(9),” after “30(d)(4),”.

11 (5) The table of sections for subpart B of part  
12 IV of subchapter A of chapter 1 is amended by in-  
13 serting after the item relating to section 30A the fol-  
14 lowing new item:

“Sec. 30B. Alternative motor vehicle credit.”.

15 (c) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to property placed in service after  
17 December 31, 2005, in taxable years ending after such  
18 date.

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1 **SEC. 1342. CREDIT FOR INSTALLATION OF ALTERNATIVE**  
2 **FUELING STATIONS.**

3 (a) IN GENERAL.—Subpart B of part IV of sub-  
4 chapter A of chapter 1 (relating to other credits), as  
5 amended by this Act, is amended by adding at the end  
6 the following new section:

7 **“SEC. 30C. ALTERNATIVE FUEL VEHICLE REFUELING PROP-**  
8 **ERTY CREDIT.**

9 “(a) CREDIT ALLOWED.—There shall be allowed as  
10 a credit against the tax imposed by this chapter for the  
11 taxable year an amount equal to 30 percent of the cost  
12 of any qualified alternative fuel vehicle refueling property  
13 placed in service by the taxpayer during the taxable year.

14 “(b) LIMITATION.—The credit allowed under sub-  
15 section (a) with respect to any alternative fuel vehicle re-  
16 fueling property shall not exceed—

17 “(1) \$30,000 in the case of a property of a  
18 character subject to an allowance for depreciation,  
19 and

20 “(2) \$1,000 in any other case.

1       “(c) QUALIFIED ALTERNATIVE FUEL VEHICLE RE-  
2 FUELING PROPERTY.—

3           “(1) IN GENERAL.—Except as provided in para-  
4 graph (2), the term ‘qualified alternative fuel vehicle  
5 refueling property’ has the meaning given to such  
6 term by section 179A(d), but only with respect to  
7 any fuel—

8           “(A) at least 85 percent of the volume of  
9 which consists of 1 or more of the following:  
10 ethanol, natural gas, compressed natural gas,  
11 liquefied natural gas, liquefied petroleum gas,  
12 or hydrogen, or

13           “(B) any mixture of biodiesel (as defined  
14 in section 40A(d)(1)) and diesel fuel (as defined  
15 in section 4083(a)(3)), determined without re-  
16 gard to any use of kerosene and containing at  
17 least 20 percent biodiesel.

18           “(2) RESIDENTIAL PROPERTY.—In the case of  
19 any property installed on property which is used as  
20 the principal residence (within the meaning of sec-

1       tion 121) of the taxpayer, paragraph (1) of section  
2       179A(d) shall not apply.

3       “(d) APPLICATION WITH OTHER CREDITS.—

4               “(1) BUSINESS CREDIT TREATED AS PART OF  
5       GENERAL BUSINESS CREDIT.—So much of the credit  
6       which would be allowed under subsection (a) for any  
7       taxable year (determined without regard to this sub-  
8       section) that is attributable to property of a char-  
9       acter subject to an allowance for depreciation shall  
10       be treated as a credit listed in section 38(b) for such  
11       taxable year (and not allowed under subsection (a)).

12              “(2) PERSONAL CREDIT.—The credit allowed  
13       under subsection (a) (after the application of para-  
14       graph (1)) for any taxable year shall not exceed the  
15       excess (if any) of—

16                   “(A) the regular tax reduced by the sum of  
17                   the credits allowable under subpart A and sec-  
18                   tions 27, 30, and 30B, over

19                   “(B) the tentative minimum tax for the  
20                   taxable year.

1       “(e) SPECIAL RULES.—For purposes of this  
2 section—

3           “(1) BASIS REDUCTION.—The basis of any  
4 property shall be reduced by the portion of the cost  
5 of such property taken into account under sub-  
6 section (a).

7           “(2) PROPERTY USED BY TAX-EXEMPT ENTI-  
8 TY.—In the case of any qualified alternative fuel ve-  
9 hicle refueling property the use of which is described  
10 in paragraph (3) or (4) of section 50(b) and which  
11 is not subject to a lease, the person who sold such  
12 property to the person or entity using such property  
13 shall be treated as the taxpayer that placed such  
14 property in service, but only if such person clearly  
15 discloses to such person or entity in a document the  
16 amount of any credit allowable under subsection (a)  
17 with respect to such property (determined without  
18 regard to subsection (d)).

19           “(3) PROPERTY USED OUTSIDE UNITED STATES  
20 NOT QUALIFIED.—No credit shall be allowable under  
21 subsection (a) with respect to any property referred

1 to in section 50(b)(1) or with respect to the portion  
2 of the cost of any property taken into account under  
3 section 179.

4 “(4) ELECTION NOT TO TAKE CREDIT.—No  
5 credit shall be allowed under subsection (a) for any  
6 property if the taxpayer elects not to have this sec-  
7 tion apply to such property.

8 “(5) RECAPTURE RULES.—Rules similar to the  
9 rules of section 179A(e)(4) shall apply.

10 “(f) REGULATIONS.—The Secretary shall prescribe  
11 such regulations as necessary to carry out the provisions  
12 of this section.

13 “(g) TERMINATION.—This section shall not apply to  
14 any property placed in service—

15 “(1) in the case of property relating to hydro-  
16 gen, after December 31, 2014, and

17 “(2) in the case of any other property, after  
18 December 31, 2009.”.

19 (b) CONFORMING AMENDMENTS.—

20 (1) Section 38(b), as amended by this Act, is  
21 amended by striking “plus” at the end of paragraph

1 (24), by striking the period at the end of paragraph  
2 (25) and inserting “, and”, and by adding at the  
3 end the following new paragraph:

4 “(26) the portion of the alternative fuel vehicle  
5 refueling property credit to which section 30C(d)(1)  
6 applies.”.

7 (2) Section 1016(a), as amended by this Act, is  
8 amended by striking “and” at the end of paragraph  
9 (35), by striking the period at the end of paragraph  
10 (36) and inserting “, and”, and by adding at the  
11 end the following new paragraph:

12 “(37) to the extent provided in section  
13 30C(f).”.

14 (3) Section 55(c)(2), as amended by this Act, is  
15 amended by inserting “30C(d)(2),” after  
16 “30B(g)(2),”.

17 (4) Section 6501(m) is amended by inserting  
18 “30C(e)(5),” after “30B(h)(9),”.

19 (5) The table of sections for subpart B of part  
20 IV of subchapter A of chapter 1, as amended by this



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1 Act, is amended by inserting after the item relating  
2 to section 30B the following new item:

“Sec. 30C. Clean-fuel vehicle refueling property credit.”.

3 (c) **EFFECTIVE DATE.**—The amendments made by  
4 this section shall apply to property placed in service after  
5 December 31, 2005, in taxable years ending after such  
6 date.

7 **SEC. 1343. REDUCED MOTOR FUEL EXCISE TAX ON CER-**  
8 **TAIN MIXTURES OF DIESEL FUEL.**

9 (a) **IN GENERAL.**—Paragraph (2) of section 4081(a)  
10 is amended by adding at the end the following:

11 “(D) **DIESEL-WATER FUEL EMULSION.**—In  
12 the case of diesel-water fuel emulsion at least  
13 14 percent of which is water and with respect  
14 to which the emulsion additive is registered by  
15 a United States manufacturer with the Envi-  
16 ronmental Protection Agency pursuant to sec-  
17 tion 211 of the Clean Air Act (as in effect on  
18 March 31, 2003), subparagraph (A)(iii) shall be  
19 applied by substituting ‘19.7 cents’ for ‘24.3  
20 cents’. The preceding sentence shall not apply

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1 to the removal, sale, or use of diesel-water fuel  
2 emulsion unless the person so removing, selling,  
3 or using such fuel is registered under section  
4 4101.”.

5 (b) SPECIAL RULES FOR DIESEL-WATER FUEL  
6 EMULSIONS.—

7 (1) REFUNDS FOR TAX-PAID PURCHASES.—Sec-  
8 tion 6427 is amended by redesignating subsections  
9 (m) through (p) as subsections (n) through (q), re-  
10 spectively, and by inserting after subsection (l) the  
11 following new subsection:

12 “(m) DIESEL FUEL USED TO PRODUCE EMUL-  
13 SION.—

14 “(1) IN GENERAL.—Except as provided in sub-  
15 section (k), if any diesel fuel on which tax was im-  
16 posed by section 4081 at the regular tax rate is used  
17 by any person in producing an emulsion described in  
18 section 4081(a)(2)(D) which is sold or used in such  
19 person’s trade or business, the Secretary shall pay  
20 (without interest) to such person an amount equal to

1 the excess of the regular tax rate over the incentive  
2 tax rate with respect to such fuel.

3 “(2) DEFINITIONS.—For purposes of paragraph  
4 (1)—

5 “(A) REGULAR TAX RATE.—The term ‘reg-  
6 ular tax rate’ means the aggregate rate of tax  
7 imposed by section 4081 determined without re-  
8 gard to section 4081(a)(2)(D).

9 “(B) INCENTIVE TAX RATE.—The term  
10 ‘incentive tax rate’ means the aggregate rate of  
11 tax imposed by section 4081 determined with  
12 regard to section 4081(a)(2)(D).”.

13 (2) LATER SEPARATION OF FUEL.—Section  
14 4081 (relating to imposition of tax) is amended by  
15 inserting after subsection (b) the following new sub-  
16 section:

17 “(c) LATER SEPARATION OF FUEL FROM DIESEL-  
18 WATER FUEL EMULSION.—If any person separates the  
19 taxable fuel from a diesel-water fuel emulsion on which  
20 tax was imposed under subsection (a) at a rate determined  
21 under subsection (a)(2)(D) (or with respect to which a

1 credit or payment was allowed or made by reason of sec-  
2 tion 6427), such person shall be treated as the refiner of  
3 such taxable fuel. The amount of tax imposed on any re-  
4 moval of such fuel by such person shall be reduced by the  
5 amount of tax imposed (and not credited or refunded) on  
6 any prior removal or entry of such fuel.”.

7 (3) CREDIT CLAIMS.—Paragraphs (1) and (2)  
8 of section 6427(i) are both amended by inserting  
9 “(m),” after “(l),”.

10 (c) EFFECTIVE DATE.—The amendments made by  
11 this section shall take effect on January 1, 2006.

12 **SEC. 1344. EXTENSION OF EXCISE TAX PROVISIONS AND IN-**  
13 **COME TAX CREDIT FOR BIODIESEL.**

14 (a) IN GENERAL.—Sections 40A(e), 6426(c)(6), and  
15 6427(e)(4)(B) are each amended by striking “2006” and  
16 inserting “2008”.

17 (b) EFFECTIVE DATE.—The amendments made by  
18 this section shall take effect on the date of the enactment  
19 of this Act.

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1 **SEC. 1345. SMALL AGRI-BIODIESEL PRODUCER CREDIT.**

2 (a) IN GENERAL.—Subsection (a) of section 40A (re-  
3 lating to biodiesel used as a fuel) is amended to read as  
4 follows:

5 “(a) GENERAL RULE.—For purposes of section 38,  
6 the biodiesel fuels credit determined under this section for  
7 the taxable year is an amount equal to the sum of—

8 “(1) the biodiesel mixture credit, plus

9 “(2) the biodiesel credit, plus

10 “(3) in the case of an eligible small agri-bio-  
11 diesel producer, the small agri-biodiesel producer  
12 credit.”.

13 (b) SMALL AGRI-BIODIESEL PRODUCER CREDIT DE-  
14 FINED.—Section 40A(b) (relating to definition of biodiesel  
15 mixture credit and biodiesel credit) is amended by adding  
16 at the end the following new paragraph:

17 “(5) SMALL AGRI-BIODIESEL PRODUCER CRED-  
18 IT.—

19 “(A) IN GENERAL.—The small agri-bio-  
20 diesel producer credit of any eligible small agri-  
21 biodiesel producer for any taxable year is 10

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1 cents for each gallon of qualified agri-biodiesel  
2 production of such producer.

3 “(B) QUALIFIED AGRIBIODIESEL PRODUC-  
4 TION.—For purposes of this paragraph, the  
5 term ‘qualified agri-biodiesel production’ means  
6 any agri-biodiesel (determined without regard to  
7 the last sentence of subsection (d)(2)) which is  
8 produced by an eligible small agri-biodiesel pro-  
9 ducer, and which during the taxable year—

10 “(i) is sold by such producer to an-  
11 other person—

12 “(I) for use by such other person  
13 in the production of a qualified bio-  
14 diesel mixture in such other person’s  
15 trade or business (other than casual  
16 off-farm production),

17 “(II) for use by such other per-  
18 son as a fuel in a trade or business,  
19 or

20 “(III) who sells such agri-bio-  
21 diesel at retail to another person and

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1 places such agri-biodiesel in the fuel  
2 tank of such other person, or

3 “(ii) is used or sold by such producer  
4 for any purpose described in clause (i).

5 “(C) LIMITATION.—The qualified agri-bio-  
6 diesel production of any producer for any tax-  
7 able year shall not exceed 15,000,000 gallons.”.

8 (c) DEFINITIONS AND SPECIAL RULES.—Section  
9 40A is amended by redesignating subsection (e) as sub-  
10 section (f) and by inserting after subsection (d) the fol-  
11 lowing new subsection:

12 “(e) DEFINITIONS AND SPECIAL RULES FOR SMALL  
13 AGRI-BIODIESEL PRODUCER CREDIT.—For purposes of  
14 this section—

15 “(1) ELIGIBLE SMALL AGRI-BIODIESEL PRO-  
16 DUCER.—The term ‘eligible small agri-biodiesel pro-  
17 ducer’ means a person who, at all times during the  
18 taxable year, has a productive capacity for agri-bio-  
19 diesel not in excess of 60,000,000 gallons.

20 “(2) AGGREGATION RULE.—For purposes of  
21 the 15,000,000 gallon limitation under subsection

1440

1 (b)(5)(C) and the 60,000,000 gallon limitation  
2 under paragraph (1), all members of the same con-  
3 trolled group of corporations (within the meaning of  
4 section 267(f)) and all persons under common con-  
5 trol (within the meaning of section 52(b) but deter-  
6 mined by treating an interest of more than 50 per-  
7 cent as a controlling interest) shall be treated as 1  
8 person.

9 “(3) PARTNERSHIP, S CORPORATION, AND  
10 OTHER PASS-THRU ENTITIES.—In the case of a  
11 partnership, trust, S corporation, or other pass-thru  
12 entity, the limitations contained in subsection  
13 (b)(5)(C) and paragraph (1) shall be applied at the  
14 entity level and at the partner or similar level.

15 “(4) ALLOCATION.—For purposes of this sub-  
16 section, in the case of a facility in which more than  
17 1 person has an interest, productive capacity shall  
18 be allocated among such persons in such manner as  
19 the Secretary may prescribe.

20 “(5) REGULATIONS.—The Secretary may pre-  
21 scribe such regulations as may be necessary—



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1           “(A) to prevent the credit provided for in  
2           subsection (a)(3) from directly or indirectly  
3           benefiting any person with a direct or indirect  
4           productive capacity of more than 60,000,000  
5           gallons of agri-biodiesel during the taxable year,  
6           or

7           “(B) to prevent any person from directly  
8           or indirectly benefiting with respect to more  
9           than 15,000,000 gallons during the taxable  
10          year.

11          “(6) ALLOCATION OF SMALL AGRI-BIODIESEL  
12          CREDIT TO PATRONS OF COOPERATIVE.—

13                 “(A) ELECTION TO ALLOCATE.—

14                         “(i) IN GENERAL.—In the case of a  
15                         cooperative organization described in sec-  
16                         tion 1381(a), any portion of the credit de-  
17                         termined under subsection (a)(3) for the  
18                         taxable year may, at the election of the or-  
19                         ganization, be apportioned pro rata among  
20                         patrons of the organization on the basis of

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1 the quantity or value of business done with  
2 or for such patrons for the taxable year.

3 “(ii) FORM AND EFFECT OF ELEC-  
4 TION.—An election under clause (i) for any  
5 taxable year shall be made on a timely  
6 filed return for such year. Such election,  
7 once made, shall be irrevocable for such  
8 taxable year. Such election shall not take  
9 effect unless the organization designates  
10 the apportionment as such in a written no-  
11 tice mailed to its patrons during the pay-  
12 ment period described in section 1382(d).

13 “(B) TREATMENT OF ORGANIZATIONS AND  
14 PATRONS.—

15 “(i) ORGANIZATIONS.—The amount of  
16 the credit not apportioned to patrons pur-  
17 suant to subparagraph (A) shall be in-  
18 cluded in the amount determined under  
19 subsection (a)(3) for the taxable year of  
20 the organization.

1443

1           “(ii) PATRONS.—The amount of the  
2           credit apportioned to patrons pursuant to  
3           subparagraph (A) shall be included in the  
4           amount determined under such subsection  
5           for the first taxable year of each patron  
6           ending on or after the last day of the pay-  
7           ment period (as defined in section  
8           1382(d)) for the taxable year of the orga-  
9           nization or, if earlier, for the taxable year  
10          of each patron ending on or after the date  
11          on which the patron receives notice from  
12          the cooperative of the apportionment.

13           “(iii) SPECIAL RULES FOR DECREASE  
14          IN CREDITS FOR TAXABLE YEAR.—If the  
15          amount of the credit of the organization  
16          determined under such subsection for a  
17          taxable year is less than the amount of  
18          such credit shown on the return of the or-  
19          ganization for such year, an amount equal  
20          to the excess of—

21                           “(I) such reduction, over

1444

1                   “(II) the amount not apportioned  
2                   to such patrons under subparagraph  
3                   (A) for the taxable year, shall be  
4                   treated as an increase in tax imposed  
5                   by this chapter on the organization.  
6                   Such increase shall not be treated as  
7                   tax imposed by this chapter for pur-  
8                   poses of determining the amount of  
9                   any credit under this chapter or for  
10                  purposes of section 55.”.

11                  (d) CONFORMING AMENDMENTS.—

12                   (1) Paragraph (4) of section 40A(b) is amended  
13                   by striking “this section” and inserting “paragraph  
14                   (1) or (2) of subsection (a)”.

15                   (2) The heading of subsection (b) of section  
16                   40A is amended by striking “and Biodiesel Credit”  
17                   and inserting “, Biodiesel Credit, and Small Agri-  
18                   biodiesel Producer Credit”.

19                   (3) Paragraph (3) of section 40A(d) is amended  
20                   by redesignating subparagraph (C) as subparagraph

1445

1 (D) and by inserting after subparagraph (B) the fol-  
2 lowing new subparagraph:

3 “(C) PRODUCER CREDIT.—If—

4 “(i) any credit was determined under  
5 subsection (a)(3), and

6 “(ii) any person does not use such  
7 fuel for a purpose described in subsection  
8 (b)(5)(B), then there is hereby imposed on  
9 such person a tax equal to 10 cents a gal-  
10 lon for each gallon of such agri-biodiesel.”.

11 (e) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to taxable years ending after the  
13 date of the enactment of this Act.

14 **SEC. 1346. RENEWABLE DIESEL.**

15 (a) IN GENERAL.—Section 40A (relating to biodiesel  
16 used as fuel), as amended by this Act, is amended by re-  
17 designating subsection (f) as subsection (g) and by insert-  
18 ing after subsection (e) the following new subsection:

19 “(f) RENEWABLE DIESEL.—For purposes of this  
20 title—

1446

1           “(1) TREATMENT IN THE SAME MANNER AS  
2 BIODIESEL.—Except as provided in paragraph (2),  
3 renewable diesel shall be treated in the same manner  
4 as biodiesel.

5           “(2) EXCEPTIONS.—

6                 “(A) RATE OF CREDIT.—Subsections  
7 (b)(1)(A) and (b)(2)(A) shall be applied with  
8 respect to renewable diesel by substituting  
9 ‘\$1.00’ for ‘50 cents’.

10                “(B) NONAPPLICATION OF CERTAIN CRED-  
11 ITS.—Subsections (b)(3) and (b)(5) shall not  
12 apply with respect to renewable diesel.

13           “(3) RENEWABLE DIESEL DEFINED.—The term  
14 ‘renewable diesel’ means diesel fuel derived from bio-  
15 mass (as defined in section 45K(c)(3)) using a ther-  
16 mal depolymerization process which meets—

17                 “(A) the registration requirements for  
18 fuels and fuel additives established by the Envi-  
19 ronmental Protection Agency under section 211  
20 of the Clean Air Act (42 U.S.C. 7545), and

1447

1                   “(B) the requirements of the American So-  
2                   ciety of Testing and Materials D975 or D396.”.

3           (b) CLERICAL AMENDMENTS.—

4                   (1) The heading for section 40A is amended by  
5                   inserting “**AND RENEWABLE DIESEL**” after “**BIO-**  
6                   **DIESEL**”.

7                   (2) The item in the table of contents for sub-  
8                   part D of part IV of subchapter A of chapter 1 re-  
9                   lating to section 40A is amended to read as follows:

“Sec. 40A. Biodiesel and renewable diesel used as fuel.”.

10           (c) EFFECTIVE DATE.—The amendment made by  
11           subsection (a) shall apply with respect to fuel sold or used  
12           after December 31, 2005.

13   **SEC. 1347. MODIFICATION OF SMALL ETHANOL PRODUCER**  
14                   **CREDIT.**

15           (a) DEFINITION OF SMALL ETHANOL PRODUCER.—  
16           Section 40(g) (relating to definitions and special rules for  
17           eligible small ethanol producer credit) is amended by strik-  
18           ing “30,000,000” each place it appears and inserting  
19           “60,000,000”.

1448

1 (b) WRITTEN NOTICE OF ELECTION TO ALLOCATE  
2 CREDIT TO PATRONS.—Section 40(g)(6)(A)(ii) (relating  
3 to form and effect of election) is amended by adding at  
4 the end the following new sentence: “Such election shall  
5 not take effect unless the organization designates the ap-  
6 portionment as such in a written notice mailed to its pa-  
7 trons during the payment period described in section  
8 1382(d).”.

9 (c) EFFECTIVE DATE.—The amendments made by  
10 this section shall apply to taxable years ending after the  
11 date of the enactment of this Act.

12 **SEC. 1348. SUNSET OF DEDUCTION FOR CLEAN-FUEL VEHI-**  
13 **CLES AND CERTAIN REFUELING PROPERTY.**

14 Subsection (f) of section 179A (relating to termi-  
15 nation) is amended by striking “December 31, 2006” and  
16 inserting “December 31, 2005”.

17 **Subtitle E—Additional Energy Tax**  
18 **Incentives**

19 **SEC. 1351. EXPANSION OF RESEARCH CREDIT.**

20 (a) CREDIT FOR EXPENSES ATTRIBUTABLE TO CER-  
21 TAIN COLLABORATIVE ENERGY RESEARCH CONSORTIA.—



1449

1           (1) IN GENERAL.—Section 41(a) (relating to  
2           credit for increasing research activities) is amended  
3           by striking “and” at the end of paragraph (1), by  
4           striking the period at the end of paragraph (2) and  
5           inserting “, and”, and by adding at the end the fol-  
6           lowing new paragraph:

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

12          (2) ENERGY RESEARCH CONSORTIUM DE-  
13          FINED.—Section 41(f) (relating to special rules) is  
14          amended by adding at the end the following new  
15          paragraph:

16          “(6) ENERGY RESEARCH CONSORTIUM.—

17                  “(A) IN GENERAL.—The term ‘energy re-  
18                  search consortium’ means any organization—

19                          “(i) which is—

20                                  “(I) described in section  
21                                  501(c)(3) and is exempt from tax

1450

1 under section 501(a) and is organized  
2 and operated primarily to conduct en-  
3 ergy research, or

4 “(II) organized and operated pri-  
5 marily to conduct energy research in  
6 the public interest (within the mean-  
7 ing of section 501(e)(3)),

8 “(ii) which is not a private founda-  
9 tion,

10 “(iii) to which at least 5 unrelated  
11 persons paid or incurred during the cal-  
12 endar year in which the taxable year of the  
13 organization begins amounts (including as  
14 contributions) to such organization for en-  
15 ergy research, and

16 “(iv) to which no single person paid  
17 or incurred (including as contributions)  
18 during such calendar year an amount  
19 equal to more than 50 percent of the total  
20 amounts received by such organization

1451

1           during such calendar year for energy re-  
2           search.

3           “(B) TREATMENT OF PERSONS.—All per-  
4           sons treated as a single employer under sub-  
5           section (a) or (b) of section 52 shall be treated  
6           as related persons for purposes of subparagraph  
7           (A)(iii) and as a single person for purposes of  
8           subparagraph (A)(iv).”.

9           (3) CONFORMING AMENDMENT.—Section  
10          41(b)(3)(C) is amended by inserting “(other than an  
11          energy research consortium)” after “organization”.

12          (b) REPEAL OF LIMITATION ON CONTRACT RE-  
13 SEARCH EXPENSES PAID TO SMALL BUSINESSES, UNI-  
14 VERSITIES, AND FEDERAL LABORATORIES.—Section  
15 41(b)(3) (relating to contract research expenses) is  
16 amended by adding at the end the following new subpara-  
17 graph:

18                   “(D) AMOUNTS PAID TO ELIGIBLE SMALL  
19                   BUSINESSES, UNIVERSITIES, AND FEDERAL  
20                   LABORATORIES.—

1452

1           “(i) IN GENERAL.—In the case of  
2 amounts paid by the taxpayer to—

3                   “(I) an eligible small business,

4                   “(II) an institution of higher  
5 education (as defined in section  
6 3304(f)), or

7                   “(III) an organization which is a  
8 Federal laboratory,

9 for qualified research which is energy re-  
10 search, subparagraph (A) shall be applied  
11 by substituting ‘100 percent’ for ‘65 per-  
12 cent’.

13           “(ii) ELIGIBLE SMALL BUSINESS.—  
14 For purposes of this subparagraph, the  
15 term ‘eligible small business’ means a  
16 small business with respect to which the  
17 taxpayer does not own (within the meaning  
18 of section 318) 50 percent or more of—

19                   “(I) in the case of a corporation,  
20 the outstanding stock of the corpora-  
21 tion (either by vote or value), and

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1           “(II) in the case of a small busi-  
2           ness which is not a corporation, the  
3           capital and profits interests of the  
4           small business.

5           “(iii) SMALL BUSINESS.—For pur-  
6           poses of this subparagraph—

7           “(I) IN GENERAL.—The term  
8           ‘small business’ means, with respect  
9           to any calendar year, any person if  
10          the annual average number of employ-  
11          ees employed by such person during  
12          either of the 2 preceding calendar  
13          years was 500 or fewer. For purposes  
14          of the preceding sentence, a preceding  
15          calendar year may be taken into ac-  
16          count only if the person was in exist-  
17          ence throughout the year.

18          “(II) STARTUPS, CONTROLLED  
19          GROUPS, AND PREDECESSORS.—Rules  
20          similar to the rules of subparagraphs

1454

1 (B) and (D) of section 220(c)(4) shall  
2 apply for purposes of this clause.

3 “(iv) FEDERAL LABORATORY.—For  
4 purposes of this subparagraph, the term  
5 ‘Federal laboratory’ has the meaning given  
6 such term by section 4(6) of the Steven-  
7 son-Wydler Technology Innovation Act of  
8 1980 (15 U.S.C. 3703(6)), as in effect on  
9 the date of the enactment of the Energy  
10 Tax Incentives Act of 2005.”.

11 (c) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to amounts paid or incurred after  
13 the date of the enactment of this Act, in taxable years  
14 ending after such date.

15 **SEC. 1352. NATIONAL ACADEMY OF SCIENCES STUDY AND**  
16 **REPORT.**

17 (a) STUDY.—Not later than 60 days after the date  
18 of the enactment of this Act, the Secretary of the Treasury  
19 shall enter into an agreement with the National Academy  
20 of Sciences under which the National Academy of Sciences  
21 shall conduct a study to define and evaluate the health,

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1 environmental, security, and infrastructure external costs  
2 and benefits associated with the production and consump-  
3 tion of energy that are not or may not be fully incor-  
4 porated into the market price of such energy, or into the  
5 Federal tax or fee or other applicable revenue measure re-  
6 lated to such production or consumption.

7 (b) REPORT.—Not later than 2 years after the date  
8 on which the agreement under subsection (a) is entered  
9 into, the National Academy of Sciences shall submit to  
10 Congress a report on the study conducted under sub-  
11 section (a).

12 **SEC. 1353. RECYCLING STUDY.**

13 (a) STUDY.—The Secretary of the Treasury, in con-  
14 sultation with the Secretary of Energy, shall conduct a  
15 study—

16 (1) to determine and quantify the energy sav-  
17 ings achieved through the recycling of glass, paper,  
18 plastic, steel, aluminum, and electronic devices, and

19 (2) to identify tax incentives which would en-  
20 courage recycling of such material.

1456

1 (b) REPORT.—Not later than one year after the date  
2 of the enactment of this Act, the Secretary of the Treasury  
3 shall submit to Congress a report on the study conducted  
4 under subsection (a).

5 **Subtitle F—Revenue Raising**  
6 **Provisions**

7 **SEC. 1361. OIL SPILL LIABILITY TRUST FUND FINANCING**  
8 **RATE.**

9 Section 4611(f) (relating to application of oil spill li-  
10 ability trust fund financing rate) is amended to read as  
11 follows:

12 “(f) APPLICATION OF OIL SPILL LIABILITY TRUST  
13 FUND FINANCING RATE.—

14 “(1) IN GENERAL.—Except as provided in para-  
15 graphs (2) and (3), the Oil Spill Liability Trust  
16 Fund financing rate under subsection (c) shall apply  
17 on and after April 1, 2006, or if later, the date  
18 which is 30 days after the last day of any calendar  
19 quarter for which the Secretary estimates that, as of  
20 the close of that quarter, the unobligated balance in



1457

1 the Oil Spill Liability Trust Fund is less than  
2 \$2,000,000,000.

3 “(2) FUND BALANCE.—The Oil Spill Liability  
4 Trust Fund financing rate shall not apply during a  
5 calendar quarter if the Secretary estimates that, as  
6 of the close of the preceding calendar quarter, the  
7 unobligated balance in the Oil Spill Liability Trust  
8 Fund exceeds \$2,700,000,000.

9 “(3) TERMINATION.—The Oil Spill Liability  
10 Trust Fund financing rate shall not apply after De-  
11 cember 31, 2014.”.

12 **SEC. 1362. EXTENSION OF LEAKING UNDERGROUND STOR-**  
13 **AGE TANK TRUST FUND FINANCING RATE.**

14 (a) IN GENERAL.—Paragraph (3) of section 4081(d)  
15 (relating to Leaking Underground Storage Tank Trust  
16 Fund financing rate) is amended by striking “2005” and  
17 inserting “2011”.

18 (b) NO EXEMPTIONS FROM TAX EXCEPT FOR EX-  
19 PORTS.—

20 (1) IN GENERAL.—Section 4082(a) (relating to  
21 exemptions for diesel fuel and kerosene) is amended

1458

1 by inserting “(other than such tax at the Leaking  
2 Underground Storage Tank Trust Fund financing  
3 rate imposed in all cases other than for export)”  
4 after “section 4081”.

5 (2) AMENDMENTS RELATING TO SECTION  
6 4041.—

7 (A) Subsections (a)(1)(B), (a)(2)(A), and  
8 (c)(2) of section 4041 are each amended by in-  
9 serting “(other than such tax at the Leaking  
10 Underground Storage Tank Trust Fund financ-  
11 ing rate)” after “section 4081”.

12 (B) Section 4041(b)(1)(A) is amended by  
13 striking “or (d)(1)”.

14 (C) Section 4041(d) is amended by adding  
15 at the end the following new paragraph:

16 “(5) NONAPPLICATION OF EXEMPTIONS OTHER  
17 THAN FOR EXPORTS.—For purposes of this section,  
18 the tax imposed under this subsection shall be deter-  
19 mined without regard to subsections (f), (g) (other  
20 than with respect to any sale for export under para-  
21 graph (3) thereof), (h), and (l).”.

1459

1 (3) NO REFUND.—

2 (A) IN GENERAL.—Subchapter B of chap-  
3 ter 65 is amended by adding at the end the fol-  
4 lowing new section:

5 **“SEC. 6430. TREATMENT OF TAX IMPOSED AT LEAKING UN-  
6 DERGROUND STORAGE TANK TRUST FUND  
7 FINANCING RATE.**

8 “No refunds, credits, or payments shall be made  
9 under this subchapter for any tax imposed at the Leaking  
10 Underground Storage Tank Trust Fund financing rate,  
11 except in the case of fuels destined for export.”.

12 (B) CLERICAL AMENDMENT.—The table of  
13 sections for subchapter B of chapter 65 is  
14 amended by adding at the end the following  
15 new item:

“Sec. 6430. Treatment of tax imposed at Leaking Underground Storage Tank  
Trust Fund financing rate.”.

16 (c) CERTAIN REFUNDS AND CREDITS NOT CHARGED  
17 TO LUST TRUST FUND.—Subsection (c) of section 9508  
18 (relating to Leaking Underground Storage Tank Trust  
19 Fund) is amended to read as follows:

1460

1       “(c) EXPENDITURES.—Amounts in the Leaking Un-  
2       derground Storage Tank Trust Fund shall be available,  
3       as provided in appropriation Acts, only for purposes of  
4       making expenditures to carry out section 9003(h) of the  
5       Solid Waste Disposal Act as in effect on the date of the  
6       enactment of the Superfund Amendments and Reauthor-  
7       ization Act of 1986.”.

8       (d) EFFECTIVE DATES.—

9               (1) IN GENERAL.—Except as provided in para-  
10       graph (2), the amendments made by this section  
11       shall take effect on October 1, 2005.

12              (2) NO EXEMPTION.—The amendments made  
13       by subsection (b) shall apply to fuel entered, re-  
14       moved, or sold after September 30, 2005.

15       **SEC. 1363. MODIFICATION OF RECAPTURE RULES FOR AM-**  
16                               **ORTIZABLE SECTION 197 INTANGIBLES.**

17       (a) IN GENERAL.—Subsection (b) of section 1245  
18       (relating to gain from dispositions of certain depreciable  
19       property) is amended by adding at the end the following  
20       new paragraph:

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1           “(9) DISPOSITION OF AMORTIZABLE SECTION  
2           197 INTANGIBLES.—

3                   “(A) IN GENERAL.—If a taxpayer disposes  
4                   of more than 1 amortizable section 197 intan-  
5                   gible (as defined in section 197(c)) in a trans-  
6                   action or a series of related transactions, all  
7                   such amortizable 197 intangibles shall be treat-  
8                   ed as 1 section 1245 property for purposes of  
9                   this section.

10                   “(B) EXCEPTION.—Subparagraph (A)  
11                   shall not apply to any amortizable section 197  
12                   intangible (as so defined) with respect to which  
13                   the adjusted basis exceeds the fair market  
14                   value.”.

15           (b) EFFECTIVE DATE.—The amendment made by  
16 this section shall apply to dispositions of property after  
17 the date of the enactment of this Act.

18 **SEC. 1364. CLARIFICATION OF TIRE EXCISE TAX.**

19           (a) IN GENERAL.—Section 4072(e) (defining super  
20 single tire) is amended by adding at the end the following:

1 “Such term shall not include any tire designed for steer-  
2 ing.”

3 (b) EFFECTIVE DATE.—The amendment made by  
4 this section shall take effect as if included in section 869  
5 of the American Jobs Creation Act of 2004.

6 (c) STUDY.—

7 (1) IN GENERAL.—With respect to the 1-year  
8 period beginning on January 1, 2006, the Secretary  
9 of the Treasury shall conduct a study to  
10 determine—

11 (A) the amount of tax collected during  
12 such period under section 4071 of the Internal  
13 Revenue Code of 1986 with respect to each  
14 class of tire, and

15 (B) the number of tires in each such class  
16 on which tax is imposed under such section dur-  
17 ing such period.

18 (2) REPORT.—Not later than July 1, 2007, the  
19 Secretary of the Treasury shall submit to Congress  
20 a report on the study conducted under paragraph  
21 (1).

1       **TITLE XIV—MISCELLANEOUS**  
2                   **Subtitle A—In General**

3       **SEC. 1401. SENSE OF CONGRESS ON RISK ASSESSMENTS.**

4           Subtitle B of title XXX of the Energy Policy Act of  
5 1992 is amended by adding at the end the following new  
6 section:

7       **“SEC. 3022. SENSE OF CONGRESS ON RISK ASSESSMENTS.**

8           “It is the sense of Congress that Federal agencies  
9 conducting assessments of risks to human health and the  
10 environment from energy technology, production, trans-  
11 port, transmission, distribution, storage, use, or conserva-  
12 tion activities shall use sound and objective scientific prac-  
13 tices in assessing such risks, shall consider the best avail-  
14 able science (including peer reviewed studies), and shall  
15 include a description of the weight of the scientific evi-  
16 dence concerning such risks.”.

17       **SEC. 1402. ENERGY PRODUCTION INCENTIVES.**

18           (a) IN GENERAL.—A State may provide to any  
19 entity—

20                   (1) a credit against any tax or fee owed to the  
21 State under a State law, or

1           (2) any other tax incentive,  
2 determined by the State to be appropriate, in the amount  
3 calculated under and in accordance with a formula deter-  
4 mined by the State, for production described in subsection  
5 (b) in the State by the entity that receives such credit or  
6 such incentive.

7           (b) ELIGIBLE ENTITIES.—Subsection (a) shall apply  
8 with respect to the production in the State of electricity  
9 from coal mined in the State and used in a facility, if such  
10 production meets all applicable Federal and State laws  
11 and if such facility uses scrubbers or other forms of clean  
12 coal technology.

13           (c) EFFECT ON INTERSTATE COMMERCE.—Any ac-  
14 tion taken by a State in accordance with this section with  
15 respect to a tax or fee payable, or incentive applicable,  
16 for any period beginning after the date of the enactment  
17 of this Act shall—

18           (1) be considered to be a reasonable regulation  
19 of commerce; and

20           (2) not be considered to impose an undue bur-  
21 den on interstate commerce or to otherwise impair,



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1       restrain, or discriminate, against interstate com-  
2       merce.

3       **SEC. 1403. REGULATION OF CERTAIN OIL USED IN TRANS-**  
4                                   **FORMERS.**

5       Notwithstanding any other provision of law, or rule  
6 promulgated by the Environmental Protection Agency,  
7 vegetable oil made from soybeans and used in electric  
8 transformers as thermal insulation shall not be regulated  
9 as an oil identified under section 2(a)(1)(B) of the Edible  
10 Oil Regulatory Reform Act (33 U.S.C. 2720(a)(1)(B)).

11       **SEC. 1404. PETROCHEMICAL AND OIL REFINERY FACILITY**  
12                                   **HEALTH ASSESSMENT.**

13       (a) ESTABLISHMENT.—The Secretary shall conduct  
14 a study of direct and significant health impacts to persons  
15 resulting from living in proximity to petrochemical and oil  
16 refinery facilities. The Secretary shall consult with the Di-  
17 rector of the National Cancer Institute and other Federal  
18 Government bodies with expertise in the field it deems ap-  
19 propriate in the design of such study. The study shall be  
20 conducted according to sound and objective scientific prac-  
21 tices and present the weight of the scientific evidence. The

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1 Secretary shall obtain scientific peer review of the draft  
2 study.

3 (b) REPORT TO CONGRESS.—The Secretary shall  
4 transmit the results of the study to Congress within 6  
5 months of the enactment of this section.

6 (c) AUTHORIZATION OF APPROPRIATIONS.—There  
7 are authorized to be appropriated to the Secretary for ac-  
8 tivities under this section such sums as are necessary for  
9 the completion of the study.

10 **SEC. 1405. NATIONAL PRIORITY PROJECT DESIGNATION.**

11 (a) DESIGNATION OF NATIONAL PRIORITY  
12 PROJECTS.—

13 (1) IN GENERAL.—There is established the Na-  
14 tional Priority Project Designation (referred to in  
15 this section as the “Designation”), which shall be  
16 evidenced by a medal bearing the inscription “Na-  
17 tional Priority Project”.

18 (2) DESIGN AND MATERIALS.—The medal shall  
19 be of such design and materials and bear such addi-  
20 tional inscriptions as the President may prescribe.

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1 (b) MAKING AND PRESENTATION OF DESIGNA-  
2 TION.—

3 (1) IN GENERAL.—The President, on the basis  
4 of recommendations made by the Secretary, shall an-  
5 nually designate organizations that have—

6 (A) advanced the field of renewable energy  
7 technology and contributed to North American  
8 energy independence; and

9 (B) been certified by the Secretary under  
10 subsection (e).

11 (2) PRESENTATION.—The President shall des-  
12 ignate projects with such ceremonies as the Presi-  
13 dent may prescribe.

14 (3) USE OF DESIGNATION.—An organization  
15 that receives a Designation under this section may  
16 publicize the Designation of the organization as a  
17 National Priority Project in advertising.

18 (4) CATEGORIES IN WHICH THE DESIGNATION  
19 MAY BE GIVEN.—Separate Designations shall be  
20 made to qualifying projects in each of the following  
21 categories:

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1 (A) Wind and biomass energy generation  
2 projects.

3 (B) Photovoltaic and fuel cell energy gen-  
4 eration projects.

5 (C) Energy efficient building and renew-  
6 able energy projects.

7 (D) First-in-Class projects.

8 (c) SELECTION CRITERIA.—

9 (1) IN GENERAL.—Certification and selection of  
10 the projects to receive the Designation shall be based  
11 on criteria established under this subsection.

12 (2) WIND, BIOMASS, AND BUILDING  
13 PROJECTS.—In the case of a wind, biomass, or  
14 building project, the project shall demonstrate that  
15 the project will install not less than 30 megawatts  
16 of renewable energy generation capacity.

17 (3) SOLAR PHOTOVOLTAIC AND FUEL CELL  
18 PROJECTS.—In the case of a solar photovoltaic or  
19 fuel cell project, the project shall demonstrate that  
20 the project will install not less than 3 megawatts of  
21 renewable energy generation capacity.

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1           (4) ENERGY EFFICIENT BUILDING AND RENEW-  
2           ABLE ENERGY PROJECTS.—In the case of an energy  
3           efficient building or renewable energy project, in ad-  
4           dition to meeting the criteria established under para-  
5           graph (2), each building project shall demonstrate  
6           that the project will—

7                   (A) comply with third-party certification  
8                   standards for high-performance, sustainable  
9                   buildings;

10                   (B) use whole-building integration of en-  
11                   ergy efficiency and environmental performance  
12                   design and technology, including advanced  
13                   building controls;

14                   (C) use renewable energy for at least 50  
15                   percent of the energy consumption of the  
16                   project;

17                   (D) comply with applicable Energy Star  
18                   standards; and

19                   (E) include at least 5,000,000 square feet  
20                   of enclosed space.

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1           (5) FIRST-IN-CLASS USE.—Notwithstanding  
2 paragraphs (2) through (4), a new building project  
3 may qualify under this section if the Secretary deter-  
4 mines that the project—

5                   (A) represents a First-In-Class use of re-  
6 newable energy; or

7                   (B) otherwise establishes a new paradigm  
8 of building integrated renewable energy use or  
9 energy efficiency.

10 (d) APPLICATION.—

11           (1) INITIAL APPLICATIONS.—No later than 120  
12 days after the date of enactment of this Act, and an-  
13 nually thereafter, the Secretary shall publish in the  
14 Federal Register an invitation and guidelines for  
15 submitting applications, consistent with this section.

16           (2) CONTENTS.—The application shall describe  
17 the project, or planned project, and the plans to  
18 meet the criteria established under subsection (c).

19 (e) CERTIFICATION.—

20           (1) IN GENERAL.—Not later than 60 days after  
21 the application period described in subsection (d),

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1 and annually thereafter, the Secretary shall certify  
2 projects that are reasonably expected to meet the  
3 criteria established under subsection (c).

4 (2) CERTIFIED PROJECTS.—The Secretary shall  
5 designate personnel of the Department to work with  
6 persons carrying out each certified project and en-  
7 sure that the personnel—

8 (A) provide each certified project with  
9 guidance in meeting the criteria established  
10 under subsection (c);

11 (B) identify programs of the Department,  
12 including National Laboratories and Technology  
13 Centers, that will assist each project in meeting  
14 the criteria established under subsection (c);  
15 and

16 (C) ensure that knowledge and transfer of  
17 the most current technology between the appli-  
18 cable resources of the Federal Government (in-  
19 cluding the National Laboratories and Tech-  
20 nology Centers, the Department, and the Envi-  
21 ronmental Protection Agency) and the certified

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1 projects is being facilitated to accelerate com-  
2 mercialization of work developed through those  
3 resources.

4 (f) AUTHORIZATION OF APPROPRIATIONS.—There  
5 are authorized to be appropriated such sums as are nec-  
6 essary to carry out this section for each of fiscal years  
7 2006 through 2010.

8 **SEC. 1406. COLD CRACKING.**

9 (a) STUDY.—The Secretary shall conduct a study of  
10 the application of radiation to petroleum at standard tem-  
11 perature and pressure to refine petroleum products, whose  
12 objective shall be to increase the economic yield from each  
13 barrel of oil.

14 (b) GOALS.—The goals of the study shall include—

15 (1) increasing the value of our current oil sup-  
16 ply;

17 (2) reducing the capital investment cost for  
18 cracking oil;

19 (3) reducing the operating energy cost for  
20 cracking oil; and



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1           (4) reducing sulfur content using an environ-  
2           mentally responsible method.

3           (c) AUTHORIZATION OF APPROPRIATIONS.—There  
4           are authorized to be appropriated to carry out this section  
5           \$250,000 for fiscal year 2006.

6           **SEC. 1407. OXYGEN-FUEL.**

7           (a) PROGRAM.—The Secretary shall establish a pro-  
8           gram on oxygen-fuel systems. If feasible, the program  
9           shall include renovation of at least one existing large unit  
10          and one existing small unit, and construction of one new  
11          large unit and one new small unit.

12          (b) AUTHORIZATION OF APPROPRIATIONS.—There  
13          are authorized to be appropriated to the Secretary for car-  
14          rying out this section—

15                 (1) \$100,000,000 for fiscal year 2006;

16                 (2) \$100,000,000 for fiscal year 2007; and

17                 (3) \$100,000,000 for fiscal year 2008.

18          (c) DEFINITIONS.—For purposes of this section—

19                 (1) the term “large unit” means a unit with a  
20                 generating capacity of 100 megawatts or more;

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1           (2) the term “oxygen-fuel systems” means sys-  
2           tems that utilize fuel efficiency benefits of oil, gas,  
3           coal, and biomass combustion using substantially  
4           pure oxygen, with high flame temperatures and the  
5           exclusion of air from the boiler, in industrial or elec-  
6           tric utility steam generating units; and

7           (3) the term “small unit” means a unit with a  
8           generating capacity in the 10-50 megawatt range.

## 9           **Subtitle B—Set America Free**

### 10       **SEC. 1421. SHORT TITLE.**

11       This subtitle may be cited as the “Set America Free  
12       Act of 2005” or the “SAFE Act”.

### 13       **SEC. 1422. PURPOSE.**

14       The purpose of this subtitle is to establish a United  
15       States commission to make recommendations for a coordi-  
16       nated and comprehensive North American energy policy  
17       that will achieve energy self-sufficiency by 2025 within the  
18       three contiguous North American nation area of Canada,  
19       Mexico, and the United States.

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1 **SEC. 1423. UNITED STATES COMMISSION ON NORTH AMER-**  
2 **ICAN ENERGY FREEDOM.**

3 (a) ESTABLISHMENT.—There is hereby established  
4 the United States Commission on North American Energy  
5 Freedom (in this subtitle referred to as the “Commis-  
6 sion”). The Federal Advisory Committee Act (5 U.S.C.  
7 App.), except sections 3, 7, and 12, does not apply to the  
8 Commission.

9 (b) MEMBERSHIP.—

10 (1) APPOINTMENT.—The Commission shall be  
11 composed of 16 members appointed by the President  
12 from among individuals described in paragraph (2)  
13 who are knowledgeable on energy issues, including  
14 oil and gas exploration and production, crude oil re-  
15 fining, oil and gas pipelines, electricity production  
16 and transmission, coal, unconventional hydrocarbon  
17 resources, fuel cells, motor vehicle power systems,  
18 nuclear energy, renewable energy, biofuels, energy  
19 efficiency, and energy conservation. The membership  
20 of the Commission shall be balanced by area of ex-  
21 pertise to the extent consistent with maintaining the

1 highest level of expertise on the Commission. Mem-  
2 bers of the Commission may be citizens of Canada,  
3 Mexico, or the United States, and the President  
4 shall ensure that citizens of all three nations are ap-  
5 pointed to the Commission.

6 (2) NOMINATIONS.—The President shall ap-  
7 point the members of the Commission within 60  
8 days after the effective date of this Act, including in-  
9 dividuals nominated as follows:

10 (A) Four members shall be appointed from  
11 amongst individuals independently determined  
12 by the President to be qualified for appoint-  
13 ment.

14 (B) Four members shall be appointed from  
15 a list of eight individuals who shall be nomi-  
16 nated by the majority leader of the Senate in  
17 consultation with the chairman of the Com-  
18 mittee on Energy and Natural Resources of the  
19 Senate.

20 (C) Four members shall be appointed from  
21 a list of eight individuals who shall be nomi-

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1           nated by the Speaker of the House of Rep-  
2           representatives in consultation with the chairmen  
3           of the Committees on Energy and Commerce  
4           and Resources of the House of Representatives.

5           (D) Two members shall be appointed from  
6           a list of four individuals who shall be nominated  
7           by the minority leader of the Senate in con-  
8           sultation with the ranking Member of the Com-  
9           mittee on Energy and Natural Resources of the  
10          Senate.

11          (E) Two members shall be appointed from  
12          a list of four individuals who shall be nominated  
13          by the minority leader of the House in consulta-  
14          tion with the ranking Members of the Commit-  
15          tees on Energy and Commerce and Resources  
16          of the House of Representatives.

17          (3) CHAIRMAN.—The chairman of the Commis-  
18          sion shall be selected by the President. The chair-  
19          man of the Commission shall be responsible for—

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1 (A) the assignment of duties and respon-  
2 sibilities among staff personnel and their con-  
3 tinuing supervision; and

4 (B) the use and expenditure of funds avail-  
5 able to the Commission.

6 (4) VACANCIES.—Any vacancy on the Commis-  
7 sion shall be filled in the same manner as the origi-  
8 nal incumbent was appointed.

9 (c) RESOURCES.—In carrying out its functions under  
10 this section, the Commission—

11 (1) is authorized to secure directly from any  
12 Federal agency or department any information it  
13 deems necessary to carry out its functions under this  
14 Act, and each such agency or department is author-  
15 ized to cooperate with the Commission and, to the  
16 extent permitted by law, to furnish such information  
17 (other than information described in section  
18 552(b)(1)(A) of title 5, United States Code) to the  
19 Commission, upon the request of the Commission;

20 (2) may enter into contracts, subject to the  
21 availability of appropriations for contracting, and

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1 employ such staff experts and consultants as may be  
2 necessary to carry out the duties of the Commission,  
3 as provided by section 3109 of title 5, United States  
4 Code; and

5 (3) shall establish a multidisciplinary science  
6 and technical advisory panel of experts in the field  
7 of energy to assist the Commission in preparing its  
8 report, including ensuring that the scientific and  
9 technical information considered by the Commission  
10 is based on the best scientific and technical informa-  
11 tion available.

12 (d) STAFFING.—The chairman of the Commission  
13 may, without regard to the civil service laws and regula-  
14 tions, appoint and terminate an executive director and  
15 such other additional personnel as may be necessary for  
16 the Commission to perform its duties. The executive direc-  
17 tor shall be compensated at a rate not to exceed the rate  
18 payable for Level IV of the Executive Schedule under  
19 chapter 5136 of title 5, United States Code. The chairman  
20 shall select staff from among qualified citizens of Canada,  
21 Mexico, and the United States of America.

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1 (e) MEETINGS.—

2 (1) ADMINISTRATION.—All meetings of the  
3 Commission shall be open to the public, except that  
4 a meeting or any portion of it may be closed to the  
5 public if it concerns matters or information de-  
6 scribed in section 552b(c) of title 5, United States  
7 Code. Interested persons shall be permitted to ap-  
8 pear at open meetings and present oral or written  
9 statements on the subject matter of the meeting.  
10 The Commission may administer oaths or affirma-  
11 tions to any person appearing before it.

12 (2) NOTICE; MINUTES; PUBLIC AVAILABILITY  
13 OF DOCUMENTS.—

14 (A) NOTICE.—All open meetings of the  
15 Commission shall be preceded by timely public  
16 notice in the Federal Register of the time,  
17 place, and subject of the meeting.

18 (B) MINUTES.—Minutes of each meeting  
19 shall be kept and shall contain a record of the  
20 people present, a description of the discussion  
21 that occurred, and copies of all statements filed.



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1           Subject to section 552 of title 5, United States  
2           Code, the minutes and records of all meetings  
3           and other documents that were made available  
4           to or prepared for the Commission shall be  
5           available for public inspection and copying at a  
6           single location in the offices of the Commission.

7           (3) INITIAL MEETING.—The Commission shall  
8           hold its first meeting within 30 days after all 16  
9           members have been appointed.

10          (f) REPORT.—Within 12 months after the effective  
11          date of this Act, the Commission shall submit to Congress  
12          and the President a final report of its findings and rec-  
13          ommendations regarding North American energy freedom.

14          (g) ADMINISTRATIVE PROCEDURE FOR REPORT AND  
15          REVIEW.—Chapter 5 and chapter 7 of title 5, United  
16          States Code, do not apply to the preparation, review, or  
17          submission of the report required by subsection (f).

18          (h) TERMINATION.—The Commission shall cease to  
19          exist 90 days after the date on which it submits its final  
20          report.

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1 (i) AUTHORIZATION OF APPROPRIATIONS.—There is  
2 authorized to be appropriated to carry out this chapter  
3 a total of \$10,000,000 for the 2 fiscal-year period begin-  
4 ning with fiscal year 2005, such sums to remain available  
5 until expended.

6 **SEC. 1424. NORTH AMERICAN ENERGY FREEDOM POLICY.**

7 Within 90 days after receiving and considering the  
8 report and recommendations of the Commission under sec-  
9 tion 1423, the President shall submit to Congress a state-  
10 ment of proposals to implement or respond to the Commis-  
11 sion's recommendations for a coordinated, comprehensive,  
12 and long-range national policy to achieve North American  
13 energy freedom by 2025.

14 **TITLE XV—ETHANOL AND**  
15 **MOTOR FUELS**  
16 **Subtitle A—General Provisions**

17 **SEC. 1501. RENEWABLE CONTENT OF GASOLINE.**

18 (a) IN GENERAL.—Section 211 of the Clean Air Act  
19 (42 U.S.C. 7545) is amended—

20 (1) by redesignating subsection (o) as sub-  
21 section (r); and

1           (2) by inserting after subsection (n) the fol-  
2           lowing:

3           “(o) RENEWABLE FUEL PROGRAM.—

4           “(1) DEFINITIONS.—In this section:

5           “(A) CELLULOSIC BIOMASS ETHANOL.—

6           The term ‘cellulosic biomass ethanol’ means  
7           ethanol derived from any lignocellulosic or  
8           hemicellulosic matter that is available on a re-  
9           newable or recurring basis, including—

10                   “(i) dedicated energy crops and trees;

11                   “(ii) wood and wood residues;

12                   “(iii) plants;

13                   “(iv) grasses;

14                   “(v) agricultural residues;

15                   “(vi) fibers;

16                   “(vii) animal wastes and other waste  
17                   materials; and

18                   “(viii) municipal solid waste.

19           The term also includes any ethanol produced in  
20           facilities where animal wastes or other waste  
21           materials are digested or otherwise used to dis-

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1 place 90 percent or more of the fossil fuel nor-  
2 mally used in the production of ethanol.

3 “(B) WASTE DERIVED ETHANOL.—The  
4 term ‘waste derived ethanol’ means ethanol de-  
5 rived from—

6 “(i) animal wastes, including poultry  
7 fats and poultry wastes, and other waste  
8 materials; or

9 “(ii) municipal solid waste.

10 “(C) RENEWABLE FUEL.—

11 “(i) IN GENERAL.—The term ‘renew-  
12 able fuel’ means motor vehicle fuel that—

13 “(I)(aa) is produced from grain,  
14 starch, oilseeds, vegetable, animal, or  
15 fish materials including fats, greases,  
16 and oils, sugarcane, sugar beets,  
17 sugar components, tobacco, potatoes,  
18 or other biomass; or

19 “(bb) is natural gas produced  
20 from a biogas source, including a  
21 landfill, sewage waste treatment plant,

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1 feedlot, or other place where decaying  
2 organic material is found; and

3 “(II) is used to replace or reduce  
4 the quantity of fossil fuel present in a  
5 fuel mixture used to operate a motor  
6 vehicle.

7 “(ii) INCLUSION.—The term ‘renew-  
8 able fuel’ includes—

9 “(I) cellulosic biomass ethanol  
10 and ‘waste derived ethanol’; and

11 “(II) biodiesel (as defined in sec-  
12 tion 312(f) of the Energy Policy Act  
13 of 1992 (42 U.S.C. 13220(f))) and  
14 any blending components derived from  
15 renewable fuel (provided that only the  
16 renewable fuel portion of any such  
17 blending component shall be consid-  
18 ered part of the applicable volume  
19 under the renewable fuel program es-  
20 tablished by this subsection).

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1           “(D) SMALL REFINERY.—The term ‘small  
2           refinery’ means a refinery for which the average  
3           aggregate daily crude oil throughput for a cal-  
4           endar year (as determined by dividing the ag-  
5           gregate throughput for the calendar year by the  
6           number of days in the calendar year) does not  
7           exceed 75,000 barrels.

8           “(2) RENEWABLE FUEL PROGRAM.—

9           “(A) REGULATIONS.—

10           “(i) IN GENERAL.—Not later than 1  
11           year after the date of enactment of this  
12           paragraph, the Administrator shall promul-  
13           gate regulations to ensure that gasoline  
14           sold or introduced into commerce in the  
15           United States (except in noncontiguous  
16           States or territories), on an annual average  
17           basis, contains the applicable volume of re-  
18           newable fuel determined in accordance with  
19           subparagraph (B).

20           “(ii) NONCONTIGUOUS STATE OPT-  
21           IN.—

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1           “(I) IN GENERAL.—On the peti-  
2           tion of a noncontiguous State or terri-  
3           tory, the Administrator may allow the  
4           renewable fuel program established  
5           under this subsection to apply in the  
6           noncontiguous State or territory at  
7           the same time or any time after the  
8           Administrator promulgates regula-  
9           tions under this subparagraph.

10           “(II) OTHER ACTIONS.—In car-  
11           rying out this clause, the Adminis-  
12           trator may—

13                   “(aa) issue or revise regula-  
14                   tions under this paragraph;

15                   “(bb) establish applicable  
16                   percentages under paragraph (3);

17                   “(cc) provide for the genera-  
18                   tion of credits under paragraph  
19                   (5); and

20                   “(dd) take such other ac-  
21                   tions as are necessary to allow

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1 for the application of the renew-  
2 able fuels program in a non-  
3 contiguous State or territory.

4 “(iii) PROVISIONS OF REGULA-  
5 TIONS.—Regardless of the date of promul-  
6 gation, the regulations promulgated under  
7 clause (i)—

8 “(I) shall contain compliance pro-  
9 visions applicable to refineries, blend-  
10 ers, distributors, and importers, as  
11 appropriate, to ensure that the re-  
12 quirements of this paragraph are met;  
13 but

14 “(II) shall not—

15 “(aa) restrict geographic  
16 areas in which renewable fuel  
17 may be used; or

18 “(bb) impose any per-gallon  
19 obligation for the use of renew-  
20 able fuel.



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1           “(iv) REQUIREMENT IN CASE OF  
 2           FAILURE TO PROMULGATE REGULA-  
 3           TIONS.—If the Administrator does not pro-  
 4           mulgate regulations under clause (i), the  
 5           percentage of renewable fuel in gasoline  
 6           sold or dispensed to consumers in the  
 7           United States, on a volume basis, shall be  
 8           2.78 percent for calendar year 2006.

9           “(B) APPLICABLE VOLUME.—

10           “(i) CALENDAR YEARS 2006 THROUGH  
 11           2012.—For the purpose of subparagraph  
 12           (A), the applicable volume for any of cal-  
 13           endar years 2006 through 2012 shall be  
 14           determined in accordance with the fol-  
 15           lowing table:

<b>“Calendar year:</b>	<b>Applicable volume of renewable fuel (in billions of gallons):</b>
2006 .....	4.0
2007 .....	4.7
2008 .....	5.4
2009 .....	6.1
2010 .....	6.8
2011 .....	7.4
2012 .....	7.5.

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1           “(ii) CALENDAR YEAR 2013 AND  
2           THEREAFTER.—Subject to clauses (iii) and  
3           (iv), for the purposes of subparagraph (A),  
4           the applicable volume for calendar year  
5           2013 and each calendar year thereafter  
6           shall be determined by the Administrator,  
7           in coordination with the Secretary of Agri-  
8           culture and the Secretary of Energy, based  
9           on a review of the implementation of the  
10          program during calendar years 2006  
11          through 2012, including a review of—

12                   “(I) the impact of the use of re-  
13                   newable fuels on the environment, air  
14                   quality, energy security, job creation,  
15                   and rural economic development; and

16                   “(II) the expected annual rate of  
17                   future production of renewable fuels,  
18                   including cellulosic ethanol.

19           “(iii) MINIMUM QUANTITY DERIVED  
20          FROM CELLULOSIC BIOMASS.—For cal-

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1           endar year 2013 and each calendar year  
2           thereafter—

3                   “(I) the applicable volume re-  
4                   ferred to in clause (ii) shall contain a  
5                   minimum of 250,000,000 gallons that  
6                   are derived from cellulosic biomass;  
7                   and

8                   “(II) the 2.5-to-1 ratio referred  
9                   to in paragraph (4) shall not apply.

10                   “(iv) MINIMUM APPLICABLE VOL-  
11                   UME.—For the purpose of subparagraph  
12                   (A), the applicable volume for calendar  
13                   year 2013 and each calendar year there-  
14                   after shall be equal to the product obtained  
15                   by multiplying—

16                           “(I) the number of gallons of  
17                           gasoline that the Administrator esti-  
18                           mates will be sold or introduced into  
19                           commerce in the calendar year; and

20                           “(II) the ratio that—

1                   “(aa) 7,500,000,000 gallons  
2                   of renewable fuel; bears to

3                   “(bb) the number of gallons  
4                   of gasoline sold or introduced  
5                   into commerce in calendar year  
6                   2012.

7                   “(3) APPLICABLE PERCENTAGES.—

8                   “(A) PROVISION OF ESTIMATE OF VOL-  
9                   UMES OF GASOLINE SALES.—Not later than Oc-  
10                  tober 31 of each of calendar years 2005  
11                  through 2011, the Administrator of the Energy  
12                  Information Administration shall provide to the  
13                  Administrator of the Environmental Protection  
14                  Agency an estimate, with respect to the fol-  
15                  lowing calendar year, of the volumes of gasoline  
16                  projected to be sold or introduced into com-  
17                  merce in the United States.

18                  “(B) DETERMINATION OF APPLICABLE  
19                  PERCENTAGES.—

20                  “(i) IN GENERAL.—Not later than  
21                  November 30 of each of calendar years

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1           2005 through 2012, based on the estimate  
2           provided under subparagraph (A), the Ad-  
3           ministratoꝛ of the Environmental Protec-  
4           tion Agency shall determine and publish in  
5           the Federal Register, with respect to the  
6           following calendar year, the renewable fuel  
7           obligation that ensures that the require-  
8           ments of paragraph (2) are met.

9           “(ii) REQUIRED ELEMENTS.—The re-  
10          newable fuel obligation determined for a  
11          calendar year under clause (i) shall—

12                 “(I) be applicable to refineries,  
13                 blenders, and importers, as appro-  
14                 priate;

15                 “(II) be expressed in terms of a  
16                 volume percentage of gasoline sold or  
17                 introduced into commerce in the  
18                 United States; and

19                 “(III) subject to subparagraph  
20                 (C)(i), consist of a single applicable  
21                 percentage that applies to all cat-

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1                   egories of persons specified in sub-  
2                   clause (I).

3                   “(C) ADJUSTMENTS.—In determining the  
4                   applicable percentage for a calendar year, the  
5                   Administrator shall make adjustments—

6                   “(i) to prevent the imposition of re-  
7                   dundant obligations on any person speci-  
8                   fied in subparagraph (B)(ii)(I); and

9                   “(ii) to account for the use of renew-  
10                  able fuel during the previous calendar year  
11                  by small refineries that are exempt under  
12                  paragraph (9).

13                  “(4) CELLULOSIC BIOMASS ETHANOL OR WASTE  
14                  DERIVED ETHANOL.—For the purpose of paragraph  
15                  (2), 1 gallon of cellulosic biomass ethanol or waste  
16                  derived ethanol shall be considered to be the equiva-  
17                  lent of 2.5 gallons of renewable fuel.

18                  “(5) CREDIT PROGRAM.—

19                  “(A) IN GENERAL.—The regulations pro-  
20                  mulgated under paragraph (2)(A) shall  
21                  provide—

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1           “(i) for the generation of an appro-  
2           priate amount of credits by any person  
3           that refines, blends, or imports gasoline  
4           that contains a quantity of renewable fuel  
5           that is greater than the quantity required  
6           under paragraph (2);

7           “(ii) for the generation of an appro-  
8           priate amount of credits for biodiesel; and

9           “(iii) for the generation of credits by  
10          small refineries in accordance with para-  
11          graph (9)(C).

12          “(B) USE OF CREDITS.—A person that  
13          generates credits under subparagraph (A) may  
14          use the credits, or transfer all or a portion of  
15          the credits to another person, for the purpose  
16          of complying with paragraph (2).

17          “(C) DURATION OF CREDITS.—A credit  
18          generated under this paragraph shall be valid to  
19          show compliance for the 12 months as of the  
20          date of generation.

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1           “(D) INABILITY TO GENERATE OR PUR-  
2           CHASE SUFFICIENT CREDITS.—The regulations  
3           promulgated under paragraph (2)(A) shall in-  
4           clude provisions allowing any person that is un-  
5           able to generate or purchase sufficient credits  
6           to meet the requirements of paragraph (2) to  
7           carry forward a renewable fuel deficit on condi-  
8           tion that the person, in the calendar year fol-  
9           lowing the year in which the renewable fuel def-  
10          icit is created—

11                   “(i) achieves compliance with the re-  
12                   newable fuel requirement under paragraph  
13                   (2); and

14                   “(ii) generates or purchases additional  
15                   renewable fuel credits to offset the renew-  
16                   able fuel deficit of the previous year.

17          “(6) SEASONAL VARIATIONS IN RENEWABLE  
18          FUEL USE.—

19                   “(A) STUDY.—For each of calendar years  
20                   2006 through 2012, the Administrator of the  
21                   Energy Information Administration shall con-



1497

1           duct a study of renewable fuel blending to de-  
2           termine whether there are excessive seasonal  
3           variations in the use of renewable fuel.

4           “(B) REGULATION OF EXCESSIVE SEA-  
5           SONAL VARIATIONS.—If, for any calendar year,  
6           the Administrator of the Energy Information  
7           Administration, based on the study under sub-  
8           paragraph (A), makes the determinations speci-  
9           fied in subparagraph (C), the Administrator of  
10          the Environmental Protection Agency shall pro-  
11          mulgate regulations to ensure that 25 percent  
12          or more of the quantity of renewable fuel nec-  
13          essary to meet the requirements of paragraph  
14          (2) is used during each of the 2 periods speci-  
15          fied in subparagraph (D) of each subsequent  
16          calendar year.

17          “(C) DETERMINATIONS.—The determina-  
18          tions referred to in subparagraph (B) are  
19          that—

20                  “(i) less than 25 percent of the quan-  
21                  tity of renewable fuel necessary to meet the

1498

1 requirements of paragraph (2) has been  
2 used during 1 of the 2 periods specified in  
3 subparagraph (D) of the calendar year;

4 “(ii) a pattern of excessive seasonal  
5 variation described in clause (i) will con-  
6 tinue in subsequent calendar years; and

7 “(iii) promulgating regulations or  
8 other requirements to impose a 25 percent  
9 or more seasonal use of renewable fuels  
10 will not prevent or interfere with the at-  
11 tainment of national ambient air quality  
12 standards or significantly increase the  
13 price of motor fuels to the consumer.

14 “(D) PERIODS.—The 2 periods referred to  
15 in this paragraph are—

16 “(i) April through September; and

17 “(ii) January through March and Oc-  
18 tober through December.

19 “(E) EXCLUSION.—Renewable fuel blended  
20 or consumed in calendar year 2006 in a State  
21 that has received a waiver under section 209(b)

1499

1 shall not be included in the study under sub-  
2 paragraph (A).

3 “(F) STATE EXEMPTION FROM  
4 SEASONALITY REQUIREMENTS.—Notwith-  
5 standing any other provision of law, the  
6 seasonality requirement relating to renewable  
7 fuel use established by this paragraph shall not  
8 apply to any State that has received a waiver  
9 under section 209(b) or any State dependent on  
10 refineries in such State for gasoline supplies.

11 “(7) WAIVERS.—

12 “(A) IN GENERAL.—The Administrator, in  
13 consultation with the Secretary of Agriculture  
14 and the Secretary of Energy, may waive the re-  
15 quirements of paragraph (2) in whole or in part  
16 on petition by 1 or more States by reducing the  
17 national quantity of renewable fuel required  
18 under paragraph (2)—

19 “(i) based on a determination by the  
20 Administrator, after public notice and op-  
21 portunity for comment, that implementa-

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1           tion of the requirement would severely  
2           harm the economy or environment of a  
3           State, a region, or the United States; or

4           “(ii) based on a determination by the  
5           Administrator, after public notice and op-  
6           portunity for comment, that there is an in-  
7           adequate domestic supply.

8           “(B) PETITIONS FOR WAIVERS.—The Ad-  
9           ministrator, in consultation with the Secretary  
10          of Agriculture and the Secretary of Energy,  
11          shall approve or disapprove a State petition for  
12          a waiver of the requirements of paragraph (2)  
13          within 90 days after the date on which the peti-  
14          tion is received by the Administrator.

15          “(C) TERMINATION OF WAIVERS.—A waiv-  
16          er granted under subparagraph (A) shall termi-  
17          nate after 1 year, but may be renewed by the  
18          Administrator after consultation with the Sec-  
19          retary of Agriculture and the Secretary of En-  
20          ergy.

1501

1           “(8) STUDY AND WAIVER FOR INITIAL YEAR OF  
2 PROGRAM.—

3           “(A) IN GENERAL.—Not later than 180  
4 days after the date of enactment of this para-  
5 graph, the Secretary of Energy shall conduct  
6 for the Administrator a study assessing whether  
7 the renewable fuel requirement under para-  
8 graph (2) will likely result in significant adverse  
9 impacts on consumers in 2006, on a national,  
10 regional, or State basis.

11           “(B) REQUIRED EVALUATIONS.—The  
12 study shall evaluate renewable fuel—

13                   “(i) supplies and prices;

14                   “(ii) blendstock supplies; and

15                   “(iii) supply and distribution system  
16 capabilities.

17           “(C) RECOMMENDATIONS BY THE SEC-  
18 RETARY.—Based on the results of the study,  
19 the Secretary of Energy shall make specific rec-  
20 ommendations to the Administrator concerning  
21 waiver of the requirements of paragraph (2), in

1502

1 whole or in part, to prevent any adverse im-  
2 pacts described in subparagraph (A).

3 “(D) WAIVER.—

4 “(i) IN GENERAL.—Not later than  
5 270 days after the date of enactment of  
6 this paragraph, the Administrator shall, if  
7 and to the extent recommended by the Sec-  
8 retary of Energy under subparagraph (C),  
9 waive, in whole or in part, the renewable  
10 fuel requirement under paragraph (2) by  
11 reducing the national quantity of renew-  
12 able fuel required under paragraph (2) in  
13 calendar year 2006.

14 “(ii) NO EFFECT ON WAIVER AUTHOR-  
15 ITY.—Clause (i) does not limit the author-  
16 ity of the Administrator to waive the re-  
17 quirements of paragraph (2) in whole, or  
18 in part, under paragraph (7).

19 “(9) SMALL REFINERIES.—

20 “(A) TEMPORARY EXEMPTION.—

1503

1           “(i) IN GENERAL.—The requirements  
2           of paragraph (2) shall not apply to small  
3           refineries until calendar year 2011.

4           “(ii) EXTENSION OF EXEMPTION.—

5                   “(I) STUDY BY SECRETARY OF  
6                   ENERGY.—Not later than December  
7                   31, 2008, the Secretary of Energy  
8                   shall conduct for the Administrator a  
9                   study to determine whether compli-  
10                  ance with the requirements of para-  
11                  graph (2) would impose a dispropor-  
12                  tionate economic hardship on small  
13                  refineries.

14                   “(II) EXTENSION OF EXEMP-  
15                   TION.—In the case of a small refinery  
16                   that the Secretary of Energy deter-  
17                   mines under subclause (I) would be  
18                   subject to a disproportionate economic  
19                   hardship if required to comply with  
20                   paragraph (2), the Administrator  
21                   shall extend the exemption under

1504

1 clause (i) for the small refinery for a  
2 period of not less than 2 additional  
3 years.

4 “(B) PETITIONS BASED ON DISPROPOR-  
5 TIONATE ECONOMIC HARDSHIP.—

6 “(i) EXTENSION OF EXEMPTION.—A  
7 small refinery may at any time petition the  
8 Administrator for an extension of the ex-  
9 emption under subparagraph (A) for the  
10 reason of disproportionate economic hard-  
11 ship.

12 “(ii) EVALUATION OF PETITIONS.—In  
13 evaluating a petition under clause (i), the  
14 Administrator, in consultation with the  
15 Secretary of Energy, shall consider the  
16 findings of the study under subparagraph  
17 (A)(ii) and other economic factors.

18 “(iii) DEADLINE FOR ACTION ON PE-  
19 TITIONS.—The Administrator shall act on  
20 any petition submitted by a small refinery  
21 for a hardship exemption not later than 90



1505

1           days after the date of receipt of the peti-  
2           tion.

3           “(C) CREDIT PROGRAM.—If a small refin-  
4           ery notifies the Administrator that the small re-  
5           finery waives the exemption under subpara-  
6           graph (A), the regulations promulgated under  
7           paragraph (2)(A) shall provide for the genera-  
8           tion of credits by the small refinery under para-  
9           graph (5) beginning in the calendar year fol-  
10          lowing the date of notification.

11          “(D) OPT-IN FOR SMALL REFINERIES.—A  
12          small refinery shall be subject to the require-  
13          ments of paragraph (2) if the small refinery no-  
14          tifies the Administrator that the small refinery  
15          waives the exemption under subparagraph (A).

16          “(10) ETHANOL MARKET CONCENTRATION  
17          ANALYSIS.—

18                 “(A) ANALYSIS.—

19                         “(i) IN GENERAL.—Not later than  
20                         180 days after the date of enactment of  
21                         this paragraph, and annually thereafter,

1506

1 the Federal Trade Commission shall per-  
2 form a market concentration analysis of  
3 the ethanol production industry using the  
4 Herfindahl-Hirschman Index to determine  
5 whether there is sufficient competition  
6 among industry participants to avoid price-  
7 setting and other anticompetitive behavior.

8 “(ii) SCORING.—For the purpose of  
9 scoring under clause (i) using the  
10 Herfindahl-Hirschman Index, all mar-  
11 keting arrangements among industry par-  
12 ticipants shall be considered.

13 “(B) REPORT.—Not later than December  
14 1, 2005, and annually thereafter, the Federal  
15 Trade Commission shall submit to Congress  
16 and the Administrator a report on the results  
17 of the market concentration analysis performed  
18 under subparagraph (A)(i).”.

19 (b) PENALTIES AND ENFORCEMENT.—Section  
20 211(d) of the Clean Air Act (42 U.S.C. 7545(d)) is  
21 amended—

1507

1 (1) in paragraph (1)—

2 (A) in the first sentence, by striking “or  
3 (n)” each place it appears and inserting “(n),  
4 or (o)”; and

5 (B) in the second sentence, by striking “or  
6 (m)” and inserting “(m), or (o)”; and

7 (2) in the first sentence of paragraph (2), by  
8 striking “and (n)” each place it appears and insert-  
9 ing “(n), and (o)”.

10 (c) EXCLUSION FROM ETHANOL WAIVER.—Section  
11 211(h) of the Clean Air Act (42 U.S.C. 7545(h)) is  
12 amended—

13 (1) by redesignating paragraph (5) as para-  
14 graph (6); and

15 (2) by inserting after paragraph (4) the fol-  
16 lowing:

17 “(5) EXCLUSION FROM ETHANOL WAIVER.—

18 “(A) PROMULGATION OF REGULATIONS.—  
19 Upon notification, accompanied by supporting  
20 documentation, from the Governor of a State  
21 that the Reid vapor pressure limitation estab-

1           lished by paragraph (4) will increase emissions  
2           that contribute to air pollution in any area in  
3           the State, the Administrator shall, by regula-  
4           tion, apply, in lieu of the Reid vapor pressure  
5           limitation established by paragraph (4), the  
6           Reid vapor pressure limitation established by  
7           paragraph (1) to all fuel blends containing gas-  
8           oline and 10 percent denatured anhydrous eth-  
9           anol that are sold, offered for sale, dispensed,  
10          supplied, offered for supply, transported, or in-  
11          troduced into commerce in the area during the  
12          high ozone season.

13                   “(B) DEADLINE FOR PROMULGATION.—  
14           The Administrator shall promulgate regulations  
15           under subparagraph (A) not later than 90 days  
16           after the date of receipt of a notification from  
17           a Governor under that subparagraph.

18                   “(C) EFFECTIVE DATE.—

19                           “(i) IN GENERAL.—With respect to an  
20                   area in a State for which the Governor  
21                   submits a notification under subparagraph

1509

1 (A), the regulations under that subpara-  
2 graph shall take effect on the later of—

3 “(I) the first day of the first high  
4 ozone season for the area that begins  
5 after the date of receipt of the notifi-  
6 cation; or

7 “(II) 1 year after the date of re-  
8 ceipt of the notification.

9 “(ii) EXTENSION OF EFFECTIVE DATE  
10 BASED ON DETERMINATION OF INSUFFI-  
11 CIENT SUPPLY.—

12 “(I) IN GENERAL.—If, after re-  
13 ceipt of a notification with respect to  
14 an area from a Governor of a State  
15 under subparagraph (A), the Adminis-  
16 trator determines, on the Administra-  
17 tor’s own motion or on petition of any  
18 person and after consultation with the  
19 Secretary of Energy, that the promul-  
20 gation of regulations described in sub-  
21 paragraph (A) would result in an in-

1510

1 sufficient supply of gasoline in the  
2 State, the Administrator, by  
3 regulation—

4 “(aa) shall extend the effec-  
5 tive date of the regulations under  
6 clause (i) with respect to the area  
7 for not more than 1 year; and

8 “(bb) may renew the exten-  
9 sion under item (aa) for 2 addi-  
10 tional periods, each of which  
11 shall not exceed 1 year.

12 “(II) DEADLINE FOR ACTION ON  
13 PETITIONS.—The Administrator shall  
14 act on any petition submitted under  
15 subclause (I) not later than 180 days  
16 after the date of receipt of the peti-  
17 tion.”.

18 (d) SURVEY OF RENEWABLE FUEL MARKET.—

19 (1) SURVEY AND REPORT.—Not later than De-  
20 cember 1, 2006, and annually thereafter, the Admin-  
21 istrator of the Environmental Protection Agency (in

1511

1 consultation with the Secretary acting through the  
2 Administrator of the Energy Information Adminis-  
3 tration) shall—

4 (A) conduct, with respect to each conven-  
5 tional gasoline use area and each reformulated  
6 gasoline use area in each State, a survey to de-  
7 termine the market shares of—

8 (i) conventional gasoline containing  
9 ethanol;

10 (ii) reformulated gasoline containing  
11 ethanol;

12 (iii) conventional gasoline containing  
13 renewable fuel; and

14 (iv) reformulated gasoline containing  
15 renewable fuel; and

16 (B) submit to Congress, and make publicly  
17 available, a report on the results of the survey  
18 under subparagraph (A).

19 (2) RECORDKEEPING AND REPORTING RE-  
20 QUIREMENTS.—The Administrator of the Environ-  
21 mental Protection Agency (hereinafter in this sub-

1512

1 section referred to as the “Administrator”) may re-  
2 quire any refiner, blender, or importer to keep such  
3 records and make such reports as are necessary to  
4 ensure that the survey conducted under paragraph  
5 (1) is accurate. The Administrator, to avoid duplica-  
6 tive requirements, shall rely, to the extent prac-  
7 ticable, on existing reporting and recordkeeping re-  
8 quirements and other information available to the  
9 Administrator including gasoline distribution pat-  
10 terns that include multistate use areas.

11 (3) APPLICABLE LAW.—Activities carried out  
12 under this subsection shall be conducted in a man-  
13 ner designed to protect confidentiality of individual  
14 responses.

15 **SEC. 1502. FINDINGS.**

16 Congress finds that—

17 (1) since 1979, methyl tertiary butyl ether  
18 (hereinafter in this section referred to as “MTBE”)  
19 has been used nationwide at low levels in gasoline to  
20 replace lead as an octane booster or anti-knocking  
21 agent;



1513

1           (2) Public Law 101–549 (commonly known as  
2           the “Clean Air Act Amendments of 1990”) (42  
3           U.S.C. 7401 et seq.) established a fuel oxygenate  
4           standard under which reformulated gasoline must  
5           contain at least 2 percent oxygen by weight; and

6           (3) the fuel industry responded to the fuel oxy-  
7           genate standard established by Public Law 101–549  
8           by making substantial investments in—

9                       (A) MTBE production capacity; and

10                      (B) systems to deliver MTBE-containing  
11                      gasoline to the marketplace.

12 **SEC. 1503. CLAIMS FILED AFTER ENACTMENT.**

13           Claims and legal actions filed after the date of enact-  
14           ment of this Act related to allegations involving actual or  
15           threatened contamination of methyl tertiary butyl ether  
16           (MTBE) may be removed to the appropriate United  
17           States district court.

18 **SEC. 1504. ELIMINATION OF OXYGEN CONTENT REQUIRE-**  
19 **MENT FOR REFORMULATED GASOLINE.**

20           (a) ELIMINATION.—

1514

1           (1) IN GENERAL.—Section 211(k) of the Clean  
2           Air Act (42 U.S.C. 7545(k)) is amended—

3                   (A) in paragraph (2)—

4                           (i) in the second sentence of subpara-  
5                           graph (A), by striking “(including the oxy-  
6                           gen content requirement contained in sub-  
7                           paragraph (B))”;

8                           (ii) by striking subparagraph (B); and

9                           (iii) by redesignating subparagraphs  
10                          (C) and (D) as subparagraphs (B) and  
11                          (C), respectively;

12                   (B) in paragraph (3)(A), by striking clause  
13                   (v); and

14                   (C) in paragraph (7)—

15                           (i) in subparagraph (A)—

16                                   (I) by striking clause (i); and

17                                   (II) by redesignating clauses (ii)  
18                           and (iii) as clauses (i) and (ii), respec-  
19                           tively; and

20                           (ii) in subparagraph (C)—

21                                   (I) by striking clause (ii); and

1515

1 (II) by redesignating clause (iii)  
2 as clause (ii).

3 (2) APPLICABILITY.—The amendments made  
4 by paragraph (1) apply—

5 (A) in the case of a State that has received  
6 a waiver under section 209(b) of the Clean Air  
7 Act (42 U.S.C. 7543(b)), beginning on the date  
8 of enactment of this Act; and

9 (B) in the case of any other State, begin-  
10 ning 270 days after the date of enactment of  
11 this Act.

12 (b) MAINTENANCE OF TOXIC AIR POLLUTANT EMIS-  
13 SION REDUCTIONS.—Section 211(k)(1) of the Clean Air  
14 Act (42 U.S.C. 7545(k)(1)) is amended—

15 (1) by striking “Within 1 year after the enact-  
16 ment of the Clean Air Act Amendments of 1990,”  
17 and inserting the following:

18 “(A) IN GENERAL.—Not later than No-  
19 vember 15, 1991,”; and

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

1516

1                   “(B) MAINTENANCE OF TOXIC AIR POL-  
2                   LUTANT EMISSIONS REDUCTIONS FROM REFOR-  
3                   MULATED GASOLINE.—

4                   “(i) DEFINITION OF PADD.—In this  
5                   subparagraph the term ‘PADD’ means a  
6                   Petroleum Administration for Defense Dis-  
7                   trict.

8                   “(ii) REGULATIONS CONCERNING  
9                   EMISSIONS OF TOXIC AIR POLLUTANTS.—  
10                  Not later than 270 days after the date of  
11                  enactment of this subparagraph, the Ad-  
12                  ministrators shall establish by regulation,  
13                  for each refinery or importer (other than a  
14                  refiner or importer in a State that has re-  
15                  ceived a waiver under section 209(b) with  
16                  respect to gasoline produced for use in that  
17                  State), standards for toxic air pollutants  
18                  from use of the reformulated gasoline pro-  
19                  duced or distributed by the refiner or im-  
20                  porter that maintain the reduction of the  
21                  average annual aggregate emissions of

1517

1 toxic air pollutants for reformulated gaso-  
2 line produced or distributed by the refiner  
3 or importer during calendar years 2001  
4 and 2002 (as determined on the basis of  
5 data collected by the Administrator with  
6 respect to the refiner or importer).

7 “(iii) STANDARDS APPLICABLE TO  
8 SPECIFIC REFINERIES OR IMPORTERS.—

9 “(I) APPLICABILITY OF STAND-  
10 ARDS.—For any calendar year, the  
11 standards applicable to a refiner or  
12 importer under clause (ii) shall apply  
13 to the quantity of gasoline produced  
14 or distributed by the refiner or im-  
15 porter in the calendar year only to the  
16 extent that the quantity is less than  
17 or equal to the average annual quan-  
18 tity of reformulated gasoline produced  
19 or distributed by the refiner or im-  
20 porter during calendar years 2001  
21 and 2002.

1518

1                   “(II) APPLICABILITY OF OTHER  
2                   STANDARDS.—For any calendar year,  
3                   the quantity of gasoline produced or  
4                   distributed by a refiner or importer  
5                   that is in excess of the quantity sub-  
6                   ject to subclause (I) shall be subject  
7                   to standards for emissions of toxic air  
8                   pollutants promulgated under sub-  
9                   paragraph (A) and paragraph (3)(B).

10                   “(iv) CREDIT PROGRAM.—The Admin-  
11                   istrator shall provide for the granting and  
12                   use of credits for emissions of toxic air pol-  
13                   lutants in the same manner as provided in  
14                   paragraph (7).

15                   “(v) REGIONAL PROTECTION OF  
16                   TOXICS REDUCTION BASELINES.—

17                   “(I) IN GENERAL.—Not later  
18                   than 60 days after the date of enact-  
19                   ment of this subparagraph, and not  
20                   later than April 1 of each calendar  
21                   year that begins after that date of en-

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1 actment, the Administrator shall pub-  
2 lish in the Federal Register a report  
3 that specifies, with respect to the pre-  
4 vious calendar year—

5 “(aa) the quantity of refor-  
6 mulated gasoline produced that is  
7 in excess of the average annual  
8 quantity of reformulated gasoline  
9 produced in 2001 and 2002; and

10 “(bb) the reduction of the  
11 average annual aggregate emis-  
12 sions of toxic air pollutants in  
13 each PADD, based on retail sur-  
14 vey data or data from other ap-  
15 propriate sources.

16 “(II) EFFECT OF FAILURE TO  
17 MAINTAIN AGGREGATE TOXICS RE-  
18 DUCTIONS.—If, in any calendar year,  
19 the reduction of the average annual  
20 aggregate emissions of toxic air pol-  
21 lutants in a PADD fails to meet or

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1 exceed the reduction of the average  
2 annual aggregate emissions of toxic  
3 air pollutants in the PADD in cal-  
4 endar years 2001 and 2002, the Ad-  
5 ministrator, not later than 90 days  
6 after the date of publication of the re-  
7 port for the calendar year under sub-  
8 clause (I), shall—

9 “(aa) identify, to the max-  
10 imum extent practicable, the rea-  
11 sons for the failure, including the  
12 sources, volumes, and character-  
13 istics of reformulated gasoline  
14 that contributed to the failure;  
15 and

16 “(bb) promulgate revisions  
17 to the regulations promulgated  
18 under clause (ii), to take effect  
19 not earlier than 180 days but not  
20 later than 270 days after the  
21 date of promulgation, to provide



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1                   that, notwithstanding clause  
2                   (iii)(II), all reformulated gasoline  
3                   produced or distributed at each  
4                   refiner or importer shall meet the  
5                   standards applicable under clause  
6                   (iii)(I) beginning not later than  
7                   April 1 of the calendar year fol-  
8                   lowing publication of the report  
9                   under subclause (I) and in each  
10                  calendar year thereafter.

11                  “(vi) Not later than July 1, 2007, the  
12                  Administrator shall promulgate final regu-  
13                  lations to control hazardous air pollutants  
14                  from motor vehicles and motor vehicle  
15                  fuels, as provided for in section 80.1045 of  
16                  title 40, Code of Federal Regulations (as  
17                  in effect on the date of enactment of this  
18                  subparagraph), and as authorized under  
19                  section 202(1) of the Clean Air Act. If the  
20                  Administrator promulgates by such date,  
21                  final regulations to control hazardous air

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1 pollutants from motor vehicles and motor  
2 vehicle fuels that achieve and maintain  
3 greater overall reductions in emissions of  
4 air toxics from reformulated gasoline than  
5 the reductions that would be achieved  
6 under section 211(k)(1)(B) of the Clean  
7 Air Act as amended by this clause, then  
8 sections 211(k)(1)(B)(i) through  
9 211(k)(1)(B)(v) shall be null and void and  
10 regulations promulgated thereunder shall  
11 be rescinded and have no further effect.”.

12 (c) CONSOLIDATION IN REFORMULATED GASOLINE  
13 REGULATIONS.—Not later than 180 days after the date  
14 of enactment of this Act, the Administrator of the Envi-  
15 ronmental Protection Agency shall revise the reformulated  
16 gasoline regulations under subpart D of part 80 of title  
17 40, Code of Federal Regulations, to consolidate the regula-  
18 tions applicable to VOC-Control Regions 1 and 2 under  
19 section 80.41 of that title by eliminating the less stringent  
20 requirements applicable to gasoline designated for VOC-  
21 Control Region 2 and instead applying the more stringent

1523

1 requirements applicable to gasoline designated for VOC-  
2 Control Region 1.

3 (d) SAVINGS CLAUSE.—

4 (1) IN GENERAL.—Nothing in this section or  
5 any amendment made by this section affects or prej-  
6 udices any legal claim or action with respect to regu-  
7 lations promulgated by the Administrator before the  
8 date of enactment of this Act regarding—

9 (A) emissions of toxic air pollutants from  
10 motor vehicles; or

11 (B) the adjustment of standards applicable  
12 to a specific refinery or importer made under  
13 those regulations.

14 (2) ADJUSTMENT OF STANDARDS.—

15 (A) APPLICABILITY.—The Administrator  
16 may apply any adjustments to the standards  
17 applicable to a refinery or importer under sub-  
18 paragraph (B)(iii)(I) of section 211(k)(1) of the  
19 Clean Air Act (as added by subsection (b)(2)),  
20 except that—

1524

1 (i) the Administrator shall revise the  
2 adjustments to be based only on calendar  
3 years 1999 and 2000;

4 (ii) any such adjustment shall not be  
5 made at a level below the average percent-  
6 age of reductions of emissions of toxic air  
7 pollutants for reformulated gasoline sup-  
8 plied to PADD I during calendar years  
9 1999 and 2000; and

10 (iii) in the case of an adjustment  
11 based on toxic air pollutant emissions from  
12 reformulated gasoline significantly below  
13 the national annual average emissions of  
14 toxic air pollutants from all reformulated  
15 gasoline—

16 (I) the Administrator may revise  
17 the adjustment to take account of the  
18 scope of the prohibition on methyl ter-  
19 tiary butyl ether imposed by a State;  
20 and

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1 (II) any such adjustment shall  
2 require the refiner or importer, to the  
3 maximum extent practicable, to main-  
4 tain the reduction achieved during cal-  
5 endar years 1999 and 2000 in the av-  
6 erage annual aggregate emissions of  
7 toxic air pollutants from reformulated  
8 gasoline produced or distributed by  
9 the refiner or importer.

10 **SEC. 1505. PUBLIC HEALTH AND ENVIRONMENTAL IM-**  
11 **PACTS OF FUELS AND FUEL ADDITIVES.**

12 Section 211(b) of the Clean Air Act (42 U.S.C.  
13 7545(b)) is amended—

14 (1) in paragraph (2)—

15 (A) by striking “may also” and inserting  
16 “shall, on a regular basis,”; and

17 (B) by striking subparagraph (A) and in-  
18 serting the following:

19 “(A) to conduct tests to determine poten-  
20 tial public health and environmental effects of

1526

1           the fuel or additive (including carcinogenic,  
2           teratogenic, or mutagenic effects); and”;  
3           (2) by adding at the end the following:

4           “(4) STUDY ON CERTAIN FUEL ADDITIVES AND  
5           BLENDSTOCKS.—

6                   “(A) IN GENERAL.—Not later than 2 years  
7           after the date of enactment of this paragraph,  
8           the Administrator shall—

9                           “(i) conduct a study on the effects on  
10                          public health (including the effects on chil-  
11                          dren, pregnant women, minority or low-in-  
12                          come communities, and other sensitive pop-  
13                          ulations), air quality, and water resources  
14                          of increased use of, and the feasibility of  
15                          using as substitutes for methyl tertiary  
16                          butyl ether in gasoline—

17                                   “(I) ethyl tertiary butyl ether;

18                                   “(II) tertiary amyl methyl ether;

19                                   “(III) di-isopropyl ether;

20                                   “(IV) tertiary butyl alcohol;

1527

1                   “(V) other ethers and heavy alco-  
2                   hols, as determined by then Adminis-  
3                   trator;

4                   “(VI) ethanol;

5                   “(VII) iso-octane; and

6                   “(VIII) alkylates; and

7                   “(ii) conduct a study on the effects on  
8                   public health (including the effects on chil-  
9                   dren, pregnant women, minority or low-in-  
10                  come communities, and other sensitive pop-  
11                  ulations), air quality, and water resources  
12                  of the adjustment for ethanol-blended re-  
13                  formulated gasoline to the volatile organic  
14                  compounds performance requirements that  
15                  are applicable under paragraphs (1) and  
16                  (3) of section 211(k); and

17                  “(iii) submit to the Committee on En-  
18                  vironment and Public Works of the Senate  
19                  and the Committee on Energy and Com-  
20                  merce of the House of Representatives a

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1 report describing the results of the studies  
2 under clauses (i) and (ii).

3 “(B) CONTRACTS FOR STUDY.—In car-  
4 rying out this paragraph, the Administrator  
5 may enter into 1 or more contracts with non-  
6 governmental entities such as—

7 “(i) the national energy laboratories;  
8 and

9 “(ii) institutions of higher education  
10 (as defined in section 101 of the Higher  
11 Education Act of 1965 (20 U.S.C.  
12 1001)).”.

13 **SEC. 1506. ANALYSES OF MOTOR VEHICLE FUEL CHANGES.**

14 Section 211 of the Clean Air Act (42 U.S.C. 7545)  
15 is amended by inserting after subsection (p) the following:

16 “(q) ANALYSES OF MOTOR VEHICLE FUEL CHANGES  
17 AND EMISSIONS MODEL.—

18 “(1) ANTI-BACKSLIDING ANALYSIS.—

19 “(A) DRAFT ANALYSIS.—Not later than 4  
20 years after the date of enactment of this para-  
21 graph, the Administrator shall publish for pub-



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1           lic comment a draft analysis of the changes in  
2           emissions of air pollutants and air quality due  
3           to the use of motor vehicle fuel and fuel addi-  
4           tives resulting from implementation of the  
5           amendments made by the Energy Policy Act of  
6           2005.

7                   “(B) FINAL ANALYSIS.—After providing a  
8           reasonable opportunity for comment but not  
9           later than 5 years after the date of enactment  
10          of this paragraph, the Administrator shall pub-  
11          lish the analysis in final form.

12                   “(2) EMISSIONS MODEL.—For the purposes of  
13          this section, not later than 4 years after the date of  
14          enactment of this paragraph, the Administrator shall  
15          develop and finalize an emissions model that reflects,  
16          to the maximum extent practicable, the effects of  
17          gasoline characteristics or components on emissions  
18          from vehicles in the motor vehicle fleet during cal-  
19          endar year 2007.

20                   “(3) PERMEATION EFFECTS STUDY.—

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1           “(A) IN GENERAL.—Not later than 1 year  
2           after the date of enactment of this paragraph,  
3           the Administrator shall conduct a study, and  
4           report to Congress the results of the study, on  
5           the effects of ethanol content in gasoline on  
6           permeation, the process by which fuel molecules  
7           migrate through the elastomeric materials (rub-  
8           ber and plastic parts) that make up the fuel  
9           and fuel vapor systems of a motor vehicle.

10           “(B) EVAPORATIVE EMISSIONS.—The  
11           study shall include estimates of the increase in  
12           total evaporative emissions likely to result from  
13           the use of gasoline with ethanol content in a  
14           motor vehicle, and the fleet of motor vehicles,  
15           due to permeation.”.

16 **SEC. 1507. ADDITIONAL OPT-IN AREAS UNDER REFORMU-**  
17 **LATED GASOLINE PROGRAM.**

18           Section 211(k)(6) of the Clean Air Act (42 U.S.C.  
19 7545(k)(6)) is amended—

20           (1) by striking “(6) OPT-IN AREAS.—(A)  
21           Upon” and inserting the following:

1531

1 “(6) OPT-IN AREAS.—

2 “(A) CLASSIFIED AREAS.—

3 “(i) IN GENERAL.—Upon”;

4 (2) in subparagraph (B), by striking “(B) If”  
5 and inserting the following:

6 “(ii) EFFECT OF INSUFFICIENT DO-  
7 MESTIC CAPACITY TO PRODUCE REFORMU-  
8 LATED GASOLINE.—If”;

9 (3) in subparagraph (A)(ii) (as redesignated by  
10 paragraph (2))—

11 (A) in the first sentence, by striking “sub-  
12 paragraph (A)” and inserting “clause (i)”; and

13 (B) in the second sentence, by striking  
14 “this paragraph” and inserting “this subpara-  
15 graph”; and

16 (4) by adding at the end the following:

17 “(B) OZONE TRANSPORT REGION.—

18 “(i) APPLICATION OF PROHIBITION.—

19 “(I) IN GENERAL.—On applica-  
20 tion of the Governor of a State in the  
21 ozone transport region established by

1532

1 section 184(a), the Administrator, not  
2 later than 180 days after the date of  
3 receipt of the application, shall apply  
4 the prohibition specified in paragraph  
5 (5) to any area in the State (other  
6 than an area classified as a marginal,  
7 moderate, serious, or severe ozone  
8 nonattainment area under subpart 2  
9 of part D of title I) unless the Admin-  
10 istrator determines under clause (iii)  
11 that there is insufficient capacity to  
12 supply reformulated gasoline.

13 “(II) PUBLICATION OF APPLICA-  
14 TION.—As soon as practicable after  
15 the date of receipt of an application  
16 under subclause (I), the Adminis-  
17 trator shall publish the application in  
18 the Federal Register.

19 “(ii) PERIOD OF APPLICABILITY.—  
20 Under clause (i), the prohibition specified  
21 in paragraph (5) shall apply in a State—

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1           “(I) commencing as soon as prac-  
2           ticable but not later than 2 years  
3           after the date of approval by the Ad-  
4           ministrator of the application of the  
5           Governor of the State; and

6           “(II) ending not earlier than 4  
7           years after the commencement date  
8           determined under subclause (I).

9           “(iii) EXTENSION OF COMMENCEMENT  
10          DATE BASED ON INSUFFICIENT CAPAC-  
11          ITY.—

12           “(I) IN GENERAL.—If, after re-  
13           ceipt of an application from a Gov-  
14           ernor of a State under clause (i), the  
15           Administrator determines, on the Ad-  
16           ministrator’s own motion or on peti-  
17           tion of any person, after consultation  
18           with the Secretary of Energy, that  
19           there is insufficient capacity to supply  
20           reformulated gasoline, the Adminis-  
21           trator, by regulation—

1534

1                   “(aa) shall extend the com-  
2                   mencement date with respect to  
3                   the State under clause (ii)(I) for  
4                   not more than 1 year; and

5                   “(bb) may renew the exten-  
6                   sion under item (aa) for 2 addi-  
7                   tional periods, each of which  
8                   shall not exceed 1 year.

9                   “(II) DEADLINE FOR ACTION ON  
10                  PETITIONS.—The Administrator shall  
11                  act on any petition submitted under  
12                  subclause (I) not later than 180 days  
13                  after the date of receipt of the peti-  
14                  tion.”.

15   **SEC. 1508. DATA COLLECTION.**

16                  Section 205 of the Department of Energy Organiza-  
17                  tion Act (42 U.S.C. 7135) is amended by adding at the  
18                  end the following:

19                  “(m) RENEWABLE FUELS SURVEY.—(1) In order to  
20                  improve the ability to evaluate the effectiveness of the Na-  
21                  tion’s renewable fuels mandate, the Administrator shall

1535

1 conduct and publish the results of a survey of renewable  
2 fuels demand in the motor vehicle fuels market in the  
3 United States monthly, and in a manner designed to pro-  
4 tect the confidentiality of individual responses. In con-  
5 ducting the survey, the Administrator shall collect infor-  
6 mation both on a national and regional basis, including  
7 each of the following:

8           “(A) The quantity of renewable fuels produced.

9           “(B) The quantity of renewable fuels blended.

10           “(C) The quantity of renewable fuels imported.

11           “(D) The quantity of renewable fuels de-  
12 manded.

13           “(E) Market price data.

14           “(F) Such other analyses or evaluations as the  
15 Administrator finds are necessary to achieve the  
16 purposes of this section.

17           “(2) The Administrator shall also collect or estimate  
18 information both on a national and regional basis, pursu-  
19 ant to subparagraphs (A) through (F) of paragraph (1),  
20 for the 5 years prior to implementation of this subsection.

1536

1 “(3) This subsection does not affect the authority of  
2 the Administrator to collect data under section 52 of the  
3 Federal Energy Administration Act of 1974 (15 U.S.C.  
4 790a).”.

5 **SEC. 1509. FUEL SYSTEM REQUIREMENTS HARMONIZATION**  
6 **STUDY.**

7 (a) STUDY.—

8 (1) IN GENERAL.—The Administrator of the  
9 Environmental Protection Agency and the Secretary  
10 shall jointly conduct a study of Federal, State, and  
11 local requirements concerning motor vehicle fuels,  
12 including—

13 (A) requirements relating to reformulated  
14 gasoline, volatility (measured in Reid vapor  
15 pressure), oxygenated fuel, and diesel fuel; and

16 (B) other requirements that vary from  
17 State to State, region to region, or locality to  
18 locality.

19 (2) REQUIRED ELEMENTS.—The study shall  
20 assess—



1537

1 (A) the effect of the variety of require-  
2 ments described in paragraph (1) on the supply,  
3 quality, and price of motor vehicle fuels avail-  
4 able to the consumer;

5 (B) the effect of the requirements de-  
6 scribed in paragraph (1) on achievement of—

7 (i) national, regional, and local air  
8 quality standards and goals; and

9 (ii) related environmental and public  
10 health protection standards and goals (in-  
11 cluding the protection of children, preg-  
12 nant women, minority or low-income com-  
13 munities, and other sensitive populations);

14 (C) the effect of Federal, State, and local  
15 motor vehicle fuel regulations, including mul-  
16 tiple motor vehicle fuel requirements, on—

17 (i) domestic refiners;

18 (ii) the fuel distribution system; and

19 (iii) industry investment in new capac-  
20 ity;

1538

1 (D) the effect of the requirements de-  
2 scribed in paragraph (1) on emissions from ve-  
3 hicles, refiners, and fuel handling facilities;

4 (E) the feasibility of developing national or  
5 regional motor vehicle fuel slates for the 48  
6 contiguous States that, while protecting and im-  
7 proving air quality at the national, regional,  
8 and local levels, could—

9 (i) enhance flexibility in the fuel dis-  
10 tribution infrastructure and improve fuel  
11 fungibility;

12 (ii) reduce price volatility and costs to  
13 consumers and producers;

14 (iii) provide increased liquidity to the  
15 gasoline market; and

16 (iv) enhance fuel quality, consistency,  
17 and supply;

18 (F) the feasibility of providing incentives,  
19 and the need for the development of national  
20 standards necessary, to promote cleaner burn-  
21 ing motor vehicle fuel; and

1539

1           (G) the extent to which improvements in  
2           air quality and any increases or decreases in  
3           the price of motor fuel can be projected to re-  
4           sult from the Environmental Protection Agen-  
5           cy's Tier II requirements for conventional gaso-  
6           line and vehicle emission systems, on-road and  
7           off-road diesel rules, the reformulated gasoline  
8           program, the renewable content requirements  
9           established by this subtitle, State programs re-  
10          garding gasoline volatility, and any other re-  
11          quirements imposed by the Federal Govern-  
12          ment, States or localities affecting the composi-  
13          tion of motor fuel.

14          (b) REPORT.—

15           (1) IN GENERAL.—Not later than June 1,  
16          2008, the Administrator of the Environmental Pro-  
17          tection Agency and the Secretary shall submit to  
18          Congress a report on the results of the study con-  
19          ducted under subsection (a).

20           (2) RECOMMENDATIONS.—

1540

1 (A) IN GENERAL.—The report shall con-  
2 tain recommendations for legislative and admin-  
3 istrative actions that may be taken—

4 (i) to improve air quality;

5 (ii) to reduce costs to consumers and  
6 producers; and

7 (iii) to increase supply liquidity.

8 (B) REQUIRED CONSIDERATIONS.—The  
9 recommendations under subparagraph (A) shall  
10 take into account the need to provide advance  
11 notice of required modifications to refinery and  
12 fuel distribution systems in order to ensure an  
13 adequate supply of motor vehicle fuel in all  
14 States.

15 (3) CONSULTATION.—In developing the report,  
16 the Administrator of the Environmental Protection  
17 Agency and the Secretary shall consult with—

18 (A) the Governors of the States;

19 (B) automobile manufacturers;

20 (C) State and local air pollution control  
21 regulators;

1541

- 1 (D) public health experts;
- 2 (E) motor vehicle fuel producers and dis-
- 3 tributors; and
- 4 (F) the public.

5 **SEC. 1510. COMMERCIAL BYPRODUCTS FROM MUNICIPAL**

6 **SOLID WASTE AND CELLULOSIC BIOMASS**

7 **LOAN GUARANTEE PROGRAM.**

8 (a) DEFINITION OF MUNICIPAL SOLID WASTE.—In

9 this section, the term “municipal solid waste” has the

10 meaning given the term “solid waste” in section 1004 of

11 the Solid Waste Disposal Act (42 U.S.C. 6903).

12 (b) ESTABLISHMENT OF PROGRAM.—The Secretary

13 shall establish a program to provide guarantees of loans

14 by private institutions for the construction of facilities for

15 the processing and conversion of municipal solid waste and

16 cellulosic biomass into fuel ethanol and other commercial

17 byproducts.

18 (c) REQUIREMENTS.—The Secretary may provide a

19 loan guarantee under subsection (b) to an applicant if—

- 20 (1) without a loan guarantee, credit is not
- 21 available to the applicant under reasonable terms or

1 conditions sufficient to finance the construction of a  
2 facility described in subsection (b);

3 (2) the prospective earning power of the appli-  
4 cant and the character and value of the security  
5 pledged provide a reasonable assurance of repayment  
6 of the loan to be guaranteed in accordance with the  
7 terms of the loan; and

8 (3) the loan bears interest at a rate determined  
9 by the Secretary to be reasonable, taking into ac-  
10 count the current average yield on outstanding obli-  
11 gations of the United States with remaining periods  
12 of maturity comparable to the maturity of the loan.

13 (d) CRITERIA.—In selecting recipients of loan guar-  
14 antees from among applicants, the Secretary shall give  
15 preference to proposals that—

16 (1) meet all applicable Federal and State per-  
17 mitting requirements;

18 (2) are most likely to be successful; and

19 (3) are located in local markets that have the  
20 greatest need for the facility because of—

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1 (A) the limited availability of land for  
2 waste disposal;

3 (B) the availability of sufficient quantities  
4 of cellulosic biomass; or

5 (C) a high level of demand for fuel ethanol  
6 or other commercial byproducts of the facility.

7 (e) MATURITY.—A loan guaranteed under subsection  
8 (b) shall have a maturity of not more than 20 years.

9 (f) TERMS AND CONDITIONS.—The loan agreement  
10 for a loan guaranteed under subsection (b) shall provide  
11 that no provision of the loan agreement may be amended  
12 or waived without the consent of the Secretary.

13 (g) ASSURANCE OF REPAYMENT.—The Secretary  
14 shall require that an applicant for a loan guarantee under  
15 subsection (b) provide an assurance of repayment in the  
16 form of a performance bond, insurance, collateral, or other  
17 means acceptable to the Secretary in an amount equal to  
18 not less than 20 percent of the amount of the loan.

19 (h) GUARANTEE FEE.—The recipient of a loan guar-  
20 antee under subsection (b) shall pay the Secretary an  
21 amount determined by the Secretary to be sufficient to

1 cover the administrative costs of the Secretary relating to  
2 the loan guarantee.

3 (i) FULL FAITH AND CREDIT.—The full faith and  
4 credit of the United States is pledged to the payment of  
5 all guarantees made under this section. Any such guar-  
6 antee made by the Secretary shall be conclusive evidence  
7 of the eligibility of the loan for the guarantee with respect  
8 to principal and interest. The validity of the guarantee  
9 shall be incontestable in the hands of a holder of the guar-  
10 anteed loan.

11 (j) REPORTS.—Until each guaranteed loan under this  
12 section has been repaid in full, the Secretary shall annu-  
13 ally submit to Congress a report on the activities of the  
14 Secretary under this section.

15 (k) AUTHORIZATION OF APPROPRIATIONS.—There  
16 are authorized to be appropriated such sums as are nec-  
17 essary to carry out this section.

18 (l) TERMINATION OF AUTHORITY.—The authority of  
19 the Secretary to issue a loan guarantee under subsection  
20 (b) terminates on the date that is 10 years after the date  
21 of enactment of this Act.



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1 **SEC. 1511. RENEWABLE FUEL.**

2

3 The Clean Air Act is amended by inserting  
4 after section 211 (42 U.S.C. 7411) the following:

5 **“SEC. 212. RENEWABLE FUEL.**

6 “(a) DEFINITIONS.—In this section:

7 “(1) MUNICIPAL SOLID WASTE.—The term  
8 ‘municipal solid waste’ has the meaning given the  
9 term ‘solid waste’ in section 1004 of the Solid Waste  
10 Disposal Act (42 U.S.C. 6903).

11 “(2) RFG STATE.—The term ‘RFG State’  
12 means a State in which is located 1 or more covered  
13 areas (as defined in section 211(k)(10)(D)).

14 “(3) SECRETARY.—The term ‘Secretary’ means  
15 the Secretary of Energy.

16 “(b) CELLULOSIC BIOMASS ETHANOL AND MUNIC-  
17 IPAL SOLID WASTE LOAN GUARANTEE PROGRAM.—

18 “(1) IN GENERAL.—Funds may be provided for  
19 the cost (as defined in the Federal Credit Reform  
20 Act of 1990 (2 U.S.C. 661 et seq.)) of loan guaran-  
21 tees issued under title XIV of the Energy Policy Act

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1 to carry out commercial demonstration projects for  
2 cellulosic biomass and sucrose-derived ethanol.

3 “(2) DEMONSTRATION PROJECTS.—

4 “(A) IN GENERAL.—The Secretary shall  
5 issue loan guarantees under this section to  
6 carry out not more than 4 projects to commer-  
7 cially demonstrate the feasibility and viability of  
8 producing cellulosic biomass ethanol or sucrose-  
9 derived ethanol, including at least 1 project that  
10 uses cereal straw as a feedstock and 1 project  
11 that uses municipal solid waste as a feedstock.

12 “(B) DESIGN CAPACITY.—Each project  
13 shall have a design capacity to produce at least  
14 30,000,000 gallons of cellulosic biomass ethanol  
15 each year.

16 “(3) APPLICANT ASSURANCES.—An applicant  
17 for a loan guarantee under this section shall provide  
18 assurances, satisfactory to the Secretary, that—

19 “(A) the project design has been validated  
20 through the operation of a continuous process

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1 facility with a cumulative output of at least  
2 50,000 gallons of ethanol;

3 “(B) the project has been subject to a full  
4 technical review;

5 “(C) the project is covered by adequate  
6 project performance guarantees;

7 “(D) the project, with the loan guarantee,  
8 is economically viable; and

9 “(E) there is a reasonable assurance of re-  
10 payment of the guaranteed loan.

11 “(4) LIMITATIONS.—

12 “(A) MAXIMUM GUARANTEE.—Except as  
13 provided in subparagraph (B), a loan guarantee  
14 under this section may be issued for up to 80  
15 percent of the estimated cost of a project, but  
16 may not exceed \$250,000,000 for a project.

17 “(B) ADDITIONAL GUARANTEES.—

18 “(i) IN GENERAL.—The Secretary  
19 may issue additional loan guarantees for a  
20 project to cover up to 80 percent of the ex-  
21 cess of actual project cost over estimated

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1 project cost but not to exceed 15 percent  
2 of the amount of the original guarantee.

3 “(ii) PRINCIPAL AND INTEREST.—  
4 Subject to subparagraph (A), the Secretary  
5 shall guarantee 100 percent of the prin-  
6 cipal and interest of a loan made under  
7 subparagraph (A).

8 “(5) EQUITY CONTRIBUTIONS.—To be eligible  
9 for a loan guarantee under this section, an applicant  
10 for the loan guarantee shall have binding commit-  
11 ments from equity investors to provide an initial eq-  
12 uity contribution of at least 20 percent of the total  
13 project cost.

14 “(6) INSUFFICIENT AMOUNTS.—If the amount  
15 made available to carry out this section is insuffi-  
16 cient to allow the Secretary to make loan guarantees  
17 for 3 projects described in subsection (b), the Sec-  
18 retary shall issue loan guarantees for 1 or more  
19 qualifying projects under this section in the order in  
20 which the applications for the projects are received  
21 by the Secretary.

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1           “(7) APPROVAL.—An application for a loan  
2           guarantee under this section shall be approved or  
3           disapproved by the Secretary not later than 90 days  
4           after the application is received by the Secretary.

5           “(c) AUTHORIZATION OF APPROPRIATIONS FOR RE-  
6 SOURCE CENTER.—There is authorized to be appro-  
7 priated, for a resource center to further develop bioconver-  
8 sion technology using low-cost biomass for the production  
9 of ethanol at the Center for Biomass-Based Energy at the  
10 Mississippi State University and the Oklahoma State Uni-  
11 versity, \$4,000,000 for each of fiscal years 2005 through  
12 2007.

13           “(d) RENEWABLE FUEL PRODUCTION RESEARCH  
14 AND DEVELOPMENT GRANTS.—

15           “(1) IN GENERAL.—The Administrator shall  
16           provide grants for the research into, and develop-  
17           ment and implementation of, renewable fuel produc-  
18           tion technologies in RFG States with low rates of  
19           ethanol production, including low rates of production  
20           of cellulosic biomass ethanol.

21           “(2) ELIGIBILITY.—

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1           “(A) IN GENERAL.—The entities eligible to  
2           receive a grant under this subsection are aca-  
3           demic institutions in RFG States, and consortia  
4           made up of combinations of academic institu-  
5           tions, industry, State government agencies, or  
6           local government agencies in RFG States, that  
7           have proven experience and capabilities with  
8           relevant technologies.

9           “(B) APPLICATION.—To be eligible to re-  
10          ceive a grant under this subsection, an eligible  
11          entity shall submit to the Administrator an ap-  
12          plication in such manner and form, and accom-  
13          panied by such information, as the Adminis-  
14          trator may specify.

15          “(3) AUTHORIZATION OF APPROPRIATIONS.—  
16          There is authorized to be appropriated to carry out  
17          this subsection \$25,000,000 for each of fiscal years  
18          2006 through 2010.

19          “(e) CELLULOSIC BIOMASS ETHANOL CONVERSION  
20          ASSISTANCE.—

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1           “(1) IN GENERAL.—The Secretary may provide  
2           grants to merchant producers of cellulosic biomass  
3           ethanol in the United States to assist the producers  
4           in building eligible production facilities described in  
5           paragraph (2) for the production of cellulosic bio-  
6           mass ethanol.

7           “(2) ELIGIBLE PRODUCTION FACILITIES.—A  
8           production facility shall be eligible to receive a grant  
9           under this subsection if the production facility—

10                   “(A) is located in the United States; and

11                   “(B) uses cellulosic biomass feedstocks de-  
12                   rived from agricultural residues or municipal  
13                   solid waste.

14           “(3) AUTHORIZATION OF APPROPRIATIONS.—  
15           There is authorized to be appropriated to carry out  
16           this subsection—

17                   “(A) \$250,000,000 for fiscal year 2006;

18                   and

19                   “(B) \$400,000,000 for fiscal year 2007.”.

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1 **SEC. 1512. CONVERSION ASSISTANCE FOR CELLULOSIC**  
2 **BIOMASS, WASTE-DERIVED ETHANOL, AP-**  
3 **PROVED RENEWABLE FUELS.**

4 Section 211 of the Clean Air Act (42 U.S.C. 7545)  
5 is amended by adding at the end the following:

6 “(r) CONVERSION ASSISTANCE FOR CELLULOSIC  
7 BIOMASS, WASTE-DERIVED ETHANOL, APPROVED RE-  
8 NEWABLE FUELS.—

9 “(1) IN GENERAL.—The Secretary of Energy  
10 may provide grants to merchant producers of cel-  
11 lulosic biomass ethanol, waste-derived ethanol, and  
12 approved renewable fuels in the United States to as-  
13 sist the producers in building eligible production fa-  
14 cilities described in paragraph (2) for the production  
15 of ethanol or approved renewable fuels.

16 “(2) ELIGIBLE PRODUCTION FACILITIES.—A  
17 production facility shall be eligible to receive a grant  
18 under this subsection if the production facility—

19 “(A) is located in the United States; and

20 “(B) uses cellulosic or renewable biomass  
21 or waste-derived feedstocks derived from agri-



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1 cultural residues, wood residues, municipal solid  
2 waste, or agricultural byproducts.

3 “(3) AUTHORIZATION OF APPROPRIATIONS.—  
4 There are authorized to be appropriated the fol-  
5 lowing amounts to carry out this subsection:

6 “(A) \$100,000,000 for fiscal year 2006.

7 “(B) \$250,000,000 for fiscal year 2007.

8 “(C) \$400,000,000 for fiscal year 2008.

9 “(4) DEFINITIONS.—For the purposes of this  
10 subsection:

11 “(A) The term ‘approved renewable fuels’  
12 are fuels and components of fuels that have  
13 been approved by the Department of Energy, as  
14 defined in section 301 of the Energy Policy Act  
15 of 1992 (42 U.S.C. 13211), which have been  
16 made from renewable biomass.

17 “(B) The term ‘renewable biomass’ is, as  
18 defined in Presidential Executive Order 13134,  
19 published in the Federal Register on August  
20 16, 1999, any organic matter that is available  
21 on a renewable or recurring basis (excluding

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1 old-growth timber), including dedicated energy  
2 crops and trees, agricultural food and feed crop  
3 residues, aquatic plants, animal wastes, wood  
4 and wood residues, paper and paper residues,  
5 and other vegetative waste materials. Old-  
6 growth timber means timber of a forest from  
7 the late successional stage of forest develop-  
8 ment.”.

9 **SEC. 1513. BLENDING OF COMPLIANT REFORMULATED GAS-**  
10 **OLINES.**

11 Section 211 of the Clean Air Act (42 U.S.C. 7545)  
12 is amended by adding at the end the following:

13 “(s) BLENDING OF COMPLIANT REFORMULATED  
14 GASOLINES.—

15 “(1) IN GENERAL.—Notwithstanding sub-  
16 sections (h) and (k) and subject to the limitations in  
17 paragraph (2) of this subsection, it shall not be a  
18 violation of this subtitle for a gasoline retailer, dur-  
19 ing any month of the year, to blend at a retail loca-  
20 tion batches of ethanol-blended and non-ethanol-  
21 blended reformulated gasoline, provided that—

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1           “(A) each batch of gasoline to be blended  
2           has been individually certified as in compliance  
3           with subsections (h) and (k) prior to being  
4           blended;

5           “(B) the retailer notifies the Administrator  
6           prior to such blending, and identifies the exact  
7           location of the retail station and the specific  
8           tank in which such blending will take place;

9           “(C) the retailer retains and, as requested  
10          by the Administrator or the Administrator’s  
11          designee, makes available for inspection such  
12          certifications accounting for all gasoline at the  
13          retail outlet; and

14          “(D) the retailer does not, between June 1  
15          and September 15 of each year, blend a batch  
16          of VOC-controlled, or ‘summer’, gasoline with a  
17          batch of non-VOC-controlled, or ‘winter’, gaso-  
18          line (as these terms are defined under sub-  
19          sections (h) and (k)).

20          “(2) LIMITATIONS.—

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1           “(A) FREQUENCY LIMITATION.—A retailer shall  
2           only be permitted to blend batches of compliant re-  
3           formulated gasoline under this subsection a max-  
4           imum of two blending periods between May 1 and  
5           September 15 of each calendar year.

6           “(B) DURATION OF BLENDING PERIOD.—Each  
7           blending period authorized under subparagraph (A)  
8           shall extend for a period of no more than 10 con-  
9           secutive calendar days.

10          “(3) SURVEYS.—A sample of gasoline taken  
11          from a retail location that has blended gasoline with-  
12          in the past 30 days and is in compliance with sub-  
13          paragraphs (A), (B), (C), and (D) of paragraph (1)  
14          shall not be used in a VOC survey mandated by 40  
15          C.F.R. Part 80.

16          “(4) STATE IMPLEMENTATION PLANS.—A State  
17          shall be held harmless and shall not be required to  
18          revise its State implementation plan under section  
19          110 to account for the emissions from blended gaso-  
20          line authorized under paragraph (1).

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1           “(5) PRESERVATION OF STATE LAW.—Nothing  
2           in this subsection shall—

3                   “(A) preempt existing State laws or regu-  
4                   lations regulating the blending of compliant  
5                   gasolines; or

6                   “(B) prohibit a State from adopting such  
7                   restrictions in the future.

8           “(6) REGULATIONS.—The Administrator shall  
9           promulgate, after notice and comment, regulations  
10           implementing this subsection within one year after  
11           the date of enactment of this subsection.

12           “(7) EFFECTIVE DATE.—This subsection shall  
13           become effective 15 months after the date of its en-  
14           actment and shall apply to blended batches of refor-  
15           mulated gasoline on or after that date, regardless of  
16           whether the implementing regulations required by  
17           paragraph (6) have been promulgated by the Admin-  
18           istrator by that date.

19           “(8) LIABILITY.—No person other than the  
20           person responsible for blending under this subsection  
21           shall be subject to an enforcement action or pen-

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1 alties under subsection (d) solely arising from the  
2 blending of compliant reformulated gasolines by the  
3 retailers.

4 “(9) FORMULATION OF GASOLINE.—This sub-  
5 section does not grant authority to the Adminis-  
6 trator or any State (or any subdivision thereof) to  
7 require reformulation of gasoline at the refinery to  
8 adjust for potential or actual emissions increases due  
9 to the blending authorized by this subsection.”.

10 **SEC. 1514. ADVANCED BIOFUEL TECHNOLOGIES PROGRAM.**

11 (a) IN GENERAL.—Subject to the availability of ap-  
12 propriations under subsection (d), the Administrator of  
13 the Environmental Protection Agency shall, in consulta-  
14 tion with the Secretary of Agriculture and the Biomass  
15 Research and Development Technical Advisory Committee  
16 established under section 306 of the Biomass Research  
17 and Development Act of 2000 (Public Law 106–224; 7  
18 U.S.C. 8101 note), establish a program, to be known as  
19 the “Advanced Biofuel Technologies Program”, to dem-  
20 onstrate advanced technologies for the production of alter-  
21 native transportation fuels.

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1 (b) PRIORITY.—In carrying out the program under  
2 subsection (a), the Administrator shall give priority to  
3 projects that enhance the geographical diversity of alter-  
4 native fuels production and utilize feedstocks that rep-  
5 resent 10 percent or less of ethanol or biodiesel fuel pro-  
6 duction in the United States during the previous fiscal  
7 year.

8 (c) DEMONSTRATION PROJECTS.—

9 (1) IN GENERAL.—As part of the program  
10 under subsection (a), the Administrator shall fund  
11 demonstration projects—

12 (A) to develop not less than 4 different  
13 conversion technologies for producing cellulosic  
14 biomass ethanol; and

15 (B) to develop not less than 5 technologies  
16 for coproducing value-added bioproducts (such  
17 as fertilizers, herbicides, and pesticides) result-  
18 ing from the production of biodiesel fuel.

19 (2) ADMINISTRATION.—Demonstration projects  
20 under this subsection shall be—

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1 (A) conducted based on a merit-reviewed,  
2 competitive process; and

3 (B) subject to the cost-sharing require-  
4 ments of section 988.

5 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
6 are authorized to be appropriated to carry out this section  
7 \$110,000,000 for each of fiscal years 2005 through 2009.

8 **SEC. 1515. WASTE-DERIVED ETHANOL AND BIODIESEL.**

9 Section 312(f)(1) of the Energy Policy Act of 1992  
10 (42 U.S.C. 13220(f)(1)) is amended—

11 (1) by striking “‘biodiesel’ means” and insert-  
12 ing the following: “‘biodiesel’—

13 “(A) means”; and

14 (2) in subparagraph (A) (as designated by  
15 paragraph (1)) by striking “and” at the end and in-  
16 serting the following:

17 “(B) includes biodiesel derived from—

18 “(i) animal wastes, including poultry  
19 fats and poultry wastes, and other waste  
20 materials; or



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1                   “(ii) municipal solid waste and  
2                   sludges and oils derived from wastewater  
3                   and the treatment of wastewater; and”.”

4 **SEC. 1516. SUGAR ETHANOL LOAN GUARANTEE PROGRAM.**

5       (a) IN GENERAL.—Funds may be provided for the  
6 cost (as defined in section 502 of the Federal Credit Re-  
7 form Act of 1990 (2 U.S.C. 661a)) of loan guarantees  
8 issued under title XIV to carry out commercial demonstra-  
9 tion projects for ethanol derived from sugarcane, bagasse,  
10 and other sugarcane byproducts.

11       (b) DEMONSTRATION PROJECTS.—The Secretary  
12 may issue loan guarantees under this section to projects  
13 to demonstrate commercially the feasibility and viability  
14 of producing ethanol using sugarcane, sugarcane bagasse,  
15 and other sugarcane byproducts as a feedstock.

16       (c) REQUIREMENTS.—An applicant for a loan guar-  
17 antee under this section may provide assurances, satisfac-  
18 tory to the Secretary, that—

19               (1) the project design has been validated  
20               through the operation of a continuous process facil-  
21               ity;

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1           (2) the project has been subject to a full tech-  
2           nical review;

3           (3) the project, with the loan guarantee, is eco-  
4           nomically viable; and

5           (4) there is a reasonable assurance of repay-  
6           ment of the guaranteed loan.

7           (d) LIMITATIONS.—

8           (1) MAXIMUM GUARANTEE.—Except as pro-  
9           vided in paragraph (2), a loan guarantee under this  
10          section—

11           (A) may be issued for up to 80 percent of  
12           the estimated cost of a project; but

13           (B) shall not exceed \$50,000,000 for any  
14           1 project.

15          (2) ADDITIONAL GUARANTEES.—

16           (A) IN GENERAL.—The Secretary may  
17           issue additional loan guarantees for a project to  
18           cover—

19           (i) up to 80 percent of the excess of  
20           actual project costs; but

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1 (ii) not to exceed 15 percent of the  
2 amount of the original loan guarantee.

3 (B) PRINCIPAL AND INTEREST.—Subject  
4 to subparagraph (A), the Secretary shall guar-  
5 antee 100 percent of the principal and interest  
6 of a loan guarantee made under subparagraph  
7 (A).

8 **Subtitle B—Underground Storage**  
9 **Tank Compliance**

10 **SEC. 1521. SHORT TITLE.**

11 This subtitle may be cited as the “Underground Stor-  
12 age Tank Compliance Act ”.

13 **SEC. 1522. LEAKING UNDERGROUND STORAGE TANKS.**

14 (a) IN GENERAL.—Section 9004 of the Solid Waste  
15 Disposal Act (42 U.S.C. 6991c) is amended by adding at  
16 the end the following:

17 “(f) TRUST FUND DISTRIBUTION.—

18 “(1) IN GENERAL.—

19 “(A) AMOUNT AND PERMITTED USES OF  
20 DISTRIBUTION.—The Administrator shall dis-  
21 tribute to States not less than 80 percent of the

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1 funds from the Trust Fund that are made  
2 available to the Administrator under section  
3 9014(2)(A) for each fiscal year for use in pay-  
4 ing the reasonable costs, incurred under a coop-  
5 erative agreement with any State for—

6 “(i) corrective actions taken by the  
7 State under section 9003(h)(7)(A);

8 “(ii) necessary administrative ex-  
9 penses, as determined by the Adminis-  
10 trator, that are directly related to State  
11 fund or State assurance programs under  
12 subsection (c)(1); or

13 “(iii) enforcement, by a State or a  
14 local government, of State or local regula-  
15 tions pertaining to underground storage  
16 tanks regulated under this subtitle.

17 “(B) USE OF FUNDS FOR ENFORCE-  
18 MENT.—In addition to the uses of funds au-  
19 thorized under subparagraph (A), the Adminis-  
20 trator may use funds from the Trust Fund that  
21 are not distributed to States under subpara-

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1 graph (A) for enforcement of any regulation  
2 promulgated by the Administrator under this  
3 subtitle.

4 “(C) PROHIBITED USES.—Funds provided  
5 to a State by the Administrator under subpara-  
6 graph (A) shall not be used by the State to pro-  
7 vide financial assistance to an owner or oper-  
8 ator to meet any requirement relating to under-  
9 ground storage tanks under subparts B, C, D,  
10 H, and G of part 280 of title 40, Code of Fed-  
11 eral Regulations (as in effect on the date of en-  
12 actment of this subsection).

13 “(2) ALLOCATION.—

14 “(A) PROCESS.—Subject to subparagraphs  
15 (B) and (C), in the case of a State with which  
16 the Administrator has entered into a coopera-  
17 tive agreement under section 9003(h)(7)(A),  
18 the Administrator shall distribute funds from  
19 the Trust Fund to the State using an allocation  
20 process developed by the Administrator.

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1           “(B) DIVERSION OF STATE FUNDS.—The  
2 Administrator shall not distribute funds under  
3 subparagraph (A)(iii) of subsection (f)(1) to  
4 any State that has diverted funds from a State  
5 fund or State assurance program for purposes  
6 other than those related to the regulation of un-  
7 derground storage tanks covered by this sub-  
8 title, with the exception of those transfers that  
9 had been completed earlier than the date of en-  
10 actment of this subsection.

11           “(C) REVISIONS TO PROCESS.—The Ad-  
12 ministrator may revise the allocation process re-  
13 ferred to in subparagraph (A) after—

14           “(i) consulting with State agencies re-  
15 sponsible for overseeing corrective action  
16 for releases from underground storage  
17 tanks; and

18           “(ii) taking into consideration, at a  
19 minimum, each of the following:

20           “(I) The number of confirmed re-  
21 leases from federally regulated leaking

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1 underground storage tanks in the  
2 States.

3 “(II) The number of federally  
4 regulated underground storage tanks  
5 in the States.

6 “(III) The performance of the  
7 States in implementing and enforcing  
8 the program.

9 “(IV) The financial needs of the  
10 States.

11 “(V) The ability of the States to  
12 use the funds referred to in subpara-  
13 graph (A) in any year.

14 “(3) DISTRIBUTIONS TO STATE AGENCIES.—  
15 Distributions from the Trust Fund under this sub-  
16 section shall be made directly to a State agency  
17 that—

18 “(A) enters into a cooperative agreement  
19 referred to in paragraph (2)(A); or

20 “(B) is enforcing a State program ap-  
21 proved under this section.”.

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1 (b) WITHDRAWAL OF APPROVAL OF STATE  
2 FUNDS.—Section 9004(c) of the Solid Waste Disposal Act  
3 (42 U.S.C. 6991c(e)) is amended by inserting the fol-  
4 lowing new paragraph at the end thereof:

5 “(6) WITHDRAWAL OF APPROVAL.—After an  
6 opportunity for good faith, collaborative efforts to  
7 correct financial deficiencies with a State fund, the  
8 Administrator may withdraw approval of any State  
9 fund or State assurance program to be used as a fi-  
10 nancial responsibility mechanism without with-  
11 drawing approval of a State underground storage  
12 tank program under section 9004(a).”.

13 (c) ABILITY TO PAY.—Section 9003(h)(6) of the  
14 Solid Waste Disposal Act (42 U.S.C. 6591a(h)(6)) is  
15 amended by adding the following new subparagraph at the  
16 end thereof:

17 “(E) INABILITY OR LIMITED ABILITY TO  
18 PAY.—

19 “(i) IN GENERAL.—In determining  
20 the level of recovery effort, or amount that  
21 should be recovered, the Administrator (or



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1 the State pursuant to paragraph (7)) shall  
2 consider the owner or operator's ability to  
3 pay. An inability or limited ability to pay  
4 corrective action costs must be dem-  
5 onstrated to the Administrator (or the  
6 State pursuant to paragraph (7)) by the  
7 owner or operator.

8 “(ii) CONSIDERATIONS.—In deter-  
9 mining whether or not a demonstration is  
10 made under clause (i), the Administrator  
11 (or the State pursuant to paragraph (7))  
12 shall take into consideration the ability of  
13 the owner or operator to pay corrective ac-  
14 tion costs and still maintain its basic busi-  
15 ness operations, including consideration of  
16 the overall financial condition of the owner  
17 or operator and demonstrable constraints  
18 on the ability of the owner or operator to  
19 raise revenues.

20 “(iii) INFORMATION.—An owner or  
21 operator requesting consideration under

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1 this subparagraph shall promptly provide  
2 the Administrator (or the State pursuant  
3 to paragraph (7)) with all relevant infor-  
4 mation needed to determine the ability of  
5 the owner or operator to pay corrective ac-  
6 tion costs.

7 “(iv) ALTERNATIVE PAYMENT METH-  
8 ODS.—The Administrator (or the State  
9 pursuant to paragraph (7)) shall consider  
10 alternative payment methods as may be  
11 necessary or appropriate if the Adminis-  
12 trator (or the State pursuant to paragraph  
13 (7)) determines that an owner or operator  
14 cannot pay all or a portion of the costs in  
15 a lump sum payment.

16 “(v) MISREPRESENTATION.—If an  
17 owner or operator provides false informa-  
18 tion or otherwise misrepresents their finan-  
19 cial situation under clause (ii), the Admin-  
20 istrator (or the State pursuant to para-  
21 graph (7)) shall seek full recovery of the

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1 costs of all such actions pursuant to the  
2 provisions of subparagraph (A) without  
3 consideration of the factors in subpara-  
4 graph (B).”.

5 **SEC. 1523. INSPECTION OF UNDERGROUND STORAGE**  
6 **TANKS.**

7 (a) INSPECTION REQUIREMENTS.—Section 9005 of  
8 the Solid Waste Disposal Act (42 U.S.C. 6991d) is amend-  
9 ed by inserting the following new subsection at the end  
10 thereof:

11 “(c) INSPECTION REQUIREMENTS.—

12 “(1) UNINSPECTED TANKS.—In the case of un-  
13 derground storage tanks regulated under this sub-  
14 title that have not undergone an inspection since De-  
15 cember 22, 1998, not later than 2 years after the  
16 date of enactment of this subsection, the Adminis-  
17 trator or a State that receives funding under this  
18 subtitle, as appropriate, shall conduct on-site inspec-  
19 tions of all such tanks to determine compliance with  
20 this subtitle and the regulations under this subtitle

1 (40 C.F.R. 280) or a requirement or standard of a  
2 State program developed under section 9004.

3 “(2) PERIODIC INSPECTIONS.—After completion  
4 of all inspections required under paragraph (1), the  
5 Administrator or a State that receives funding under  
6 this subtitle, as appropriate, shall conduct on-site in-  
7 spections of each underground storage tank regu-  
8 lated under this subtitle at least once every 3 years  
9 to determine compliance with this subtitle and the  
10 regulations under this subtitle (40 C.F.R. 280) or a  
11 requirement or standard of a State program devel-  
12 oped under section 9004. The Administrator may ex-  
13 tend for up to one additional year the first 3-year  
14 inspection interval under this paragraph if the State  
15 demonstrates that it has insufficient resources to  
16 complete all such inspections within the first 3-year  
17 period.

18 “(3) INSPECTION AUTHORITY.—Nothing in this  
19 section shall be construed to diminish the Adminis-  
20 trator’s or a State’s authorities under section  
21 9005(a).”.

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1 (b) STUDY OF ALTERNATIVE INSPECTION PRO-  
2 GRAMS.—The Administrator of the Environmental Protec-  
3 tion Agency, in coordination with a State, shall gather in-  
4 formation on compliance assurance programs that could  
5 serve as an alternative to the inspection programs under  
6 section 9005(c) of the Solid Waste Disposal Act (42  
7 U.S.C. 6991d(c)) and shall, within 4 years after the date  
8 of enactment of this Act, submit a report to the Congress  
9 containing the results of such study.

10 **SEC. 1524. OPERATOR TRAINING.**

11 (a) IN GENERAL.—Section 9010 of the Solid Waste  
12 Disposal Act (42 U.S.C. 6991i) is amended to read as fol-  
13 lows:

14 **“SEC. 9010. OPERATOR TRAINING.**

15 “(a) GUIDELINES.—

16 “(1) IN GENERAL.—Not later than 2 years  
17 after the date of enactment of the Underground  
18 Storage Tank Compliance Act , in consultation and  
19 cooperation with States and after public notice and  
20 opportunity for comment, the Administrator shall

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1 publish guidelines that specify training requirements  
2 for—

3 “(A) persons having primary responsibility  
4 for on-site operation and maintenance of under-  
5 ground storage tank systems;

6 “(B) persons having daily on-site responsi-  
7 bility for the operation and maintenance of un-  
8 derground storage tanks systems; and

9 “(C) daily, on-site employees having pri-  
10 mary responsibility for addressing emergencies  
11 presented by a spill or release from an under-  
12 ground storage tank system.

13 “(2) CONSIDERATIONS.—The guidelines de-  
14 scribed in paragraph (1) shall take into account—

15 “(A) State training programs in existence  
16 as of the date of publication of the guidelines;

17 “(B) training programs that are being em-  
18 ployed by tank owners and tank operators as of  
19 the date of enactment of the Underground Stor-  
20 age Tank Compliance Act ;

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1           “(C) the high turnover rate of tank opera-  
2           tors and other personnel;

3           “(D) the frequency of improvement in un-  
4           derground storage tank equipment technology;

5           “(E) the nature of the businesses in which  
6           the tank operators are engaged;

7           “(F) the substantial differences in the  
8           scope and length of training needed for the dif-  
9           ferent classes of persons described in subpara-  
10          graphs (A), (B), and (C) of paragraph (1); and

11          “(G) such other factors as the Adminis-  
12          trator determines to be necessary to carry out  
13          this section.

14          “(b) STATE PROGRAMS.—

15                 “(1) IN GENERAL.—Not later than 2 years  
16                 after the date on which the Administrator publishes  
17                 the guidelines under subsection (a)(1), each State  
18                 that receives funding under this subtitle shall de-  
19                 velop State-specific training requirements that are  
20                 consistent with the guidelines developed under sub-  
21                 section (a)(1).

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1           “(2) REQUIREMENTS.—State requirements de-  
2       scribed in paragraph (1) shall—

3                   “(A) be consistent with subsection (a);

4                   “(B) be developed in cooperation with tank  
5       owners and tank operators;

6                   “(C) take into consideration training pro-  
7       grams implemented by tank owners and tank  
8       operators as of the date of enactment of this  
9       section; and

10                  “(D) be appropriately communicated to  
11       tank owners and operators.

12           “(3) FINANCIAL INCENTIVE.—The Adminis-  
13       trator may award to a State that develops and im-  
14       plements requirements described in paragraph (1),  
15       in addition to any funds that the State is entitled to  
16       receive under this subtitle, not more than \$200,000,  
17       to be used to carry out the requirements.

18       “(c) TRAINING.—All persons that are subject to the  
19       operator training requirements of subsection (a) shall—

20                  “(1) meet the training requirements developed  
21       under subsection (b); and



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1           “(2) repeat the applicable requirements devel-  
2           oped under subsection (b), if the tank for which they  
3           have primary daily on-site management responsibil-  
4           ities is determined to be out of compliance with—

5                   “(A) a requirement or standard promul-  
6                   gated by the Administrator under section 9003;  
7                   or

8                   “(B) a requirement or standard of a State  
9                   program approved under section 9004.”.

10       (b) STATE PROGRAM REQUIREMENT.—Section  
11 9004(a) of the Solid Waste Disposal Act (42 U.S.C.  
12 6991c(a)) is amended by striking “and” at the end of  
13 paragraph (7), by striking the period at the end of para-  
14 graph (8) and inserting “; and”, and by adding the fol-  
15 lowing new paragraph at the end thereof:

16                   “(9) State-specific training requirements as re-  
17                   quired by section 9010.”.

18       (c) ENFORCEMENT.—Section 9006(d)(2) of such Act  
19 (42 U.S.C. 6991e) is amended as follows:

20                   (1) By striking “or” at the end of subpara-  
21                   graph (B).

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1           (2) By adding the following new subparagraph  
2           after subparagraph (C):

3           “(D) the training requirements established by  
4           States pursuant to section 9010 (relating to oper-  
5           ator training); or”.

6           (d) TABLE OF CONTENTS.—The item relating to sec-  
7           tion 9010 in table of contents for the Solid Waste Disposal  
8           Act is amended to read as follows:

“Sec. 9010. Operator training”.

9           **SEC. 1525. REMEDIATION FROM OXYGENATED FUEL ADDI-**  
10           **TIVES.**

11           Section 9003(h) of the Solid Waste Disposal Act (42  
12           U.S.C. 6991b(h)) is amended as follows:

13           (1) In paragraph (7)(A)—

14                   (A) by striking “paragraphs (1) and (2) of  
15                   this subsection” and inserting “paragraphs (1),  
16                   (2), and (12)”; and

17                   (B) by striking “and including the authori-  
18                   ties of paragraphs (4), (6), and (8) of this sub-  
19                   section” and inserting “and the authority under

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1 sections 9011 and 9012 and paragraphs (4),  
2 (6), and (8).”.

3 (2) By adding at the end the following:

4 “(12) REMEDIATION OF OXYGENATED FUEL  
5 CONTAMINATION.—

6 “(A) IN GENERAL.—The Administrator  
7 and the States may use funds made available  
8 under section 9014(2)(B) to carry out correc-  
9 tive actions with respect to a release of a fuel  
10 containing an oxygenated fuel additive that pre-  
11 sents a threat to human health or welfare or  
12 the environment.

13 “(B) APPLICABLE AUTHORITY.—The Ad-  
14 ministrator or a State shall carry out subpara-  
15 graph (A) in accordance with paragraph (2),  
16 and in the case of a State, in accordance with  
17 a cooperative agreement entered into by the Ad-  
18 ministrator and the State under paragraph  
19 (7).”.

1 **SEC. 1526. RELEASE PREVENTION, COMPLIANCE, AND EN-**  
2 **FORCEMENT.**

3 (a) **RELEASE PREVENTION AND COMPLIANCE.**—Sub-  
4 title I of the Solid Waste Disposal Act (42 U.S.C. 6991  
5 et seq.) is amended by adding at the end the following:

6 **“SEC. 9011. USE OF FUNDS FOR RELEASE PREVENTION AND**  
7 **COMPLIANCE.**

8 “Funds made available under section 9014(2)(D)  
9 from the Trust Fund may be used to conduct inspections,  
10 issue orders, or bring actions under this subtitle—

11 “(1) by a State, in accordance with a grant or  
12 cooperative agreement with the Administrator, of  
13 State regulations pertaining to underground storage  
14 tanks regulated under this subtitle; and

15 “(2) by the Administrator, for tanks regulated  
16 under this subtitle (including under a State program  
17 approved under section 9004).”.

18 (b) **GOVERNMENT-OWNED TANKS.**—Section 9003 of  
19 the Solid Waste Disposal Act (42 U.S.C. 6991b) is amend-  
20 ed by adding at the end the following:

21 “(i) **GOVERNMENT-OWNED TANKS.**—

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1           “(1) STATE COMPLIANCE REPORT.—(A) Not  
2 later than 2 years after the date of enactment of  
3 this subsection, each State that receives funding  
4 under this subtitle shall submit to the Administrator  
5 a State compliance report that—

6           “(i) lists the location and owner of each  
7 underground storage tank described in subpara-  
8 graph (B) in the State that, as of the date of  
9 submission of the report, is not in compliance  
10 with section 9003; and

11           “(ii) specifies the date of the last inspec-  
12 tion and describes the actions that have been  
13 and will be taken to ensure compliance of the  
14 underground storage tank listed under clause  
15 (i) with this subtitle.

16           “(B) An underground storage tank described in  
17 this subparagraph is an underground storage tank  
18 that is—

19           “(i) regulated under this subtitle; and

20           “(ii) owned or operated by the Federal,  
21 State, or local government.

1           “(C) The Administrator shall make each report,  
2           received under subparagraph (A), available to the  
3           public through an appropriate media.

4           “(2) FINANCIAL INCENTIVE.—The Adminis-  
5           trator may award to a State that develops a report  
6           described in paragraph (1), in addition to any other  
7           funds that the State is entitled to receive under this  
8           subtitle, not more than \$50,000, to be used to carry  
9           out the report.

10          “(3) NOT A SAFE HARBOR.—This subsection  
11          does not relieve any person from any obligation or  
12          requirement under this subtitle.”.

13          (c) PUBLIC RECORD.—Section 9002 of the Solid  
14          Waste Disposal Act (42 U.S.C. 6991a) is amended by add-  
15          ing at the end the following:

16          “(d) PUBLIC RECORD.—

17                 “(1) IN GENERAL.—The Administrator shall re-  
18                 quire each State that receives Federal funds to carry  
19                 out this subtitle to maintain, update at least annu-  
20                 ally, and make available to the public, in such man-  
21                 ner and form as the Administrator shall prescribe

1 (after consultation with States), a record of under-  
2 ground storage tanks regulated under this subtitle.

3 “(2) CONSIDERATIONS.—To the maximum ex-  
4 tent practicable, the public record of a State, respec-  
5 tively, shall include, for each year—

6 “(A) the number, sources, and causes of  
7 underground storage tank releases in the State;

8 “(B) the record of compliance by under-  
9 ground storage tanks in the State with—

10 “(i) this subtitle; or

11 “(ii) an applicable State program ap-  
12 proved under section 9004; and

13 “(C) data on the number of underground  
14 storage tank equipment failures in the State.”.

15 (d) INCENTIVE FOR PERFORMANCE.—Section 9006  
16 of the Solid Waste Disposal Act (42 U.S.C. 6991e) is  
17 amended by adding at the end the following:

18 “(e) INCENTIVE FOR PERFORMANCE.—Both of the  
19 following may be taken into account in determining the  
20 terms of a civil penalty under subsection (d):

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1           “(1) The compliance history of an owner or op-  
2           erator in accordance with this subtitle or a program  
3           approved under section 9004.

4           “(2) Any other factor the Administrator con-  
5           siders appropriate.”.

6           (e) TABLE OF CONTENTS.—The table of contents for  
7           such subtitle I is amended by adding the following new  
8           item at the end thereof:

          “Sec. 9011. Use of funds for release prevention and compliance”.

9           **SEC. 1527. DELIVERY PROHIBITION.**

10          (a) IN GENERAL.—Subtitle I of the Solid Waste Dis-  
11          posal Act (42 U.S.C. 6991 et seq.) is amended by adding  
12          at the end the following:

13          **“SEC. 9012. DELIVERY PROHIBITION.**

14          “(a) REQUIREMENTS.—

15               “(1) PROHIBITION OF DELIVERY OR DE-  
16               POSIT.—Beginning 2 years after the date of enact-  
17               ment of this section, it shall be unlawful to deliver  
18               to, deposit into, or accept a regulated substance into  
19               an underground storage tank at a facility which has  
20               been identified by the Administrator or a State im-



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1       plementing agency to be ineligible for such delivery,  
2       deposit, or acceptance.

3               “(2) GUIDANCE.—Within 1 year after the date  
4       of enactment of this section, the Administrator shall,  
5       in consultation with the States, underground storage  
6       tank owners, and product delivery industries, publish  
7       guidelines detailing the specific processes and proce-  
8       dures they will use to implement the provisions of  
9       this section. The processes and procedures include,  
10      at a minimum—

11               “(A) the criteria for determining which un-  
12      derground storage tank facilities are ineligible  
13      for delivery, deposit, or acceptance of a regu-  
14      lated substance;

15               “(B) the mechanisms for identifying which  
16      facilities are ineligible for delivery, deposit, or  
17      acceptance of a regulated substance to the un-  
18      derground storage tank owning and fuel deliv-  
19      ery industries;

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1           “(C) the process for reclassifying ineligible  
2 facilities as eligible for delivery, deposit, or ac-  
3 ceptance of a regulated substance;

4           “(D) one or more processes for providing  
5 adequate notice to underground storage tank  
6 owners and operators and supplier industries  
7 that an underground storage tank has been de-  
8 termined to be ineligible for delivery, deposit, or  
9 acceptance or a regulated substance; and

10           “(E) a delineation of, or a process for de-  
11 termining, the specified geographic areas sub-  
12 ject to paragraph (4).

13           “(3) COMPLIANCE.—States that receive funding  
14 under this subtitle shall, at a minimum, comply with  
15 the processes and procedures published under para-  
16 graph (2).

17           “(4) CONSIDERATION.—

18           “(A) RURAL AND REMOTE AREAS.—Sub-  
19 ject to subparagraph (B), the Administrator or  
20 a State may consider not treating an under-  
21 ground storage tank as ineligible for delivery,

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1 deposit or acceptance of a regulated substance  
2 if such treatment would jeopardize the avail-  
3 ability of, or access to, fuel in any rural and re-  
4 mote areas unless an urgent threat to public  
5 health, as determined by the Administrator, ex-  
6 ists.

7 “(B) APPLICABILITY.—Subparagraph (A)  
8 shall apply only during the 180-day period fol-  
9 lowing the date of a determination by the Ad-  
10 ministrator or the appropriate State under sub-  
11 paragraph (A).

12 “(b) EFFECT ON STATE AUTHORITY.—Nothing in  
13 this section shall affect or preempt the authority of a State  
14 to prohibit the delivery, deposit, or acceptance of a regu-  
15 lated substance to an underground storage tank.

16 “(c) DEFENSE TO VIOLATION.—A person shall not  
17 be in violation of subsection (a)(1) if the person has not  
18 been provided with notice pursuant to subsection  
19 (a)(2)(D) of the ineligibility of a facility for delivery, de-  
20 posit, or acceptance of a regulated substance as deter-

1 mined by the Administrator or a State, as appropriate,  
2 under this section.”.

3 (b) ENFORCEMENT.—Section 9006(d)(2) of such Act  
4 (42 U.S.C. 6991e(d)(2)) is amended as follows:

5 (1) By adding the following new subparagraph  
6 after subparagraph (D):

7 “(E) the delivery prohibition requirement estab-  
8 lished by section 9012,”.

9 (2) By adding the following new sentence at the  
10 end thereof: “Any person making or accepting a de-  
11 livery or deposit of a regulated substance to an un-  
12 derground storage tank at an ineligible facility in  
13 violation of section 9012 shall also be subject to the  
14 same civil penalty for each day of such violation.”.

15 (c) TABLE OF CONTENTS.—The table of contents for  
16 such subtitle I is amended by adding the following new  
17 item at the end thereof:

“Sec. 9012. Delivery prohibition”.

18 **SEC. 1528. FEDERAL FACILITIES.**

19 Section 9007 of the Solid Waste Disposal Act (42  
20 U.S.C. 6991f) is amended to read as follows:

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1 **“SEC. 9007. FEDERAL FACILITIES.**

2       “(a) IN GENERAL.—Each department, agency, and  
3 instrumentality of the executive, legislative, and judicial  
4 branches of the Federal Government (1) having jurisdic-  
5 tion over any underground storage tank or underground  
6 storage tank system, or (2) engaged in any activity result-  
7 ing, or which may result, in the installation, operation,  
8 management, or closure of any underground storage tank,  
9 release response activities related thereto, or in the deliv-  
10 ery, acceptance, or deposit of any regulated substance to  
11 an underground storage tank or underground storage tank  
12 system shall be subject to, and comply with, all Federal,  
13 State, interstate, and local requirements, both substantive  
14 and procedural (including any requirement for permits or  
15 reporting or any provisions for injunctive relief and such  
16 sanctions as may be imposed by a court to enforce such  
17 relief), respecting underground storage tanks in the same  
18 manner, and to the same extent, as any person is subject  
19 to such requirements, including the payment of reasonable  
20 service charges. The Federal, State, interstate, and local  
21 substantive and procedural requirements referred to in

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1 this subsection include, but are not limited to, all adminis-  
2 trative orders and all civil and administrative penalties  
3 and fines, regardless of whether such penalties or fines  
4 are punitive or coercive in nature or are imposed for iso-  
5 lated, intermittent, or continuing violations. The United  
6 States hereby expressly waives any immunity otherwise  
7 applicable to the United States with respect to any such  
8 substantive or procedural requirement (including, but not  
9 limited to, any injunctive relief, administrative order or  
10 civil or administrative penalty or fine referred to in the  
11 preceding sentence, or reasonable service charge). The rea-  
12 sonable service charges referred to in this subsection in-  
13 clude, but are not limited to, fees or charges assessed in  
14 connection with the processing and issuance of permits,  
15 renewal of permits, amendments to permits, review of  
16 plans, studies, and other documents, and inspection and  
17 monitoring of facilities, as well as any other nondiscrim-  
18 inatory charges that are assessed in connection with a  
19 Federal, State, interstate, or local underground storage  
20 tank regulatory program. Neither the United States, nor  
21 any agent, employee, or officer thereof, shall be immune

1 or exempt from any process or sanction of any State or  
2 Federal Court with respect to the enforcement of any such  
3 injunctive relief. No agent, employee, or officer of the  
4 United States shall be personally liable for any civil pen-  
5 alty under any Federal, State, interstate, or local law con-  
6 cerning underground storage tanks with respect to any act  
7 or omission within the scope of the official duties of the  
8 agent, employee, or officer. An agent, employee, or officer  
9 of the United States shall be subject to any criminal sanc-  
10 tion (including, but not limited to, any fine or imprison-  
11 ment) under any Federal or State law concerning under-  
12 ground storage tanks, but no department, agency, or in-  
13 strumentality of the executive, legislative, or judicial  
14 branch of the Federal Government shall be subject to any  
15 such sanction. The President may exempt any under-  
16 ground storage tank of any department, agency, or instru-  
17 mentality in the executive branch from compliance with  
18 such a requirement if he determines it to be in the para-  
19 mount interest of the United States to do so. No such  
20 exemption shall be granted due to lack of appropriation  
21 unless the President shall have specifically requested such

1 appropriation as a part of the budgetary process and the  
2 Congress shall have failed to make available such re-  
3 quested appropriation. Any exemption shall be for a period  
4 not in excess of one year, but additional exemptions may  
5 be granted for periods not to exceed one year upon the  
6 President's making a new determination. The President  
7 shall report each January to the Congress all exemptions  
8 from the requirements of this section granted during the  
9 preceding calendar year, together with his reason for  
10 granting each such exemption.

11       “(b) REVIEW OF AND REPORT ON FEDERAL UNDER-  
12 GROUND STORAGE TANKS.—

13               “(1) REVIEW.—Not later than 12 months after  
14 the date of enactment of the Underground Storage  
15 Tank Compliance Act , each Federal agency that  
16 owns or operates 1 or more underground storage  
17 tanks, or that manages land on which 1 or more un-  
18 derground storage tanks are located, shall submit to  
19 the Administrator, the Committee on Energy and  
20 Commerce of the United States House of Represent-  
21 atives, and the Committee on the Environment and



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1 Public Works of the United States Senate a compli-  
2 ance strategy report that—

3 “(A) lists the location and owner of each  
4 underground storage tank described in this  
5 paragraph;

6 “(B) lists all tanks that are not in compli-  
7 ance with this subtitle that are owned or oper-  
8 ated by the Federal agency;

9 “(C) specifies the date of the last inspec-  
10 tion by a State or Federal inspector of each un-  
11 derground storage tank owned or operated by  
12 the agency;

13 “(D) lists each violation of this subtitle re-  
14 specting any underground storage tank owned  
15 or operated by the agency;

16 “(E) describes the operator training that  
17 has been provided to the operator and other  
18 persons having primary daily on-site manage-  
19 ment responsibility for the operation and main-  
20 tenance of underground storage tanks owned or  
21 operated by the agency; and

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1           “(F) describes the actions that have been  
2           and will be taken to ensure compliance for each  
3           underground storage tank identified under sub-  
4           paragraph (B).

5           “(2) NOT A SAFE HARBOR.—This subsection  
6           does not relieve any person from any obligation or  
7           requirement under this subtitle.”.

8   **SEC. 1529. TANKS ON TRIBAL LANDS.**

9           (a) IN GENERAL.—Subtitle I of the Solid Waste Dis-  
10          posal Act (42 U.S.C. 6991 et seq.) is amended by adding  
11          the following at the end thereof:

12   **“SEC. 9013. TANKS ON TRIBAL LANDS.**

13          “(a) STRATEGY.—The Administrator, in coordination  
14          with Indian tribes, shall, not later than 1 year after the  
15          date of enactment of this section, develop and implement  
16          a strategy—

17                 “(1) giving priority to releases that present the  
18                 greatest threat to human health or the environment,  
19                 to take necessary corrective action in response to re-  
20                 leases from leaking underground storage tanks lo-  
21                 cated wholly within the boundaries of—

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1                   “(A) an Indian reservation; or

2                   “(B) any other area under the jurisdiction  
3                   of an Indian tribe; and

4                   “(2) to implement and enforce requirements  
5                   concerning underground storage tanks located wholly  
6                   within the boundaries of—

7                   “(A) an Indian reservation; or

8                   “(B) any other area under the jurisdiction  
9                   of an Indian tribe.

10           “(b) REPORT.—Not later than 2 years after the date  
11 of enactment of this section, the Administrator shall sub-  
12 mit to Congress a report that summarizes the status of  
13 implementation and enforcement of this subtitle in areas  
14 located wholly within—

15                   “(1) the boundaries of Indian reservations; and

16                   “(2) any other areas under the jurisdiction of  
17                   an Indian tribe.

18 The Administrator shall make the report under this sub-  
19 section available to the public.

1       “(c) NOT A SAFE HARBOR.—This section does not  
2 relieve any person from any obligation or requirement  
3 under this subtitle.

4       “(d) STATE AUTHORITY.—Nothing in this section  
5 applies to any underground storage tank that is located  
6 in an area under the jurisdiction of a State, or that is  
7 subject to regulation by a State, as of the date of enact-  
8 ment of this section.”.

9       (b) TABLE OF CONTENTS.—The table of contents for  
10 such subtitle I is amended by adding the following new  
11 item at the end thereof:

“Sec. 9013. Tanks on Tribal lands”.

12 **SEC. 1530. ADDITIONAL MEASURES TO PROTECT GROUND-**  
13 **WATER.**

14       (a) IN GENERAL.—Section 9003 of the Solid Waste  
15 Disposal Act (42 U.S.C. 6991b) is amended by adding the  
16 following new subsection at the end:

17       “(i) ADDITIONAL MEASURES TO PROTECT GROUND-  
18 WATER FROM CONTAMINATION.—The Administrator shall  
19 require each State that receives funding under this sub-  
20 title to require one of the following:

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1           “(1) TANK AND PIPING SECONDARY CONTAIN-  
2           MENT.—(A) Each new underground storage tank, or  
3           piping connected to any such new tank, installed  
4           after the effective date of this subsection, or any ex-  
5           isting underground storage tank, or existing piping  
6           connected to such existing tank, that is replaced  
7           after the effective date of this subsection, shall be  
8           secondarily contained and monitored for leaks if the  
9           new or replaced underground storage tank or piping  
10          is within 1,000 feet of any existing community water  
11          system or any existing potable drinking water well.

12          “(B) In the case of a new underground storage  
13          tank system consisting of one or more underground  
14          storage tanks and connected by piping, subpara-  
15          graph (A) shall apply to all underground storage  
16          tanks and connected pipes comprising such system.

17          “(C) In the case of a replacement of an existing  
18          underground storage tank or existing piping con-  
19          nected to the underground storage tank, subpara-  
20          graph (A) shall apply only to the specific under-  
21          ground storage tank or piping being replaced, not to

1 other underground storage tanks and connected  
2 pipes comprising such system.

3 “(D) Each installation of a new motor fuel dis-  
4 penser system, after the effective date of this sub-  
5 section, shall include under-dispenser spill contain-  
6 ment if the new dispenser is within 1,000 feet of any  
7 existing community water system or any existing po-  
8 table drinking water well.

9 “(E) This paragraph shall not apply to repairs  
10 to an underground storage tank, piping, or dispenser  
11 that are meant to restore a tank, pipe, or dispenser  
12 to operating condition.

13 “(F) As used in this subsection:

14 “(i) The term ‘secondarily contained’  
15 means a release detection and prevention sys-  
16 tem that meets the requirements of 40 CFR  
17 280.43(g), but shall not include under-dispenser  
18 spill containment or control systems.

19 “(ii) The term ‘underground storage tank’  
20 has the meaning given to it in section 9001, ex-  
21 cept that such term does not include tank com-

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1 binations or more than a single underground  
2 pipe connected to a tank.

3 “(iii) The term ‘installation of a new motor  
4 fuel dispenser system’ means the installation of  
5 a new motor fuel dispenser and the equipment  
6 necessary to connect the dispenser to the under-  
7 ground storage tank system, but does not mean  
8 the installation of a motor fuel dispenser in-  
9 stalled separately from the equipment need to  
10 connect the dispenser to the underground stor-  
11 age tank system.

12 “(2) EVIDENCE OF FINANCIAL RESPONSIBILITY  
13 AND CERTIFICATION.—

14 “(A) MANUFACTURER AND INSTALLER FI-  
15 NANCIAL RESPONSIBILITY.—A person that  
16 manufactures an underground storage tank or  
17 piping for an underground storage tank system  
18 or that installs an underground storage tank  
19 system is required to maintain evidence of fi-  
20 nancial responsibility under section 9003(d) in  
21 order to provide for the costs of corrective ac-

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1           tions directly related to releases caused by im-  
2           proper manufacture or installation unless the  
3           person can demonstrate themselves to be al-  
4           ready covered as an owner or operator of an  
5           underground storage tank under section 9003.

6           “(B) INSTALLER CERTIFICATION.—The  
7           Administrator and each State that receives  
8           funding under this subtitle, as appropriate,  
9           shall require that a person that installs an un-  
10          derground storage tank system is—

11                   “(i) certified or licensed by the tank  
12                   and piping manufacturer;

13                   “(ii) certified or licensed by the Ad-  
14                   ministrator or a State, as appropriate;

15                   “(iii) has their underground storage  
16                   tank system installation certified by a reg-  
17                   istered professional engineer with edu-  
18                   cation and experience in underground stor-  
19                   age tank system installation;

20                   “(iv) has had their installation of the  
21                   underground storage tank inspected and



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1 approved by the Administrator or the  
2 State, as appropriate;

3 “(v) compliant with a code of practice  
4 developed by a nationally recognized asso-  
5 ciation or independent testing laboratory  
6 and in accordance with the manufacturer’s  
7 instructions; or

8 “(vi) compliant with another method  
9 that is determined by the Administrator or  
10 a State, as appropriate, to be no less pro-  
11 tective of human health and the environ-  
12 ment.

13 “(C) SAVINGS CLAUSE.—Nothing in sub-  
14 paragraph (A) alters or affects the liability of  
15 any owner or operator of an underground stor-  
16 age tank.”.

17 (b) EFFECTIVE DATE.—This subsection shall take  
18 effect 18 months after the date of enactment of this sub-  
19 section.

20 (c) PROMULGATION OF REGULATIONS OR GUIDE-  
21 LINES.—The Administrator shall issue regulations or

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1 guidelines implementing the requirements of this sub-  
2 section, including guidance to differentiate between the  
3 terms “repair” and “replace” for the purposes of section  
4 9003(i)(1) of the Solid Waste Disposal Act.

5 (d) PENALTIES.—Section 9006(d)(2) of such Act (42  
6 U.S.C. 6991e(d)(2)) is amended as follows:

7 (1) By striking “or” at the end of subpara-  
8 graph (B).

9 (2) By inserting “; or” at the end of subpara-  
10 graph (C).

11 (3) By adding the following new subparagraph  
12 after subparagraph (C):

13 “(D) the requirements established in sec-  
14 tion 9003(i),”.

15 **SEC. 1531. AUTHORIZATION OF APPROPRIATIONS.**

16 (a) IN GENERAL.—Subtitle I of the Solid Waste Dis-  
17 posal Act (42 U.S.C. 6991 et seq.) is amended by adding  
18 at the end the following:

19 **“SEC. 9014. AUTHORIZATION OF APPROPRIATIONS.**

20 “There are authorized to be appropriated to the Ad-  
21 ministrator the following amounts:

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1           “(1) To carry out subtitle I (except sections  
2           9003(h), 9005(c), 9011 and 9012) \$50,000,000 for  
3           each of fiscal years 2005 through 2009.

4           “(2) From the Trust Fund, notwithstanding  
5           section 9508(c)(1) of the Internal Revenue Code of  
6           1986:

7                   “(A) to carry out section 9003(h) (except  
8                   section 9003(h)(12)) \$200,000,000 for each of  
9                   fiscal years 2005 through 2009;

10                   “(B) to carry out section 9003(h)(12),  
11                   \$200,000,000 for each of fiscal years 2005  
12                   through 2009;

13                   “(C) to carry out sections 9003(i),  
14                   9004(f), and 9005(c) \$100,000,000 for each of  
15                   fiscal years 2005 through 2009; and

16                   “(D) to carry out sections 9010, 9011,  
17                   9012, and 9013 \$55,000,000 for each of fiscal  
18                   years 2005 through 2009.”.

19           (b) TABLE OF CONTENTS.—The table of contents for  
20 such subtitle I is amended by adding the following new  
21 item at the end thereof:

“Sec. 9014. Authorization of appropriations”.

1 **SEC. 1532. CONFORMING AMENDMENTS.**

2 (a) IN GENERAL.—Section 9001 of the Solid Waste  
3 Disposal Act (42 U.S.C. 6991) is amended as follows:

4 (1) By striking “For the purposes of this sub-  
5 title—” and inserting “In this subtitle:”.

6 (2) By redesignating paragraphs (1), (2), (3),  
7 (4), (5), (6), (7), and (8) as paragraphs (10), (7),  
8 (4), (3), (8), (5), (2), and (6), respectively.

9 (3) By inserting before paragraph (2) (as red-  
10 igned by paragraph (2) of this subsection) the fol-  
11 lowing:

12 “(1) INDIAN TRIBE.—

13 “(A) IN GENERAL.—The term ‘Indian  
14 tribe’ means any Indian tribe, band, nation, or  
15 other organized group or community that is rec-  
16 ognized as being eligible for special programs  
17 and services provided by the United States to  
18 Indians because of their status as Indians.

19 “(B) INCLUSIONS.—The term ‘Indian  
20 tribe’ includes an Alaska Native village, as de-

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1            fined in or established under the Alaska Native  
2            Claims Settlement Act (43 U.S.C. 1601 et  
3            seq.); and”.

4            (4) By inserting after paragraph (8) (as reded-  
5            ignated by paragraph (2) of this subsection) the fol-  
6            lowing:

7            “(9) TRUST FUND.—The term ‘Trust Fund’  
8            means the Leaking Underground Storage Tank  
9            Trust Fund established by section 9508 of the Inter-  
10           nal Revenue Code of 1986.”.

11           (b) CONFORMING AMENDMENTS.—The Solid Waste  
12           Disposal Act (42 U.S.C. 6901 and following) is amended  
13           as follows:

14           (1) Section 9003(f) (42 U.S.C. 6991b(f)) is  
15           amended—

16           (A) in paragraph (1), by striking  
17           “9001(2)(B)” and inserting “9001(7)(B)”; and

18           (B) in paragraphs (2) and (3), by striking  
19           “9001(2)(A)” each place it appears and insert-  
20           ing “9001(7)(A)”.

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1           (2) Section 9003(h) (42 U.S.C. 6991b(h)) is  
2           amended in paragraphs (1), (2)(C), (7)(A), and (11)  
3           by striking “Leaking Underground Storage Tank  
4           Trust Fund” each place it appears and inserting  
5           “Trust Fund”.

6           (3) Section 9009 (42 U.S.C. 6991h) is  
7           amended—

8                   (A) in subsection (a), by striking  
9                   “9001(2)(B)” and inserting “9001(7)(B)”; and

10                   (B) in subsection (d), by striking “section  
11                   9001(1) (A) and (B)” and inserting “subpara-  
12                   graphs (A) and (B) of section 9001(10)”.

13 **SEC. 1533. TECHNICAL AMENDMENTS.**

14           The Solid Waste Disposal Act is amended as follows:

15           (1) Section 9001(4)(A) (42 U.S.C. 6991(4)(A))  
16           is amended by striking “sustances” and inserting  
17           “substances”.

18           (2) Section 9003(f)(1) (42 U.S.C. 6991b(f)(1))  
19           is amended by striking “subsection (c) and (d) of  
20           this section” and inserting “subsections (c) and  
21           (d)”.

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1           (3) Section 9004(a) (42 U.S.C. 6991c(a)) is  
2           amended by striking “in 9001(2) (A) or (B) or  
3           both” and inserting “in subparagraph (A) or (B) of  
4           section 9001(7)”.

5           (4) Section 9005 (42 U.S.C. 6991d) is  
6           amended—

7                   (A) in subsection (a), by striking “study  
8                   taking” and inserting “study, taking”;

9                   (B) in subsection (b)(1), by striking  
10                  “relevent” and inserting “relevant”; and

11                  (C) in subsection (b)(4), by striking  
12                  “Evironmental” and inserting “Environ-  
13                  mental”.

## 14           **Subtitle C—Boutique Fuels**

### 15   **SEC. 1541. REDUCING THE PROLIFERATION OF BOUTIQUE** 16           **FUELS.**

17           (a) **TEMPORARY WAIVERS DURING SUPPLY EMER-**  
18   **GENCIES.**—Section 211(c)(4)(C) of the Clean Air Act (42  
19   U.S.C. 7545(c)(4)(C)) is amended by inserting “(i)” after  
20   “(C)” and by adding the following new clauses at the end  
21   thereof:

1       “(ii) The Administrator may temporarily waive a con-  
2 trol or prohibition respecting the use of a fuel or fuel addi-  
3 tive required or regulated by the Administrator pursuant  
4 to subsection (c), (h), (i), (k), or (m) of this section or  
5 prescribed in an applicable implementation plan under sec-  
6 tion 110 approved by the Administrator under clause (i)  
7 of this subparagraph if, after consultation with, and con-  
8 currence by, the Secretary of Energy, the Administrator  
9 determines that—

10           “(I) extreme and unusual fuel or fuel additive  
11 supply circumstances exist in a State or region of  
12 the Nation which prevent the distribution of an ade-  
13 quate supply of the fuel or fuel additive to con-  
14 sumers;

15           “(II) such extreme and unusual fuel and fuel  
16 additive supply circumstances are the result of a  
17 natural disaster, an Act of God, a pipeline or refin-  
18 ery equipment failure, or another event that could  
19 not reasonably have been foreseen or prevented and  
20 not the lack of prudent planning on the part of the



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1 suppliers of the fuel or fuel additive to such State  
2 or region; and

3 “(III) it is in the public interest to grant the  
4 waiver (for example, when a waiver is necessary to  
5 meet projected temporary shortfalls in the supply of  
6 the fuel or fuel additive in a State or region of the  
7 Nation which cannot otherwise be compensated for).

8 “(iii) If the Administrator makes the determinations  
9 required under clause (ii), such a temporary extreme and  
10 unusual fuel and fuel additive supply circumstances waiver  
11 shall be permitted only if—

12 “(I) the waiver applies to the smallest geo-  
13 graphic area necessary to address the extreme and  
14 unusual fuel and fuel additive supply circumstances;

15 “(II) the waiver is effective for a period of 20  
16 calendar days or, if the Administrator determines  
17 that a shorter waiver period is adequate, for the  
18 shortest practicable time period necessary to permit  
19 the correction of the extreme and unusual fuel and  
20 fuel additive supply circumstances and to mitigate  
21 impact on air quality;

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1           “(III) the waiver permits a transitional period,  
2           the exact duration of which shall be determined by  
3           the Administrator (but which shall be for the short-  
4           est practicable period), after the termination of the  
5           temporary waiver to permit wholesalers and retailers  
6           to blend down their wholesale and retail inventory;

7           “(IV) the waiver applies to all persons in the  
8           motor fuel distribution system; and

9           “(V) the Administrator has given public notice  
10          to all parties in the motor fuel distribution system,  
11          and local and State regulators, in the State or re-  
12          gion to be covered by the waiver.

13          The term ‘motor fuel distribution system’ as used in this  
14          clause shall be defined by the Administrator through rule-  
15          making.

16          “(iv) Within 180 days of the date of enactment of  
17          this clause, the Administrator shall promulgate regula-  
18          tions to implement clauses (ii) and (iii).

19          “(v) Nothing in this subparagraph shall—

20                 “(I) limit or otherwise affect the application of  
21                 any other waiver authority of the Administrator pur-

1       suant to this section or pursuant to a regulation  
2       promulgated pursuant to this section; and

3               “(II) subject any State or person to an enforce-  
4       ment action, penalties, or liability solely arising from  
5       actions taken pursuant to the issuance of a waiver  
6       under this subparagraph.”.

7       (b) LIMIT ON NUMBER OF BOUTIQUE FUELS.—Sec-  
8       tion 211(c)(4)(C) of the Clean Air Act (42 U.S.C.  
9       7545(c)(4)), as amended by subsection (a), is further  
10      amended by adding at the end the following:

11       “(v)(I) The Administrator shall have no authority,  
12      when considering a State implementation plan or a State  
13      implementation plan revision, to approve under this para-  
14      graph any fuel included in such plan or revision if the ef-  
15      fect of such approval increases the total number of fuels  
16      approved under this paragraph as of September 1, 2004,  
17      in all State implementation plans.

18       “(II) The Administrator, in consultation with the  
19      Secretary of Energy, shall determine the total number of  
20      fuels approved under this paragraph as of September 1,  
21      2004, in all State implementation plans and shall publish

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1 a list of such fuels, including the states and Petroleum  
2 Administration for Defense District in which they are  
3 used, in the Federal Register for public review and com-  
4 ment no later than 90 days after enactment.

5 “(III) The Administrator shall remove a fuel from the  
6 list published under subclause (II) if a fuel ceases to be  
7 included in a State implementation plan or if a fuel in  
8 a State implementation plan is identical to a Federal fuel  
9 formulation implemented by the Administrator, but the  
10 Administrator shall not reduce the total number of fuels  
11 authorized under the list published under subclause (II).

12 “(IV) Subclause (I) shall not limit the Administra-  
13 tor’s authority to approve a control or prohibition respect-  
14 ing any new fuel under this paragraph in a State imple-  
15 mentation plan or revision to a State implementation plan  
16 if such new fuel:

17 “(aa) completely replaces a fuel on the list pub-  
18 lished under subclause (II); or

19 “(bb) does not increase the total number of  
20 fuels on the list published under subclause (II) as of  
21 September 1, 2004.

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1 In the event that the total number of fuels on the list pub-  
2 lished under subclause (II) at the time of the Administra-  
3 tor's consideration of a control or prohibition respecting  
4 a new fuel is lower than the total number of fuels on such  
5 list as of September 1, 2004, the Administrator may ap-  
6 prove a control or prohibition respecting a new fuel under  
7 this subclause if the Administrator, after consultation with  
8 the Secretary of Energy, publishes in the Federal Register  
9 after notice and comment a finding that, in the Adminis-  
10 trator's judgment, such control or prohibition respecting  
11 a new fuel will not cause fuel supply or distribution inter-  
12 ruptions or have a significant adverse impact on fuel  
13 producibility in the affected area or contiguous areas.

14       “(V) The Administrator shall have no authority  
15 under this paragraph, when considering any particular  
16 State's implementation plan or a revision to that State's  
17 implementation plan, to approve any fuel unless that fuel  
18 was, as of the date of such consideration, approved in at  
19 least one State implementation plan in the applicable Pe-  
20 troleum Administration for Defense District. However, the  
21 Administrator may approve as part of a State implementa-

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1 tion plan or State implementation plan revision a fuel with  
2 a summertime Reid Vapor Pressure of 7.0 psi. In no event  
3 shall such approval by the Administrator cause an increase  
4 in the total number of fuels on the list published under  
5 subclause (II).

6 “(VI) Nothing in this clause shall be construed to  
7 have any effect regarding any available authority of States  
8 to require the use of any fuel additive registered in accord-  
9 ance with subsection (b), including any fuel additive reg-  
10 istered in accordance with subsection (b) after the enact-  
11 ment of this subclause.”

12 (c) STUDY AND REPORT TO CONGRESS ON BOU-  
13 TIQUE FUELS.—

14 (1) JOINT STUDY.—The Administrator of the  
15 Environmental Protection Agency and the Secretary  
16 shall undertake a study of the effects on air quality,  
17 on the number of fuel blends, on fuel availability, on  
18 fuel fungibility, and on fuel costs of the State plan  
19 provisions adopted pursuant to section 211(c)(4)(C)  
20 of the Clean Air Act (42 U.S.C. 7545(c)(4)(C)).

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1           (2) FOCUS OF STUDY.—The primary focus of  
2           the study required under paragraph (1) shall be to  
3           determine how to develop a Federal fuels system  
4           that maximizes motor fuel fungibility and supply,  
5           addresses air quality requirements, and reduces  
6           motor fuel price volatility including that which has  
7           resulted from the proliferation of boutique fuels, and  
8           to recommend to Congress such legislative changes  
9           as are necessary to implement such a system. The  
10          study should include the impacts on overall energy  
11          supply, distribution, and use as a result of the legis-  
12          lative changes recommended.

13          (3) CONDUCT OF STUDY.—In carrying out their  
14          joint duties under this section, the Administrator  
15          and the Secretary shall use sound science and objec-  
16          tive science practices, shall consider the best avail-  
17          able science, shall use data collected by accepted  
18          means and shall consider and include a description  
19          of the weight of the scientific evidence. The Adminis-  
20          trator and the Secretary shall coordinate the study

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1 required by this section with other studies required  
2 by the act.

3 (4) RESPONSIBILITY OF ADMINISTRATOR.—In  
4 carrying out the study required by this section, the  
5 Administrator shall coordinate obtaining comments  
6 from affected parties interested in the air quality  
7 impact assessment portion of the study.

8 (5) RESPONSIBILITY OF SECRETARY.—In car-  
9 rying out the study required by this section, the Sec-  
10 retary shall coordinate obtaining comments from af-  
11 fected parties interested in the fuel availability,  
12 number of fuel blends, fuel fungibility and fuel costs  
13 portion of the study.

14 (6) REPORT TO CONGRESS.—The Administrator  
15 and the Secretary jointly shall submit the results of  
16 the study required by this section in a report to the  
17 Congress not later than 12 months after the date of  
18 the enactment of this Act, together with any rec-  
19 ommended regulatory and legislative changes. Such  
20 report shall be submitted to the Committee on En-  
21 ergy and Commerce of the United States House of



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1 Representatives and the Committees on Energy and  
2 Natural Resources and on Environment and Public  
3 Works of the United States Senate.

4 (7) AUTHORIZATION OF APPROPRIATIONS.—  
5 There is authorized to be appropriated jointly to the  
6 Administrator and the Secretary \$500,000 for the  
7 completion of the study required under this sub-  
8 section.

9 (d) DEFINITIONS.—In this section:

10 (1) The term “Administrator” means the Ad-  
11 ministrator of the Environmental Protection Agency.

12 (2) The term “fuel” means gasoline, diesel fuel,  
13 and any other liquid petroleum product commercially  
14 known as gasoline and diesel fuel for use in highway  
15 and nonroad motor vehicles.

16 (3) The term “a control or prohibition respect-  
17 ing a new fuel” means a control or prohibition on  
18 the formulation, composition, or emissions character-  
19 istics of a fuel that would require the increase or de-  
20 crease of a constituent in gasoline or diesel fuel.

1     **TITLE XVI—CLIMATE CHANGE**  
2         **Subtitle A—National Climate**  
3         **Change Technology Deployment**

4     **SEC. 1601. GREENHOUSE GAS INTENSITY REDUCING TECH-**  
5             **NOLOGY STRATEGIES.**

6         Title XVI of the Energy Policy Act of 1992 (42  
7     U.S.C. 13381 et seq.) is amended by adding at the end  
8     the following:

9     **“SEC. 1610. GREENHOUSE GAS INTENSITY REDUCING**  
10             **STRATEGIES.**

11         “(a) DEFINITIONS.—In this section:

12             “(1) ADVISORY COMMITTEE.—The term ‘Advi-  
13         sory Committee’ means the Climate Change Tech-  
14         nology Advisory Committee established under sub-  
15         section (f)(1).

16             “(2) CARBON SEQUESTRATION.—The term ‘car-  
17         bon sequestration’ means the capture of carbon diox-  
18         ide through terrestrial, geological, biological, or  
19         other means, which prevents the release of carbon  
20         dioxide into the atmosphere.

1           “(3) COMMITTEE.—The term ‘Committee’  
2 means the Committee on Climate Change Tech-  
3 nology established under subsection (b)(1).

4           “(4) DEVELOPING COUNTRY.—The term ‘devel-  
5 oping country’ has the meaning given the term in  
6 section 1608(m).

7           “(5) GREENHOUSE GAS.—The term ‘greenhouse  
8 gas’ means—

9                   “(A) carbon dioxide;

10                   “(B) methane;

11                   “(C) nitrous oxide;

12                   “(D) hydrofluorocarbons;

13                   “(E) perfluorocarbons; and

14                   “(F) sulfur hexafluoride.

15           “(6) GREENHOUSE GAS INTENSITY.—The term  
16 ‘greenhouse gas intensity’ means the ratio of green-  
17 house gas emissions to economic output.

18           “(7) NATIONAL LABORATORY.—The term ‘Na-  
19 tional Laboratory’ has the meaning given the term  
20 in section 3(3) of the Energy Policy Act of 2005.

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1       “(b) COMMITTEE ON CLIMATE CHANGE TECH-  
2 NOLOGY.—

3           “(1) IN GENERAL.—Not later than 180 days  
4 after the date of enactment of this section, the  
5 President shall establish a Committee on Climate  
6 Change Technology to—

7           “(A) integrate current Federal climate re-  
8 ports; and

9           “(B) coordinate Federal climate change  
10 technology activities and programs carried out  
11 in furtherance of the strategy developed under  
12 subsection (c)(1).

13       “(2) MEMBERSHIP.—The Committee shall be  
14 composed of at least 7 members, including—

15           “(A) the Secretary, who shall chair the  
16 Committee;

17           “(B) the Secretary of Commerce;

18           “(C) the Chairman of the Council on Envi-  
19 ronmental Quality;

20           “(D) the Secretary of Agriculture;

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1           “(E) the Administrator of the Environ-  
2           mental Protection Agency;

3           “(F) the Secretary of Transportation;

4           “(G) the Director of the Office of Science  
5           and Technology Policy; and

6           “(H) other representatives as may be de-  
7           termined by the President.

8           “(3) STAFF.—The members of the Committee  
9           shall provide such personnel as are necessary to en-  
10          able the Committee to perform its duties.

11          “(c) NATIONAL CLIMATE CHANGE TECHNOLOGY  
12          POLICY.—

13               “(1) IN GENERAL.—Not later than 18 months  
14               after the date of enactment of this section, the Com-  
15               mittee shall, based on applicable Federal climate re-  
16               ports, submit to the Secretary and the President a  
17               national strategy to promote the deployment and  
18               commercialization of greenhouse gas intensity reduc-  
19               ing technologies and practices developed through re-  
20               search and development programs conducted by the  
21               National Laboratories, other Federal research facili-

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1 ties, institutions of higher education, and the private  
2 sector.

3 “(2) UPDATES.—The Committee shall—

4 “(A) at the time of submission of the  
5 strategy to the President under paragraph (1),  
6 also make the strategy available to the public;  
7 and

8 “(B) update the strategy every 5 years, or  
9 more frequently as the Committee determines  
10 to be necessary.

11 “(d) CLIMATE CHANGE TECHNOLOGY PROGRAM.—  
12 Not later than 180 days after the date on which the Com-  
13 mittee is established under subsection (b)(1), the Sec-  
14 retary, in consultation with the Committee, shall establish  
15 within the Department of Energy the Climate Change  
16 Technology Program to—

17 “(1) assist the Committee in the interagency  
18 coordination of climate change technology research,  
19 development, demonstration, and deployment to re-  
20 duce greenhouse gas intensity; and

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1           “(2) carry out the programs authorized under  
2 this section.

3           “(e) TECHNOLOGY INVENTORY.—

4           “(1) IN GENERAL.—The Secretary shall con-  
5 duct and make public an inventory and evaluation of  
6 greenhouse gas intensity reducing technologies that  
7 have been developed, or are under development, by  
8 the National Laboratories, other Federal research  
9 facilities, institutions of higher education, and the  
10 private sector to determine which technologies are  
11 suitable for commercialization and deployment.

12           “(2) REPORT.—Not later than 180 days after  
13 the completion of the inventory under paragraph (1),  
14 the Secretary shall submit to Congress a report that  
15 includes the results of the completed inventory and  
16 any recommendations of the Secretary.

17           “(3) USE.—The Secretary shall use the results  
18 of the inventory as guidance in the commercializa-  
19 tion and deployment of greenhouse gas intensity re-  
20 ducing technologies.

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1           “(4) UPDATED INVENTORY.—The Secretary  
2 shall—

3                   “(A) periodically update the inventory  
4 under paragraph (1), including when deter-  
5 mined necessary by the Committee; and

6                   “(B) make the updated inventory available  
7 to the public.

8           “(f) CLIMATE CHANGE TECHNOLOGY ADVISORY  
9 COMMITTEE.—

10           “(1) IN GENERAL.—The Secretary, in consulta-  
11 tion with the Committee, may establish under sec-  
12 tion 624 of the Department of Energy Organization  
13 Act (42 U.S.C. 7234) a Climate Change Technology  
14 Advisory Committee to identify statutory, regu-  
15 latory, economic, and other barriers to the commer-  
16 cialization and deployment of greenhouse gas inten-  
17 sity reducing technologies and practices in the  
18 United States.

19           “(2) COMPOSITION.—The Advisory Committee  
20 shall be composed of the following members, to be



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1 appointed by the Secretary, in consultation with the  
2 Committee:

3 “(A) 1 representative shall be appointed  
4 from each National Laboratory.

5 “(B) 3 members shall be representatives of  
6 energy-producing trade organizations.

7 “(C) 3 members shall represent energy-in-  
8 tensive trade organizations.

9 “(D) 3 members shall represent groups  
10 that represent end-use energy and other con-  
11 sumers.

12 “(E) 3 members shall be employees of the  
13 Federal Government who are experts in energy  
14 technology, intellectual property, and tax.

15 “(F) 3 members shall be representatives of  
16 institutions of higher education with expertise  
17 in energy technology development that are rec-  
18 ommended by the National Academy of Engi-  
19 neering.

20 “(3) REPORT.—Not later than 1 year after the  
21 date of enactment of this section and annually there-

1 after, the Advisory Committee shall submit to the  
2 Committee a report that describes—

3 “(A) the findings of the Advisory Com-  
4 mittee; and

5 “(B) any recommendations of the Advisory  
6 Committee for the removal or reduction of bar-  
7 riers to commercialization, deployment, and in-  
8 creasing the use of greenhouse gas intensity re-  
9 ducing technologies and practices.

10 “(g) GREENHOUSE GAS INTENSITY REDUCING  
11 TECHNOLOGY DEPLOYMENT.—

12 “(1) IN GENERAL.—Based on the strategy de-  
13 veloped under subsection (c)(1), the technology in-  
14 ventory conducted under subsection (e)(1), the  
15 greenhouse gas intensity reducing technology study  
16 report submitted under subsection (e)(2), and re-  
17 ports under subsection (f)(3), if any, the Committee  
18 shall develop recommendations that would provide  
19 for the removal of domestic barriers to the commer-  
20 cialization and deployment of greenhouse gas inten-  
21 sity reducing technologies and practices.

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1           “(2) REQUIREMENTS.—In developing the rec-  
2           ommendations under paragraph (1), the Committee  
3           shall consider in the aggregate—

4                   “(A) the cost-effectiveness of the tech-  
5           nology;

6                   “(B) fiscal and regulatory barriers;

7                   “(C) statutory and other barriers; and

8                   “(D) intellectual property issues.

9           “(3) DEMONSTRATION PROJECTS.—In devel-  
10          oping recommendations under paragraph (1), the  
11          Committee may identify the need for climate change  
12          technology demonstration projects.

13          “(4) REPORT.—Not later than 18 months after  
14          the date of enactment of this section, the Committee  
15          shall submit to the President and Congress a report  
16          that—

17                   “(A) identifies, based on the report sub-  
18                  mitted under subsection (f)(3), any barriers to,  
19                  and commercial risks associated with, the de-  
20                  ployment of greenhouse gas intensity reducing  
21                  technologies; and

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1           “(B) includes a plan for carrying out dem-  
2           onstration projects.

3           “(5) UPDATES.—The Committee shall—

4           “(A) at the time of submission of the re-  
5           port to Congress under paragraph (4), also  
6           make the report available to the public; and

7           “(B) update the report every 5 years, or  
8           more frequently as the Committee determines  
9           to be necessary.

10          “(h) PROCEDURES FOR CALCULATING, MONITORING,  
11          AND ANALYZING GREENHOUSE GAS INTENSITY.—The  
12          Secretary, in collaboration with the Committee and the  
13          National Institute of Standards and Technology, and after  
14          public notice and opportunity for comment, shall develop  
15          standards and best practices for calculating, monitoring,  
16          and analyzing greenhouse gas intensity.

17          “(i) DEMONSTRATION PROJECTS.—

18                 “(1) IN GENERAL.—The Secretary shall, sub-  
19                 ject to the availability of appropriations, support  
20                 demonstration projects that—

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1           “(A) increase the reduction of the green-  
2           house gas intensity to levels below that which  
3           would be achieved by technologies being used in  
4           the United States as of the date of enactment  
5           of this section;

6           “(B) maximize the potential return on  
7           Federal investment;

8           “(C) demonstrate distinct roles in public-  
9           private partnerships;

10          “(D) produce a large-scale reduction of  
11          greenhouse gas intensity if commercialization  
12          occurred; and

13          “(E) support a diversified portfolio to miti-  
14          gate the uncertainty associated with a single  
15          technology.

16          “(2) COST SHARING.—In supporting a dem-  
17          onstration project under this subsection, the Sec-  
18          retary shall require cost-sharing in accordance with  
19          section 988 of the Energy Policy Act of 2005.

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1           “(3) AUTHORIZATION OF APPROPRIATIONS.—

2           There are authorized to be appropriated such sums  
3           as are necessary to carry out this subsection.

4           “(j) COOPERATIVE RESEARCH AND DEVELOPMENT  
5 AGREEMENTS.—In carrying out greenhouse gas intensity  
6 reduction research and technology deployment activities  
7 under this subtitle, the Secretary may enter into coopera-  
8 tive research and development agreements under section  
9 12 of the Stevenson-Wydler Technology Innovation Act of  
10 1980 (15 U.S.C. 3710a).”.

11 **Subtitle B—Climate Change Tech-**  
12 **nology Deployment in Devel-**  
13 **oping Countries**

14 **SEC. 1611. CLIMATE CHANGE TECHNOLOGY DEPLOYMENT**  
15 **IN DEVELOPING COUNTRIES.**

16           The Global Environmental Protection Assistance Act  
17 of 1989 (Public Law 101–240; 103 Stat. 2521) is amend-  
18 ing by adding at the end the following:

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1           **“PART C—TECHNOLOGY DEPLOYMENT IN**  
2                           **DEVELOPING COUNTRIES**

3 **“SEC. 731. DEFINITIONS.**

4           “In this part:

5                   “(1) CARBON SEQUESTRATION.—The term ‘car-

6           bon sequestration’ means the capture of carbon diox-

7           ide through terrestrial, geological, biological, or

8           other means, which prevents the release of carbon

9           dioxide into the atmosphere.

10                   “(2) GREENHOUSE GAS.—The term ‘greenhouse

11           gas’ means carbon dioxide, methane, nitrous oxide,

12           hydrofluorocarbons, perfluorocarbons, and sulfur

13           hexafluoride.

14                   “(3) GREENHOUSE GAS INTENSITY.—The term

15           ‘greenhouse gas intensity’ means the ratio of green-

16           house gas emissions to economic output.

17 **“SEC. 732. REDUCTION OF GREENHOUSE GAS INTENSITY.**

18           “(a) LEAD AGENCY.—

19                   “(1) IN GENERAL.—The Department of State

20           shall act as the lead agency for integrating into

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1 United States foreign policy the goal of reducing  
2 greenhouse gas intensity in developing countries.

3 “(2) REPORTS.—

4 “(A) INITIAL REPORT.—Not later than  
5 180 days after the date of enactment of this  
6 part, the Secretary of State shall submit to the  
7 appropriate authorizing and appropriating com-  
8 mittees of Congress an initial report, based on  
9 the most recent information available to the  
10 Secretary from reliable public sources, that  
11 identifies the 25 developing countries that are  
12 the largest greenhouse gas emitters, including  
13 for each country—

14 “(i) an estimate of the quantity and  
15 types of energy used;

16 “(ii) an estimate of the greenhouse  
17 gas intensity of the energy, manufacturing,  
18 agricultural, and transportation sectors;

19 “(iii) a description the progress of any  
20 significant projects undertaken to reduce  
21 greenhouse gas intensity;



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1           “(iv) a description of the potential for  
2           undertaking projects to reduce greenhouse  
3           gas intensity;

4           “(v) a description of any obstacles to  
5           the reduction of greenhouse gas intensity;  
6           and

7           “(vi) a description of the best prac-  
8           tices learned by the Agency for Inter-  
9           national Development from conducting pre-  
10          vious pilot and demonstration projects to  
11          reduce greenhouse gas intensity.

12          “(B) UPDATE.—Not later than 18 months  
13          after the date on which the initial report is sub-  
14          mitted under subparagraph (A), the Secretary  
15          shall submit to the appropriate authorizing and  
16          appropriating committees of Congress, based on  
17          the best information available to the Secretary,  
18          an update of the information provided in the  
19          initial report.

20          “(C) USE.—

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1           “(i) INITIAL REPORT.—The Secretary  
2           of State shall use the initial report sub-  
3           mitted under subparagraph (A) to estab-  
4           lish baselines for the developing countries  
5           identified in the report with respect to the  
6           information provided under clauses (i) and  
7           (ii) of that subparagraph.

8           “(ii) ANNUAL REPORTS.—The Sec-  
9           retary of State shall use the annual reports  
10          prepared under subparagraph (B) and any  
11          other information available to the Sec-  
12          retary to track the progress of the devel-  
13          oping countries with respect to reducing  
14          greenhouse gas intensity.

15          “(b) PROJECTS.—The Secretary of State, in coordi-  
16          nation with Administrator of the United States Agency for  
17          International Development, shall (directly or through  
18          agreements with the World Bank, the International Mone-  
19          tary Fund, the Overseas Private Investment Corporation,  
20          and other development institutions) provide assistance to

1 developing countries specifically for projects to reduce  
2 greenhouse gas intensity, including projects to—

3           “(1) leverage, through bilateral agreements,  
4 funds for reduction of greenhouse gas intensity;

5           “(2) increase private investment in projects and  
6 activities to reduce greenhouse gas intensity; and

7           “(3) expedite the deployment of technology to  
8 reduce greenhouse gas intensity.

9           “(c) FOCUS.—In providing assistance under sub-  
10 section (b), the Secretary of State shall focus on—

11           “(1) promoting the rule of law, property rights,  
12 contract protection, and economic freedom; and

13           “(2) increasing capacity, infrastructure, and  
14 training.

15           “(d) PRIORITY.—In providing assistance under sub-  
16 section (b), the Secretary of State shall give priority to  
17 projects in the 25 developing countries identified in the  
18 report submitted under subsection (a)(2)(A).

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1 **“SEC. 733. TECHNOLOGY INVENTORY FOR DEVELOPING**  
2 **COUNTRIES.**

3 “(a) IN GENERAL.—The Secretary of Energy, in co-  
4 ordination with the Secretary of State and the Secretary  
5 of Commerce, shall conduct an inventory of greenhouse  
6 gas intensity reducing technologies that are developed, or  
7 under development in the United States, to identify tech-  
8 nologies that are suitable for transfer to, deployment in,  
9 and commercialization in the developing countries identi-  
10 fied in the report submitted under section 732(a)(2)(A).

11 “(b) REPORT.—Not later than 180 days after the  
12 completion of the inventory under subsection (a), the Sec-  
13 retary of State and the Secretary of Energy shall jointly  
14 submit to Congress a report that—

15 “(1) includes the results of the completed inven-  
16 tory;

17 “(2) identifies obstacles to the transfer, deploy-  
18 ment, and commercialization of the inventoried tech-  
19 nologies;

20 “(3) includes results from previous Federal re-  
21 ports related to the inventoried technologies; and

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1           “(4) includes an analysis of market forces re-  
2           lated to the inventoried technologies.

3   **“SEC. 734. TRADE-RELATED BARRIERS TO EXPORT OF**  
4                   **GREENHOUSE GAS INTENSITY REDUCING**  
5                   **TECHNOLOGIES.**

6           “(a) IN GENERAL.—Not later than 1 year after the  
7           date of enactment of this part, the United States Trade  
8           Representative shall (as appropriate and consistent with  
9           applicable bilateral, regional, and mutual trade agree-  
10          ments)—

11           “(1) identify trade-relations barriers maintained  
12          by foreign countries to the export of greenhouse gas  
13          intensity reducing technologies and practices from  
14          the United States to the developing countries identi-  
15          fied in the report submitted under section  
16          732(a)(2)(A); and

17           “(2) negotiate with foreign countries for the re-  
18          moval of those barriers.

19           “(b) ANNUAL REPORT.—Not later than 1 year after  
20          the date on which a report is submitted under subsection  
21          (a)(1) and annually thereafter, the United States Trade

1 Representative shall submit to Congress a report that de-  
2 scribes any progress made with respect to removing the  
3 barriers identified by the United States Trade Representa-  
4 tive under subsection (a)(1).

5 **“SEC. 735. GREENHOUSE GAS INTENSITY REDUCING TECH-**  
6 **NOLOGY EXPORT INITIATIVE.**

7 “(a) IN GENERAL.—There is established an inter-  
8 agency working group to carry out a Greenhouse Gas In-  
9 tensity Reducing Technology Export Initiative to—

10 “(1) promote the export of greenhouse gas in-  
11 tensity reducing technologies and practices from the  
12 United States;

13 “(2) identify developing countries that should  
14 be designated as priority countries for the purpose  
15 of exporting greenhouse gas intensity reducing tech-  
16 nologies and practices, based on the report sub-  
17 mitted under section 732(a)(2)(A);

18 “(3) identify potential barriers to adoption of  
19 exported greenhouse gas intensity reducing tech-  
20 nologies and practices based on the reports sub-  
21 mitted under section 734; and

1           “(4) identify previous efforts to export energy  
2 technologies to learn best practices.

3           “(b) COMPOSITION.—The working group shall be  
4 composed of—

5           “(1) the Secretary of State, who shall act as  
6 the head of the working group;

7           “(2) the Administrator of the United States  
8 Agency for International Development;

9           “(3) the United States Trade Representative;

10           “(4) a designee of the Secretary of Energy;

11           “(5) a designee of the Secretary of Commerce;

12           and

13           “(6) a designee of the Administrator of the En-  
14 vironmental Protection Agency.

15           “(c) PERFORMANCE REVIEWS AND REPORTS.—Not  
16 later than 180 days after the date of enactment of this  
17 part and each year thereafter, the interagency working  
18 group shall—

19           “(1) conduct a performance review of actions  
20 taken and results achieved by the Federal Govern-  
21 ment (including each of the agencies represented on

1 the interagency working group) to promote the ex-  
2 port of greenhouse gas intensity reducing tech-  
3 nologies and practices from the United States; and  
4 “(2) submit to the appropriate authorizing and  
5 appropriating committees of Congress a report that  
6 describes the results of the performance reviews and  
7 evaluates progress in promoting the export of green-  
8 house gas intensity reducing technologies and prac-  
9 tices from the United States, including any rec-  
10 ommendations for increasing the export of the tech-  
11 nologies and practices.

12 **“SEC. 736. TECHNOLOGY DEMONSTRATION PROJECTS.**

13 “(a) IN GENERAL.—The Secretary of State, in co-  
14 ordination with the Secretary of Energy and the Adminis-  
15 trator of the United States Agency for International De-  
16 velopment, shall promote the adoption of technologies and  
17 practices that reduce greenhouse gas intensity in devel-  
18 oping countries in accordance with this section.

19 “(b) DEMONSTRATION PROJECTS.—

20 “(1) IN GENERAL.—The Secretaries and the  
21 Administrator shall plan, coordinate, and carry out,



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1 or provide assistance for the planning, coordination,  
2 or carrying out of, demonstration projects under this  
3 section in at least 10 eligible countries, as deter-  
4 mined by the Secretaries and the Administrator.

5 “(2) ELIGIBILITY.—A country shall be eligible  
6 for assistance under this subsection if the Secre-  
7 taries and the Administrator determine that the  
8 country has demonstrated a commitment to—

9 “(A) just governance, including—

10 “(i) promoting the rule of law;

11 “(ii) respecting human and civil  
12 rights;

13 “(iii) protecting private property  
14 rights; and

15 “(iv) combating corruption; and

16 “(B) economic freedom, including economic  
17 policies that—

18 “(i) encourage citizens and firms to  
19 participate in global trade and inter-  
20 national capital markets;

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1           “(ii) promote private sector growth  
2           and the sustainable management of nat-  
3           ural resources; and

4           “(iii) strengthen market forces in the  
5           economy.

6           “(3) SELECTION.—In determining which eligi-  
7           ble countries to provide assistance to under para-  
8           graph (1), the Secretaries and the Administrator  
9           shall consider—

10           “(A) the opportunity to reduce greenhouse  
11           gas intensity in the eligible country; and

12           “(B) the opportunity to generate economic  
13           growth in the eligible country.

14           “(4) TYPES OF PROJECTS.—Demonstration  
15           projects under this section may include—

16           “(A) coal gasification, coal liquefaction,  
17           and clean coal projects;

18           “(B) carbon sequestration projects;

19           “(C) cogeneration technology initiatives;

20           “(D) renewable projects; and

21           “(E) lower emission transportation.

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1 **“SEC. 737. FELLOWSHIP AND EXCHANGE PROGRAMS.**

2 “The Secretary of State, in coordination with the  
3 Secretary of Energy, the Secretary of Commerce, and the  
4 Administrator of the Environmental Protection Agency,  
5 shall carry out fellowship and exchange programs under  
6 which officials from developing countries visit the United  
7 States to acquire expertise and knowledge of best practices  
8 to reduce greenhouse gas intensity in their countries.

9 **“SEC. 738. AUTHORIZATION OF APPROPRIATIONS.**

10 “There are authorized to be appropriated such sums  
11 as are necessary to carry out this part.

12 **“SEC. 739. EFFECTIVE DATE.**

13 “Except as otherwise provided in this part, this part  
14 takes effect on October 1, 2005.”.

15 **TITLE XVII—INCENTIVES FOR**  
16 **INNOVATIVE TECHNOLOGIES**

17 **SEC. 1701. DEFINITIONS.**

18 In this title:

19 (1) **COMMERCIAL TECHNOLOGY.**—

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1 (A) IN GENERAL.—The term “commercial  
2 technology” means a technology in general use  
3 in the commercial marketplace.

4 (B) INCLUSIONS.—The term “commercial  
5 technology” does not include a technology solely  
6 by use of the technology in a demonstration  
7 project funded by the Department.

8 (2) COST.—The term “cost” has the meaning  
9 given the term “cost of a loan guarantee” within the  
10 meaning of section 502(5)(C) of the Federal Credit  
11 Reform Act of 1990 (2 U.S.C. 661a(5)(C)).

12 (3) ELIGIBLE PROJECT.—The term “eligible  
13 project” means a project described in section 1703.

14 (4) GUARANTEE.—

15 (A) IN GENERAL.—The term “guarantee”  
16 has the meaning given the term “loan guar-  
17 antee” in section 502 of the Federal Credit Re-  
18 form Act of 1990 (2 U.S.C. 661a).

19 (B) INCLUSION.—The term “guarantee”  
20 includes a loan guarantee commitment (as de-

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1           fined in section 502 of the Federal Credit Re-  
2           form Act of 1990 (2 U.S.C. 661a)).

3           (5) OBLIGATION.—The term “obligation”  
4           means the loan or other debt obligation that is guar-  
5           anteed under this section.

6 **SEC. 1702. TERMS AND CONDITIONS.**

7           (a) IN GENERAL.—Except for division C of Public  
8           Law 108–324, the Secretary shall make guarantees under  
9           this or any other Act for projects on such terms and condi-  
10          tions as the Secretary determines, after consultation with  
11          the Secretary of the Treasury, only in accordance with this  
12          section.

13          (b) SPECIFIC APPROPRIATION OR CONTRIBUTION.—  
14          No guarantee shall be made unless—

15                 (1) an appropriation for the cost has been  
16                 made; or

17                 (2) the Secretary has received from the bor-  
18                 rower a payment in full for the cost of the obligation  
19                 and deposited the payment into the Treasury.

20          (c) AMOUNT.—Unless otherwise provided by law, a  
21          guarantee by the Secretary shall not exceed an amount

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1 equal to 80 percent of the project cost of the facility that  
2 is the subject of the guarantee, as estimated at the time  
3 at which the guarantee is issued.

4 (d) REPAYMENT.—

5 (1) IN GENERAL.—No guarantee shall be made  
6 unless the Secretary determines that there is reason-  
7 able prospect of repayment of the principal and in-  
8 terest on the obligation by the borrower.

9 (2) AMOUNT.—No guarantee shall be made un-  
10 less the Secretary determines that the amount of the  
11 obligation (when combined with amounts available to  
12 the borrower from other sources) will be sufficient to  
13 carry out the project.

14 (3) SUBORDINATION.—The obligation shall be  
15 subject to the condition that the obligation is not  
16 subordinate to other financing.

17 (e) INTEREST RATE.—An obligation shall bear inter-  
18 est at a rate that does not exceed a level that the Secretary  
19 determines appropriate, taking into account the prevailing  
20 rate of interest in the private sector for similar loans and  
21 risks.

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1 (f) TERM.—The term of an obligation shall require  
2 full repayment over a period not to exceed the lesser of—

3 (1) 30 years; or

4 (2) 90 percent of the projected useful life of the  
5 physical asset to be financed by the obligation (as  
6 determined by the Secretary).

7 (g) DEFAULTS.—

8 (1) PAYMENT BY SECRETARY.—

9 (A) IN GENERAL.—If a borrower defaults  
10 on the obligation (as defined in regulations pro-  
11 mulgated by the Secretary and specified in the  
12 guarantee contract), the holder of the guarantee  
13 shall have the right to demand payment of the  
14 unpaid amount from the Secretary.

15 (B) PAYMENT REQUIRED.—Within such  
16 period as may be specified in the guarantee or  
17 related agreements, the Secretary shall pay to  
18 the holder of the guarantee the unpaid interest  
19 on, and unpaid principal of the obligation as to  
20 which the borrower has defaulted, unless the  
21 Secretary finds that there was no default by the

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1 borrower in the payment of interest or principal  
2 or that the default has been remedied.

3 (C) FORBEARANCE.—Nothing in this sub-  
4 section precludes any forbearance by the holder  
5 of the obligation for the benefit of the borrower  
6 which may be agreed upon by the parties to the  
7 obligation and approved by the Secretary.

8 (2) SUBROGATION.—

9 (A) IN GENERAL.—If the Secretary makes  
10 a payment under paragraph (1), the Secretary  
11 shall be subrogated to the rights of the recipi-  
12 ent of the payment as specified in the guar-  
13 antee or related agreements including, where  
14 appropriate, the authority (notwithstanding any  
15 other provision of law) to—

16 (i) complete, maintain, operate, lease,  
17 or otherwise dispose of any property ac-  
18 quired pursuant to such guarantee or re-  
19 lated agreements; or

20 (ii) permit the borrower, pursuant to  
21 an agreement with the Secretary, to con-



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1           tinue to pursue the purposes of the project  
2           if the Secretary determines this to be in  
3           the public interest.

4           (B) SUPERIORITY OF RIGHTS.—The rights  
5           of the Secretary, with respect to any property  
6           acquired pursuant to a guarantee or related  
7           agreements, shall be superior to the rights of  
8           any other person with respect to the property.

9           (C) TERMS AND CONDITIONS.—A guar-  
10          antee agreement shall include such detailed  
11          terms and conditions as the Secretary deter-  
12          mines appropriate to—

13                   (i) protect the interests of the United  
14                   States in the case of default; and

15                   (ii) have available all the patents and  
16                   technology necessary for any person se-  
17                   lected, including the Secretary, to complete  
18                   and operate the project.

19          (3) PAYMENT OF PRINCIPAL AND INTEREST BY  
20          SECRETARY.—With respect to any obligation guar-  
21          anteed under this section, the Secretary may enter

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1 into a contract to pay, and pay, holders of the obli-  
2 gation, for and on behalf of the borrower, from  
3 funds appropriated for that purpose, the principal  
4 and interest payments which become due and pay-  
5 able on the unpaid balance of the obligation if the  
6 Secretary finds that—

7 (A)(i) the borrower is unable to meet the  
8 payments and is not in default;

9 (ii) it is in the public interest to permit the  
10 borrower to continue to pursue the purposes of  
11 the project; and

12 (iii) the probable net benefit to the Federal  
13 Government in paying the principal and interest  
14 will be greater than that which would result in  
15 the event of a default;

16 (B) the amount of the payment that the  
17 Secretary is authorized to pay shall be no great-  
18 er than the amount of principal and interest  
19 that the borrower is obligated to pay under the  
20 agreement being guaranteed; and

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1 (C) the borrower agrees to reimburse the  
2 Secretary for the payment (including interest)  
3 on terms and conditions that are satisfactory to  
4 the Secretary.

5 (4) ACTION BY ATTORNEY GENERAL.—

6 (A) NOTIFICATION.—If the borrower de-  
7 faults on an obligation, the Secretary shall no-  
8 tify the Attorney General of the default.

9 (B) RECOVERY.—On notification, the At-  
10 torney General shall take such action as is ap-  
11 propriate to recover the unpaid principal and  
12 interest due from—

13 (i) such assets of the defaulting bor-  
14 rower as are associated with the obligation;

15 or

16 (ii) any other security pledged to se-  
17 cure the obligation.

18 (h) FEES.—

19 (1) IN GENERAL.—The Secretary shall charge  
20 and collect fees for guarantees in amounts the Sec-

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1       retary determines are sufficient to cover applicable  
2       administrative expenses.

3           (2) AVAILABILITY.—Fees collected under this  
4       subsection shall—

5                   (A) be deposited by the Secretary into the  
6       Treasury; and

7                   (B) remain available until expended, sub-  
8       ject to such other conditions as are contained in  
9       annual appropriations Acts.

10       (i) RECORDS; AUDITS.—

11           (1) IN GENERAL.—A recipient of a guarantee  
12       shall keep such records and other pertinent docu-  
13       ments as the Secretary shall prescribe by regulation,  
14       including such records as the Secretary may require  
15       to facilitate an effective audit.

16           (2) ACCESS.—The Secretary and the Comp-  
17       troller General of the United States, or their duly  
18       authorized representatives, shall have access, for the  
19       purpose of audit, to the records and other pertinent  
20       documents.

1 (j) FULL FAITH AND CREDIT.—The full faith and  
2 credit of the United States is pledged to the payment of  
3 all guarantees issued under this section with respect to  
4 principal and interest.

5 **SEC. 1703. ELIGIBLE PROJECTS.**

6 (a) IN GENERAL.—The Secretary may make guaran-  
7 tees under this section only for projects that—

8 (1) avoid, reduce, or sequester air pollutants or  
9 anthropogenic emissions of greenhouse gases; and

10 (2) employ new or significantly improved tech-  
11 nologies as compared to commercial technologies in  
12 service in the United States at the time the guar-  
13 antee is issued.

14 (b) CATEGORIES.—Projects from the following cat-  
15 egories shall be eligible for a guarantee under this section:

16 (1) Renewable energy systems.

17 (2) Advanced fossil energy technology (includ-  
18 ing coal gasification meeting the criteria in sub-  
19 section (d)).

20 (3) Hydrogen fuel cell technology for residen-  
21 tial, industrial or –transportation applications.

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- 1           (4) Advanced nuclear energy facilities.
- 2           (5) Carbon capture and sequestration practices
- 3           and technologies, including agricultural and forestry
- 4           practices that store and sequester carbon.
- 5           (6) Efficient electrical generation, transmission,
- 6           and distribution technologies.
- 7           (7) Efficient end-use energy technologies.
- 8           (8) Production facilities for fuel efficient vehi-
- 9           cles, including hybrid and advanced diesel vehicles.
- 10          (9) Pollution control equipment.
- 11          (10) Refineries, meaning facilities at which
- 12          crude oil is refined into gasoline.

13          (c) GASIFICATION PROJECTS.—The Secretary may  
14          make guarantees for the following gasification projects:

15               (1) INTEGRATED GASIFICATION COMBINED  
16               CYCLE PROJECTS.—Integrated gasification combined  
17               cycle plants meeting the emission levels under sub-  
18               section (d), including—

19                       (A) projects for the generation of  
20                       electricity—

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1 (i) for which, during the term of the  
2 guarantee—

3 (I) coal, biomass, petroleum coke,  
4 or a combination of coal, biomass, and  
5 petroleum coke will account for at  
6 least 65 percent of annual heat input;  
7 and

8 (II) electricity will account for at  
9 least 65 percent of net useful annual  
10 energy output;

11 (ii) that have a design that is deter-  
12 mined by the Secretary to be capable of ac-  
13 commodating the equipment likely to be  
14 necessary to capture the carbon dioxide  
15 that would otherwise be emitted in flue gas  
16 from the plant;

17 (iii) that have an assured revenue  
18 stream that covers project capital and op-  
19 erating costs (including servicing all debt  
20 obligations covered by the guarantee) that

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1 is approved by the Secretary and the rel-  
2 evant State public utility commission; and

3 (iv) on which construction commences  
4 not later than the date that is 3 years  
5 after the date of the issuance of the guar-  
6 antee;

7 (B) a project to produce energy from coal  
8 (of not more than 13,000 Btu/lb and mined in  
9 the western United States) using appropriate  
10 advanced integrated gasification combined cycle  
11 technology that minimizes and offers the poten-  
12 tial to sequester carbon dioxide emissions and  
13 that—

14 (i) may include repowering of existing  
15 facilities;

16 (ii) may be built in stages;

17 (iii) shall have a combined output of  
18 at least 100 megawatts;

19 (iv) shall be located in a western State  
20 at an altitude greater than 4,000 feet; and



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1 (v) shall demonstrate the ability to  
2 use coal with an energy content of not  
3 more than 9,000 Btu/lb;

4 (C) a project located in a taconite-pro-  
5 ducing region of the United States that is enti-  
6 tled under the law of the State in which the  
7 plant is located to enter into a long-term con-  
8 tract approved by a State public utility commis-  
9 sion to sell at least 450 megawatts of output to  
10 a utility;

11 (D) facilities that—

12 (i) generate 1 or more hydrogen-rich  
13 and carbon monoxide-rich product streams  
14 from the gasification of coal or coal waste;  
15 and

16 (ii) use those streams to facilitate the  
17 production of ultra clean premium fuels  
18 through the Fischer-Tropsch process; and

19 (E) a project to produce energy and clean  
20 fuels, using appropriate coal liquefaction tech-

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1 nology, from Western bituminous or subbitu-  
2 minous coal, that—

3 (i) is owned by a State government;

4 and

5 (ii) may include tribal and private coal  
6 resources.

7 (2) INDUSTRIAL GASIFICATION PROJECTS.—Fa-  
8 cilities that gasify coal, biomass, or petroleum coke  
9 in any combination to produce synthesis gas for use  
10 as a fuel or feedstock and for which electricity ac-  
11 counts for less than 65 percent of the useful energy  
12 output of the facility.

13 (3) PETROLEUM COKE GASIFICATION  
14 PROJECTS.—The Secretary is encouraged to make  
15 loan guarantees under this title available for petro-  
16 leum coke gasification projects.

17 (4) LIQUIFACTION PROJECT.—Notwithstanding  
18 any other provision of law, funds awarded under the  
19 clean coal power initiative under subtitle A of title  
20 IV for coal-to-oil liquefaction projects may be used

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1 to finance the cost of loan guarantees for projects  
2 awarded such funds.

3 (d) EMISSION LEVELS.—In addition to any other ap-  
4 plicable Federal or State emission limitation requirements,  
5 a project shall attain at least—

6 (1) total sulfur dioxide emissions in flue gas  
7 from the project that do not exceed 0.05 lb/  
8 mmBTU;

9 (2) a 90-percent removal rate (including any  
10 fuel pretreatment) of mercury from the coal-derived  
11 gas, and any other fuel, combusted by the project;

12 (3) total nitrogen oxide emissions in the flue  
13 gas from the project that do not exceed 0.08 lb/  
14 mmBTU; and

15 (4) total particulate emissions in the flue gas  
16 from the project that do not exceed 0.01 lb/  
17 mmBTU.

18 (e) QUALIFICATION OF FACILITIES RECEIVING TAX  
19 CREDITS.—A project that receives tax credits for clean  
20 coal technology shall not be disqualified from receiving a  
21 guarantee under this title.

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**1 SEC. 1704. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) IN GENERAL.—There are authorized to be appro-  
3 priated such sums as are necessary to provide the cost  
4 of guarantees under this title.

5 (b) USE OF OTHER APPROPRIATED FUNDS.—The  
6 Department may use amounts awarded under the clean  
7 coal power initiative under subtitle A of title IV to carry  
8 out the project described in section 1703(c)(1)(C), on the  
9 request of the recipient of such award, for a loan guar-  
10 antee, to the extent that the amounts have not yet been  
11 disbursed to, or have been repaid by, the recipient.

**12 TITLE XVIII—STUDIES****13 SEC. 1801. STUDY ON INVENTORY OF PETROLEUM AND  
14 NATURAL GAS STORAGE.**

15 (a) DEFINITION.—For purposes of this section “pe-  
16 troleum” means crude oil, motor gasoline, jet fuel, dis-  
17 tillates, and propane.

18 (b) STUDY.—The Secretary shall conduct a study on  
19 petroleum and natural gas storage capacity and oper-  
20 ational inventory levels, nationwide and by major geo-  
21 graphical regions.

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1 (c) CONTENTS.—The study shall address—

2 (1) historical normal ranges for petroleum and  
3 natural gas inventory levels;

4 (2) historical and projected storage capacity  
5 trends;

6 (3) estimated operation inventory levels below  
7 which outages, delivery slowdown, rationing, inter-  
8 ruptions in service, or other indicators of shortage  
9 begin to appear;

10 (4) explanations for inventory levels dropping  
11 below normal ranges; and

12 (5) the ability of industry to meet United  
13 States demand for petroleum and natural gas with-  
14 out shortages or price spikes, when inventory levels  
15 are below normal ranges.

16 (d) REPORT TO CONGRESS.—Not later than 1 year  
17 after the date of enactment of this Act, the Secretary shall  
18 submit a report to Congress on the results of the study,  
19 including findings and any recommendations for pre-  
20 venting future supply shortages.

1 **SEC. 1802. STUDY OF ENERGY EFFICIENCY STANDARDS.**

2       The Secretary shall contract with the National Acad-  
3 emy of Sciences for a study, to be completed within 1 year  
4 after the date of enactment of this Act, to examine wheth-  
5 er the goals of energy efficiency standards are best served  
6 by measurement of energy consumed, and efficiency im-  
7 provements, at the actual site of energy consumption, or  
8 through the full fuel cycle, beginning at the source of en-  
9 ergy production. The Secretary shall submit the report to  
10 Congress.

11 **SEC. 1803. TELECOMMUTING STUDY.**

12       (a) **STUDY REQUIRED.**—The Secretary, in consulta-  
13 tion with the Commission, the Director of the Office of  
14 Personnel Management, the Administrator of General  
15 Services, and the Administrator of NTIA, shall conduct  
16 a study of the energy conservation implications of the  
17 widespread adoption of telecommuting by Federal employ-  
18 ees in the United States.

19       (b) **REQUIRED SUBJECTS OF STUDY.**—The study re-  
20 quired by subsection (a) shall analyze the following sub-

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1 jects in relation to the energy saving potential of telecom-  
2 muting by Federal employees:

3 (1) Reductions of energy use and energy costs  
4 in commuting and regular office heating, cooling,  
5 and other operations.

6 (2) Other energy reductions accomplished by  
7 telecommuting.

8 (3) Existing regulatory barriers that hamper  
9 telecommuting, including barriers to broadband tele-  
10 communications services deployment.

11 (4) Collateral benefits to the environment, fam-  
12 ily life, and other values.

13 (c) REPORT REQUIRED.—The Secretary shall submit  
14 to the President and Congress a report on the study re-  
15 quired by this section not later than 6 months after the  
16 date of enactment of this Act. Such report shall include  
17 a description of the results of the analysis of each of the  
18 subject described in subsection (b).

19 (d) DEFINITIONS.—As used in this section:

20 (1) COMMISSION.—The term “Commission”  
21 means the Federal Communications Commission.

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1           (2) NTIA.—The term “NTIA” means the Na-  
2           tional Telecommunications and Information Admin-  
3           istration of the Department of Commerce.

4           (3) TELECOMMUTING.—The term “telecom-  
5           muting” means the performance of work functions  
6           using communications technologies, thereby elimi-  
7           nating or substantially reducing the need to com-  
8           mute to and from traditional worksites.

9           (4) FEDERAL EMPLOYEE.—The term “Federal  
10          employee” has the meaning provided the term “em-  
11          ployee” by section 2105 of title 5, United States  
12          Code.

13 **SEC. 1804. LIHEAP REPORT.**

14          Not later than 1 year after the date of enactment  
15          of this Act, the Secretary of Health and Human Services  
16          shall transmit to Congress a report on how the Low-In-  
17          come Home Energy Assistance Program could be used  
18          more effectively to prevent loss of life from extreme tem-  
19          peratures. In preparing such report, the Secretary shall  
20          consult with appropriate officials in all 50 States and the  
21          District of Columbia.



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1 **SEC. 1805. OIL BYPASS FILTRATION TECHNOLOGY.**

2 The Secretary and the Administrator of the Environ-  
3 mental Protection Agency shall—

4 (1) conduct a joint study of the benefits of oil  
5 bypass filtration technology in reducing demand for  
6 oil and protecting the environment;

7 (2) examine the feasibility of using oil bypass  
8 filtration technology in Federal motor vehicle fleets;  
9 and

10 (3) include in such study, prior to any deter-  
11 mination of the feasibility of using oil bypass filtra-  
12 tion technology, the evaluation of products and var-  
13 ious manufacturers.

14 **SEC. 1806. TOTAL INTEGRATED THERMAL SYSTEMS.**

15 The Secretary shall—

16 (1) conduct a study of the benefits of total inte-  
17 grated thermal systems in reducing demand for oil  
18 and protecting the environment; and

19 (2) examine the feasibility of using total inte-  
20 grated thermal systems in Department of Defense  
21 and other Federal motor vehicle fleets.

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1 **SEC. 1807. REPORT ON ENERGY INTEGRATION WITH LATIN**  
2 **AMERICA.**

3 The Secretary shall submit an annual report to the  
4 Committee on Energy and Commerce of the United States  
5 House of Representatives and to the Committee on En-  
6 ergy and Natural Resources of the United States Senate  
7 concerning the status of energy export development in  
8 Latin America and efforts by the Secretary and other de-  
9 partments and agencies of the United States to promote  
10 energy integration with Latin America. The report shall  
11 contain a detailed analysis of the status of energy export  
12 development in Mexico and a description of all significant  
13 efforts by the Secretary and other departments and agen-  
14 cies to promote a constructive relationship with Mexico re-  
15 garding the development of that nation's energy capacity.  
16 In particular this report shall outline efforts the Secretary  
17 and other departments and agencies have made to ensure  
18 that regulatory approval and oversight of United States/  
19 Mexico border projects that result in the expansion of  
20 Mexican energy capacity are effectively coordinated across  
21 departments and with the Mexican government.

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**1 SEC. 1808. LOW-VOLUME GAS RESERVOIR STUDY.**

2 (a) STUDY.—The Secretary shall make a grant to an  
3 organization of oil and gas producing States, specifically  
4 those containing significant numbers of marginal oil and  
5 natural gas wells, for conducting an annual study of low-  
6 volume natural gas reservoirs. Such organization shall  
7 work with the State geologist of each State being studied.

8 (b) CONTENTS.—The studies under this section  
9 shall—

10 (1) determine the status and location of mar-  
11 ginal wells and gas reservoirs;

12 (2) gather the production information of these  
13 marginal wells and reservoirs;

14 (3) estimate the remaining producible reserves  
15 based on variable pipeline pressures;

16 (4) locate low-pressure gathering facilities and  
17 pipelines;

18 (5) recommend incentives which will enable the  
19 continued production of these resources;

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1           (6) produce maps and literature to disseminate  
2           to States to promote conservation of natural gas re-  
3           serves; and

4           (7) evaluate the amount of natural gas that is  
5           being wasted through the practice of venting or flar-  
6           ing of natural gas produced in association with  
7           crude oil well production.

8           (c) DATA ANALYSIS.—Data development and anal-  
9           ysis under this section shall be performed by an institution  
10          of higher education with GIS capabilities. If the organiza-  
11          tion receiving the grant under subsection (a) does not have  
12          GIS capabilities, such organization shall contract with one  
13          or more entities with—

14                (1) technological capabilities and resources to  
15                perform advanced image processing, GIS program-  
16                ming, and data analysis; and

17                (2) the ability to—

18                      (A) process remotely sensed imagery with  
19                      high spatial resolution;

20                      (B) deploy global positioning systems;

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1 (C) process and synthesize existing, vari-  
2 able-format gas well, pipeline, gathering facility,  
3 and reservoir data;

4 (D) create and query GIS databases with  
5 infrastructure location and attribute informa-  
6 tion;

7 (E) write computer programs to customize  
8 relevant GIS software;

9 (F) generate maps, charts, and graphs  
10 which summarize findings from data research  
11 for presentation to different audiences; and

12 (G) deliver data in a variety of formats, in-  
13 cluding Internet Map Server for query and dis-  
14 play, desktop computer display, and access  
15 through handheld personal digital assistants.

16 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
17 are authorized to be appropriated to the Secretary for car-  
18 rying out this section—

19 (1) \$1,500,000 for fiscal year 2006; and

20 (2) \$450,000 for each of the fiscal years 2007  
21 through 2010.

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1 (e) DEFINITIONS.—For purposes of this section, the  
2 term “GIS” means geographic information systems tech-  
3 nology that facilitates the organization and management  
4 of data with a geographic component.

5 **SEC. 1809. INVESTIGATION OF GASOLINE PRICES.**

6 (a) INVESTIGATION.—Not later than 90 days after  
7 the date of enactment of this Act, the Federal Trade Com-  
8 mission shall conduct an investigation to determine if the  
9 price of gasoline is being artificially manipulated by reduc-  
10 ing refinery capacity or by any other form of market ma-  
11 nipulation or price gouging practices.

12 (b) EVALUATION AND ANALYSIS.—The Secretary  
13 shall direct the National Petroleum Council to conduct an  
14 evaluation and analysis to determine whether, and to what  
15 extent, environmental and other regulations affect new do-  
16 mestic refinery construction and significant expansion of  
17 existing refinery capacity.

18 (c) REPORTS TO CONGRESS.—

19 (1) INVESTIGATION.—On completion of the in-  
20 vestigation under subsection (a), the Federal Trade

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1 Commission shall submit to Congress a report that  
2 describes—

3 (A) the results of the investigation; and

4 (B) any recommendations of the Federal  
5 Trade Commission.

6 (2) EVALUATION AND ANALYSIS.—On comple-  
7 tion of the evaluation and analysis under subsection  
8 (b), the Secretary shall submit to Congress a report  
9 that describes—

10 (A) the results of the evaluation and anal-  
11 ysis; and

12 (B) any recommendations of the National  
13 Petroleum Council.

14 **SEC. 1810. ALASKA NATURAL GAS PIPELINE.**

15 Not later than 180 days after the date of enactment  
16 of this Act, and every 180 days thereafter until the Alaska  
17 natural gas pipeline commences operation, the Federal  
18 Energy Regulatory Commission shall submit to Congress  
19 a report describing—

20 (1) the progress made in licensing and con-  
21 structing the pipeline; and

1 (2) any issue impeding that progress.

2 **SEC. 1811. COAL BED METHANE STUDY.**

3 (a) STUDY.—

4 (1) IN GENERAL.—The Secretary of the Inte-  
5 rior, in consultation with the Administrator of the  
6 Environmental Protection Agency, shall enter into  
7 an arrangement under which the National Academy  
8 of Sciences shall conduct a study on the effect of  
9 coalbed natural gas production on surface and  
10 ground water resources, including ground water  
11 aquifers, in the States of Montana, Wyoming, Colo-  
12 rado, New Mexico, North Dakota, and Utah.

13 (2) MATTERS TO BE ADDRESSED.—The study  
14 shall address the effectiveness of—

15 (A) the management of coal bed methane  
16 produced water;

17 (B) the use of best management practices;

18 and

19 (C) various production techniques for coal  
20 bed methane natural gas in minimizing impacts  
21 on water resources.



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1 (b) DATA ANALYSIS.—The study shall analyze avail-  
2 able hydrologic, geologic and water quality data, along  
3 with—

4 (1) production techniques, produced water man-  
5 agement techniques, best management practices, and  
6 other factors that can mitigate effects of coal bed  
7 methane development;

8 (2) the costs associated with mitigation tech-  
9 niques;

10 (3) effects on surface or ground water re-  
11 sources, including drinking water, associated with  
12 surface or subsurface disposal of waters produced  
13 during extraction of coal bed methane; and

14 (4) any other significant effects on surface or  
15 ground water resources associated with production  
16 of coal-bed methane.

17 (c) RECOMMENDATIONS.—The study shall analyze  
18 the effectiveness of current mitigation practices of coal bed  
19 methane produced water handling in relation to existing  
20 Federal and State laws and regulations, and make rec-  
21 ommendations as to changes, if any, to Federal law nec-

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1 essary to address adverse impacts to surface or ground  
2 water resources associated with coal bed methane develop-  
3 ment.

4 (d) COMPLETION OF STUDY.—The National Acad-  
5 emy of Sciences shall submit the findings and rec-  
6 ommendations of the study to the Secretary of the Interior  
7 and the Administrator of the Environmental Protection  
8 Agency within 12 months after the date of enactment of  
9 this Act, and shall upon completion make the results of  
10 the study available to the public.

11 (e) REPORT TO CONGRESS.—The Secretary of the In-  
12 terior and the Administrator of the Environmental Protec-  
13 tion Agency, after consulting with States, shall report to  
14 the Congress within 6 months after receiving the results  
15 of the study on—

16 (1) the findings and recommendations of the  
17 study;

18 (2) the agreement or disagreement of the Sec-  
19 retary of the Interior and the Administrator of the  
20 Environmental Protection Agency with each of its  
21 findings and recommendations; and

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1           (3) any recommended changes in funding to ad-  
2           dress the effects of coal bed methane production on  
3           surface and ground water resources.

4 **SEC. 1812. BACKUP FUEL CAPABILITY STUDY.**

5           (a) STUDY.—

6           (1) IN GENERAL.—The Secretary shall conduct  
7           a study of the effect of obtaining and maintaining  
8           liquid and other fuel backup capability at—

9                   (A) gas-fired power generation facilities;

10                   and

11                   (B) other gas-fired industrial facilities.

12           (2) CONTENTS.—The study under paragraph

13           (1) shall address—

14                   (A) the costs and benefits of adding a dif-  
15                   ferent fuel capability to a power gas-fired power  
16                   generating or industrial facility, taking into  
17                   consideration regional differences;

18                   (B) methods of the Federal Government  
19                   and State governments to encourage gas-fired  
20                   power generators and industries to develop the

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1 capability to power the facilities using a backup  
2 fuel;

3 (C) the effect on the supply and cost of  
4 natural gas of—

5 (i) a balanced portfolio of fuel choices  
6 in power generation and industrial applica-  
7 tions; and

8 (ii) State regulations that permit  
9 agencies in the State to carry out policies  
10 that encourage the use of other backup  
11 fuels in gas-fired power generation; and

12 (D) changes required in the Clean Air Act  
13 (42 U.S.C. 7401 et seq.) to allow natural gas  
14 generators to add clean backup fuel capabilities.

15 (b) REPORT TO CONGRESS.—Not later than 1 year  
16 after the date of enactment of this Act, the Secretary shall  
17 submit to Congress a report on the results of the study  
18 under subsection (a), including recommendations regard-  
19 ing future activity of the Federal Government relating to  
20 backup fuel capability.

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1 **SEC. 1813. INDIAN LAND RIGHTS-OF-WAY.**

2 (a) STUDY.—

3 (1) IN GENERAL.—The Secretary and the Sec-  
4 retary of the Interior (referred to in this section as  
5 the “Secretaries”) shall jointly conduct a study of  
6 issues regarding energy rights-of-way on tribal land  
7 (as defined in section 2601 of the Energy Policy Act  
8 of 1992 (as amended by section 503)) (referred to  
9 in this section as “tribal land”).

10 (2) CONSULTATION.—In conducting the study  
11 under paragraph (1), the Secretaries shall consult  
12 with Indian tribes, the energy industry, appropriate  
13 governmental entities, and affected businesses and  
14 consumers.

15 (b) REPORT.—Not later than 1 year after the date  
16 of enactment of this Act, the Secretaries shall submit to  
17 Congress a report on the findings of the study,  
18 including—

19 (1) an analysis of historic rates of compensation  
20 paid for energy rights-of-way on tribal land;

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1           (2) recommendations for appropriate standards  
2           and procedures for determining fair and appropriate  
3           compensation to Indian tribes for grants, expan-  
4           sions, and renewals of energy rights-of-way on tribal  
5           land;

6           (3) an assessment of the tribal self-determina-  
7           tion and sovereignty interests implicated by applica-  
8           tions for the grant, expansion, or renewal of energy  
9           rights-of-way on tribal land; and

10          (4) an analysis of relevant national energy  
11          transportation policies relating to grants, expan-  
12          sions, and renewals of energy rights-of-way on tribal  
13          land.

14 **SEC. 1814. MOBILITY OF SCIENTIFIC AND TECHNICAL PER-**  
15 **SONNEL.**

16          Not later than 2 years after the date of enactment  
17 of this section, the Secretary shall transmit to Congress  
18 a report that—

19           (1) identifies any policies or procedures of a  
20           contractor operating a National Laboratory or sin-  
21           gle-purpose research facility that create disincentives

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1 to the temporary or permanent transfer of scientific  
2 and technical personnel among the contractor-oper-  
3 ated National Laboratories or contractor-operated  
4 single-purpose research facilities; and

5 (2) provides recommendations for improving  
6 interlaboratory exchange of scientific and technical  
7 personnel.

8 **SEC. 1815. INTERAGENCY REVIEW OF COMPETITION IN THE**  
9 **WHOLESALE AND RETAIL MARKETS FOR**  
10 **ELECTRIC ENERGY.**

11 (a) **TASK FORCE.**—There is established an inter-  
12 agency task force, to be known as the “Electric Energy  
13 Market Competition Task Force” (referred to in this sec-  
14 tion as the “task force”), consisting of 5 members—

15 (1) 1 of whom shall be an employee of the De-  
16 partment of Justice, to be appointed by the Attorney  
17 General of the United States;

18 (2) 1 of whom shall be an employee of the Fed-  
19 eral Energy Regulatory Commission, to be appointed  
20 by the Chairperson of that Commission;

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1           (3) 1 of whom shall be an employee of the Fed-  
2           eral Trade Commission, to be appointed by the  
3           Chairperson of that Commission;

4           (4) 1 of whom shall be an employee of the De-  
5           partment, to be appointed by the Secretary; and

6           (5) 1 of whom shall be an employee of the  
7           Rural Utilities Service, to be appointed by the Sec-  
8           retary of Agriculture.

9           (b) STUDY AND REPORT.—

10           (1) STUDY.—The task force shall conduct a  
11           study and analysis of competition within the whole-  
12           sale and retail market for electric energy in the  
13           United States.

14           (2) REPORT.—

15           (A) FINAL REPORT.—Not later than 1  
16           year after the date of enactment of this Act, the  
17           task force shall submit to Congress a final re-  
18           port on the findings of the task force under  
19           paragraph (1).

20           (B) PUBLIC COMMENT.—Not later than  
21           the date that is 60 days before a final report



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1 is submitted to Congress under subparagraph  
2 (A), the task force shall—

3 (i) publish in the Federal Register a  
4 draft of the report; and

5 (ii) provide an opportunity for public  
6 comment on the report.

7 (c) CONSULTATION.—In conducting the study under  
8 subsection (b), the task force shall consult with and solicit  
9 comments from any advisory entity of the task force, the  
10 States, representatives of the electric power industry, and  
11 the public.

12 **SEC. 1816. STUDY OF RAPID ELECTRICAL GRID RESTORA-**  
13 **TION.**

14 (a) STUDY.—

15 (1) IN GENERAL.—The Secretary shall conduct  
16 a study of the benefits of using mobile transformers  
17 and mobile substations to rapidly restore electrical  
18 service to areas subjected to blackouts as a result  
19 of—

20 (A) equipment failure;

21 (B) natural disasters;

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1 (C) acts of terrorism; or

2 (D) war.

3 (2) CONTENTS.—The study under paragraph

4 (1) shall contain an analysis of—

5 (A) the feasibility of using mobile trans-  
6 formers and mobile substations to reduce de-  
7 pendence on foreign entities for key elements of  
8 the electrical grid system of the United States;

9 (B) the feasibility of using mobile trans-  
10 formers and mobile substations to rapidly re-  
11 store electrical power to—

12 (i) military bases;

13 (ii) the Federal Government;

14 (iii) communications industries;

15 (iv) first responders; and

16 (v) other critical infrastructures, as  
17 determined by the Secretary;

18 (C) the quantity of mobile transformers  
19 and mobile substations necessary—

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1 (i) to eliminate dependence on foreign  
2 sources for key electrical grid components  
3 in the United States;

4 (ii) to rapidly deploy technology to  
5 fully restore full electrical service to  
6 prioritized Governmental functions; and

7 (iii) to identify manufacturing sources  
8 in existence on the date of enactment of  
9 this Act that have previously manufactured  
10 specialized mobile transformer or mobile  
11 substation products for Federal agencies.

12 (b) REPORT.—

13 (1) IN GENERAL.—Not later than 1 year after  
14 the date of enactment of this Act, the Secretary  
15 shall submit to the President and Congress a report  
16 on the study under subsection (a).

17 (2) INCLUSION.—The report shall include a de-  
18 scription of the results of the analysis under sub-  
19 section (a)(2).

20 **SEC. 1817. STUDY OF DISTRIBUTED GENERATION.**

21 (a) STUDY.—

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1 (1) IN GENERAL.—

2 (A) POTENTIAL BENEFITS.—The Sec-  
3 retary, in consultation with the Federal Energy  
4 Regulatory Commission, shall conduct a study  
5 of the potential benefits of cogeneration and  
6 small power production.

7 (B) RECIPIENTS.—The benefits described  
8 in subparagraph (A) include benefits that are  
9 received directly or indirectly by—

10 (i) an electricity distribution or trans-  
11 mission service provider;

12 (ii) other customers served by an elec-  
13 tricity distribution or transmission service  
14 provider; and

15 (iii) the general public in the area  
16 served by the public utility in which the co-  
17 generator or small power producer is lo-  
18 cated.

19 (2) INCLUSIONS.—The study shall include an  
20 analysis of—

21 (A) the potential benefits of—

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- 1 (i) increased system reliability;
- 2 (ii) improved power quality;
- 3 (iii) the provision of ancillary services;
- 4 (iv) reduction of peak power require-
- 5 ments through onsite generation;
- 6 (v) the provision of reactive power or
- 7 volt-ampere reactives;
- 8 (vi) an emergency supply of power;
- 9 (vii) offsets to investments in genera-
- 10 tion, transmission, or distribution facilities
- 11 that would otherwise be recovered through
- 12 rates;
- 13 (viii) diminished land use effects and
- 14 right-of-way acquisition costs; and
- 15 (ix) reducing the vulnerability of a
- 16 system to terrorism; and
- 17 (B) any rate-related issue that may impede
- 18 or otherwise discourage the expansion of cogen-
- 19 eration and small power production facilities,
- 20 including a review of whether rates, rules, or
- 21 other requirements imposed on the facilities are

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1           comparable to rates imposed on customers of  
2           the same class that do not have cogeneration or  
3           small power production.

4           (3) VALUATION OF BENEFITS.—In carrying out  
5           the study, the Secretary shall determine an appro-  
6           priate method of valuing potential benefits under  
7           varying circumstances for individual cogeneration or  
8           small power production units.

9           (b) REPORT.—Not later than 18 months after the  
10          date of enactment of this Act, the Secretary shall—

11                 (1) complete the study;

12                 (2) provide an opportunity for public comment  
13                 on the results of the study; and

14                 (3) submit to the President and Congress a re-  
15                 port describing—

16                         (A) the results of the study; and

17                         (B) information relating to the public com-  
18                         ments received under paragraph (2).

19           (c) PUBLICATION.—After submission of the report  
20          under subsection (b) to the President and Congress, the  
21          Secretary shall publish the report.

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1 **SEC. 1818. NATURAL GAS SUPPLY SHORTAGE REPORT.**

2 (a) IN GENERAL.—Not later than 180 days after the  
3 date of enactment of this Act, the Secretary shall submit  
4 to Congress a report on natural gas supplies and demand.

5 (b) PURPOSE.—The purpose of the report under sub-  
6 section (a) is to develop recommendations for achieving  
7 a balance between natural gas supply and demand in order  
8 to—

9 (1) provide residential consumers with natural  
10 gas at reasonable and stable prices;

11 (2) accommodate long-term maintenance and  
12 growth of domestic natural gas-dependent industrial,  
13 manufacturing, and commercial enterprises;

14 (3) facilitate the attainment of national ambient  
15 air quality standards under the Clean Air Act (43  
16 U.S.C. 7401 et seq.);

17 (4) achieve continued progress in reducing the  
18 emissions associated with electric power generation;  
19 and

20 (5) support the development of the preliminary  
21 phases of hydrogen-based energy technologies.

1           (c) COMPREHENSIVE ANALYSIS.—The report shall  
2 include a comprehensive analysis of, for the period begin-  
3 ning on January 1, 2004, and ending on December 31,  
4 2015, natural gas supply and demand in the United  
5 States, including—

6           (1) estimates of annual domestic demand for  
7 natural gas, taking into consideration the effect of  
8 Federal policies and actions that are likely to in-  
9 crease or decrease the demand for natural gas;

10           (2) projections of annual natural gas supplies,  
11 from domestic and foreign sources, under Federal  
12 policies in existence on the date of enactment of this  
13 Act;

14           (3) an identification of estimated natural gas  
15 supplies that are not available under those Federal  
16 policies;

17           (4) scenarios for decreasing natural gas demand  
18 and increasing natural gas supplies that compare  
19 the relative economic and environmental impacts of  
20 Federal policies that—



1 (A) encourage or require the use of natural  
2 gas to meet air quality, carbon dioxide emission  
3 reduction, or energy security goals;

4 (B) encourage or require the use of energy  
5 sources other than natural gas, including coal,  
6 nuclear, and renewable sources;

7 (C) support technologies to develop alter-  
8 native sources of natural gas and synthetic gas,  
9 including coal gasification technologies;

10 (D) encourage or require the use of energy  
11 conservation and demand side management  
12 practices; and

13 (E) affect access to domestic natural gas  
14 supplies; and

15 (5) recommendations for Federal actions to  
16 achieve the purposes described in subsection (b), in-  
17 cluding recommendations that—

18 (A) encourage or require the use of energy  
19 sources other than natural gas, including coal,  
20 nuclear, and renewable sources;

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1 (B) encourage or require the use of energy  
2 conservation or demand side management prac-  
3 tices;

4 (C) support technologies for the develop-  
5 ment of alternative sources of natural gas and  
6 synthetic gas, including coal gasification tech-  
7 nologies; and

8 (D) would improve access to domestic nat-  
9 ural gas supplies.

10 (d) CONSULTATION.—In preparing the report under  
11 subsection (a), the Secretary shall consult with—

12 (1) experts in natural gas supply and demand;  
13 and

14 (2) representatives of—

15 (A) State and local governments;

16 (B) tribal organizations; and

17 (C) consumer and other organizations.

18 (e) HEARINGS.—In preparing the report under sub-  
19 section (a), the Secretary may hold public hearings and  
20 provide other opportunities for public comment, as the  
21 Secretary considers appropriate.

1 **SEC. 1819. HYDROGEN PARTICIPATION STUDY.**

2 Not later than 1 year after the date of enactment  
3 of this Act, the Secretary shall submit to Congress a re-  
4 port evaluating methodologies to ensure the widest partici-  
5 pation practicable in setting goals and milestones under  
6 the hydrogen program of the Department, including inter-  
7 national participants.

8 **SEC. 1820. OVERALL EMPLOYMENT IN A HYDROGEN ECON-**  
9 **OMY.**

10 (a) STUDY.—

11 (1) IN GENERAL.—The Secretary shall carry  
12 out a study of the likely effects of a transition to a  
13 hydrogen economy on overall employment in the  
14 United States.

15 (2) CONTENTS.—In completing the study, the  
16 Secretary shall take into consideration—

17 (A) the replacement effects of new goods  
18 and services;

19 (B) international competition;

20 (C) workforce training requirements;

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1 (D) multiple possible fuel cycles, including  
2 usage of raw materials;

3 (E) rates of market penetration of tech-  
4 nologies; and

5 (F) regional variations based on geog-  
6 raphy.

7 (b) REPORT.—Not later than 18 months after the  
8 date of enactment of this Act, the Secretary shall submit  
9 to Congress a report describing the findings, conclusions,  
10 and recommendations of the study under subsection (a).

11 **SEC. 1821. STUDY OF BEST MANAGEMENT PRACTICES FOR**  
12 **ENERGY RESEARCH AND DEVELOPMENT**  
13 **PROGRAMS.**

14 (a) IN GENERAL.—The Secretary shall enter into an  
15 arrangement with the National Academy of Public Admin-  
16 istration under which the Academy shall conduct a study  
17 to assess management practices for research, development,  
18 and demonstration programs at the Department.

19 (b) SCOPE OF THE STUDY.—The study shall  
20 consider—

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1           (1) management practices that act as barriers  
2           between the Office of Science and offices conducting  
3           mission-oriented research;

4           (2) recommendations for management practices  
5           that would improve coordination and bridge the in-  
6           novation gap between the Office of Science and of-  
7           fices conducting mission-oriented research;

8           (3) the applicability of the management prac-  
9           tices used by the Department of Defense Advanced  
10          Research Projects Agency to research programs at  
11          the Department;

12          (4) the advisability of creating an agency within  
13          the Department modeled after the Department of  
14          Defense Advanced Research Projects Agency;

15          (5) recommendations for management practices  
16          that could best encourage innovative research and  
17          efficiency at the Department; and

18          (6) any other relevant considerations.

19          (c) REPORT.—Not later than 18 months after the  
20          date of enactment of this Act, the Secretary shall submit

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1 to Congress a report on the study conducted under this  
2 section.

3 **SEC. 1822. EFFECT OF ELECTRICAL CONTAMINANTS ON RE-**  
4 **LIABILITY OF ENERGY PRODUCTION SYS-**  
5 **TEMS.**

6 Not later than 180 days after the date of enactment  
7 of this Act, the Secretary shall enter into a contract with  
8 the National Academy of Sciences under which the Na-  
9 tional Academy of Sciences shall determine the effect that  
10 electrical contaminants (such as tin whiskers) may have  
11 on the reliability of energy production systems, including  
12 nuclear energy.

13 **SEC. 1823. ALTERNATIVE FUELS REPORTS.**

14 (a) IN GENERAL.—Not later than 1 year after the  
15 date of enactment of this Act, the Secretary shall submit  
16 to Congress reports on the potential for each of biodiesel  
17 and hythane to become major, sustainable, alternative  
18 fuels.

19 (b) BIODIESEL REPORT.—The report relating to bio-  
20 diesel submitted under subsection (a) shall—

21 (1) provide a detailed assessment of—

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1 (A) potential biodiesel markets and manu-  
2 facturing capacity; and

3 (B) environmental and energy security  
4 benefits with respect to the use of biodiesel;

5 (2) identify any impediments, especially in in-  
6 frastructure needed for production, distribution, and  
7 storage, to biodiesel becoming a substantial source of  
8 fuel for conventional diesel and heating oil applica-  
9 tions;

10 (3) identify strategies to enhance the commer-  
11 cial deployment of biodiesel; and

12 (4) include an examination and recommenda-  
13 tions, as appropriate, of the ways in which biodiesel  
14 may be modified to be a cleaner-burning fuel.

15 (c) HYTHANE REPORT.—The report relating to  
16 hythane submitted under subsection (a) shall—

17 (1) provide a detailed assessment of potential  
18 hythane markets and the research and development  
19 activities that are necessary to facilitate the commer-  
20 cialization of hythane as a competitive, environ-  
21 mentally friendly transportation fuel;

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1 (2) address—

2 (A) the infrastructure necessary to  
3 produce, blend, distribute, and store hythane  
4 for widespread commercial purposes; and

5 (B) other potential market barriers to the  
6 commercialization of hythane;

7 (3) examine the viability of producing hydrogen  
8 using energy-efficient, environmentally friendly  
9 methods so that the hydrogen can be blended with  
10 natural gas to produce hythane; and

11 (4) include an assessment of the modifications  
12 that would be required to convert compressed nat-  
13 ural gas vehicle engines to engines that use hythane  
14 as fuel.

15 (d) GRANTS FOR REPORT COMPLETION.—The Sec-  
16 retary may use such sums as are available to the Secretary  
17 to provide, to 1 or more colleges or universities selected  
18 by the Secretary, grants for use in carrying out research  
19 to assist the Secretary in preparing the reports required  
20 to be submitted under subsection (a).



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1 **SEC. 1824. FINAL ACTION ON REFUNDS FOR EXCESSIVE**  
2 **CHARGES.**

3 FERC shall—

4 (1) seek to conclude its investigation into the  
5 unjust or unreasonable charges incurred by Cali-  
6 fornia during the 2000–2001 electricity crisis as  
7 soon as possible;

8 (2) seek to ensure that refunds the Commission  
9 determines are owed to the State of California are  
10 paid to the State of California; and

11 (3) submit to Congress a report by December  
12 31, 2005, describing the actions taken by the Com-  
13 mission to date under this section and timetables for  
14 further actions.

15 **SEC. 1825. FUEL CELL AND HYDROGEN TECHNOLOGY**  
16 **STUDY.**

17 (a) **IN GENERAL.**—As soon as practicable after the  
18 date of enactment of this Act, the Secretary shall enter  
19 into a contract with the National Academy of Sciences and  
20 the National Research Council to carry out a study of fuel  
21 cell technologies that provides a budget roadmap for the

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1 development of fuel cell technologies and the transition  
2 from petroleum to hydrogen in a significant percentage  
3 of the vehicles sold by 2020.

4 (b) REQUIREMENTS.—In carrying out the study, the  
5 National Academy of Sciences and the National Research  
6 Council shall—

7 (1) establish as a goal the maximum percentage  
8 practicable of vehicles that the National Academy of  
9 Sciences and the National Research Council deter-  
10 mines can be fueled by hydrogen by 2020;

11 (2) determine the amount of Federal and pri-  
12 vate funding required to meet the goal established  
13 under paragraph (1);

14 (3) determine what actions are required to meet  
15 the goal established under paragraph (1);

16 (4) examine the need for expanded and en-  
17 hanced Federal research and development programs,  
18 changes in regulations, grant programs, partnerships  
19 between the Federal Government and industry, pri-  
20 vate sector investments, infrastructure investments  
21 by the Federal Government and industry, edu-

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1 educational and public information initiatives, and Fed-  
2 eral and State tax incentives to meet the goal estab-  
3 lished under paragraph (1);

4 (5) consider whether other technologies would  
5 be less expensive or could be more quickly imple-  
6 mented than fuel cell technologies to achieve signifi-  
7 cant reductions in carbon dioxide emissions;

8 (6) take into account any reports relating to  
9 fuel cell technologies and hydrogen-fueled vehicles,  
10 including—

11 (A) the report prepared by the National  
12 Academy of Engineering and the National Re-  
13 search Council in 2004 entitled “Hydrogen  
14 Economy: Opportunities, Costs, Barriers, and  
15 R&D Needs”; and

16 (B) the report prepared by the U.S. Fuel  
17 Cell Council in 2003 entitled “Fuel Cells and  
18 Hydrogen: The Path Forward”;

19 (7) consider the challenges, difficulties, and po-  
20 tential barriers to meeting the goal established  
21 under paragraph (1); and

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- 1 (8) with respect to the budget roadmap—
- 2 (A) specify the amount of funding required
- 3 on an annual basis from the Federal Govern-
- 4 ment and industry to carry out the budget
- 5 roadmap; and
- 6 (B) specify the advantages and disadvan-
- 7 tages to moving toward the transition to hydro-
- 8 gen in vehicles in accordance with the timeline
- 9 established by the budget roadmap.

10 **SEC. 1826. PASSIVE SOLAR TECHNOLOGIES.**

- 11 (a) DEFINITION OF PASSIVE SOLAR TECHNOLOGY.—
- 12 In this section, the term “passive solar technology” means
- 13 a passive solar technology, including daylighting, that—
- 14 (1) is used exclusively to avoid electricity use;
- 15 and
- 16 (2) can be metered to determine energy savings.
- 17 (b) STUDY.—The Secretary shall conduct a study to
- 18 determine—
- 19 (1) the range of levelized costs of avoided elec-
- 20 tricity for passive solar technologies;

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1           (2) the quantity of electricity displaced using  
2           passive solar technologies in the United States as of  
3           the date of enactment of this Act; and

4           (3) the projected energy savings from passive  
5           solar technologies in 5, 10, 15, 20, and 25 years  
6           after the date of enactment of this Act if—

7                   (A) incentives comparable to the incentives  
8                   provided for electricity generation technologies  
9                   were provided for passive solar technologies;  
10                  and

11                   (B) no new incentives for passive solar  
12                  technologies were provided.

13           (c) REPORT.—Not later than 120 days after the date  
14           of enactment of this Act, the Secretary shall submit to  
15           Congress a report that describes the results of the study  
16           under subsection (b).

17   **SEC. 1827. STUDY OF LINK BETWEEN ENERGY SECURITY**  
18                   **AND INCREASES IN VEHICLE MILES TRAV-**  
19                   **ELED.**

20           (a) IN GENERAL.—The Secretary shall enter into an  
21           arrangement with the National Academy of Sciences

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1 under which the Academy shall conduct a study to assess  
2 the implications on energy use and efficiency of land devel-  
3 opment patterns in the United States.

4 (b) SCOPE.—The study shall consider—

5 (1) the correlation, if any, between land devel-  
6 opment patterns and increases in vehicle miles trav-  
7 eled;

8 (2) whether petroleum use in the transportation  
9 sector can be reduced through changes in the design  
10 of development patterns;

11 (3) the potential benefits of—

12 (A) information and education programs  
13 for State and local officials (including planning  
14 officials) on the potential for energy savings  
15 through planning, design, development, and in-  
16 frastructure decisions;

17 (B) incorporation of location efficiency  
18 models in transportation infrastructure plan-  
19 ning and investments; and

20 (C) transportation policies and strategies  
21 to help transportation planners manage the de-

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1           mand for the number and length of vehicle  
2           trips, including trips that increase the viability  
3           of other means of travel; and

4           (4) such other considerations relating to the  
5           study topic as the National Academy of Sciences  
6           finds appropriate.

7           (c) REPORT.—Not later than 2 years after the date  
8 of enactment of this Act, the National Academy of  
9 Sciences shall submit to the Secretary and Congress a re-  
10 port on the study conducted under this section.

11 **SEC. 1828. SCIENCE STUDY ON CUMULATIVE IMPACTS OF**  
12                           **MULTIPLE OFFSHORE LIQUEFIED NATURAL**  
13                           **GAS FACILITIES.**

14           (a) IN GENERAL.—The Secretary (in consultation  
15 with the National Oceanic Atmospheric Administration,  
16 the Commandant of the Coast Guard, affected recreational  
17 and commercial fishing industries, and affected energy  
18 and transportation stakeholders) shall carry out a study  
19 and compile existing science (including studies and data)  
20 to determine the risks or benefits presented by cumulative  
21 impacts of multiple offshore liquefied natural gas facilities

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1 reasonably assumed to be constructed in an area of the  
2 Gulf of Mexico using the open-rack vaporization system.

3 (b) ACCURACY.—In carrying out subsection (a), the  
4 Secretary shall verify the accuracy of available science and  
5 develop a science-based evaluation of significant short-  
6 term and long-term cumulative impacts, both adverse and  
7 beneficial, of multiple offshore liquefied natural gas facili-  
8 ties reasonably assumed to be constructed in an area of  
9 the Gulf of Mexico using or proposing the open-rack va-  
10 porization system on the fisheries and marine populations  
11 in the vicinity of the facility.

12 **SEC. 1829. ENERGY AND WATER SAVING MEASURES IN CON-**  
13 **GRESSIONAL BUILDINGS.**

14 (a) IN GENERAL.—The Architect of the Capitol, as  
15 part of the process of updating the Master Plan Study  
16 for the Capitol complex, shall—

17 (1) carry out a study to evaluate the energy in-  
18 frastructure of the Capitol complex to determine  
19 how to augment the infrastructure to become more  
20 energy efficient—



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1 (A) by using unconventional and renewable  
2 energy resources;

3 (B) by—

4 (i) incorporating new technologies to  
5 implement effective green building solu-  
6 tions;

7 (ii) adopting computer-based building  
8 management systems; and

9 (iii) recommending strategies based on  
10 end-user behavioral changes to implement  
11 low-cost environmental gains; and

12 (C) in a manner that would enable the  
13 Capitol complex to have reliable utility service  
14 in the event of power fluctuations, shortages, or  
15 outages;

16 (2) carry out a study to explore the feasibility  
17 of installing energy and water conservation measures  
18 on the rooftop of the Dirksen Senate Office Build-  
19 ing, including the area directly above the food serv-  
20 ice facilities in the center of the building, including  
21 the installation of—

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1 (A) a vegetative covering area, using native  
2 species to the maximum extent practicable, to—

3 (i) insulate and increase the energy  
4 efficiency of the building;

5 (ii) reduce precipitation runoff and  
6 conserve water for landscaping or other  
7 uses;

8 (iii) increase, and provide more effi-  
9 cient use of, available outdoor space  
10 through management of the rooftop of the  
11 center of the building as a park or garden  
12 area for occupants of the building; and

13 (iv) improve the aesthetics of the  
14 building; and

15 (B) onsite renewable energy and other  
16 state-of-the-art technologies to—

17 (i) improve the energy efficiency and  
18 energy security of the building or the Cap-  
19 itol complex by providing additional or  
20 backup sources of power in the event of a  
21 power shortage or other emergency;

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1 (ii) reduce the use of resources by the  
2 building; or

3 (iii) enhance worker productivity; and

4 (C) not later than 180 days after the date  
5 of enactment of this Act, submit to Congress a  
6 report describing the findings and recommenda-  
7 tions of the study under subparagraph (B).

8 (b) AUTHORIZATION OF APPROPRIATIONS.—There is  
9 authorized to be appropriated to the Architect of the Cap-  
10 itol to carry out this section \$2,000,000 for each of fiscal  
11 years 2006 through 2010.

12 **SEC. 1830. STUDY OF AVAILABILITY OF SKILLED WORKERS.**

13 (a) IN GENERAL.—The Secretary shall enter into an  
14 arrangement with the National Academy of Sciences  
15 under which the National Academy of Sciences shall con-  
16 duct a study of the short-term and long-term availability  
17 of skilled workers to meet the energy and mineral security  
18 requirements of the United States.

19 (b) INCLUSIONS.—The study shall include an analysis  
20 of—

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1 (1) the need for and availability of workers for  
2 the oil, gas, and mineral industries;

3 (2) the availability of skilled labor at both entry  
4 level and more senior levels; and

5 (3) recommendations for future actions needed  
6 to meet future labor requirements.

7 (c) REPORT.—Not later than 2 years after the date  
8 of enactment of this Act, the Secretary shall submit to  
9 Congress a report that describes the results of the study.

10 **SEC. 1831. REVIEW OF ENERGY POLICY ACT OF 1992 PRO-**  
11 **GRAMS.**

12 (a) IN GENERAL.—Not later than 180 days after the  
13 date of enactment of this section, the Secretary shall com-  
14 plete a study to determine the effect that titles III, IV,  
15 and V of the Energy Policy Act of 1992 (42 U.S.C. 13211  
16 et seq.) have had on—

17 (1) the development of alternative fueled vehicle  
18 technology;

19 (2) the availability of that technology in the  
20 market; and

21 (3) the cost of alternative fueled vehicles.

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1 (b) TOPICS.—As part of the study under subsection  
2 (a), the Secretary shall specifically identify—

3 (1) the number of alternative fueled vehicles ac-  
4 quired by fleets or covered persons required to ac-  
5 quire alternative fueled vehicles;

6 (2) the quantity, by type, of alternative fuel ac-  
7 tually used in alternative fueled vehicles acquired by  
8 fleets or covered persons;

9 (3) the quantity of petroleum displaced by the  
10 use of alternative fuels in alternative fueled vehicles  
11 acquired by fleets or covered persons;

12 (4) the direct and indirect costs of compliance  
13 with requirements under titles III, IV, and V of the  
14 Energy Policy Act of 1992 (42 U.S.C. 13211 et  
15 seq.), including—

16 (A) vehicle acquisition requirements im-  
17 posed on fleets or covered persons;

18 (B) administrative and recordkeeping ex-  
19 penses;

20 (C) fuel and fuel infrastructure costs;

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1 (D) associated training and employee ex-  
2 penses; and

3 (E) any other factors or expenses the Sec-  
4 retary determines to be necessary to compile re-  
5 liable estimates of the overall costs and benefits  
6 of complying with programs under those titles  
7 for fleets, covered persons, and the national  
8 economy;

9 (5) the existence of obstacles preventing compli-  
10 ance with vehicle acquisition requirements and in-  
11 creased use of alternative fuel in alternative fueled  
12 vehicles acquired by fleets or covered persons; and

13 (6) the projected impact of amendments to the  
14 Energy Policy Act of 1992 made by this title.

15 (c) REPORT.—Upon completion of the study under  
16 this section, the Secretary shall submit to Congress a re-  
17 port that describes the results of the study and includes  
18 any recommendations of the Secretary for legislative or  
19 administrative changes concerning the alternative fueled  
20 vehicle requirements under titles III, IV and V of the En-  
21 ergy Policy Act of 1992 (42 U.S.C. 13211 et seq.).

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1 **SEC. 1832. STUDY ON THE BENEFITS OF ECONOMIC DIS-**  
2 **PATCH.**

3 (a) **STUDY.**—The Secretary, in coordination and con-  
4 sultation with the States, shall conduct a study on—

5 (1) the procedures currently used by electric  
6 utilities to perform economic dispatch;

7 (2) identifying possible revisions to those proce-  
8 dures to improve the ability of nonutility generation  
9 resources to offer their output for sale for the pur-  
10 pose of inclusion in economic dispatch; and

11 (3) the potential benefits to residential, com-  
12 mercial, and industrial electricity consumers nation-  
13 ally and in each state if economic dispatch proce-  
14 dures were revised to improve the ability of non-  
15 utility generation resources to offer their output for  
16 inclusion in economic dispatch.

17 (b) **DEFINITION.**—The term “economic dispatch”  
18 when used in this section means the operation of genera-  
19 tion facilities to produce energy at the lowest cost to reli-  
20 ably serve consumers, recognizing any operational limits  
21 of generation and transmission facilities.

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1 (c) REPORT TO CONGRESS AND THE STATES.—Not  
2 later than 90 days after the date of enactment of this Act,  
3 and on a yearly basis following, the Secretary shall submit  
4 a report to Congress and the States on the results of the  
5 study conducted under subsection (a), including rec-  
6 ommendations to Congress and the States for any sug-  
7 gested legislative or regulatory changes.

8 **SEC. 1833. RENEWABLE ENERGY ON FEDERAL LAND.**

9 (a) NATIONAL ACADEMY OF SCIENCES STUDY.—Not  
10 later than 90 days after the date of enactment of this Act,  
11 the Secretary of the Interior shall enter into a contract  
12 with the National Academy of Sciences under which the  
13 National Academy of Sciences shall—

14 (1) study the potential of developing wind,  
15 solar, and ocean energy resources (including tidal,  
16 wave, and thermal energy) on Federal land available  
17 for those uses under current law and the outer Con-  
18 tinental Shelf;

19 (2) assess any Federal law (including regula-  
20 tions) relating to the development of those resources



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1 that is in existence on the date of enactment of this  
2 Act; and

3 (3) recommend statutory and regulatory mecha-  
4 nisms for developing those resources.

5 (b) SUBMISSION TO CONGRESS.—Not later than 2  
6 years after the date of enactment of this Act, the Sec-  
7 retary of the Interior shall submit to Congress the results  
8 of the study under subsection (a).

9 **SEC. 1834. INCREASED HYDROELECTRIC GENERATION AT**  
10 **EXISTING FEDERAL FACILITIES.**

11 (a) IN GENERAL.—The Secretary of the Interior, the  
12 Secretary, and the Secretary of the Army shall jointly con-  
13 duct a study of the potential for increasing electric power  
14 production capability at federally owned or operated water  
15 regulation, storage, and conveyance facilities.

16 (b) CONTENT.—The study under this section shall in-  
17 clude identification and description in detail of each facil-  
18 ity that is capable, with or without modification, of pro-  
19 ducing additional hydroelectric power, including esti-  
20 mation of the existing potential for the facility to generate  
21 hydroelectric power.

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1 (c) REPORT.—The Secretaries shall submit to the  
2 Committees on Energy and Commerce, Resources, and  
3 Transportation and Infrastructure of the House of Rep-  
4 resentatives and the Committee on Energy and Natural  
5 Resources of the Senate a report on the findings, conclu-  
6 sions, and recommendations of the study under this sec-  
7 tion by not later than 18 months after the date of the  
8 enactment of this Act. The report shall include each of  
9 the following:

10 (1) The identifications, descriptions, and esti-  
11 mations referred to in subsection (b).

12 (2) A description of activities currently con-  
13 ducted or considered, or that could be considered, to  
14 produce additional hydroelectric power from each  
15 identified facility.

16 (3) A summary of prior actions taken by the  
17 Secretaries to produce additional hydroelectric power  
18 from each identified facility.

19 (4) The costs to install, upgrade, or modify  
20 equipment or take other actions to produce addi-  
21 tional hydroelectric power from each identified facil-

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1           ity and the level of Federal power customer involve-  
2           ment in the determination of such costs.

3           (5) The benefits that would be achieved by such  
4           installation, upgrade, modification, or other action,  
5           including quantified estimates of any additional en-  
6           ergy or capacity from each facility identified under  
7           subsection (b).

8           (6) A description of actions that are planned,  
9           underway, or might reasonably be considered to in-  
10          crease hydroelectric power production by replacing  
11          turbine runners, by performing generator upgrades  
12          or rewinds, or construction of pumped storage facili-  
13          ties.

14          (7) The impact of increased hydroelectric power  
15          production on irrigation, water supply, fish, wildlife,  
16          Indian tribes, river health, water quality, navigation,  
17          recreation, fishing, and flood control.

18          (8) Any additional recommendations to increase  
19          hydroelectric power production from, and reduce  
20          costs and improve efficiency at, federally owned or

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1 operated water regulation, storage, and conveyance  
2 facilities.

3 **SEC. 1835. SPLIT-ESTATE FEDERAL OIL AND GAS LEASING**  
4 **AND DEVELOPMENT PRACTICES.**

5 (a) REVIEW.—In consultation with affected private  
6 surface owners, oil and gas industry, and other interested  
7 parties, the Secretary of the Interior shall undertake a re-  
8 view of the current policies and practices with respect to  
9 management of Federal subsurface oil and gas develop-  
10 ment activities and their effects on the privately owned  
11 surface. This review shall include—

12 (1) a comparison of the rights and responsibil-  
13 ities under existing mineral and land law for the  
14 owner of a Federal mineral lease, the private surface  
15 owners and the Department;

16 (2) a comparison of the surface owner consent  
17 provisions in section 714 of the Surface Mining Con-  
18 trol and Reclamation Act of 1977 (30 U.S.C. 1304)  
19 concerning surface mining of Federal coal deposits  
20 and the surface owner consent provisions for oil and

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1 gas development, including coalbed methane produc-  
2 tion; and

3 (3) recommendations for administrative or leg-  
4 islative action necessary to facilitate reasonable ac-  
5 cess for Federal oil and gas activities while address-  
6 ing surface owner concerns and minimizing impacts  
7 to private surface.

8 (b) REPORT.—The Secretary of the Interior shall re-  
9 port the results of such review to Congress not later than  
10 180 days after the date of enactment of this Act.

11 **SEC. 1836. RESOLUTION OF FEDERAL RESOURCE DEVELOP-**  
12 **MENT CONFLICTS IN THE POWDER RIVER**  
13 **BASIN.**

14 (a) REVIEW.—The Secretary of the Interior shall re-  
15 view Federal and State laws in existence on the date of  
16 enactment of this Act in order to resolve any conflict relat-  
17 ing to the Powder River Basin in Wyoming and Montana  
18 between—

19 (1) the development of Federal coal; and

20 (2) the development of Federal and non-Federal  
21 coalbed methane.

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1 (b) REPORT.—Not later than 180 days after the date  
2 of enactment of this Act, the Secretary of the Interior  
3 shall submit to Congress a report that—

4 (1) describes methods of resolving a conflict de-  
5 scribed in subsection (a); and

6 (2) identifies a method preferred by the Sec-  
7 retary of the Interior, including proposed legislative  
8 language, if any, required to implement the method.

9 **SEC. 1837. NATIONAL SECURITY REVIEW OF INTER-**  
10 **NATIONAL ENERGY REQUIREMENTS.**

11 (a) STUDY.—The Secretary, in consultation with the  
12 Secretary of Defense and Secretary of Homeland Security,  
13 shall conduct a study of the growing energy requirements  
14 of the People’s Republic of China and the implications of  
15 such growth on the political, strategic, economic, or na-  
16 tional security interests of the United States, including—

17 (1) an assessment of the type, nationality, and  
18 location of energy assets that have been sought for  
19 investment by entities located in the People’s Repub-  
20 lic of China;

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1           (2) an assessment of the extent to which invest-  
2           ment in energy assets by entities located in the Peo-  
3           ple's Republic of China has been on market-based  
4           terms and free from subsidies from the People's Re-  
5           public of China;

6           (3) an assessment of the effect of investment in  
7           energy assets by entities located in the People's Re-  
8           public of China on the control by the United States  
9           of dual-use and export-controlled technologies, in-  
10          cluding the effect on current and future access to  
11          foreign and domestic sources of rare earth elements  
12          used to produce such technologies;

13          (4) an assessment of the relationship between  
14          the Government of the People's Republic of China  
15          and energy-related businesses located in the People's  
16          Republic of China;

17          (5) an assessment of the impact on the world  
18          energy market of the common practice of entities lo-  
19          cated in the People's Republic of China of removing  
20          the energy assets owned or controlled by such enti-  
21          ties from the competitive market, with emphasis on

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1 the effect if such practice expands along with the  
2 growth in energy consumption of the People's Re-  
3 public of China;

4 (6) an examination of the United States energy  
5 policy and foreign policy as it relates to ensuring a  
6 competitive global energy market;

7 (7) an examination of the relationship between  
8 the United States and the People's Republic of  
9 China as it relates to pursuing energy interests in a  
10 manner that avoids conflicts; and

11 (8) a comparison of the appropriate laws and  
12 regulations of other nations to determine whether a  
13 United States company would be permitted to pur-  
14 chase, acquire, merge, or otherwise establish a joint  
15 relationship with an entity whose primary place of  
16 business is in that other nation, including the laws  
17 and regulations of the People's Republic of China.

18 (b) REPORT AND RECOMMENDATIONS.—Not later  
19 than 120 days after the date of the enactment of this Act,  
20 the Secretary, in consultation with the Secretary of De-  
21 fense, shall report to the President and the Congress on



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1 the findings of the study described in subsection (a) and  
2 any recommendations the Secretaries consider appro-  
3 priate.

4 (c) **REGULATORY EFFECT.**—Notwithstanding any  
5 other provision of law, any instrumentality of the United  
6 States vested with authority to review a transaction that  
7 includes an investment in a United States domestic cor-  
8 poration may not conclude a national security review re-  
9 lated to an investment in the energy assets of a United  
10 States domestic corporation by an entity owned or con-  
11 trolled by the government of the People’s Republic of  
12 China for 21 days after the report to the President and  
13 the Congress, and until the President certifies that he has  
14 received the report described in subsection (b).

15 **SEC. 1838. USED OIL RE-REFINING STUDY.**

16 The Secretary, in consultation with the Administrator  
17 of the Environmental Protection Agency, shall undertake  
18 a study of the energy and environmental benefits of the  
19 re-refining of used lubricating oil and report to Congress  
20 within 90 days after enactment of this Act including rec-  
21 ommendations of specific steps that can be taken to im-

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1 prove collections of used lubricating oil and increase re-  
2 refining and other beneficial re-use of such oil.

3 **SEC. 1839. TRANSMISSION SYSTEM MONITORING.**

4       Within 6 months after the date of enactment of this  
5 Act, the Secretary and the Federal Energy Regulatory  
6 Commission shall study and report to Congress on the  
7 steps which must be taken to establish a system to make  
8 available to all transmission system owners and Regional  
9 Transmission Organizations (as defined in the Federal  
10 Power Act) within the Eastern and Western Interconnec-  
11 tions real-time information on the functional status of all  
12 transmission lines within such Interconnections. In such  
13 study, the Commission shall assess technical means for  
14 implementing such transmission information system and  
15 identify the steps the Commission or Congress must take  
16 to require the implementation of such system.

17 **SEC. 1840. REPORT IDENTIFYING AND DESCRIBING THE**  
18                   **STATUS OF POTENTIAL HYDROPOWER FA-**  
19                   **CILITIES.**

20       (a) **REPORT REQUIREMENT.**—Not later than 90 days  
21 after the date of enactment of this Act, the Secretary of

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1 the Interior, acting through the Bureau of Reclamation,  
2 shall submit to the Committee on Resources of the House  
3 of Representatives and the Committee on Energy and  
4 Natural Resources of the Senate a report identifying and  
5 describing the status of potential hydropower facilities in-  
6 cluded in water surface storage studies undertaken by the  
7 Secretary for projects that have not been completed or au-  
8 thorized for construction.

9 (b) REPORT CONTENTS.—The report shall include  
10 the following:

11 (1) Identification of all surface storage studies  
12 authorized by Congress since the enactment of the  
13 Reclamation Project Act of 1939 (43 U.S.C. 485 et  
14 seq.).

15 (2) The purposes of each project included with-  
16 in each study identified under paragraph (1).

17 (3) The status of each study identified under  
18 paragraph (1), including for each study—

19 (A) whether the study is completed or, if  
20 not completed, still authorized;

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1 (B) the level of analyses conducted at the  
2 feasibility and reconnaissance levels of review;

3 (C) identifiable environmental impacts of  
4 each project included in the study, including to  
5 fish and wildlife, water quality, and recreation;

6 (D) projected water yield from each such  
7 project;

8 (E) beneficiaries of each such project;

9 (F) the amount authorized and expended;

10 (G) projected funding needs and timelines  
11 for completing the study (if applicable);

12 (H) anticipated costs of each such project;

13 and

14 (I) other factors that might interfere with  
15 construction of any such project.

16 (4) An identification of potential hydroelectric  
17 facilities that might be developed pursuant to each  
18 study identified under paragraph (1).

19 (5) Applicable costs and benefits associated  
20 with potential hydroelectric production pursuant to  
21 each study.