

109TH CONGRESS
1ST SESSION

H. R. 1640

To ensure jobs for our future with secure and reliable energy.

IN THE HOUSE OF REPRESENTATIVES

APRIL 14, 2005

Mr. BARTON of Texas (for himself, Mr. HALL, Mr. UPTON, Mr. STEARNS, Mrs. CUBIN, Mr. SHIMKUS, Mr. PICKERING, Mr. BLUNT, Mr. BUYER, Mr. RADANOVICH, Mr. PITTS, Mr. TERRY, and Mr. ROGERS of Michigan) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Science, Resources, Education and the Workforce, Transportation and Infrastructure, Financial Services, and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To ensure jobs for our future with secure and reliable energy.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Energy Policy Act of 2005”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 the bill is as follows:

Sec. 1. Short title; table of contents.

TITLE I—ENERGY EFFICIENCY

Subtitle A—Federal Programs

- Sec. 101. Energy and water saving measures in congressional buildings.
- Sec. 102. Energy management requirements.
- Sec. 103. Energy use measurement and accountability.
- Sec. 104. Procurement of energy efficient products.
- Sec. 105. Energy Savings Performance Contracts.
- Sec. 107. Voluntary commitments to reduce industrial energy intensity.
- Sec. 108. Advanced Building Efficiency Testbed.
- Sec. 109. Federal building performance standards.
- Sec. 110. Daylight savings.

Subtitle B—Energy Assistance and State Programs

- Sec. 121. Low Income Home Energy Assistance Program.
- Sec. 122. Weatherization assistance.
- Sec. 123. State energy programs.
- Sec. 124. Energy efficient appliance rebate programs.
- Sec. 125. Energy efficient public buildings.
- Sec. 126. Low income community energy efficiency pilot program.

Subtitle C—Energy Efficient Products

- Sec. 131. Energy Star Program.
- Sec. 132. HVAC maintenance consumer education program.
- Sec. 133. Energy conservation standards for additional products.
- Sec. 134. Energy labeling.
- Sec. 135. Preemption.
- Sec. 136. State consumer product energy efficiency standards.

Subtitle D—Public Housing

- Sec. 145. Grants for energy-conserving improvements for assisted housing.
- Sec. 147. Energy-efficient appliances.
- Sec. 149. Energy strategy for HUD.

TITLE II—RENEWABLE ENERGY

Subtitle A—General Provisions

- Sec. 201. Assessment of renewable energy resources.
- Sec. 202. Renewable energy production incentive.
- Sec. 203. Federal purchase requirement.
- Sec. 204. Insular areas energy security.
- Sec. 205. Use of photovoltaic energy in public buildings.
- Sec. 206. Grants to improve the commercial value of forest biomass for electric energy, useful heat, transportation fuels, petroleum-based product substitutes, and other commercial purposes.
- Sec. 207. Biobased products.
- Sec. 208. Renewable energy security.

Subtitle C—Hydroelectric

PART I—ALTERNATIVE CONDITIONS

- Sec. 231. Alternative conditions and fishways.

PART II—ADDITIONAL HYDROPOWER

- Sec. 241. Hydroelectric production incentives.
- Sec. 242. Hydroelectric efficiency improvement.
- Sec. 243. Small hydroelectric power projects.
- Sec. 244. Increased hydroelectric generation at existing Federal facilities.
- Sec. 245. Shift of project loads to off-peak periods.

TITLE III—OIL AND GAS

Subtitle A—Petroleum Reserve and Home Heating Oil

- Sec. 301. Permanent authority to operate the Strategic Petroleum Reserve and other energy programs.
- Sec. 302. National Oilheat Research Alliance.
- Sec. 303. Site selection.
- Sec. 304. Suspension of Strategic Petroleum Reserve deliveries.

Subtitle B—Production Incentives

- Sec. 320. Liquefaction or gasification natural gas terminals.
- Sec. 327. Hydraulic fracturing.
- Sec. 330. Appeals relating to pipeline construction or offshore mineral development projects.
- Sec. 333. Natural gas market transparency.

Subtitle C—Access to Federal Land

- Sec. 344. Consultation regarding oil and gas leasing on public land.
- Sec. 346. Compliance with executive order 13211; actions concerning regulations that significantly affect energy supply, distribution, or use.
- Sec. 350. Energy facility rights-of-way and corridors on Federal land.
- Sec. 355. Encouraging Great Lakes oil and gas drilling ban.
- Sec. 358. Federal coalbed methane regulation.

Subtitle D—Refining Revitalization

- Sec. 371. Short title.
- Sec. 372. Findings.
- Sec. 373. Purpose.
- Sec. 374. Designation of Refinery Revitalization Zones.
- Sec. 375. Memorandum of understanding.
- Sec. 376. State environmental permitting assistance.
- Sec. 377. Coordination and expeditious review of permitting process.
- Sec. 378. Compliance with all environmental regulations required.
- Sec. 379. Definitions.

TITLE IV—COAL

Subtitle A—Clean Coal Power Initiative

- Sec. 401. Authorization of appropriations.
- Sec. 402. Project criteria.
- Sec. 403. Report.
- Sec. 404. Clean Coal Centers of Excellence.

Subtitle B—Clean Power Projects

- Sec. 411. Coal technology loan.
- Sec. 412. Coal gasification.
- Sec. 414. Petroleum coke gasification.
- Sec. 416. Electron scrubbing demonstration.

Subtitle D—Coal and related programs

- Sec. 441. Clean air coal program.

TITLE V—INDIAN ENERGY

- Sec. 501. Short title.
- Sec. 502. Office of Indian Energy Policy and Programs.
- Sec. 503. Indian energy.
- Sec. 504. Four Corners transmission line project.
- Sec. 505. Energy efficiency in federally assisted housing.
- Sec. 506. Consultation with Indian tribes.

TITLE VI—NUCLEAR MATTERS

Subtitle A—Price-Anderson Act Amendments

- Sec. 601. Short title.
- Sec. 602. Extension of indemnification authority.
- Sec. 603. Maximum assessment.
- Sec. 604. Department of Energy liability limit.
- Sec. 605. Incidents outside the United States.
- Sec. 606. Reports.
- Sec. 607. Inflation adjustment.
- Sec. 608. Treatment of modular reactors.
- Sec. 609. Applicability.
- Sec. 610. Prohibition on assumption by United States Government of liability
for certain foreign incidents.
- Sec. 611. Civil penalties.
- Sec. 612. Financial accountability.

Subtitle B—General Nuclear Matters

- Sec. 621. Licenses.
- Sec. 622. NRC training program.
- Sec. 623. Cost recovery from government agencies.
- Sec. 624. Elimination of pension offset.
- Sec. 625. Antitrust review.
- Sec. 626. Decommissioning.
- Sec. 627. Limitation on legal fee reimbursement.
- Sec. 629. Report on feasibility of developing commercial nuclear energy genera-
tion facilities at existing Department of Energy sites.
- Sec. 630. Uranium sales.
- Sec. 631. Cooperative research and development and special demonstration
projects for the uranium mining industry.
- Sec. 632. Whistleblower protection.
- Sec. 633. Medical isotope production.
- Sec. 634. Fernald byproduct material.
- Sec. 635. Safe disposal of greater-than-class c radioactive waste.
- Sec. 636. Prohibition on nuclear exports to countries that sponsor terrorism.
- Sec. 638. National uranium stockpile.
- Sec. 639. Nuclear Regulatory Commission meetings.

Sec. 640. Employee benefits.

Subtitle C—Additional hydrogen production provisions

Sec. 651. Hydrogen production programs.

Sec. 652. Definitions.

Subtitle D—Nuclear Security

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Sec. 662. Fingerprinting for criminal history record checks.

Sec. 663. Use of firearms by security personnel of licensees and certificate holders of the Commission.

Sec. 664. Unauthorized introduction of dangerous weapons.

Sec. 665. Sabotage of nuclear facilities or fuel.

Sec. 666. Secure transfer of nuclear materials.

Sec. 667. Department of Homeland Security consultation.

Sec. 668. Authorization of appropriations.

TITLE VII—VEHICLES AND FUELS

Subtitle A—Existing Programs

Sec. 701. Use of alternative fuels by dual-fueled vehicles.

Sec. 704. Incremental cost allocation.

Sec. 705. Lease condensates.

Sec. 706. Review of Energy Policy Act of 1992 programs.

Sec. 707. Report concerning compliance with alternative fueled vehicle purchasing requirements.

Subtitle B—Hybrid vehicles, advanced vehicles, and fuel cell buses

PART 1—HYBRID VEHICLES

Sec. 711. Hybrid vehicles.

Sec. 712. Hybrid retrofit and electric conversion program.

PART 2—ADVANCED VEHICLES

Sec. 721. Definitions.

Sec. 722. Pilot program.

Sec. 723. Reports to Congress.

Sec. 724. Authorization of appropriations.

PART 3—FUEL CELL BUSES

Sec. 731. Fuel cell transit bus demonstration.

Subtitle C—Clean School Buses

Sec. 741. Definitions.

Sec. 742. Program for replacement of certain school buses with clean school buses.

Sec. 743. Diesel retrofit program.

Sec. 744. Fuel cell school buses.

Subtitle D—Miscellaneous

Sec. 751. Railroad efficiency.

- Sec. 752. Mobile emission reductions trading and crediting.
- Sec. 753. Aviation fuel conservation and emissions.
- Sec. 754. Diesel fueled vehicles.
- Sec. 757. Biodiesel engine testing program.
- Sec. 759. Ultra-efficient engine technology for aircraft.

Subtitle E—Automobile Efficiency

- Sec. 771. Authorization of appropriations for implementation and enforcement of fuel economy standards.
- Sec. 772. Revised considerations for decisions on maximum feasible average fuel economy.
- Sec. 773. Extension of maximum fuel economy increase for alternative fueled vehicles.
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TITLE VIII—HYDROGEN

- Sec. 801. Definitions.
- Sec. 802. Plan.
- Sec. 803. Programs.
- Sec. 804. Interagency task force.
- Sec. 805. Advisory Committee.
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- Sec. 807. Miscellaneous provisions.
- Sec. 808. Savings clause.
- Sec. 809. Authorization of appropriations.
- Sec. 810. Solar and wind technologies.

TITLE IX—STUDIES AND PROGRAM SUPPORT

- Sec. 901. Goals.
- Sec. 902. Definitions.

Subtitle A—Energy Efficiency

- Sec. 904. Energy efficiency.
- Sec. 905. Next Generation Lighting Initiative.
- Sec. 906. National Building Performance Initiative.
- Sec. 907. Secondary electric vehicle battery use program.
- Sec. 908. Energy efficiency study initiative.
- Sec. 909. Electric motor control technology.

Subtitle B—Distributed Energy and Electric Energy Systems

- Sec. 911. Distributed energy and electric energy systems.
- Sec. 913. High power density industry program.
- Sec. 916. Reciprocating power.
- Sec. 917. Advanced portable power devices.

Subtitle C—Renewable Energy

- Sec. 918. Renewable energy.
- Sec. 919. Bioenergy programs.
- Sec. 920. Concentrating solar power study program.
- Sec. 921. Miscellaneous projects.
- Sec. 922. Renewable energy in public buildings.

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Subtitle D—Nuclear energy

Sec. 929. Alternatives to industrial radioactive sources.

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Subtitle E—Fossil Energy

PART I—STUDIES AND PROGRAM SUPPORT

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Sec. 932. Oil and gas studies.

Sec. 933. Technology transfer.

Sec. 934. Coal mining technologies.

Sec. 935. Coal and related technologies program.

Sec. 936. Complex Well Technology Testing Facility.

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Sec. 944. Additional requirements for awards.

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Sec. 946. Limits on participation.

Sec. 947. Sunset.

Sec. 948. Definitions.

Sec. 949. Funding.

Subtitle F—Energy Sciences

Sec. 953. Plan for Fusion Energy Sciences Program.

Sec. 954. Spallation Neutron Source.

Sec. 962. Nitrogen fixation.

Subtitle G—Energy and Environment

Sec. 966. Waste reduction and use of alternatives.

Sec. 967. Report on fuel cell test center.

Sec. 968. Arctic Engineering Research Center.

Sec. 970. Western Michigan demonstration project.

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Subtitle H—International Cooperation

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Sec. 1003. University collaboration.

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Sec. 1211. Electric reliability standards.

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Subtitle F—Repeal of PUHCA

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Subtitle G—Market Transparency, Enforcement, and Consumer Protection

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Subtitle H—Merger Reform

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- Sec. 1295. Definitions.

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- Sec. 1448. Oxygen-fuel.
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TITLE XV—ETHANOL AND MOTOR FUELS

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- Sec. 1501. Renewable content of motor vehicle fuel.
- Sec. 1502. Fuels safe harbor.
- Sec. 1503. Findings and MTBE transition assistance.
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- Sec. 1505. National Academy of Sciences review and presidential determination.
- Sec. 1506. Elimination of oxygen content requirement for reformulated gasoline.
- Sec. 1507. Analyses of motor vehicle fuel changes.
- Sec. 1508. Data collection.
- Sec. 1509. Reducing the proliferation of State fuel controls.
- Sec. 1510. Fuel system requirements harmonization study.
- Sec. 1511. Commercial byproducts from municipal solid waste and cellulosic biomass loan guarantee program.
- Sec. 1512. Cellulosic biomass and waste-derived ethanol conversion assistance.

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Subtitle B—Underground Storage Tank Compliance

Sec. 1521. Short title.
 Sec. 1522. Leaking underground storage tanks.
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Subtitle C—Boutique Fuels

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 Sec. 1611. Reliability and consumer protection assessment.
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 Sec. 1613. Low-volume gas reservoir study.

1 **TITLE I—ENERGY EFFICIENCY**

2 **Subtitle A—Federal Programs**

3 **SEC. 101. ENERGY AND WATER SAVING MEASURES IN CON-**
 4 **GRESSIONAL BUILDINGS.**

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

8 **“SEC. 552. ENERGY AND WATER SAVINGS MEASURES IN**
 9 **CONGRESSIONAL BUILDINGS.**

10 **“(a) IN GENERAL.—The Architect of the Capitol—**

1 “(1) shall develop, update, and implement a
2 cost-effective energy conservation and management
3 plan (referred to in this section as the ‘plan’) for all
4 facilities administered by Congress (referred to in
5 this section as ‘congressional buildings’) to meet the
6 energy performance requirements for Federal build-
7 ings established under section 543(a)(1); and

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

11 “(b) PLAN REQUIREMENTS.—The plan shall in-
12 clude—

13 “(1) a description of the life cycle cost analysis
14 used to determine the cost-effectiveness of proposed
15 energy efficiency projects;

16 “(2) a schedule of energy surveys to ensure
17 complete surveys of all congressional buildings every
18 5 years to determine the cost and payback period of
19 energy and water conservation measures;

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

22 “(4) the results of a study of the costs and ben-
23 efits of installation of submetering in congressional
24 buildings; and

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

5 “(c) ANNUAL REPORT.—The Architect of the Capitol
6 shall submit to Congress annually a report on congres-
7 sional energy management and conservation programs re-
8 quired under this section that describes in detail—

9 “(1) energy expenditures and savings estimates
10 for each facility;

11 “(2) energy management and conservation
12 projects; and

13 “(3) future priorities to ensure compliance with
14 this section.”.

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

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

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

21 (d) ENERGY INFRASTRUCTURE.—The Architect of
22 the Capitol, building on the Master Plan Study completed
23 in July 2000, shall commission a study to evaluate the
24 energy infrastructure of the Capital Complex to determine
25 how the infrastructure could be augmented to become

1 more energy efficient, using unconventional and renewable
 2 energy resources, in a way that would enable the Complex
 3 to have reliable utility service in the event of power fluc-
 4 tuations, shortages, or outages.

5 (e) AUTHORIZATION OF APPROPRIATIONS.—There
 6 are authorized to be appropriated to the Architect of the
 7 Capitol to carry out subsection (d), \$2,000,000 for each
 8 of fiscal years 2006 through 2010.

9 **SEC. 102. ENERGY MANAGEMENT REQUIREMENTS.**

10 (a) ENERGY REDUCTION GOALS.—

11 (1) AMENDMENT.—Section 543(a)(1) of the
 12 National Energy Conservation Policy Act (42 U.S.C.
 13 8253(a)(1)) is amended by striking “its Federal
 14 buildings so that” and all that follows through the
 15 end and inserting “the Federal buildings of the
 16 agency (including each industrial or laboratory facil-
 17 ity) so that the energy consumption per gross square
 18 foot of the Federal buildings of the agency in fiscal
 19 years 2006 through 2015 is reduced, as compared
 20 with the energy consumption per gross square foot
 21 of the Federal buildings of the agency in fiscal year
 22 2003, by the percentage specified in the following
 23 table:

“Fiscal Year	Percentage reduction
2006	2
2007	4
2008	6
2009	8

“Fiscal Year	Percentage reduction
2010	10
2011	12
2012	14
2013	16
2014	18
2015	20.”.

1 (2) REPORTING BASELINE.—The energy reduction goals and baseline established in paragraph (1)
2 of section 543(a) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)(1)), as amended
3 by this subsection, supersede all previous goals and
4 baselines under such paragraph, and related reporting requirements.
5 ing requirements.

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

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

15 (c) EXCLUSIONS.—Section 543(c)(1) of the National
16 Energy Conservation Policy Act (42 U.S.C. 8253(c)(1))
17 is amended by striking “An agency may exclude” and all
18 that follows through the end and inserting “(A) An agency
19 may exclude, from the energy performance requirement
20 may exclude, from the energy performance requirement
21 may exclude, from the energy performance requirement
22 may exclude, from the energy performance requirement

1 for a fiscal year established under subsection (a) and the
2 energy management requirement established under sub-
3 section (b), any Federal building or collection of Federal
4 buildings, if the head of the agency finds that—

5 “(i) compliance with those requirements would
6 be impracticable;

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

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

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

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

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

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

1 (d) REVIEW BY SECRETARY.—Section 543(e)(2) of
2 the National Energy Conservation Policy Act (42 U.S.C.
3 8253(e)(2)) is amended—

4 (1) by striking “impracticability standards” and
5 inserting “standards for exclusion”;

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

8 (3) by striking “energy consumption require-
9 ments” and inserting “requirements of subsections
10 (a) and (b)(1)”.

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

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

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

22 “(e) RETENTION OF ENERGY AND WATER SAV-
23 INGS.—An agency may retain any funds appropriated to
24 that agency for energy expenditures, water expenditures,
25 or wastewater treatment expenditures, at buildings subject

1 to the requirements of section 543(a) and (b), that are
2 not made because of energy savings or water savings. Ex-
3 cept as otherwise provided by law, such funds may be used
4 only for energy efficiency, water conservation, or uncon-
5 ventional and renewable energy resources projects.”.

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

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

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

13 (h) CONFORMING AMENDMENT.—Section 550(d) of
14 the National Energy Conservation Policy Act (42 U.S.C.
15 8258b(d)) is amended in the second sentence by striking
16 “the 20 percent reduction goal established under section
17 543(a) of the National Energy Conservation Policy Act
18 (42 U.S.C. 8253(a)).” and inserting “each of the energy
19 reduction goals established under section 543(a).”.

20 **SEC. 103. ENERGY USE MEASUREMENT AND ACCOUNT-**
21 **ABILITY.**

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

25 “(e) METERING OF ENERGY USE.—

1 “(1) DEADLINE.—By October 1, 2012, in ac-
2 cordance with guidelines established by the Sec-
3 retary under paragraph (2), all Federal buildings
4 shall, for the purposes of efficient use of energy and
5 reduction in the cost of electricity used in such
6 buildings, be metered or submetered. Each agency
7 shall use, to the maximum extent practicable, ad-
8 vanced meters or advanced metering devices that
9 provide data at least daily and that measure at least
10 hourly consumption of electricity in the Federal
11 buildings of the agency. Such data shall be incor-
12 porated into existing Federal energy tracking sys-
13 tems and made available to Federal facility energy
14 managers.

15 “(2) GUIDELINES.—

16 “(A) IN GENERAL.—Not later than 180
17 days after the date of enactment of this sub-
18 section, the Secretary, in consultation with the
19 Department of Defense, the General Services
20 Administration, representatives from the meter-
21 ing industry, utility industry, energy services in-
22 dustry, energy efficiency industry, energy effi-
23 ciency advocacy organizations, national labora-
24 tories, universities, and Federal facility energy

1 managers, shall establish guidelines for agencies
2 to carry out paragraph (1).

3 “(B) REQUIREMENTS FOR GUIDELINES.—

4 The guidelines shall—

5 “(i) take into consideration—

6 “(I) the cost of metering and
7 submetering and the reduced cost of
8 operation and maintenance expected
9 to result from metering and sub-
10 metering;

11 “(II) the extent to which meter-
12 ing and submetering are expected to
13 result in increased potential for en-
14 ergy management, increased potential
15 for energy savings and energy effi-
16 ciency improvement, and cost and en-
17 ergy savings due to utility contract
18 aggregation; and

19 “(III) the measurement and
20 verification protocols of the Depart-
21 ment of Energy;

22 “(ii) include recommendations con-
23 cerning the amount of funds and the num-
24 ber of trained personnel necessary to gath-

1 er and use the metering information to
2 track and reduce energy use;

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

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

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

1 vanced metering devices, as defined in paragraph
2 (1), are not practicable.”.

3 **SEC. 104. PROCUREMENT OF ENERGY EFFICIENT PROD-**
4 **UCTS.**

5 (a) REQUIREMENTS.—Part 3 of title V of the Na-
6 tional Energy Conservation Policy Act (42 U.S.C. 8251
7 et seq.), as amended by section 101, is amended by adding
8 at the end the following:

9 **“SEC. 553. FEDERAL PROCUREMENT OF ENERGY EFFI-**
10 **CIENT PRODUCTS.**

11 “(a) DEFINITIONS.—In this section:

12 “(1) AGENCY.—The term ‘agency’ has the
13 meaning given that term in section 7902(a) of title
14 5, United States Code.

15 “(2) ENERGY STAR PRODUCT.—The term ‘En-
16 ergy Star product’ means a product that is rated for
17 energy efficiency under an Energy Star program.

18 “(3) ENERGY STAR PROGRAM.—The term ‘En-
19 ergy Star program’ means the program established
20 by section 324A of the Energy Policy and Conserva-
21 tion Act.

22 “(4) FEMP DESIGNATED PRODUCT.—The term
23 ‘FEMP designated product’ means a product that is
24 designated under the Federal Energy Management
25 Program of the Department of Energy as being

1 among the highest 25 percent of equivalent products
2 for energy efficiency.

3 “(b) PROCUREMENT OF ENERGY EFFICIENT PROD-
4 UCTS.—

5 “(1) REQUIREMENT.—To meet the require-
6 ments of an agency for an energy consuming prod-
7 uct, the head of the agency shall, except as provided
8 in paragraph (2), procure—

9 “(A) an Energy Star product; or

10 “(B) a FEMP designated product.

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

15 “(A) an Energy Star product or FEMP
16 designated product is not cost-effective over the
17 life of the product taking energy cost savings
18 into account; or

19 “(B) no Energy Star product or FEMP
20 designated product is reasonably available that
21 meets the functional requirements of the agen-
22 cy.

23 “(3) PROCUREMENT PLANNING.—The head of
24 an agency shall incorporate into the specifications
25 for all procurements involving energy consuming

1 products and systems, including guide specifications,
2 project specifications, and construction, renovation,
3 and services contracts that include provision of en-
4 ergy consuming products and systems, and into the
5 factors for the evaluation of offers received for the
6 procurement, criteria for energy efficiency that are
7 consistent with the criteria used for rating Energy
8 Star products and for rating FEMP designated
9 products.

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

1 the life of the product, taking energy cost savings into ac-
2 count.

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

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

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

23 “(B) determined by the Administrator of the
24 Environmental Protection Agency to be environ-
25 mentally safe; and

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

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

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

16 (b) CONFORMING AMENDMENT.—The table of con-
17 tents of the National Energy Conservation Policy Act is
18 further amended by inserting after the item relating to
19 section 552 the following new item:

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

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

21 (a) LIMITATIONS.—

22 (1) IN GENERAL.—Section 801(a) of the Na-
23 tional Energy Conservation Policy Act (42 U.S.C.
24 8287(a)) is amended by adding at the end the fol-
25 lowing subparagraph:

1 “(E) All Federal agencies combined may not, after
2 the date of enactment of the Energy Policy Act of 2005,
3 enter into more than a total of 100 contracts under this
4 title. Payments made by the Federal Government under
5 all contracts permitted by this subparagraph combined
6 shall not exceed a total of \$500,000,000. Each Federal
7 agency shall appoint a coordinator for Energy Savings
8 Performance Contracts with the responsibility to monitor
9 the number of such contracts for that Federal agency and
10 the investment value of each contract. The coordinators
11 for each Federal agency shall meet monthly to ensure that
12 the limits specified in this subparagraph on the number
13 of contracts and the payments made for the contracts are
14 not exceeded.”.

15 (2) DEFINITION.—Section 804(1) of the Na-
16 tional Energy Conservation Policy Act (42 U.S.C.
17 8287c(1)) is amended to read as follows:

18 “(1) The term ‘Federal agency’ means the De-
19 partment of Defense, the Department of Veterans
20 Affairs, and the Department of Energy.”.

21 (3) VALIDITY OF CONTRACTS.—The amend-
22 ments made by this subsection shall not affect the
23 validity of contracts entered into under title VIII of
24 the National Energy Conservation Policy Act (42
25 U.S.C. 8287 et seq.) before the date of enactment

1 of this Act, or of contracts described in subsection
2 (h).

3 (b) PERMANENT EXTENSION.—Effective October 1,
4 2006, section 801(c) of the National Energy Conservation
5 Policy Act (42 U.S.C. 8287(c)) is repealed.

6 (c) PAYMENT OF COSTS.—Section 802 of the Na-
7 tional Energy Conservation Policy Act (42 U.S.C. 8287a)
8 is amended by inserting “, water, or wastewater treat-
9 ment” after “payment of energy”.

10 (d) ENERGY SAVINGS.—Section 804(2) of the Na-
11 tional Energy Conservation Policy Act (42 U.S.C.
12 8287c(2)) is amended to read as follows:

13 “(2) The term ‘energy savings’ means a reduc-
14 tion in the cost of energy, water, or wastewater
15 treatment, from a base cost established through a
16 methodology set forth in the contract, used in an ex-
17 isting federally owned building or buildings or other
18 federally owned facilities as a result of—

19 “(A) the lease or purchase of operating
20 equipment, improvements, altered operation and
21 maintenance, or technical services;

22 “(B) the increased efficient use of existing
23 energy sources by cogeneration or heat recov-
24 ery, excluding any cogeneration process for

1 other than a federally owned building or build-
2 ings or other federally owned facilities; or

3 “(C) the increased efficient use of existing
4 water sources in either interior or exterior ap-
5 plications.”.

6 (e) ENERGY SAVINGS CONTRACT.—Section 804(3) of
7 the National Energy Conservation Policy Act (42 U.S.C.
8 8287c(3)) is amended to read as follows:

9 “(3) The terms ‘energy savings contract’ and
10 ‘energy savings performance contract’ mean a con-
11 tract that provides for the performance of services
12 for the design, acquisition, installation, testing, and,
13 where appropriate, operation, maintenance, and re-
14 pair, of an identified energy or water conservation
15 measure or series of measures at 1 or more loca-
16 tions. Such contracts shall, with respect to an agen-
17 cy facility that is a public building (as such term is
18 defined in section 3301 of title 40, United States
19 Code), be in compliance with the prospectus require-
20 ments and procedures of section 3307 of title 40,
21 United States Code.”.

22 (f) ENERGY OR WATER CONSERVATION MEASURE.—
23 Section 804(4) of the National Energy Conservation Pol-
24 icy Act (42 U.S.C. 8287c(4)) is amended to read as fol-
25 lows:

1 “(4) The term ‘energy or water conservation
2 measure’ means—

3 “(A) an energy conservation measure, as
4 defined in section 551; or

5 “(B) a water conservation measure that
6 improves the efficiency of water use, is life-cycle
7 cost-effective, and involves water conservation,
8 water recycling or reuse, more efficient treat-
9 ment of wastewater or stormwater, improve-
10 ments in operation or maintenance efficiencies,
11 retrofit activities, or other related activities, not
12 at a Federal hydroelectric facility.”.

13 (g) REVIEW.—Not later than 180 days after the date
14 of the enactment of this Act, the Secretary of Energy shall
15 complete a review of the Energy Savings Performance
16 Contract program to identify statutory, regulatory, and
17 administrative obstacles that prevent Federal agencies
18 from fully utilizing the program. In addition, this review
19 shall identify all areas for increasing program flexibility
20 and effectiveness, including audit and measurement
21 verification requirements, accounting for energy use in de-
22 termining savings, contracting requirements, including the
23 identification of additional qualified contractors, and en-
24 ergy efficiency services covered. The Secretary shall report
25 these findings to Congress and shall implement identified

1 administrative and regulatory changes to increase pro-
2 gram flexibility and effectiveness to the extent that such
3 changes are consistent with statutory authority.

4 (h) EXTENSION OF AUTHORITY.—Any energy sav-
5 ings performance contract entered into under section 801
6 of the National Energy Conservation Policy Act (42
7 U.S.C. 8287) after October 1, 2006, and before the date
8 of enactment of this Act, shall be deemed to have been
9 entered into pursuant to such section 801 as amended by
10 subsection (a) of this section.

11 **SEC. 107. VOLUNTARY COMMITMENTS TO REDUCE INDUS-**
12 **TRIAL ENERGY INTENSITY.**

13 (a) VOLUNTARY AGREEMENTS.—The Secretary of
14 Energy is authorized to enter into voluntary agreements
15 with 1 or more persons in industrial sectors that consume
16 significant amounts of primary energy per unit of physical
17 output to reduce the energy intensity of their production
18 activities by a significant amount relative to improvements
19 in each sector in recent years.

20 (b) RECOGNITION.—The Secretary of Energy, in co-
21 operation with the Administrator of the Environmental
22 Protection Agency and other appropriate Federal agen-
23 cies, shall recognize and publicize the achievements of par-
24 ticipants in voluntary agreements under this section.

1 (c) DEFINITION.—In this section, the term “energy
2 intensity” means the primary energy consumed per unit
3 of physical output in an industrial process.

4 **SEC. 108. ADVANCED BUILDING EFFICIENCY TESTBED.**

5 (a) ESTABLISHMENT.—The Secretary of Energy, in
6 consultation with the Administrator of General Services,
7 shall establish an Advanced Building Efficiency Testbed
8 program for the development, testing, and demonstration
9 of advanced engineering systems, components, and mate-
10 rials to enable innovations in building technologies. The
11 program shall evaluate efficiency concepts for government
12 and industry buildings, and demonstrate the ability of
13 next generation buildings to support individual and orga-
14 nizational productivity and health (including by improving
15 indoor air quality) as well as flexibility and technological
16 change to improve environmental sustainability. Such pro-
17 gram shall complement and not duplicate existing national
18 programs.

19 (b) PARTICIPANTS.—The program established under
20 subsection (a) shall be led by a university with the ability
21 to combine the expertise from numerous academic fields
22 including, at a minimum, intelligent workplaces and ad-
23 vanced building systems and engineering, electrical and
24 computer engineering, computer science, architecture,
25 urban design, and environmental and mechanical engi-

1 neering. Such university shall partner with other univer-
2 sities and entities who have established programs and the
3 capability of advancing innovative building efficiency tech-
4 nologies.

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

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

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

17 (1) in paragraph (2)(A), by striking “CABO
18 Model Energy Code, 1992” and inserting “the 2003
19 International Energy Conservation Code”; and

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

21 “(3) REVISED FEDERAL BUILDING ENERGY EFFI-
22 CIENCY PERFORMANCE STANDARDS.—

23 “(A) IN GENERAL.—Not later than 1 year after
24 the date of enactment of this paragraph, the Sec-
25 retary of Energy shall establish, by rule, revised

1 Federal building energy efficiency performance
2 standards that require that—

3 “(i) if life-cycle cost-effective, for new Fed-
4 eral buildings—

5 “(I) such buildings be designed so as
6 to achieve energy consumption levels at
7 least 30 percent below those of the version
8 current as of the date of enactment of this
9 paragraph of the ASHRAE Standard or
10 the International Energy Conservation
11 Code, as appropriate; and

12 “(II) sustainable design principles are
13 applied to the siting, design, and construc-
14 tion of all new and replacement buildings;
15 and

16 “(ii) where water is used to achieve energy
17 efficiency, water conservation technologies shall
18 be applied to the extent they are life-cycle cost
19 effective.

20 “(B) ADDITIONAL REVISIONS.—Not later than
21 1 year after the date of approval of each subsequent
22 revision of the ASHRAE Standard or the Inter-
23 national Energy Conservation Code, as appropriate,
24 the Secretary of Energy shall determine, based on
25 the cost-effectiveness of the requirements under the

1 amendments, whether the revised standards estab-
2 lished under this paragraph should be updated to re-
3 flect the amendments.

4 “(C) STATEMENT ON COMPLIANCE OF NEW
5 BUILDINGS.—In the budget request of the Federal
6 agency for each fiscal year and each report sub-
7 mitted by the Federal agency under section 548(a)
8 of the National Energy Conservation Policy Act (42
9 U.S.C. 8258(a)), the head of each Federal agency
10 shall include—

11 “(i) a list of all new Federal buildings
12 owned, operated, or controlled by the Federal
13 agency; and

14 “(ii) a statement concerning whether the
15 Federal buildings meet or exceed the revised
16 standards established under this paragraph.”.

17 **SEC. 110. DAYLIGHT SAVINGS.**

18 (a) REPEAL.—Section 3(a) of the Uniform Time Act
19 of 1966 (15 U.S.C. 260a(a)) is amended—

20 (1) by striking “April” and inserting “March”;
21 and

22 (2) by striking “October” and inserting “No-
23 vember”.

24 (b) REPORT TO CONGRESS.—Not later than 9
25 months after the date of enactment of this Act, the Sec-

1 retary of Energy shall report to Congress on the impact
2 this section on energy consumption in the United States.

3 **Subtitle B—Energy Assistance and**
4 **State Programs**

5 **SEC. 121. LOW INCOME HOME ENERGY ASSISTANCE PRO-**
6 **GRAM.**

7 (a) AUTHORIZATION OF APPROPRIATIONS.—Section
8 2602(b) of the Low-Income Home Energy Assistance Act
9 of 1981 (42 U.S.C. 8621(b)) is amended by striking “and
10 \$2,000,000,000 for each of fiscal years 2002 through
11 2004” and inserting “and \$5,100,000,000 for each of fis-
12 cal years 2005 through 2007”.

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

16 “RENEWABLE FUELS

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

21 (c) REPORT TO CONGRESS.—The Secretary of En-
22 ergy shall report to Congress on the use of renewable fuels
23 in providing assistance under the Low-Income Home En-
24 ergy Assistance Act of 1981 (42 U.S.C. 8621 et seq.).

1 **SEC. 122. WEATHERIZATION ASSISTANCE.**

2 (a) AUTHORIZATION OF APPROPRIATIONS.—Section
3 422 of the Energy Conservation and Production Act (42
4 U.S.C. 6872) is amended by striking “for fiscal years
5 1999 through 2003 such sums as may be necessary” and
6 inserting “\$500,000,000 for fiscal year 2006,
7 \$600,000,000 for fiscal year 2007, and \$700,000,000 for
8 fiscal year 2008”.

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

13 **SEC. 123. STATE ENERGY PROGRAMS.**

14 (a) STATE ENERGY CONSERVATION PLANS.—Section
15 362 of the Energy Policy and Conservation Act (42 U.S.C.
16 6322) is amended by inserting at the end the following
17 new subsection:

18 “(g) The Secretary shall, at least once every 3 years,
19 invite the Governor of each State to review and, if nec-
20 essary, revise the energy conservation plan of such State
21 submitted under subsection (b) or (e). Such reviews should
22 consider the energy conservation plans of other States
23 within the region, and identify opportunities and actions
24 carried out in pursuit of common energy conservation
25 goals.”.

1 (b) STATE ENERGY EFFICIENCY GOALS.—Section
2 364 of the Energy Policy and Conservation Act (42 U.S.C.
3 6324) is amended to read as follows:

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

13 (c) AUTHORIZATION OF APPROPRIATIONS.—Section
14 365(f) of the Energy Policy and Conservation Act (42
15 U.S.C. 6325(f)) is amended by striking “for fiscal years
16 1999 through 2003 such sums as may be necessary” and
17 inserting “\$100,000,000 for each of the fiscal years 2006
18 and 2007 and \$125,000,000 for fiscal year 2008”.

19 **SEC. 124. ENERGY EFFICIENT APPLIANCE REBATE PRO-**
20 **GRAMS.**

21 (a) DEFINITIONS.—In this section:

22 (1) ELIGIBLE STATE.—The term “eligible
23 State” means a State that meets the requirements
24 of subsection (b).

25 (2) ENERGY STAR PROGRAM.—The term “En-
26 ergy Star program” means the program established

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

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

7 (4) SECRETARY.—The term “Secretary” means
8 the Secretary of Energy.

9 (5) 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 (6) 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
22 residential Energy Star products to replace used ap-
23 pliances of the same type;

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

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

8 (c) AMOUNT OF ALLOCATIONS.—

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

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

24 (d) USE OF ALLOCATED FUNDS.—The allocation to
25 a State energy office under subsection (c) may be used

1 to pay up to 50 percent of the cost of establishing and
2 carrying out a State program.

3 (e) ISSUANCE OF REBATES.—Rebates may be pro-
4 vided to residential consumers that meet the requirements
5 of the State program. The amount of a rebate shall be
6 determined by the State energy office, taking into consid-
7 eration—

8 (1) the amount of the allocation to the State
9 energy office under subsection (c);

10 (2) the amount of any Federal or State tax in-
11 centive available for the purchase of the residential
12 Energy Star product; and

13 (3) the difference between the cost of the resi-
14 dential Energy Star product and the cost of an ap-
15 pliance that is not a residential Energy Star prod-
16 uct, but is of the same type as, and is the nearest
17 capacity, performance, and other relevant character-
18 istics (as determined by the State energy office) to,
19 the residential Energy Star product.

20 (f) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated to the Secretary to carry
22 out this section \$50,000,000 for each of the fiscal years
23 2006 through 2010.

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

2 (a) GRANTS.—The Secretary of Energy may make
3 grants to the State agency responsible for developing State
4 energy conservation plans under section 362 of the Energy
5 Policy and Conservation Act (42 U.S.C. 6322), or, if no
6 such agency exists, a State agency designated by the Gov-
7 ernor of the State, to assist units of local government in
8 the State in improving the energy efficiency of public
9 buildings and facilities—

10 (1) through construction of new energy efficient
11 public buildings that use at least 30 percent less en-
12 ergy than a comparable public building constructed
13 in compliance with standards prescribed in the most
14 recent version of the International Energy Conserva-
15 tion Code, or a similar State code intended to
16 achieve substantially equivalent efficiency levels; or

17 (2) through renovation of existing public build-
18 ings to achieve reductions in energy use of at least
19 30 percent as compared to the baseline energy use
20 in such buildings prior to renovation, assuming a 3-
21 year, weather-normalized average for calculating
22 such baseline.

23 (b) ADMINISTRATION.—State energy offices receiving
24 grants under this section shall—

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

1 (2) develop and distribute information and ma-
2 terials and conduct programs to provide technical
3 services and assistance to encourage planning, fi-
4 nancing, and design of energy efficient public build-
5 ings by units of local government.

6 (c) AUTHORIZATION OF APPROPRIATIONS.—For the
7 purposes of this section, there are authorized to be appro-
8 priated to the Secretary of Energy \$30,000,000 for each
9 of fiscal years 2006 through 2010. Not more than 10 per-
10 cent of appropriated funds shall be used for administra-
11 tion.

12 **SEC. 126. LOW INCOME COMMUNITY ENERGY EFFICIENCY**
13 **PILOT PROGRAM.**

14 (a) GRANTS.—The Secretary of Energy is authorized
15 to make grants to units of local government, private, non-
16 profit community development organizations, and Indian
17 tribe economic development entities to improve energy effi-
18 ciency; identify and develop alternative, renewable, and
19 distributed energy supplies; and increase energy conserva-
20 tion in low income rural and urban communities.

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

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

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

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

6 (4) planning and development assistance for in-
7 creasing the energy efficiency of buildings and facili-
8 ties; and

9 (5) technical and financial assistance to local
10 government and private entities on developing new
11 renewable and distributed sources of power or com-
12 bined heat and power generation.

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

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

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

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

4 (a) AMENDMENT.—The Energy Policy and Conserva-
5 tion Act (42 U.S.C. 6201 et seq.) is amended by inserting
6 the following after section 324:

7 **“SEC. 324A. ENERGY STAR PROGRAM.**

8 “There is established at the Department of Energy
9 and the Environmental Protection Agency a voluntary
10 program to identify and promote energy-efficient products
11 and buildings in order to reduce energy consumption, im-
12 prove energy security, and reduce pollution through vol-
13 untary labeling of or other forms of communication about
14 products and buildings that meet the highest energy effi-
15 ciency standards. Responsibilities under the program shall
16 be divided between the Department of Energy and the En-
17 vironmental Protection Agency consistent with the terms
18 of agreements between the 2 agencies. The Administrator
19 and the Secretary shall—

20 “(1) promote Energy Star compliant tech-
21 nologies as the preferred technologies in the market-
22 place for achieving energy efficiency and to reduce
23 pollution;

1 “(2) work to enhance public awareness of the
2 Energy Star label, including special outreach to
3 small businesses;

4 “(3) preserve the integrity of the Energy Star
5 label;

6 “(4) solicit comments from interested parties
7 prior to establishing or revising an Energy Star
8 product category, specification, or criterion (or effec-
9 tive dates for any of the foregoing);

10 “(5) upon adoption of a new or revised product
11 category, specification, or criterion, provide reason-
12 able notice to interested parties of any changes (in-
13 cluding effective dates) in product categories, speci-
14 fications, or criteria along with an explanation of
15 such changes and, where appropriate, responses to
16 comments submitted by interested parties; and

17 “(6) provide appropriate lead time (which shall
18 be 9 months, unless the Agency or Department de-
19 termines otherwise) prior to the effective date for a
20 new or a significant revision to a product category,
21 specification, or criterion, taking into account the
22 timing requirements of the manufacturing, product
23 marketing, and distribution process for the specific
24 product addressed.”.

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

“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.—For the purpose of en-
11 suring that installed air conditioning and heating systems
12 operate at their maximum rated efficiency levels, the Sec-
13 retary shall, not later than 180 days after the date of en-
14 actment of this subsection, carry out a program to educate
15 homeowners and small business owners concerning the en-
16 ergy savings resulting from properly conducted mainte-
17 nance of air conditioning, heating, and ventilating sys-
18 tems. The Secretary shall carry out the program in a cost-
19 shared manner in cooperation with the Administrator of
20 the Environmental Protection Agency and such other enti-
21 ties as the Secretary considers appropriate, including in-
22 dustry trade associations, industry members, and energy
23 efficiency organizations.

24 “(d) SMALL BUSINESS EDUCATION AND ASSIST-
25 ANCE.—The Administrator of the Small Business Admin-

1 istration, in consultation with the Secretary of Energy and
2 the Administrator of the Environmental Protection Agen-
3 cy, shall develop and coordinate a Government-wide pro-
4 gram, building on the existing Energy Star for Small
5 Business Program, to assist small businesses to become
6 more energy efficient, understand the cost savings obtain-
7 able through efficiencies, and identify financing options
8 for energy efficiency upgrades. The Secretary and the Ad-
9 ministrator of the Small Business Administration shall
10 make the program information available directly to small
11 businesses and through other Federal agencies, including
12 the Federal Emergency Management Program and the
13 Department of Agriculture.”.

14 **SEC. 133. ENERGY CONSERVATION STANDARDS FOR ADDI-**
15 **TIONAL PRODUCTS.**

16 (a) DEFINITIONS.—Section 321 of the Energy Policy
17 and Conservation Act (42 U.S.C. 6291) is amended—

18 (1) in paragraph (30)(S), by striking the period
19 and adding at the end the following: “but does not
20 include any lamp specifically designed to be used for
21 special purpose applications and that is unlikely to
22 be used in general purpose applications such as
23 those described in subparagraph (D), and also does
24 not include any lamp not described in subparagraph
25 (D) that is excluded by the Secretary, by rule, be-

1 cause the lamp is designed for special applications
2 and is unlikely to be used in general purpose appli-
3 cations.”; and

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

5 “(32) The term ‘battery charger’ means a de-
6 vice that charges batteries for consumer products
7 and includes battery chargers embedded in other
8 consumer products.

9 “(33) The term ‘commercial refrigerators,
10 freezers, and refrigerator-freezers’ means refrig-
11 erators, freezers, or refrigerator-freezers that—

12 “(A) are not consumer products regulated
13 under this Act; and

14 “(B) incorporate most components involved
15 in the vapor-compression cycle and the refrig-
16 erated compartment in a single package.

17 “(34) The term ‘external power supply’ means
18 an external power supply circuit that is used to con-
19 vert household electric current into either DC cur-
20 rent or lower-voltage AC current to operate a con-
21 sumer product.

22 “(35) The term ‘illuminated exit sign’ means a
23 sign that—

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

1 “(B) consists of an electrically powered in-
2 tegral light source that illuminates the legend
3 ‘EXIT’ and any directional indicators and pro-
4 vides contrast between the legend, any direc-
5 tional indicators, and the background.

6 “(36)(A) Except as provided in subparagraph
7 (B), the term ‘distribution transformer’ means a
8 transformer that—

9 “(i) has an input voltage of 34.5 kilovolts
10 or less;

11 “(ii) has an output voltage of 600 volts or
12 less; and

13 “(iii) is rated for operation at a frequency
14 of 60 Hertz.

15 “(B) The term ‘distribution transformer’ does
16 not include—

17 “(i) transformers with multiple voltage
18 taps, with the highest voltage tap equaling at
19 least 20 percent more than the lowest voltage
20 tap;

21 “(ii) transformers, such as those commonly
22 known as drive transformers, rectifier trans-
23 formers, auto-transformers, Uninterruptible
24 Power System transformers, impedance trans-
25 formers, regulating transformers, sealed and

1 nonventilating transformers, machine tool
2 transformers, welding transformers, grounding
3 transformers, or testing transformers, that are
4 designed to be used in a special purpose appli-
5 cation and are unlikely to be used in general
6 purpose applications; or

7 “(iii) any transformer not listed in clause
8 (ii) that is excluded by the Secretary by rule be-
9 cause—

10 “(I) the transformer is designed for a
11 special application;

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

14 “(III) the application of standards to
15 the transformer would not result in signifi-
16 cant energy savings.

17 “(37) The term ‘low-voltage dry-type distribu-
18 tion transformer’ means a distribution transformer
19 that—

20 “(A) has an input voltage of 600 volts or
21 less;

22 “(B) is air-cooled; and

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

24 “(38) The term ‘standby mode’ means the low-
25 est power consumption mode that—

1 “(A) cannot be switched off or influenced
2 by the user; and

3 “(B) may persist for an indefinite time
4 when an appliance is connected to the main
5 electricity supply and used in accordance with
6 the manufacturer’s instructions,

7 as defined on an individual product basis by the Sec-
8 retary.

9 “(39) The term ‘torchiere’ means a portable
10 electric lamp with a reflector bowl that directs light
11 upward so as to give indirect illumination.

12 “(40) The term ‘traffic signal module’ means a
13 standard 8-inch (200mm) or 12-inch (300mm) traf-
14 fic signal indication, consisting of a light source, a
15 lens, and all other parts necessary for operation,
16 that communicates movement messages to drivers
17 through red, amber, and green colors.

18 “(41) The term ‘transformer’ means a device
19 consisting of 2 or more coils of insulated wire that
20 transfers alternating current by electromagnetic in-
21 duction from 1 coil to another to change the original
22 voltage or current value.

23 “(42) The term ‘unit heater’ means a self-con-
24 tained fan-type heater designed to be installed with-

1 in the heated space, except that such term does not
2 include a warm air furnace.

3 “(43) The term ‘ceiling fan’ means a non-port-
4 able device that is suspended from a ceiling for cir-
5 culating air via the rotation of fan blades.

6 “(44) The term ‘ceiling fan light kit’ means
7 equipment designed to provide light from a ceiling
8 fan which can be—

9 “(A) integral, such that the equipment is
10 attached to the ceiling fan prior to the time of
11 retail sale; or

12 “(B) attachable, such that at the time of
13 retail sale the equipment is not physically at-
14 tached to the ceiling fan, but may be included
15 inside the ceiling fan package at the time of
16 sale or sold separately for subsequent attach-
17 ment to the fan.”.

18 (b) TEST PROCEDURES.—Section 323 of the Energy
19 Policy and Conservation Act (42 U.S.C. 6293) is amend-
20 ed—

21 (1) in subsection (b), by adding at the end the
22 following:

23 “(9) Test procedures for illuminated exit signs shall
24 be based on the test method used under Version 2.0 of

1 the Energy Star program of the Environmental Protection
2 Agency for illuminated exit signs.

3 “(10) Test procedures for distribution transformers
4 and low voltage dry-type distribution transformers shall
5 be based on the ‘Standard Test Method for Measuring the
6 Energy Consumption of Distribution Transformers’ pre-
7 scribed by the National Electrical Manufacturers Associa-
8 tion (NEMA TP 2–1998). The Secretary may review and
9 revise this test procedure. For purposes of section 346(a),
10 this test procedure shall be deemed to be testing require-
11 ments prescribed by the Secretary under section 346(a)(1)
12 for distribution transformers for which the Secretary
13 makes a determination that energy conservation standards
14 would be technologically feasible and economically justi-
15 fied, and would result in significant energy savings.

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

21 “(12) Test procedures for medium base compact fluo-
22 rescent lamps shall be based on the test methods used
23 under the August 9, 2001, version of the Energy Star pro-
24 gram of the Environmental Protection Agency and De-
25 partment of Energy for compact fluorescent lamps. Cov-

1 ered products shall meet all test requirements for regu-
2 lated parameters in section 325(bb). However, covered
3 products may be marketed prior to completion of lamp life
4 and lumen maintenance at 40 percent of rated life testing
5 provided manufacturers document engineering predictions
6 and analysis that support expected attainment of lumen
7 maintenance at 40 percent rated life and lamp life time.

8 “(13) The Secretary shall, not later than 18 months
9 after the date of enactment of this paragraph, prescribe
10 testing requirements for ceiling fans and ceiling fan light
11 kits.”; and

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

13 “(f) ADDITIONAL CONSUMER AND COMMERCIAL
14 PRODUCTS.—The Secretary shall, not later than 24
15 months after the date of enactment of this subsection, pre-
16 scribe testing requirements for suspended ceiling fans, re-
17 frigerated bottled or canned beverage vending machines,
18 and commercial refrigerators, freezers, and refrigerator-
19 freezers. Such testing requirements shall be based on ex-
20 isting test procedures used in industry to the extent prac-
21 tical and reasonable. In the case of suspended ceiling fans,
22 such test procedures shall include efficiency at both max-
23 imum output and at an output no more than 50 percent
24 of the maximum output.”.

1 (c) NEW STANDARDS.—Section 325 of the Energy
2 Policy and Conservation Act (42 U.S.C. 6295) is amended
3 by adding at the end the following:

4 “(u) BATTERY CHARGER AND EXTERNAL POWER
5 SUPPLY ELECTRIC ENERGY CONSUMPTION.—

6 “(1) INITIAL RULEMAKING.—(A) The Secretary
7 shall, within 18 months after the date of enactment
8 of this subsection, prescribe by notice and comment,
9 definitions and test procedures for the power use of
10 battery chargers and external power supplies. In es-
11 tablishing these test procedures, the Secretary shall
12 consider, among other factors, existing definitions
13 and test procedures used for measuring energy con-
14 sumption in standby mode and other modes and as-
15 sess the current and projected future market for
16 battery chargers and external power supplies. This
17 assessment shall include estimates of the significance
18 of potential energy savings from technical improve-
19 ments to these products and suggested product
20 classes for standards. Prior to the end of this time
21 period, the Secretary shall hold a scoping workshop
22 to discuss and receive comments on plans for devel-
23 oping energy conservation standards for energy use
24 for these products.

1 “(B) The Secretary shall, within 3 years after
2 the date of enactment of this subsection, issue a
3 final rule that determines whether energy conserva-
4 tion standards shall be issued for battery chargers
5 and external power supplies or classes thereof. For
6 each product class, any such standards shall be set
7 at the lowest level of energy use that—

8 “(i) meets the criteria and procedures of
9 subsections (o), (p), (q), (r), (s), and (t); and

10 “(ii) will result in significant overall an-
11 nual energy savings, considering both standby
12 mode and other operating modes.

13 “(2) REVIEW OF STANDBY ENERGY USE IN
14 COVERED PRODUCTS.—In determining pursuant to
15 section 323 whether test procedures and energy con-
16 servation standards pursuant to this section should
17 be revised, the Secretary shall consider, for covered
18 products that are major sources of standby mode en-
19 ergy consumption, whether to incorporate standby
20 mode into such test procedures and energy conserva-
21 tion standards, taking into account, among other
22 relevant factors, standby mode power consumption
23 compared to overall product energy consumption.

24 “(3) RULEMAKING.—The Secretary shall not
25 propose a standard under this section unless the

1 Secretary has issued applicable test procedures for
2 each product pursuant to section 323.

3 “(4) EFFECTIVE DATE.—Any standard issued
4 under this subsection shall be applicable to products
5 manufactured or imported 3 years after the date of
6 issuance.

7 “(5) VOLUNTARY PROGRAMS.—The Secretary
8 and the Administrator shall collaborate and develop
9 programs, including programs pursuant to section
10 324A (relating to Energy Star Programs) and other
11 voluntary industry agreements or codes of conduct,
12 that are designed to reduce standby mode energy
13 use.

14 “(v) SUSPENDED CEILING FANS, VENDING MA-
15 CHINES, AND COMMERCIAL REFRIGERATORS, FREEZERS,
16 AND REFRIGERATOR-FREEZERS.—The Secretary shall not
17 later than 36 months after the date on which testing re-
18 quirements are prescribed by the Secretary pursuant to
19 section 323(f), prescribe, by rule, energy conservation
20 standards for suspended ceiling fans, refrigerated bottled
21 or canned beverage vending machines, and commercial re-
22 frigerators, freezers, and refrigerator-freezers. In estab-
23 lishing standards under this subsection, the Secretary
24 shall use the criteria and procedures contained in sub-
25 sections (o) and (p). Any standard prescribed under this

1 subsection shall apply to products manufactured 3 years
2 after the date of publication of a final rule establishing
3 such standard.

4 “(w) ILLUMINATED EXIT SIGNS.—Illuminated exit
5 signs manufactured on or after January 1, 2006, shall
6 meet the Version 2.0 Energy Star Program performance
7 requirements for illuminated exit signs prescribed by the
8 Environmental Protection Agency.

9 “(x) TORCHIERES.—Torchieres manufactured on or
10 after January 1, 2006—

11 “(1) shall consume not more than 190 watts of
12 power; and

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

15 “(y) LOW VOLTAGE DRY-TYPE DISTRIBUTION
16 TRANSFORMERS.—The efficiency of low voltage dry-type
17 distribution transformers manufactured on or after Janu-
18 ary 1, 2006, shall be the Class I Efficiency Levels for dis-
19 tribution transformers specified in Table 4–2 of the ‘Guide
20 for Determining Energy Efficiency for Distribution Trans-
21 formers’ published by the National Electrical Manufactur-
22 ers Association (NEMA TP–1–2002).

23 “(z) TRAFFIC SIGNAL MODULES.—Traffic signal
24 modules manufactured on or after January 1, 2006, shall
25 meet the performance requirements used under the En-

1 energy Star program of the Environmental Protection Agen-
2 cy for traffic signals, as in effect on the date of enactment
3 of this subsection, and shall be installed with compatible,
4 electrically connected signal control interface devices and
5 conflict monitoring systems.

6 “(aa) UNIT HEATERS.—Unit heaters manufactured
7 on or after the date that is 3 years after the date of enact-
8 ment of this subsection shall be equipped with an intermit-
9 tent ignition device and shall have either power venting
10 or an automatic flue damper.

11 “(bb) MEDIUM BASE COMPACT FLUORESCENT
12 LAMPS.—Bare lamp and covered lamp (no reflector) me-
13 dium base compact fluorescent lamps manufactured on or
14 after January 1, 2006, shall meet the following require-
15 ments prescribed by the August 9, 2001, version of the
16 Energy Star Program Requirements for Compact Fluores-
17 cent Lamps, Energy Star Eligibility Criteria, Energy-Effi-
18 ciency Specification issued by the Environmental Protec-
19 tion Agency and Department of Energy: minimum initial
20 efficacy; lumen maintenance at 1000 hours; lumen mainte-
21 nance at 40 percent of rated life; rapid cycle stress test;
22 and lamp life. The Secretary may, by rule, establish re-
23 quirements for color quality (CRI); power factor; oper-
24 ating frequency; and maximum allowable start time based
25 on the requirements prescribed by the August 9, 2001,

1 version of the Energy Star Program Requirements for
2 Compact Fluorescent Lamps. The Secretary may, by rule,
3 revise these requirements or establish other requirements
4 considering energy savings, cost effectiveness, and con-
5 sumer satisfaction.

6 “(cc) EFFECTIVE DATE.—Section 327 shall apply—

7 “(1) to products for which standards are to be
8 established under subsections (u) and (v) on the
9 date on which a final rule is issued by the Depart-
10 ment of Energy, except that any State or local
11 standards prescribed or enacted for any such prod-
12 uct prior to the date on which such final rule is
13 issued shall not be preempted until the standard es-
14 tablished under subsection (u) or (v) for that prod-
15 uct takes effect; and

16 “(2) to products for which standards are estab-
17 lished under subsections (w) through (bb) on the
18 date of enactment of those subsections, except that
19 any State or local standards prescribed or enacted
20 prior to the date of enactment of those subsections
21 shall not be preempted until the standards estab-
22 lished under subsections (w) through (bb) take ef-
23 fect.

24 “(dd) CEILING FANS.—

1 “(1) FEATURES.—All ceiling fans manufactured
2 on or after January 1, 2006, shall have the following
3 features:

4 “(A) Lighting controls operate independ-
5 ently from fan speed controls.

6 “(B) Adjustable speed controls (either
7 more than 1 speed or variable speed).

8 “(C) The capability of reversible fan ac-
9 tion, except for fans sold for industrial applica-
10 tions, outdoor applications, and where safety
11 standards would be violated by the use of the
12 reversible mode. The Secretary may promulgate
13 regulations to define in greater detail the excep-
14 tions provided under this subparagraph but
15 may not substantively expand the exceptions.

16 “(2) REVISED STANDARDS.—

17 “(A) IN GENERAL.—Notwithstanding any
18 provision of this Act, if the requirements of
19 subsections (o) and (p) are met, the Secretary
20 may consider and prescribe energy efficiency or
21 energy use standards for electricity used by ceil-
22 ing fans to circulate air in a room.

23 “(B) SPECIAL CONSIDERATION.—If the
24 Secretary sets such standards, the Secretary
25 shall consider—

1 “(i) exempting or setting different
2 standards for certain product classes for
3 which the primary standards are not tech-
4 nically feasible or economically justified;
5 and

6 “(ii) establishing separate exempted
7 product classes for highly decorative fans
8 for which air movement performance is a
9 secondary design feature.

10 “(C) APPLICATION.—Any air movement
11 standard prescribed under this subsection shall
12 apply to products manufactured on or after the
13 date that is 3 years after the date of publica-
14 tion of a final rule establishing the standard.”.

15 (d) RESIDENTIAL FURNACE FANS.—Section
16 325(f)(3) of the Energy Policy and Conservation Act (42
17 U.S.C. 6295(f)(3)) is amended by adding the following
18 new subparagraph at the end:

19 “(D) Notwithstanding any provision of this Act, the
20 Secretary may consider, and prescribe, if the requirements
21 of subsection (o) of this section are met, energy efficiency
22 or energy use standards for electricity used for purposes
23 of circulating air through duct work.”.

1 **SEC. 134. ENERGY LABELING.**

2 (a) RULEMAKING ON EFFECTIVENESS OF CONSUMER
3 PRODUCT LABELING.—Section 324(a)(2) of the Energy
4 Policy and Conservation Act (42 U.S.C. 6294(a)(2)) is
5 amended by adding at the end the following:

6 “(F) Not later than 3 months after the date of enact-
7 ment of this subparagraph, the Commission shall initiate
8 a rulemaking to consider the effectiveness of the current
9 consumer products labeling program in assisting con-
10 sumers in making purchasing decisions and improving en-
11 ergy efficiency and to consider changes to the labeling
12 rules that would improve the effectiveness of consumer
13 product labels. Such rulemaking shall be completed not
14 later than 2 years after the date of enactment of this sub-
15 paragraph.

16 “(G)(i) Not later than 18 months after date of enact-
17 ment of this subparagraph, the Commission shall prescribe
18 by rule, pursuant to this section, labeling requirements for
19 the electricity used by ceiling fans to circulate air in a
20 room.

21 “(ii) The rule prescribed under clause (i) shall apply
22 to products manufactured after the later of—

23 “(I) January 1, 2009; or

24 “(II) the date that is 60 days after the final
25 rule is prescribed.”.

1 (b) RULEMAKING ON LABELING FOR ADDITIONAL
2 PRODUCTS.—Section 324(a) of the Energy Policy and
3 Conservation Act (42 U.S.C. 6294(a)) is further amended
4 by adding at the end the following:

5 “(5) The Secretary or the Commission, as appro-
6 priate, may, for covered products referred to in sub-
7 sections (u) through (aa) of section 325, prescribe, by rule,
8 pursuant to this section, labeling requirements for such
9 products after a test procedure has been set pursuant to
10 section 323. In the case of products to which TP–1 stand-
11 ards under section 325(y) apply, labeling requirements
12 shall be based on the ‘Standard for the Labeling of Dis-
13 tribution Transformer Efficiency’ prescribed by the Na-
14 tional Electrical Manufacturers Association (NEMA TP–
15 3) as in effect upon the date of enactment of this para-
16 graph.”.

17 **SEC. 135. PREEMPTION.**

18 Section 327 of the Energy Policy and Conservation
19 Act (42 U.S.C. 6297) is amended by adding at the end
20 the following:

21 “(h) CEILING FANS.—Effective on January 1, 2006,
22 this section shall apply to and supersede all State and local
23 standards prescribed or enacted for ceiling fans and ceil-
24 ing fan light kits.”.

1 **SEC. 136. STATE CONSUMER PRODUCT ENERGY EFFI-**
2 **CIENCY STANDARDS.**

3 Section 327 of the Energy Policy and Conservation
4 Act (42 U.S.C. 6297) is amended by adding at the end
5 the following new subsection:

6 “(h) LIMITATION ON PREEMPTION.—Subsections (a)
7 and (b) shall not apply with respect to State regulation
8 of energy consumption or water use of any covered prod-
9 uct during any period of time—

10 “(1) after the date which is 3 years after a
11 Federal standard is required by law to be established
12 or revised, but has not been established or revised;
13 and

14 “(2) before the date on which such Federal
15 standard is established or revised.”.

16 **Subtitle D—Public Housing**

17 **SEC. 145. GRANTS FOR ENERGY-CONSERVING IMPROVE-**
18 **MENTS FOR ASSISTED HOUSING.**

19 Section 251(b)(1) of the National Energy Conserva-
20 tion Policy Act (42 U.S.C. 8231(1)) is amended—

21 (1) by striking “financed with loans” and in-
22 serting “assisted”;

23 (2) by inserting after “1959,” the following:
24 “which are eligible multifamily housing projects (as
25 such term is defined in section 512 of the Multi-
26 family Assisted Housing Reform and Affordability

1 Act of 1997 (42 U.S.C. 1437f note)) and are subject
2 to mortgage restructuring and rental assistance suf-
3 ficiency plans under such Act,”; and

4 (3) by inserting after the period at the end of
5 the first sentence the following new sentence: “Such
6 improvements may also include the installation of
7 energy and water conserving fixtures and fittings
8 that conform to the American Society of Mechanical
9 Engineers/American National Standards Institute
10 standards A112.19.2–1998 and A112.18.1–2000, or
11 any revision thereto, applicable at the time of instal-
12 lation.”.

13 **SEC. 147. ENERGY-EFFICIENT APPLIANCES.**

14 In purchasing appliances, a public housing agency
15 shall purchase energy-efficient appliances that are Energy
16 Star products or FEMP-designated products, as such
17 terms are defined in section 553 of the National Energy
18 Conservation Policy Act (as amended by this title), unless
19 the purchase of energy-efficient appliances is not cost-ef-
20 fective to the agency.

21 **SEC. 149. ENERGY STRATEGY FOR HUD.**

22 The Secretary of Housing and Urban Development
23 shall develop and implement an integrated strategy to re-
24 duce utility expenses through cost-effective energy con-
25 servation and efficiency measures and energy efficient de-

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

11 **TITLE II—RENEWABLE ENERGY**

12 **Subtitle A—General Provisions**

13 **SEC. 201. ASSESSMENT OF RENEWABLE ENERGY RE-** 14 **SOURCES.**

15 (a) **RESOURCE ASSESSMENT.**—Not later than 6
16 months after the date of enactment of this Act, and each
17 year thereafter, the Secretary of Energy shall review the
18 available assessments of renewable energy resources with-
19 in the United States, including solar, wind, biomass, ocean
20 (tidal, wave, current, and thermal), geothermal, and hy-
21 droelectric energy resources, and undertake new assess-
22 ments as necessary, taking into account changes in market
23 conditions, available technologies, and other relevant fac-
24 tors.

1 (b) CONTENTS OF REPORTS.—Not later than 1 year
2 after the date of enactment of this Act, and each year
3 thereafter, the Secretary shall publish a report based on
4 the assessment under subsection (a). The report shall con-
5 tain—

6 (1) a detailed inventory describing the available
7 amount and characteristics of the renewable energy
8 resources; and

9 (2) such other information as the Secretary be-
10 lieves would be useful in developing such renewable
11 energy resources, including descriptions of sur-
12 rounding terrain, population and load centers, near-
13 by energy infrastructure, location of energy and
14 water resources, and available estimates of the costs
15 needed to develop each resource, together with an
16 identification of any barriers to providing adequate
17 transmission for remote sources of renewable energy
18 resources to current and emerging markets, rec-
19 ommendations for removing or addressing such bar-
20 riers, and ways to provide access to the grid that do
21 not unfairly disadvantage renewable or other energy
22 producers.

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

1 priated to the Secretary of Energy \$10,000,000 for each
2 of fiscal years 2006 through 2010.

3 **SEC. 202. RENEWABLE ENERGY PRODUCTION INCENTIVE.**

4 (a) INCENTIVE PAYMENTS.—Section 1212(a) of the
5 Energy Policy Act of 1992 (42 U.S.C. 13317(a)) is
6 amended by striking “and which satisfies” and all that
7 follows through “Secretary shall establish.” and inserting
8 “. If there are insufficient appropriations to make full pay-
9 ments for electric production from all qualified renewable
10 energy facilities in any given year, the Secretary shall as-
11 sign 60 percent of appropriated funds for that year to fa-
12 cilities that use solar, wind, geothermal, or closed-loop
13 (dedicated energy crops) biomass technologies to generate
14 electricity, and assign the remaining 40 percent to other
15 projects. The Secretary may, after transmitting to Con-
16 gress an explanation of the reasons therefor, alter the per-
17 centage requirements of the preceding sentence.”.

18 (b) QUALIFIED RENEWABLE ENERGY FACILITY.—
19 Section 1212(b) of the Energy Policy Act of 1992 (42
20 U.S.C. 13317(b)) is amended—

21 (1) by striking “a State or any political” and
22 all that follows through “nonprofit electrical cooper-
23 ative” and inserting “a not-for-profit electric cooper-
24 ative, a public utility described in section 115 of the
25 Internal Revenue Code of 1986, a State, Common-

1 wealth, territory, or possession of the United States
2 or the District of Columbia, or a political subdivision
3 thereof, or an Indian tribal government or subdivi-
4 sion thereof,”; and

5 (2) by inserting “landfill gas, livestock methane,
6 ocean (tidal, wave, current, and thermal),” after
7 “wind, biomass,”.

8 (c) ELIGIBILITY WINDOW.—Section 1212(c) of the
9 Energy Policy Act of 1992 (42 U.S.C. 13317(c)) is
10 amended by striking “during the 10-fiscal year period be-
11 ginning with the first full fiscal year occurring after the
12 enactment of this section” and inserting “after October
13 1, 2005, and before October 1, 2015”.

14 (d) AMOUNT OF PAYMENT.—Section 1212(e)(1) of
15 the Energy Policy Act of 1992 (42 U.S.C. 13317(e)(1))
16 is amended by inserting “landfill gas, livestock methane,
17 ocean (tidal, wave, current, and thermal),” after “wind,
18 biomass,”.

19 (e) SUNSET.—Section 1212(f) of the Energy Policy
20 Act of 1992 (42 U.S.C. 13317(f)) is amended by striking
21 “the expiration of” and all that follows through “of this
22 section” and inserting “September 30, 2025”.

23 (f) AUTHORIZATION OF APPROPRIATIONS.—Section
24 1212(g) of the Energy Policy Act of 1992 (42 U.S.C.
25 13317(g)) is amended to read as follows:

1 “(g) AUTHORIZATION OF APPROPRIATIONS.—

2 “(1) IN GENERAL.—Subject to paragraph (2),
3 there are authorized to be appropriated such sums
4 as may be necessary to carry out this section for fis-
5 cal years 2005 through 2025.

6 “(2) AVAILABILITY OF FUNDS.—Funds made
7 available under paragraph (1) shall remain available
8 until expended.”.

9 **SEC. 203. FEDERAL PURCHASE REQUIREMENT.**

10 (a) REQUIREMENT.—The President, acting through
11 the Secretary of Energy, shall seek to ensure that, to the
12 extent economically feasible and technically practicable, of
13 the total amount of electric energy the Federal Govern-
14 ment consumes during any fiscal year, the following
15 amounts shall be renewable energy:

16 (1) Not less than 3 percent in fiscal years 2007
17 through 2009.

18 (2) Not less than 5 percent in fiscal years 2010
19 through 2012.

20 (3) Not less than 7.5 percent in fiscal year
21 2013 and each fiscal year thereafter.

22 (b) DEFINITIONS.—In this section:

23 (1) BIOMASS.—The term “biomass” means any
24 solid, nonhazardous, cellulosic material that is de-
25 rived from—

1 (A) any of the following forest-related re-
2 sources: mill residues, precommercial thinnings,
3 slash, and brush, or nonmerchutable 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 (tidal, wave,
22 current, and thermal), geothermal, municipal solid
23 waste, or new hydroelectric generation capacity
24 achieved from increased efficiency or additions of
25 new capacity at an existing hydroelectric project.

1 (c) CALCULATION.—For purposes of determining
2 compliance with the requirement of this section, the
3 amount of renewable energy shall be doubled if—

4 (1) the renewable energy is produced and used
5 on-site at a Federal facility;

6 (2) the renewable energy is produced on Fed-
7 eral lands and used at a Federal facility; or

8 (3) the renewable energy is produced on Indian
9 land as defined in title XXVI of the Energy Policy
10 Act of 1992 (25 U.S.C. 3501 et. seq.) and used at
11 a Federal facility.

12 (d) REPORT.—Not later than April 15, 2007, and
13 every 2 years thereafter, the Secretary of Energy shall
14 provide a report to Congress on the progress of the Fed-
15 eral Government in meeting the goals established by this
16 section.

17 **SEC. 204. INSULAR AREAS ENERGY SECURITY.**

18 Section 604 of the Act entitled “An Act to authorize
19 appropriations for certain insular areas of the United
20 States, and for other purposes”, approved December 24,
21 1980 (48 U.S.C. 1492), is amended—

22 (1) in subsection (a)(4) by striking the period
23 and inserting a semicolon;

24 (2) by adding at the end of subsection (a) the
25 following new paragraphs:

1 “(5) electric power transmission and distribu-
2 tion lines in insular areas are inadequate to with-
3 stand damage caused by the hurricanes and ty-
4 phoons which frequently occur in insular areas and
5 such damage often costs millions of dollars to repair;
6 and

7 “(6) the refinement of renewable energy tech-
8 nologies since the publication of the 1982 Territorial
9 Energy Assessment prepared pursuant to subsection
10 (c) reveals the need to reassess the state of energy
11 production, consumption, infrastructure, reliance on
12 imported energy, opportunities for energy conserva-
13 tion and increased energy efficiency, and indigenous
14 sources in regard to the insular areas.”;

15 (3) by amending subsection (e) to read as fol-
16 lows:

17 “(e)(1) The Secretary of the Interior, in consultation
18 with the Secretary of Energy and the head of government
19 of each insular area, shall update the plans required under
20 subsection (e) by—

21 “(A) updating the contents required by sub-
22 section (c);

23 “(B) drafting long-term energy plans for such
24 insular areas with the objective of reducing, to the
25 extent feasible, their reliance on energy imports by

1 the year 2012, increasing energy conservation and
2 energy efficiency, and maximizing, to the extent fea-
3 sible, use of indigenous energy sources; and

4 “(C) drafting long-term energy transmission
5 line plans for such insular areas with the objective
6 that the maximum percentage feasible of electric
7 power transmission and distribution lines in each in-
8 sular area be protected from damage caused by hur-
9 ricanes and typhoons.

10 “(2) Not later than December 31, 2007, the Sec-
11 retary of the Interior shall submit to Congress the updated
12 plans for each insular area required by this subsection.”;
13 and

14 (4) by amending subsection (g)(4) to read as
15 follows:

16 “(4) POWER LINE GRANTS FOR INSULAR
17 AREAS.—

18 “(A) IN GENERAL.—The Secretary of the
19 Interior is authorized to make grants to govern-
20 ments of insular areas of the United States to
21 carry out eligible projects to protect electric
22 power transmission and distribution lines in
23 such insular areas from damage caused by hur-
24 ricanes and typhoons.

1 “(B) ELIGIBLE PROJECTS.—The Secretary
2 may award grants under subparagraph (A) only
3 to governments of insular areas of the United
4 States that submit written project plans to the
5 Secretary for projects that meet the following
6 criteria:

7 “(i) The project is designed to protect
8 electric power transmission and distribu-
9 tion lines located in 1 or more of the insu-
10 lar areas of the United States from dam-
11 age caused by hurricanes and typhoons.

12 “(ii) The project is likely to substan-
13 tially reduce the risk of future damage,
14 hardship, loss, or suffering.

15 “(iii) The project addresses 1 or more
16 problems that have been repetitive or that
17 pose a significant risk to public health and
18 safety.

19 “(iv) The project is not likely to cost
20 more than the value of the reduction in di-
21 rect damage and other negative impacts
22 that the project is designed to prevent or
23 mitigate. The cost benefit analysis required
24 by this criterion shall be computed on a
25 net present value basis.

1 “(v) The project design has taken into
2 consideration long-term changes to the
3 areas and persons it is designed to protect
4 and has manageable future maintenance
5 and modification requirements.

6 “(vi) The project plan includes an
7 analysis of a range of options to address
8 the problem it is designed to prevent or
9 mitigate and a justification for the selec-
10 tion of the project in light of that analysis.

11 “(vii) The applicant has demonstrated
12 to the Secretary that the matching funds
13 required by subparagraph (D) are avail-
14 able.

15 “(C) PRIORITY.—When making grants
16 under this paragraph, the Secretary shall give
17 priority to grants for projects which are likely
18 to—

19 “(i) have the greatest impact on re-
20 ducing future disaster losses; and

21 “(ii) best conform with plans that
22 have been approved by the Federal Govern-
23 ment or the government of the insular area
24 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 \$5,000,000
18 for each fiscal year beginning after the date of
19 the enactment of this paragraph.”.

20 **SEC. 205. USE OF PHOTOVOLTAIC ENERGY IN PUBLIC**
21 **BUILDINGS.**

22 (a) IN GENERAL.—Part 4 of title V of the National
23 Energy Conservation Policy Act (42 U.S.C. 8271 et seq.)
24 is amended by adding at the end the following:

1 **“SEC. 570. USE OF PHOTOVOLTAIC ENERGY IN PUBLIC**
2 **BUILDINGS.**

3 “(a) PHOTOVOLTAIC ENERGY COMMERCIALIZATION
4 PROGRAM.—

5 “(1) IN GENERAL.—The Secretary may estab-
6 lish a photovoltaic energy commercialization pro-
7 gram for the procurement and installation of photo-
8 voltaic solar electric systems for electric production
9 in new and existing public buildings.

10 “(2) PURPOSES.—The purposes of the program
11 shall be to accomplish the following:

12 “(A) To accelerate the growth of a com-
13 mercially viable photovoltaic industry to make
14 this energy system available to the general pub-
15 lic as an option which can reduce the national
16 consumption of fossil fuel.

17 “(B) To reduce the fossil fuel consumption
18 and costs of the Federal Government.

19 “(C) To attain the goal of installing solar
20 energy systems in 20,000 Federal buildings by
21 2010, as contained in the Federal Government’s
22 Million Solar Roof Initiative of 1997.

23 “(D) To stimulate the general use within
24 the Federal Government of life-cycle costing
25 and innovative procurement methods.

1 “(E) To develop program performance
2 data to support policy decisions on future incen-
3 tive programs with respect to energy.

4 “(3) ACQUISITION OF PHOTOVOLTAIC SOLAR
5 ELECTRIC SYSTEMS.—

6 “(A) IN GENERAL.—The program shall
7 provide for the acquisition of photovoltaic solar
8 electric systems and associated storage capa-
9 bility for use in public buildings.

10 “(B) ACQUISITION LEVELS.—The acquisi-
11 tion of photovoltaic electric systems shall be at
12 a level substantial enough to allow use of low-
13 cost production techniques with at least 150
14 megawatts (peak) cumulative acquired during
15 the 5 years of the program.

16 “(4) ADMINISTRATION.—The Secretary shall
17 administer the program and shall—

18 “(A) issue such rules and regulations as
19 may be appropriate to monitor and assess the
20 performance and operation of photovoltaic solar
21 electric systems installed pursuant to this sub-
22 section;

23 “(B) develop innovative procurement strat-
24 egies for the acquisition of such systems; and

1 “(C) transmit to Congress an annual re-
2 port on the results of the program.

3 “(b) PHOTOVOLTAIC SYSTEMS EVALUATION PRO-
4 GRAM.—

5 “(1) IN GENERAL.—Not later than 60 days
6 after the date of enactment of this section, the Sec-
7 retary shall establish a photovoltaic solar energy sys-
8 tems evaluation program to evaluate such photo-
9 voltaic solar energy systems as are required in public
10 buildings.

11 “(2) PROGRAM REQUIREMENT.—In evaluating
12 photovoltaic solar energy systems under the pro-
13 gram, the Secretary shall ensure that such systems
14 reflect the most advanced technology.

15 “(c) AUTHORIZATION OF APPROPRIATIONS.—

16 “(1) PHOTOVOLTAIC ENERGY COMMERCIALIZA-
17 TION PROGRAM.—There are authorized to be appro-
18 priated to carry out subsection (a) \$50,000,000 for
19 each of fiscal years 2006 through 2010. Such sums
20 shall remain available until expended.

21 “(2) PHOTOVOLTAIC SYSTEMS EVALUATION
22 PROGRAM.—There are authorized to be appropriated
23 to carry out subsection (b) \$10,000,000 for each of
24 fiscal years 2006 through 2010. Such sums shall re-
25 main available until expended.”.

1 (b) CONFORMING AMENDMENT.—The table of sec-
2 tions for the National Energy Conservation Policy Act is
3 amended by inserting after the item relating to section
4 569 the following:

“Sec. 570. Use of photovoltaic energy in public buildings.”.

5 **SEC. 206. GRANTS TO IMPROVE THE COMMERCIAL VALUE**
6 **OF FOREST BIOMASS FOR ELECTRIC ENERGY,**
7 **USEFUL HEAT, TRANSPORTATION FUELS, PE-**
8 **TROLEUM-BASED PRODUCT SUBSTITUTES,**
9 **AND OTHER COMMERCIAL PURPOSES.**

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

11 (1) Thousands of communities in the United
12 States, many located near Federal lands, are at risk
13 to wildfire. Approximately 190,000,000 acres of land
14 managed by the Secretary of Agriculture and the
15 Secretary of the Interior are at risk of catastrophic
16 fire in the near future. The accumulation of heavy
17 forest fuel loads continues to increase as a result of
18 disease, insect infestations, and drought, further
19 raising the risk of fire each year.

20 (2) In addition, more than 70,000,000 acres
21 across all land ownerships are at risk to higher than
22 normal mortality over the next 15 years from insect
23 infestation and disease. High levels of tree mortality
24 from insects and disease result in increased fire risk,
25 loss of old growth, degraded watershed conditions,

1 and changes in species diversity and productivity, as
2 well as diminished fish and wildlife habitat and de-
3 creased timber values.

4 (3) Preventive treatments such as removing fuel
5 loading, ladder fuels, and hazard trees, planting
6 proper species mix and restoring and protecting
7 early successional habitat, and other specific restora-
8 tion treatments designed to reduce the susceptibility
9 of forest land, woodland, and rangeland to insect
10 outbreaks, disease, and catastrophic fire present the
11 greatest opportunity for long-term forest health by
12 creating a mosaic of species-mix and age distribu-
13 tion. Such prevention treatments are widely acknowl-
14 edged to be more successful and cost effective than
15 suppression treatments in the case of insects, dis-
16 ease, and fire.

17 (4) The byproducts of preventive treatment
18 (wood, brush, thinnings, chips, slash, and other haz-
19 ardous fuels) removed from forest lands, woodlands
20 and rangelands represent an abundant supply of bio-
21 mass for biomass-to-energy facilities and raw mate-
22 rial for business. There are currently few markets
23 for the extraordinary volumes of byproducts being
24 generated as a result of the necessary large-scale
25 preventive treatment activities.

1 (5) The United States should—

2 (A) promote economic and entrepreneurial
3 opportunities in using byproducts removed
4 through preventive treatment activities related
5 to hazardous fuels reduction, disease, and insect
6 infestation; and

7 (B) develop and expand markets for tradi-
8 tionally underused wood and biomass as an out-
9 let for byproducts of preventive treatment ac-
10 tivities.

11 (b) DEFINITIONS.—In this section:

12 (1) BIOMASS.—The term “biomass” means
13 trees and woody plants, including limbs, tops, nee-
14 dles, and other woody parts, and byproducts of pre-
15 ventive treatment, such as wood, brush, thinnings,
16 chips, and slash, that are removed—

17 (A) to reduce hazardous fuels; or

18 (B) to reduce the risk of or to contain dis-
19 ease or insect infestation.

20 (2) INDIAN TRIBE.—The term “Indian tribe”
21 has the meaning given the term in section 4(e) of
22 the Indian Self-Determination and Education Assist-
23 ance Act (25 U.S.C. 450b(e)).

24 (3) PERSON.—The term “person” includes—

25 (A) an individual;

1 (B) a community (as determined by the
2 Secretary concerned);

3 (C) an Indian tribe;

4 (D) a small business, micro-business, or a
5 corporation that is incorporated in the United
6 States; and

7 (E) a nonprofit organization.

8 (4) PREFERRED COMMUNITY.—The term “pre-
9 ferred community” means—

10 (A) any town, township, municipality, or
11 other similar unit of local government (as deter-
12 mined by the Secretary concerned) that—

13 (i) has a population of not more than
14 50,000 individuals; and

15 (ii) the Secretary concerned, in the
16 sole discretion of the Secretary concerned,
17 determines contains or is located near
18 land, the condition of which is at signifi-
19 cant risk of catastrophic wildfire, disease,
20 or insect infestation or which suffers from
21 disease or insect infestation; or

22 (B) any county that—

23 (i) is not contained within a metro-
24 politan statistical area; and

1 (ii) the Secretary concerned, in the
2 sole discretion of the Secretary concerned,
3 determines contains or is located near
4 land, the condition of which is at signifi-
5 cant risk of catastrophic wildfire, disease,
6 or insect infestation or which suffers from
7 disease or insect infestation.

8 (5) SECRETARY CONCERNED.—The term “Sec-
9 retary concerned” means—

10 (A) the Secretary of Agriculture with re-
11 spect to National Forest System lands; and

12 (B) the Secretary of the Interior with re-
13 spect to Federal lands under the jurisdiction of
14 the Secretary of the Interior and Indian lands.

15 (c) BIOMASS COMMERCIAL USE GRANT PROGRAM.—

16 (1) IN GENERAL.—The Secretary concerned
17 may make grants to any person that owns or oper-
18 ates a facility that uses biomass as a raw material
19 to produce electric energy, sensible heat, transpor-
20 tation fuels, or substitutes for petroleum-based prod-
21 ucts to offset the costs incurred to purchase biomass
22 for use by such facility.

23 (2) GRANT AMOUNTS.—A grant under this sub-
24 section may not exceed \$20 per green ton of biomass
25 delivered.

1 (3) MONITORING OF GRANT RECIPIENT ACTIVI-
2 TIES.—As a condition of a grant under this sub-
3 section, the grant recipient shall keep such records
4 as the Secretary concerned may require to fully and
5 correctly disclose the use of the grant funds and all
6 transactions involved in the purchase of biomass.
7 Upon notice by a representative of the Secretary
8 concerned, the grant recipient shall afford the rep-
9 resentative reasonable access to the facility that pur-
10 chases or uses biomass and an opportunity to exam-
11 ine the inventory and records of the facility.

12 (d) IMPROVED BIOMASS USE GRANT PROGRAM.—

13 (1) IN GENERAL.—The Secretary concerned
14 may make grants to persons to offset the cost of
15 projects to develop or research opportunities to im-
16 prove the use of, or add value to, biomass. In mak-
17 ing such grants, the Secretary concerned shall give
18 preference to persons in preferred communities.

19 (2) SELECTION.—The Secretary concerned shall
20 select a grant recipient under paragraph (1) after
21 giving consideration to the anticipated public bene-
22 fits of the project, including the potential to develop
23 thermal or electric energy resources or affordable en-
24 ergy, opportunities for the creation or expansion of

1 small businesses and micro-businesses, and the po-
2 tential for new job creation.

3 (3) GRANT AMOUNT.—A grant under this sub-
4 section may not exceed \$500,000.

5 (e) AUTHORIZATION OF APPROPRIATIONS.—There
6 are authorized to be appropriated \$50,000,000 for each
7 of the fiscal years 2006 through 2016 to carry out this
8 section.

9 (f) REPORT.—Not later than October 1, 2012, the
10 Secretary of Agriculture, in consultation with the Sec-
11 retary of the Interior, shall submit to the Committee on
12 Energy and Natural Resources and the Committee on Ag-
13 riculture, Nutrition, and Forestry of the Senate and the
14 Committee on Resources, the Committee on Energy and
15 Commerce, and the Committee on Agriculture of the
16 House of Representatives a report describing the results
17 of the grant programs authorized by this section. The re-
18 port shall include the following:

19 (1) An identification of the size, type, and the
20 use of biomass by persons that receive grants under
21 this section.

22 (2) The distance between the land from which
23 the biomass was removed and the facility that used
24 the biomass.

1 (3) The economic impacts, particularly new job
2 creation, resulting from the grants to and operation
3 of the eligible operations.

4 **SEC. 207. BIOBASED PRODUCTS.**

5 Section 9002(c)(1) of the Farm Security and Rural
6 Investment Act of 2002 (7 U.S.C. 8102(c)(1)) is amended
7 by inserting “or such items that comply with the regula-
8 tions issued under section 103 of Public Law 100–556 (42
9 U.S.C. 6914b–1)” after “practicable”.

10 **SEC. 208. RENEWABLE ENERGY SECURITY.**

11 (a) WEATHERIZATION ASSISTANCE.—Section 415(c)
12 of the Energy Conservation and Production Act (42
13 U.S.C. 6865(c)) is amended—

14 (1) in paragraph (1), by striking “in paragraph
15 (3)” and inserting “in paragraphs (3) and (4)”;

16 (2) in paragraph (3), by striking “\$2,500 per
17 dwelling unit average provided in paragraph (1)”
18 and inserting “dwelling unit averages provided in
19 paragraphs (1) and (4)”; and

20 (3) by adding at the end the following new
21 paragraphs:

22 “(4) The expenditure of financial assistance provided
23 under this part for labor, weatherization materials, and
24 related matters for a renewable energy system shall not
25 exceed an average of \$3,000 per dwelling unit.

1 “(5)(A) The Secretary shall by regulations—

2 “(i) establish the criteria which are to be used
3 in prescribing performance and quality standards
4 under paragraph (6)(A)(ii) or in specifying any form
5 of renewable energy under paragraph (6)(A)(i)(I);
6 and

7 “(ii) establish a procedure under which a manu-
8 facturer of an item may request the Secretary to
9 certify that the item will be treated, for purposes of
10 this paragraph, as a renewable energy system.

11 “(B) The Secretary shall make a final determination
12 with respect to any request filed under subparagraph
13 (A)(ii) within 1 year after the filing of the request, to-
14 gether with any information required to be filed with such
15 request under subparagraph (A)(ii).

16 “(C) Each month the Secretary shall publish a report
17 of any request under subparagraph (A)(ii) which has been
18 denied during the preceding month and the reasons for
19 the denial.

20 “(D) The Secretary shall not specify any form of re-
21 newable energy under paragraph (6)(A)(i)(I) unless the
22 Secretary determines that—

23 “(i) there will be a reduction in oil or natural
24 gas consumption as a result of such specification;

1 “(ii) such specification will not result in an in-
2 creased use of any item which is known to be, or
3 reasonably suspected to be, environmentally haz-
4 ardous or a threat to public health or safety; and

5 “(iii) available Federal subsidies do not make
6 such specification unnecessary or inappropriate (in
7 the light of the most advantageous allocation of eco-
8 nomic resources).

9 “(6) In this subsection—

10 “(A) the term ‘renewable energy system’ means
11 a system which—

12 “(i) when installed in connection with a
13 dwelling, transmits or uses—

14 “(I) solar energy, energy derived from
15 the geothermal deposits, energy derived
16 from biomass, or any other form of renew-
17 able energy which the Secretary specifies
18 by regulations, for the purpose of heating
19 or cooling such dwelling or providing hot
20 water or electricity for use within such
21 dwelling; or

22 “(II) wind energy for nonbusiness res-
23 idential purposes;

1 “(ii) meets the performance and quality
2 standards (if any) which have been prescribed
3 by the Secretary by regulations;

4 “(iii) in the case of a combustion rated
5 system, has a thermal efficiency rating of at
6 least 75 percent; and

7 “(iv) in the case of a solar system, has a
8 thermal efficiency rating of at least 15 percent;
9 and

10 “(B) the term ‘biomass’ means any organic
11 matter that is available on a renewable or recurring
12 basis, including agricultural crops and trees, wood
13 and wood wastes and residues, plants (including
14 aquatic plants), grasses, residues, fibers, and animal
15 wastes, municipal wastes, and other waste mate-
16 rials.”.

17 (b) DISTRICT HEATING AND COOLING PROGRAMS.—
18 Section 172 of the Energy Policy Act of 1992 (42 U.S.C.
19 13451 note) is amended—

20 (1) in subsection (a)—

21 (A) by striking “and” at the end of para-
22 graph (3);

23 (B) by striking the period at the end of
24 paragraph (4) and inserting “; and”; and

1 (C) by adding at the end the following new
2 paragraph:

3 “(5) evaluate the use of renewable energy sys-
4 tems (as such term is defined in section 415(c) of
5 the Energy Conservation and Production Act (42
6 U.S.C. 6865(c)) in residential buildings.”; and

7 (2) in subsection (b), by striking “this Act” and
8 inserting “the Energy Policy Act of 2005”.

9 (c) DEFINITION OF BIOMASS.—Section 203(2) of the
10 Biomass Energy and Alcohol Fuels Act of 1980 (42
11 U.S.C. 8802(2)) is amended to read as follows:

12 “(2) The term ‘biomass’ means any organic
13 matter that is available on a renewable or recurring
14 basis, including agricultural crops and trees, wood
15 and wood wastes and residues, plants (including
16 aquatic plants), grasses, residues, fibers, and animal
17 wastes, municipal wastes, and other waste mate-
18 rials.”.

19 (d) REBATE PROGRAM.—

20 (1) ESTABLISHMENT.—The Secretary of En-
21 ergy shall establish a program providing rebates for
22 consumers for expenditures made for the installation
23 of a renewable energy system in connection with a
24 dwelling unit or small business.

1 (2) AMOUNT OF REBATE.—Rebates provided
2 under the program established under paragraph (1)
3 shall be in an amount not to exceed the lesser of—

4 (A) 25 percent of the expenditures de-
5 scribed in paragraph (1) made by the con-
6 sumer; or

7 (B) \$3,000.

8 (3) DEFINITION.—For purposes of this sub-
9 section, the term “renewable energy system” has the
10 meaning given that term in section 415(c)(6)(A) of
11 the Energy Conservation and Production Act (42
12 U.S.C. 6865(c)(6)(A)), as added by subsection
13 (a)(3) of this section.

14 (4) AUTHORIZATION OF APPROPRIATIONS.—
15 There are authorized to be appropriated to the Sec-
16 retary of Energy for carrying out this subsection, to
17 remain available until expended—

18 (A) \$150,000,000 for fiscal year 2006;

19 (B) \$150,000,000 for fiscal year 2007;

20 (C) \$200,000,000 for fiscal year 2008;

21 (D) \$250,000,000 for fiscal year 2009;

22 and

23 (E) \$250,000,000 for fiscal year 2010.

24 (e) RENEWABLE FUEL INVENTORY.—Not later than
25 180 days after the date of enactment of this Act, the Sec-

1 retary of Energy shall transmit to Congress a report con-
2 taining—

3 (1) an inventory of renewable fuels available for
4 consumers; and

5 (2) a projection of future inventories of renew-
6 able fuels based on the incentives provided in this
7 section

8 **Subtitle C—Hydroelectric**

9 **PART I—ALTERNATIVE CONDITIONS**

10 **SEC. 231. ALTERNATIVE CONDITIONS AND FISHWAYS.**

11 (a) FEDERAL RESERVATIONS.—Section 4(e) of the
12 Federal Power Act (16 U.S.C. 797(e)) is amended by in-
13 serting after “adequate protection and utilization of such
14 reservation.” at the end of the first proviso the following:
15 “The license applicant shall be entitled to a determination
16 on the record, after opportunity for an expedited agency
17 trial-type hearing of any disputed issues of material fact,
18 with respect to such conditions. Such hearing may be con-
19 ducted in accordance with procedures established by agen-
20 cy regulation in consultation with the Federal Energy
21 Regulatory Commission.”.

22 (b) FISHWAYS.—Section 18 of the Federal Power Act
23 (16 U.S.C. 811) is amended by inserting after “and such
24 fishways as may be prescribed by the Secretary of Com-
25 merce.” the following: “The license applicant shall be enti-

1 tled to a determination on the record, after opportunity
2 for an expedited agency trial-type hearing of any disputed
3 issues of material fact, with respect to such fishways. Such
4 hearing may be conducted in accordance with procedures
5 established by agency regulation in consultation with the
6 Federal Energy Regulatory Commission.”.

7 (c) ALTERNATIVE CONDITIONS AND PRESCRIP-
8 TIONS.—Part I of the Federal Power Act (16 U.S.C. 791a
9 et seq.) is amended by adding the following new section
10 at the end thereof:

11 **“SEC. 33. ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.**

12 “(a) ALTERNATIVE CONDITIONS.—(1) Whenever any
13 person applies for a license for any project works within
14 any reservation of the United States, and the Secretary
15 of the department under whose supervision such reserva-
16 tion falls (referred to in this subsection as ‘the Secretary’)
17 deems a condition to such license to be necessary under
18 the first proviso of section 4(e), the license applicant may
19 propose an alternative condition.

20 “(2) Notwithstanding the first proviso of section 4(e),
21 the Secretary shall accept the proposed alternative condi-
22 tion referred to in paragraph (1), and the Commission
23 shall include in the license such alternative condition, if
24 the Secretary determines, based on substantial evidence

1 provided by the license applicant or otherwise available to
2 the Secretary, that such alternative condition—

3 “(A) provides for the adequate protection and
4 utilization of the reservation; and

5 “(B) will either—

6 “(i) cost less to implement; or

7 “(ii) result in improved operation of the
8 project works for electricity production,

9 as compared to the condition initially deemed nec-
10 essary by the Secretary.

11 “(3) The Secretary shall submit into the public
12 record of the Commission proceeding with any condition
13 under section 4(e) or alternative condition it accepts under
14 this section, a written statement explaining the basis for
15 such condition, and reason for not accepting any alter-
16 native condition under this section. The written statement
17 must demonstrate that the Secretary gave equal consider-
18 ation to the effects of the condition adopted and alter-
19 natives not accepted on energy supply, distribution, cost,
20 and use; flood control; navigation; water supply; and air
21 quality (in addition to the preservation of other aspects
22 of environmental quality); based on such information as
23 may be available to the Secretary, including information
24 voluntarily provided in a timely manner by the applicant
25 and others. The Secretary shall also submit, together with

1 the aforementioned written statement, all studies, data,
2 and other factual information available to the Secretary
3 and relevant to the Secretary's decision.

4 “(4) Nothing in this section shall prohibit other inter-
5 ested parties from proposing alternative conditions.

6 “(5) If the Secretary does not accept an applicant's
7 alternative condition under this section, and the Commis-
8 sion finds that the Secretary's condition would be incon-
9 sistent with the purposes of this part, or other applicable
10 law, the Commission may refer the dispute to the Commis-
11 sion's Dispute Resolution Service. The Dispute Resolution
12 Service shall consult with the Secretary and the Commis-
13 sion and issue a non-binding advisory within 90 days. The
14 Secretary may accept the Dispute Resolution Service advi-
15 sory unless the Secretary finds that the recommendation
16 will not provide for the adequate protection and utilization
17 of the reservation. The Secretary shall submit the advisory
18 and the Secretary's final written determination into the
19 record of the Commission's proceeding.

20 “(b) ALTERNATIVE PRESCRIPTIONS.—(1) Whenever
21 the Secretary of the Interior or the Secretary of Commerce
22 prescribes a fishway under section 18, the license appli-
23 cant or licensee may propose an alternative to such pre-
24 scription to construct, maintain, or operate a fishway.

1 “(2) Notwithstanding section 18, the Secretary of the
2 Interior or the Secretary of Commerce, as appropriate,
3 shall accept and prescribe, and the Commission shall re-
4 quire, the proposed alternative referred to in paragraph
5 (1), if the Secretary of the appropriate department deter-
6 mines, based on substantial evidence provided by the li-
7 censee or otherwise available to the Secretary, that such
8 alternative—

9 “(A) will be no less protective than the fishway
10 initially prescribed by the Secretary; and

11 “(B) will either—

12 “(i) cost less to implement; or

13 “(ii) result in improved operation of the
14 project works for electricity production,
15 as compared to the fishway initially deemed nec-
16 essary by the Secretary.

17 “(3) 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-
22 ing any alternative prescription under this section. The
23 written statement must demonstrate that the Secretary
24 gave equal consideration to the effects of the condition
25 adopted and alternatives not accepted on energy supply,

1 distribution, cost, and use; flood control; navigation; water
2 supply; and air quality (in addition to the preservation of
3 other aspects of environmental quality); based on such in-
4 formation as may be available to the Secretary, including
5 information voluntarily provided in a timely manner by the
6 applicant and others. The Secretary shall also submit, to-
7 gether with the aforementioned written statement, all
8 studies, data, and other factual information available to
9 the Secretary and relevant to the Secretary's decision.

10 “(4) Nothing in this section shall prohibit other inter-
11 ested parties from proposing alternative prescriptions.

12 “(5) If the Secretary concerned does not accept an
13 applicant's alternative prescription under this section, and
14 the Commission finds that the Secretary's prescription
15 would be inconsistent with the purposes of this part, or
16 other applicable law, the Commission may refer the dis-
17 pute to the Commission's Dispute Resolution Service. The
18 Dispute Resolution Service shall consult with the Sec-
19 retary and the Commission and issue a non-binding advi-
20 sory within 90 days. The Secretary may accept the Dis-
21 pute Resolution Service advisory unless the Secretary
22 finds that the recommendation will be less protective than
23 the fishway initially prescribed by the Secretary. The Sec-
24 retary shall submit the advisory and the Secretary's final

1 written determination into the record of the Commission's
2 proceeding.”.

3 **PART II—ADDITIONAL HYDROPOWER**

4 **SEC. 241. HYDROELECTRIC PRODUCTION INCENTIVES.**

5 (a) INCENTIVE PAYMENTS.—For electric energy gen-
6 erated and sold by a qualified hydroelectric facility during
7 the incentive period, the Secretary of Energy (referred to
8 in this section as 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:

21 (1) QUALIFIED HYDROELECTRIC FACILITY.—

22 The term “qualified hydroelectric facility” means a
23 turbine or other generating device owned or solely
24 operated by a non-Federal entity which generates

1 hydroelectric energy for sale and which is added to
2 an existing dam or conduit.

3 (2) EXISTING DAM OR CONDUIT.—The term
4 “existing dam or conduit” means any dam or con-
5 duit the construction of which was completed before
6 the date of the enactment of this section and which
7 does not require any construction or enlargement of
8 impoundment or diversion structures (other than re-
9 pair or reconstruction) in connection with the instal-
10 lation of a turbine or other generating device.

11 (3) CONDUIT.—The term “conduit” has the
12 same meaning as when used in section 30(a)(2) of
13 the Federal Power Act (16 U.S.C. 823a(a)(2)).

14 The terms defined in this subsection shall apply without
15 regard to the hydroelectric kilowatt capacity of the facility
16 concerned, without regard to whether the facility uses a
17 dam owned by a governmental or nongovernmental entity,
18 and without regard to whether the facility begins oper-
19 ation on or after the date of the enactment of this section.

20 (c) ELIGIBILITY WINDOW.—Payments may be made
21 under this section only for electric energy generated from
22 a qualified hydroelectric facility which begins operation
23 during the period of 10 fiscal years beginning with the
24 first full fiscal year occurring after the date of enactment
25 of this subtitle.

1 (d) INCENTIVE PERIOD.—A qualified hydroelectric
2 facility may receive payments under this section for a pe-
3 riod of 10 fiscal years (referred to in this section as the
4 “incentive period”). Such period shall begin with the fiscal
5 year in which electric energy generated from the facility
6 is first eligible for such payments.

7 (e) AMOUNT OF PAYMENT.—

8 (1) IN GENERAL.—Payments made by the Sec-
9 retary under this section to the owner or operator of
10 a qualified hydroelectric facility shall be based on
11 the number of kilowatt hours of hydroelectric energy
12 generated by the facility during the incentive period.
13 For any such facility, the amount of such payment
14 shall be 1.8 cents per kilowatt hour (adjusted as
15 provided in paragraph (2)), subject to the avail-
16 ability of appropriations under subsection (g), except
17 that no facility may receive more than \$750,000 in
18 1 calendar year.

19 (2) ADJUSTMENTS.—The amount of the pay-
20 ment made to any person under this section as pro-
21 vided in paragraph (1) shall be adjusted for inflation
22 for each fiscal year beginning after calendar year
23 2005 in the same manner as provided in the provi-
24 sions of section 29(d)(2)(B) of the Internal Revenue
25 Code of 1986, except that in applying such provi-

1 sions the calendar year 2005 shall be substituted for
2 calendar year 1979.

3 (f) SUNSET.—No payment may be made under this
4 section to any qualified hydroelectric facility after the ex-
5 piration of the period of 20 fiscal years beginning with
6 the first full fiscal year occurring after the date of enact-
7 ment of this subtitle, and no payment may be made under
8 this section to any such facility after a payment has been
9 made with respect to such facility for a period of 10 fiscal
10 years.

11 (g) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated to the Secretary to carry
13 out the purposes of this section \$10,000,000 for each of
14 the fiscal years 2006 through 2015.

15 **SEC. 242. HYDROELECTRIC EFFICIENCY IMPROVEMENT.**

16 (a) INCENTIVE PAYMENTS.—The Secretary of En-
17 ergy shall make incentive payments to the owners or oper-
18 ators of hydroelectric facilities at existing dams to be used
19 to make capital improvements in the facilities that are di-
20 rectly related to improving the efficiency of such facilities
21 by at least 3 percent.

22 (b) LIMITATIONS.—Incentive payments under this
23 section shall not exceed 10 percent of the costs of the cap-
24 ital improvement concerned and not more than 1 payment
25 may be made with respect to improvements at a single

1 facility. No payment in excess of \$750,000 may be made
2 with respect to improvements at a single facility.

3 (c) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated to carry out this section
5 not more than \$10,000,000 for each of the fiscal years
6 2006 through 2015.

7 **SEC. 243. SMALL HYDROELECTRIC POWER PROJECTS.**

8 Section 408(a)(6) of the Public Utility Regulatory
9 Policies Act of 1978 (16 U.S.C. 2708(a)(6)) is amended
10 by striking “April 20, 1977” and inserting “March 4,
11 2003”.

12 **SEC. 244. INCREASED HYDROELECTRIC GENERATION AT**
13 **EXISTING FEDERAL FACILITIES.**

14 (a) IN GENERAL.—The Secretary of the Interior and
15 the Secretary of Energy, in consultation with the Sec-
16 retary of the Army, shall jointly conduct a study of the
17 potential for increasing electric power production capa-
18 bility at federally owned or operated water regulation,
19 storage, and conveyance facilities.

20 (b) CONTENT.—The study under this section shall in-
21 clude identification and description in detail of each facil-
22 ity that is capable, with or without modification, of pro-
23 ducing additional hydroelectric power, including esti-
24 mation of the existing potential for the facility to generate
25 hydroelectric power.

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-
22 ity and the level of Federal power customer involve-
23 ment in the determination of such costs.

24 (5) The benefits that would be achieved by such
25 installation, upgrade, modification, or other action,

1 including quantified estimates of any additional en-
2 ergy or capacity from each facility identified under
3 subsection (b).

4 (6) A description of actions that are planned,
5 underway, or might reasonably be considered to in-
6 crease hydroelectric power production by replacing
7 turbine runners, by performing generator upgrades
8 or rewinds, or construction of pumped storage facili-
9 ties.

10 (7) The impact of increased hydroelectric power
11 production on irrigation, fish, wildlife, Indian tribes,
12 river health, water quality, navigation, recreation,
13 fishing, and flood control.

14 (8) Any additional recommendations to increase
15 hydroelectric power production from, and reduce
16 costs and improve efficiency at, federally owned or
17 operated water regulation, storage, and conveyance
18 facilities.

19 **SEC. 245. SHIFT OF PROJECT LOADS TO OFF-PEAK PERI-**
20 **ODS.**

21 (a) IN GENERAL.—The Secretary of the Interior
22 shall—

23 (1) review electric power consumption by Bu-
24 reau of Reclamation facilities for water pumping
25 purposes; and

1 (2) make such adjustments in such pumping as
2 possible to minimize the amount of electric power
3 consumed for such pumping during periods of peak
4 electric power consumption, including by performing
5 as much of such pumping as possible during off-
6 peak hours at night.

7 (b) CONSENT OF AFFECTED IRRIGATION CUSTOMERS
8 REQUIRED.—The Secretary may not under this section
9 make any adjustment in pumping at a facility without the
10 consent of each person that has contracted with the
11 United States for delivery of water from the facility for
12 use for irrigation and that would be affected by such ad-
13 justment.

14 (c) EXISTING OBLIGATIONS NOT AFFECTED.—This
15 section shall not be construed to affect any existing obliga-
16 tion of the Secretary to provide electric power, water, or
17 other benefits from Bureau of Reclamation facilities, in-
18 cluding recreational releases.

1 **TITLE III—OIL AND GAS**
2 **Subtitle A—Petroleum Reserve and**
3 **Home Heating Oil**

4 **SEC. 301. PERMANENT AUTHORITY TO OPERATE THE STRA-**
5 **TEGIC PETROLEUM RESERVE AND OTHER**
6 **ENERGY PROGRAMS.**

7 (a) AMENDMENT TO TITLE I OF THE ENERGY POL-
8 ICY AND CONSERVATION ACT.—Title I of the Energy Pol-
9 icy and Conservation Act (42 U.S.C. 6211 et seq.) is
10 amended—

11 (1) by striking section 166 (42 U.S.C. 6246)
12 and inserting the following:

13 “AUTHORIZATION OF APPROPRIATIONS
14 “SEC. 166. There are authorized to be appropriated
15 to the Secretary such sums as may be necessary to carry
16 out this part and part D, to remain available until ex-
17 pended.”;

18 (2) by striking section 186 (42 U.S.C. 6250e);
19 and

20 (3) by striking part E (42 U.S.C. 6251; relat-
21 ing to the expiration of title I of the Act).

22 (b) AMENDMENT TO TITLE II OF THE ENERGY POL-
23 ICY AND CONSERVATION ACT.—Title II of the Energy
24 Policy and Conservation Act (42 U.S.C. 6271 et seq.) is
25 amended—

1 (1) by inserting before section 273 (42 U.S.C.
2 6283) the following:

3 **“PART C—SUMMER FILL AND FUEL BUDGETING**
4 **PROGRAMS”;**

5 (2) by striking section 273(e) (42 U.S.C.
6 6283(e); relating to the expiration of summer fill
7 and fuel budgeting programs); and

8 (3) by striking part D (42 U.S.C. 6285; relat-
9 ing to the expiration of title II of the Act).

10 (c) TECHNICAL AMENDMENTS.—The table of con-
11 tents for the Energy Policy and Conservation Act is
12 amended—

13 (1) by inserting after the items relating to part
14 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.”;

15 (2) by amending the items relating to part C of
16 title II to read as follows:

“PART C—SUMMER FILL AND FUEL BUDGETING PROGRAMS

“Sec. 273. Summer fill and fuel budgeting programs.”;

17 and

18 (3) by striking the items relating to part D of
19 title II.

1 (d) AMENDMENT TO THE ENERGY POLICY AND CON-
2 SERVATION ACT.—Section 183(b)(1) of the Energy Policy
3 and Conservation Act (42 U.S.C. 6250(b)(1)) is amended
4 by striking all after “increases” through to “mid-October
5 through March” and inserting “by more than 60 percent
6 over its 5-year rolling average for the months of mid-October
7 through March (considered as a heating season aver-
8 age)”.

9 (e) FILL STRATEGIC PETROLEUM RESERVE TO CA-
10 PACITY.—The Secretary of Energy shall, as expeditiously
11 as practicable, acquire petroleum in amounts sufficient to
12 fill the Strategic Petroleum Reserve to the 1,000,000,000
13 barrel capacity authorized under section 154(a) of the En-
14 ergy Policy and Conservation Act (42 U.S.C. 6234(a)),
15 consistent with the provisions of sections 159 and 160 of
16 such Act (42 U.S.C. 6239, 6240).

17 **SEC. 302. NATIONAL OILHEAT RESEARCH ALLIANCE.**

18 Section 713 of the Energy Act of 2000 (42 U.S.C.
19 6201 note) is amended by striking “4” and inserting “9”.

20 **SEC. 303. SITE SELECTION.**

21 Not later than 1 year after the date of enactment
22 of this Act, the Secretary of Energy shall complete a pro-
23 ceeding to select, from sites that the Secretary has pre-
24 viously studied, sites necessary to enable acquisition by the

1 Secretary of the full authorized volume of the Strategic
2 Petroleum Reserve.

3 **SEC. 304. SUSPENSION OF STRATEGIC PETROLEUM RE-**
4 **SERVE DELIVERIES.**

5 The Secretary of Energy shall suspend deliveries of
6 royalty-in-kind oil to the Strategic Petroleum Reserve
7 until the price of oil falls below \$40 per barrel for 2 con-
8 secutive weeks on the New York Mercantile Exchange.

9 **Subtitle B—Production Incentives**

10 **SEC. 320. LIQUEFACTION OR GASIFICATION NATURAL GAS**
11 **TERMINALS.**

12 (a) SCOPE OF NATURAL GAS ACT.—Section 1(b) of
13 the Natural Gas Act (15 U.S.C. 717(b)) is amended by
14 inserting “and to the importation or exportation of natural
15 gas in foreign commerce and to persons engaged in such
16 importation or exportation,” after “such transportation or
17 sale,”.

18 (b) DEFINITION.—Section 2 of the Natural Gas Act
19 (15 U.S.C. 717a) is amended by adding at the end the
20 following new paragraph:

21 “(11) ‘Liquefaction or gasification natural gas
22 terminal’ includes all facilities located onshore or in
23 State waters that are used to receive, unload, load,
24 store, transport, gasify, liquefy, or process natural
25 gas that is imported to the United States from a

1 foreign country, exported to a foreign country from
2 the United States, or transported in interstate com-
3 merce by waterborne tanker, but does not include—

4 “(A) waterborne tankers used to deliver
5 natural gas to or from any such facility; or

6 “(B) any pipeline or storage facility sub-
7 ject to the jurisdiction of the Commission under
8 section 7.”.

9 (c) AUTHORIZATION FOR CONSTRUCTION, EXPAN-
10 SION, OR OPERATION OF LIQUEFACTION OR GASIFI-
11 CATION NATURAL GAS TERMINALS.—(1) The title for sec-
12 tion 3 of the Natural Gas Act (15 U.S.C. 717b) is amend-
13 ed by inserting “; LIQUEFACTION OR GASIFICATION NAT-
14 URAL GAS TERMINALS” after “EXPORTATION OR IMPORTA-
15 TION OF NATURAL GAS”.

16 (2) Section 3 of the Natural Gas Act (15 U.S.C.
17 717b) is amended by adding at the end the following:

18 “(d) AUTHORIZATION FOR CONSTRUCTION, EXPAN-
19 SION, OR OPERATION OF LIQUEFACTION OR GASIFI-
20 CATION NATURAL GAS TERMINALS.—

21 “(1) COMMISSION AUTHORIZATION RE-
22 QUIRED.—No person shall construct, expand, or op-
23 erate a liquefaction or gasification natural gas ter-
24 minal without an order from the Commission au-
25 thORIZING such person to do so.

1 “(2) AUTHORIZATION PROCEDURES.—

2 “(A) NOTICE AND HEARING.—Upon the
3 filing of any application to construct, expand,
4 or operate a liquefaction or gasification natural
5 gas terminal, the Commission shall—

6 “(i) set the matter for hearing;

7 “(ii) give reasonable notice of the
8 hearing to all interested persons, including
9 the State commission of the State in which
10 the liquefaction or gasification natural gas
11 terminal is located;

12 “(iii) decide the matter in accordance
13 with this subsection; and

14 “(iv) issue or deny the appropriate
15 order accordingly.

16 “(B) DESIGNATION AS LEAD AGENCY.—

17 “(i) IN GENERAL.—The Commission
18 shall act as the lead agency for the pur-
19 poses of coordinating all applicable Federal
20 authorizations and for the purposes of
21 complying with the National Environ-
22 mental Policy Act of 1969 (42 U.S.C.
23 4312 et seq.) for a liquefaction or gasifi-
24 cation natural gas terminal.

1 “(ii) OTHER AGENCIES.—Each Fed-
2 eral agency considering an aspect of the
3 construction, expansion, or operation of a
4 liquefaction or gasification natural gas ter-
5 minal shall cooperate with the Commission
6 and comply with the deadlines established
7 by the Commission.

8 “(C) SCHEDULE.—

9 “(i) COMMISSION AUTHORITY TO SET
10 SCHEDULE.—The Commission shall estab-
11 lish a schedule for all Federal and State
12 administrative proceedings required under
13 authority of Federal law to construct, ex-
14 pand, or operate a liquefaction or gasifi-
15 cation natural gas terminal. In establishing
16 the schedule, the Commission shall—

17 “(I) ensure expeditious comple-
18 tion of all such proceedings; and

19 “(II) accommodate the applicable
20 schedules established by Federal law
21 for such proceedings.

22 “(ii) FAILURE TO MEET SCHEDULE.—
23 If a Federal or State administrative agency
24 does not complete a proceeding for an ap-
25 proval that is required before a person may

1 construct, expand, or operate the lique-
2 faction or gasification natural gas ter-
3 minal, in accordance with the schedule es-
4 tablished by the Commission under this
5 subparagraph, and if—

6 “(I) a determination has been
7 made by the Court pursuant to sec-
8 tion 19(d) that such delay is unrea-
9 sonable; and

10 “(II) the agency has failed to act
11 on any remand by the Court within
12 the deadline set by the Court,

13 that approval may be conclusively pre-
14 sumed by the Commission.

15 “(D) EXCLUSIVE RECORD.—The Commis-
16 sion shall, with the cooperation of Federal and
17 State administrative agencies and officials,
18 maintain a complete consolidated record of all
19 decisions made or actions taken by the Commis-
20 sion or by a Federal administrative agency or
21 officer (or State administrative agency or offi-
22 cer acting under delegated Federal authority)
23 with respect to the construction, expansion, or
24 operation of a liquefaction or gasification nat-
25 ural gas terminal. Such record shall be the ex-

1 clusive record for any Federal administrative
2 proceeding that is an appeal or review of any
3 such decision made or action taken.

4 “(E) STATE AND LOCAL SAFETY CONSID-
5 ERATIONS.—

6 “(i) IN GENERAL.—The Commission
7 shall consult with the State commission of
8 the State in which the liquefaction or gas-
9 fication natural gas terminal is located re-
10 garding State and local safety consider-
11 ations prior to issuing an order pursuant
12 to this subsection and consistent with the
13 schedule established under subparagraph
14 (C).

15 “(ii) STATE SAFETY INSPECTIONS.—
16 The State commission of the State in
17 which a liquefaction or gasification natural
18 gas terminal is located may, after the ter-
19 minal is operational, conduct safety inspec-
20 tions with respect to the liquefaction or
21 gasification natural gas terminal if—

22 “(I) the State commission pro-
23 vides written notice to the Commis-
24 sion of its intention to do so; and

1 “(II) the inspections will be car-
2 ried out in conformance with Federal
3 regulations and guidelines.

4 Enforcement of any safety violation discov-
5 ered by a State commission pursuant to
6 this clause shall be carried out by Federal
7 officials. The Commission shall take appro-
8 priate action in response to a report of a
9 violation not later than 90 days after re-
10 ceiving such report.

11 “(iii) STATE AND LOCAL SAFETY CON-
12 SIDERATIONS.—For the purposes of this
13 subparagraph, State and local safety con-
14 siderations include—

15 “(I) the kind and use of the facil-
16 ity;

17 “(II) the existing and projected
18 population and demographic charac-
19 teristics of the location;

20 “(III) the existing and proposed
21 land use near the location;

22 “(IV) the natural and physical
23 aspects of the location;

24 “(V) the medical, law enforce-
25 ment, and fire prevention capabilities

1 near the location that can respond at
2 the facility; and

3 “(VI) the feasibility of remote
4 siting.

5 “(3) ISSUANCE OF COMMISSION ORDER.—

6 “(A) IN GENERAL.—The Commission shall
7 issue an order authorizing, in whole or in part,
8 the construction, expansion, or operation cov-
9 ered by the application to any qualified appli-
10 cant—

11 “(i) unless the Commission finds such
12 actions or operations will not be consistent
13 with the public interest; and

14 “(ii) if the Commission has found that
15 the applicant is—

16 “(I) able and willing to carry out
17 the actions and operations proposed;
18 and

19 “(II) willing to conform to the
20 provisions of this Act and any require-
21 ments, rules, and regulations of the
22 Commission set forth under this Act.

23 “(B) TERMS AND CONDITIONS.—The Com-
24 mission may by its order grant an application,
25 in whole or in part, with such modification and

1 upon such terms and conditions as the Commis-
2 sion may find necessary or appropriate.

3 “(C) LIMITATIONS ON TERMS AND CONDI-
4 TIONS TO COMMISSION ORDER.—

5 “(i) IN GENERAL.—Any Commission
6 order issued pursuant to this subsection
7 before January 1, 2011, shall not be condi-
8 tioned on—

9 “(I) a requirement that the lique-
10 faction or gasification natural gas ter-
11 minal offer service to persons other
12 than the person, or any affiliate there-
13 of, securing the order; or

14 “(II) any regulation of the lique-
15 faction or gasification natural gas ter-
16 minal’s rates, charges, terms, or con-
17 ditions of service.

18 “(ii) INAPPLICABLE TO TERMINAL
19 EXIT PIPELINE.—Clause (i) shall not apply
20 to any pipeline subject to the jurisdiction
21 of the Commission under section 7 exiting
22 a liquefaction or gasification natural gas
23 terminal.

24 “(iii) EXPANSION OF REGULATED
25 TERMINAL.—An order issued under this

1 paragraph that relates to an expansion of
2 an existing liquefaction or gasification nat-
3 ural gas terminal, where any portion of the
4 existing terminal continues to be subject to
5 Commission regulation of rates, charges,
6 terms, or conditions of service, may not re-
7 sult in—

8 “(I) subsidization of the expan-
9 sion by regulated terminal users;

10 “(II) degradation of service to
11 the regulated terminal users; or

12 “(III) undue discrimination
13 against the regulated terminal users.

14 “(iv) EXPIRATION.—This subpara-
15 graph shall cease to have effect on Janu-
16 ary 1, 2021.

17 “(4) DEFINITION.—For the purposes of this
18 subsection, the term ‘Federal authorization’ means
19 any authorization required under Federal law in
20 order to construct, expand, or operate a liquefaction
21 or gasification natural gas terminal, including such
22 permits, special use authorizations, certifications,
23 opinions, or other approvals as may be required,
24 whether issued by a Federal or State agency.”.

1 (d) JUDICIAL REVIEW.—Section 19 of the Natural
2 Gas Act (15 U.S.C. 717r) is amended by adding at the
3 end the following:

4 “(d) JUDICIAL REVIEW.—

5 “(1) IN GENERAL.—The United States Court of
6 Appeals for the District of Columbia Circuit shall
7 have original and exclusive jurisdiction over any civil
8 action—

9 “(A) for review of any order, action, or
10 failure to act of any Federal or State adminis-
11 trative agency to issue, condition, or deny any
12 permit, license, concurrence, or approval re-
13 quired under Federal law for the construction,
14 expansion, or operation of a liquefaction or gas-
15 ification natural gas terminal;

16 “(B) alleging unreasonable delay, in meet-
17 ing a schedule established under section
18 3(d)(2)(C) or otherwise, by any Federal or
19 State administrative agency in entering an
20 order or taking other action described in sub-
21 paragraph (A); or

22 “(C) challenging any decision made or ac-
23 tion taken by the Commission under section
24 3(d).

1 “(2) COMMISSION ACTION.—For any action de-
2 scribed in this subsection, the Commission shall file
3 with the Court the consolidated record maintained
4 under section 3(d)(2)(D).

5 “(3) COURT ACTION.—If the Court finds under
6 paragraph (1)(A) or (B) that an order, action, fail-
7 ure to act, or delay is inconsistent with applicable
8 Federal law, and would prevent the construction, ex-
9 pansion, or operation of a liquefaction or gasification
10 natural gas terminal, the order or action shall be
11 deemed to have been issued or taken, subject to any
12 conditions established by the Federal or State ad-
13 ministrative agency upon remand from the Court,
14 such conditions to be consistent with the order of
15 the Court. If the Court remands the order or action
16 to the Federal or State agency, the Court shall set
17 a reasonable deadline for the agency to act on re-
18 mand.

19 “(4) UNREASONABLE DELAY.—For the pur-
20 poses of paragraph (1)(B), the failure of an agency
21 to issue a permit, license, concurrence, or approval
22 within the later of—

23 “(A) 1 year after the date of filing of an
24 application for the permit, license, concurrence,
25 or approval; or

1 “(B) 60 days after the date of issuance of
2 the order under section 3(d),
3 shall be considered unreasonable delay unless the
4 Court, for good cause shown, determines otherwise.

5 “(5) EXPEDITED REVIEW.—The Court shall set
6 any action brought under this subsection for expe-
7 dited consideration.”.

8 **SEC. 327. HYDRAULIC FRACTURING.**

9 Paragraph (1) of section 1421(d) of the Safe Drink-
10 ing Water Act (42 U.S.C. 300h(d)) is amended to read
11 as follows:

12 “(1) UNDERGROUND INJECTION.—The term
13 ‘underground injection’—

14 “(A) means the subsurface emplacement of
15 fluids by well injection; and

16 “(B) excludes—

17 “(i) the underground injection of nat-
18 ural gas for purposes of storage; and

19 “(ii) the underground injection of
20 fluids or propping agents pursuant to hy-
21 draulic fracturing operations related to oil
22 or gas production activities.”.

1 **SEC. 330. APPEALS RELATING TO PIPELINE CONSTRUC-**
2 **TION OR OFFSHORE MINERAL DEVELOP-**
3 **MENT PROJECTS.**

4 (a) **AGENCY OF RECORD, PIPELINE CONSTRUCTION**
5 **PROJECTS.**—Any Federal administrative agency pro-
6 ceeding that is an appeal or review under section 319 of
7 the Coastal Zone Management Act of 1972 (16 U.S.C.
8 1465), as amended by this Act, related to Federal author-
9 ity for an interstate natural gas pipeline construction
10 project, including construction of natural gas storage and
11 liquefied natural gas facilities, shall use as its exclusive
12 record for all purposes the record compiled by the Federal
13 Energy Regulatory Commission pursuant to the Commis-
14 sion’s proceeding under sections 3 and 7 of the Natural
15 Gas Act (15 U.S.C. 717b, 717f).

16 (b) **SENSE OF CONGRESS.**—It is the sense of Con-
17 gress that all Federal and State agencies with jurisdiction
18 over interstate natural gas pipeline construction activities
19 should coordinate their proceedings within the timeframes
20 established by the Federal Energy Regulatory Commission
21 when the Commission is acting under sections 3 and 7
22 of the Natural Gas Act (15 U.S.C. 717b, 717f) to deter-
23 mine whether a certificate of public convenience and neces-
24 sity should be issued for a proposed interstate natural gas
25 pipeline.

1 (c) AGENCY OF RECORD, OFFSHORE MINERAL DE-
2 VELOPMENT PROJECTS.—Any Federal administrative
3 agency proceeding that is an appeal or review under sec-
4 tion 319 of the Coastal Zone Management Act of 1972
5 (16 U.S.C. 1465), as amended by this Act, related to Fed-
6 eral authority for the permitting, approval, or other au-
7 thorization of energy projects, including projects to ex-
8 plore, develop, or produce mineral resources in or under-
9 lying the outer Continental Shelf shall use as its exclusive
10 record for all purposes (except for the filing of pleadings)
11 the record compiled by the relevant Federal permitting
12 agency.

13 **SEC. 333. NATURAL GAS MARKET TRANSPARENCY.**

14 The Natural Gas Act (15 U.S.C 717 et seq.) is
15 amended—

16 (1) by redesignating section 24 as section 25;

17 and

18 (2) by inserting after section 23 the following:

19 **“SEC. 24. NATURAL GAS MARKET TRANSPARENCY.**

20 “(a) AUTHORIZATION.—(1) Not later than 180 days
21 after the date of enactment of the Energy Policy Act of
22 2005, the Federal Energy Regulatory Commission shall
23 issue rules directing all entities subject to the Commis-
24 sion’s jurisdiction as provided under this Act to timely re-
25 port information about the availability and prices of nat-

1 ural gas sold at wholesale in interstate commerce to the
2 Commission and price publishers.

3 “(2) The Commission shall evaluate the data for ade-
4 quate price transparency and accuracy.

5 “(3) Rules issued under this subsection requiring the
6 reporting of information to the Commission that may be
7 come publicly available shall be limited to aggregate data
8 and transaction-specific data that are otherwise required
9 by the Commission to be made public.

10 “(4) In exercising its authority under this section, the
11 Commission shall not—

12 “(A) compete with, or displace from the market
13 place, any price publisher; or

14 “(B) regulate price publishers or impose any re-
15 quirements on the publication of information.

16 “(b) **TIMELY ENFORCEMENT.**—No person shall be
17 subject to any penalty under this section with respect to
18 a violation occurring more than 3 years before the date
19 on which the Federal Energy Regulatory Commission
20 seeks to assess a penalty.

21 “(c) **LIMITATION ON COMMISSION AUTHORITY.**—(1)
22 The Commission shall not condition access to interstate
23 pipeline transportation upon the reporting requirements
24 authorized under this section.

1 “(2) Natural gas sales by a producer that are attrib-
2 utable to volumes of natural gas produced by such pro-
3 ducer shall not be subject to the rules issued pursuant to
4 this section.

5 “(3) The Commission shall not require natural gas
6 producers, processors, or users who have a de minimis
7 market presence to participate in the reporting require-
8 ments provided in this section.”.

9 **Subtitle C—Access to Federal Land**

10 **SEC. 344. CONSULTATION REGARDING OIL AND GAS LEAS-** 11 **ING ON PUBLIC LAND.**

12 (a) IN GENERAL.—Not later than 180 days after the
13 date of enactment of this Act, the Secretary of the Interior
14 and the Secretary of Agriculture shall enter into a memo-
15 randum of understanding regarding oil and gas leasing
16 on—

17 (1) public lands under the jurisdiction of the
18 Secretary of the Interior; and

19 (2) National Forest System lands under the ju-
20 risdiction of the Secretary of Agriculture.

21 (b) CONTENTS.—The memorandum of understanding
22 shall include provisions that—

23 (1) establish administrative procedures and
24 lines of authority that ensure timely processing of oil
25 and gas lease applications, surface use plans of oper-

1 ation, and applications for permits to drill, including
2 steps for processing surface use plans and applica-
3 tions for permits to drill consistent with the
4 timelines established by the amendment made by
5 section 348;

6 (2) eliminate duplication of effort by providing
7 for coordination of planning and environmental com-
8 pliance efforts; and

9 (3) ensure that lease stipulations are—

10 (A) applied consistently;

11 (B) coordinated between agencies; and

12 (C) only as restrictive as necessary to pro-
13 tect the resource for which the stipulations are
14 applied.

15 (c) DATA RETRIEVAL SYSTEM.—

16 (1) IN GENERAL.—Not later than 1 year after
17 the date of enactment of this Act, the Secretary of
18 the Interior and the Secretary of Agriculture shall
19 establish a joint data retrieval system that is capable
20 of—

21 (A) tracking applications and formal re-
22 quests made in accordance with procedures of
23 the Federal onshore oil and gas leasing pro-
24 gram; and

1 (B) providing information regarding the
2 status of the applications and requests within
3 the Department of the Interior and the Depart-
4 ment of Agriculture.

5 (2) RESOURCE MAPPING.—Not later than 2
6 years after the date of enactment of this Act, the
7 Secretary of the Interior and the Secretary of Agri-
8 culture shall establish a joint Geographic Informa-
9 tion System mapping system for use in—

10 (A) tracking surface resource values to aid
11 in resource management; and

12 (B) processing surface use plans of oper-
13 ation and applications for permits to drill.

14 **SEC. 346. COMPLIANCE WITH EXECUTIVE ORDER 13211; AC-**
15 **TIONS CONCERNING REGULATIONS THAT**
16 **SIGNIFICANTLY AFFECT ENERGY SUPPLY,**
17 **DISTRIBUTION, OR USE.**

18 (a) REQUIREMENT.—The head of each Federal agen-
19 cy shall require that before the Federal agency takes any
20 action that could have a significant adverse effect on the
21 supply of domestic energy resources from Federal public
22 land, the Federal agency taking the action shall comply
23 with Executive Order No. 13211 (42 U.S.C. 13201 note).

24 (b) GUIDANCE.—Not later than 180 days after the
25 date of enactment of this Act, the Secretary of Energy

1 shall publish guidance for purposes of this section describ-
2 ing what constitutes a significant adverse effect on the
3 supply of domestic energy resources under Executive
4 Order No. 13211 (42 U.S.C. 13201 note).

5 (c) MEMORANDUM OF UNDERSTANDING.—The Sec-
6 retary of the Interior and the Secretary of Agriculture
7 shall include in the memorandum of understanding under
8 section 344 provisions for implementing subsection (a) of
9 this section.

10 **SEC. 350. ENERGY FACILITY RIGHTS-OF-WAY AND COR-**
11 **RIDORS ON FEDERAL LAND.**

12 (a) REPORT TO CONGRESS.—

13 (1) IN GENERAL.—Not later than 1 year after
14 the date of enactment of this Act, the Secretary of
15 Agriculture and the Secretary of the Interior, in con-
16 sultation with the Secretary of Commerce, the Sec-
17 retary of Defense, the Secretary of Energy, and the
18 Federal Energy Regulatory Commission, shall sub-
19 mit to Congress a joint report—

20 (A) that addresses—

21 (i) the location of existing rights-of-
22 way and designated and de facto corridors
23 for oil and gas pipelines and electric trans-
24 mission and distribution facilities on Fed-
25 eral land; and

1 (ii) opportunities for additional oil
2 and gas pipeline and electric transmission
3 capacity within those rights-of-way and
4 corridors; and

5 (B) that includes a plan for making avail-
6 able, on request, to the appropriate Federal,
7 State, and local agencies, tribal governments,
8 and other persons involved in the siting of oil
9 and gas pipelines and electricity transmission
10 facilities Geographic Information System-based
11 information regarding the location of the exist-
12 ing rights-of-way and corridors and any planned
13 rights-of-way and corridors.

14 (2) CONSULTATIONS AND CONSIDERATIONS.—
15 In preparing the report, the Secretary of the Interior
16 and the Secretary of Agriculture shall consult
17 with—

18 (A) other agencies of Federal, State, tribal,
19 or local units of government, as appropriate;

20 (B) persons involved in the siting of oil
21 and gas pipelines and electric transmission fa-
22 cilities; and

23 (C) other interested members of the public.

24 (3) LIMITATION.—The Secretary of the Interior
25 and the Secretary of Agriculture shall limit the dis-

1 tribution of the report and Geographic Information
2 System-based information referred to in paragraph
3 (1) as necessary for national and infrastructure se-
4 curity reasons, if either Secretary determines that
5 the information may be withheld from public disclo-
6 sure under a national security or other exception
7 under section 552(b) of title 5, United States Code.

8 (b) CORRIDOR DESIGNATIONS.—

9 (1) 11 CONTIGUOUS WESTERN STATES.—Not
10 later than 2 years after the date of enactment of
11 this Act, the Secretary of Agriculture, the Secretary
12 of Commerce, the Secretary of Defense, the Sec-
13 retary of Energy, and the Secretary of the Interior,
14 in consultation with the Federal Energy Regulatory
15 Commission and the affected utility industries, shall
16 jointly—

17 (A) designate, under title V of the Federal
18 Land Policy and Management Act of 1976 (43
19 U.S.C. 1761 et seq.) and other applicable Fed-
20 eral laws, corridors for oil and gas pipelines and
21 electricity transmission and facilities on Federal
22 land in the eleven contiguous Western States
23 (as defined in section 103 of the Federal Land
24 Policy and Management Act of 1976 (43 U.S.C.
25 1702));

1 (B) perform any environmental reviews
2 that may be required to complete the designa-
3 tions of corridors for the facilities on Federal
4 land in the eleven contiguous Western States;
5 and

6 (C) incorporate the designated corridors
7 into—

8 (i) the relevant departmental and
9 agency land use and resource management
10 plans; or

11 (ii) equivalent plans.

12 (2) OTHER STATES.—Not later than 4 years
13 after the date of enactment of this Act, the Sec-
14 retary of Agriculture, the Secretary of Commerce,
15 the Secretary of Defense, the Secretary of Energy,
16 and the Secretary of the Interior, in consultation
17 with the Federal Energy Regulatory Commission
18 and the affected utility industries, shall jointly—

19 (A) identify corridors for oil and gas pipe-
20 lines and electricity transmission and distribu-
21 tion facilities on Federal land in the States
22 other than those described in paragraph (1);
23 and

1 (B) schedule prompt action to identify,
2 designate, and incorporate the corridors into
3 the land use plan.

4 (3) ONGOING RESPONSIBILITIES.—The Sec-
5 retary of Agriculture, the Secretary of Commerce,
6 the Secretary of Defense, the Secretary of Energy,
7 and the Secretary of the Interior, with respect to
8 lands under their respective jurisdictions, in con-
9 sultation with the Federal Energy Regulatory Com-
10 mission and the affected utility industries, shall es-
11 tablish procedures that—

12 (A) ensure that additional corridors for oil
13 and gas pipelines and electricity transmission
14 and distribution facilities on Federal land are
15 promptly identified and designated; and

16 (B) expedite applications to construct or
17 modify oil and gas pipelines and electricity
18 transmission and distribution facilities within
19 the corridors, taking into account prior analyses
20 and environmental reviews undertaken during
21 the designation of corridors.

22 (c) CONSIDERATIONS.—In carrying out this section,
23 the Secretaries shall take into account the need for up-
24 graded and new electricity transmission and distribution
25 facilities to—

- 1 (1) improve reliability;
2 (2) relieve congestion; and
3 (3) enhance the capability of the national grid
4 to deliver electricity.

5 (d) DEFINITION OF CORRIDOR.—

6 (1) IN GENERAL.—In this section and title V of
7 the Federal Land Policy and Management Act of
8 1976 (43 U.S.C. 1761 et seq.), the term “corridor”
9 means—

10 (A) a linear strip of land—

11 (i) with a width determined with con-
12 sideration given to technological, environ-
13 mental, and topographical factors; and

14 (ii) that contains, or may in the fu-
15 ture contain, 1 or more utility, communica-
16 tion, or transportation facilities;

17 (B) a land use designation that is estab-
18 lished—

19 (i) by law;

20 (ii) by Secretarial Order;

21 (iii) through the land use planning
22 process; or

23 (iv) by other management decision;

24 and

1 (C) a designation made for the purpose of
2 establishing the preferred location of compatible
3 linear facilities and land uses.

4 (2) SPECIFICATIONS OF CORRIDOR.—On des-
5 ignation of a corridor under this section, the center-
6 line, width, and compatible uses of a corridor shall
7 be specified.

8 **SEC. 355. ENCOURAGING GREAT LAKES OIL AND GAS**
9 **DRILLING BAN.**

10 Congress encourages no Federal or State permit or
11 lease to be issued for new oil and gas slant, directional,
12 or offshore drilling in or under one or more of the Great
13 Lakes.

14 **SEC. 358. FEDERAL COALBED METHANE REGULATION.**

15 Any State currently on the list of Affected States es-
16 tablished under section 1339(b) of the Energy Policy Act
17 of 1992 (42 U.S.C. 13368(b)) shall be removed from the
18 list if, not later than 3 years after the date of enactment
19 of this Act, the State takes, or prior to the date of enact-
20 ment has taken, any of the actions required for removal
21 from the list under such section 1339(b).

22 **Subtitle D—Refining Revitalization**

23 **SEC. 371. SHORT TITLE.**

24 This subtitle may be cited as the “United States Re-
25 finery Revitalization Act of 2005”.

1 **SEC. 372. FINDINGS.**

2 Congress finds the following:

3 (1) It serves the national interest to increase
4 petroleum refining capacity for gasoline, heating oil,
5 diesel fuel, jet fuel, kerosene, and petrochemical
6 feedstocks wherever located within the United
7 States, to bring more supply to the markets for use
8 by the American people. Nearly 50 percent of the
9 petroleum in the United States is used for the pro-
10 duction of gasoline. Refined petroleum products have
11 a significant impact on interstate commerce.

12 (2) United States demand for refined petroleum
13 products currently exceeds the country's petroleum
14 refining capacity to produce such products. By
15 2025, United States gasoline consumption is pro-
16 jected to rise from 8,900,000 barrels per day to
17 12,900,000 barrels per day. Diesel fuel and home
18 heating oil are becoming larger components of an in-
19 creasing demand for refined petroleum supply. With
20 the increase in air travel, jet fuel consumption is
21 projected to be 789,000 barrels per day higher in
22 2025 than today.

23 (3) The petroleum refining industry is oper-
24 ating at 95 percent of capacity. The United States
25 is currently importing 5 percent of its refined petro-
26 leum products and because of the stringent United

1 States gasoline and diesel fuel specifications, few
2 foreign refiners can produce the clean fuels required
3 in the United States and the number of foreign sup-
4 pliers that can produce United States quality gaso-
5 line is decreasing.

6 (4) Refiners are subject to significant environ-
7 mental and other regulations and face several new
8 Clean Air Act requirements over the next decade.
9 New Clean Air Act requirements will benefit the en-
10 vironment but will also require substantial capital
11 investment and additional government permits.

12 (5) No new refinery has been built in the
13 United States since 1976 and many smaller domes-
14 tic refineries have become idle since the removal of
15 the Domestic Crude Oil Allocation Program and be-
16 cause of regulatory uncertainty and generally low re-
17 turns on capital employed. Today, the United States
18 has 149 refineries, down from 324 in 1981. Restora-
19 tion of recently idled refineries alone would amount
20 to 483,570 barrels a day in additional capacity, or
21 approximately 3.3 percent of the total operating ca-
22 pacity.

23 (6) Refiners have met growing demand by in-
24 creasing the use of existing equipment and increas-
25 ing the efficiency and capacity of existing plants.

1 But refining capacity has begun to lag behind peak
2 summer demand.

3 (7) Heavy industry and manufacturing jobs
4 have closed or relocated due to barriers to invest-
5 ment, burdensome regulation, and high costs of op-
6 eration, among other reasons.

7 (8) Because the production and disruption in
8 supply of refined petroleum products has a signifi-
9 cant impact on interstate commerce, it serves the
10 national interest to increase the domestic refining
11 operating capacity.

12 (9) More regulatory certainty for refinery own-
13 ers is needed to stimulate investment in increased
14 refinery capacity and required procedures for Fed-
15 eral, State, and local regulatory approvals need to be
16 streamlined to ensure that increased refinery capac-
17 ity can be developed and operated in a safe, timely,
18 and cost-effective manner.

19 (10) The proposed Yuma Arizona Refinery, a
20 grassroots refinery facility, which only recently re-
21 ceived its Federal air quality permit after 5 years
22 under the current regulatory process, and is just
23 now beginning its environmental impact statement
24 and local permitting process, serves as an example

1 of the obstacles a refiner would have to overcome to
2 reopen an idle refinery.

3 **SEC. 373. PURPOSE.**

4 The purpose of this subtitle is to encourage the ex-
5 pansion of the United States refining capacity by pro-
6 viding an accelerated review and approval process of all
7 regulatory approvals for certain idle refineries and lending
8 corresponding legal and technical assistance to States with
9 resources that may be inadequate to meet such permit re-
10 view demands.

11 **SEC. 374. DESIGNATION OF REFINERY REVITALIZATION**

12 **ZONES.**

13 Not later than 90 days after the date of enactment
14 of this Act, the Secretary shall designate as a Refinery
15 Revitalization Zone any area—

16 (1) that—

17 (A) has experienced mass layoffs at manu-
18 facturing facilities, as determined by the Sec-
19 retary of Labor; or

20 (B) contains an idle refinery; and

21 (2) that has an unemployment rate that exceeds
22 the national average by at least 10 percent of the
23 national average, as set by the Department of
24 Labor, Bureau of Labor Statistics, at the time of
25 the designation as a Refinery Revitalization Zone.

1 **SEC. 375. MEMORANDUM OF UNDERSTANDING.**

2 (a) IN GENERAL.—Not later than 90 days after the
3 date of enactment of this Act, the Secretary shall enter
4 into a memorandum of understanding with the Adminis-
5 trator for the purposes of this subtitle. The Secretary and
6 the Administrator shall each designate a senior official re-
7 sponsible for, and dedicate sufficient other staff and re-
8 sources to ensure, full implementation of the purposes of
9 this subtitle and any regulations enacted pursuant to this
10 subtitle.

11 (b) ADDITIONAL SIGNATORIES.—The Governor of
12 any State, and the appropriate representative of any In-
13 dian Tribe, with jurisdiction over a Refinery Revitalization
14 Zone, as designated by the Secretary pursuant to section
15 374, may be signatories to the memorandum of under-
16 standing under this section.

17 **SEC. 376. STATE ENVIRONMENTAL PERMITTING ASSIST-**
18 **ANCE.**

19 Not later than 30 days after a Revitalization Pro-
20 gram Qualifying State becomes a signatory to the memo-
21 randum of understanding under section 375(b)—

22 (1) the Secretary shall designate one or more
23 employees of the Department with expertise relating
24 to the siting and operation of refineries to provide
25 legal and technical assistance to that Revitalization
26 Program Qualifying State; and

1 (2) the Administrator shall designate, to pro-
2 vide legal and technical assistance for that Revital-
3 ization Program Qualifying State, one or more em-
4 ployees of the Environmental Protection Agency
5 with expertise on regulatory issues, relating to the
6 siting and operation of refineries, with respect to
7 each of—

8 (A) the Clean Air Act (42 U.S.C. 7401 et
9 seq.);

10 (B) the Federal Water Pollution Control
11 Act (33 U.S.C. 1251 et seq.);

12 (C) the Safe Drinking Water Act (42
13 U.S.C. 300f et seq.);

14 (D) the Comprehensive Environmental Re-
15 sponse, Compensation, and Liability Act of
16 1980 (42 U.S.C. 9601 et seq.);

17 (E) the Solid Waste Disposal Act (42
18 U.S.C. 6901 et seq.);

19 (F) the Toxic Substances Control Act (15
20 U.S.C. 2601 et seq.);

21 (G) the National Historic Preservation Act
22 (16 U.S.C. 470 et seq.); and

23 (H) the National Environmental Policy Act
24 of 1969 (42 U.S.C. 4321 et seq.).

1 **SEC. 377. COORDINATION AND EXPEDITIOUS REVIEW OF**
2 **PERMITTING PROCESS.**

3 (a) DEPARTMENT OF ENERGY AS LEAD AGENCY.—
4 Upon written request of a prospective applicant for Fed-
5 eral authorization for a refinery facility in a Refinery Revi-
6 talization Zone, the Department shall act as the lead Fed-
7 eral agency for the purposes of coordinating all applicable
8 Federal authorizations and environmental reviews of the
9 refining facility. To the maximum extent practicable under
10 applicable Federal law, the Secretary shall coordinate this
11 Federal authorization and review process with any Indian
12 Tribes and State and local agencies responsible for con-
13 ducting any separate permitting and environmental re-
14 views of the refining facility.

15 (b) SCHEDULE.—

16 (1) IN GENERAL.—The Secretary, in coordina-
17 tion with the agencies with authority over Federal
18 authorizations and, as appropriate, with Indian
19 Tribes and State and local agencies that are willing
20 to coordinate their separate permitting and environ-
21 mental reviews with the Federal authorizations and
22 environmental reviews, shall establish a schedule
23 with prompt and binding intermediate and ultimate
24 deadlines for the review of, and Federal authoriza-
25 tion decisions relating to, refinery facility siting and
26 operation.

1 (2) PREAPPLICATION PROCESS.—Prior to estab-
2 lishing the schedule, the Secretary shall provide an
3 expeditious preapplication mechanism for applicants
4 to confer with the agencies involved and to have
5 each agency communicate to the prospective appli-
6 cant within 60 days concerning—

7 (A) the likelihood of approval for a poten-
8 tial refinery facility; and

9 (B) key issues of concern to the agencies
10 and local community.

11 (3) SCHEDULE.—The Secretary shall consider
12 the preapplication findings under paragraph (2) in
13 setting the schedule and shall ensure that once an
14 application has been submitted with such informa-
15 tion as the Secretary considers necessary, all permit
16 decisions and related environmental reviews under
17 all applicable Federal laws shall be completed within
18 6 months or, where circumstances require otherwise,
19 as soon as thereafter practicable.

20 (c) CONSOLIDATED ENVIRONMENTAL REVIEW.—

21 (1) LEAD AGENCY.—In carrying out its role as
22 the lead Federal agency for environmental review,
23 the Department shall coordinate all applicable Fed-
24 eral actions for complying with the National Envi-
25 ronmental Policy Act of 1969 (42 U.S.C. 4321 et

1 seq.) and shall be responsible for preparing any envi-
2 ronmental impact statement required by section
3 102(2)(C) of that Act (42 U.S.C. 4332(2)(C)) or
4 such other form of environmental review as is re-
5 quired.

6 (2) CONSOLIDATION OF STATEMENTS.—In car-
7 rying out paragraph (1), if the Department deter-
8 mines an environmental impact statement is re-
9 quired, the Department shall prepare a single envi-
10 ronmental impact statement, which shall consolidate
11 the environmental reviews of all Federal agencies
12 considering any aspect of the project covered by the
13 environmental impact statement.

14 (d) OTHER AGENCIES.—Each Federal agency consid-
15 ering an aspect of the siting or operation of a refinery
16 facility in a Refinery Revitalization Zone shall cooperate
17 with the Department and comply with the deadlines estab-
18 lished by the Department in the preparation of any envi-
19 ronmental impact statement or such other form of review
20 as is required.

21 (e) EXCLUSIVE RECORD.—The Department shall,
22 with the cooperation of Federal and State administrative
23 agencies and officials, maintain a complete consolidated
24 record of all decisions made or actions taken by the De-
25 partment or by a Federal administrative agency or officer

1 (or State administrative agency or officer acting under
2 delegated Federal authority) with respect to the siting or
3 operation of a refinery facility in a Refinery Revitalization
4 Zone. Such record shall be the exclusive record for any
5 Federal administrative proceeding that is an appeal or re-
6 view of any such decision made or action taken.

7 (f) APPEALS.—In the event any agency has denied
8 a Federal authorization required for a refinery facility in
9 a Refinery Revitalization Zone, or has failed to act by a
10 deadline established by the Secretary pursuant to sub-
11 section (b) for deciding whether to issue the Federal au-
12 thorization, the applicant or any State in which the refin-
13 ery facility would be located may file an appeal with the
14 Secretary. Based on the record maintained under sub-
15 section (e), and in consultation with the affected agency,
16 the Secretary may then either issue the necessary Federal
17 authorization with appropriate conditions, or deny the ap-
18 peal. The Secretary shall issue a decision within 60 days
19 after the filing of the appeal. In making a decision under
20 this subsection, the Secretary shall comply with applicable
21 requirements of Federal law, including each of the laws
22 referred to in section 376(2)(A) through (H). Any judicial
23 appeal of the Secretary's decision shall be to the United
24 States Court of Appeals for the District of Columbia.

1 (g) CONFORMING REGULATIONS.—Not later than 6
2 months after the date of enactment of this Act, the Sec-
3 retary shall issue any regulations necessary to implement
4 this subtitle.

5 **SEC. 378. COMPLIANCE WITH ALL ENVIRONMENTAL REGU-**
6 **LATIONS REQUIRED.**

7 Nothing in this subtitle shall be construed to waive
8 the applicability of environmental laws and regulations to
9 any refinery facility.

10 **SEC. 379. DEFINITIONS.**

11 For the purposes of this subtitle, the term—

12 (1) “Administrator” means the Administrator
13 of the Environmental Protection Agency;

14 (2) “Department” means the Department of
15 Energy;

16 (3) “Federal authorization” means any author-
17 ization required under Federal law (including the
18 Clean Air Act, the Federal Water Pollution Control
19 Act, the Safe Drinking Water Act, the Comprehen-
20 sive Environmental Response, Compensation, and
21 Liability Act of 1980, the Solid Waste Disposal Act,
22 the Toxic Substances Control Act, the National His-
23 toric Preservation Act, and the National Environ-
24 mental Policy Act of 1969) in order to site, con-
25 struct, upgrade, or operate a refinery facility within

1 a Refinery Revitalization Zone, including such per-
2 mits, special use authorizations, certifications, opin-
3 ions, or other approvals as may be required, whether
4 issued by a Federal, State, or local agency;

5 (4) “idle refinery” means any real property site
6 that has been used at any time for a refinery facility
7 since December 31, 1979, that has not been in oper-
8 ation after April 1, 2005;

9 (5) “refinery facility” means any facility de-
10 signed and operated to receive, unload, store, proc-
11 ess and refine raw crude oil by any chemical or
12 physical process, including distillation, fluid catalytic
13 cracking, hydrocracking, coking, alkylation,
14 etherification, polymerization, catalytic reforming,
15 isomerization, hydrotreating, blending, and any com-
16 bination thereof;

17 (6) “Revitalization Program Qualifying State”
18 means a State or Indian Tribe that—

19 (A) has entered into the memorandum of
20 understanding pursuant to section 375(b); and

21 (B) has established a refining infrastruc-
22 ture coordination office that the Secretary finds
23 will facilitate Federal-State cooperation for the
24 purposes of this subtitle; and

25 (7) “Secretary” means the Secretary of Energy.

1 **TITLE IV—COAL**
2 **Subtitle A—Clean Coal Power**
3 **Initiative**

4 **SEC. 401. AUTHORIZATION OF APPROPRIATIONS.**

5 (a) CLEAN COAL POWER INITIATIVE.—There are au-
6 thORIZED to be appropriated to the Secretary of Energy (re-
7 ferred to in this title as the “Secretary”) to carry out the
8 activities authorized by this subtitle \$200,000,000 for
9 each of fiscal years 2006 through 2014, to remain avail-
10 able until expended.

11 (b) REPORT.—The Secretary shall submit to Con-
12 gress the report required by this subsection not later than
13 March 31, 2007. The report shall include, with respect
14 to subsection (a), a 10-year plan containing—

15 (1) a detailed assessment of whether the aggre-
16 gate funding levels provided under subsection (a) are
17 the appropriate funding levels for that program;

18 (2) a detailed description of how proposals will
19 be solicited and evaluated, including a list of all ac-
20 tivities expected to be undertaken;

21 (3) a detailed list of technical milestones for
22 each coal and related technology that will be pur-
23 sued; and

24 (4) a detailed description of how the program
25 will avoid problems enumerated in General Account-

1 ing Office reports on the Clean Coal Technology
2 Program, including problems that have resulted in
3 unspent funds and projects that failed either finan-
4 cially or scientifically.

5 **SEC. 402. PROJECT CRITERIA.**

6 (a) IN GENERAL.—The Secretary shall not provide
7 funding under this subtitle for any project that does not
8 advance efficiency, environmental performance, and cost
9 competitiveness well beyond the level of technologies that
10 are in commercial service or have been demonstrated on
11 a scale that the Secretary determines is sufficient to dem-
12 onstrate that commercial service is viable as of the date
13 of enactment of this Act.

14 (b) TECHNICAL CRITERIA FOR CLEAN COAL POWER
15 INITIATIVE.—

16 (1) GASIFICATION PROJECTS.—

17 (A) IN GENERAL.—In allocating the funds
18 made available under section 401(a), the Sec-
19 retary shall ensure that at least 60 percent of
20 the funds are used only for projects on coal-
21 based gasification technologies, including gasifi-
22 cation combined cycle, gasification fuel cells,
23 gasification coproduction, and hybrid gasifi-
24 cation/combustion.

1 (B) TECHNICAL MILESTONES.—The Sec-
2 retary shall periodically set technical milestones
3 specifying the emission and thermal efficiency
4 levels that coal gasification projects under this
5 subtitle shall be designed, and reasonably ex-
6 pected, to achieve. The technical milestones
7 shall become more restrictive during the life of
8 the program. The Secretary shall set the peri-
9 odic milestones so as to achieve by 2020 coal
10 gasification projects able—

11 (i) to remove 99 percent of sulfur di-
12 oxide;

13 (ii) to emit not more than .05 lbs of
14 NO_x per million Btu;

15 (iii) to achieve substantial reductions
16 in mercury emissions; and

17 (iv) to achieve a thermal efficiency
18 of—

19 (I) 60 percent for coal of more
20 than 9,000 Btu;

21 (II) 59 percent for coal of 7,000
22 to 9,000 Btu; and

23 (III) 50 percent for coal of less
24 than 7,000 Btu.

1 (2) OTHER PROJECTS.—The Secretary shall pe-
2 riodically set technical milestones and ensure that up
3 to 40 percent of the funds appropriated pursuant to
4 section 401(a) are used for projects not described in
5 paragraph (1). The milestones shall specify the
6 emission and thermal efficiency levels that projects
7 funded under this paragraph shall be designed to
8 and reasonably expected to achieve. The technical
9 milestones shall become more restrictive during the
10 life of the program. The Secretary shall set the peri-
11 odic milestones so as to achieve by 2010 projects
12 able—

13 (A) to remove 97 percent of sulfur dioxide;

14 (B) to emit no more than .08 lbs of NO_x
15 per million Btu;

16 (C) to achieve substantial reductions in
17 mercury emissions; and

18 (D) to achieve a thermal efficiency of—

19 (i) 45 percent for coal of more than
20 9,000 Btu;

21 (ii) 44 percent for coal of 7,000 to
22 9,000 Btu; and

23 (iii) 40 percent for coal of less than
24 7,000 Btu.

1 (3) CONSULTATION.—Before setting the tech-
2 nical milestones under paragraphs (1)(B) and (2),
3 the Secretary shall consult with the Administrator of
4 the Environmental Protection Agency and interested
5 entities, including coal producers, industries using
6 coal, organizations to promote coal or advanced coal
7 technologies, environmental organizations, and orga-
8 nizations representing workers.

9 (4) EXISTING UNITS.—In the case of projects
10 at units in existence on the date of enactment of this
11 Act, in lieu of the thermal efficiency requirements
12 set forth in paragraphs (1)(B)(iv) and (2)(D), the
13 milestones shall be designed to achieve an overall
14 thermal design efficiency improvement, compared to
15 the efficiency of the unit as operated, of not less
16 than—

17 (A) 7 percent for coal of more than 9,000

18 Btu;

19 (B) 6 percent for coal of 7,000 to 9,000

20 Btu; or

21 (C) 4 percent for coal of less than 7,000

22 Btu.

23 (5) PERMITTED USES.—In carrying out this
24 subtitle, the Secretary may fund projects that in-
25 clude, as part of the project, the separation and cap-

1 ture of carbon dioxide. The thermal efficiency goals
2 of paragraphs (1), (2), and (4) shall not apply for
3 projects that separate and capture at least 50 per-
4 cent of the facility's potential emissions of carbon di-
5 oxide.

6 (c) FINANCIAL CRITERIA.—The Secretary shall not
7 provide a funding award under this subtitle unless the re-
8 cipient documents to the satisfaction of the Secretary
9 that—

10 (1) the award recipient is financially viable
11 without the receipt of additional Federal funding;

12 (2) the recipient will provide sufficient informa-
13 tion to the Secretary to enable the Secretary to en-
14 sure that the award funds are spent efficiently and
15 effectively; and

16 (3) a market exists for the technology being
17 demonstrated or applied, as evidenced by statements
18 of interest in writing from potential purchasers of
19 the technology.

20 (d) FINANCIAL ASSISTANCE.—The Secretary shall
21 provide financial assistance to projects that meet the re-
22 quirements of subsections (a), (b), and (c) and are likely
23 to—

24 (1) achieve overall cost reductions in the utiliza-
25 tion of coal to generate useful forms of energy;

1 (2) improve the competitiveness of coal among
2 various forms of energy in order to maintain a diver-
3 sity of fuel choices in the United States to meet elec-
4 tricity generation requirements; and

5 (3) demonstrate methods and equipment that
6 are applicable to 25 percent of the electricity gener-
7 ating facilities, using various types of coal, that use
8 coal as the primary feedstock as of the date of en-
9 actment of this Act.

10 (e) FEDERAL SHARE.—The Federal share of the cost
11 of a coal or related technology project funded by the Sec-
12 retary under this subtitle shall not exceed 50 percent.

13 (f) APPLICABILITY.—No technology, or level of emis-
14 sion reduction, shall be treated as adequately dem-
15 onstrated for purposes of section 111 of the Clean Air Act
16 (42 U.S.C. 7411), achievable for purposes of section 169
17 of that Act (42 U.S.C. 7479), or achievable in practice
18 for purposes of section 171 of that Act (42 U.S.C. 7501)
19 solely by reason of the use of such technology, or the
20 achievement of such emission reduction, by 1 or more fa-
21 cilities receiving assistance under this subtitle.

22 **SEC. 403. REPORT.**

23 Not later than 1 year after the date of enactment
24 of this Act, and once every 2 years thereafter through
25 2014, the Secretary, in consultation with other appro-

1 priate Federal agencies, shall submit to Congress a report
2 describing—

3 (1) the technical milestones set forth in section
4 402 and how those milestones ensure progress to-
5 ward meeting the requirements of subsections
6 (b)(1)(B) and (b)(2) of section 402; and

7 (2) the status of projects funded under this
8 subtitle.

9 **SEC. 404. CLEAN COAL CENTERS OF EXCELLENCE.**

10 As part of the program authorized in section 401,
11 the Secretary shall award competitive, merit-based grants
12 to universities for the establishment of Centers of Excel-
13 lence for Energy Systems of the Future. The Secretary
14 shall provide grants to universities that show the greatest
15 potential for advancing new clean coal technologies.

16 **Subtitle B—Clean Power Projects**

17 **SEC. 411. COAL TECHNOLOGY LOAN.**

18 There are authorized to be appropriated to the Sec-
19 retary \$125,000,000 to provide a loan to the owner of the
20 experimental plant constructed under United States De-
21 partment of Energy cooperative agreement number DE-
22 FC-22-91PC90544 on such terms and conditions as the
23 Secretary determines, including interest rates and upfront
24 payments.

1 **SEC. 412. COAL GASIFICATION.**

2 The Secretary is authorized to provide loan guaran-
3 tees for a project to produce energy from a plant using
4 integrated gasification combined cycle technology of at
5 least 400 megawatts in capacity that produces power at
6 competitive rates in deregulated energy generation mar-
7 kets and that does not receive any subsidy (direct or indi-
8 rect) from ratepayers.

9 **SEC. 414. PETROLEUM COKE GASIFICATION.**

10 The Secretary is authorized to provide loan guaran-
11 tees for at least 5 petroleum coke gasification projects.

12 **SEC. 416. ELECTRON SCRUBBING DEMONSTRATION.**

13 The Secretary shall use \$5,000,000 from amounts
14 appropriated to initiate, through the Chicago Operations
15 Office, a project to demonstrate the viability of high-en-
16 ergy electron scrubbing technology on commercial-scale
17 electrical generation using high-sulfur coal.

18 **Subtitle D—Coal and Related**
19 **Programs**

20 **SEC. 441. CLEAN AIR COAL PROGRAM.**

21 (a) AMENDMENT.—The Energy Policy Act of 1992
22 is amended by adding the following new title at the end
23 thereof:

1 **“TITLE XXXI—CLEAN AIR COAL**
2 **PROGRAM**

3 **“SEC. 3101. FINDINGS; PURPOSES; DEFINITIONS.**

4 “(a) FINDINGS.—The Congress finds that—

5 “(1) new environmental regulations present ad-
6 ditional challenges for coal-fired electrical generation
7 in the private marketplace; and

8 “(2) the Department of Energy, in cooperation
9 with industry, has already fully developed and com-
10 mercialized several new clean-coal technologies that
11 will allow the clean use of coal.

12 “(b) PURPOSES.—The purposes of this title are to—

13 “(1) promote national energy policy and energy
14 security, diversity, and economic competitiveness
15 benefits that result from the increased use of coal;

16 “(2) mitigate financial risks, reduce the cost,
17 and increase the marketplace acceptance of the new
18 clean coal technologies; and

19 “(3) advance the deployment of pollution con-
20 trol equipment to meet the current and future obli-
21 gations of coal-fired generation units regulated
22 under the Clean Air Act (42 U.S.C. 7402 and fol-
23 lowing).

1 **“SEC. 3102. AUTHORIZATION OF PROGRAM.**

2 “The Secretary shall carry out a program to facilitate
3 production and generation of coal-based power and the in-
4 stallation of pollution control equipment.

5 **“SEC. 3103. AUTHORIZATION OF APPROPRIATIONS.**

6 “(a) POLLUTION CONTROL PROJECTS.—There are
7 authorized to be appropriated to the Secretary
8 \$300,000,000 for fiscal year 2006, \$100,000,000 for fis-
9 cal year 2007, \$40,000,000 for fiscal year 2008,
10 \$30,000,000 for fiscal year 2009, and \$30,000,000 for fis-
11 cal year 2010, to remain available until expended, for car-
12 rying out the program for pollution control projects, which
13 may include—

14 “(1) pollution control equipment and processes
15 for the control of mercury air emissions;

16 “(2) pollution control equipment and processes
17 for the control of nitrogen dioxide air emissions or
18 sulfur dioxide emissions;

19 “(3) pollution control equipment and processes
20 for the mitigation or collection of more than one pol-
21 lutant;

22 “(4) advanced combustion technology for the
23 control of at least two pollutants, including mercury,
24 particulate matter, nitrogen oxides, and sulfur diox-
25 ide, which may also be designed to improve the en-
26 ergy efficiency of the unit; and

1 “(5) advanced pollution control equipment and
2 processes designed to allow use of the waste byprod-
3 ucts or other byproducts of the equipment or an
4 electrical generation unit designed to allow the use
5 of byproducts.

6 Funds appropriated under this subsection which are not
7 awarded before fiscal year 2012 may be applied to projects
8 under subsection (b), in addition to amounts authorized
9 under subsection (b).

10 “(b) GENERATION PROJECTS.—There are authorized
11 to be appropriated to the Secretary \$250,000,000 for fis-
12 cal year 2007, \$350,000,000 for fiscal year 2008,
13 \$400,000,000 for fiscal year 2009, \$400,000,000 for fis-
14 cal year 2010, \$400,000,000 for fiscal year 2011,
15 \$400,000,000 for fiscal year 2012, and \$300,000,000 for
16 fiscal year 2013, to remain available until expended, for
17 generation projects and air pollution control projects.
18 Such projects may include—

19 “(1) coal-based electrical generation equipment
20 and processes, including gasification combined cycle
21 or other coal-based generation equipment and proc-
22 esses;

23 “(2) associated environmental control equip-
24 ment, that will be cost-effective and that is designed
25 to meet anticipated regulatory requirements;

1 “(3) coal-based electrical generation equipment
2 and processes, including gasification fuel cells, gas-
3 ification coproduction, and hybrid gasification/com-
4 bustion projects; and

5 “(4) advanced coal-based electrical generation
6 equipment and processes, including oxidation com-
7 bustion techniques, ultra-supercritical boilers, and
8 chemical looping, which the Secretary determines
9 will be cost-effective and could substantially con-
10 tribute to meeting anticipated environmental or en-
11 ergy needs.

12 “(c) LIMITATION.—Funds placed at risk during any
13 fiscal year for Federal loans or loan guarantees pursuant
14 to this title may not exceed 30 percent of the total funds
15 obligated under this title.

16 **“SEC. 3104. AIR POLLUTION CONTROL PROJECT CRITERIA.**

17 “The Secretary shall pursuant to authorizations con-
18 tained in section 3103 provide funding for air pollution
19 control projects designed to facilitate compliance with
20 Federal and State environmental regulations, including
21 any regulation that may be established with respect to
22 mercury.

23 **“SEC. 3105. CRITERIA FOR GENERATION PROJECTS.**

24 “(a) CRITERIA.—The Secretary shall establish cri-
25 teria on which selection of individual projects described in

1 section 3103(b) should be based. The Secretary may mod-
2 ify the criteria as appropriate to reflect improvements in
3 equipment, except that the criteria shall not be modified
4 to be less stringent. These selection criteria shall include—

5 “(1) prioritization of projects whose installation
6 is likely to result in significant air quality improve-
7 ments in nonattainment air quality areas;

8 “(2) prioritization of projects that result in the
9 repowering or replacement of older, less efficient
10 units;

11 “(3) documented broad interest in the procure-
12 ment of the equipment and utilization of the proc-
13 esses used in the projects by electrical generator
14 owners or operators;

15 “(4) equipment and processes beginning in
16 2006 through 2011 that are projected to achieve an
17 thermal efficiency of—

18 “(A) 40 percent for coal of more than
19 9,000 Btu per pound based on higher heating
20 values;

21 “(B) 38 percent for coal of 7,000 to 9,000
22 Btu per pound based on higher heating values;
23 and

24 “(C) 36 percent for coal of less than 7,000
25 Btu per pound based on higher heating values,

1 except that energy used for coproduction or cogen-
2 eration shall not be counted in calculating the ther-
3 mal efficiency under this paragraph; and

4 “(5) equipment and processes beginning in
5 2012 and 2013 that are projected to achieve an
6 thermal efficiency of—

7 “(A) 45 percent for coal of more than
8 9,000 Btu per pound based on higher heating
9 values;

10 “(B) 44 percent for coal of 7,000 to 9,000
11 Btu per pound based on higher heating values;
12 and

13 “(C) 40 percent for coal of less than 7,000
14 Btu per pound based on higher heating values,
15 except that energy used for coproduction or cogen-
16 eration shall not be counted in calculating the ther-
17 mal efficiency under this paragraph.

18 “(b) SELECTION.—(1) In selecting the projects, up
19 to 25 percent of the projects selected may be either co-
20 production or cogeneration or other gasification projects,
21 but at least 25 percent of the projects shall be for the
22 sole purpose of electrical generation, and priority should
23 be given to equipment and projects less than 600 MW to
24 foster and promote standard designs.

1 “(2) The Secretary shall give priority to projects that
2 have been developed and demonstrated that are not yet
3 cost competitive, and for coal energy generation projects
4 that advance efficiency, environmental performance, or
5 cost competitiveness significantly beyond the level of pollu-
6 tion control equipment that is in operation on a full scale.

7 **“SEC. 3106. FINANCIAL CRITERIA.**

8 “(a) IN GENERAL.—The Secretary shall only provide
9 financial assistance to projects that meet the requirements
10 of sections 3103 and 3104 and are likely to—

11 “(1) achieve overall cost reductions in the utili-
12 zation of coal to generate useful forms of energy;
13 and

14 “(2) improve the competitiveness of coal in
15 order to maintain a diversity of domestic fuel choices
16 in the United States to meet electricity generation
17 requirements.

18 “(b) CONDITIONS.—The Secretary shall not provide
19 a funding award under this title unless—

20 “(1) the award recipient is financially viable
21 without the receipt of additional Federal funding;
22 and

23 “(2) the recipient provides sufficient informa-
24 tion to the Secretary for the Secretary to ensure

1 that the award funds are spent efficiently and effec-
2 tively.

3 “(c) EQUAL ACCESS.—The Secretary shall, to the ex-
4 tent practical, utilize cooperative agreement, loan guar-
5 antee, and direct Federal loan mechanisms designed to en-
6 sure that all electrical generation owners have equal access
7 to these technology deployment incentives. The Secretary
8 shall develop and direct a competitive solicitation process
9 for the selection of technologies and projects under this
10 title.

11 **“SEC. 3107. FEDERAL SHARE.**

12 “The Federal share of the cost of a coal or related
13 technology project funded by the Secretary under this title
14 shall not exceed 50 percent. For purposes of this title,
15 Federal funding includes only appropriated funds.

16 **“SEC. 3108. APPLICABILITY.**

17 “No technology, or level of emission reduction, shall
18 be treated as adequately demonstrated for purposes of sec-
19 tion 111 of the Clean Air Act (42 U.S.C. 7411), achievable
20 for purposes of section 169 of the Clean Air Act (42
21 U.S.C. 7479), or achievable in practice for purposes of
22 section 171 of the Clean Air Act (42 U.S.C. 7501) solely
23 by reason of the use of such technology, or the achieve-
24 ment of such emission reduction, by one or more facilities
25 receiving assistance under this title.”.

1 (b) TABLE OF CONTENTS AMENDMENT.—The table
 2 of contents of the Energy Policy Act of 1992 is amended
 3 by adding at the end the following:

“TITLE XXXI—CLEAN AIR COAL PROGRAM

- “Sec. 3101. Findings; purposes; definitions.
- “Sec. 3102. Authorization of program.
- “Sec. 3103. Authorization of appropriations.
- “Sec. 3104. Air pollution control project criteria.
- “Sec. 3105. Criteria for generation projects.
- “Sec. 3106. Financial criteria.
- “Sec. 3107. Federal share.
- “Sec. 3108. Applicability.”.

4 **TITLE V—INDIAN ENERGY**

5 **SEC. 501. SHORT TITLE.**

6 This title may be cited as the “Indian Tribal Energy
 7 Development and Self-Determination Act of 2005”.

8 **SEC. 502. OFFICE OF INDIAN ENERGY POLICY AND PRO-**
 9 **GRAMS.**

10 (a) IN GENERAL.—Title II of the Department of En-
 11 ergy Organization Act (42 U.S.C. 7131 et seq.) is amend-
 12 ed by adding at the end the following:

13 “OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS

14 “SEC. 217. (a) ESTABLISHMENT.—There is estab-
 15 lished within the Department an Office of Indian Energy
 16 Policy and Programs (referred to in this section as the
 17 ‘Office’). The Office shall be headed by a Director, who
 18 shall be appointed by the Secretary and compensated at
 19 a rate equal to that of level IV of the Executive Schedule
 20 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—

21 (A) in the item relating to section 209, by
22 striking “Section” and inserting “Sec.”; and

23 (B) by striking the items relating to sec-
24 tions 213 through 216 and inserting the fol-
25 lowing:

“Sec. 213. Establishment of policy for National Nuclear Security Administration.

“Sec. 214. Establishment of security, counterintelligence, and intelligence policies.

“Sec. 215. Office of Counterintelligence.

“Sec. 216. Office of Intelligence.

“Sec. 217. Office of Indian Energy Policy and Programs.”.

1 (2) Section 5315 of title 5, United States Code,
 2 is amended by inserting “Director, Office of Indian
 3 Energy Policy and Programs, Department of En-
 4 ergy.” after “Inspector General, Department of En-
 5 ergy.”.

6 **SEC. 503. INDIAN ENERGY.**

7 (a) IN GENERAL.—Title XXVI of the Energy Policy
 8 Act of 1992 (25 U.S.C. 3501 et seq.) is amended to read
 9 as follows:

10 **“TITLE XXVI—INDIAN ENERGY**

11 **“SEC. 2601. DEFINITIONS.**

12 “For purposes of this title:

13 “(1) The term ‘Director’ means the Director of
 14 the Office of Indian Energy Policy and Programs,
 15 Department of Energy.

16 “(2) The term ‘Indian land’ means—

17 “(A) any land located within the bound-
 18 aries of an Indian reservation, pueblo, or
 19 rancheria;

20 “(B) any land not located within the
 21 boundaries of an Indian reservation, pueblo, or
 22 rancheria, the title to which is held—

1 “(i) in trust by the United States for
2 the benefit of an Indian tribe or an indi-
3 vidual Indian;

4 “(ii) by an Indian tribe or an indi-
5 vidual Indian, subject to restriction against
6 alienation under laws of the United States;

7 or

8 “(iii) by a dependent Indian commu-
9 nity; and

10 “(C) land that is owned by an Indian tribe
11 and was conveyed by the United States to a
12 Native Corporation pursuant to the Alaska Na-
13 tive Claims Settlement Act (43 U.S.C. 1601 et
14 seq.), or that was conveyed by the United
15 States to a Native Corporation in exchange for
16 such land.

17 “(3) The term ‘Indian reservation’ includes—

18 “(A) an Indian reservation in existence in
19 any State or States as of the date of enactment
20 of this paragraph;

21 “(B) a public domain Indian allotment;
22 and

23 “(C) a dependent Indian community lo-
24 cated within the borders of the United States,

1 regardless of whether the community is lo-
2 cated—

3 “(i) on original or acquired territory
4 of the community; or

5 “(ii) within or outside the boundaries
6 of any particular State.

7 “(4) The term ‘Indian tribe’ has the meaning
8 given the term in section 4 of the Indian Self-Deter-
9 mination and Education Assistance Act (25 U.S.C.
10 450b), except that the term ‘Indian tribe’, for the
11 purpose of paragraph (11) and sections 2603(b)(3)
12 and 2604, shall not include any Native Corporation.

13 “(5) The term ‘integration of energy resources’
14 means any project or activity that promotes the loca-
15 tion and operation of a facility (including any pipe-
16 line, gathering system, transportation system or fa-
17 cility, or electric transmission or distribution facility)
18 on or near Indian land to process, refine, generate
19 electricity from, or otherwise develop energy re-
20 sources on, Indian land.

21 “(6) The term ‘Native Corporation’ has the
22 meaning given the term in section 3 of the Alaska
23 Native Claims Settlement Act (43 U.S.C. 1602).

24 “(7) The term ‘organization’ means a partner-
25 ship, joint venture, limited liability company, or

1 other unincorporated association or entity that is es-
2 tablished to develop Indian energy resources.

3 “(8) The term ‘Program’ means the Indian en-
4 ergy resource development program established
5 under section 2602(a).

6 “(9) The term ‘Secretary’ means the Secretary
7 of the Interior.

8 “(10) The term ‘tribal energy resource develop-
9 ment organization’ means an organization of 2 or
10 more entities, at least 1 of which is an Indian tribe,
11 that has the written consent of the governing bodies
12 of all Indian tribes participating in the organization
13 to apply for a grant, loan, or other assistance au-
14 thorized by section 2602.

15 “(11) The term ‘tribal land’ means any land or
16 interests in land owned by any Indian tribe, title to
17 which is held in trust by the United States or which
18 is subject to a restriction against alienation under
19 laws of the United States.

20 **“SEC. 2602. INDIAN TRIBAL ENERGY RESOURCE DEVELOP-**
21 **MENT.**

22 “(a) DEPARTMENT OF THE INTERIOR PROGRAM.—

23 “(1) To assist Indian tribes in the development
24 of energy resources and further the goal of Indian
25 self-determination, the Secretary shall establish and

1 implement an Indian energy resource development
2 program to assist consenting Indian tribes and tribal
3 energy resource development organizations in achiev-
4 ing the purposes of this title.

5 “(2) In carrying out the Program, the Sec-
6 retary shall—

7 “(A) provide development grants to Indian
8 tribes and tribal energy resource development
9 organizations for use in developing or obtaining
10 the managerial and technical capacity needed to
11 develop energy resources on Indian land, and to
12 properly account for resulting energy produc-
13 tion and revenues;

14 “(B) provide grants to Indian tribes and
15 tribal energy resource development organiza-
16 tions for use in carrying out projects to pro-
17 mote the integration of energy resources, and to
18 process, use, or develop those energy resources,
19 on Indian land; and

20 “(C) provide low-interest loans to Indian
21 tribes and tribal energy resource development
22 organizations for use in the promotion of en-
23 ergy resource development on Indian land and
24 integration of energy resources.

1 “(3) There are authorized to be appropriated to
2 carry out this subsection such sums as are necessary
3 for each of fiscal years 2006 through 2016.

4 “(b) DEPARTMENT OF ENERGY INDIAN ENERGY
5 EDUCATION PLANNING AND MANAGEMENT ASSISTANCE
6 PROGRAM.—

7 “(1) The Director shall establish programs to
8 assist consenting Indian tribes in meeting energy
9 education, research and development, planning, and
10 management needs.

11 “(2) In carrying out this subsection, the Direc-
12 tor may provide grants, on a competitive basis, to an
13 Indian tribe or tribal energy resource development
14 organization for use in carrying out—

15 “(A) energy, energy efficiency, and energy
16 conservation programs;

17 “(B) studies and other activities sup-
18 porting tribal acquisitions of energy supplies,
19 services, and facilities;

20 “(C) planning, construction, development,
21 operation, maintenance, and improvement of
22 tribal electrical generation, transmission, and
23 distribution facilities located on Indian land;
24 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 may develop, in consulta-
6 tion with Indian tribes, a formula for providing
7 grants under this subsection.

8 “(B) In providing a grant under this sub-
9 section, the Director shall give priority to an applica-
10 tion received from an Indian tribe with inadequate
11 electric service (as determined by the Director).

12 “(4) The Secretary of Energy may issue such
13 regulations as necessary to carry out this subsection.

14 “(5) There are authorized to be appropriated to
15 carry out this subsection \$20,000,000 for each of
16 fiscal years 2006 through 2016.

17 “(c) DEPARTMENT OF ENERGY LOAN GUARANTEE
18 PROGRAM.—

19 “(1) Subject to paragraph (3), the Secretary of
20 Energy may provide loan guarantees (as defined in
21 section 502 of the Federal Credit Reform Act of
22 1990 (2 U.S.C. 661a)) for not more than 90 percent
23 of the unpaid principal and interest due on any loan
24 made to any Indian tribe for energy development.

1 “(2) A loan guarantee under this subsection
2 shall be made by—

3 “(A) a financial institution subject to ex-
4 amination by the Secretary of Energy; or

5 “(B) an Indian tribe, from funds of the In-
6 dian tribe.

7 “(3) The aggregate outstanding amount guar-
8 anteed by the Secretary of Energy at any time under
9 this subsection shall not exceed \$2,000,000,000.

10 “(4) The Secretary of Energy may issue such
11 regulations as the Secretary of Energy determines
12 are necessary to carry out this subsection.

13 “(5) There are authorized to be appropriated
14 such sums as are necessary to carry out this sub-
15 section, to remain available until expended.

16 “(6) Not later than 1 year from the date of en-
17 actment of this section, the Secretary of Energy
18 shall report to Congress on the financing require-
19 ments of Indian tribes for energy development on In-
20 dian land.

21 “(d) FEDERAL AGENCIES-INDIAN ENERGY PREF-
22 ERENCE.—

23 “(1) In purchasing electricity or any other en-
24 ergy product or byproduct, a Federal agency or de-
25 partment may give preference to an energy and re-

1 source production enterprise, partnership, consor-
2 tium, corporation, or other type of business organi-
3 zation the majority of the interest in which is owned
4 and controlled by 1 or more Indian tribes.

5 “(2) In carrying out this subsection, a Federal
6 agency or department shall not—

7 “(A) pay more than the prevailing market
8 price for an energy product or byproduct; or

9 “(B) obtain less than prevailing market
10 terms and conditions.

11 **“SEC. 2603. INDIAN TRIBAL ENERGY RESOURCE REGULA-**
12 **TION.**

13 “(a) GRANTS.—The Secretary may provide to Indian
14 tribes, on an annual basis, grants for use in accordance
15 with subsection (b).

16 “(b) USE OF FUNDS.—Funds from a grant provided
17 under this section may be used—

18 “(1) by an Indian tribe for the development of
19 a tribal energy resource inventory or tribal energy
20 resource on Indian land;

21 “(2) by an Indian tribe for the development of
22 a feasibility study or other report necessary to the
23 development of energy resources on Indian land;

24 “(3) by an Indian tribe (other than an Indian
25 Tribe in Alaska except the Metlakatla Indian Com-

1 munity) for the development and enforcement of
2 tribal laws (including regulations) relating to tribal
3 energy resource development and the development of
4 technical infrastructure to protect the environment
5 under applicable law; or

6 “(4) by a Native Corporation for the develop-
7 ment and implementation of corporate policies and
8 the development of technical infrastructure to pro-
9 tect the environment under applicable law; and

10 “(5) by an Indian tribe for the training of em-
11 ployees that—

12 “(A) are engaged in the development of en-
13 ergy resources on Indian land; or

14 “(B) are responsible for protecting the en-
15 vironment.

16 “(c) OTHER ASSISTANCE.—In carrying out the obli-
17 gations of the United States under this title, the Secretary
18 shall ensure, to the maximum extent practicable and to
19 the extent of available resources, that upon the request
20 of an Indian tribe, the Indian tribe shall have available
21 scientific and technical information and expertise, for use
22 in the Indian tribe’s regulation, development, and manage-
23 ment of energy resources on Indian land. The Secretary
24 may fulfill this responsibility either directly, through the
25 use of Federal officials, or indirectly, by providing finan-

1 cial assistance to the Indian tribe to secure independent
2 assistance.

3 **“SEC. 2604. LEASES, BUSINESS AGREEMENTS, AND RIGHTS-**
4 **OF-WAY INVOLVING ENERGY DEVELOPMENT**
5 **OR TRANSMISSION.**

6 “(a) LEASES AND BUSINESS AGREEMENTS.—Subject
7 to the provisions of this section—

8 “(1) an Indian tribe may, at its discretion,
9 enter into a lease or business agreement for the pur-
10 pose of energy resource development on tribal land,
11 including a lease or business agreement for—

12 “(A) exploration for, extraction of, proc-
13 essing of, or other development of the Indian
14 tribe’s energy mineral resources located on trib-
15 al land; and

16 “(B) construction or operation of an elec-
17 tric generation, transmission, or distribution fa-
18 cility located on tribal land or a facility to proc-
19 ess or refine energy resources developed on trib-
20 al land; and

21 “(2) such lease or business agreement described
22 in paragraph (1) shall not require the approval of
23 the Secretary under section 2103 of the Revised
24 Statutes (25 U.S.C. 81) or any other provision of
25 law, if—

1 “(A) the lease or business agreement is ex-
2 ecuted pursuant to a tribal energy resource
3 agreement approved by the Secretary under
4 subsection (e);

5 “(B) the term of the lease or business
6 agreement does not exceed—

7 “(i) 30 years; or

8 “(ii) in the case of a lease for the pro-
9 duction of oil resources, gas resources, or
10 both, 10 years and as long thereafter as oil
11 or gas is produced in paying quantities;
12 and

13 “(C) the Indian tribe has entered into a
14 tribal energy resource agreement with the Sec-
15 retary, as described in subsection (e), relating
16 to the development of energy resources on tribal
17 land (including the periodic review and evalua-
18 tion of the activities of the Indian tribe under
19 the agreement, to be conducted pursuant to the
20 provisions required by subsection (e)(2)(D)(i)).

21 “(b) RIGHTS-OF-WAY FOR PIPELINES OR ELECTRIC
22 TRANSMISSION OR DISTRIBUTION LINES.—An Indian
23 tribe may grant a right-of-way over tribal land for a pipe-
24 line or an electric transmission or distribution line without
25 approval by the Secretary if—

1 “(1) the right-of-way is executed in accordance
2 with a tribal energy resource agreement approved by
3 the Secretary under subsection (e);

4 “(2) the term of the right-of-way does not ex-
5 ceed 30 years;

6 “(3) the pipeline or electric transmission or dis-
7 tribution line serves—

8 “(A) an electric generation, transmission,
9 or distribution facility located on tribal land; or

10 “(B) a facility located on tribal land that
11 processes or refines energy resources developed
12 on tribal land; and

13 “(4) the Indian tribe has entered into a tribal
14 energy resource agreement with the Secretary, as de-
15 scribed in subsection (e), relating to the development
16 of energy resources on tribal land (including the
17 periodic review and evaluation of the Indian tribe’s
18 activities under such agreement described in sub-
19 paragraphs (D) and (E) of subsection (e)(2)).

20 “(c) RENEWALS.—A lease or business agreement en-
21 tered into or a right-of-way granted by an Indian tribe
22 under this section may be renewed at the discretion of the
23 Indian tribe in accordance with this section.

24 “(d) VALIDITY.—No lease, business agreement, or
25 right-of-way relating to the development of tribal energy

1 resources pursuant to the provisions of this section shall
2 be valid unless the lease, business agreement, or right-of-
3 way is authorized by the provisions of a tribal energy re-
4 source agreement approved by the Secretary under sub-
5 section (e)(2).

6 “(e) TRIBAL ENERGY RESOURCE AGREEMENTS.—

7 “(1) On issuance of regulations under para-
8 graph (8), an Indian tribe may submit to the Sec-
9 retary for approval a tribal energy resource agree-
10 ment governing leases, business agreements, and
11 rights-of-way under this section.

12 “(2)(A) Not later than 180 days after the date
13 on which the Secretary receives a tribal energy re-
14 source agreement submitted by an Indian tribe
15 under paragraph (1), or not later than 60 days after
16 the Secretary receives a revised tribal energy re-
17 source agreement submitted by an Indian tribe
18 under paragraph (4)(C), (or such later date as may
19 be agreed to by the Secretary and the Indian tribe),
20 the Secretary shall approve or disapprove the tribal
21 energy resource agreement.

22 “(B) The Secretary shall approve a tribal en-
23 ergy resource agreement submitted under paragraph
24 (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;

22 “(IV) address the economic return to
23 the Indian tribe under leases, business
24 agreements, and rights-of-way;

1 “(V) address technical or other rel-
2 evant requirements;

3 “(VI) establish requirements for envi-
4 ronmental review in accordance with sub-
5 paragraph (C);

6 “(VII) ensure compliance with all ap-
7 plicable environmental laws;

8 “(VIII) identify final approval author-
9 ity;

10 “(IX) provide for public notification of
11 final approvals;

12 “(X) establish a process for consulta-
13 tion with any affected States concerning
14 off-reservation impacts, if any, identified
15 pursuant to the provisions required under
16 subparagraph (C)(i);

17 “(XI) describe the remedies for
18 breach of the lease, business agreement, or
19 right-of-way;

20 “(XII) require each lease, business
21 agreement, and right-of-way to include a
22 statement that, in the event that any of its
23 provisions violates an express term or re-
24 quirement set forth in the tribal energy re-

1 source agreement pursuant to which it was
2 executed—

3 “(aa) such provision shall be null
4 and void; and

5 “(bb) if the Secretary determines
6 such provision to be material, the Sec-
7 retary shall have the authority to sus-
8 pend or rescind the lease, business
9 agreement, or right-of-way or take
10 other appropriate action that the Sec-
11 retary determines to be in the best in-
12 terest of the Indian tribe;

13 “(XIII) require each lease, business
14 agreement, and right-of-way to provide
15 that it will become effective on the date on
16 which a copy of the executed lease, busi-
17 ness agreement, or right-of-way is deliv-
18 ered to the Secretary in accordance with
19 regulations adopted pursuant to this sub-
20 section; and

21 “(XIV) include citations to tribal
22 laws, regulations, or procedures, if any,
23 that set out tribal remedies that must be
24 exhausted before a petition may be sub-

1 mitted to the Secretary pursuant to para-
2 graph (7)(B).

3 “(C) Tribal energy resource agreements sub-
4 mitted under paragraph (1) shall establish, and in-
5 clude provisions to ensure compliance with, an envi-
6 ronmental review process that, with respect to a
7 lease, business agreement, or right-of-way under this
8 section, provides for—

9 “(i) the identification and evaluation of all
10 significant environmental impacts (as compared
11 with a no-action alternative), including effects
12 on cultural resources;

13 “(ii) the identification of proposed mitiga-
14 tion;

15 “(iii) a process for ensuring that the public
16 is informed of and has an opportunity to com-
17 ment on the environmental impacts of the pro-
18 posed action before tribal approval of the lease,
19 business agreement, or right-of-way; and

20 “(iv) sufficient administrative support and
21 technical capability to carry out the environ-
22 mental review process.

23 “(D) A tribal energy resource agreement nego-
24 tiated between the Secretary and an Indian tribe in
25 accordance with this subsection shall include—

1 “(i) provisions requiring the Secretary to
2 conduct a periodic review and evaluation to
3 monitor the performance of the Indian tribe’s
4 activities associated with the development of en-
5 ergy resources under the tribal energy resource
6 agreement; and

7 “(ii) when such review and evaluation re-
8 sult in a finding by the Secretary of imminent
9 jeopardy to a physical trust asset arising from
10 a violation of the tribal energy resource agree-
11 ment or applicable Federal laws, provisions au-
12 thorizing the Secretary to take appropriate ac-
13 tions determined by the Secretary to be nec-
14 essary to protect such asset, which actions may
15 include reassumption of responsibility for activi-
16 ties associated with the development of energy
17 resources on tribal land until the violation and
18 conditions that gave rise to such jeopardy have
19 been corrected.

20 “(E) The periodic review and evaluation de-
21 scribed in subparagraph (D) shall be conducted on
22 an annual basis, except that, after the third such an-
23 nual review and evaluation, the Secretary and the
24 Indian tribe may mutually agree to amend the tribal
25 energy resource agreement to authorize the review

1 and evaluation required by subparagraph (D) to be
2 conducted once every 2 years.

3 “(3) The Secretary shall provide notice and op-
4 portunity for public comment on tribal energy re-
5 source agreements submitted for approval under
6 paragraph (1). The Secretary’s review of a tribal en-
7 ergy resource agreement under the National Envi-
8 ronmental Policy Act of 1969 (42 U.S.C. 4321 et
9 seq.) shall be limited to the direct effects of that ap-
10 proval.

11 “(4) If the Secretary disapproves a tribal en-
12 ergy resource agreement submitted by an Indian
13 tribe under paragraph (1), the Secretary shall, not
14 later than 10 days after the date of disapproval—

15 “(A) notify the Indian tribe in writing of
16 the basis for the disapproval;

17 “(B) identify what changes or other ac-
18 tions are required to address the concerns of
19 the Secretary; and

20 “(C) provide the Indian tribe with an op-
21 portunity to revise and resubmit the tribal en-
22 ergy resource agreement.

23 “(5) If an Indian tribe executes a lease or busi-
24 ness agreement or grants a right-of-way in accord-
25 ance with a tribal energy resource agreement ap-

1 proved under this subsection, the Indian tribe shall,
2 in accordance with the process and requirements set
3 forth in the Secretary’s regulations adopted pursu-
4 ant to paragraph (8), provide to the Secretary—

5 “(A) a copy of the lease, business agree-
6 ment, or right-of-way document (including all
7 amendments to and renewals of the document);
8 and

9 “(B) in the case of a tribal energy resource
10 agreement or a lease, business agreement, or
11 right-of-way that permits payments to be made
12 directly to the Indian tribe, information and
13 documentation of those payments sufficient to
14 enable the Secretary to discharge the trust re-
15 sponsibility of the United States to enforce the
16 terms of, and protect the Indian tribe’s rights
17 under, the lease, business agreement, or right-
18 of-way.

19 “(6)(A) For purposes of the activities to be un-
20 dertaken by the Secretary pursuant to this section,
21 the Secretary shall—

22 “(i) carry out such activities in a manner
23 consistent with the trust responsibility of the
24 United States relating to mineral and other
25 trust resources; and

1 “(ii) act in good faith and in the best in-
2 terests of the Indian tribes.

3 “(B) Subject to the provisions of subsections
4 (a)(2), (b), and (c) waiving the requirement of Sec-
5 retarial approval of leases, business agreements, and
6 rights-of-way executed pursuant to tribal energy re-
7 source agreements approved under this section, and
8 the provisions of subparagraph (D), nothing in this
9 section shall absolve the United States from any re-
10 sponsibility to Indians or Indian tribes, including,
11 but not limited to, those which derive from the trust
12 relationship or from any treaties, statutes, and other
13 laws of the United States, Executive Orders, or
14 agreements between the United States and any In-
15 dian tribe.

16 “(C) The Secretary shall continue to have a
17 trust obligation to ensure that the rights and inter-
18 ests of an Indian tribe are protected in the event
19 that—

20 “(i) any other party to any such lease,
21 business agreement, or right-of-way violates any
22 applicable provision of Federal law or the terms
23 of any lease, business agreement, or right-of-
24 way under this section; or

1 “(ii) any provision in such lease, business
2 agreement, or right-of-way violates any express
3 provision or requirement set forth in the tribal
4 energy resource agreement pursuant to which
5 the lease, business agreement, or right-of-way
6 was executed.

7 “(D) Notwithstanding subparagraph (B), the
8 United States shall not be liable to any party (in-
9 cluding any Indian tribe) for any of the negotiated
10 terms of, or any losses resulting from the negotiated
11 terms of, a lease, business agreement, or right-of-
12 way executed pursuant to and in accordance with a
13 tribal energy resource agreement approved by the
14 Secretary under paragraph (2). For the purpose of
15 this subparagraph, the term ‘negotiated terms’
16 means any terms or provisions that are negotiated
17 by an Indian tribe and any other party or parties to
18 a lease, business agreement, or right-of-way entered
19 into pursuant to an approved tribal energy resource
20 agreement.

21 “(7)(A) In this paragraph, the term ‘interested
22 party’ means any person or entity the interests of
23 which have sustained or will sustain a significant ad-
24 verse environmental impact as a result of the failure
25 of an Indian tribe to comply with a tribal energy re-

1 source agreement of the Indian tribe approved by
2 the Secretary under paragraph (2).

3 “(B) After exhaustion of tribal remedies, and in
4 accordance with the process and requirements set
5 forth in regulations adopted by the Secretary pursu-
6 ant to paragraph (8), an interested party may sub-
7 mit to the Secretary a petition to review compliance
8 of an Indian tribe with a tribal energy resource
9 agreement of the Indian tribe approved by the Sec-
10 retary under paragraph (2).

11 “(C)(i) Not later than 120 days after the date
12 on which the Secretary receives a petition under sub-
13 paragraph (B), the Secretary shall determine wheth-
14 er the Indian tribe is not in compliance with the
15 tribal energy resource agreement, as alleged in the
16 petition.

17 “(ii) The Secretary may adopt procedures
18 under paragraph (8) authorizing an extension of
19 time, not to exceed 120 days, for making the deter-
20 mination under clause (i) in any case in which the
21 Secretary determines that additional time is nec-
22 essary to evaluate the allegations of the petition.

23 “(iii) Subject to subparagraph (D), if the Sec-
24 retary determines that the Indian tribe is not in
25 compliance with the tribal energy resource agree-

1 ment as alleged in the petition, the Secretary shall
2 take such action as is necessary to ensure compli-
3 ance with the provisions of the tribal energy resource
4 agreement, which action may include—

5 “(I) temporarily suspending some or all ac-
6 tivities under a lease, business agreement, or
7 right-of-way under this section until the Indian
8 tribe or such activities are in compliance with
9 the provisions of the approved tribal energy re-
10 source agreement; or

11 “(II) rescinding approval of all or part of
12 the tribal energy resource agreement, and if all
13 of such agreement is rescinded, reassuming the
14 responsibility for approval of any future leases,
15 business agreements, or rights-of-way described
16 in subsections (a) and (b).

17 “(D) Prior to seeking to ensure compliance with
18 the provisions of the tribal energy resource agree-
19 ment of an Indian tribe under subparagraph (C)(iii),
20 the Secretary shall—

21 “(i) make a written determination that de-
22 scribes the manner in which the tribal energy
23 resource agreement has been violated;

1 “(ii) provide the Indian tribe with a writ-
2 ten notice of the violations together with the
3 written determination; and

4 “(iii) before taking any action described in
5 subparagraph (C)(iii) or seeking any other rem-
6 edy, provide the Indian tribe with a hearing and
7 a reasonable opportunity to attain compliance
8 with the tribal energy resource agreement.

9 “(E) An Indian tribe described in subparagraph
10 (D) shall retain all rights to appeal as provided in
11 regulations issued by the Secretary.

12 “(8) Not later than 1 year after the date of en-
13 actment of the Indian Tribal Energy Development
14 and Self-Determination Act of 2005, the Secretary
15 shall issue regulations that implement the provisions
16 of this subsection, including—

17 “(A) criteria to be used in determining the
18 capacity of an Indian tribe described in para-
19 graph (2)(B)(i), including the experience of the
20 Indian tribe in managing natural resources and
21 financial and administrative resources available
22 for use by the Indian tribe in implementing the
23 approved tribal energy resource agreement of
24 the 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 leases,
8 business agreements, and rights-of-way de-
9 scribed in this subsection;

10 “(C) provisions setting forth 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 defining final agency ac-
18 tions after exhaustion of administrative appeals
19 from determinations of the Secretary under
20 paragraph (7).

21 “(f) NO EFFECT ON OTHER LAW.—Nothing in this
22 section affects the application of—

23 “(1) any Federal environment law;

24 “(2) the Surface Mining Control and Reclama-
25 tion Act of 1977 (30 U.S.C. 1201 et seq.); or

1 “(3) except as otherwise provided in this title,
2 the Indian Mineral Development Act of 1982 (25
3 U.S.C. 2101 et seq.) and the National Environ-
4 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

5 “(g) AUTHORIZATION OF APPROPRIATIONS.—There
6 are authorized to be appropriated to the Secretary such
7 sums as are necessary for each of fiscal years 2006
8 through 2016 to implement the provisions of this section
9 and to make grants or provide other appropriate assist-
10 ance to Indian tribes to assist the Indian tribes in devel-
11 oping and implementing tribal energy resource agreements
12 in accordance with the provisions of this section.

13 **“SEC. 2605. INDIAN MINERAL DEVELOPMENT REVIEW.**

14 “(a) IN GENERAL.—The Secretary shall conduct a
15 review of all activities being conducted under the Indian
16 Mineral Development Act of 1982 (25 U.S.C. 2101 et
17 seq.) as of that date.

18 “(b) REPORT.—Not later than 1 year after the date
19 of enactment of the Indian Tribal Energy Development
20 and Self-Determination Act of 2005, the Secretary shall
21 submit to Congress a report that includes—

22 “(1) the results of the review;

23 “(2) recommendations to ensure that Indian
24 tribes have the opportunity to develop Indian energy
25 resources; and

1 “(3) an analysis of the barriers to the develop-
 2 ment of energy resources on Indian land (including
 3 legal, fiscal, market, and other barriers), along with
 4 recommendations for the removal of those barriers.”.

5 (b) CONFORMING AMENDMENTS.—The table of con-
 6 tents for the Energy Policy Act of 1992 is amended by
 7 striking the items relating to title XXVI and inserting the
 8 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. Indian mineral development review.”.

9 **SEC. 504. FOUR CORNERS TRANSMISSION LINE PROJECT.**

10 The Dine Power Authority, an enterprise of the Nav-
 11 ajo Nation, shall be eligible to receive grants and other
 12 assistance as authorized by section 217 of the Department
 13 of Energy Organization Act, as added by section 502 of
 14 this title, and section 2602 of the Energy Policy Act of
 15 1992, as amended by this title, for activities associated
 16 with the development of a transmission line from the Four
 17 Corners Area to southern Nevada, including related power
 18 generation opportunities.

19 **SEC. 505. ENERGY EFFICIENCY IN FEDERALLY ASSISTED**
 20 **HOUSING.**

21 (a) IN GENERAL.—The Secretary of Housing and
 22 Urban Development shall promote energy conservation in

1 housing that is located on Indian land and assisted with
2 Federal resources through—

3 (1) the use of energy-efficient technologies and
4 innovations (including the procurement of energy-ef-
5 ficient refrigerators and other appliances);

6 (2) the promotion of shared savings contracts;
7 and

8 (3) the use and implementation of such other
9 similar technologies and innovations as the Secretary
10 of Housing and Urban Development considers to be
11 appropriate.

12 (b) AMENDMENT.—Section 202(2) of the Native
13 American Housing and Self-Determination Act of 1996
14 (25 U.S.C. 4132(2)) is amended by inserting “improve-
15 ment to achieve greater energy efficiency,” after “plan-
16 ning,”.

17 **SEC. 506. CONSULTATION WITH INDIAN TRIBES.**

18 In carrying out this title and the amendments made
19 by this title, the Secretary of Energy and the Secretary
20 shall, as appropriate and to the maximum extent prac-
21 ticable, involve and consult with Indian tribes in a manner
22 that is consistent with the Federal trust and the govern-
23 ment-to-government relationships between Indian tribes
24 and the United States.

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 OF ENERGY
17 CONTRACTORS.—Section 170 d.(1)(A) of the Atomic En-
18 ergy Act of 1954 (42 U.S.C. 2210(d)(1)(A)) is amended
19 by striking “December 31, 2006” and inserting “Decem-
20 ber 31, 2025”.

21 (c) INDEMNIFICATION OF NONPROFIT EDUCATIONAL
22 INSTITUTIONS.—Section 170 k. of the Atomic Energy Act
23 of 1954 (42 U.S.C. 2210(k)) is amended by striking “Au-
24 gust 1, 2002” each place it appears and inserting “Decem-
25 ber 31, 2025”.

1 **SEC. 603. MAXIMUM ASSESSMENT.**

2 Section 170 of the Atomic Energy Act of 1954 (42
3 U.S.C. 2210) is amended—

4 (1) in the second proviso of the third sentence
5 of subsection b.(1)—

6 (A) by striking “\$63,000,000” and insert-
7 ing “\$95,800,000”; and

8 (B) by striking “\$10,000,000 in any 1
9 year” and inserting “\$15,000,000 in any 1 year
10 (subject to adjustment for inflation under sub-
11 section t.)”; and

12 (2) in subsection t.(1)—

13 (A) by inserting “total and annual” after
14 “amount of the maximum”;

15 (B) by striking “the date of the enactment
16 of the Price-Anderson Amendments Act of
17 1988” and inserting “August 20, 2003”; and

18 (C) in subparagraph (A), by striking “such
19 date of enactment” and inserting “August 20,
20 2003”.

21 **SEC. 604. DEPARTMENT OF ENERGY LIABILITY LIMIT.**

22 (a) INDEMNIFICATION OF DEPARTMENT OF ENERGY
23 CONTRACTORS.—Section 170 d. of the Atomic Energy Act
24 of 1954 (42 U.S.C. 2210(d)) is amended by striking para-
25 graph (2) and inserting the following:

1 “(2) In an agreement of indemnification entered into
2 under paragraph (1), the Secretary—

3 “(A) may require the contractor to provide and
4 maintain financial protection of such a type and in
5 such amounts as the Secretary shall determine to be
6 appropriate to cover public liability arising out of or
7 in connection with the contractual activity; and

8 “(B) shall indemnify the persons indemnified
9 against such liability above the amount of the finan-
10 cial protection required, in the amount of
11 \$10,000,000,000 (subject to adjustment for inflation
12 under subsection t.), in the aggregate, for all per-
13 sons indemnified in connection with the contract and
14 for each nuclear incident, including such legal costs
15 of the contractor as are approved by the Secretary.”.

16 (b) CONTRACT AMENDMENTS.—Section 170 d. of the
17 Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is further
18 amended by striking paragraph (3) and inserting the fol-
19 lowing—

20 “(3) All agreements of indemnification under which
21 the Department of Energy (or its predecessor agencies)
22 may be required to indemnify any person under this sec-
23 tion shall be deemed to be amended, on the date of enact-
24 ment of the Price-Anderson Amendments Act of 2005, to
25 reflect the amount of indemnity for public liability and any

1 applicable financial protection required of the contractor
2 under this subsection.”.

3 (c) LIABILITY LIMIT.—Section 170 e.(1)(B) of the
4 Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(1)(B)) is
5 amended—

6 (1) by striking “the maximum amount of finan-
7 cial protection required under subsection b. or”; and

8 (2) by striking “paragraph (3) of subsection d.,
9 whichever amount is more” and inserting “para-
10 graph (2) of subsection d.”.

11 **SEC. 605. INCIDENTS OUTSIDE THE UNITED STATES.**

12 (a) AMOUNT OF INDEMNIFICATION.—Section 170
13 d.(5) of the Atomic Energy Act of 1954 (42 U.S.C.
14 2210(d)(5)) is amended by striking “\$100,000,000” and
15 inserting “\$500,000,000”.

16 (b) LIABILITY LIMIT.—Section 170 e.(4) of the
17 Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(4)) is
18 amended by striking “\$100,000,000” and inserting
19 “\$500,000,000”.

20 **SEC. 606. REPORTS.**

21 Section 170 p. of the Atomic Energy Act of 1954 (42
22 U.S.C. 2210(p)) is amended by striking “August 1, 1998”
23 and inserting “December 31, 2021”.

1 **SEC. 607. INFLATION ADJUSTMENT.**

2 Section 170 t. of the Atomic Energy Act of 1954 (42
3 U.S.C. 2210(t)) is amended—

4 (1) by redesignating paragraph (2) as para-
5 graph (3); and

6 (2) by inserting after paragraph (1) the fol-
7 lowing:

8 “(2) The Secretary shall adjust the amount of indem-
9 nification provided under an agreement of indemnification
10 under subsection d. not less than once during each 5-year
11 period following July 1, 2003, in accordance with the ag-
12 gregate percentage change in the Consumer Price Index
13 since—

14 “(A) that date, in the case of the first adjust-
15 ment under this paragraph; or

16 “(B) the previous adjustment under this para-
17 graph.”.

18 **SEC. 608. TREATMENT OF MODULAR REACTORS.**

19 Section 170 b. of the Atomic Energy Act of 1954 (42
20 U.S.C. 2210(b)) is amended by adding at the end the fol-
21 lowing:

22 “(5)(A) For purposes of this section only, the Com-
23 mission shall consider a combination of facilities described
24 in subparagraph (B) to be a single facility having a rated
25 capacity of 100,000 electrical kilowatts or more.

1 “(B) A combination of facilities referred to in sub-
2 paragraph (A) is 2 or more facilities located at a single
3 site, each of which has a rated capacity of 100,000 elec-
4 trical kilowatts or more but not more than 300,000 elec-
5 trical kilowatts, with a combined rated capacity of not
6 more than 1,300,000 electrical kilowatts.”.

7 **SEC. 609. APPLICABILITY.**

8 The amendments made by sections 603, 604, and 605
9 do not apply to a nuclear incident that occurs before the
10 date of the enactment of this Act.

11 **SEC. 610. PROHIBITION ON ASSUMPTION BY UNITED**
12 **STATES GOVERNMENT OF LIABILITY FOR**
13 **CERTAIN FOREIGN INCIDENTS.**

14 Section 170 of the Atomic Energy Act of 1954 (42
15 U.S.C. 2210) is amended by adding at the end the fol-
16 lowing new subsection:

17 “u. PROHIBITION ON ASSUMPTION OF LIABILITY FOR
18 CERTAIN FOREIGN INCIDENTS.—Notwithstanding this
19 section or any other provision of law, no officer of the
20 United States or of any department, agency, or instrumen-
21 tality of the United States Government may enter into any
22 contract or other arrangement, or into any amendment or
23 modification of a contract or other arrangement, the pur-
24 pose or effect of which would be to directly or indirectly
25 impose liability on the United States Government, or any

1 department, agency, or instrumentality of the United
2 States Government, or to otherwise directly or indirectly
3 require an indemnity by the United States Government,
4 for nuclear incidents occurring in connection with the de-
5 sign, construction, or operation of a production facility or
6 utilization facility in any country whose government has
7 been identified by the Secretary of State as engaged in
8 state sponsorship of terrorist activities (specifically includ-
9 ing any country the government of which, as of September
10 11, 2001, had been determined by the Secretary of State
11 under section 620A(a) of the Foreign Assistance Act of
12 1961 (22 U.S.C. 2371(a)), section 6(j)(1) of the Export
13 Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)),
14 or section 40(d) of the Arms Export Control Act (22
15 U.S.C. 2780(d)) to have repeatedly provided support for
16 acts of international terrorism). This subsection shall not
17 apply to nuclear incidents occurring as a result of mis-
18 sions, carried out under the direction of the Secretary of
19 Energy, the Secretary of Defense, or the Secretary of
20 State, that are necessary to safely secure, store, transport,
21 or remove nuclear materials for nuclear safety or non-
22 proliferation purposes.”.

1 **SEC. 611. CIVIL PENALTIES.**

2 (a) REPEAL OF AUTOMATIC REMISSION.—Section
3 234A b.(2) of the Atomic Energy Act of 1954 (42 U.S.C.
4 2282a(b)(2)) is amended by striking the last sentence.

5 (b) LIMITATION FOR NOT-FOR-PROFIT INSTITU-
6 TIONS.—Subsection d. of section 234A of the Atomic En-
7 ergy Act of 1954 (42 U.S.C. 2282a(d)) is amended to read
8 as follows:

9 “d.(1) Notwithstanding subsection a., in the case of
10 any not-for-profit contractor, subcontractor, or supplier,
11 the total amount of civil penalties paid under subsection
12 a. may not exceed the total amount of fees paid within
13 any 1-year period (as determined by the Secretary) under
14 the contract under which the violation occurs.

15 “(2) For purposes of this section, the term ‘not-for-
16 profit’ means that no part of the net earnings of the con-
17 tractor, subcontractor, or supplier inures to the benefit of
18 any natural person or for-profit artificial person.”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall not apply to any violation of the Atomic
21 Energy Act of 1954 (42 U.S.C. 2011 et seq.) occurring
22 under a contract entered into before the date of enactment
23 of this section.

1 **SEC. 612. FINANCIAL ACCOUNTABILITY.**

2 (a) AMENDMENT.—Section 170 of the Atomic En-
3 ergy Act of 1954 (42 U.S.C. 2210) is amended by adding
4 at the end the following new subsection:

5 “v. FINANCIAL ACCOUNTABILITY.—(1) Notwith-
6 standing subsection d., the Attorney General may bring
7 an action in the appropriate United States district court
8 to recover from a contractor of the Secretary (or subcon-
9 tractor or supplier of such contractor) amounts paid by
10 the Federal Government under an agreement of indem-
11 nification under subsection d. for public liability resulting
12 from conduct which constitutes intentional misconduct of
13 any corporate officer, manager, or superintendent of such
14 contractor (or subcontractor or supplier of such con-
15 tractor).

16 “(2) The Attorney General may recover under
17 paragraph (1) an amount not to exceed the amount
18 of the profit derived by the defendant from the con-
19 tract.

20 “(3) No amount recovered from any contractor
21 (or subcontractor or supplier of such contractor)
22 under paragraph (1) may be reimbursed directly or
23 indirectly by the Department of Energy.

24 “(4) Paragraph (1) shall not apply to any non-
25 profit entity conducting activities under contract for
26 the Secretary.

1 “(5) No waiver of a defense required under this
2 section shall prevent a defendant from asserting
3 such defense in an action brought under this sub-
4 section.

5 “(6) The Secretary shall, by rule, define the
6 terms ‘profit’ and ‘nonprofit entity’ for purposes of
7 this subsection. Such rulemaking shall be completed
8 not later than 180 days after the date of the enact-
9 ment of this subsection.”.

10 (b) EFFECTIVE DATE.—The amendment made by
11 this section shall not apply to any agreement of indem-
12 nification entered into under section 170 d. of the Atomic
13 Energy Act of 1954 (42 U.S.C. 2210(d)) before the date
14 of the enactment of this Act.

15 **Subtitle B—General Nuclear** 16 **Matters**

17 **SEC. 621. LICENSES.**

18 Section 103 c. of the Atomic Energy Act of 1954 (42
19 U.S.C. 2133(c)) is amended by inserting “from the au-
20 thorization to commence operations” after “forty years”.

21 **SEC. 622. NRC TRAINING PROGRAM.**

22 (a) IN GENERAL.—In order to maintain the human
23 resource investment and infrastructure of the United
24 States in the nuclear sciences, health physics, and engi-
25 neering fields, in accordance with the statutory authorities

1 of the Nuclear Regulatory Commission relating to the ci-
2 vilian nuclear energy program, the Nuclear Regulatory
3 Commission shall carry out a training and fellowship pro-
4 gram to address shortages of individuals with critical nu-
5 clear safety regulatory skills.

6 (b) AUTHORIZATION OF APPROPRIATIONS.—

7 (1) IN GENERAL.—There are authorized to be
8 appropriated to the Nuclear Regulatory Commission
9 to carry out this section \$1,000,000 for each of fis-
10 cal years 2005 through 2009.

11 (2) AVAILABILITY.—Funds made available
12 under paragraph (1) shall remain available until ex-
13 pended.

14 **SEC. 623. COST RECOVERY FROM GOVERNMENT AGENCIES.**

15 Section 161 w. of the Atomic Energy Act of 1954
16 (42 U.S.C. 2201(w)) is amended—

17 (1) by striking “for or is issued” and all that
18 follows through “1702” and inserting “to the Com-
19 mission for, or is issued by the Commission, a li-
20 cense or certificate”;

21 (2) by striking “483a” and inserting “9701”;
22 and

23 (3) by striking “, of applicants for, or holders
24 of, such licenses or certificates”.

1 **SEC. 624. ELIMINATION OF PENSION OFFSET.**

2 Section 161 of the Atomic Energy Act of 1954 (42
3 U.S.C. 2201) is amended by adding at the end the fol-
4 lowing:

5 “y. Exempt from the application of sections 8344 and
6 8468 of title 5, United States Code, an annuitant who was
7 formerly an employee of the Commission who is hired by
8 the Commission as a consultant, if the Commission finds
9 that the annuitant has a skill that is critical to the per-
10 formance of the duties of the Commission.”.

11 **SEC. 625. ANTITRUST REVIEW.**

12 Section 105 c. of the Atomic Energy Act of 1954 (42
13 U.S.C. 2135(c)) is amended by adding at the end the fol-
14 lowing:

15 “(9) APPLICABILITY.—This subsection does not
16 apply to an application for a license to construct or oper-
17 ate a utilization facility or production facility under sec-
18 tion 103 or 104 b. that is filed on or after the date of
19 enactment of this paragraph.”.

20 **SEC. 626. DECOMMISSIONING.**

21 Section 161 i. of the Atomic Energy Act of 1954 (42
22 U.S.C. 2201(i)) is amended—

23 (1) by striking “and (3)” and inserting “(3)”;

24 and

25 (2) by inserting before the semicolon at the end
26 the following: “, and (4) to ensure that sufficient

1 funds will be available for the decommissioning of
2 any production or utilization facility licensed under
3 section 103 or 104 b., including standards and re-
4 strictions governing the control, maintenance, use,
5 and disbursement by any former licensee under this
6 Act that has control over any fund for the decom-
7 missioning of the facility”.

8 **SEC. 627. LIMITATION ON LEGAL FEE REIMBURSEMENT.**

9 Title II of the Energy Reorganization Act of 1974
10 (42 U.S.C. 5841 et seq.) is amended by adding at the end
11 the following new section:

12 “LIMITATION ON LEGAL FEE REIMBURSEMENT

13 “SEC. 212. The Department of Energy shall not, ex-
14 cept as required under a contract entered into before the
15 date of enactment of this section, reimburse any con-
16 tractor or subcontractor of the Department for any legal
17 fees or expenses incurred with respect to a complaint sub-
18 sequent to—

19 “(1) an adverse determination on the merits
20 with respect to such complaint against the con-
21 tractor or subcontractor by the Director of the De-
22 partment of Energy’s Office of Hearings and Ap-
23 peals pursuant to part 708 of title 10, Code of Fed-
24 eral Regulations, or by a Department of Labor Ad-
25 ministrative Law Judge pursuant to section 211 of
26 this Act; or

1 “(2) an adverse final judgment by any State or
2 Federal court with respect to such complaint against
3 the contractor or subcontractor for wrongful termi-
4 nation or retaliation due to the making of disclo-
5 sures protected under chapter 12 of title 5, United
6 States Code, section 211 of this Act, or any com-
7 parable State law,
8 unless the adverse determination or final judgment is re-
9 versed upon further administrative or judicial review.”.

10 **SEC. 629. REPORT ON FEASIBILITY OF DEVELOPING COM-**
11 **MERCIAL NUCLEAR ENERGY GENERATION**
12 **FACILITIES AT EXISTING DEPARTMENT OF**
13 **ENERGY SITES.**

14 Not later than 1 year after the date of the enactment
15 of this Act, the Secretary of Energy shall submit to Con-
16 gress a report on the feasibility of developing commercial
17 nuclear energy generation facilities at Department of En-
18 ergy sites in existence on the date of enactment of this
19 Act.

20 **SEC. 630. URANIUM SALES.**

21 (a) SALES, TRANSFERS, AND SERVICES.—Section
22 3112 of the USEC Privatization Act (42 U.S.C. 2297h-
23 10) is amended by striking subsections (d), (e), and (f)
24 and inserting the following:

1 “(3) The Secretary may transfer to the Corporation,
2 notwithstanding subsections (b)(2) and (d), natural ura-
3 nium in amounts sufficient to fulfill the Department of
4 Energy’s commitments under Article 4(B) of the Agree-
5 ment between the Department and the Corporation dated
6 June 17, 2002.

7 “(d) INVENTORY SALES.—(1) In addition to the
8 transfers and sales authorized under subsections (b) and
9 (c) and under paragraph (5) of this subsection, the United
10 States Government may transfer or sell uranium in any
11 form subject to paragraphs (2), (3), and (4).

12 “(2) Except as provided in subsections (b) and (c)
13 and paragraph (5) of this subsection, no sale or transfer
14 of uranium shall be made under this subsection by the
15 United States Government unless—

16 “(A) the President determines that the material
17 is not necessary for national security needs and the
18 sale or transfer has no adverse impact on implemen-
19 tation of existing government-to-government agree-
20 ments;

21 “(B) the price paid to the appropriate Federal
22 agency, if the transaction is a sale, will not be less
23 than the fair market value of the material; and

1 “(C) the sale or transfer to commercial nuclear
2 power end users is made pursuant to a contract of
3 at least 3 years’ duration.

4 “(3) Except as provided in paragraph (5), the United
5 States Government shall not make any transfer or sale
6 of uranium in any form under this subsection that would
7 cause the total amount of uranium transferred or sold pur-
8 suant to this subsection that is delivered for consumption
9 by commercial nuclear power end users to exceed—

10 “(A) 3,000,000 pounds of U_3O_8 equivalent in
11 fiscal year 2005, 2006, 2007, 2008, or 2009;

12 “(B) 5,000,000 pounds of U_3O_8 equivalent in
13 fiscal year 2010 or 2011;

14 “(C) 7,000,000 pounds of U_3O_8 equivalent in
15 fiscal year 2012; and

16 “(D) 10,000,000 pounds of U_3O_8 equivalent in
17 fiscal year 2013 or any fiscal year thereafter.

18 “(4) Except for sales or transfers under paragraph
19 (5), for the purposes of this subsection, the recovery of
20 uranium from uranium bearing materials transferred or
21 sold by the United States Government to the domestic
22 uranium industry shall be the preferred method of making
23 uranium available. The recovered uranium shall be count-
24 ed against the annual maximum deliveries set forth in this
25 section, when such uranium is sold to end users.

1 “(5) The United States Government may make the
2 following sales and transfers:

3 “(A) Sales or transfers to a Federal agency if
4 the material is transferred for the use of the receiv-
5 ing agency without any resale or transfer to another
6 entity and the material does not meet commercial
7 specifications.

8 “(B) Sales or transfers to any person for na-
9 tional security purposes, as determined by the Sec-
10 retary.

11 “(C) Sales or transfers to any State or local
12 agency or nonprofit, charitable, or educational insti-
13 tution for use other than the generation of electricity
14 for commercial use.

15 “(D) Sales or transfers to the Department of
16 Energy research reactor sales program.

17 “(E) Sales or transfers, at fair market value,
18 for emergency purposes in the event of a disruption
19 in supply to commercial nuclear power end users in
20 the United States.

21 “(F) Sales or transfers, at fair market value,
22 for use in a commercial reactor in the United States
23 with nonstandard fuel requirements.

24 “(G) Sales or transfers provided for under law
25 for use by the Tennessee Valley Authority in relation

1 to the Department of Energy’s highly enriched ura-
2 nium or tritium programs.

3 “(6) For purposes of this subsection, the term
4 ‘United States Government’ does not include the Ten-
5 nessee Valley Authority.

6 “(e) SAVINGS PROVISION.—Nothing in this sub-
7 chapter modifies the terms of the Russian HEU Agree-
8 ment.

9 “(f) SERVICES.—Notwithstanding any other provi-
10 sion of this section, if the Secretary determines that the
11 Corporation has failed, or may fail, to perform any obliga-
12 tion under the Agreement between the Department of En-
13 ergy and the Corporation dated June 17, 2002, and as
14 amended thereafter, which failure could result in termi-
15 nation of the Agreement, the Secretary shall notify Con-
16 gress, in such a manner that affords Congress an oppor-
17 tunity to comment, prior to a determination by the Sec-
18 retary whether termination, waiver, or modification of the
19 Agreement is required. The Secretary is authorized to take
20 such action as he determines necessary under the Agree-
21 ment to terminate, waive, or modify provisions of the
22 Agreement to achieve its purposes.”.

23 (b) REPORT.—Not later than 3 years after the date
24 of enactment of this Act, the Secretary of Energy shall
25 report to Congress on the implementation of this section.

1 The report shall include a discussion of available excess
2 uranium inventories; all sales or transfers made by the
3 United States Government; the impact of such sales or
4 transfers on the domestic uranium industry, the spot mar-
5 ket uranium price, and the national security interests of
6 the United States; and any steps taken to remediate any
7 adverse impacts of such sales or transfers.

8 **SEC. 631. COOPERATIVE RESEARCH AND DEVELOPMENT**
9 **AND SPECIAL DEMONSTRATION PROJECTS**
10 **FOR THE URANIUM MINING INDUSTRY.**

11 (a) **AUTHORIZATION OF APPROPRIATIONS.**—There
12 are authorized to be appropriated to the Secretary of En-
13 ergy \$10,000,000 for each of fiscal years 2006, 2007, and
14 2008 for—

15 (1) cooperative, cost-shared agreements between
16 the Department of Energy and domestic uranium
17 producers to identify, test, and develop improved in
18 situ leaching mining technologies, including low-cost
19 environmental restoration technologies that may be
20 applied to sites after completion of in situ leaching
21 operations; and

22 (2) funding for competitively selected dem-
23 onstration projects with domestic uranium producers
24 relating to—

- 1 (A) enhanced production with minimal en-
2 vironmental impacts;
3 (B) restoration of well fields; and
4 (C) decommissioning and decontamination
5 activities.

6 (b) DOMESTIC URANIUM PRODUCER.—For purposes
7 of this section, the term “domestic uranium producer” has
8 the meaning given that term in section 1018(4) of the En-
9 ergy Policy Act of 1992 (42 U.S.C. 2296b–7(4)), except
10 that the term shall not include any producer that has not
11 produced uranium from domestic reserves on or after July
12 30, 1998.

13 (c) LIMITATION.—No activities funded under this
14 section may be carried out in the State of New Mexico.

15 **SEC. 632. WHISTLEBLOWER PROTECTION.**

16 (a) DEFINITION OF EMPLOYER.—Section 211(a)(2)
17 of the Energy Reorganization Act of 1974 (42 U.S.C.
18 5851(a)(2)) is amended—

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

21 (2) in subparagraph (D), by striking the period
22 at the end and inserting “; and” and

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

24 “(E) a contractor or subcontractor of the
25 Commission.”.

1 (b) DE NOVO REVIEW.—Subsection (b) of such sec-
2 tion 211 is amended by adding at the end the following
3 new paragraph:

4 “(4) If the Secretary has not issued a final de-
5 cision within 540 days after the filing of a complaint
6 under paragraph (1), and there is no showing that
7 such delay is due to the bad faith of the person
8 seeking relief under this paragraph, such person
9 may bring an action at law or equity for de novo re-
10 view in the appropriate district court of the United
11 States, which shall have jurisdiction over such an ac-
12 tion without regard to the amount in controversy.”.

13 **SEC. 633. MEDICAL ISOTOPE PRODUCTION.**

14 Section 134 of the Atomic Energy Act of 1954 (42
15 U.S.C. 2160d) is amended—

16 (1) in subsection a., by striking “a. The Com-
17 mission” and inserting “a. IN GENERAL.—Except as
18 provided in subsection b., the Commission”;

19 (2) by redesignating subsection b. as subsection
20 c.; and

21 (3) by inserting after subsection a. the fol-
22 lowing:

23 “b. MEDICAL ISOTOPE PRODUCTION.—

24 “(1) DEFINITIONS.—In this subsection:

1 “(A) HIGHLY ENRICHED URANIUM.—The
2 term ‘highly enriched uranium’ means uranium
3 enriched to include concentration of U-235
4 above 20 percent.

5 “(B) MEDICAL ISOTOPE.—The term ‘med-
6 ical isotope’ includes Molybdenum 99, Iodine
7 131, Xenon 133, and other radioactive mate-
8 rials used to produce a radiopharmaceutical for
9 diagnostic, therapeutic procedures or for re-
10 search and development.

11 “(C) RADIOPHARMACEUTICAL.—The term
12 ‘radiopharmaceutical’ means a radioactive iso-
13 tope that—

14 “(i) contains byproduct material com-
15 bined with chemical or biological material;
16 and

17 “(ii) is designed to accumulate tempo-
18 rarily in a part of the body for therapeutic
19 purposes or for enabling the production of
20 a useful image for use in a diagnosis of a
21 medical condition.

22 “(D) RECIPIENT COUNTRY.—The term ‘re-
23 cipient country’ means Canada, Belgium,
24 France, Germany, and the Netherlands.

1 “(2) LICENSES.—The Commission may issue a
2 license authorizing the export (including shipment to
3 and use at intermediate and ultimate consignees
4 specified in the license) to a recipient country of
5 highly enriched uranium for medical isotope produc-
6 tion if, in addition to any other requirements of this
7 Act (except subsection a.), the Commission deter-
8 mines that—

9 “(A) a recipient country that supplies an
10 assurance letter to the United States Govern-
11 ment in connection with the consideration by
12 the Commission of the export license applica-
13 tion has informed the United States Govern-
14 ment that any intermediate consignees and the
15 ultimate consignee specified in the application
16 are required to use the highly enriched uranium
17 solely to produce medical isotopes; and

18 “(B) the highly enriched uranium for med-
19 ical isotope production will be irradiated only in
20 a reactor in a recipient country that—

21 “(i) uses an alternative nuclear reac-
22 tor fuel; or

23 “(ii) is the subject of an agreement
24 with the United States Government to con-
25 vert to an alternative nuclear reactor fuel

1 when alternative nuclear reactor fuel can
2 be used in the reactor.

3 “(3) REVIEW OF PHYSICAL PROTECTION RE-
4 QUIREMENTS.—

5 “(A) IN GENERAL.—The Commission shall
6 review the adequacy of physical protection re-
7 quirements that, as of the date of an applica-
8 tion under paragraph (2), are applicable to the
9 transportation and storage of highly enriched
10 uranium for medical isotope production or con-
11 trol of residual material after irradiation and
12 extraction of medical isotopes.

13 “(B) IMPOSITION OF ADDITIONAL RE-
14 QUIREMENTS.—If the Commission determines
15 that additional physical protection requirements
16 are necessary (including a limit on the quantity
17 of highly enriched uranium that may be con-
18 tained in a single shipment), the Commission
19 shall impose such requirements as license condi-
20 tions or through other appropriate means.

21 “(4) FIRST REPORT TO CONGRESS.—

22 “(A) NAS STUDY.—The Secretary shall
23 enter into an arrangement with the National
24 Academy of Sciences to conduct a study to de-
25 termine—

1 “(i) the feasibility of procuring sup-
2 plies of medical isotopes from commercial
3 sources that do not use highly enriched
4 uranium;

5 “(ii) the current and projected de-
6 mand and availability of medical isotopes
7 in regular current domestic use;

8 “(iii) the progress that is being made
9 by the Department of Energy and others
10 to eliminate all use of highly enriched ura-
11 nium in reactor fuel, reactor targets, and
12 medical isotope production facilities; and

13 “(iv) the potential cost differential in
14 medical isotope production in the reactors
15 and target processing facilities if the prod-
16 ucts were derived from production systems
17 that do not involve fuels and targets with
18 highly enriched uranium.

19 “(B) FEASIBILITY.—For the purpose of
20 this subsection, the use of low enriched uranium
21 to produce medical isotopes shall be determined
22 to be feasible if—

23 “(i) low enriched uranium targets
24 have been developed and demonstrated for
25 use in the reactors and target processing

1 facilities that produce significant quantities
2 of medical isotopes to serve United States
3 needs for such isotopes;

4 “(ii) sufficient quantities of medical
5 isotopes are available from low enriched
6 uranium targets and fuel to meet United
7 States domestic needs; and

8 “(iii) the average anticipated total
9 cost increase from production of medical
10 isotopes in such facilities without use of
11 highly enriched uranium is less than 10
12 percent.

13 “(C) REPORT BY THE SECRETARY.—Not
14 later than 5 years after the date of enactment
15 of the Energy Policy Act of 2005, the Secretary
16 shall submit to Congress a report that—

17 “(i) contains the findings of the Na-
18 tional Academy of Sciences made in the
19 study under subparagraph (A); and

20 “(ii) discloses the existence of any
21 commitments from commercial producers
22 to provide domestic requirements for med-
23 ical isotopes without use of highly enriched
24 uranium consistent with the feasibility cri-
25 teria described in subparagraph (B) not

1 later than the date that is 4 years after
2 the date of submission of the report.

3 “(5) SECOND REPORT TO CONGRESS.—If the
4 study of the National Academy of Sciences deter-
5 mines under paragraph (4)(A)(i) that the procure-
6 ment of supplies of medical isotopes from commer-
7 cial sources that do not use highly enriched uranium
8 is feasible, but the Secretary is unable to report the
9 existence of commitments under paragraph
10 (4)(C)(ii), not later than the date that is 6 years
11 after the date of enactment of the Energy Policy Act
12 of 2005, the Secretary shall submit to Congress a
13 report that describes options for developing domestic
14 supplies of medical isotopes in quantities that are
15 adequate to meet domestic demand without the use
16 of highly enriched uranium consistent with the cost
17 increase described in paragraph (4)(B)(iii).

18 “(6) CERTIFICATION.—At such time as com-
19 mercial facilities that do not use highly enriched
20 uranium are capable of meeting domestic require-
21 ments for medical isotopes, within the cost increase
22 described in paragraph (4)(B)(iii) and without im-
23 pairing the reliable supply of medical isotopes for
24 domestic utilization, the Secretary shall submit to
25 Congress a certification to that effect.

1 “(7) SUNSET PROVISION.—After the Secretary
2 submits a certification under paragraph (6), the
3 Commission shall, by rule, terminate its review of
4 export license applications under this subsection.”.

5 **SEC. 634. FERNALD BYPRODUCT MATERIAL.**

6 Title III of the Nuclear Waste Policy Act of 1982
7 (42 U.S.C. 10221 et seq.) is amended by adding at the
8 end the following new section:

9 “FERNALD BYPRODUCT MATERIAL

10 “SEC. 307. Notwithstanding any other law, the mate-
11 rial in the concrete silos at the Fernald uranium proc-
12 essing facility managed on the date of enactment of this
13 section by the Department shall be considered byproduct
14 material (as defined by section 11 e.(2) of the Atomic En-
15 ergy Act of 1954 (42 U.S.C. 2014(e)(2))). The Depart-
16 ment may dispose of the material in a facility regulated
17 by the Commission or by an Agreement State. If the De-
18 partment disposes of the material in such a facility, the
19 Commission or the Agreement State shall regulate the ma-
20 terial as byproduct material under that Act. This material
21 shall remain subject to the jurisdiction of the Department
22 until it is received at a commercial, Commission-licensed,
23 or Agreement State-licensed facility, at which time the
24 material shall be subject to the health and safety require-
25 ments of the Commission or the Agreement State with ju-
26 risdiction over the disposal site.”.

1 **SEC. 635. SAFE DISPOSAL OF GREATER-THAN-CLASS C RA-**
2 **DIOACTIVE WASTE.**

3 Subtitle D of title I of the Nuclear Waste Policy Act
4 of 1982 (42 U.S.C. 10171) is amended by adding at the
5 end the following new section:

6 “SAFE DISPOSAL OF GREATER-THAN-CLASS C
7 RADIOACTIVE WASTE

8 “SEC. 152. (a) DESIGNATION OF RESPONSIBILITY.—
9 The Secretary shall designate an Office within the Depart-
10 ment to have the responsibility for activities needed to de-
11 velop a new, or use an existing, facility for safely disposing
12 of all low-level radioactive waste with concentrations of
13 radionuclides that exceed the limits established by the
14 Commission for Class C radioactive waste (referred to in
15 this section as ‘GTCC waste’).

16 “(b) COMPREHENSIVE PLAN.—The Secretary shall
17 develop a comprehensive plan for permanent disposal of
18 GTCC waste which includes plans for a disposal facility.
19 This plan shall be transmitted to Congress in a series of
20 reports, including the following:

21 “(1) REPORT ON SHORT-TERM PLAN.—Not
22 later than 180 days after the date of enactment of
23 this section, the Secretary shall submit to Congress
24 a plan describing the Secretary’s operational strat-
25 egy for continued recovery and storage of GTCC
26 waste until a permanent disposal facility is available.

1 “(2) UPDATE OF 1987 REPORT.—

2 “(A) IN GENERAL.—Not later than 1 year
3 after the date of enactment of this section, the
4 Secretary shall submit to Congress an update of
5 the Secretary’s February 1987 report submitted
6 to Congress that made comprehensive rec-
7 ommendations for the disposal of GTCC waste.

8 “(B) CONTENTS.—The update under this
9 paragraph shall contain—

10 “(i) a detailed description and identi-
11 fication of the GTCC waste that is to be
12 disposed;

13 “(ii) a description of current domestic
14 and international programs, both Federal
15 and commercial, for management and dis-
16 position of GTCC waste;

17 “(iii) an identification of the Federal
18 and private options and costs for the safe
19 disposal of GTCC waste;

20 “(iv) an identification of the options
21 for ensuring that, wherever possible, gen-
22 erators and users of GTCC waste bear all
23 reasonable costs of waste disposal;

1 “(v) an identification of any new stat-
2 utory authority required for disposal of
3 GTCC waste; and

4 “(vi) in coordination with the Envi-
5 ronmental Protection Agency and the Com-
6 mission, an identification of any new regu-
7 latory guidance needed for the disposal of
8 GTCC waste.

9 “(3) REPORT ON COST AND SCHEDULE FOR
10 COMPLETION OF ENVIRONMENTAL IMPACT STATE-
11 MENT AND RECORD OF DECISION.—Not later than
12 180 days after the date of submission of the update
13 required under paragraph (2), the Secretary shall
14 submit to Congress a report containing an estimate
15 of the cost and schedule to complete a draft and
16 final environmental impact statement and to issue a
17 record of decision for a permanent disposal facility,
18 utilizing either a new or existing facility, for GTCC
19 waste.”.

20 **SEC. 636. PROHIBITION ON NUCLEAR EXPORTS TO COUN-**
21 **TRIES THAT SPONSOR TERRORISM.**

22 (a) IN GENERAL.—Section 129 of the Atomic Energy
23 Act of 1954 (42 U.S.C. 2158) is amended—

24 (1) by inserting “a.” before “No nuclear mate-
25 rials and equipment”; and

1 (2) by adding at the end the following new sub-
2 section:

3 “b.(1) Notwithstanding any other provision of law,
4 including specifically section 121 of this Act, and except
5 as provided in paragraphs (2) and (3), no nuclear mate-
6 rials and equipment or sensitive nuclear technology, in-
7 cluding items and assistance authorized by section 57 b.
8 of this Act and regulated under part 810 of title 10, Code
9 of Federal Regulations, and nuclear-related items on the
10 Commerce Control List maintained under part 774 of title
11 15 of the Code of Federal Regulations, shall be exported
12 or reexported, or transferred or retransferred whether di-
13 rectly or indirectly, and no Federal agency shall issue any
14 license, approval, or authorization for the export or reex-
15 port, or transfer, or retransfer, whether directly or indi-
16 rectly, of these items or assistance (as defined in this para-
17 graph) to any country whose government has been identi-
18 fied by the Secretary of State as engaged in state sponsor-
19 ship of terrorist activities (specifically including any coun-
20 try the government of which has been determined by the
21 Secretary of State under section 620A(a) of the Foreign
22 Assistance Act of 1961 (22 U.S.C. 2371(a)), section
23 6(j)(1) of the Export Administration Act of 1979 (50
24 U.S.C. App. 2405(j)(1)), or section 40(d) of the Arms Ex-

1 port Control Act (22 U.S.C. 2780(d)) to have repeatedly
2 provided support for acts of international terrorism).

3 “(2) This subsection shall not apply to exports, reex-
4 ports, transfers, or retransfers of radiation monitoring
5 technologies, surveillance equipment, seals, cameras, tam-
6 per-indication devices, nuclear detectors, monitoring sys-
7 tems, or equipment necessary to safely store, transport,
8 or remove hazardous materials, whether such items, serv-
9 ices, or information are regulated by the Department of
10 Energy, the Department of Commerce, or the Nuclear
11 Regulatory Commission, except to the extent that such
12 technologies, equipment, seals, cameras, devices, detectors,
13 or systems are available for use in the design or construc-
14 tion of nuclear reactors or nuclear weapons.

15 “(3) The President may waive the application of
16 paragraph (1) to a country if the President determines
17 and certifies to Congress that the waiver will not result
18 in any increased risk that the country receiving the waiver
19 will acquire nuclear weapons, nuclear reactors, or any ma-
20 terials or components of nuclear weapons and—

21 “(A) the government of such country has not
22 within the preceding 12-month period willfully aided
23 or abetted the international proliferation of nuclear
24 explosive devices to individuals or groups or willfully

1 aided and abetted an individual or groups in acquir-
2 ing unsafeguarded nuclear materials;

3 “(B) in the judgment of the President, the gov-
4 ernment of such country has provided adequate,
5 verifiable assurances that it will cease its support for
6 acts of international terrorism;

7 “(C) the waiver of that paragraph is in the vital
8 national security interest of the United States; or

9 “(D) such a waiver is essential to prevent or re-
10 spond to a serious radiological hazard in the country
11 receiving the waiver that may or does threaten pub-
12 lic health and safety.”.

13 (b) **APPLICABILITY TO EXPORTS APPROVED FOR**
14 **TRANSFER BUT NOT TRANSFERRED.**—Subsection b. of
15 section 129 of Atomic Energy Act of 1954, as added by
16 subsection (a) of this section, shall apply with respect to
17 exports that have been approved for transfer as of the date
18 of the enactment of this Act but have not yet been trans-
19 ferred as of that date.

20 **SEC. 638. NATIONAL URANIUM STOCKPILE.**

21 The USEC Privatization Act (42 U.S.C. 2297h et
22 seq.) is amended by adding at the end the following new
23 section:

1 **“SEC. 3118. NATIONAL URANIUM STOCKPILE.**

2 “(a) STOCKPILE CREATION.—The Secretary of En-
3 ergy may create a national low-enriched uranium stockpile
4 with the goals to—

5 “(1) enhance national energy security; and

6 “(2) reduce global proliferation threats.

7 “(b) SOURCE OF MATERIAL.—The Secretary shall
8 obtain material for the stockpile from—

9 “(1) material derived from blend-down of Rus-
10 sian highly enriched uranium derived from weapons
11 materials; and

12 “(2) domestically mined and enriched uranium.

13 “(c) LIMITATION ON SALES OR TRANSFERS.—Sales
14 or transfer of materials in the stockpile shall occur pursu-
15 ant to section 3112.”.

16 **SEC. 639. NUCLEAR REGULATORY COMMISSION MEETINGS.**

17 If a quorum of the Nuclear Regulatory Commission
18 gathers to discuss official Commission business the discus-
19 sions shall be recorded, and the Commission shall notify
20 the public of such discussions within 15 days after they
21 occur. The Commission shall promptly make a transcript
22 of the recording available to the public on request, except
23 to the extent that public disclosure is exempted or prohib-
24 ited by law. This section shall not apply to a meeting,
25 within the meaning of that term under section 552b(a)(2)
26 of title 5, United States Code.

1 **SEC. 640. EMPLOYEE BENEFITS.**

2 Section 3110 of the USEC Privatization Act (42
3 U.S.C. 2297h-8(a)) is amended by adding at the end the
4 following new paragraph:

5 “(8) CONTINUITY OF BENEFITS.—Not later than 30
6 days after the date of enactment of this paragraph, the
7 Secretary shall implement such actions as are necessary
8 to ensure that any employee who—

9 “(A) is involved in providing infrastructure or
10 environmental remediation services at the Ports-
11 mouth, Ohio, or the Paducah, Kentucky, Gaseous
12 Diffusion Plant;

13 “(B) has been an employee of the Department
14 of Energy’s predecessor management and inte-
15 grating contractor (or its first or second tier sub-
16 contractors), or of the Corporation, at the Ports-
17 mouth, Ohio, or the Paducah, Kentucky, facility;
18 and

19 “(C) was eligible as of April 1, 2005, to partici-
20 pate in or transfer into the Multiple Employer Pen-
21 sion Plan or the associated multiple employer retiree
22 health care benefit plans, as defined in those plans,
23 shall continue to be eligible to participate in or transfer
24 into such pension or health care benefit plans.”.

1 **Subtitle C—Additional Hydrogen**
2 **Production Provisions**

3 **SEC. 651. HYDROGEN PRODUCTION PROGRAMS.**

4 (a) ADVANCED REACTOR HYDROGEN COGENERA-
5 TION PROJECT.—

6 (1) PROJECT ESTABLISHMENT.— The Sec-
7 retary is directed to establish an Advanced Reactor
8 Hydrogen Cogeneration Project.

9 (2) PROJECT DEFINITION.— The project shall
10 consist of the research, development, design, con-
11 struction, and operation of a hydrogen production
12 cogeneration research facility that, relative to the
13 current commercial reactors, enhances safety fea-
14 tures, reduces waste production, enhances thermal
15 efficiencies, increases proliferation resistance, and
16 has the potential for improved economics and phys-
17 ical security in reactor siting. This facility shall be
18 constructed so as to enable research and develop-
19 ment on advanced reactors of the type selected and
20 on alternative approaches for reactor-based produc-
21 tion of hydrogen.

22 (3) PROJECT MANAGEMENT.—

23 (A) MANAGEMENT.—The project shall be
24 managed within the Department by the Office
25 of Nuclear Energy, Science, and Technology.

1 (B) LEAD LABORATORY.—The lead labora-
2 tory for the project, providing the site for the
3 reactor construction, shall be the Idaho Na-
4 tional Laboratory (in this subsection referred to
5 as “INL”).

6 (C) STEERING COMMITTEE.—The Sec-
7 retary shall establish a national steering com-
8 mittee with membership from the national lab-
9 oratories, universities, and industry to provide
10 advice to the Secretary and the Director of the
11 Office of Nuclear Energy, Science, and Tech-
12 nology on technical and program management
13 aspects of the project.

14 (D) COLLABORATION.—Project activities
15 shall be conducted at INL, other national lab-
16 oratories, universities, domestic industry, and
17 international partners.

18 (4) PROJECT REQUIREMENTS.—

19 (A) RESEARCH AND DEVELOPMENT.—

20 (i) IN GENERAL.—The project shall
21 include planning, research and develop-
22 ment, design, and construction of an ad-
23 vanced, next-generation, nuclear energy
24 system suitable for enabling further re-
25 search and development on advanced reac-

1 tor technologies and alternative approaches
2 for reactor-based generation of hydrogen.

3 (ii) REACTOR TEST CAPABILITIES AT
4 INL.—The project shall utilize, where ap-
5 propriate, extensive reactor test capabilities
6 resident at INL.

7 (iii) ALTERNATIVES.—The project
8 shall be designed to explore technical, envi-
9 ronmental, and economic feasibility of al-
10 ternative approaches for reactor-based hy-
11 drogen production.

12 (iv) INDUSTRIAL LEAD.—The indus-
13 trial lead for the project shall be a com-
14 pany incorporated in the United States.

15 (B) INTERNATIONAL COLLABORATION.—

16 (i) IN GENERAL.—The Secretary shall
17 seek international cooperation, participa-
18 tion, and financial contribution in this
19 project.

20 (ii) ASSISTANCE FROM INTER-
21 NATIONAL PARTNERS.—The Secretary may
22 contract for assistance from specialists or
23 facilities from member countries of the
24 Generation IV International Forum, the
25 Russian Federation, or other international

1 partners where such specialists or facilities
2 provide access to cost-effective and relevant
3 skills or test capabilities.

4 (iii) GENERATION IV INTERNATIONAL
5 FORUM.—International activities shall be
6 coordinated with the Generation IV Inter-
7 national Forum.

8 (iv) GENERATION IV NUCLEAR EN-
9 ERGY SYSTEMS PROGRAM.—The Secretary
10 may combine this project with the Genera-
11 tion IV Nuclear Energy Systems Program.

12 (C) DEMONSTRATION.—The overall
13 project, which may involve demonstration of se-
14 lected project objectives in a partner nation,
15 must demonstrate both electricity and hydrogen
16 production and may provide flexibility, where
17 technically and economically feasible in the de-
18 sign and construction, to enable tests of alter-
19 native reactor core and cooling configurations.

20 (D) PARTNERSHIPS.—The Secretary shall
21 establish cost-shared partnerships with domestic
22 industry or international participants for the re-
23 search, development, design, construction, and
24 operation of the research facility, and pref-
25 erence in determining the final project structure

1 shall be given to an overall project which re-
2 tains United States leadership while maximizing
3 cost sharing opportunities and minimizing Fed-
4 eral funding responsibilities.

5 (E) TARGET DATE.—The Secretary shall
6 select technologies and develop the project to
7 provide initial testing of either hydrogen pro-
8 duction or electricity generation by 2011, or
9 provide a report to Congress explaining why
10 this date is not feasible.

11 (F) WAIVER OF CONSTRUCTION
12 TIMELINES.—The Secretary is authorized to
13 conduct the Advanced Reactor Hydrogen Co-
14 generation Project without the constraints of
15 DOE Order 413.3, relating to program and
16 project management for the acquisition of cap-
17 ital assets, as necessary to meet the specified
18 operational date.

19 (G) COMPETITION.—The Secretary may
20 fund up to 2 teams for up to 1 year to develop
21 detailed proposals for competitive evaluation
22 and selection of a single proposal and concept
23 for further progress. The Secretary shall define
24 the format of the competitive evaluation of pro-
25 posals.

1 (H) USE OF FACILITIES.—Research facili-
2 ties in industry, national laboratories, or univer-
3 sities either within the United States or with
4 cooperating international partners may be used
5 to develop the enabling technologies for the re-
6 search facility. Utilization of domestic univer-
7 sity-based facilities shall be encouraged to pro-
8 vide educational opportunities for student devel-
9 opment.

10 (I) ROLE OF NUCLEAR REGULATORY COM-
11 MISSION.—

12 (i) IN GENERAL.—The Nuclear Regu-
13 latory Commission shall have licensing and
14 regulatory authority for any reactor au-
15 thorized under this subsection, pursuant to
16 section 202 of the Energy Reorganization
17 Act of 1974 (42 U.S.C. 5842).

18 (ii) RISK-BASED CRITERIA.—The Sec-
19 retary shall seek active participation of the
20 Nuclear Regulatory Commission through-
21 out the project to develop risk-based cri-
22 teria for any future commercial develop-
23 ment of a similar reactor architecture.

24 (J) REPORT.—The Secretary shall develop
25 and transmit to Congress a comprehensive

1 project plan not later than 3 months after the
2 date of enactment of this Act. The project plan
3 shall be updated annually with each annual
4 budget submission.

5 (b) ADVANCED NUCLEAR REACTOR TECH-
6 NOLOGIES.—The Secretary shall—

7 (1) prepare a detailed roadmap for carrying out
8 the provisions in this subtitle related to advanced
9 nuclear reactor technologies and for implementing
10 the recommendations related to advanced nuclear re-
11 actor technologies that are included in the report
12 transmitted under subsection (d); and

13 (2) provide for the establishment of 5 projects
14 in geographic areas that are regionally and climati-
15 cally diverse to demonstrate the commercial produc-
16 tion of hydrogen at existing nuclear power plants,
17 including one demonstration project at a national
18 laboratory or institution of higher education using
19 an advanced gas-cooled reactor.

20 (c) COLLOCATION WITH HYDROGEN PRODUCTION
21 FACILITY.—Section 103 of the Atomic Energy Act of
22 1954 (42 U.S.C. 2011) is amended by adding at the end
23 the following new subsection:

24 “g. The Commission shall give priority to the licens-
25 ing of a utilization facility that is collocated with a hydro-

1 gen production facility. The Commission shall issue a final
2 decision approving or disapproving the issuance of a li-
3 cense to construct and operate a utilization facility not
4 later than the expiration of 3 years after the date of the
5 submission of such application, if the application ref-
6 erences a Commission-certified design and an early site
7 permit, unless the Commission determines that the appli-
8 cant has proposed material and substantial changes to the
9 design or the site design parameters.”.

10 (d) REPORT.—The Secretary shall transmit to the
11 Congress not later than 120 days after the date of enact-
12 ment of this Act a report containing detailed summaries
13 of the roadmaps prepared under subsection (b)(1), de-
14 scriptions of the Secretary’s progress in establishing the
15 projects and other programs required under this section,
16 and recommendations for promoting the availability of ad-
17 vanced nuclear reactor energy technologies for the produc-
18 tion of hydrogen.

19 (e) AUTHORIZATION OF APPROPRIATIONS.—For the
20 purpose of supporting research programs related to the
21 development of advanced nuclear reactor technologies
22 under this section, there are authorized to be appropriated
23 to the Secretary—

24 (1) \$65,000,000 for fiscal year 2006;

25 (2) \$74,750,000 for fiscal year 2007;

- 1 (3) \$85,962,500 for fiscal year 2008;
- 2 (4) \$98,856,875 for fiscal year 2009;
- 3 (5) \$113,685,406 for fiscal year 2010;
- 4 (6) \$130,738,217 for fiscal year 2011;
- 5 (7) \$150,348,950 for fiscal year 2012;
- 6 (8) \$172,901,292 for fiscal year 2013;
- 7 (9) \$198,836,486 for fiscal year 2014; and
- 8 (10) \$228,661,959 for fiscal year 2015.

9 **SEC. 652. DEFINITIONS.**

10 For purposes of this subtitle—

11 (1) the term “advanced nuclear reactor tech-
12 nologies” means—

13 (A) technologies related to advanced light
14 water reactors that may be commercially avail-
15 able in the near-term, including mid-sized reac-
16 tors with passive safety features, for the gen-
17 eration of electric power from nuclear fission
18 and the production of hydrogen; and

19 (B) technologies related to other nuclear
20 reactors that may require prototype demonstra-
21 tion prior to availability in the mid-term or
22 long-term, including high-temperature, gas-
23 cooled reactors and liquid metal reactors, for
24 the generation of electric power from nuclear
25 fission and the production of hydrogen;

1 (2) the term “institution of higher education”
2 has the meaning given to that term in section
3 101(a) of the Higher Education Act of 1965 (20
4 U.S.C. 1001(a)); and

5 (3) the term “Secretary” means the Secretary
6 of Energy.

7 **Subtitle D—Nuclear Security**

8 **SEC. 661. NUCLEAR FACILITY THREATS.**

9 (a) STUDY.—The President, in consultation with the
10 Nuclear Regulatory Commission (referred to in this sub-
11 title as the “Commission”) and other appropriate Federal,
12 State, and local agencies and private entities, shall con-
13 duct a study to identify the types of threats that pose an
14 appreciable risk to the security of the various classes of
15 facilities licensed by the Commission under the Atomic
16 Energy Act of 1954 (42 U.S.C. 2011 et seq.). Such study
17 shall take into account, but not be limited to—

18 (1) the events of September 11, 2001;

19 (2) an assessment of physical, cyber, bio-
20 chemical, and other terrorist threats;

21 (3) the potential for attack on facilities by mul-
22 tiple coordinated teams of a large number of individ-
23 uals;

24 (4) the potential for assistance in an attack
25 from several persons employed at the facility;

1 (5) the potential for suicide attacks;

2 (6) the potential for water-based and air-based
3 threats;

4 (7) the potential use of explosive devices of con-
5 siderable size and other modern weaponry;

6 (8) the potential for attacks by persons with a
7 sophisticated knowledge of facility operations;

8 (9) the potential for fires, especially fires of
9 long duration;

10 (10) the potential for attacks on spent fuel
11 shipments by multiple coordinated teams of a large
12 number of individuals;

13 (11) the adequacy of planning to protect the
14 public health and safety at and around nuclear fa-
15 cilities, as appropriate, in the event of a terrorist at-
16 tack against a nuclear facility; and

17 (12) the potential for theft and diversion of nu-
18 clear materials from such facilities.

19 (b) SUMMARY AND CLASSIFICATION REPORT.—Not
20 later than 180 days after the date of the enactment of
21 this Act, the President shall transmit to Congress and the
22 Commission a report—

23 (1) summarizing the types of threats identified
24 under subsection (a); and

1 (2) classifying each type of threat identified
2 under subsection (a), in accordance with existing
3 laws and regulations, as either—

4 (A) involving attacks and destructive acts,
5 including sabotage, directed against the facility
6 by an enemy of the United States, whether a
7 foreign government or other person, or other-
8 wise falling under the responsibilities of the
9 Federal Government; or

10 (B) involving the type of risks that Com-
11 mission licensees should be responsible for
12 guarding against.

13 (c) **FEDERAL ACTION REPORT.**—Not later than 90
14 days after the date on which a report is transmitted under
15 subsection (b), the President shall transmit to Congress
16 a report on actions taken, or to be taken, to address the
17 types of threats identified under subsection (b)(2)(A), in-
18 cluding identification of the Federal, State, and local
19 agencies responsible for carrying out the obligations and
20 authorities of the United States. Such report may include
21 a classified annex, as appropriate.

22 (d) **REGULATIONS.**—Not later than 180 days after
23 the date on which a report is transmitted under subsection
24 (b), the Commission may revise, by rule, the design basis
25 threats issued before the date of enactment of this section

1 as the Commission considers appropriate based on the
2 summary and classification report.

3 (e) PHYSICAL SECURITY PROGRAM.—The Commis-
4 sion shall establish an operational safeguards response
5 evaluation program that ensures that the physical protec-
6 tion capability and operational safeguards response for
7 sensitive nuclear facilities, as determined by the Commis-
8 sion consistent with the protection of public health and
9 the common defense and security, shall be tested periodi-
10 cally through Commission approved or designed, observed,
11 and evaluated force-on-force exercises to determine wheth-
12 er the ability to defeat the design basis threat is being
13 maintained. For purposes of this subsection, the term
14 “sensitive nuclear facilities” includes at a minimum com-
15 mercial nuclear power plants and category I fuel cycle fa-
16 cilities.

17 (f) CONTROL OF INFORMATION.—Notwithstanding
18 any other provision of law, the Commission may undertake
19 any rulemaking under this subtitle in a manner that will
20 fully protect safeguards and classified national security in-
21 formation.

22 (g) FEDERAL SECURITY COORDINATORS.—

23 (1) REGIONAL OFFICES.—Not later than 18
24 months after the date of enactment of this Act, the
25 Commission shall assign a Federal security coordi-

1 nator, under the employment of the Commission, to
2 each region of the Commission.

3 (2) RESPONSIBILITIES.—The Federal security
4 coordinator shall be responsible for—

5 (A) communicating with the Commission
6 and other Federal, State, and local authorities
7 concerning threats, including threats against
8 such classes of facilities as the Commission de-
9 termines to be appropriate;

10 (B) ensuring that such classes of facilities
11 as the Commission determines to be appropriate
12 maintain security consistent with the security
13 plan in accordance with the appropriate threat
14 level; and

15 (C) assisting in the coordination of secu-
16 rity measures among the private security forces
17 at such classes of facilities as the Commission
18 determines to be appropriate and Federal,
19 State, and local authorities, as appropriate.

20 (h) TRAINING PROGRAM.—The President shall estab-
21 lish a program to provide technical assistance and training
22 to Federal agencies, the National Guard, and State and
23 local law enforcement and emergency response agencies in
24 responding to threats against a designated nuclear facility.

1 **SEC. 662. FINGERPRINTING FOR CRIMINAL HISTORY**
2 **RECORD CHECKS.**

3 (a) IN GENERAL.—Subsection a. of section 149 of
4 the Atomic Energy Act of 1954 (42 U.S.C. 2169(a)) is
5 amended—

6 (1) by striking “a. The Nuclear” and all that
7 follows through “section 147.” and inserting the fol-
8 lowing:

9 “a. IN GENERAL.—

10 “(1) REQUIREMENTS.—

11 “(A) IN GENERAL.—The Commission shall
12 require each individual or entity—

13 “(i) that is licensed or certified to en-
14 gage in an activity subject to regulation by
15 the Commission;

16 “(ii) that has filed an application for
17 a license or certificate to engage in an ac-
18 tivity subject to regulation by the Commis-
19 sion; or

20 “(iii) that has notified the Commis-
21 sion, in writing, of an intent to file an ap-
22 plication for licensing, certification, permit-
23 ting, or approval of a product or activity
24 subject to regulation by the Commission,

25 to fingerprint each individual described in sub-
26 paragraph (B) before the individual is per-

1 mitted unescorted access or access, whichever is
2 applicable, as described in subparagraph (B).

3 “(B) INDIVIDUALS REQUIRED TO BE
4 FINGERPRINTED.—The Commission shall re-
5 quire to be fingerprinted each individual who—

6 “(i) is permitted unescorted access
7 to—

8 “(I) a utilization facility; or

9 “(II) radioactive material or
10 other property subject to regulation
11 by the Commission that the Commis-
12 sion determines to be of such signifi-
13 cance to the public health and safety
14 or the common defense and security
15 as to warrant fingerprinting and back-
16 ground checks; or

17 “(ii) is permitted access to safeguards
18 information under section 147.”;

19 (2) by striking “All fingerprints obtained by a
20 licensee or applicant as required in the preceding
21 sentence” and inserting the following:

22 “(2) SUBMISSION TO THE ATTORNEY GEN-
23 ERAL.—All fingerprints obtained by an individual or
24 entity as required in paragraph (1)”;

1 (3) by striking “The costs of any identification
2 and records check conducted pursuant to the pre-
3 ceding sentence shall be paid by the licensee or ap-
4 plicant.” and inserting the following:

5 “(3) COSTS.—The costs of any identification
6 and records check conducted pursuant to paragraph
7 (1) shall be paid by the individual or entity required
8 to conduct the fingerprinting under paragraph
9 (1)(A).”; and

10 (4) by striking “Notwithstanding any other pro-
11 vision of law, the Attorney General may provide all
12 the results of the search to the Commission, and, in
13 accordance with regulations prescribed under this
14 section, the Commission may provide such results to
15 licensee or applicant submitting such fingerprints.”
16 and inserting the following:

17 “(4) PROVISION TO INDIVIDUAL OR ENTITY RE-
18 QUIRED TO CONDUCT FINGERPRINTING.—Notwith-
19 standing any other provision of law, the Attorney
20 General may provide all the results of the search to
21 the Commission, and, in accordance with regulations
22 prescribed under this section, the Commission may
23 provide such results to the individual or entity re-
24 quired to conduct the fingerprinting under para-
25 graph (1)(A).”.

1 (b) ADMINISTRATION.—Subsection c. of section 149
2 of the Atomic Energy Act of 1954 (42 U.S.C. 2169(e))
3 is amended—

4 (1) by striking “, subject to public notice and
5 comment, regulations—” and inserting “require-
6 ments—”; and

7 (2) by striking, in paragraph (2)(B),
8 “unescorted access to the facility of a licensee or ap-
9 plicant” and inserting “unescorted access to a utili-
10 zation facility, radioactive material, or other prop-
11 erty described in subsection a.(1)(B)”.

12 (c) BIOMETRIC METHODS.—Subsection d. of section
13 149 of the Atomic Energy Act of 1954 (42 U.S.C.
14 2169(d)) is redesignated as subsection e., and the fol-
15 lowing is inserted after subsection c.:

16 “d. USE OF OTHER BIOMETRIC METHODS.—The
17 Commission may satisfy any requirement for a person to
18 conduct fingerprinting under this section using any other
19 biometric method for identification approved for use by
20 the Attorney General, after the Commission has approved
21 the alternative method by rule.”.

1 **SEC. 663. USE OF FIREARMS BY SECURITY PERSONNEL OF**
2 **LICENSEES AND CERTIFICATE HOLDERS OF**
3 **THE COMMISSION.**

4 Section 161 of the Atomic Energy Act of 1954 (42
5 U.S.C. 2201) is amended by adding at the end the fol-
6 lowing subsection:

7 “(z)(1) notwithstanding section 922(o), (v), and
8 (w) of title 18, United States Code, or any similar
9 provision of any State law or any similar rule or reg-
10 ulation of a State or any political subdivision of a
11 State prohibiting the transfer or possession of a
12 handgun, a rifle or shotgun, a short-barreled shot-
13 gun, a short-barreled rifle, a machinegun, a semi-
14 automatic assault weapon, ammunition for the fore-
15 going, or a large capacity ammunition feeding de-
16 vice, authorize security personnel of licensees and
17 certificate holders of the Commission (including em-
18 ployees of contractors of licensees and certificate
19 holders) to receive, possess, transport, import, and
20 use 1 or more of those weapons, ammunition, or de-
21 vices, if the Commission determines that—

22 “(A) such authorization is necessary to the
23 discharge of the security personnel’s official du-
24 ties; and

25 “(B) the security personnel—

1 “(i) are not otherwise prohibited from
2 possessing or receiving a firearm under
3 Federal or State laws pertaining to posses-
4 sion of firearms by certain categories of
5 persons;

6 “(ii) have successfully completed re-
7 quirements established through guidelines
8 implementing this subsection for training
9 in use of firearms and tactical maneuvers;

10 “(iii) are engaged in the protection
11 of—

12 “(I) facilities owned or operated
13 by a Commission licensee or certifi-
14 cate holder that are designated by the
15 Commission; or

16 “(II) radioactive material or
17 other property owned or possessed by
18 a person that is a licensee or certifi-
19 cate holder of the Commission, or that
20 is being transported to or from a fa-
21 cility owned or operated by such a li-
22 censee or certificate holder, and that
23 has been determined by the Commis-
24 sion to be of significance to the com-

1 mon defense and security or public
2 health and safety; and

3 “(iv) are discharging their official du-
4 ties.

5 “(2) Such receipt, possession, transportation,
6 importation, or use shall be subject to—

7 “(A) chapter 44 of title 18, United States
8 Code, except for section 922(a)(4), (o), (v), and
9 (w);

10 “(B) chapter 53 of title 26, United States
11 Code, except for section 5844; and

12 “(C) a background check by the Attorney
13 General, based on fingerprints and including a
14 check of the system established under section
15 103(b) of the Brady Handgun Violence Preven-
16 tion Act (18 U.S.C. 922 note) to determine
17 whether the person applying for the authority is
18 prohibited from possessing or receiving a fire-
19 arm under Federal or State law.

20 “(3) This subsection shall become effective
21 upon the issuance of guidelines by the Commission,
22 with the approval of the Attorney General, to govern
23 the implementation of this subsection.

24 “(4) In this subsection, the terms ‘handgun’,
25 ‘rifle’, ‘shotgun’, ‘firearm’, ‘ammunition’, ‘machine-

1 gun', 'semiautomatic assault weapon', 'large capacity
2 ammunition feeding device', 'short-barreled shotgun',
3 and 'short-barreled rifle' shall have the meanings
4 given those terms in section 921(a) of title 18,
5 United States Code.”.

6 **SEC. 664. UNAUTHORIZED INTRODUCTION OF DANGEROUS**
7 **WEAPONS.**

8 Section 229 a. of the Atomic Energy Act of 1954 (42
9 U.S.C. 2278a(a)) is amended in the first sentence by in-
10 serting “or subject to the licensing authority of the Com-
11 mission or to certification by the Commission under this
12 Act or any other Act” before the period at the end.

13 **SEC. 665. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.**

14 (a) IN GENERAL.—Section 236 a. of the Atomic En-
15 ergy Act of 1954 (42 U.S.C. 2284(a)) is amended—

16 (1) in paragraph (2), by striking “storage facil-
17 ity” and inserting “storage, treatment, or disposal
18 facility”;

19 (2) in paragraph (3)—

20 (A) by striking “such a utilization facility”
21 and inserting “a utilization facility licensed
22 under this Act”; and

23 (B) by striking “or” at the end;

24 (3) in paragraph (4)—

1 (A) by striking “facility licensed” and in-
2 serting “, uranium conversion, or nuclear fuel
3 fabrication facility licensed or certified”; and

4 (B) by striking the comma at the end and
5 inserting a semicolon; and

6 (4) by inserting after paragraph (4) the fol-
7 lowing:

8 “(5) any production, utilization, waste storage,
9 waste treatment, waste disposal, uranium enrich-
10 ment, uranium conversion, or nuclear fuel fabrica-
11 tion facility subject to licensing or certification
12 under this Act during construction of the facility, if
13 the destruction or damage caused or attempted to be
14 caused could adversely affect public health and safe-
15 ty during the operation of the facility;

16 “(6) any primary facility or backup facility
17 from which a radiological emergency preparedness
18 alert and warning system is activated; or

19 “(7) any radioactive material or other property
20 subject to regulation by the Nuclear Regulatory
21 Commission that, before the date of the offense, the
22 Nuclear Regulatory Commission determines, by
23 order or regulation published in the Federal Reg-
24 ister, is of significance to the public health and safe-
25 ty or to common defense and security,”.

1 (b) PENALTIES.—Section 236 of the Atomic Energy
2 Act of 1954 (42 U.S.C. 2284) is amended by striking
3 “\$10,000 or imprisoned for not more than 20 years, or
4 both, and, if death results to any person, shall be impris-
5 oned for any term of years or for life” both places it ap-
6 pears and inserting “\$1,000,000 or imprisoned for up to
7 life without parole”.

8 **SEC. 666. SECURE TRANSFER OF NUCLEAR MATERIALS.**

9 (a) AMENDMENT.—Chapter 14 of the Atomic Energy
10 Act of 1954 (42 U.S.C. 2201–2210b) is amended by add-
11 ing at the end the following new section:

12 **“SEC. 170C. SECURE TRANSFER OF NUCLEAR MATERIALS.**

13 “a. The Nuclear Regulatory Commission shall estab-
14 lish a system to ensure that materials described in sub-
15 section b., when transferred or received in the United
16 States by any party pursuant to an import or export li-
17 cense issued pursuant to this Act, are accompanied by a
18 manifest describing the type and amount of materials
19 being transferred or received. Each individual receiving or
20 accompanying the transfer of such materials shall be sub-
21 ject to a security background check conducted by appro-
22 priate Federal entities.

23 “b. Except as otherwise provided by the Commission
24 by regulation, the materials referred to in subsection a.
25 are byproduct materials, source materials, special nuclear

1 materials, high-level radioactive waste, spent nuclear fuel,
2 transuranic waste, and low-level radioactive waste (as de-
3 fined in section 2(16) of the Nuclear Waste Policy Act
4 of 1982 (42 U.S.C. 10101(16))).”.

5 (b) REGULATIONS.—Not later than 1 year after the
6 date of the enactment of this Act, and from time to time
7 thereafter as it considers necessary, the Nuclear Regu-
8 latory Commission shall issue regulations identifying ra-
9 dioactive materials or classes of individuals that, con-
10 sistent with the protection of public health and safety and
11 the common defense and security, are appropriate excep-
12 tions to the requirements of section 170C of the Atomic
13 Energy Act of 1954, as added by subsection (a) of this
14 section.

15 (c) EFFECTIVE DATE.—The amendment made by
16 subsection (a) shall take effect upon the issuance of regu-
17 lations under subsection (b), except that the background
18 check requirement shall become effective on a date estab-
19 lished by the Commission.

20 (d) EFFECT ON OTHER LAW.—Nothing in this sec-
21 tion or the amendment made by this section shall waive,
22 modify, or affect the application of chapter 51 of title 49,
23 United States Code, part A of subtitle V of title 49,
24 United States Code, part B of subtitle VI of title 49,
25 United States Code, and title 23, United States Code.

1 (e) TABLE OF SECTIONS AMENDMENT.—The table of
2 sections for chapter 14 of the Atomic Energy Act of 1954
3 is amended by adding at the end the following new item:

“Sec. 170C. Secure transfer of nuclear materials.”.

4 **SEC. 667. DEPARTMENT OF HOMELAND SECURITY CON-**
5 **SULTATION.**

6 Before issuing a license for a utilization facility, the
7 Nuclear Regulatory Commission shall consult with the De-
8 partment of Homeland Security concerning the potential
9 vulnerabilities of the location of the proposed facility to
10 terrorist attack.

11 **SEC. 668. AUTHORIZATION OF APPROPRIATIONS.**

12 (a) IN GENERAL.—There are authorized to be appro-
13 priated such sums as are necessary to carry out this sub-
14 title and the amendments made by this subtitle.

15 (b) NUCLEAR REGULATORY COMMISSION USER FEES
16 AND ANNUAL CHARGES.—Section 6101 of the Omnibus
17 Budget Reconciliation Act of 1990 (42 U.S.C. 2214) is
18 amended—

19 (1) in subsection (a)—

20 (A) by striking “Except as provided in
21 paragraph (3), the” and inserting “The” in
22 paragraph (1); and

23 (B) by striking paragraph (3); and

24 (2) in subsection (c)—

1 (A) by striking “and” at the end of para-
2 graph (2)(A)(i);

3 (B) by striking the period at the end of
4 paragraph (2)(A)(ii) and inserting a semicolon;

5 (C) by adding at the end of paragraph
6 (2)(A) the following new clauses:

7 “(iii) amounts appropriated to the
8 Commission for the fiscal year for imple-
9 mentation of section 3116 of the Ronald
10 W. Reagan National Defense Authorization
11 Act for Fiscal Year 2005; and

12 “(iv) amounts appropriated to the
13 Commission for homeland security activi-
14 ties of the Commission for the fiscal year,
15 except for the costs of fingerprinting and
16 background checks required by section 149
17 of the Atomic Energy Act of 1954 (42
18 U.S.C. 2169) and the costs of conducting
19 security inspections.”; and

20 (D) by amending paragraph (2)(B)(v) to
21 read as follows:

22 “(v) 90 percent for fiscal year 2005
23 and each fiscal year thereafter.”.

1 (c) REPEAL.—Section 7601 of the Consolidated Om-
2 nibus Budget Reconciliation Act of 1985 (42 U.S.C. 2213)
3 is repealed.

4 **TITLE VII—VEHICLES AND**
5 **FUELS**
6 **Subtitle A—Existing Programs**

7 **SEC. 701. USE OF ALTERNATIVE FUELS BY DUAL-FUELED**
8 **VEHICLES.**

9 Section 400AA(a)(3)(E) of the Energy Policy and
10 Conservation Act (42 U.S.C. 6374(a)(3)(E)) is amended
11 to read as follows:

12 “(E)(i) Dual fueled vehicles acquired pursuant to this
13 section shall be operated on alternative fuels unless the
14 Secretary determines that an agency qualifies for a waiver
15 of such requirement for vehicles operated by the agency
16 in a particular geographic area in which—

17 “(I) the alternative fuel otherwise required to
18 be used in the vehicle is not reasonably available to
19 retail purchasers of the fuel, as certified to the Sec-
20 retary by the head of the agency; or

21 “(II) the cost of the alternative fuel otherwise
22 required to be used in the vehicle is unreasonably
23 more expensive compared to gasoline, as certified to
24 the Secretary by the head of the agency.

1 “(ii) 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. 704. 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. 705. LEASE CONDENSATES.**

13 (a) LEASE CONDENSATE FUELS.—Section 301 of the
14 Energy Policy Act of 1992 (42 U.S.C. 13211) is amend-
15 ed—

16 (1) in paragraph (2), by inserting “mixtures
17 containing 50 percent or more by volume of lease
18 condensate or fuels extracted from lease conden-
19 sate;” after “liquefied petroleum gas;”;

20 (2) in paragraph (13), by striking “and” at the
21 end;

22 (3) in paragraph (14)—

23 (A) by inserting “mixtures containing 50
24 percent or more by volume of lease condensate

1 or fuels extracted from lease condensate,” after
2 “liquefied petroleum gas,”; and

3 (B) by striking the period and inserting “;
4 and”; and

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

6 “(15) the term ‘lease condensate’ means a mix-
7 ture, primarily of pentanes and heavier hydro-
8 carbons, that is recovered as a liquid from natural
9 gas in lease separation facilities.”.

10 (b) LEASE CONDENSATE USE CREDITS.—

11 (1) IN GENERAL.—Title III of the Energy Pol-
12 icy Act of 1992 (42 U.S.C. 13211 et seq.) is amend-
13 ed by adding at the end the following:

14 **“SEC. 313. LEASE CONDENSATE USE CREDITS.**

15 “(a) IN GENERAL.—Subject to subsection (d), the
16 Secretary shall allocate 1 credit under this section to a
17 fleet or covered person for each qualifying volume of the
18 lease condensate component of fuel containing at least 50
19 percent lease condensate, or fuels extracted from lease
20 condensate, after the date of enactment of this section for
21 use by the fleet or covered person in vehicles owned or
22 operated by the fleet or covered person that weigh more
23 than 8,500 pounds gross vehicle weight rating.

24 “(b) REQUIREMENTS.—A credit allocated under this
25 section—

1 “(1) shall be subject to the same exceptions,
2 authority, documentation, and use of credits that are
3 specified for qualifying volumes of biodiesel in sec-
4 tion 312; and

5 “(2) shall not be considered a credit under sec-
6 tion 508.

7 “(c) REGULATION.—

8 “(1) IN GENERAL.—Subject to subsection (d),
9 not later than January 1, 2006, after the collection
10 of appropriate information and data that consider
11 usage options, uses in other industries, products, or
12 processes, potential volume capacities, costs, air
13 emissions, and fuel efficiencies, the Secretary shall
14 issue a regulation establishing requirements and pro-
15 cedures for the implementation of this section.

16 “(2) QUALIFYING VOLUME.—The regulation
17 shall include a determination of an appropriate
18 qualifying volume for lease condensate, except that
19 in no case shall the Secretary determine that the
20 qualifying volume for lease condensate is less than
21 1,125 gallons.

22 “(d) APPLICABILITY.—This section applies unless the
23 Secretary finds that the use of lease condensate as an al-
24 ternative fuel would adversely affect public health or safe-
25 ty or ambient air quality or the environment.”.

1 (2) TABLE OF CONTENTS AMENDMENT.—The
2 table of contents of the Energy Policy Act of 1992
3 (42 U.S.C. prec. 13201) is amended by adding at
4 the end of the items relating to title III the fol-
5 lowing:

“Sec. 313. Lease condensate use credits.”.

6 (c) EMERGENCY EXEMPTION.—Section 301 of the
7 Energy Policy Act of 1992 (42 U.S.C. 13211) is amended
8 in paragraph (9)(E) by inserting before the semicolon at
9 the end “, including vehicles directly used in the emer-
10 gency repair of transmission lines and in the restoration
11 of electricity service following power outages, as deter-
12 mined by the Secretary”.

13 **SEC. 706. REVIEW OF ENERGY POLICY ACT OF 1992 PRO-**
14 **GRAMS.**

15 (a) IN GENERAL.—Not later than 180 days after the
16 date of enactment of this section, the Secretary of Energy
17 shall complete a study to determine the effect that titles
18 III, IV, and V of the Energy Policy Act of 1992 (42
19 U.S.C. 13211 et seq.) have had on—

20 (1) the development of alternative fueled vehicle
21 technology;

22 (2) the availability of that technology in the
23 market; and

24 (3) the cost of alternative fueled vehicles.

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;

21 (D) associated training and employee ex-
22 penses; and

23 (E) any other factors or expenses the Sec-
24 retary determines to be necessary to compile re-
25 liable estimates of the overall costs and benefits

1 of complying with programs under those titles
2 for fleets, covered persons, and the national
3 economy;

4 (5) the existence of obstacles preventing compli-
5 ance with vehicle acquisition requirements and in-
6 creased use of alternative fuel in alternative fueled
7 vehicles acquired by fleets or covered persons; and

8 (6) the projected impact of amendments to the
9 Energy Policy Act of 1992 made by this title.

10 (c) REPORT.—Upon completion of the study under
11 this section, the Secretary shall submit to Congress a re-
12 port that describes the results of the study and includes
13 any recommendations of the Secretary for legislative or
14 administrative changes concerning the alternative fueled
15 vehicle requirements under titles III, IV and V of the En-
16 ergy Policy Act of 1992 (42 U.S.C. 13211 et seq.).

17 **SEC. 707. REPORT CONCERNING COMPLIANCE WITH AL-**
18 **TERNATIVE FUELED VEHICLE PURCHASING**
19 **REQUIREMENTS.**

20 Section 310(b)(1) of the Energy Policy Act of 1992
21 (42 U.S.C. 13218(b)(1)) is amended by striking “1 year
22 after the date of enactment of this subsection” and insert-
23 ing “February 15, 2006”.

1 **Subtitle B—Hybrid Vehicles, Ad-**
2 **vanced Vehicles, and Fuel Cell**
3 **Buses**

4 **PART 1—HYBRID VEHICLES**

5 **SEC. 711. HYBRID VEHICLES.**

6 The Secretary of Energy shall accelerate efforts di-
7 rected toward the improvement of batteries and other re-
8 chargeable energy storage systems, power electronics, hy-
9 brid systems integration, and other technologies for use
10 in hybrid vehicles.

11 **SEC. 712. HYBRID RETROFIT AND ELECTRIC CONVERSION**
12 **PROGRAM.**

13 (a) **ESTABLISHMENT.**—The Administrator of the En-
14 vironmental Protection Agency, in consultation with the
15 Secretary, shall establish a program for awarding grants
16 on a competitive basis to entities for the installation of
17 hybrid retrofit and electric conversion technologies for
18 combustion engine vehicles.

19 (b) **ELIGIBLE RECIPIENTS.**—A grant shall be award-
20 ed under this section only—

21 (1) to a local or State governmental entity;

22 (2) to a for-profit or nonprofit corporation or
23 other person; or

1 (3) to 1 or more contracting entities that serv-
2 ice combustion engine vehicles for an entity de-
3 scribed in paragraph (1) or (2).

4 (c) AWARDS.—

5 (1) IN GENERAL.—The Administrator shall
6 seek, to the maximum extent practicable, to ensure
7 a broad geographic distribution of grants under this
8 section.

9 (2) PREFERENCES.—In making awards of
10 grants under this section, the Administrator shall
11 give preference to proposals that—

12 (A) will achieve the greatest reductions in
13 emissions per proposal or per vehicle; or

14 (B) involve the use of emissions control
15 retrofit or conversion technology.

16 (d) CONDITIONS OF GRANT.—A grant shall be pro-
17 vided under this section on the conditions that—

18 (1) combustion engine vehicles on which hybrid
19 retrofit or conversion technology are to be dem-
20 onstrated—

21 (A) with the retrofit or conversion tech-
22 nology applied will achieve low-emission stand-
23 ards consistent with the Voluntary National
24 Low Emission Vehicle Program for Light-Duty

1 Vehicles and Light-Duty Trucks (40 CFR Part
2 86) without model year restrictions; and

3 (B) will be used for a minimum of 3 years;

4 (2) grant funds will be used for the purchase of
5 hybrid retrofit or conversion technology, including
6 State taxes and contract fees; and

7 (3) grant recipients will provide at least 15 per-
8 cent of the total cost of the retrofit or conversion,
9 including the purchase of hybrid retrofit or conver-
10 sion technology and all necessary labor for installa-
11 tion of the retrofit or conversion.

12 (e) VERIFICATION.—Not later than 90 days after the
13 date of enactment of this Act, the Administrator shall
14 publish in the Federal Register procedures to verify—

15 (1) the hybrid retrofit or conversion technology
16 to be demonstrated; and

17 (2) that grants are administered in accordance
18 with this section.

19 (f) AUTHORIZATION OF APPROPRIATIONS.—There
20 are authorized to be appropriated to the Administrator to
21 carry out this section, to remain available until ex-
22 pended—

23 (1) \$20,000,000 for fiscal year 2005;

24 (2) \$35,000,000 for fiscal year 2006;

25 (3) \$45,000,000 for fiscal year 2007; and

1 (4) such sums as are necessary for each of fis-
2 cal years 2008 and 2009.

3 **PART 2—ADVANCED VEHICLES**

4 **SEC. 721. DEFINITIONS.**

5 In this part:

6 (1) **ALTERNATIVE FUELED VEHICLE.**—

7 (A) **IN GENERAL.**—The term “alternative
8 fueled vehicle” means a vehicle propelled solely
9 on an alternative fuel (as defined in section 301
10 of the Energy Policy Act of 1992 (42 U.S.C.
11 13211)).

12 (B) **EXCLUSION.**—The term “alternative
13 fueled vehicle” does not include a vehicle that
14 the Secretary determines, by regulation, does
15 not yield substantial environmental benefits
16 over a vehicle operating solely on gasoline or
17 diesel derived from fossil fuels.

18 (2) **FUEL CELL VEHICLE.**—The term “fuel cell
19 vehicle” means a vehicle propelled by an electric
20 motor powered by a fuel cell system that converts
21 chemical energy into electricity by combining oxygen
22 (from air) with hydrogen fuel that is stored on the
23 vehicle or is produced onboard by reformation of a
24 hydrocarbon fuel. Such fuel cell system may or may

1 not include the use of auxiliary energy storage sys-
2 tems to enhance vehicle performance.

3 (3) HYBRID VEHICLE.—The term “hybrid vehi-
4 cle” means a medium or heavy duty vehicle propelled
5 by an internal combustion engine or heat engine
6 using any combustible fuel and an onboard recharge-
7 able energy storage device.

8 (4) NEIGHBORHOOD ELECTRIC VEHICLE.—The
9 term “neighborhood electric vehicle” means a motor
10 vehicle that—

11 (A) meets the definition of a low-speed ve-
12 hicle (as defined in part 571 of title 49, Code
13 of Federal Regulations);

14 (B) meets the definition of a zero-emission
15 vehicle (as defined in section 86.1702–99 of
16 title 40, Code of Federal Regulations);

17 (C) meets the requirements of Federal
18 Motor Vehicle Safety Standard No. 500; and

19 (D) has a maximum speed of not greater
20 than 25 miles per hour.

21 (5) PILOT PROGRAM.—The term “pilot pro-
22 gram” means the competitive grant program estab-
23 lished under section 722.

24 (6) SECRETARY.—The term “Secretary” means
25 the Secretary of Energy.

1 (7) ULTRA-LOW SULFUR DIESEL VEHICLE.—

2 The term “ultra-low sulfur diesel vehicle” means a
3 vehicle manufactured in any of model years 2004
4 through 2006 powered by a heavy-duty diesel engine
5 that—

6 (A) is fueled by diesel fuel that contains
7 sulfur at not more than 15 parts per million;
8 and

9 (B) emits not more than the lesser of—

10 (i) for vehicles manufactured in model
11 years 2004 through 2006, 2.5 grams per
12 brake horsepower-hour of nonmethane hy-
13 drocarbons and oxides of nitrogen and .01
14 grams per brake horsepower-hour of par-
15 ticulate matter; or

16 (ii) the quantity of emissions of non-
17 methane hydrocarbons, oxides of nitrogen,
18 and particulate matter of the best-per-
19 forming technology of ultra-low sulfur die-
20 sel vehicles of the same class and applica-
21 tion that are commercially available.

22 **SEC. 722. PILOT PROGRAM.**

23 (a) ESTABLISHMENT.—The Secretary, in consulta-
24 tion with the Secretary of Transportation, shall establish
25 a competitive grant pilot program, to be administered

1 through the Clean Cities Program of the Department of
2 Energy, to provide not more than 15 geographically dis-
3 persed project grants to State governments, local govern-
4 ments, or metropolitan transportation authorities to carry
5 out a project or projects for the purposes described in sub-
6 section (b).

7 (b) GRANT PURPOSES.—A grant under this section
8 may be used for the following purposes:

9 (1) The acquisition of alternative fueled vehicles
10 or fuel cell vehicles, including—

11 (A) passenger vehicles (including neighbor-
12 hood electric vehicles); and

13 (B) motorized 2-wheel bicycles, scooters, or
14 other vehicles for use by law enforcement per-
15 sonnel or other State or local government or
16 metropolitan transportation authority employ-
17 ees.

18 (2) The acquisition of alternative fueled vehi-
19 cles, hybrid vehicles, or fuel cell vehicles, including—

20 (A) buses used for public transportation or
21 transportation to and from schools;

22 (B) delivery vehicles for goods or services;
23 and

24 (C) ground support vehicles at public air-
25 ports (including vehicles to carry baggage or

1 push or pull airplanes toward or away from ter-
2 minal gates).

3 (3) The acquisition of ultra-low sulfur diesel ve-
4 hicles.

5 (4) Installation or acquisition of infrastructure
6 necessary to directly support an alternative fueled
7 vehicle, fuel cell vehicle, or hybrid vehicle project
8 funded by the grant, including fueling and other
9 support equipment.

10 (5) Operation and maintenance of vehicles, in-
11 frastructure, and equipment acquired as part of a
12 project funded by the grant.

13 (c) APPLICATIONS.—

14 (1) REQUIREMENTS.—

15 (A) IN GENERAL.—The Secretary shall
16 issue requirements for applying for grants
17 under the pilot program.

18 (B) MINIMUM REQUIREMENTS.—At a min-
19 imum, the Secretary shall require that an appli-
20 cation for a grant—

21 (i) be submitted by the head of a
22 State or local government or a metropoli-
23 tan transportation authority, or any com-
24 bination thereof, and a registered partici-

1 part in the Clean Cities Program of the
2 Department of Energy; 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;

21 (V) a complete description of the
22 costs of the project, including acquisi-
23 tion, construction, operation, and
24 maintenance costs over the expected
25 life of the project;

1 (VI) a description of which costs
2 of the project will be supported by
3 Federal assistance under this part;
4 and

5 (VII) documentation to the satis-
6 faction of the Secretary that diesel
7 fuel containing sulfur at not more
8 than 15 parts per million is available
9 for carrying out the project, and a
10 commitment by the applicant to use
11 such fuel in carrying out the project.

12 (2) PARTNERS.—An applicant under paragraph
13 (1) may carry out a project under the pilot program
14 in partnership with public and private entities.

15 (d) SELECTION CRITERIA.—In evaluating applica-
16 tions under the pilot program, the Secretary shall—

17 (1) consider each applicant's previous experi-
18 ence with similar projects; and

19 (2) give priority consideration to applications
20 that—

21 (A) are most likely to maximize protection
22 of the environment;

23 (B) demonstrate the greatest commitment
24 on the part of the applicant to ensure funding
25 for the proposed project and the greatest likeli-

1 hood that the project will be maintained or ex-
2 panded after Federal assistance under this part
3 is completed; and

4 (C) exceed the minimum requirements of
5 subsection (c)(1)(B)(ii).

6 (e) PILOT PROJECT REQUIREMENTS.—

7 (1) MAXIMUM AMOUNT.—The Secretary shall
8 not provide more than \$20,000,000 in Federal as-
9 sistance under the pilot program to any applicant.

10 (2) COST SHARING.—The Secretary shall not
11 provide more than 50 percent of the cost, incurred
12 during the period of the grant, of any project under
13 the pilot program.

14 (3) MAXIMUM PERIOD OF GRANTS.—The Sec-
15 retary shall not fund any applicant under the pilot
16 program for more than 5 years.

17 (4) DEPLOYMENT AND DISTRIBUTION.—The
18 Secretary shall seek to the maximum extent prac-
19 ticable to ensure a broad geographic distribution of
20 project sites.

21 (5) TRANSFER OF INFORMATION AND KNOWL-
22 EDGE.—The Secretary shall establish mechanisms to
23 ensure that the information and knowledge gained
24 by participants in the pilot program are transferred
25 among the pilot program participants and to other

1 interested parties, including other applicants that
2 submitted applications.

3 (f) SCHEDULE.—

4 (1) PUBLICATION.—Not later than 90 days
5 after the date of enactment of this Act, the Sec-
6 retary shall publish in the Federal Register, Com-
7 merce Business Daily, and elsewhere as appropriate,
8 a request for applications to undertake projects
9 under the pilot program. Applications shall be due
10 not later than 180 days after the date of publication
11 of the notice.

12 (2) SELECTION.—Not later than 180 days after
13 the date by which applications for grants are due,
14 the Secretary shall select by competitive, peer re-
15 viewed proposal, all applications for projects to be
16 awarded a grant under the pilot program.

17 (g) LIMIT ON FUNDING.—The Secretary shall pro-
18 vide not less than 20 nor more than 25 percent of the
19 grant funding made available under this section for the
20 acquisition of ultra-low sulfur diesel vehicles.

21 **SEC. 723. REPORTS TO CONGRESS.**

22 (a) INITIAL REPORT.—Not later than 60 days after
23 the date on which grants are awarded under this part,
24 the Secretary shall submit to Congress a report con-
25 taining—

1 (1) an identification of the grant recipients and
2 a description of the projects to be funded;

3 (2) an identification of other applicants that
4 submitted applications for the pilot program; and

5 (3) a description of the mechanisms used by the
6 Secretary to ensure that the information and knowl-
7 edge gained by participants in the pilot program are
8 transferred among the pilot program participants
9 and to other interested parties, including other ap-
10 plicants that submitted applications.

11 (b) EVALUATION.—Not later than 3 years after the
12 date of enactment of this Act, and annually thereafter
13 until the pilot program ends, the Secretary shall submit
14 to Congress a report containing an evaluation of the effec-
15 tiveness of the pilot program, including—

16 (1) an assessment of the benefits to the envi-
17 ronment derived from the projects included in the
18 pilot program; and

19 (2) an estimate of the potential benefits to the
20 environment to be derived from widespread applica-
21 tion of alternative fueled vehicles and ultra-low sul-
22 fur diesel vehicles.

1 **SEC. 724. 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 of Energy, in con-
8 sultation with the Secretary of Transportation, shall es-
9 tablish a transit bus demonstration program to make com-
10 petitive, merit-based awards for 5-year projects to dem-
11 onstrate not more than 25 fuel cell transit buses (and nec-
12 essary infrastructure) in 5 geographically dispersed local-
13 ities.

14 (b) **PREFERENCE.**—In selecting projects under this
15 section, the Secretary of Energy shall give preference to
16 projects that are most likely to mitigate congestion and
17 improve air quality.

18 (c) **AUTHORIZATION OF APPROPRIATIONS.**—There
19 are authorized to be appropriated to the Secretary of En-
20 ergy to carry out this section \$10,000,000 for each of fis-
21 cal years 2006 through 2010.

22 **Subtitle C—Clean School Buses**

23 **SEC. 741. DEFINITIONS.**

24 In this subtitle:

1 (1) ADMINISTRATOR.—The term “Adminis-
2 trator” means the Administrator of the Environ-
3 mental Protection Agency.

4 (2) ALTERNATIVE FUEL.—The term “alter-
5 native fuel” means liquefied natural gas, compressed
6 natural gas, liquefied petroleum gas, hydrogen, pro-
7 pane, or methanol or ethanol at no less than 85 per-
8 cent by volume.

9 (3) ALTERNATIVE FUEL SCHOOL BUS.—The
10 term “alternative fuel school bus” means a school
11 bus that meets all of the requirements of this sub-
12 title and is operated solely on an alternative fuel.

13 (4) EMISSIONS CONTROL RETROFIT TECH-
14 NOLOGY.—The term “emissions control retrofit tech-
15 nology” means a particulate filter or other emissions
16 control equipment that is verified or certified by the
17 Administrator or the California Air Resources Board
18 as an effective emission reduction technology when
19 installed on an existing school bus.

20 (5) IDLING.—The term “idling” means oper-
21 ating an engine while remaining stationary for more
22 than approximately 15 minutes, except that the term
23 does not apply to routine stoppages associated with
24 traffic movement or congestion.

1 (6) SECRETARY.—The term “Secretary” means
2 the Secretary of Energy.

3 (7) ULTRA-LOW SULFUR DIESEL FUEL.—The
4 term “ultra-low sulfur diesel fuel” means diesel fuel
5 that contains sulfur at not more than 15 parts per
6 million.

7 (8) ULTRA-LOW SULFUR DIESEL FUEL SCHOOL
8 BUS.—The term “ultra-low sulfur diesel fuel school
9 bus” means a school bus that meets all of the re-
10 quirements of this subtitle and is operated solely on
11 ultra-low sulfur diesel fuel.

12 **SEC. 742. PROGRAM FOR REPLACEMENT OF CERTAIN**
13 **SCHOOL BUSES WITH CLEAN SCHOOL BUSES.**

14 (a) ESTABLISHMENT.—The Administrator, in con-
15 sultation with the Secretary and other appropriate Federal
16 departments and agencies, shall establish a program for
17 awarding grants on a competitive basis to eligible entities
18 for the replacement of existing school buses manufactured
19 before model year 1991 with alternative fuel school buses
20 and ultra-low sulfur diesel fuel school buses.

21 (b) REQUIREMENTS.—

22 (1) IN GENERAL.—Not later than 90 days after
23 the date of enactment of this Act, the Administrator
24 shall establish and publish in the Federal Register
25 grant requirements on eligibility for assistance, and

1 on implementation of the program established under
2 subsection (a), including instructions for the submis-
3 sion of grant applications and certification require-
4 ments to ensure compliance with this subtitle.

5 (2) APPLICATION DEADLINES.—The require-
6 ments established under paragraph (1) shall require
7 submission of grant applications not later than—

8 (A) in the case of the first year of program
9 implementation, the date that is 180 days after
10 the publication of the requirements in the Fed-
11 eral Register; and

12 (B) in the case of each subsequent year,
13 June 1 of the year.

14 (c) ELIGIBLE RECIPIENTS.—A grant shall be award-
15 ed under this section only—

16 (1) to 1 or more local or State governmental
17 entities responsible for providing school bus service
18 to 1 or more public school systems or responsible for
19 the purchase of school buses;

20 (2) to 1 or more contracting entities that pro-
21 vide school bus service to 1 or more public school
22 systems, if the grant application is submitted jointly
23 with the 1 or more school systems to be served by
24 the buses, except that the application may provide
25 that buses purchased using funds awarded shall be

1 owned, operated, and maintained exclusively by the
2 1 or more contracting entities; or

3 (3) to a nonprofit school transportation associa-
4 tion representing private contracting entities, if the
5 association has notified and received approval from
6 the 1 or more school systems to be served by the
7 buses.

8 (d) AWARD DEADLINES.—

9 (1) IN GENERAL.—Subject to paragraph (2),
10 the Administrator shall award a grant made to a
11 qualified applicant for a fiscal year—

12 (A) in the case of the first fiscal year of
13 program implementation, not later than the
14 date that is 90 days after the application dead-
15 line established under subsection (b)(2); and

16 (B) in the case of each subsequent fiscal
17 year, not later than August 1 of the fiscal year.

18 (2) INSUFFICIENT NUMBER OF QUALIFIED
19 GRANT APPLICATIONS.—If the Administrator does
20 not receive a sufficient number of qualified grant ap-
21 plications to meet the requirements of subsection
22 (i)(1) for a fiscal year, the Administrator shall
23 award a grant made to a qualified applicant under
24 subsection (i)(2) not later than September 30 of the
25 fiscal year.

1 (e) TYPES OF GRANTS.—

2 (1) IN GENERAL.—A grant under this section
3 shall be used for the replacement of school buses
4 manufactured before model year 1991 with alter-
5 native fuel school buses and ultra-low sulfur diesel
6 fuel school buses.

7 (2) NO ECONOMIC BENEFIT.—Other than the
8 receipt of the grant, a recipient of a grant under this
9 section may not receive any economic benefit in con-
10 nection with the receipt of the grant.

11 (3) PRIORITY OF GRANT APPLICATIONS.—The
12 Administrator shall give priority to applicants that
13 propose to replace school buses manufactured before
14 model year 1977.

15 (f) CONDITIONS OF GRANT.—A grant provided under
16 this section shall include the following conditions:

17 (1) SCHOOL BUS FLEET.—All buses acquired
18 with funds provided under the grant shall be oper-
19 ated as part of the school bus fleet for which the
20 grant was made for a minimum of 5 years.

21 (2) USE OF FUNDS.—Funds provided under the
22 grant may only be used—

23 (A) to pay the cost, except as provided in
24 paragraph (3), of new alternative fuel school
25 buses or ultra-low sulfur diesel fuel school

1 buses, including State taxes and contract fees
2 associated with the acquisition of such buses;
3 and

4 (B) to provide—

5 (i) up to 20 percent of the price of the
6 alternative fuel school buses acquired, for
7 necessary alternative fuel infrastructure if
8 the infrastructure will only be available to
9 the grant recipient; and

10 (ii) up to 25 percent of the price of
11 the alternative fuel school buses acquired,
12 for necessary alternative fuel infrastructure
13 if the infrastructure will be available to the
14 grant recipient and to other bus fleets.

15 (3) GRANT RECIPIENT FUNDS.—The grant re-
16 cipient shall be required to provide at least—

17 (A) in the case of a grant recipient de-
18 scribed in paragraph (1) or (3) of subsection
19 (c), the lesser of—

20 (i) an amount equal to 15 percent of
21 the total cost of each bus received; or

22 (ii) \$15,000 per bus; and

23 (B) in the case of a grant recipient de-
24 scribed in subsection (c)(2), the lesser of—

1 (i) an amount equal to 20 percent of
2 the total cost of each bus received; or

3 (ii) \$20,000 per bus.

4 (4) ULTRA-LOW SULFUR DIESEL FUEL.—In the
5 case of a grant recipient receiving a grant for ultra-
6 low sulfur diesel fuel school buses, the grant recipi-
7 ent shall be required to provide documentation to
8 the satisfaction of the Administrator that diesel fuel
9 containing sulfur at not more than 15 parts per mil-
10 lion is available for carrying out the purposes of the
11 grant, and a commitment by the applicant to use
12 such fuel in carrying out the purposes of the grant.

13 (5) TIMING.—All alternative fuel school buses,
14 ultra-low sulfur diesel fuel school buses, or alter-
15 native fuel infrastructure acquired under a grant
16 awarded under this section shall be purchased and
17 placed in service as soon as practicable.

18 (g) BUSES.—

19 (1) IN GENERAL.—Except as provided in para-
20 graph (2), funding under a grant made under this
21 section for the acquisition of new alternative fuel
22 school buses or ultra-low sulfur diesel fuel school
23 buses shall only be used to acquire school buses—

24 (A) with a gross vehicle weight of greater
25 than 14,000 pounds;

1 (B) that are powered by a heavy duty en-
2 gine;

3 (C) in the case of alternative fuel school
4 buses manufactured in model years 2004
5 through 2006, that emit not more than 1.8
6 grams per brake horsepower-hour of non-
7 methane hydrocarbons and oxides of nitrogen
8 and .01 grams per brake horsepower-hour of
9 particulate matter; and

10 (D) in the case of ultra-low sulfur diesel
11 fuel school buses manufactured in model years
12 2004 through 2006, that emit not more than
13 2.5 grams per brake horsepower-hour of non-
14 methane hydrocarbons and oxides of nitrogen
15 and .01 grams per brake horsepower-hour of
16 particulate matter.

17 (2) LIMITATIONS.—A bus shall not be acquired
18 under this section that emits nonmethane hydro-
19 carbons, oxides of nitrogen, or particulate matter at
20 a rate greater than the best performing technology
21 of the same class of ultra-low sulfur diesel fuel
22 school buses commercially available at the time the
23 grant is made.

24 (h) DEPLOYMENT AND DISTRIBUTION.—The Admin-
25 istrator shall—

1 (1) seek, to the maximum extent practicable, to
2 achieve nationwide deployment of alternative fuel
3 school buses and ultra-low sulfur diesel fuel school
4 buses through the program under this section; and

5 (2) ensure a broad geographic distribution of
6 grant awards, with a goal of no State receiving more
7 than 10 percent of the grant funding made available
8 under this section for a fiscal year.

9 (i) ALLOCATION OF FUNDS.—

10 (1) IN GENERAL.—Subject to paragraph (2), of
11 the amount of grant funding made available to carry
12 out this section for any fiscal year, the Adminis-
13 trator shall use—

14 (A) 70 percent for the acquisition of alter-
15 native fuel school buses or supporting infra-
16 structure; and

17 (B) 30 percent for the acquisition of ultra-
18 low sulfur diesel fuel school buses.

19 (2) INSUFFICIENT NUMBER OF QUALIFIED
20 GRANT APPLICATIONS.—After the first fiscal year in
21 which this program is in effect, if the Administrator
22 does not receive a sufficient number of qualified
23 grant applications to meet the requirements of sub-
24 paragraph (A) or (B) of paragraph (1) for a fiscal
25 year, effective beginning on August 1 of the fiscal

1 year, the Administrator shall make the remaining
2 funds available to other qualified grant applicants
3 under this section.

4 (j) REDUCTION OF SCHOOL BUS IDLING.—Each
5 local educational agency (as defined in section 9101 of the
6 Elementary and Secondary Education Act of 1965 (20
7 U.S.C. 7801)) that receives Federal funds under the Ele-
8 mentary and Secondary Education Act of 1965 (20 U.S.C.
9 6301 et seq.) is encouraged to develop a policy, consistent
10 with the health, safety, and welfare of students and the
11 proper operation and maintenance of school buses, to re-
12 duce the incidence of unnecessary school bus idling at
13 schools when picking up and unloading students.

14 (k) ANNUAL REPORT.—

15 (1) IN GENERAL.—Not later than January 31
16 of each year, the Administrator shall transmit to
17 Congress a report evaluating implementation of the
18 programs under this section and section 743.

19 (2) COMPONENTS.—The reports shall include a
20 description of—

21 (A) the total number of grant applications
22 received;

23 (B) the number and types of alternative
24 fuel school buses, ultra-low sulfur diesel fuel

1 school buses, and retrofitted buses requested in
2 grant applications;

3 (C) grants awarded and the criteria used
4 to select the grant recipients;

5 (D) certified engine emission levels of all
6 buses purchased or retrofitted under the pro-
7 grams under this section and section 743;

8 (E) an evaluation of the in-use emission
9 level of buses purchased or retrofitted under the
10 programs under this section and section 743;
11 and

12 (F) any other information the Adminis-
13 trator considers appropriate.

14 (I) AUTHORIZATION OF APPROPRIATIONS.—There
15 are authorized to be appropriated to the Administrator to
16 carry out this section, to remain available until ex-
17 pended—

18 (1) \$45,000,000 for fiscal year 2005;

19 (2) \$65,000,000 for fiscal year 2006;

20 (3) \$90,000,000 for fiscal year 2007; and

21 (4) such sums as are necessary for each of fis-
22 cal years 2008 and 2009.

23 **SEC. 743. DIESEL RETROFIT PROGRAM.**

24 (a) ESTABLISHMENT.—The Administrator, in con-
25 sultation with the Secretary, shall establish a program for

1 awarding grants on a competitive basis to entities for the
2 installation of retrofit technologies for diesel school buses.

3 (b) ELIGIBLE RECIPIENTS.—A grant shall be award-
4 ed under this section only—

5 (1) to a local or State governmental entity re-
6 sponsible for providing school bus service to 1 or
7 more public school systems;

8 (2) to 1 or more contracting entities that pro-
9 vide school bus service to 1 or more public school
10 systems, if the grant application is submitted jointly
11 with the 1 or more school systems that the buses
12 will serve, except that the application may provide
13 that buses purchased using funds awarded shall be
14 owned, operated, and maintained exclusively by the
15 1 or more contracting entities; or

16 (3) to a nonprofit school transportation associa-
17 tion representing private contracting entities, if the
18 association has notified and received approval from
19 the 1 or more school systems to be served by the
20 buses.

21 (c) AWARDS.—

22 (1) IN GENERAL.—The Administrator shall
23 seek, to the maximum extent practicable, to ensure
24 a broad geographic distribution of grants under this
25 section.

1 (2) PREFERENCES.—In making awards of
2 grants under this section, the Administrator shall
3 give preference to proposals that—

4 (A) will achieve the greatest reductions in
5 emissions of nonmethane hydrocarbons, oxides
6 of nitrogen, or particulate matter per proposal
7 or per bus; or

8 (B) involve the use of emissions control
9 retrofit technology on diesel school buses that
10 operate solely on ultra-low sulfur diesel fuel.

11 (d) CONDITIONS OF GRANT.—A grant shall be pro-
12 vided under this section on the conditions that—

13 (1) buses on which retrofit emissions-control
14 technology are to be demonstrated—

15 (A) will operate on ultra-low sulfur diesel
16 fuel where such fuel is reasonably available or
17 required for sale by State or local law or regula-
18 tion;

19 (B) were manufactured in model year 1991
20 or later; and

21 (C) will be used for the transportation of
22 school children to and from school for a min-
23 imum of 5 years;

1 (2) grant funds will be used for the purchase of
2 emission control retrofit technology, including State
3 taxes and contract fees; and

4 (3) grant recipients will provide at least 15 per-
5 cent of the total cost of the retrofit, including the
6 purchase of emission control retrofit technology and
7 all necessary labor for installation of the retrofit.

8 (e) VERIFICATION.—Not later than 90 days after the
9 date of enactment of this Act, the Administrator shall
10 publish in the Federal Register procedures to verify—

11 (1) the retrofit emissions-control technology to
12 be demonstrated;

13 (2) that buses powered by ultra-low sulfur die-
14 sel fuel on which retrofit emissions-control tech-
15 nology are to be demonstrated will operate on diesel
16 fuel containing not more than 15 parts per million
17 of sulfur; and

18 (3) that grants are administered in accordance
19 with this section.

20 (f) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated to the Administrator to
22 carry out this section, to remain available until ex-
23 pended—

24 (1) \$20,000,000 for fiscal year 2005;

25 (2) \$35,000,000 for fiscal year 2006;

1 (3) \$45,000,000 for fiscal year 2007; and

2 (4) such sums as are necessary for each of fis-
3 cal years 2008 and 2009.

4 **SEC. 744. FUEL CELL SCHOOL BUSES.**

5 (a) ESTABLISHMENT.—The Secretary shall establish
6 a program for entering into cooperative agreements—

7 (1) with private sector fuel cell bus developers
8 for the development of fuel cell-powered school
9 buses; and

10 (2) subsequently, with not less than 2 units of
11 local government using natural gas-powered school
12 buses and such private sector fuel cell bus developers
13 to demonstrate the use of fuel cell-powered school
14 buses.

15 (b) COST SHARING.—The non-Federal contribution
16 for activities funded under this section shall be not less
17 than—

18 (1) 20 percent for fuel infrastructure develop-
19 ment activities; and

20 (2) 50 percent for demonstration activities and
21 for development activities not described in paragraph
22 (1).

23 (c) REPORTS TO CONGRESS.—Not later than 3 years
24 after the date of enactment of this Act, the Secretary shall
25 transmit to Congress a report that—

1 (1) evaluates the process of converting natural
2 gas infrastructure to accommodate fuel cell-powered
3 school buses; and

4 (2) assesses the results of the development and
5 demonstration program under this section.

6 (d) AUTHORIZATION OF APPROPRIATIONS.—There
7 are authorized to be appropriated to the Secretary to carry
8 out this section \$25,000,000 for the period of fiscal years
9 2005 through 2007.

10 **Subtitle D—Miscellaneous**

11 **SEC. 751. RAILROAD EFFICIENCY.**

12 (a) ESTABLISHMENT.—The Secretary of Energy
13 shall, in cooperation with the Secretary of Transportation
14 and the Administrator of the Environmental Protection
15 Agency, establish a cost-shared, public-private research
16 partnership involving the Federal Government, railroad
17 carriers, locomotive manufacturers and equipment sup-
18 pliers, and the Association of American Railroads, to de-
19 velop and demonstrate railroad locomotive technologies
20 that increase fuel economy, reduce emissions, and lower
21 costs of operation.

22 (b) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated to the Secretary of En-
24 ergy to carry out this section—

25 (1) \$25,000,000 for fiscal year 2006;

1 (2) \$35,000,000 for fiscal year 2007; and

2 (3) \$50,000,000 for fiscal year 2008.

3 **SEC. 752. MOBILE EMISSION REDUCTIONS TRADING AND**
4 **CREDITING.**

5 (a) IN GENERAL.—Not later than 180 days after the
6 date of enactment of this Act, the Administrator of the
7 Environmental Protection Agency shall submit to Con-
8 gress a report on the experience of the Administrator with
9 the trading of mobile source emission reduction credits for
10 use by owners and operators of stationary source emission
11 sources to meet emission offset requirements within a non-
12 attainment area.

13 (b) CONTENTS.—The report shall describe—

14 (1) projects approved by the Administrator that
15 include the trading of mobile source emission reduc-
16 tion credits for use by stationary sources in com-
17 plying with offset requirements, including a descrip-
18 tion of—

19 (A) project and stationary sources location;

20 (B) volumes of emissions offset and trad-
21 ed;

22 (C) the sources of mobile emission reduc-
23 tion credits; and

24 (D) if available, the cost of the credits;

1 (2) the significant issues identified by the Ad-
2 ministrator in consideration and approval of trading
3 in the projects;

4 (3) the requirements for monitoring and assess-
5 ing the air quality benefits of any approved project;

6 (4) the statutory authority on which the Admin-
7 istrator has based approval of the projects;

8 (5) an evaluation of how the resolution of issues
9 in approved projects could be used in other projects;
10 and

11 (6) any other issues that the Administrator con-
12 siders relevant to the trading and generation of mo-
13 bile source emission reduction credits for use by sta-
14 tionary sources or for other purposes.

15 **SEC. 753. AVIATION FUEL CONSERVATION AND EMISSIONS.**

16 (a) IN GENERAL.—Not later than 60 days after the
17 date of enactment of this Act, the Administrator of the
18 Federal Aviation Administration and the Administrator of
19 the Environmental Protection Agency shall jointly initiate
20 a study to identify—

21 (1) the impact of aircraft emissions on air qual-
22 ity in nonattainment areas; and

23 (2) ways to promote fuel conservation measures
24 for aviation to—

25 (A) enhance fuel efficiency; and

1 (B) reduce emissions.

2 (b) FOCUS.—The study under subsection (a) shall
3 focus on how air traffic management inefficiencies, such
4 as aircraft idling at airports, result in unnecessary fuel
5 burn and air emissions.

6 (c) REPORT.—Not later than 1 year after the date
7 of the initiation of the study under subsection (a), the Ad-
8 ministrator of the Federal Aviation Administration and
9 the Administrator of the Environmental Protection Agen-
10 cy shall jointly submit to the Committee on Energy and
11 Commerce and the Committee on Transportation and In-
12 frastructure of the House of Representatives and the Com-
13 mittee on Environment and Public Works and the Com-
14 mittee on Commerce, Science, and Transportation of the
15 Senate a report that—

16 (1) describes the results of the study; and

17 (2) includes any recommendations on ways in
18 which unnecessary fuel use and emissions affecting
19 air quality may be reduced—

20 (A) without adversely affecting safety and
21 security and increasing individual aircraft noise;
22 and

23 (B) while taking into account all aircraft
24 emissions and the impact of the emissions on
25 human health.

1 **SEC. 754. DIESEL FUELED VEHICLES.**

2 (a) DEFINITION OF TIER 2 EMISSION STANDARDS.—

3 In this section, the term “tier 2 emission standards”
4 means the motor vehicle emission standards that apply to
5 passenger cars, light trucks, and larger passenger vehicles
6 manufactured after the 2003 model year, as issued on
7 February 10, 2000, by the Administrator of the Environ-
8 mental Protection Agency under sections 202 and 211 of
9 the Clean Air Act (42 U.S.C. 7521, 7545).

10 (b) DIESEL COMBUSTION AND AFTER-TREATMENT

11 TECHNOLOGIES.—The Secretary of Energy shall accel-
12 erate efforts to improve diesel combustion and after-treat-
13 ment technologies for use in diesel fueled motor vehicles.

14 (c) GOALS.—The Secretary shall carry out subsection
15 (b) with a view toward achieving the following goals:

16 (1) Developing and demonstrating diesel tech-
17 nologies that, not later than 2010, meet the fol-
18 lowing standards:

19 (A) Tier 2 emission standards.

20 (B) The heavy-duty emissions standards of
21 2007 that are applicable to heavy-duty vehicles
22 under regulations issued by the Administrator
23 of the Environmental Protection Agency as of
24 the date of enactment of this Act.

25 (2) Developing the next generation of low-emis-
26 sion, high efficiency diesel engine technologies, in-

1 including homogeneous charge compression ignition
2 technology.

3 **SEC. 757. BIODIESEL ENGINE TESTING PROGRAM.**

4 (a) IN GENERAL.—Not later than 180 days after the
5 date of enactment of this Act, the Secretary shall initiate
6 a partnership with diesel engine, diesel fuel injection sys-
7 tem, and diesel vehicle manufacturers and diesel and bio-
8 diesel fuel providers, to include biodiesel testing in ad-
9 vanced diesel engine and fuel system technology.

10 (b) SCOPE.—The program shall provide for testing
11 to determine the impact of biodiesel from different sources
12 on current and future emission control technologies, with
13 emphasis on—

14 (1) the impact of biodiesel on emissions war-
15 ranty, in-use liability, and antitampering provisions;

16 (2) the impact of long-term use of biodiesel on
17 engine operations;

18 (3) the options for optimizing these technologies
19 for both emissions and performance when switching
20 between biodiesel and diesel fuel; and

21 (4) the impact of using biodiesel in these fuel-
22 ing systems and engines when used as a blend with
23 2006 Environmental Protection Agency-mandated
24 diesel fuel containing a maximum of 15-parts-per-
25 million sulfur content.

1 (c) REPORT.—Not later than 2 years after the date
2 of enactment of this Act, the Secretary shall provide an
3 interim report to Congress on the findings of the program,
4 including a comprehensive analysis of impacts from bio-
5 diesel on engine operation for both existing and expected
6 future diesel technologies, and recommendations for en-
7 suring optimal emissions reductions and engine perform-
8 ance with biodiesel.

9 (d) AUTHORIZATION OF APPROPRIATIONS.—There
10 are authorized to be appropriated \$5,000,000 for each of
11 fiscal years 2006 through 2010 to carry out this section.

12 (e) DEFINITION.—For purposes of this section, the
13 term “biodiesel” means a diesel fuel substitute produced
14 from nonpetroleum renewable resources that meets the
15 registration requirements for fuels and fuel additives es-
16 tablished by the Environmental Protection Agency under
17 section 211 of the Clean Air Act (42 U.S.C. 7545) and
18 that meets the American Society for Testing and Materials
19 D6751–02a Standard Specification for Biodiesel Fuel
20 (B100) Blend Stock for Distillate Fuels.

21 **SEC. 759. ULTRA-EFFICIENT ENGINE TECHNOLOGY FOR**
22 **AIRCRAFT.**

23 (a) ULTRA-EFFICIENT ENGINE TECHNOLOGY PART-
24 NERSHIP.—The Secretary of Energy shall enter into a co-
25 operative agreement with the National Aeronautics and

1 Space Administration for the development of ultra-effi-
2 cient engine technology for aircraft.

3 (b) PERFORMANCE OBJECTIVE.—The Secretary of
4 Energy shall establish the following performance objec-
5 tives for the program set forth in subsection (a):

6 (1) A fuel efficiency increase of 10 percent.

7 (2) A reduction in the impact of landing and
8 takeoff nitrogen oxides emissions on local air quality
9 of 70 percent.

10 (c) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated to the Secretary of En-
12 ergy for carrying out this section \$45,000,000 for each
13 of the fiscal years 2006, 2007, 2008, 2009, and 2010.

14 **Subtitle E—Automobile Efficiency**

15 **SEC. 771. AUTHORIZATION OF APPROPRIATIONS FOR IM-** 16 **PLEMENTATION AND ENFORCEMENT OF** 17 **FUEL ECONOMY STANDARDS.**

18 In addition to any other funds authorized by law,
19 there are authorized to be appropriated to the National
20 Highway Traffic Safety Administration to carry out its ob-
21 ligations with respect to average fuel economy standards
22 \$2,000,000 for each of fiscal years 2006 through 2010.

1 **SEC. 772. REVISED CONSIDERATIONS FOR DECISIONS ON**
2 **MAXIMUM FEASIBLE AVERAGE FUEL ECON-**
3 **OMY.**

4 Section 32902(f) of title 49, United States Code, is
5 amended to read as follows:

6 “(f) CONSIDERATIONS FOR DECISIONS ON MAXIMUM
7 FEASIBLE AVERAGE FUEL ECONOMY.—When deciding
8 maximum feasible average fuel economy under this sec-
9 tion, the Secretary of Transportation shall consider the
10 following matters:

11 “(1) Technological feasibility.

12 “(2) Economic practicability.

13 “(3) The effect of other motor vehicle standards
14 of the Government on fuel economy.

15 “(4) The need of the United States to conserve
16 energy.

17 “(5) The effects of fuel economy standards on
18 passenger automobiles, nonpassenger automobiles,
19 and occupant safety.

20 “(6) The effects of compliance with average fuel
21 economy standards on levels of automobile industry
22 employment in the United States.”.

1 **SEC. 773. EXTENSION OF MAXIMUM FUEL ECONOMY IN-**
2 **CREASE FOR ALTERNATIVE FUELED VEHI-**
3 **CLES.**

4 (a) MANUFACTURING INCENTIVES.—Section 32905
5 of title 49, United States Code, is amended—

6 (1) in each of subsections (b) and (d), by strik-
7 ing “1993–2004” and inserting “1993–2010”;

8 (2) in subsection (f), by striking “2001” and
9 inserting “2007”; and

10 (3) in subsection (f)(1), by striking “2004” and
11 inserting “2010”.

12 (b) MAXIMUM FUEL ECONOMY INCREASE.—Sub-
13 section (a)(1) of section 32906 of title 49, United States
14 Code, is amended—

15 (1) in subparagraph (A), by striking “the model
16 years 1993–2004” and inserting “model years
17 1993–2010”; and

18 (2) in subparagraph (B), by striking “the model
19 years 2005–2008” and inserting “model years
20 2011–2014”.

21 **SEC. 774. STUDY OF FEASIBILITY AND EFFECTS OF REDUC-**
22 **ING USE OF FUEL FOR AUTOMOBILES.**

23 (a) IN GENERAL.—Not later than 30 days after the
24 date of the enactment of this Act, the Administrator of
25 the National Highway Traffic Safety Administration shall
26 initiate a study of the feasibility and effects of reducing

1 by model year 2014, by a significant percentage, the
2 amount of fuel consumed by automobiles.

3 (b) SUBJECTS OF STUDY.—The study under this sec-
4 tion shall include—

5 (1) examination of, and recommendation of al-
6 ternatives to, the policy under current Federal law
7 of establishing average fuel economy standards for
8 automobiles and requiring each automobile manufac-
9 turer to comply with average fuel economy standards
10 that apply to the automobiles it manufactures;

11 (2) examination of how automobile manufactur-
12 ers could contribute toward achieving the reduction
13 referred to in subsection (a);

14 (3) examination of the potential of fuel cell
15 technology in motor vehicles in order to determine
16 the extent to which such technology may contribute
17 to achieving the reduction referred to in subsection
18 (a); and

19 (4) examination of the effects of the reduction
20 referred to in subsection (a) on—

21 (A) gasoline supplies;

22 (B) the automobile industry, including
23 sales of automobiles manufactured in the
24 United States;

25 (C) motor vehicle safety; and

1 (D) air quality.

2 (c) REPORT.—The Administrator shall submit to
3 Congress a report on the findings, conclusion, and rec-
4 ommendations of the study under this section by not later
5 than 1 year after the date of the enactment of this Act.

6 **TITLE VIII—HYDROGEN**

7 **SEC. 801. DEFINITIONS.**

8 In this title:

9 (1) ADVISORY COMMITTEE.—The term “Advi-
10 sory Committee” means the Hydrogen Technical and
11 Fuel Cell Advisory Committee established under sec-
12 tion 805.

13 (2) DEPARTMENT.—The term “Department”
14 means the Department of Energy.

15 (3) 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 an electro-
18 chemical process taking place at separate electrodes
19 in the device.

20 (4) INFRASTRUCTURE.—The term “infrastruc-
21 ture” means the equipment, systems, or facilities
22 used to produce, distribute, deliver, or store hydro-
23 gen.

24 (5) LIGHT DUTY VEHICLE.—The term “light
25 duty vehicle” means a car or truck classified by the

1 Department of Transportation as a Class I or IIA
2 vehicle.

3 (6) SECRETARY.—The term “Secretary” means
4 the Secretary of Energy.

5 **SEC. 802. PLAN.**

6 Not later than 6 months after the date of enactment
7 of this Act, the Secretary shall transmit to Congress a
8 coordinated plan for the programs described in this title
9 and any other programs of the Department that are di-
10 rectly related to fuel cells or hydrogen. The plan shall de-
11 scribe, at a minimum—

12 (1) the agenda for the next 5 years for the pro-
13 grams authorized under this title, including the
14 agenda for each activity enumerated in section
15 803(a);

16 (2) the types of entities that will carry out the
17 activities under this title and what role each entity
18 is expected to play;

19 (3) the milestones that will be used to evaluate
20 the programs for the next 5 years;

21 (4) the most significant technical and nontech-
22 nical hurdles that stand in the way of achieving the
23 goals described in section 803(b), and how the pro-
24 grams will address those hurdles; and

1 (5) the policy assumptions that are implicit in
2 the plan, including any assumptions that would af-
3 fect the sources of hydrogen or the marketability of
4 hydrogen-related products.

5 **SEC. 803. PROGRAMS.**

6 (a) **ACTIVITIES.**—The Secretary, in partnership with
7 the private sector, shall conduct programs to address—

8 (1) production of hydrogen from diverse energy
9 sources, including—

10 (A) fossil fuels, which may include carbon
11 capture and sequestration;

12 (B) hydrogen-carrier fuels (including eth-
13 anol and methanol);

14 (C) renewable energy resources, including
15 biomass; and

16 (D) nuclear energy;

17 (2) use of hydrogen for commercial, industrial,
18 and residential electric power generation;

19 (3) safe delivery of hydrogen or hydrogen-car-
20 rier fuels, including—

21 (A) transmission by pipeline and other dis-
22 tribution methods; and

23 (B) convenient and economic refueling of
24 vehicles either at central refueling stations or
25 through distributed on-site generation;

- 1 (4) advanced vehicle technologies, including—
- 2 (A) engine and emission control systems;
- 3 (B) energy storage, electric propulsion, and
- 4 hybrid systems;
- 5 (C) automotive materials; and
- 6 (D) other advanced vehicle technologies;
- 7 (5) storage of hydrogen or hydrogen-carrier
- 8 fuels, including development of materials for safe
- 9 and economic storage in gaseous, liquid, or solid
- 10 form at refueling facilities and onboard vehicles;
- 11 (6) development of safe, durable, affordable,
- 12 and efficient fuel cells, including fuel-flexible fuel cell
- 13 power systems, improved manufacturing processes,
- 14 high-temperature membranes, cost-effective fuel
- 15 processing for natural gas, fuel cell stack and system
- 16 reliability, low temperature operation, and cold start
- 17 capability;
- 18 (7) development, after consultation with the pri-
- 19 vate sector, of necessary codes and standards (in-
- 20 cluding international codes and standards and vol-
- 21 untary consensus standards adopted in accordance
- 22 with OMB Circular A-119) and safety practices for
- 23 the production, distribution, storage, and use of hy-
- 24 drogen, hydrogen-carrier fuels, and related products;

1 (8) a public education program to develop im-
2 proved knowledge and acceptability of hydrogen-
3 based systems; and

4 (9) the ability of domestic automobile manufac-
5 turers to manufacture commercially available com-
6 petitive hybrid vehicle technologies in the United
7 States.

8 (b) PROGRAM GOALS.—

9 (1) VEHICLES.—For vehicles, the goals of the
10 program are—

11 (A) to enable a commitment by auto-
12 makers no later than year 2015 to offer safe,
13 affordable, and technically viable hydrogen fuel
14 cell vehicles in the mass consumer market; and

15 (B) to enable production, delivery, and ac-
16 ceptance by consumers of model year 2020 hy-
17 drogen fuel cell and other hydrogen-powered ve-
18 hicles that will have—

19 (i) a range of at least 300 miles;

20 (ii) improved performance and ease of
21 driving;

22 (iii) safety and performance com-
23 parable to vehicle technologies in the mar-
24 ket; and

1 (iv) when compared to light duty vehi-
2 cles in model year 2003—

3 (I) fuel economy that is substan-
4 tially higher;

5 (II) substantially lower emissions
6 of air pollutants; and

7 (III) equivalent or improved vehi-
8 cle fuel system crash integrity and oc-
9 cupant protection.

10 (2) HYDROGEN ENERGY AND ENERGY INFRA-
11 STRUCTURE.—For hydrogen energy and energy in-
12 frastructure, the goals of the program are to enable
13 a commitment not later than 2015 that will lead to
14 infrastructure by 2020 that will provide—

15 (A) safe and convenient refueling;

16 (B) improved overall efficiency;

17 (C) widespread availability of hydrogen
18 from domestic energy sources through—

19 (i) production, with consideration of
20 emissions levels;

21 (ii) delivery, including transmission by
22 pipeline and other distribution methods for
23 hydrogen; and

24 (iii) storage, including storage in sur-
25 face transportation vehicles;

1 (D) hydrogen for fuel cells, internal com-
2 bustion engines, and other energy conversion
3 devices for portable, stationary, and transpor-
4 tation applications; and

5 (E) other technologies consistent with the
6 Department's plan.

7 (3) FUEL CELLS.—The goals for fuel cells and
8 their portable, stationary, and transportation appli-
9 cations are to enable—

10 (A) safe, economical, and environmentally
11 sound hydrogen fuel cells;

12 (B) fuel cells for light duty and other vehi-
13 cles; and

14 (C) other technologies consistent with the
15 Department's plan.

16 (c) DEMONSTRATION.—In carrying out the programs
17 under this section, the Secretary shall fund a limited num-
18 ber of demonstration projects, consistent with a deter-
19 mination of the maturity, cost-effectiveness, and environ-
20 mental impacts of technologies supporting each project. In
21 selecting projects under this subsection, the Secretary
22 shall, to the extent practicable and in the public interest,
23 select projects that—

24 (1) involve using hydrogen and related products
25 at existing facilities or installations, such as existing

1 office buildings, military bases, vehicle fleet centers,
2 transit bus authorities, or units of the National Park
3 System;

4 (2) depend on reliable power from hydrogen to
5 carry out essential activities;

6 (3) lead to the replication of hydrogen tech-
7 nologies and draw such technologies into the market-
8 place;

9 (4) include vehicle, portable, and stationary
10 demonstrations of fuel cell and hydrogen-based en-
11 ergy technologies;

12 (5) address the interdependency of demand for
13 hydrogen fuel cell applications and hydrogen fuel in-
14 frastructure;

15 (6) raise awareness of hydrogen technology
16 among the public;

17 (7) facilitate identification of an optimum tech-
18 nology among competing alternatives;

19 (8) address distributed generation using renew-
20 able sources; and

21 (9) address applications specific to rural or re-
22 mote locations, including isolated villages and is-
23 lands, the National Park System, and tribal entities.

1 The Secretary shall give preference to projects which ad-
2 dress multiple elements contained in paragraphs (1)
3 through (9).

4 (d) DEPLOYMENT.—In carrying out the programs
5 under this section, the Secretary shall, in partnership with
6 the private sector, conduct activities to facilitate the de-
7 ployment of hydrogen energy and energy infrastructure,
8 fuel cells, and advanced vehicle technologies.

9 (e) FUNDING.—

10 (1) IN GENERAL.—The Secretary shall carry
11 out the programs under this section using a competi-
12 tive, merit-based review process and consistent with
13 the generally applicable Federal laws and regulations
14 governing awards of financial assistance, contracts,
15 or other agreements.

16 (2) RESEARCH CENTERS.—Activities under this
17 section may be carried out by funding nationally rec-
18 ognized university-based or Federal laboratory re-
19 search centers.

20 (f) COST SHARING.—

21 (1) RESEARCH AND DEVELOPMENT.—Except as
22 otherwise provided in this title, for research and de-
23 velopment programs carried out under this title the
24 Secretary shall require a commitment from non-Fed-
25 eral sources of at least 20 percent of the cost of the

1 project. The Secretary may reduce or eliminate the
2 non-Federal requirement under this paragraph if the
3 Secretary determines that the research and develop-
4 ment is of a basic or fundamental nature or involves
5 technical analyses or educational activities.

6 (2) DEMONSTRATION AND COMMERCIAL APPLI-
7 CATION.—Except as otherwise provided in this title,
8 the Secretary shall require at least 50 percent of the
9 costs directly and specifically related to any dem-
10 onstration or commercial application project under
11 this title to be provided from non-Federal sources.
12 The Secretary may reduce the non-Federal require-
13 ment under this paragraph if the Secretary deter-
14 mines that the reduction is necessary and appro-
15 priate considering the technological risks involved in
16 the project and is necessary to meet the objectives
17 of this title.

18 (3) CALCULATION OF AMOUNT.—In calculating
19 the amount of the non-Federal commitment under
20 paragraph (1) or (2), the Secretary may include per-
21 sonnel, services, equipment, and other resources.

22 (4) SIZE OF NON-FEDERAL SHARE.—The Sec-
23 retary may consider the size of the non-Federal
24 share in selecting projects.

1 (g) DISCLOSURE.—Section 623 of the Energy Policy
2 Act of 1992 (42 U.S.C. 13293) relating to the protection
3 of information shall apply to projects carried out through
4 grants, cooperative agreements, or contracts under this
5 title.

6 **SEC. 804. INTERAGENCY TASK FORCE.**

7 (a) ESTABLISHMENT.—Not later than 120 days after
8 the date of enactment of this Act, the President shall es-
9 tablish an interagency task force chaired by the Secretary
10 with representatives from each of the following:

11 (1) The Office of Science and Technology Pol-
12 icy within the Executive Office of the President.

13 (2) The Department of Transportation.

14 (3) The Department of Defense.

15 (4) The Department of Commerce (including
16 the National Institute of Standards and Tech-
17 nology).

18 (5) The Department of State.

19 (6) The Environmental Protection Agency.

20 (7) The National Aeronautics and Space Ad-
21 ministration.

22 (8) Other Federal agencies as the Secretary de-
23 termines appropriate.

24 (b) DUTIES.—

1 (1) PLANNING.—The interagency task force
2 shall work toward—

3 (A) a safe, economical, and environ-
4 mentally sound fuel infrastructure for hydrogen
5 and hydrogen-carrier fuels, including an infra-
6 structure that supports buses and other fleet
7 transportation;

8 (B) fuel cells in government and other ap-
9 plications, including portable, stationary, and
10 transportation applications;

11 (C) distributed power generation, including
12 the generation of combined heat, power, and
13 clean fuels including hydrogen;

14 (D) uniform hydrogen codes, standards,
15 and safety protocols; and

16 (E) vehicle hydrogen fuel system integrity
17 safety performance.

18 (2) ACTIVITIES.—The interagency task force
19 may organize workshops and conferences, may issue
20 publications, and may create databases to carry out
21 its duties. The interagency task force shall—

22 (A) foster the exchange of generic, non-
23 proprietary information and technology among
24 industry, academia, and government;

1 (B) develop and maintain an inventory and
2 assessment of hydrogen, fuel cells, and other
3 advanced technologies, including the commercial
4 capability of each technology for the economic
5 and environmentally safe production, distribu-
6 tion, delivery, storage, and use of hydrogen;

7 (C) integrate technical and other informa-
8 tion made available as a result of the programs
9 and activities under this title;

10 (D) promote the marketplace introduction
11 of infrastructure for hydrogen fuel vehicles; and

12 (E) conduct an education program to pro-
13 vide hydrogen and fuel cell information to po-
14 tential end-users.

15 (c) AGENCY COOPERATION.—The heads of all agen-
16 cies, including those whose agencies are not represented
17 on the interagency task force, shall cooperate with and
18 furnish information to the interagency task force, the Ad-
19 visory Committee, and the Department.

20 **SEC. 805. ADVISORY COMMITTEE.**

21 (a) ESTABLISHMENT.—The Hydrogen Technical and
22 Fuel Cell Advisory Committee is established to advise the
23 Secretary on the programs and activities under this title.

24 (b) MEMBERSHIP.—

1 (1) MEMBERS.—The Advisory Committee shall
2 be comprised of not fewer than 12 nor more than 25
3 members. The members shall be appointed by the
4 Secretary to represent domestic industry, academia,
5 professional societies, government agencies, Federal
6 laboratories, previous advisory panels, and financial,
7 environmental, and other appropriate organizations
8 based on the Department’s assessment of the tech-
9 nical and other qualifications of committee members
10 and the needs of the Advisory Committee.

11 (2) TERMS.—The term of a member of the Ad-
12 visory Committee shall not be more than 3 years.
13 The Secretary may appoint members of the Advisory
14 Committee in a manner that allows the terms of the
15 members serving at any time to expire at spaced in-
16 tervals so as to ensure continuity in the functioning
17 of the Advisory Committee. A member of the Advi-
18 sory Committee whose term is expiring may be re-
19 appointed.

20 (3) CHAIRPERSON.—The Advisory Committee
21 shall have a chairperson, who is elected by the mem-
22 bers from among their number.

23 (c) REVIEW.—The Advisory Committee shall review
24 and make recommendations to the Secretary on—

1 (1) the implementation of programs and activi-
2 ties under this title;

3 (2) the safety, economical, and environmental
4 consequences of technologies for the production, dis-
5 tribution, delivery, storage, or use of hydrogen en-
6 ergy and fuel cells; and

7 (3) the plan under section 802.

8 (d) RESPONSE.—

9 (1) CONSIDERATION OF RECOMMENDATIONS.—

10 The Secretary shall consider, but need not adopt,
11 any recommendations of the Advisory Committee
12 under subsection (c).

13 (2) BIENNIAL REPORT.—The Secretary shall
14 transmit a biennial report to Congress describing
15 any recommendations made by the Advisory Com-
16 mittee since the previous report. The report shall in-
17 clude a description of how the Secretary has imple-
18 mented or plans to implement the recommendations,
19 or an explanation of the reasons that a recommenda-
20 tion will not be implemented. The report shall be
21 transmitted along with the President's budget pro-
22 posal.

23 (e) SUPPORT.—The Secretary shall provide resources
24 necessary in the judgment of the Secretary for the Advi-

1 sory Committee to carry out its responsibilities under this
2 title.

3 **SEC. 806. EXTERNAL REVIEW.**

4 (a) **PLAN.**—The Secretary shall enter into an ar-
5 rangement with the National Academy of Sciences to re-
6 view the plan prepared under section 802, which shall be
7 completed not later than 6 months after the Academy re-
8 ceives the plan. Not later than 45 days after receiving the
9 review, the Secretary shall transmit the review to Congress
10 along with a plan to implement the review’s recommenda-
11 tions or an explanation of the reasons that a recommenda-
12 tion will not be implemented.

13 (b) **ADDITIONAL REVIEW.**—The Secretary shall enter
14 into an arrangement with the National Academy of
15 Sciences under which the Academy will review the pro-
16 grams under section 803 during the fourth year following
17 the date of enactment of this Act. The Academy’s review
18 shall include the research priorities and technical mile-
19 stones, and evaluate the progress toward achieving them.
20 The review shall be completed not later than 5 years after
21 the date of enactment of this Act. Not later than 45 days
22 after receiving the review, the Secretary shall transmit the
23 review to Congress along with a plan to implement the
24 review’s recommendations or an explanation for the rea-
25 sons that a recommendation will not be implemented.

1 **SEC. 807. MISCELLANEOUS PROVISIONS.**

2 (a) REPRESENTATION.—The Secretary may rep-
3 resent the United States interests with respect to activities
4 and programs under this title, in coordination with the
5 Department of Transportation, the National Institute of
6 Standards and Technology, and other relevant Federal
7 agencies, before governments and nongovernmental orga-
8 nizations including—

9 (1) other Federal, State, regional, and local
10 governments and their representatives;

11 (2) industry and its representatives, including
12 members of the energy and transportation indus-
13 tries; and

14 (3) in consultation with the Department of
15 State, foreign governments and their representatives
16 including international organizations.

17 (b) REGULATORY AUTHORITY.—Nothing in this title
18 shall be construed to alter the regulatory authority of the
19 Department.

20 **SEC. 808. SAVINGS CLAUSE.**

21 Nothing in this title shall be construed to affect the
22 authority of the Secretary of Transportation that may
23 exist prior to the date of enactment of this Act with re-
24 spect to—

25 (1) research into, and regulation of, hydrogen-
26 powered vehicles fuel systems integrity, standards,

1 and safety under subtitle VI of title 49, United
2 States Code;

3 (2) regulation of hazardous materials transpor-
4 tation under chapter 51 of title 49, United States
5 Code;

6 (3) regulation of pipeline safety under chapter
7 601 of title 49, United States Code;

8 (4) encouragement and promotion of research,
9 development, and deployment activities relating to
10 advanced vehicle technologies under section 5506 of
11 title 49, United States Code;

12 (5) regulation of motor vehicle safety under
13 chapter 301 of title 49, United States Code;

14 (6) automobile fuel economy under chapter 329
15 of title 49, United States Code; or

16 (7) representation of the interests of the United
17 States with respect to the activities and programs
18 under the authority of title 49, United States Code.

19 **SEC. 809. AUTHORIZATION OF APPROPRIATIONS.**

20 There are authorized to be appropriated to the Sec-
21 retary to carry out this title, in addition to any amounts
22 made available for these purposes under other Acts—

23 (1) \$546,000,000 for fiscal year 2006;

24 (2) \$750,000,000 for fiscal year 2007;

25 (3) \$850,000,000 for fiscal year 2008;

1 (4) \$900,000,000 for fiscal year 2009; and

2 (5) \$1,000,000,000 for fiscal year 2010.

3 **SEC. 810. SOLAR AND WIND TECHNOLOGIES.**

4 (a) SOLAR ENERGY TECHNOLOGIES.—The Secretary
5 shall—

6 (1) prepare a detailed roadmap for carrying out
7 the provisions in this subtitle related to solar energy
8 technologies and for implementing the recommenda-
9 tions related to solar energy technologies that are in-
10 cluded in the report transmitted under subsection
11 (c);

12 (2) provide for the establishment of 5 projects
13 in geographic areas that are regionally and climati-
14 cally diverse to demonstrate the production of hydro-
15 gen at solar energy facilities, including one dem-
16 onstration project at a national laboratory or institu-
17 tion of higher education;

18 (3) establish a research and development pro-
19 gram—

20 (A) to develop optimized concentrating
21 solar power devices that may be used for the
22 production of both electricity and hydrogen; and

23 (B) to evaluate the use of thermochemical
24 cycles for hydrogen production at the tempera-

1 tures attainable with concentrating solar power
2 devices;

3 (4) coordinate with activities sponsored by the
4 Department of Energy's Office of Nuclear Energy,
5 Science, and Technology on high-temperature mate-
6 rials, thermochemical cycles, and economic issues re-
7 lated to solar energy;

8 (5) provide for the construction and operation
9 of new concentrating solar power devices or solar
10 power cogeneration facilities that produce hydrogen
11 either concurrently with, or independently of, the
12 production of electricity;

13 (6) support existing facilities and research pro-
14 grams dedicated to the development and advance-
15 ment of concentrating solar power devices; and

16 (7) establish a program—

17 (A) to research and develop methods that
18 use electricity from photovoltaic devices for the
19 onsite production of hydrogen, such that no in-
20 termediate transmission or distribution infra-
21 structure is required or used and future de-
22 mand growth may be accommodated;

23 (B) to evaluate the economics of small-
24 scale electrolysis for hydrogen production; and

1 (C) to research the potential of modular
2 photovoltaic devices for the development of a
3 hydrogen infrastructure, the security implica-
4 tions of a hydrogen infrastructure, and the ben-
5 efits potentially derived from a hydrogen infra-
6 structure.

7 (b) WIND ENERGY TECHNOLOGIES.—The Secretary
8 shall—

9 (1) prepare a detailed roadmap for carrying out
10 the provisions in this subtitle related to wind energy
11 technologies and for implementing the recommenda-
12 tions related to wind energy technologies that are in-
13 cluded in the report transmitted under subsection
14 (c); and

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 existing wind energy facilities, including one
19 demonstration project at a national laboratory or in-
20 stitution of higher education.

21 (c) PROGRAM SUPPORT.—The Secretary shall sup-
22 port research programs at institutions of higher education
23 for the development of solar energy technologies and wind
24 energy technologies for the production of hydrogen. The

1 research programs supported under this subsection
2 shall—

3 (1) enhance fellowship and faculty assistance
4 programs;

5 (2) provide support for fundamental research;

6 (3) encourage collaborative research among in-
7 dustry, national laboratories, and institutions of
8 higher education;

9 (4) support communication and outreach; and

10 (5) to the greatest extent possible—

11 (A) be located in geographic areas that are
12 regionally and climatically diverse; and

13 (B) be located at part B institutions, mi-
14 nority institutions, and institutions of higher
15 education located in States participating in the
16 Experimental Program to Stimulate Competi-
17 tive Research of the Department of Energy.

18 (d) INSTITUTIONS OF HIGHER EDUCATION AND NA-
19 TIONAL LABORATORY INTERACTIONS.—In conjunction
20 with the programs supported under this section, the Sec-
21 retary shall develop sabbatical, fellowship, and visiting sci-
22 entist programs to encourage national laboratories and in-
23 stitutions of higher education to share and exchange per-
24 sonnel.

25 (e) DEFINITIONS.—For purposes of this section—

1 (1) the term “concentrating solar power de-
2 vices” means devices that concentrate the power of
3 the sun by reflection or refraction to improve the ef-
4 ficiency of a photovoltaic or thermal generation proc-
5 ess;

6 (2) the term “institution of higher education”
7 has the meaning given to that term in section
8 101(a) of the Higher Education Act of 1965 (20
9 U.S.C. 1001(a));

10 (3) the term “minority institution” has the
11 meaning given to that term in section 365 of the
12 Higher Education Act of 1965 (20 U.S.C. 1067k);

13 (4) the term “part B institution” has the mean-
14 ing given to that term in section 322 of the Higher
15 Education Act of 1965 (20 U.S.C. 1061); and

16 (5) the term “photovoltaic devices” means de-
17 vices that convert light directly into electricity
18 through a solid-state, semiconductor process.

19 **TITLE IX—STUDIES AND** 20 **PROGRAM SUPPORT**

21 **SEC. 901. GOALS.**

22 (a) IN GENERAL.—The Secretary shall conduct a bal-
23 anced set of programs of study to support Federal energy
24 policy and programs by the Department. Such programs
25 shall be focused on—

1 (1) increasing the efficiency of all energy inten-
2 sive sectors through conservation and improved tech-
3 nologies;

4 (2) promoting diversity of energy supply;

5 (3) decreasing the Nation's dependence on for-
6 eign energy supplies;

7 (4) improving United States energy security;
8 and

9 (5) decreasing the environmental impact of en-
10 ergy-related activities.

11 (b) GOALS.—The Secretary shall publish measurable
12 5-year cost and performance-based goals with each annual
13 budget submission in at least the following areas:

14 (1) Energy efficiency for buildings, energy-con-
15 suming industries, and vehicles.

16 (2) Electric energy generation (including dis-
17 tributed generation), transmission, and storage.

18 (3) Renewable energy technologies including
19 wind power, photovoltaics, solar thermal systems,
20 geothermal energy, hydrogen-fueled systems, bio-
21 mass-based systems, biofuels, and hydropower.

22 (4) Fossil energy including power generation,
23 onshore and offshore oil and gas resource recovery,
24 and transportation.

1 (5) Nuclear energy including programs for ex-
2 isting and advanced reactors and education of future
3 specialists.

4 (c) PUBLIC COMMENT.—The Secretary shall provide
5 mechanisms for input on the annually published goals
6 from industry, university, and other public sources.

7 (d) EFFECT OF GOALS.—

8 (1) NO NEW AUTHORITY OR REQUIREMENT.—
9 Nothing in subsection (a) or the annually published
10 goals shall—

11 (A) create any new—

12 (i) authority for any Federal agency;

13 or

14 (ii) requirement for any other person;

15 (B) be used by a Federal agency to sup-
16 port the establishment of regulatory standards
17 or regulatory requirements; or

18 (C) alter the authority of the Secretary to
19 make grants or other awards.

20 (2) NO LIMITATION.—Nothing in this sub-
21 section shall be construed to limit the authority of
22 the Secretary to impose conditions on grants or
23 other awards based on the goals in subsection (a) or
24 any subsequent modification thereto.

1 **SEC. 902. DEFINITIONS.**

2 For purposes of this title:

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

5 (2) DEPARTMENTAL MISSION.—The term “de-
6 partmental mission” means any of the functions
7 vested in the Secretary of Energy by the Depart-
8 ment of Energy Organization Act (42 U.S.C. 7101
9 et seq.) or other law.

10 (3) INSTITUTION OF HIGHER EDUCATION.—The
11 term “institution of higher education” has the
12 meaning given that term in section 101(a) of the
13 Higher Education Act of 1965 (20 U.S.C. 1001(a)).

14 (4) SECRETARY.—The term “Secretary” means
15 the Secretary of Energy.

16 **Subtitle A—Energy Efficiency**

17 **SEC. 904. ENERGY EFFICIENCY.**

18 (a) IN GENERAL.—The following sums are author-
19 ized to be appropriated to the Secretary for energy effi-
20 ciency and conservation activities, including activities au-
21 thorized under this subtitle:

22 (1) For fiscal year 2006, \$616,000,000.

23 (2) For fiscal year 2007, \$695,000,000.

24 (3) For fiscal year 2008, \$772,000,000.

25 (4) For fiscal year 2009, \$865,000,000.

26 (5) For fiscal year 2010, \$920,000,000.

1 (b) ALLOCATIONS.—From amounts authorized under
2 subsection (a), the following sums are authorized:

3 (1) For activities under section 905—

4 (A) for fiscal year 2006, \$20,000,000;

5 (B) for fiscal year 2007, \$30,000,000;

6 (C) for fiscal year 2008, \$50,000,000;

7 (D) for fiscal year 2009, \$50,000,000; and

8 (E) for fiscal year 2010, \$50,000,000.

9 (2) For activities under section 907—

10 (A) for fiscal year 2006, \$4,000,000; and

11 (B) for each of fiscal years 2007 through
12 2010, \$7,000,000.

13 (3) For activities under section 908—

14 (A) for fiscal year 2006, \$20,000,000;

15 (B) for fiscal year 2007, \$25,000,000;

16 (C) for fiscal year 2008, \$30,000,000;

17 (D) for fiscal year 2009, \$35,000,000; and

18 (E) for fiscal year 2010, \$40,000,000.

19 (4) For activities under section 909,
20 \$2,000,000 for each of fiscal years 2007 through
21 2010.

22 (c) EXTENDED AUTHORIZATION.—There are author-
23 ized to be appropriated to the Secretary for activities
24 under section 905, \$50,000,000 for each of fiscal years
25 2011 through 2015.

1 (d) LIMITATION ON USE OF FUNDS.—None of the
2 funds authorized to be appropriated under this section
3 may be used for—

4 (1) the issuance and implementation of energy
5 efficiency regulations;

6 (2) the Weatherization Assistance Program
7 under part A of title IV of the Energy Conservation
8 and Production Act (42 U.S.C. 6861 et seq.);

9 (3) the State Energy Program under part D of
10 title III of the Energy Policy and Conservation Act
11 (42 U.S.C. 6321 et seq.); or

12 (4) the Federal Energy Management Program
13 under part 3 of title V of the National Energy Con-
14 servation Policy Act (42 U.S.C. 8251 et seq.).

15 **SEC. 905. NEXT GENERATION LIGHTING INITIATIVE.**

16 (a) IN GENERAL.—The Secretary shall carry out a
17 Next Generation Lighting Initiative in accordance with
18 this section to support activities related to advanced solid-
19 state lighting technologies based on white light emitting
20 diodes.

21 (b) OBJECTIVES.—The objectives of the initiative
22 shall be to develop advanced solid-state organic and inor-
23 ganic lighting technologies based on white light emitting
24 diodes that, compared to incandescent and fluorescent
25 lighting technologies, are longer lasting; more energy-effi-

1 cient; and cost-competitive, and have less environmental
2 impact.

3 (c) INDUSTRY ALLIANCE.—The Secretary shall, not
4 later than 3 months after the date of enactment of this
5 section, competitively select an Industry Alliance to rep-
6 resent participants that are private, for-profit firms which,
7 as a group, are broadly representative of United States
8 solid state lighting expertise as a whole.

9 (d) STUDY.—

10 (1) IN GENERAL.—The Secretary shall carry
11 out the activities of the Next Generation Lighting
12 Initiative through competitively awarded grants, in-
13 cluding to Industry Alliance participants, National
14 Laboratories, and institutions of higher education.

15 (2) ASSISTANCE FROM THE INDUSTRY ALLI-
16 ANCE.—The Secretary shall annually solicit from the
17 Industry Alliance—

18 (A) comments to identify solid-state light-
19 ing technology needs;

20 (B) assessment of the progress of the Ini-
21 tiative's research activities; and

22 (C) assistance in annually updating solid-
23 state lighting technology roadmaps.

24 (3) AVAILABILITY OF INFORMATION AND ROAD-
25 MAPS.—The information and roadmaps under para-

1 graph (2) shall be available to the public and public
2 response shall be solicited by the Secretary.

3 (e) INTELLECTUAL PROPERTY.—The Secretary may
4 require, in accordance with the authorities provided in sec-
5 tion 202(a)(ii) of title 35, United States Code, section 152
6 of the Atomic Energy Act of 1954 (42 U.S.C. 2182), and
7 section 9 of the Federal Nonnuclear Energy Research and
8 Development Act of 1974 (42 U.S.C. 5908), that—

9 (1) for any new invention resulting from activi-
10 ties under subsection (d)—

11 (A) the Industry Alliance members that
12 are active participants in research, development,
13 and demonstration activities related to the ad-
14 vanced solid-state lighting technologies that are
15 the subject of this section shall be granted first
16 option to negotiate with the invention owner
17 nonexclusive licenses and royalties for uses of
18 the invention related to solid-state lighting on
19 terms that are reasonable under the cir-
20 cumstances; and

21 (B)(i) for 1 year after a United States pat-
22 ent is issued for the invention, the patent hold-
23 er shall not negotiate any license or royalty
24 with any entity that is not a participant in the

1 Industry Alliance described in subparagraph
2 (A); and

3 (ii) during the year described in clause (i),
4 the invention owner shall negotiate nonexclusive
5 licenses and royalties in good faith with any in-
6 terested participant in the Industry Alliance de-
7 scribed in subparagraph (A); and

8 (2) such other terms as the Secretary deter-
9 mines are required to promote accelerated commer-
10 cialization of inventions made under the Initiative.

11 (f) NATIONAL ACADEMY REVIEW.—The Secretary
12 shall enter into an arrangement with the National Acad-
13 emy of Sciences to conduct periodic reviews of the Next
14 Generation Lighting Initiative. The Academy shall review
15 the priorities, technical milestones, and plans for tech-
16 nology transfer and progress towards achieving them. The
17 Secretary shall consider the results of such reviews in eval-
18 uating the information obtained under subsection (d)(2).

19 (g) DEFINITIONS.—As used in this section:

20 (1) ADVANCED SOLID-STATE LIGHTING.—The
21 term “advanced solid-state lighting” means a
22 semiconducting device package and delivery system
23 that produces white light using externally applied
24 voltage.

1 (2) INDUSTRY ALLIANCE.—The term “Industry
2 Alliance” means an entity selected by the Secretary
3 under subsection (c).

4 (3) WHITE LIGHT EMITTING DIODE.—The term
5 “white light emitting diode” means a
6 semiconducting package, utilizing either organic or
7 inorganic materials, that produces white light using
8 externally applied voltage.

9 **SEC. 906. NATIONAL BUILDING PERFORMANCE INITIATIVE.**

10 (a) INTERAGENCY GROUP.—Not later than 90 days
11 after the date of enactment of this Act, the President shall
12 establish an interagency group to develop, in coordination
13 with the advisory committee established under subsection
14 (e), a National Building Performance Initiative (in this
15 section referred to as the “Initiative”). The interagency
16 group shall be co-chaired by appropriate officials of the
17 Department and the Department of Commerce, who shall
18 jointly arrange for the provision of necessary administra-
19 tive support to the group.

20 (b) INTEGRATION OF EFFORTS.—The Initiative,
21 working with the National Institute of Building Sciences,
22 shall integrate Federal, State, and voluntary private sector
23 efforts to reduce the costs of construction, operation,
24 maintenance, and renovation of commercial, industrial, in-
25 stitutional, and residential buildings.

1 (c) DEPARTMENT OF ENERGY ROLE.—Within the
2 Federal portion of the Initiative, the Department shall be
3 the lead agency for all aspects of building performance re-
4 lated to use and conservation of energy.

5 (d) ADVISORY COMMITTEE.—

6 (1) ESTABLISHMENT.—The Secretary, in con-
7 sultation with the Secretary of Commerce and the
8 Director of the Office of Science and Technology
9 Policy, shall establish an advisory committee to—

10 (A) analyze and provide recommendations
11 on potential private sector roles and participa-
12 tion in the Initiative; and

13 (B) review and provide recommendations
14 on the plan described in subsection (c).

15 (2) MEMBERSHIP.—Membership of the advisory
16 committee shall include representatives with a broad
17 range of appropriate expertise, including expertise
18 in—

19 (A) building technology;

20 (B) architecture, engineering, and building
21 materials and systems; and

22 (C) the residential, commercial, and indus-
23 trial sectors of the construction industry.

1 (e) CONSTRUCTION.—Nothing in this section pro-
2 vides any Federal agency with new authority to regulate
3 building performance.

4 **SEC. 907. SECONDARY ELECTRIC VEHICLE BATTERY USE**
5 **PROGRAM.**

6 (a) DEFINITIONS.—For purposes of this section:

7 (1) ASSOCIATED EQUIPMENT.—The term “asso-
8 ciated equipment” means equipment located where
9 the batteries will be used that is necessary to enable
10 the use of the energy stored in the batteries.

11 (2) BATTERY.—The term “battery” means an
12 energy storage device that previously has been used
13 to provide motive power in a vehicle powered in
14 whole or in part by electricity.

15 (b) PROGRAM.—The Secretary shall establish and
16 conduct a program of study for the secondary use of bat-
17 teries if the Secretary finds that there are sufficient num-
18 bers of such batteries to support the program. The pro-
19 gram shall be—

20 (1) designed to demonstrate the use of batteries
21 in secondary applications, including utility and com-
22 mercial power storage and power quality;

23 (2) structured to evaluate the performance, in-
24 cluding useful service life and costs, of such bat-
25 teries in field operations, and the necessary sup-

1 porting infrastructure, including reuse and disposal
2 of batteries; and

3 (3) coordinated with ongoing secondary battery
4 use programs at the National Laboratories and in
5 industry.

6 (c) SOLICITATION.—Not later than 180 days after
7 the date of enactment of this Act, if the Secretary finds
8 under subsection (b) that there are sufficient numbers of
9 batteries to support the program, the Secretary shall so-
10 licit proposals to demonstrate the secondary use of bat-
11 teries and associated equipment and supporting infra-
12 structure in geographic locations throughout the United
13 States. The Secretary may make additional solicitations
14 for proposals if the Secretary determines that such solici-
15 tations are necessary to carry out this section.

16 (d) SELECTION OF PROPOSALS.—

17 (1) IN GENERAL.—The Secretary shall, not
18 later than 90 days after the closing date established
19 by the Secretary for receipt of proposals under sub-
20 section (c), select up to 5 proposals which may re-
21 ceive financial assistance under this section, subject
22 to the availability of appropriations.

23 (2) DIVERSITY; ENVIRONMENTAL EFFECT.—In
24 selecting proposals, the Secretary shall consider di-
25 versity of battery type, geographic and climatic di-

1 iversity, and life-cycle environmental effects of the
2 approaches.

3 (3) LIMITATION.—No 1 project selected under
4 this section shall receive more than 25 percent of the
5 funds authorized for the program under this section.

6 (4) OPTIMIZATION OF FEDERAL RESOURCES.—
7 The Secretary shall consider the extent of involve-
8 ment of State or local government and other persons
9 in each demonstration project to optimize use of
10 Federal resources.

11 (5) OTHER CRITERIA.—The Secretary may con-
12 sider such other criteria as the Secretary considers
13 appropriate.

14 (e) CONDITIONS.—The Secretary shall require that—

15 (1) relevant information be provided to the De-
16 partment, the users of the batteries, the proposers,
17 and the battery manufacturers;

18 (2) the proposer provide at least 50 percent of
19 the costs associated with the proposal; and

20 (3) the proposer provide to the Secretary such
21 information regarding the disposal of the batteries
22 as the Secretary may require to ensure that the pro-
23 poser disposes of the batteries in accordance with
24 applicable law.

1 **SEC. 908. ENERGY EFFICIENCY STUDY INITIATIVE.**

2 (a) ESTABLISHMENT.—The Secretary shall establish
3 an Energy Efficiency Science Initiative to be managed by
4 the Assistant Secretary in the Department with responsi-
5 bility for energy conservation under section 203(a)(9) of
6 the Department of Energy Organization Act (42 U.S.C.
7 7133(a)(9)), in consultation with the Director of the Of-
8 fice of Science, for grants to be competitively awarded and
9 subject to peer review for studies relating to energy effi-
10 ciency.

11 (b) REPORT.—The Secretary shall submit to Con-
12 gress, along with the President’s annual budget request
13 under section 1105(a) of title 31, United States Code, a
14 report on the activities of the Energy Efficiency Science
15 Initiative, including a description of the process used to
16 award the funds and an explanation of how the studies
17 relate to energy efficiency.

18 **SEC. 909. ELECTRIC MOTOR CONTROL TECHNOLOGY.**

19 The Secretary shall conduct a program of study on
20 advanced control devices to improve the energy efficiency
21 of electric motors used in heating, ventilation, air condi-
22 tioning, and comparable systems.

1 **Subtitle B—Distributed Energy and**
2 **Electric Energy Systems**

3 **SEC. 911. DISTRIBUTED ENERGY AND ELECTRIC ENERGY**
4 **SYSTEMS.**

5 (a) IN GENERAL.—The following sums are author-
6 ized to be appropriated to the Secretary for distributed
7 energy and electric energy systems activities, including ac-
8 tivities authorized under this subtitle:

9 (1) For fiscal year 2006, \$190,000,000.

10 (2) For fiscal year 2007, \$200,000,000.

11 (3) For fiscal year 2008, \$220,000,000.

12 (4) For fiscal year 2009, \$240,000,000.

13 (5) For fiscal year 2010, \$260,000,000.

14 (b) MICRO-COGENERATION ENERGY TECH-
15 NOLOGY.—From amounts authorized under subsection
16 (a), \$20,000,000 for each of fiscal years 2006 and 2007
17 is authorized for activities under section 914.

18 **SEC. 913. HIGH POWER DENSITY INDUSTRY PROGRAM.**

19 The Secretary shall establish a comprehensive pro-
20 gram of study to improve energy efficiency of high power
21 density facilities, including data centers, server farms, and
22 telecommunications facilities. Such program shall consider
23 technologies that provide significant improvement in ther-
24 mal controls, metering, load management, peak load re-
25 duction, or the efficient cooling of electronics.

1 **SEC. 916. RECIPROCATING POWER.**

2 The Secretary shall conduct a program of study re-
3 garding fuel system optimization and emissions reduction
4 after-treatment technologies for industrial reciprocating
5 engines. Such after-treatment technologies shall use proc-
6 esses that reduce emissions by recirculating exhaust gases
7 and shall be designed to be retrofitted to any new or exist-
8 ing diesel or natural gas engine used for power generation,
9 peaking power generation, combined heat and power, or
10 compression.

11 **SEC. 917. ADVANCED PORTABLE POWER DEVICES.**

12 (a) PROGRAM.—The Secretary shall—

13 (1) establish a program to develop working
14 models of small scale portable power devices; and

15 (2) to the fullest extent practicable, identify and
16 utilize the resources of universities that have shown
17 expertise with respect to advanced portable power
18 devices for either civilian or military use.

19 (b) ORGANIZATION.—The universities identified and
20 utilized under subsection (a)(2) are authorized to establish
21 an organization to promote small scale portable power de-
22 vices.

23 (c) DEFINITION.—For purposes of this section, the
24 term “small scale portable power device” means a field
25 deployable portable mechanical or electromechanical device
26 that can be used for applications such as communications,

1 computation, mobility enhancement, weapons systems, op-
2 tical devices, cooling, sensors, medical devices and active
3 biological agent detection systems.

4 (d) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated to the Secretary for car-
6 rying out this section \$8,000,000 for the period encom-
7 passing fiscal years 2006 through 2010.

8 **Subtitle C—Renewable Energy**

9 **SEC. 918. RENEWABLE ENERGY.**

10 (a) IN GENERAL.—The following sums are author-
11 ized to be appropriated to the Secretary for renewable en-
12 ergy activities, including activities authorized under this
13 subtitle:

14 (1) For fiscal year 2006, \$480,000,000.

15 (2) For fiscal year 2007, \$550,000,000.

16 (3) For fiscal year 2008, \$610,000,000.

17 (4) For fiscal year 2009, \$659,000,000.

18 (5) For fiscal year 2010, \$710,000,000.

19 (b) BIOENERGY.—From the amounts authorized
20 under subsection (a), the following sums are authorized
21 to be appropriated to carry out section 919:

22 (1) For fiscal year 2006, \$135,425,000.

23 (2) For fiscal year 2007, \$155,600,000.

24 (3) For fiscal year 2008, \$167,650,000.

25 (4) For fiscal year 2009, \$180,000,000.

1 (5) For fiscal year 2010, \$192,000,000.

2 (c) CONCENTRATING SOLAR POWER.—From
3 amounts authorized under subsection (a), the following
4 sums are authorized to be appropriated to carry out sec-
5 tion 920:

6 (1) For fiscal year 2006, \$20,000,000.

7 (2) For fiscal year 2007, \$40,000,000.

8 (3) For each of fiscal years 2008, 2009, and
9 2010, \$50,000,000.

10 (d) PUBLIC BUILDINGS.—From the amounts author-
11 ized under subsection (a), \$30,000,000 for each of the fis-
12 cal years 2006 through 2010 are authorized to be appro-
13 priated to carry out section 922.

14 (e) LIMITS ON USE OF FUNDS.—

15 (1) NO FUNDS FOR RENEWABLE SUPPORT AND
16 IMPLEMENTATION.—None of the funds authorized to
17 be appropriated under this section may be used for
18 Renewable Support and Implementation.

19 (2) GRANTS.—Of the funds authorized under
20 subsection (b), not less than \$5,000,000 for each fis-
21 cal year shall be made available for grants to His-
22 torically Black Colleges and Universities, Tribal Col-
23 leges, and Hispanic-Serving Institutions.

24 (3) REGIONAL FIELD VERIFICATION PRO-
25 GRAM.—Of the funds authorized under subsection

1 (a), not less than \$4,000,000 for each fiscal year
2 shall be made available for the Regional Field
3 Verification Program of the Department.

4 (4) OFF-STREAM PUMPED STORAGE HYDRO-
5 POWER.—Of the funds authorized under subsection
6 (a), such sums as may be necessary shall be made
7 available for demonstration projects of off-stream
8 pumped storage hydropower.

9 (f) CONSULTATION.—In carrying out this subtitle,
10 the Secretary, in consultation with the Secretary of Agri-
11 culture, shall demonstrate the use of advanced wind power
12 technology, including combined use with coal gasification;
13 biomass; geothermal energy systems; and other renewable
14 energy technologies to assist in delivering electricity to
15 rural and remote locations.

16 **SEC. 919. BIOENERGY PROGRAMS.**

17 (a) DEFINITIONS.—For the purposes of this section:

18 (1) The term “agricultural byproducts” in-
19 cludes waste products, including poultry fat and
20 poultry waste.

21 (2) The term “cellulosic biomass” means any
22 portion of a crop containing lignocellulose or hemi-
23 cellulose, including barley grain, grapeseed, forest
24 thinnings, rice bran, rice hulls, rice straw, soybean
25 matter, and sugarcane bagasse, or any crop grown

1 specifically for the purpose of producing cellulosic
2 feedstocks.

3 (b) PROGRAM.—The Secretary shall conduct a pro-
4 gram of study for bioenergy, including—

5 (1) biopower energy systems;

6 (2) biofuels;

7 (3) bio-based products;

8 (4) integrated biorefineries that may produce
9 biopower, biofuels, and bio-based products;

10 (5) cross-cutting research and development in
11 feedstocks and enzymes; and

12 (6) economic analysis.

13 (c) BIOFUELS AND BIO-BASED PRODUCTS.—The
14 goals of the biofuels and bio-based products programs
15 shall be to promote, in partnership with industry—

16 (1) advanced biochemical and thermochemical
17 conversion technologies capable of making biofuels
18 that are price-competitive with gasoline or diesel in
19 either internal combustion engines or fuel cell-pow-
20 ered vehicles, and bio-based products from a variety
21 of feedstocks, including grains, cellulosic biomass,
22 and other agricultural byproducts; and

23 (2) advanced biotechnology processes capable of
24 making biofuels and bio-based products with empha-

1 sis on development of biorefinery technologies using
2 enzyme-based processing systems.

3 **SEC. 920. CONCENTRATING SOLAR POWER STUDY PRO-**
4 **GRAM.**

5 (a) IN GENERAL.—The Secretary shall conduct a
6 program of study to evaluate the potential of concen-
7 trating solar power for hydrogen production, including co-
8 generation approaches for both hydrogen and electricity.
9 Such program shall take advantage of existing facilities
10 to the extent possible and shall include—

11 (1) development of optimized technologies that
12 are common to both electricity and hydrogen produc-
13 tion;

14 (2) evaluation of thermochemical cycles for hy-
15 drogen production at the temperatures attainable
16 with concentrating solar power;

17 (3) evaluation of materials issues for the
18 thermochemical cycles described in paragraph (2);

19 (4) system architectures and economics studies;
20 and

21 (5) coordination with activities in the Advanced
22 Reactor Hydrogen Cogeneration Project on high
23 temperature materials, thermochemical cycles, and
24 economic issues.

1 (b) 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 report entitled “Renewable Power Pathways:
7 A Review of the U.S. Department of Energy’s Re-
8 newable Energy Programs” in 2000 and subsequent
9 Department-funded reviews of that report; and

10 (2) provide an assessment of the potential im-
11 pact of the technology before, or concurrent with,
12 submission of the fiscal year 2008 budget.

13 (c) REPORT.—Not later than 5 years after the date
14 of enactment of this Act, the Secretary shall provide a re-
15 port to Congress on the economic and technical potential
16 for electricity or hydrogen production, with or without co-
17 generation, with concentrating solar power.

18 **SEC. 921. MISCELLANEOUS PROJECTS.**

19 The Secretary may conduct studies for—

20 (1) ocean energy, including wave energy; and

21 (2) the combined use of renewable energy tech-
22 nologies with one another and with other energy
23 technologies, including the combined use of wind
24 power and coal gasification technologies.

1 **SEC. 922. RENEWABLE ENERGY IN PUBLIC BUILDINGS.**

2 (a) TECHNOLOGY TRANSFER PROGRAM.—The Sec-
3 retary shall establish a program for the transfer of innova-
4 tive technologies for solar and other renewable energy
5 sources in buildings owned or operated by a State or local
6 government, and for the dissemination of information re-
7 sulting from an assessment of such program to interested
8 parties.

9 (b) LIMIT ON FEDERAL FUNDING.—The Secretary
10 shall provide under this section no more than 40 percent
11 of the incremental costs of the solar or other renewable
12 energy source project funded.

13 (c) REQUIREMENT.—As part of the application for
14 awards under this section, the Secretary shall require all
15 applicants—

16 (1) to demonstrate a continuing commitment to
17 the use of solar and other renewable energy sources
18 in buildings they own or operate; and

19 (2) to state how they expect any award to fur-
20 ther their transition to the significant use of renew-
21 able energy.

22 **SEC. 923. UNIVERSITY BIODIESEL PROGRAM.**

23 (a) IN GENERAL.—The Secretary shall establish a
24 program regarding the feasibility of the operation of diesel
25 electric power generators, using biodiesel fuels, with rat-

1 ings as high as B100 at a university electric generation
2 facility. The program shall examine—

3 (1) heat rates of diesel fuels with large quan-
4 tities of cellulosic content;

5 (2) the reliability of operation of various fuel
6 blends;

7 (3) performance in cold or freezing weather;

8 (4) stability of fuel after extended storage; and

9 (5) other criteria, as determined by the Sec-
10 retary.

11 (b) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated to the Secretary
13 \$400,000 to carry out subsection (a). Such funds shall re-
14 main available until expended.

15 **Subtitle D—Nuclear Energy**

16 **SEC. 929. ALTERNATIVES TO INDUSTRIAL RADIOACTIVE** 17 **SOURCES.**

18 (a) STUDY.—The Secretary shall conduct a study and
19 provide a report to Congress not later than August 1,
20 2006. The study shall—

21 (1) survey industrial applications of large radio-
22 active sources, including well-logging sources;

23 (2) review current domestic and international
24 Department, Department of Defense, Department of

1 State, and commercial programs to manage and dis-
2 pose of radioactive sources;

3 (3) discuss disposal options and practices for
4 currently deployed or future sources and, if defi-
5 ciencies are noted in existing disposal options or
6 practices for either deployed or future sources, rec-
7 ommend options to remedy deficiencies; and

8 (4) develop a program plan for research and de-
9 velopment to develop alternatives to large industrial
10 sources that reduce safety, environmental, or pro-
11 liferation risks to either workers using the sources or
12 the public.

13 (b) PROGRAM.—The Secretary shall establish a re-
14 search and development program to implement the pro-
15 gram plan developed under subsection (a)(4). The pro-
16 gram shall include miniaturized particle accelerators for
17 well-logging or other industrial applications and portable
18 accelerators for production of short-lived radioactive mate-
19 rials at an industrial site.

20 **SEC. 930. GEOLOGICAL ISOLATION OF SPENT FUEL.**

21 The Secretary shall conduct a study to determine the
22 feasibility of deep borehole disposal of spent nuclear fuel
23 and high-level radioactive waste. The study shall empha-
24 size geological, chemical, and hydrological characterization
25 of, and design of engineered structures for, deep borehole

1 environments. Not later than 1 year after the date of en-
2 actment of this Act, the Secretary shall transmit the study
3 to Congress.

4 **Subtitle E—Fossil Energy**

5 **PART I—STUDIES AND PROGRAM SUPPORT**

6 **SEC. 931. FOSSIL ENERGY.**

7 (a) IN GENERAL.—The following sums are author-
8 ized to be appropriated to the Secretary for fossil energy
9 activities, including activities authorized under this part:

10 (1) For fiscal year 2006, \$530,000,000.

11 (2) For fiscal year 2007, \$556,000,000.

12 (3) For fiscal year 2008, \$583,000,000.

13 (4) For fiscal year 2009, \$611,000,000.

14 (5) For fiscal year 2010, \$626,000,000.

15 (b) ALLOCATIONS.—From amounts authorized under
16 subsection (a), the following sums are authorized:

17 (1) For activities under section 932(b)(2),
18 \$28,000,000 for each of the fiscal years 2006
19 through 2010.

20 (2) For activities under section 934—

21 (A) for fiscal year 2006, \$12,000,000;

22 (B) for fiscal year 2007, \$15,000,000; and

23 (C) for each of fiscal years 2008 through
24 2010, \$20,000,000.

25 (3) For activities under section 935—

1 (A) for fiscal year 2006, \$259,000,000;

2 (B) for fiscal year 2007, \$272,000,000;

3 (C) for fiscal year 2008, \$285,000,000;

4 (D) for fiscal year 2009, \$298,000,000;

5 and

6 (E) for fiscal year 2010, \$308,000,000.

7 (4) For the Office of Arctic Energy under sec-
8 tion 3197 of the Floyd D. Spence National Defense
9 Authorization Act for Fiscal Year 2001 (42 U.S.C.
10 7144d), \$25,000,000 for each of fiscal years 2006
11 through 2010.

12 (5) For activities under section 933,
13 \$4,000,000 for fiscal year 2006 and \$2,000,000 for
14 each of fiscal years 2007 through 2010.

15 (c) EXTENDED AUTHORIZATION.—There are author-
16 ized to be appropriated to the Secretary for the Office of
17 Arctic Energy under section 3197 of the Floyd D. Spence
18 National Defense Authorization Act for Fiscal Year 2001
19 (42 U.S.C. 7144d), \$25,000,000 for each of fiscal years
20 2009 through 2012.

21 (d) LIMITS ON USE OF FUNDS.—

22 (1) NO FUNDS FOR CERTAIN PROGRAMS.—None
23 of the funds authorized under this section may be
24 used for Fossil Energy Environmental Restoration
25 or Import/Export Authorization.

1 (2) INSTITUTIONS OF HIGHER EDUCATION.—Of
2 the funds authorized under subsection (b)(2), not
3 less than 20 percent of the funds appropriated for
4 each fiscal year shall be dedicated to activities car-
5 ried out at institutions of higher education.

6 **SEC. 932. OIL AND GAS STUDIES.**

7 (a) OIL AND GAS STUDIES.—The Secretary shall
8 conduct a program of studies on oil and gas, including—

- 9 (1) exploration and production;
10 (2) gas hydrates;
11 (3) reservoir life and extension;
12 (4) transportation and distribution infrastruc-
13 ture;
14 (5) ultraclean fuels;
15 (6) heavy oil and oil shale;
16 (7) related environmental research; and
17 (8) compressed natural gas marine transport.

18 (b) FUEL CELLS.—

19 (1) IN GENERAL.—The Secretary shall conduct
20 a program of studies on fuel cells for low-cost, high-
21 efficiency, fuel-flexible, modular power systems.

22 (2) IMPROVED MANUFACTURING PRODUCTION
23 AND PROCESSES.—The studies under paragraph (1)
24 shall include fuel cell technology for commercial, res-
25 idential, and transportation applications, and distrib-

1 uted generation systems, utilizing improved manu-
2 facturing production and processes.

3 (c) NATURAL GAS AND OIL DEPOSITS REPORT.—

4 Not later than 2 years after the date of enactment of this
5 Act, and every 2 years thereafter, the Secretary of the In-
6 terior, in consultation with other appropriate Federal
7 agencies, shall transmit a report to Congress of the latest
8 estimates of natural gas and oil reserves, reserves growth,
9 and undiscovered resources in Federal and State waters
10 off the coast of Louisiana and Texas.

11 (d) INTEGRATED CLEAN POWER AND ENERGY.—

12 (1) NATIONAL CENTER OR CONSORTIUM OF EX-
13 CELLENCE.—The Secretary shall establish a na-
14 tional center or consortium of excellence in clean en-
15 ergy and power generation to address the Nation’s
16 critical dependence on energy and the need to reduce
17 emissions.

18 (2) PROGRAM.—The center or consortium shall
19 conduct a program integrating the following focus
20 areas:

21 (A) Efficiency and reliability of gas tur-
22 bines for power generation.

23 (B) Reduction in emissions from power
24 generation.

1 (C) Promotion of energy conservation
2 issues.

3 (D) Effectively utilizing alternative fuels
4 and renewable energy.

5 (E) Advanced materials technology for oil
6 and gas exploration and utilization in harsh en-
7 vironments.

8 (F) Education on energy and power gen-
9 eration issues.

10 **SEC. 933. TECHNOLOGY TRANSFER.**

11 The Secretary shall establish a competitive program
12 to award a contract to a nonprofit entity for the purpose
13 of transferring technologies developed with public funds.
14 The entity selected under this section shall have experi-
15 ence in offshore oil and gas technology management, in
16 the transfer of technologies developed with public funds
17 to the offshore and maritime industry, and in management
18 of an offshore and maritime industry consortium. The pro-
19 gram consortium selected under section 942 shall not be
20 eligible for selection under this section. When appropriate,
21 the Secretary shall consider utilizing the entity selected
22 under this section when implementing the activities au-
23 thorized by section 975.

1 **SEC. 934. COAL MINING TECHNOLOGIES.**

2 (a) ESTABLISHMENT.—The Secretary shall carry out
3 a program of studies on coal mining technologies. The
4 Secretary shall cooperate with appropriate Federal agen-
5 cies, coal producers, trade associations, equipment manu-
6 facturers, institutions of higher education with mining en-
7 gineering departments, and other relevant entities.

8 (b) PROGRAM.—The activities carried out under this
9 section shall—

10 (1) be guided by the mining priorities identified
11 by the Mining Industry of the Future Program and
12 in the recommendations from relevant reports of the
13 National Academy of Sciences on mining tech-
14 nologies; and

15 (2) include activities exploring minimization of
16 contaminants in mined coal that contribute to envi-
17 ronmental concerns.

18 **SEC. 935. COAL AND RELATED TECHNOLOGIES PROGRAM.**

19 (a) IN GENERAL.—In addition to the programs au-
20 thorized under title IV, the Secretary shall conduct a pro-
21 gram of technology to study coal and power systems, in-
22 cluding programs to facilitate production and generation
23 of coal-based power through—

24 (1) innovations for existing plants;

25 (2) integrated gasification combined cycle;

26 (3) advanced combustion systems;

- 1 (4) turbines for synthesis gas derived from coal;
- 2 (5) carbon capture and sequestration;
- 3 (6) coal-derived transportation fuels and chemi-
- 4 cals;
- 5 (7) solid fuels and feedstocks;
- 6 (8) advanced studies;
- 7 (9) advanced separation technologies; and
- 8 (10) a joint project for permeability enhance-
- 9 ment in coals for natural gas production and carbon
- 10 dioxide sequestration.

11 (b) COST AND PERFORMANCE GOALS.—In carrying
12 out programs authorized by this section, the Secretary
13 shall identify cost and performance goals for coal-based
14 technologies that would permit the continued cost-com-
15 petitive use of coal for electricity generation, as chemical
16 feedstocks, and as transportation fuel in 2007, 2015, and
17 the years after 2020. In establishing such cost and per-
18 formance goals, the Secretary shall—

19 (1) consider activities and studies undertaken
20 to date by industry in cooperation with the Depart-
21 ment in support of such assessment;

22 (2) consult with interested entities, including
23 coal producers, industries using coal, organizations
24 to promote coal and advanced coal technologies, en-

1 vironmental organizations, and organizations rep-
2 resenting workers;

3 (3) not later than 120 days after the date of
4 enactment of this Act, publish in the Federal Reg-
5 ister proposed draft cost and performance goals for
6 public comments; and

7 (4) not later than 180 days after the date of
8 enactment of this Act and every 4 years thereafter,
9 submit to Congress a report describing final cost
10 and performance goals for such technologies that in-
11 cludes a list of technical milestones as well as an ex-
12 planation of how programs authorized in this section
13 will not duplicate the activities authorized under the
14 Clean Coal Power Initiative authorized under sub-
15 title A of title IV.

16 **SEC. 936. COMPLEX WELL TECHNOLOGY TESTING FACIL-**
17 **ITY.**

18 The Secretary, in coordination with industry leaders
19 in extended research drilling technology, shall establish a
20 Complex Well Technology Testing Facility at the Rocky
21 Mountain Oilfield Testing Center to increase the range of
22 extended drilling technologies.

1 **PART II—ULTRA-DEEPWATER AND UNCONVEN-**
2 **TIONAL NATURAL GAS AND OTHER PETRO-**
3 **LEUM RESOURCES**

4 **SEC. 941. PROGRAM AUTHORITY.**

5 (a) IN GENERAL.—The Secretary shall carry out a
6 program under this part regarding technologies for ultra-
7 deepwater and unconventional natural gas and other pe-
8 troleum resource exploration and production, including ad-
9 dressing the technology challenges for small producers,
10 safe operations, and environmental mitigation (including
11 reduction of greenhouse gas emissions and sequestration
12 of carbon).

13 (b) PROGRAM ELEMENTS.—The program under this
14 part shall address the following areas, including improving
15 safety and minimizing environmental impacts of activities
16 within each area:

17 (1) Ultra-deepwater technology, including drill-
18 ing to formations in the Outer Continental Shelf to
19 depths greater than 15,000 feet.

20 (2) Ultra-deepwater architecture.

21 (3) Unconventional natural gas and other petro-
22 leum resource exploration and production tech-
23 nology, including the technology challenges of small
24 producers.

1 (c) LIMITATION ON LOCATION OF FIELD ACTIVI-
2 TIES.—Field activities under the program under this part
3 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) CONSULTATION WITH SECRETARY OF THE INTE-
20 RIOR.—In carrying out this part, the Secretary shall con-
21 sult regularly with the Secretary of the Interior.

22 **SEC. 942. ULTRA-DEEPWATER PROGRAM.**

23 (a) IN GENERAL.—The Secretary shall carry out the
24 activities under section 941(a), to maximize the use of the
25 ultra-deepwater natural gas and other petroleum resources

1 of the United States by increasing the supply of such re-
2 sources, through reducing the cost and increasing the effi-
3 ciency of exploration for and production of such resources,
4 while improving safety and minimizing environmental im-
5 pacts.

6 (b) ROLE OF THE SECRETARY.—The Secretary shall
7 have ultimate responsibility for, and oversight of, all as-
8 pects of the program under this section.

9 (c) ROLE OF THE PROGRAM CONSORTIUM.—

10 (1) IN GENERAL.—The Secretary may contract
11 with a consortium to—

12 (A) manage awards pursuant to subsection
13 (f)(4);

14 (B) make recommendations to the Sec-
15 retary for project solicitations;

16 (C) disburse funds awarded under sub-
17 section (f) as directed by the Secretary in ac-
18 cordance with the annual plan under subsection
19 (e); and

20 (D) carry out other activities assigned to
21 the program consortium by this section.

22 (2) LIMITATION.—The Secretary may not as-
23 sign any activities to the program consortium except
24 as specifically authorized under this section.

25 (3) CONFLICT OF INTEREST.—

1 (A) PROCEDURES.—The Secretary shall
2 establish procedures—

3 (i) to ensure that each board member,
4 officer, or employee of the program consor-
5 tium who is in a decision-making capacity
6 under subsection (f)(3) or (4) shall disclose
7 to the Secretary any financial interests in,
8 or financial relationships with, applicants
9 for or recipients of awards under this sec-
10 tion, including those of his or her spouse
11 or minor child, unless such relationships or
12 interests would be considered to be remote
13 or inconsequential; and

14 (ii) to require any board member, offi-
15 cer, or employee with a financial relation-
16 ship or interest disclosed under clause (i)
17 to recuse himself or herself from any re-
18 view under subsection (f)(3) or oversight
19 under subsection (f)(4) with respect to
20 such applicant or recipient.

21 (B) FAILURE TO COMPLY.—The Secretary
22 may disqualify an application or revoke an
23 award under this section if a board member, of-
24 ficer, or employee has failed to comply with pro-
25 cedures required under subparagraph (A)(ii).

1 (d) SELECTION OF THE PROGRAM CONSORTIUM.—

2 (1) IN GENERAL.—The Secretary shall select
3 the program consortium through an open, competi-
4 tive process.

5 (2) MEMBERS.—The program consortium may
6 include corporations, trade associations, institutions
7 of higher education, National Laboratories, or other
8 research institutions. After submitting a proposal
9 under paragraph (4), the program consortium may
10 not add members without the consent of the Sec-
11 retary.

12 (3) TAX STATUS.—The program consortium
13 shall be an entity that is exempt from tax under sec-
14 tion 501(c)(3) of the Internal Revenue Code of
15 1986.

16 (4) SCHEDULE.—Not later than 180 days after
17 the date of enactment of this Act, the Secretary
18 shall solicit proposals from eligible consortia to per-
19 form the duties in subsection (c)(1), which shall be
20 submitted not later than 360 days after the date of
21 enactment of this Act. The Secretary shall select the
22 program consortium not later than 18 months after
23 such date of enactment.

1 (5) APPLICATION.—Applicants shall submit a
2 proposal including such information as the Secretary
3 may require. At a minimum, each proposal shall—

4 (A) list all members of the consortium;

5 (B) fully describe the structure of the con-
6 sortium, including any provisions relating to in-
7 tellectual property; and

8 (C) describe how the applicant would carry
9 out the activities of the program consortium
10 under this section.

11 (6) CRITERION.—The Secretary shall consider
12 the amount of the fee an applicant proposes to re-
13 ceive under subsection (g) in selecting a consortium
14 under this section.

15 (e) ANNUAL PLAN.—

16 (1) IN GENERAL.—The program under this sec-
17 tion shall be carried out pursuant to an annual plan
18 prepared by the Secretary in accordance with para-
19 graph (2).

20 (2) DEVELOPMENT.—

21 (A) SOLICITATION OF RECOMMENDA-
22 TIONS.—Before drafting an annual plan under
23 this subsection, the Secretary shall solicit spe-
24 cific written recommendations from the pro-
25 gram consortium for each element to be ad-

1 dressed in the plan, including those described in
2 paragraph (4). The Secretary may request that
3 the program consortium submit its rec-
4 ommendations in the form of a draft annual
5 plan.

6 (B) SUBMISSION OF RECOMMENDATIONS;
7 OTHER COMMENT.—The Secretary shall submit
8 the recommendations of the program consor-
9 tium under subparagraph (A) to the Ultra-
10 Deepwater Advisory Committee established
11 under section 945(a) for review, and such Advi-
12 sory Committee shall provide to the Secretary
13 written comments by a date determined by the
14 Secretary. The Secretary may also solicit com-
15 ments from any other experts.

16 (C) CONSULTATION.—The Secretary shall
17 consult regularly with the program consortium
18 throughout the preparation of the annual plan.

19 (3) PUBLICATION.—The Secretary shall trans-
20 mit to Congress and publish in the Federal Register
21 the annual plan, along with any written comments
22 received under paragraph (2)(A) and (B).

23 (4) CONTENTS.—The annual plan shall describe
24 the ongoing and prospective activities of the pro-
25 gram under this section and shall include—

1 (A) a list of any solicitations for awards
2 that the Secretary plans to issue to carry out
3 research, development, demonstration, or com-
4 mercial application activities, including the top-
5 ics for such work, who would be eligible to
6 apply, selection criteria, and the duration of
7 awards; and

8 (B) a description of the activities expected
9 of the program consortium to carry out sub-
10 section (f)(4).

11 (5) ESTIMATES OF INCREASED ROYALTY RE-
12 CEIPTS.—The Secretary, in consultation with the
13 Secretary of the Interior, shall provide an annual re-
14 port to Congress with the President’s budget on the
15 estimated cumulative increase in Federal royalty re-
16 ceipts (if any) resulting from the implementation of
17 this part. The initial report under this paragraph
18 shall be submitted in the first President’s budget fol-
19 lowing the completion of the first annual plan re-
20 quired under this subsection.

21 (f) AWARDS.—

22 (1) IN GENERAL.—The Secretary shall make
23 awards to carry out activities under the program
24 under this section. The program consortium shall

1 not be eligible to receive such awards, but members
2 of the program consortium may receive such awards.

3 (2) PROPOSALS.—The Secretary shall solicit
4 proposals for awards under this subsection in such
5 manner and at such time as the Secretary may pre-
6 scribe, in consultation with the program consortium.

7 (3) REVIEW.—The Secretary shall make awards
8 under this subsection through a competitive process,
9 which shall include a review by individuals selected
10 by the Secretary. Such individuals shall include, for
11 each application, Federal officials, the program con-
12 sortium, and non-Federal experts who are not board
13 members, officers, or employees of the program con-
14 sortium or of a member of the program consortium.

15 (4) OVERSIGHT.—

16 (A) IN GENERAL.—The program Consor-
17 tium shall oversee the implementation of
18 awards under this subsection, consistent with
19 the annual plan under subsection (e), including
20 disbursing funds and monitoring activities car-
21 ried out under such awards for compliance with
22 the terms and conditions of the awards.

23 (B) EFFECT.—Nothing in subparagraph
24 (A) shall limit the authority or responsibility of
25 the Secretary to oversee awards, or limit the

1 authority of the Secretary to review or revoke
2 awards.

3 (C) PROVISION OF INFORMATION.—The
4 Secretary shall provide to the program consor-
5 tium the information necessary for the program
6 consortium to carry out its responsibilities
7 under this paragraph.

8 (g) ADMINISTRATIVE COSTS.—

9 (1) IN GENERAL.—To compensate the program
10 consortium for carrying out its activities under this
11 section, the Secretary shall provide to the program
12 consortium funds sufficient to administer the pro-
13 gram. This compensation may include a manage-
14 ment fee consistent with Department of Energy con-
15 tracting practices and procedures.

16 (2) ADVANCE.—The Secretary shall advance
17 funds to the program consortium upon selection of
18 the consortium, which shall be deducted from
19 amounts to be provided under paragraph (1).

20 (h) AUDIT.—The Secretary shall retain an inde-
21 pendent, commercial auditor to determine the extent to
22 which funds provided to the program consortium, and
23 funds provided under awards made under subsection (f),
24 have been expended in a manner consistent with the pur-
25 poses and requirements of this part. The auditor shall

1 transmit a report annually to the Secretary, who shall
2 transmit the report to Congress, along with a plan to rem-
3 edy any deficiencies cited in the report.

4 **SEC. 943. UNCONVENTIONAL NATURAL GAS AND OTHER PE-**
5 **TROLEUM RESOURCES PROGRAM.**

6 (a) IN GENERAL.—The Secretary shall carry out ac-
7 tivities under subsection 941(b)(3), to maximize the use
8 of the onshore unconventional natural gas and other petro-
9 leum resources of the United States, by increasing the
10 supply of such resources, through reducing the cost and
11 increasing the efficiency of exploration for and production
12 of such resources, while improving safety and minimizing
13 environmental impacts.

14 (b) AWARDS.—

15 (1) IN GENERAL.—The Secretary shall carry
16 out this section through awards to consortia made
17 through an open, competitive process. As a condition
18 of award of funds, qualified consortia shall—

19 (A) demonstrate capability and experience
20 in unconventional onshore natural gas or other
21 petroleum technologies;

22 (B) provide a research plan that dem-
23 onstrates how additional natural gas or oil pro-
24 duction will be achieved; and

1 (C) at the request of the Secretary, provide
2 technical advice to the Secretary for the pur-
3 poses of developing the annual plan required
4 under subsection (e).

5 (2) PRODUCTION POTENTIAL.—The Secretary
6 shall seek to ensure that the number and types of
7 awards made under this subsection have reasonable
8 potential to lead to additional oil and natural gas
9 production on Federal lands.

10 (3) SCHEDULE.—To carry out this subsection,
11 not later than 180 days after the date of enactment
12 of this Act, the Secretary shall solicit proposals from
13 consortia, which shall be submitted not later than
14 360 days after the date of enactment of this Act.
15 The Secretary shall select the first group of research
16 consortia to receive awards under this subsection not
17 later than 18 months after such date of enactment.

18 (c) AUDIT.—The Secretary shall retain an inde-
19 pendent, commercial auditor to determine the extent to
20 which funds provided under awards made under this sec-
21 tion have been expended in a manner consistent with the
22 purposes and requirements of this part. The auditor shall
23 transmit a report annually to the Secretary, who shall
24 transmit the report to Congress, along with a plan to rem-
25 edy any deficiencies cited in the report.

1 (d) FOCUS AREAS FOR AWARDS.—

2 (1) UNCONVENTIONAL RESOURCES.—Awards
3 from allocations under section 949(d)(2) shall focus
4 on areas including advanced coalbed methane, deep
5 drilling, natural gas production from tight sands,
6 natural gas production from gas shales, stranded
7 gas, innovative exploration and production tech-
8 niques, enhanced recovery techniques, and environ-
9 mental mitigation of unconventional natural gas and
10 other petroleum resources exploration and produc-
11 tion.

12 (2) SMALL PRODUCERS.—Awards from alloca-
13 tions under section 949(d)(3) shall be made to con-
14 sortia consisting of small producers or organized pri-
15 marily for the benefit of small producers, and shall
16 focus on areas including complex geology involving
17 rapid changes in the type and quality of the oil and
18 gas reservoirs across the reservoir; low reservoir
19 pressure; unconventional natural gas reservoirs in
20 coalbeds, deep reservoirs, tight sands, or shales; and
21 unconventional oil reservoirs in tar sands and oil
22 shales.

23 (e) ANNUAL PLAN.—

24 (1) IN GENERAL.—The program under this sec-
25 tion shall be carried out pursuant to an annual plan

1 prepared by the Secretary in accordance with para-
2 graph (2).

3 (2) DEVELOPMENT.—

4 (A) WRITTEN RECOMMENDATIONS.—Be-
5 fore drafting an annual plan under this sub-
6 section, the Secretary shall solicit specific writ-
7 ten recommendations from the consortia receiv-
8 ing awards under subsection (b) and the Un-
9 conventional Resources Technology Advisory
10 Committee for each element to be addressed in
11 the plan, including those described in subpara-
12 graph (D).

13 (B) CONSULTATION.—The Secretary shall
14 consult regularly with the consortia throughout
15 the preparation of the annual plan.

16 (C) PUBLICATION.—The Secretary shall
17 transmit to Congress and publish in the Fed-
18 eral Register the annual plan, along with any
19 written comments received under subparagraph
20 (A).

21 (D) CONTENTS.—The annual plan shall
22 describe the ongoing and prospective activities
23 under this section and shall include a list of any
24 solicitations for awards that the Secretary plans
25 to issue to carry out activities, including the

1 topics for such work, who would be eligible to
2 apply, selection criteria, and the duration of
3 awards.

4 (3) 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 part. 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 **SEC. 944. ADDITIONAL REQUIREMENTS FOR AWARDS.**

15 (a) DEMONSTRATION PROJECTS.—An application for
16 an award under this part for a demonstration project shall
17 describe with specificity the intended commercial use of
18 the technology to be demonstrated.

19 (b) FLEXIBILITY IN LOCATING DEMONSTRATION
20 PROJECTS.—Subject to the limitation in section 941(c),
21 a demonstration project under this part relating to an
22 ultra-deepwater technology or an ultra-deepwater architec-
23 ture may be conducted in deepwater depths.

24 (c) INTELLECTUAL PROPERTY AGREEMENTS.—If an
25 award under this part is made to a consortium (other than

1 the program consortium), the consortium shall provide to
2 the Secretary a signed contract agreed to by all members
3 of the consortium describing the rights of each member
4 to intellectual property used or developed under the award.

5 (d) TECHNOLOGY TRANSFER.—2.5 percent of the
6 amount of each award made under this part shall be des-
7 ignated for technology transfer and outreach activities
8 under this title.

9 (e) COST SHARING REDUCTION FOR INDEPENDENT
10 PRODUCERS.—In applying the cost sharing requirements
11 under section 972 to an award under this part the Sec-
12 retary may reduce or eliminate the non-Federal require-
13 ment if the Secretary determines that the reduction is nec-
14 essary and appropriate considering the technological risks
15 involved in the project.

16 **SEC. 945. ADVISORY COMMITTEES.**

17 (a) ULTRA-DEEPWATER ADVISORY COMMITTEE.—

18 (1) ESTABLISHMENT.—Not later than 270 days
19 after the date of enactment of this Act, the Sec-
20 retary shall establish an advisory committee to be
21 known as the Ultra-Deepwater Advisory Committee.

22 (2) MEMBERSHIP.—The advisory committee
23 under this subsection shall be composed of members
24 appointed by the Secretary including—

1 (A) individuals with extensive experience or
2 operational knowledge of offshore natural gas
3 and other petroleum exploration and produc-
4 tion;

5 (B) individuals broadly representative of
6 the affected interests in ultra-deepwater natural
7 gas and other petroleum production, including
8 interests in environmental protection and safe
9 operations;

10 (C) no individuals who are Federal employ-
11 ees; and

12 (D) no individuals who are board members,
13 officers, or employees of the program consor-
14 tium.

15 (3) DUTIES.—The advisory committee under
16 this subsection shall—

17 (A) advise the Secretary on the develop-
18 ment and implementation of programs under
19 this part related to ultra-deepwater natural gas
20 and other petroleum resources; and

21 (B) carry out section 942(e)(2)(B).

22 (4) COMPENSATION.—A member of the advi-
23 sory committee under this subsection shall serve
24 without compensation but shall receive travel ex-
25 penses in accordance with applicable provisions

1 under subchapter I of chapter 57 of title 5, United
2 States Code.

3 (b) UNCONVENTIONAL RESOURCES TECHNOLOGY
4 ADVISORY COMMITTEE.—

5 (1) ESTABLISHMENT.—Not later than 270 days
6 after the date of enactment of this Act, the Sec-
7 retary shall establish an advisory committee to be
8 known as the Unconventional Resources Technology
9 Advisory Committee.

10 (2) MEMBERSHIP.—The advisory committee
11 under this subsection shall be composed of members
12 appointed by the Secretary including—

13 (A) a majority of members who are em-
14 ployees or representatives of independent pro-
15 ducers of natural gas and other petroleum, in-
16 cluding small producers;

17 (B) individuals with extensive research ex-
18 perience or operational knowledge of unconven-
19 tional natural gas and other petroleum resource
20 exploration and production;

21 (C) individuals broadly representative of
22 the affected interests in unconventional natural
23 gas and other petroleum resource exploration
24 and production, including interests in environ-
25 mental protection and safe operations; and

1 (D) no individuals who are Federal em-
2 ployees.

3 (3) DUTIES.—The advisory committee under
4 this subsection shall advise the Secretary on the de-
5 velopment and implementation of activities under
6 this part related to unconventional natural gas and
7 other petroleum resources.

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 (c) PROHIBITION.—No advisory committee estab-
15 lished under this section shall make recommendations on
16 funding awards to particular consortia or other entities,
17 or for specific projects.

18 **SEC. 946. LIMITS ON PARTICIPATION.**

19 An entity shall be eligible to receive an award under
20 this part only if the Secretary finds—

21 (1) that the entity's participation in the pro-
22 gram under this part would be in the economic in-
23 terest of the United States; and

24 (2) that either—

1 (A) the entity is a United States-owned en-
2 tity organized under the laws of the United
3 States; or

4 (B) the entity is organized under the laws
5 of the United States and has a parent entity or-
6 ganized under the laws of a country that af-
7 fords—

8 (i) to United States-owned entities op-
9 portunities, comparable to those afforded
10 to any other entity, to participate in any
11 cooperative research venture similar to
12 those authorized under this part;

13 (ii) to United States-owned entities
14 local investment opportunities comparable
15 to those afforded to any other entity; and

16 (iii) adequate and effective protection
17 for the intellectual property rights of
18 United States-owned entities.

19 **SEC. 947. SUNSET.**

20 The authority provided by this part shall terminate
21 on September 30, 2014.

22 **SEC. 948. DEFINITIONS.**

23 In this part:

1 (1) DEEPWATER.—The term “deepwater”
2 means a water depth that is greater than 200 but
3 less than 1,500 meters.

4 (2) INDEPENDENT PRODUCER OF OIL OR
5 GAS.—

6 (A) IN GENERAL.—The term “independent
7 producer of oil or gas” means any person that
8 produces oil or gas other than a person to
9 whom subsection (c) of section 613A of the In-
10 ternal Revenue Code of 1986 does not apply by
11 reason of paragraph (2) (relating to certain re-
12 tailers) or paragraph (4) (relating to certain re-
13 finers) of section 613A(d) of such Code.

14 (B) RULES FOR APPLYING PARAGRAPHS (2)
15 AND (4) OF SECTION 613A(d).—For purposes of
16 subparagraph (A), paragraphs (2) and (4) of
17 section 613A(d) of the Internal Revenue Code
18 of 1986 shall be applied by substituting “cal-
19 endar year” for “taxable year” each place it ap-
20 pears in such paragraphs.

21 (3) PROGRAM CONSORTIUM.—The term “pro-
22 gram consortium” means the consortium selected
23 under section 942(d).

24 (4) REMOTE OR INCONSEQUENTIAL.—The term
25 “remote or inconsequential” has the meaning given

1 that term in regulations issued by the Office of Gov-
2 ernment Ethics under section 208(b)(2) of title 18,
3 United States Code.

4 (5) SMALL PRODUCER.—The term “small pro-
5 ducer” means an entity organized under the laws of
6 the United States with production levels of less than
7 1,000 barrels per day of oil equivalent.

8 (6) ULTRA-DEEPWATER.—The term “ultra-
9 deepwater” means a water depth that is equal to or
10 greater than 1,500 meters.

11 (7) ULTRA-DEEPWATER ARCHITECTURE.—The
12 term “ultra-deepwater architecture” means the inte-
13 gration of technologies for the exploration for, or
14 production of, natural gas or other petroleum re-
15 sources located at ultra-deepwater depths.

16 (8) ULTRA-DEEPWATER TECHNOLOGY.—The
17 term “ultra-deepwater technology” means a discrete
18 technology that is specially suited to address 1 or
19 more challenges associated with the exploration for,
20 or production of, natural gas or other petroleum re-
21 sources located at ultra-deepwater depths.

22 (9) UNCONVENTIONAL NATURAL GAS AND
23 OTHER PETROLEUM RESOURCE.—The term “uncon-
24 ventional natural gas and other petroleum resource”
25 means natural gas and other petroleum resource lo-

1 cated onshore in an economically inaccessible geo-
2 logical formation, including resources of small pro-
3 ducers.

4 **SEC. 949. FUNDING.**

5 (a) IN GENERAL.—

6 (1) OIL AND GAS LEASE INCOME.—For each of
7 fiscal years 2005 through 2014, from any Federal
8 royalties, rents, and bonuses derived from Federal
9 onshore and offshore oil and gas leases issued under
10 the Outer Continental Shelf Lands Act and the Min-
11 eral Leasing Act which are deposited in the Treas-
12 ury, and after distribution of any such funds as de-
13 scribed in subsection (c), \$50,000,000 shall be de-
14 posited into the Ultra-Deepwater and Unconven-
15 tional Natural Gas and Other Petroleum Research
16 Fund (in this section referred to as the Fund). For
17 purposes of this section, the term “royalties” ex-
18 cludes proceeds from the sale of royalty production
19 taken in kind and royalty production that is trans-
20 ferred under section 27(a)(3) of the Outer Conti-
21 nental Shelf Lands Act (43 U.S.C. 1353(a)(3)).

22 (2) AUTHORIZATION OF APPROPRIATIONS.—In
23 addition to amounts described in paragraph (1),
24 there are authorized to be appropriated to the Sec-
25 retary, to be deposited in the Fund, \$150,000,000

1 for each of the fiscal years 2005 through 2014, to
2 remain available until expended.

3 (b) OBLIGATIONAL AUTHORITY.—Monies in the
4 Fund shall be available to the Secretary for obligation
5 under this part without fiscal year limitation, to remain
6 available until expended.

7 (c) PRIOR DISTRIBUTIONS.—The distributions de-
8 scribed in subsection (a) are those required by law—

9 (1) to States and to the Reclamation Fund
10 under the Mineral Leasing Act (30 U.S.C. 191(a));
11 and

12 (2) to other funds receiving monies from Fed-
13 eral oil and gas leasing programs, including—

14 (A) any recipients pursuant to section 8(g)
15 of the Outer Continental Shelf Lands Act (43
16 U.S.C. 1337(g));

17 (B) the Land and Water Conservation
18 Fund, pursuant to section 2(c) of the Land and
19 Water Conservation Fund Act of 1965 (16
20 U.S.C. 4601–5(c));

21 (C) the Historic Preservation Fund, pursu-
22 ant to section 108 of the National Historic
23 Preservation Act (16 U.S.C. 470h); and

24 (D) the Secure Energy Reinvestment
25 Fund.

1 (d) ALLOCATION.—Amounts obligated from the Fund
2 under this section in each fiscal year shall be allocated
3 as follows:

4 (1) 50 percent shall be for activities under sec-
5 tion 942.

6 (2) 35 percent shall be for activities under sec-
7 tion 943(d)(1).

8 (3) 10 percent shall be for activities under sec-
9 tion 943(d)(2).

10 (4) 5 percent shall be for research under section
11 941(d).

12 (e) FUND.—There is hereby established in the Treas-
13 ury of the United States a separate fund to be known as
14 the “Ultra-Deepwater and Unconventional Natural Gas
15 and Other Petroleum Research Fund”.

16 **Subtitle F—Energy Sciences**

17 **SEC. 953. PLAN FOR FUSION ENERGY SCIENCES PROGRAM.**

18 (a) DECLARATION OF POLICY.—It shall be the policy
19 of the United States to conduct a program of activities
20 to ensure that the United States is competitive with other
21 nations in providing fusion energy for its own needs and
22 the needs of other nations.

23 (b) PLANNING.—

24 (1) IN GENERAL.—Not later than 180 days
25 after the date of enactment of this Act, the Sec-

1 retary shall present to Congress a plan, with pro-
2 posed cost estimates, budgets, and potential inter-
3 national partners, for the implementation of the pol-
4 icy described in subsection (a).

5 (2) COSTS AND SCHEDULES.—Such plan shall
6 also address the status of and, to the degree pos-
7 sible, costs and schedules for—

8 (A) the design and implementation of
9 international or national facilities for the test-
10 ing of fusion materials; and

11 (B) the design and implementation of
12 international or national facilities for the test-
13 ing and development of key fusion technologies.

14 **SEC. 954. SPALLATION NEUTRON SOURCE.**

15 (a) DEFINITION.—For the purposes of this section,
16 the term “Spallation Neutron Source” means Department
17 Project 99–E–334, Oak Ridge National Laboratory, Oak
18 Ridge, Tennessee.

19 (b) REPORT.—The Secretary shall report on the
20 Spallation Neutron Source as part of the Department’s
21 annual budget submission, including a description of the
22 achievement of milestones, a comparison of actual costs
23 to estimated costs, and any changes in estimated project
24 costs or schedule.

1 (c) LIMITATIONS.—The total amount obligated by the
2 Department, including prior year appropriations, for the
3 Spallation Neutron Source shall not exceed—

4 (1) \$1,192,700,000 for costs of construction;

5 (2) \$219,000,000 for other project costs; and

6 (3) \$1,411,700,000 for total project cost.

7 **SEC. 962. NITROGEN FIXATION.**

8 The Secretary shall conduct studies on biological ni-
9 trogen fixation, including plant genomics research relevant
10 to the development of commercial crop varieties with en-
11 hanced nitrogen fixation efficiency and ability.

12 **Subtitle G—Energy and**
13 **Environment**

14 **SEC. 966. WASTE REDUCTION AND USE OF ALTERNATIVES.**

15 (a) GRANT AUTHORITY.—The Secretary may make
16 a single grant to a qualified institution to examine burning
17 post-consumer carpet in cement kilns as an alternative en-
18 ergy source. The purposes of the grant shall include deter-
19 mining—

20 (1) how post-consumer carpet can be burned
21 without disrupting kiln operations;

22 (2) the extent to which overall kiln emissions
23 may be reduced;

24 (3) the emissions of air pollutants and other
25 relevant environmental impacts; and

1 (4) how this process provides benefits to both
2 cement kiln operations and carpet suppliers.

3 (b) QUALIFIED INSTITUTION.—For the purposes of
4 subsection (a), a qualified institution is an institution of
5 higher education with demonstrated expertise in the fields
6 of fiber recycling and logistical modeling of carpet waste
7 collection and preparation.

8 (c) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated to the Secretary for car-
10 rying out this section \$500,000.

11 **SEC. 967. REPORT ON FUEL CELL TEST CENTER.**

12 (a) REPORT.—Not later than 1 year after the date
13 of enactment of this Act, the Secretary shall transmit to
14 Congress a report on the results of a study of the estab-
15 lishment of a test center for next-generation fuel cells at
16 an institution of higher education that has available a con-
17 tinuous source of hydrogen and access to the electric
18 transmission grid. Such report shall include a conceptual
19 design for such test center and a projection of the costs
20 of establishing the test center.

21 (b) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated to the Secretary for car-
23 rying out this section \$500,000.

1 **SEC. 968. ARCTIC ENGINEERING RESEARCH CENTER.**

2 (a) IN GENERAL.—The Secretary of Energy (referred
3 to in this section as the “Secretary”) in consultation with
4 the Secretary of Transportation and the United States
5 Arctic Research Commission shall provide annual grants
6 to a university located adjacent to the Arctic Energy Of-
7 fice of the Department of Energy, to establish and operate
8 a university research center to be headquartered in Fair-
9 banks and to be known as the “Arctic Engineering Re-
10 search Center” (referred to in this section as the “Cen-
11 ter”).

12 (b) PURPOSE.—The purpose of the Center shall be
13 to conduct research on, and develop improved methods of,
14 construction and use of materials to improve the overall
15 performance of roads, bridges, residential, commercial,
16 and industrial structures, and other infrastructure in the
17 Arctic region, with an emphasis on developing—

18 (1) new construction techniques for roads,
19 bridges, rail, and related transportation infrastruc-
20 ture and residential, commercial, and industrial in-
21 frastructure that are capable of withstanding the
22 Arctic environment and using limited energy re-
23 sources as efficiently as possible;

24 (2) technologies and procedures for increasing
25 road, bridge, rail, and related transportation infra-
26 structure and residential, commercial, and industrial

1 infrastructure safety, reliability, and integrity in the
2 Arctic region;

3 (3) new materials and improving the perform-
4 ance and energy efficiency of existing materials for
5 the construction of roads, bridges, rail, and related
6 transportation infrastructure and residential, com-
7 mercial, and industrial infrastructure in the Arctic
8 region; and

9 (4) recommendations for new local, regional,
10 and State permitting and building codes to ensure
11 transportation and building safety and efficient en-
12 ergy use when constructing, using, and occupying
13 such infrastructure in the Arctic region.

14 (c) OBJECTIVES.—The Center shall carry out—

15 (1) basic and applied research in the subjects
16 described in subsection (b), the products of which
17 shall be judged by peers or other experts in the field
18 to advance the body of knowledge in road, bridge,
19 rail, and infrastructure engineering in the Arctic re-
20 gion; and

21 (2) an ongoing program of technology transfer
22 that makes research results available to potential
23 users in a form that can be implemented.

24 (d) AMOUNT OF GRANT.—For each of fiscal years
25 2005 through 2010, the Secretary shall provide a grant

1 in the amount of \$3,000,000 to the institution specified
2 in subsection (a) to carry out this section.

3 (e) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated to carry out this section
5 \$3,000,000 for each of fiscal years 2005 through 2010.

6 **SEC. 970. WESTERN MICHIGAN DEMONSTRATION PROJECT.**

7 The Administrator of the Environmental Protection
8 Agency, in consultation with the State of Michigan and
9 affected local officials, shall conduct a demonstration
10 project to address the effect of transported ozone and
11 ozone precursors in Southwestern Michigan. The dem-
12 onstration program shall address projected nonattainment
13 areas in Southwestern Michigan that include counties with
14 design values for ozone of less than .095 based on years
15 2000 to 2002 or the most current 3-year period of air
16 quality data. The Administrator shall assess any difficul-
17 ties such areas may experience in meeting the 8 hour na-
18 tional ambient air quality standard for ozone due to the
19 effect of transported ozone or ozone precursors into the
20 areas. The Administrator shall work with State and local
21 officials to determine the extent of ozone and ozone pre-
22 cursor transport, to assess alternatives to achieve compli-
23 ance with the 8 hour standard apart from local controls,
24 and to determine the timeframe in which such compliance
25 could take place. The Administrator shall complete this

1 demonstration project no later than 2 years after the date
2 of enactment of this section and shall not impose any re-
3 quirement or sanction that might otherwise apply during
4 the pendency of the demonstration project.

5 **SEC. 971. LOW-COST HYDROGEN PROPULSION AND INFRA-**
6 **STRUCTURE.**

7 (a) PROGRAM.—The Secretary of Energy shall—

8 (1) establish a program with respect to the fea-
9 sibility of using hydrogen propulsion in light-weight
10 vehicles and the integration of the associated hydro-
11 gen production infrastructure using off-the-shelf
12 components; and

13 (2) identify universities and institutions that—

14 (A) have expertise in operating and testing
15 vehicles fueled by hydrogen, methane, and other
16 fuels;

17 (B) have expertise in integrating off-the-
18 shelf components to minimize cost; and

19 (C) within two years can test a vehicle
20 based on an existing commercially available
21 platform with a curb weight of not less than
22 2,000 pounds before modifications, that—

23 (i) operates solely on hydrogen gas;

24 (ii) can travel a minimum of 300
25 miles under normal road conditions; and

1 (iii) uses hydrogen produced from
2 water using only solar energy.

3 (b) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated to the Secretary of En-
5 ergy for carrying out this section \$200,000 for fiscal year
6 2006. Such sums shall remain available until expended.

7 **SEC. 972. CARBON-BASED FUEL CELL DEVELOPMENT.**

8 (a) GRANT AUTHORITY.—The Secretary of Energy is
9 authorized to make a single grant to a qualified institution
10 to design and fabricate a 5-kilowatt prototype coal-based
11 fuel cell with the following performance objectives:

12 (1) A current density of 600 milliamps per
13 square centimeter at a cell voltage of 0.8 volts.

14 (2) An operating temperature range not to ex-
15 ceed 900 degrees celsius.

16 (b) QUALIFIED INSTITUTION.—For the purposes of
17 subsection (a), a qualified institution is a research-inten-
18 sive institution of higher education with demonstrated ex-
19 pertise in the development of carbon-based fuel cells allow-
20 ing the direct use of high sulfur content coal as fuel, and
21 which has produced a laboratory-scale carbon-based fuel
22 cell with a proven current density of 100 milliamps per
23 square centimeter at a voltage of 0.6 volts.

24 (c) AUTHORIZATION OF APPROPRIATIONS.—There
25 are authorized to be appropriated to the Secretary of En-

1 ergy for carrying out this section \$850,000 for fiscal year
2 2006.

3 **Subtitle H—International** 4 **Cooperation**

5 **SEC. 981. UNITED STATES-ISRAEL COOPERATION.**

6 (a) FINDINGS.—The Congress finds that—

7 (1) on February 1, 1996, United States Sec-
8 retary of Energy Hazel R. O’Leary and Israeli Min-
9 ister of Energy and Infrastructure Gonen Segev
10 signed the Agreement between the Department of
11 Energy of the United States of America and the
12 Ministry of Energy and Infrastructure of Israel Con-
13 cerning Energy Cooperation, to establish a frame-
14 work for collaboration between the United States
15 and Israel in energy research and development ac-
16 tivities;

17 (2) the Agreement entered into force in Feb-
18 ruary 2000;

19 (3) in February 2005, the Agreement was auto-
20 matically renewed for one additional 5-year period
21 pursuant to Article X of the Agreement; and

22 (4) under the Agreement, the United States
23 and Israel may cooperate in energy research and de-
24 velopment in a variety of alternative and advanced
25 energy sectors.

1 (b) REPORT TO CONGRESS.—(1) The Secretary of
2 Energy shall report to the Committee on Energy and
3 Commerce of the House of Representatives and the Com-
4 mittee on Energy and Natural Resources of the Senate
5 on—

6 (A) how the United States and Israel have co-
7 operated on energy research and development activi-
8 ties under the Agreement;

9 (B) projects initiated pursuant to the Agree-
10 ment; and

11 (C) plans for future cooperation and joint
12 projects under the Agreement.

13 (2) The report shall be submitted no later than three
14 months after the date of enactment of this Act.

15 (c) SENSE OF CONGRESS.—It is the sense of the Con-
16 gress that energy cooperation between the Governments
17 of the United States and Israel is mutually beneficial in
18 the development of energy technology.

19 **TITLE X—DEPARTMENT OF**
20 **ENERGY MANAGEMENT**

21 **SEC. 1001. ADDITIONAL ASSISTANT SECRETARY POSITION.**

22 (a) ADDITIONAL ASSISTANT SECRETARY POSITION
23 TO ENABLE IMPROVED MANAGEMENT OF NUCLEAR EN-
24 ERGY ISSUES.—

1 (1) IN GENERAL.—Section 203(a) of the De-
2 partment of Energy Organization Act (42 U.S.C.
3 7133(a)) is amended by striking “six Assistant Sec-
4 retaries” and inserting “7 Assistant Secretaries”.

5 (2) SENSE OF CONGRESS.—It is the sense of
6 Congress that the leadership for departmental mis-
7 sions in nuclear energy should be at the Assistant
8 Secretary level.

9 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

10 (1) TITLE 5.—Section 5315 of title 5, United
11 States Code, is amended by striking “Assistant Sec-
12 retaries of Energy (6)” and inserting “Assistant
13 Secretaries of Energy (7)”.

14 (2) DEPARTMENT OF ENERGY ORGANIZATION
15 ACT.—The table of contents for the Department of
16 Energy Organization Act (42 U.S.C. 7101 note) is
17 amended—

18 (A) by striking “Section 209” and insert-
19 ing “Sec. 209”;

20 (B) by striking “213.” and inserting “Sec.
21 213.”;

22 (C) by striking “214.” and inserting “Sec.
23 214.”;

24 (D) by striking “215.” and inserting “Sec.
25 215.”; and

1 (E) by striking “216.” and inserting “Sec.
2 216.”.

3 **SEC. 1002. OTHER TRANSACTIONS AUTHORITY.**

4 Section 646 of the Department of Energy Organiza-
5 tion Act (42 U.S.C. 7256) is amended by adding at the
6 end the following:

7 “(g)(1) In addition to other authorities granted to the
8 Secretary under law, the Secretary may enter into other
9 transactions on such terms as the Secretary may deem
10 appropriate in furtherance of research, development, or
11 demonstration functions vested in the Secretary. Such
12 other transactions shall not be subject to the provisions
13 of section 9 of the Federal Nonnuclear Energy Research
14 and Development Act of 1974 (42 U.S.C. 5908) or section
15 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182).

16 “(2)(A) The Secretary shall ensure that—

17 “(i) to the maximum extent the Secretary de-
18 termines practicable, no transaction entered into
19 under paragraph (1) provides for research, develop-
20 ment, or demonstration that duplicates research, de-
21 velopment, or demonstration being conducted under
22 existing projects carried out by the Department;

23 “(ii) to the extent the Secretary determines
24 practicable, the funds provided by the Government
25 under a transaction authorized by paragraph (1) do

1 not exceed the total amount provided by other par-
2 ties to the transaction; and

3 “(iii) to the extent the Secretary determines
4 practicable, competitive, merit-based selection proce-
5 dures shall be used when entering into transactions
6 under paragraph (1).

7 “(B) A transaction authorized by paragraph (1) may
8 be used for a research, development, or demonstration
9 project only if the Secretary makes a written determina-
10 tion that the use of a standard contract, grant, or coopera-
11 tive agreement for the project is not feasible or appro-
12 priate.

13 “(3)(A) The Secretary shall protect from disclosure,
14 including disclosure under section 552 of title 5, United
15 States Code, for up to 5 years after the date the informa-
16 tion is received by the Secretary—

17 “(i) a proposal, proposal abstract, and sup-
18 porting documents submitted to the Department in
19 a competitive or noncompetitive process having the
20 potential for resulting in an award under paragraph
21 (1) to the party submitting the information; and

22 “(ii) a business plan and technical information
23 relating to a transaction authorized by paragraph
24 (1) submitted to the Department as confidential
25 business information.

1 “(B) The Secretary may protect from disclosure, for
2 up to 5 years after the information was developed, any
3 information developed pursuant to a transaction under
4 paragraph (1) which developed information is of a char-
5 acter that it would be protected from disclosure under sec-
6 tion 552(b)(4) of title 5, United States Code, if obtained
7 from a person other than a Federal agency.

8 “(4) Not later than 90 days after the date of enact-
9 ment of this subsection, the Secretary shall prescribe
10 guidelines for using other transactions authorized by para-
11 graph (1). Such guidelines shall be published in the Fed-
12 eral Register for public comment under rulemaking proce-
13 dures of the Department.

14 “(5) The authority of the Secretary under this sub-
15 section may be delegated only to an officer of the Depart-
16 ment who is appointed by the President by and with the
17 advice and consent of the Senate and may not be delegated
18 to any other person.

19 “(6)(A) Not later than September 31, 2006, the
20 Comptroller General of the United States shall report to
21 Congress on the Department’s use of the authorities
22 granted under this section, including the ability to attract
23 nontraditional government contractors and whether addi-
24 tional safeguards are needed with respect to the use of
25 such authorities.

1 “(B) In this section, the term ‘nontraditional Govern-
2 ment contractor’ has the same meaning as the term ‘non-
3 traditional defense contractor’ as defined in section 845(e)
4 of the National Defense Authorization Act for Fiscal Year
5 1994 (Public Law 103–160; 10 U.S.C. 2371 note).”.

6 **SEC. 1003. UNIVERSITY COLLABORATION.**

7 Not later than 2 years after the date of enactment
8 of this Act, the Secretary of Energy shall transmit to the
9 Congress a report that examines the feasibility of pro-
10 moting collaborations between major universities and
11 other colleges and universities in grants, contracts, and
12 cooperative agreements made by the Secretary for energy
13 projects. For purposes of this section, major universities
14 are schools listed by the Carnegie Foundation as Doctoral
15 Research Extensive Universities. The Secretary shall also
16 consider providing incentives to increase the inclusion of
17 small institutions of higher education, including minority-
18 serving institutions, in energy grants, contracts, and coop-
19 erative agreements.

20 **SEC. 1004. SENSE OF CONGRESS.**

21 It is the sense of the Congress that—

22 (1) the Secretary of Energy should develop and
23 implement more stringent procurement and inven-
24 tory controls, including controls on the purchase
25 card program, to prevent waste, fraud, and abuse of

1 taxpayer funds by employees and contractors of the
2 Department of Energy; and

3 (2) the Department’s Inspector General should
4 continue to closely review purchase card purchases
5 and other procurement and inventory practices at
6 the Department.

7 **TITLE XII—ELECTRICITY**

8 **SEC. 1201. SHORT TITLE.**

9 This title may be cited as the “Electric Reliability
10 Act of 2005”.

11 **Subtitle A—Reliability Standards**

12 **SEC. 1211. ELECTRIC RELIABILITY STANDARDS.**

13 (a) IN GENERAL.—Part II of the Federal Power Act
14 (16 U.S.C 824 et seq.) is amended by adding at the end
15 the following:

16 **“SEC. 215. ELECTRIC RELIABILITY.**

17 “(a) DEFINITIONS.—For purposes of this section:

18 “(1) The term ‘bulk-power system’ means—

19 “(A) facilities and control systems nec-
20 essary for operating an interconnected electric
21 energy transmission network (or any portion
22 thereof); and

23 “(B) electric energy from generation facili-
24 ties needed to maintain transmission system re-
25 liability.

1 The term does not include facilities used in the local
2 distribution of electric energy.

3 “(2) The terms ‘Electric Reliability Organiza-
4 tion’ and ‘ERO’ mean the organization certified by
5 the Commission under subsection (c) the purpose of
6 which is to establish and enforce reliability stand-
7 ards for the bulk-power system, subject to Commis-
8 sion review.

9 “(3) The term ‘reliability standard’ means a re-
10 quirement, approved by the Commission under this
11 section, to provide for reliable operation of the bulk-
12 power system. The term includes requirements for
13 the operation of existing bulk-power system facilities,
14 including cybersecurity protection, and the design of
15 planned additions or modifications to such facilities
16 to the extent necessary to provide for reliable oper-
17 ation of the bulk-power system, but the term does
18 not include any requirement to enlarge such facilities
19 or to construct new transmission capacity or genera-
20 tion capacity.

21 “(4) The term ‘reliable operation’ means oper-
22 ating the elements of the bulk-power system within
23 equipment and electric system thermal, voltage, and
24 stability limits so that instability, uncontrolled sepa-
25 ration, or cascading failures of such system will not

1 occur as a result of a sudden disturbance, including
2 a cybersecurity incident, or unanticipated failure of
3 system elements.

4 “(5) The term ‘Interconnection’ means a geo-
5 graphic area in which the operation of bulk-power
6 system components is synchronized such that the
7 failure of 1 or more of such components may ad-
8 versely affect the ability of the operators of other
9 components within the system to maintain reliable
10 operation of the facilities within their control.

11 “(6) The term ‘transmission organization’
12 means a Regional Transmission Organization, Inde-
13 pendent System Operator, independent transmission
14 provider, or other transmission organization finally
15 approved by the Commission for the operation of
16 transmission facilities.

17 “(7) The term ‘regional entity’ means an entity
18 having enforcement authority pursuant to subsection
19 (e)(4).

20 “(8) The term ‘cybersecurity incident’ means a
21 malicious act or suspicious event that disrupts, or
22 was an attempt to disrupt, the operation of those
23 programmable electronic devices and communication
24 networks including hardware, software and data that

1 are essential to the reliable operation of the bulk
2 power system.

3 “(b) JURISDICTION AND APPLICABILITY.—(1) The
4 Commission shall have jurisdiction, within the United
5 States, over the ERO certified by the Commission under
6 subsection (c), any regional entities, and all users, owners
7 and operators of the bulk-power system, including but not
8 limited to the entities described in section 201(f), for pur-
9 poses of approving reliability standards established under
10 this section and enforcing compliance with this section. All
11 users, owners and operators of the bulk-power system
12 shall comply with reliability standards that take effect
13 under this section.

14 “(2) The Commission shall issue a final rule to imple-
15 ment the requirements of this section not later than 180
16 days after the date of enactment of this section.

17 “(c) CERTIFICATION.—Following the issuance of a
18 Commission rule under subsection (b)(2), any person may
19 submit an application to the Commission for certification
20 as the Electric Reliability Organization. The Commission
21 may certify 1 such ERO if the Commission determines
22 that such ERO—

23 “(1) has the ability to develop and enforce, sub-
24 ject to subsection (e)(2), reliability standards that

1 provide for an adequate level of reliability of the
2 bulk-power system; and

3 “(2) has established rules that—

4 “(A) assure its independence of the users
5 and owners and operators of the bulk-power
6 system, while assuring fair stakeholder rep-
7 resentation in the selection of its directors and
8 balanced decisionmaking in any ERO com-
9 mittee or subordinate organizational structure;

10 “(B) allocate equitably reasonable dues,
11 fees, and other charges among end users for all
12 activities under this section;

13 “(C) provide fair and impartial procedures
14 for enforcement of reliability standards through
15 the imposition of penalties in accordance with
16 subsection (e) (including limitations on activi-
17 ties, functions, or operations, or other appro-
18 priate sanctions);

19 “(D) provide for reasonable notice and op-
20 portunity for public comment, due process,
21 openness, and balance of interests in developing
22 reliability standards and otherwise exercising its
23 duties; and

1 “(E) provide for taking, after certification,
2 appropriate steps to gain recognition in Canada
3 and Mexico.

4 The total amount of all dues, fees, and other charges
5 collected by the ERO in each of the fiscal years
6 2006 through 2015 and allocated under subpara-
7 graph (B) shall not exceed \$50,000,000.

8 “(d) RELIABILITY STANDARDS.—(1) The Electric
9 Reliability Organization shall file each reliability standard
10 or modification to a reliability standard that it proposes
11 to be made effective under this section with the Commis-
12 sion.

13 “(2) The Commission may approve, by rule or order,
14 a proposed reliability standard or modification to a reli-
15 ability standard if it determines that the standard is just,
16 reasonable, not unduly discriminatory or preferential, and
17 in the public interest. The Commission shall give due
18 weight to the technical expertise of the Electric Reliability
19 Organization with respect to the content of a proposed
20 standard or modification to a reliability standard and to
21 the technical expertise of a regional entity organized on
22 an Interconnection-wide basis with respect to a reliability
23 standard to be applicable within that Interconnection, but
24 shall not defer with respect to the effect of a standard

1 on competition. A proposed standard or modification shall
2 take effect upon approval by the Commission.

3 “(3) The Electric Reliability Organization shall
4 rebuttably presume that a proposal from a regional entity
5 organized on an Interconnection-wide basis for a reliability
6 standard or modification to a reliability standard to be ap-
7 plicable on an Interconnection-wide basis is just, reason-
8 able, and not unduly discriminatory or preferential, and
9 in the public interest.

10 “(4) The Commission shall remand to the Electric
11 Reliability Organization for further consideration a pro-
12 posed reliability standard or a modification to a reliability
13 standard that the Commission disapproves in whole or in
14 part.

15 “(5) The Commission, upon its own motion or upon
16 complaint, may order the Electric Reliability Organization
17 to submit to the Commission a proposed reliability stand-
18 ard or a modification to a reliability standard that ad-
19 dresses a specific matter if the Commission considers such
20 a new or modified reliability standard appropriate to carry
21 out this section.

22 “(6) The final rule adopted under subsection (b)(2)
23 shall include fair processes for the identification and time-
24 ly resolution of any conflict between a reliability standard
25 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
21 subsection (d) if the ERO, after notice and an opportunity
22 for a hearing—

23 “(A) finds that the user or owner or operator
24 has violated a reliability standard approved by the
25 Commission under subsection (d); and

1 “(B) files notice and the record of the pro-
2 ceeding with the Commission.

3 “(2) A penalty imposed under paragraph (1) may
4 take effect not earlier than the 31st day after the ERO
5 files with the Commission notice of the penalty and the
6 record of proceedings. Such penalty shall be subject to re-
7 view by the Commission, on its own motion or upon appli-
8 cation by the user, owner or operator that is the subject
9 of the penalty filed within 30 days after the date such
10 notice is filed with the Commission. Application to the
11 Commission for review, or the initiation of review by the
12 Commission on its own motion, shall not operate as a stay
13 of such penalty unless the Commission otherwise orders
14 upon its own motion or upon application by the user,
15 owner or operator that is the subject of such penalty. In
16 any proceeding to review a penalty imposed under para-
17 graph (1), the Commission, after notice and opportunity
18 for hearing (which hearing may consist solely of the record
19 before the ERO and opportunity for the presentation of
20 supporting reasons to affirm, modify, or set aside the pen-
21 alty), shall by order affirm, set aside, reinstate, or modify
22 the penalty, and, if appropriate, remand to the ERO for
23 further proceedings. The Commission shall implement ex-
24 pedited procedures for such hearings.

1 “(3) On its own motion or upon complaint, the Com-
2 mission may order compliance with a reliability standard
3 and may impose a penalty against a user or owner or oper-
4 ator of the bulk-power system if the Commission finds,
5 after notice and opportunity for a hearing, that the user
6 or owner or operator of the bulk-power system has en-
7 gaged or is about to engage in any acts or practices that
8 constitute or will constitute a violation of a reliability
9 standard.

10 “(4) The Commission shall issue regulations author-
11 izing the ERO to enter into an agreement to delegate au-
12 thority to a regional entity for the purpose of proposing
13 reliability standards to the ERO and enforcing reliability
14 standards under paragraph (1) if—

15 “(A) the regional entity is governed by—

16 “(i) an independent board;

17 “(ii) a balanced stakeholder board; or

18 “(iii) a combination independent and bal-
19 anced stakeholder board.

20 “(B) the regional entity otherwise satisfies the
21 provisions of subsection (c)(1) and (2); and

22 “(C) the agreement promotes effective and effi-
23 cient administration of bulk-power system reliability.

24 The Commission may modify such delegation. The ERO
25 and the Commission shall rebuttably presume that a pro-

1 posal for delegation to a regional entity organized on an
2 Interconnection-wide basis promotes effective and efficient
3 administration of bulk-power system reliability and should
4 be approved. Such regulation may provide that the Com-
5 mission may assign the ERO's authority to enforce reli-
6 ability standards under paragraph (1) directly to a re-
7 gional entity consistent with the requirements of this para-
8 graph.

9 “(5) The Commission may take such action as is nec-
10 essary or appropriate against the ERO or a regional entity
11 to ensure compliance with a reliability standard or any
12 Commission order affecting the ERO or a regional entity.

13 “(6) Any penalty imposed under this section shall
14 bear a reasonable relation to the seriousness of the viola-
15 tion and shall take into consideration the efforts of such
16 user, owner, or operator to remedy the violation in a time-
17 ly manner.

18 “(f) CHANGES IN ELECTRIC RELIABILITY ORGANIZA-
19 TION RULES.—The Electric Reliability Organization shall
20 file with the Commission for approval any proposed rule
21 or proposed rule change, accompanied by an explanation
22 of its basis and purpose. The Commission, upon its own
23 motion or complaint, may propose a change to the rules
24 of the ERO. A proposed rule or proposed rule change shall
25 take effect upon a finding by the Commission, after notice

1 and opportunity for comment, that the change is just, rea-
2 sonable, not unduly discriminatory or preferential, is in
3 the public interest, and satisfies the requirements of sub-
4 section (c).

5 “(g) RELIABILITY REPORTS.—The ERO shall con-
6 duct periodic assessments of the reliability and adequacy
7 of the bulk-power system in North America.

8 “(h) COORDINATION WITH CANADA AND MEXICO.—
9 The President is urged to negotiate international agree-
10 ments with the governments of Canada and Mexico to pro-
11 vide for effective compliance with reliability standards and
12 the effectiveness of the ERO in the United States and
13 Canada or Mexico.

14 “(i) SAVINGS PROVISIONS.—(1) The ERO shall have
15 authority to develop and enforce compliance with reli-
16 ability standards for only the bulk-power system.

17 “(2) This section does not authorize the ERO or the
18 Commission to order the construction of additional gen-
19 eration or transmission capacity or to set and enforce com-
20 pliance with standards for adequacy or safety of electric
21 facilities or services.

22 “(3) Nothing in this section shall be construed to pre-
23 empt any authority of any State to take action to ensure
24 the safety, adequacy, and reliability of electric service
25 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
22 the Governor of each State, and may include representa-
23 tives of agencies, States, and provinces outside the United
24 States. A regional advisory body may provide advice to the
25 Electric Reliability Organization, a regional entity, or the

1 Commission regarding the governance of an existing or
2 proposed regional entity within the same region, whether
3 a standard proposed to apply within the region is just,
4 reasonable, not unduly discriminatory or preferential, and
5 in the public interest, whether fees proposed to be assessed
6 within the region are just, reasonable, not unduly discrimi-
7 natory or preferential, and in the public interest and any
8 other responsibilities requested by the Commission. The
9 Commission may give deference to the advice of any such
10 regional advisory body if that body is organized on an
11 Interconnection-wide basis.

12 “(k) ALASKA AND HAWAII.—The provisions of this
13 section do not apply to Alaska or Hawaii.”.

14 (b) STATUS OF ERO.—The Electric Reliability Orga-
15 nization certified by the Federal Energy Regulatory Com-
16 mission under section 215(c) of the Federal Power Act
17 and any regional entity delegated enforcement authority
18 pursuant to section 215(e)(4) of that Act are not depart-
19 ments, agencies, or instrumentalities of the United States
20 Government.

21 (c) LIMITATION ON ANNUAL APPROPRIATIONS.—
22 There is authorized to be appropriated not more than
23 \$50,000,000 per year for fiscal years 2006 through 2015
24 for all activities under the amendment made by subsection
25 (a).

1 **Subtitle B—Transmission**
2 **Infrastructure Modernization**

3 **SEC. 1221. SITING OF INTERSTATE ELECTRIC TRANS-**
4 **MISSION FACILITIES.**

5 (a) AMENDMENT OF FEDERAL POWER ACT.—Part
6 II of the Federal Power Act is amended by adding at the
7 end the following:

8 **“SEC. 216. SITING OF INTERSTATE ELECTRIC TRANS-**
9 **MISSION FACILITIES.**

10 “(a) DESIGNATION OF NATIONAL INTEREST ELEC-
11 TRIC TRANSMISSION CORRIDORS.—

12 “(1) TRANSMISSION CONGESTION STUDY.—

13 Within 1 year after the enactment of this section,
14 and every 3 years thereafter, the Secretary of En-
15 ergy, in consultation with affected States, shall con-
16 duct a study of electric transmission congestion.

17 After considering alternatives and recommendations
18 from interested parties, including an opportunity for
19 comment from affected States, the Secretary shall
20 issue a report, based on such study, which may des-
21 ignate any geographic area experiencing electric en-
22 ergy transmission capacity constraints or congestion
23 that adversely affects consumers as a national inter-
24 est electric transmission corridor. The Secretary
25 shall conduct the study and issue the report in con-

1 sultation with any appropriate regional entity ref-
2 erenced in section 215 of this Act.

3 “(2) CONSIDERATIONS.—In determining wheth-
4 er to designate a national interest electric trans-
5 mission corridor referred to in paragraph (1) under
6 this section, the Secretary may consider whether—

7 “(A) the economic vitality and development
8 of the corridor, or the end markets served by
9 the corridor, may be constrained by lack of ade-
10 quate or reasonably priced electricity;

11 “(B)(i) economic growth in the corridor, or
12 the end markets served by the corridor, may be
13 jeopardized by reliance on limited sources of en-
14 ergy; and

15 “(ii) a diversification of supply is war-
16 ranted;

17 “(C) the energy independence of the
18 United States would be served by the designa-
19 tion;

20 “(D) the designation would be in the inter-
21 est of national energy policy; and

22 “(E) the designation would enhance na-
23 tional defense and homeland security.

24 “(b) CONSTRUCTION PERMIT.—Except as provided
25 in subsection (i), the Commission is authorized, after no-

1 tice and an opportunity for hearing, to issue a permit or
2 permits for the construction or modification of electric
3 transmission facilities in a national interest electric trans-
4 mission corridor designated by the Secretary under sub-
5 section (a) if the Commission finds that—

6 “(1)(A) a State in which the transmission fa-
7 cilities are to be constructed or modified is without
8 authority to—

9 “(i) approve the siting of the facilities; or

10 “(ii) consider the interstate benefits ex-
11 pected to be achieved by the proposed construc-
12 tion or modification of transmission facilities in
13 the State;

14 “(B) the applicant for a permit is a transmit-
15 ting utility under this Act but does not qualify to
16 apply for a permit or siting approval for the pro-
17 posed project in a State because the applicant does
18 not serve end-use customers in the State; or

19 “(C) a State commission or other entity that
20 has authority to approve the siting of the facilities
21 has—

22 “(i) withheld approval for more than 1
23 year after the filing of an application pursuant
24 to applicable law seeking approval or 1 year
25 after the designation of the relevant national in-

1 terest electric transmission corridor, whichever
2 is later; or

3 “(ii) conditioned its approval in such a
4 manner that the proposed construction or modi-
5 fication will not significantly reduce trans-
6 mission congestion in interstate commerce or is
7 not economically feasible;

8 “(2) the facilities to be authorized by the per-
9 mit will be used for the transmission of electric en-
10 ergy in interstate commerce;

11 “(3) the proposed construction or modification
12 is consistent with the public interest;

13 “(4) the proposed construction or modification
14 will significantly reduce transmission congestion in
15 interstate commerce and protects or benefits con-
16 sumers; and

17 “(5) the proposed construction or modification
18 is consistent with sound national energy policy and
19 will enhance energy independence.

20 “(c) PERMIT APPLICATIONS.—Permit applications
21 under subsection (b) shall be made in writing to the Com-
22 mission. The Commission shall issue rules setting forth
23 the form of the application, the information to be con-
24 tained in the application, and the manner of service of no-
25 tice of the permit application upon interested persons.

1 “(d) COMMENTS.—In any proceeding before the
2 Commission under subsection (b), the Commission shall
3 afford each State in which a transmission facility covered
4 by the permit is or will be located, each affected Federal
5 agency and Indian tribe, private property owners, and
6 other interested persons, a reasonable opportunity to
7 present their views and recommendations with respect to
8 the need for and impact of a facility covered by the permit.

9 “(e) RIGHTS-OF-WAY.—In the case of a permit under
10 subsection (b) for electric transmission facilities to be lo-
11 cated on property other than property owned by the
12 United States or a State, if the permit holder cannot ac-
13 quire by contract, or is unable to agree with the owner
14 of the property to the compensation to be paid for, the
15 necessary right-of-way to construct or modify such trans-
16 mission facilities, the permit holder may acquire the right-
17 of-way by the exercise of the right of eminent domain in
18 the district court of the United States for the district in
19 which the property concerned is located, or in the appro-
20 priate court of the State in which the property is located.
21 The practice and procedure in any action or proceeding
22 for that purpose in the district court of the United States
23 shall conform as nearly as may be with the practice and
24 procedure in similar action or proceeding in the courts of
25 the State where the property is situated.

1 “(f) STATE LAW.—Nothing in this section shall pre-
2 clude any person from constructing or modifying any
3 transmission facility pursuant to State law.

4 “(g) COMPENSATION.—Any exercise of eminent do-
5 main authority pursuant to this section shall be considered
6 a taking of private property for which just compensation
7 is due. Just compensation shall be an amount equal to
8 the full fair market value of the property taken on the
9 date of the exercise of eminent domain authority, except
10 that the compensation shall exceed fair market value if
11 necessary to make the landowner whole for decreases in
12 the value of any portion of the land not subject to eminent
13 domain. Any parcel of land acquired by eminent domain
14 under this subsection shall be transferred back to the
15 owner from whom it was acquired (or his heirs or assigns)
16 if the land is not used for the construction or modification
17 of electric transmission facilities within a reasonable pe-
18 riod of time after the acquisition. Other than construction,
19 modification, operation, or maintenance of electric trans-
20 mission facilities and related facilities, property acquired
21 under subsection (e) may not be used for any purpose (in-
22 cluding use for any heritage area, recreational trail, or
23 park) without the consent of the owner of the parcel from
24 whom the property was acquired (or the owner’s heirs or
25 assigns).

1 “(h) COORDINATION OF FEDERAL AUTHORIZATIONS
2 FOR TRANSMISSION AND DISTRIBUTION FACILITIES.—

3 “(1) LEAD AGENCY.—If an applicant, or pro-
4 spective applicant, for a Federal authorization re-
5 lated to an electric transmission or distribution facil-
6 ity so requests, the Department of Energy (DOE)
7 shall act as the lead agency for purposes of coordi-
8 nating all applicable Federal authorizations and re-
9 lated environmental reviews of the facility. For pur-
10 poses of this subsection, the term ‘Federal author-
11 ization’ means any authorization required under
12 Federal law in order to site a transmission or dis-
13 tribution facility, including but not limited to such
14 permits, special use authorizations, certifications,
15 opinions, or other approvals as may be required,
16 whether issued by a Federal or a State agency. To
17 the maximum extent practicable under applicable
18 Federal law, the Secretary of Energy shall coordi-
19 nate this Federal authorization and review process
20 with any Indian tribes, multi-State entities, and
21 State agencies that are responsible for conducting
22 any separate permitting and environmental reviews
23 of the facility, to ensure timely and efficient review
24 and permit decisions.

1 “(2) AUTHORITY TO SET DEADLINES.—As lead
2 agency, the Department of Energy, in consultation
3 with agencies responsible for Federal authorizations
4 and, as appropriate, with Indian tribes, multi-State
5 entities, and State agencies that are willing to co-
6 ordinate their own separate permitting and environ-
7 mental reviews with the Federal authorization and
8 environmental reviews, shall establish prompt and
9 binding intermediate milestones and ultimate dead-
10 lines for the review of, and Federal authorization de-
11 cisions relating to, the proposed facility. The Sec-
12 retary of Energy shall ensure that once an applica-
13 tion has been submitted with such data as the Sec-
14 retary considers necessary, all permit decisions and
15 related environmental reviews under all applicable
16 Federal laws shall be completed within 1 year or, if
17 a requirement of another provision of Federal law
18 makes this impossible, as soon thereafter as is prac-
19 ticable. The Secretary of Energy also shall provide
20 an expeditious pre-application mechanism for pro-
21 spective applicants to confer with the agencies in-
22 volved to have each such agency determine and com-
23 municate to the prospective applicant within 60 days
24 of when the prospective applicant submits a request
25 for such information concerning—

1 “(A) the likelihood of approval for a poten-
2 tial facility; and

3 “(B) key issues of concern to the agencies
4 and public.

5 “(3) CONSOLIDATED ENVIRONMENTAL REVIEW
6 AND RECORD OF DECISION.—As lead agency head,
7 the Secretary of Energy, in consultation with the af-
8 fected agencies, shall prepare a single environmental
9 review document, which shall be used as the basis
10 for all decisions on the proposed project under Fed-
11 eral law. The document may be an environmental as-
12 sessment or environmental impact statement under
13 the National Environmental Policy Act of 1969 if
14 warranted, or such other form of analysis as may be
15 warranted. The Secretary of Energy and the heads
16 of other agencies shall streamline the review and
17 permitting of transmission and distribution facilities
18 within corridors designated under section 503 of the
19 Federal Land Policy and Management Act (43
20 U.S.C. 1763) by fully taking into account prior anal-
21 yses and decisions relating to the corridors. Such
22 document shall include consideration by the relevant
23 agencies of any applicable criteria or other matters
24 as required under applicable laws.

1 “(4) APPEALS.—In the event that any agency
2 has denied a Federal authorization required for a
3 transmission or distribution facility, or has failed to
4 act by the deadline established by the Secretary pur-
5 suant to this section for deciding whether to issue
6 the authorization, the applicant or any State in
7 which the facility would be located may file an ap-
8 peal with the Secretary, who shall, in consultation
9 with the affected agency, review the denial or take
10 action on the pending application. Based on the
11 overall record and in consultation with the affected
12 agency, the Secretary may then either issue the nec-
13 essary authorization with any appropriate condi-
14 tions, or deny the application. The Secretary shall
15 issue a decision within 90 days of the filing of the
16 appeal. In making a decision under this paragraph,
17 the Secretary shall comply with applicable require-
18 ments of Federal law, including any requirements of
19 the Endangered Species Act, the Clean Water Act,
20 the National Forest Management Act, the National
21 Environmental Policy Act of 1969, and the Federal
22 Land Policy and Management Act.

23 “(5) CONFORMING REGULATIONS AND MEMO-
24 RANDA OF UNDERSTANDING.—Not later than 18
25 months after the date of enactment of this section,

1 the Secretary of Energy shall issue any regulations
2 necessary to implement this subsection. Not later
3 than 1 year after the date of enactment of this sec-
4 tion, the Secretary and the heads of all Federal
5 agencies with authority to issue Federal authoriza-
6 tions shall enter into Memoranda of Understanding
7 to ensure the timely and coordinated review and per-
8 mitting of electricity transmission and distribution
9 facilities. The head of each Federal agency with au-
10 thority to issue a Federal authorization shall des-
11 ignate a senior official responsible for, and dedicate
12 sufficient other staff and resources to ensure, full
13 implementation of the DOE regulations and any
14 Memoranda. Interested Indian tribes, multi-State
15 entities, and State agencies may enter such Memo-
16 randa of Understanding.

17 “(6) DURATION AND RENEWAL.—Each Federal
18 land use authorization for an electricity transmission
19 or distribution facility shall be issued—

20 “(A) for a duration, as determined by the
21 Secretary of Energy, commensurate with the
22 anticipated use of the facility, and

23 “(B) with appropriate authority to manage
24 the right-of-way for reliability and environ-
25 mental protection.

1 Upon the expiration of any such authorization (in-
2 cluding an authorization issued prior to enactment
3 of this section), the authorization shall be reviewed
4 for renewal taking fully into account reliance on
5 such electricity infrastructure, recognizing its impor-
6 tance for public health, safety and economic welfare
7 and as a legitimate use of Federal lands.

8 “(7) MAINTAINING AND ENHANCING THE
9 TRANSMISSION INFRASTRUCTURE.—In exercising the
10 responsibilities under this section, the Secretary of
11 Energy shall consult regularly with the Federal En-
12 ergy Regulatory Commission (FERC), FERC-ap-
13 proved electric reliability organizations (including re-
14 lated regional entities), and FERC-approved Re-
15 gional Transmission Organizations and Independent
16 System Operators.

17 “(i) INTERSTATE COMPACTS.—The consent of Con-
18 gress is hereby given for 3 or more contiguous States to
19 enter into an interstate compact, subject to approval by
20 Congress, establishing regional transmission siting agen-
21 cies to facilitate siting of future electric energy trans-
22 mission facilities within such States and to carry out the
23 electric energy transmission siting responsibilities of such
24 States. The Secretary of Energy may provide technical as-
25 sistance to regional transmission siting agencies estab-

1 lished under this subsection. Such regional transmission
2 siting agencies shall have the authority to review, certify,
3 and permit siting of transmission facilities, including fa-
4 cilities in national interest electric transmission corridors
5 (other than facilities on property owned by the United
6 States). The Commission shall have no authority to issue
7 a permit for the construction or modification of electric
8 transmission facilities within a State that is a party to
9 a compact, unless the members of a compact are in dis-
10 agreement and the Secretary makes, after notice and an
11 opportunity for a hearing, the finding described in sub-
12 section (b)(1)(C).

13 “(j) SAVINGS CLAUSE.—Nothing in this section shall
14 be construed to affect any requirement of the environ-
15 mental laws of the United States, including, but not lim-
16 ited to, the National Environmental Policy Act of 1969.
17 Subsection (h)(4) of this section shall not apply to any
18 Congressionally-designated components of the National
19 Wilderness Preservation System, the National Wild and
20 Scenic Rivers System, or the National Park system (in-
21 cluding National Monuments therein).

22 “(k) ERCOT.—This section shall not apply within
23 the area referred to in section 212(k)(2)(A).”.

24 (b) REPORTS TO CONGRESS ON CORRIDORS AND
25 RIGHTS OF WAY ON FEDERAL LANDS.—The Secretary of

1 the Interior, the Secretary of Energy, the Secretary of Ag-
2 riculture, and the Chairman of the Council on Environ-
3 mental Quality shall, within 90 days of the date of enact-
4 ment of this subsection, submit a joint report to Congress
5 identifying each of the following:

6 (1) All existing designated transmission and
7 distribution corridors on Federal land and the status
8 of work related to proposed transmission and dis-
9 tribution corridor designations under Title V of the
10 Federal Land Policy and Management Act (43
11 U.S.C. 1761 et. Seq.), the schedule for completing
12 such work, any impediments to completing the work,
13 and steps that Congress could take to expedite the
14 process.

15 (2) The number of pending applications to lo-
16 cate transmission and distribution facilities on Fed-
17 eral lands, key information relating to each such fa-
18 cility, how long each application has been pending,
19 the schedule for issuing a timely decision as to each
20 facility, and progress in incorporating existing and
21 new such rights-of-way into relevant land use and
22 resource management plans or their equivalent.

23 (3) The number of existing transmission and
24 distribution rights-of-way on Federal lands that will
25 come up for renewal within the following 5, 10, and

1 15 year periods, and a description of how the Secre-
2 taries plan to manage such renewals.

3 **SEC. 1222. THIRD-PARTY FINANCE.**

4 (a) EXISTING FACILITIES.—The Secretary of Energy
5 (hereinafter in this section referred to as the “Secretary”),
6 acting through the Administrator of the Western Area
7 Power Administration (hereinafter in this section referred
8 to as “WAPA”), or through the Administrator of the
9 Southwestern Power Administration (hereinafter in this
10 section referred to as “SWPA”), or both, may design, de-
11 velop, construct, operate, maintain, or own, or participate
12 with other entities in designing, developing, constructing,
13 operating, maintaining, or owning, an electric power
14 transmission facility and related facilities (“Project”)
15 needed to upgrade existing transmission facilities owned
16 by SWPA or WAPA if the Secretary of Energy, in con-
17 sultation with the applicable Administrator, determines
18 that the proposed Project—

19 (1)(A) is located in a national interest electric
20 transmission corridor designated under section
21 216(a) of the Federal Power Act and will reduce
22 congestion of electric transmission in interstate com-
23 merce; or

1 (B) is necessary to accommodate an actual or
2 projected increase in demand for electric trans-
3 mission capacity;

4 (2) is consistent with—

5 (A) transmission needs identified, in a
6 transmission expansion plan or otherwise, by
7 the appropriate Regional Transmission Organi-
8 zation or Independent System Operator (as de-
9 fined in the Federal Power Act), if any, or ap-
10 proved regional reliability organization; and

11 (B) efficient and reliable operation of the
12 transmission grid; and

13 (3) would be operated in conformance with pru-
14 dent utility practice.

15 (b) NEW FACILITIES.—The Secretary, acting
16 through WAPA or SWPA, or both, may design, develop,
17 construct, operate, maintain, or own, or participate with
18 other entities in designing, developing, constructing, oper-
19 ating, maintaining, or owning, a new electric power trans-
20 mission facility and related facilities (“Project”) located
21 within any State in which WAPA or SWPA operates if
22 the Secretary, in consultation with the applicable Adminis-
23 trator, determines that the proposed Project—

24 (1)(A) is located in an area designated under
25 section 216(a) of the Federal Power Act and will re-

1 duce congestion of electric transmission in interstate
2 commerce; or

3 (B) is necessary to accommodate an actual or
4 projected increase in demand for electric trans-
5 mission capacity;

6 (2) is consistent with—

7 (A) transmission needs identified, in a
8 transmission expansion plan or otherwise, by
9 the appropriate Regional Transmission Organi-
10 zation or Independent System Operator, if any,
11 or approved regional reliability organization;
12 and

13 (B) efficient and reliable operation of the
14 transmission grid;

15 (3) will be operated in conformance with pru-
16 dent utility practice;

17 (4) will be operated by, or in conformance with
18 the rules of, the appropriate (A) Regional Trans-
19 mission Organization or Independent System Oper-
20 ator, if any, or (B) if such an organization does not
21 exist, regional reliability organization; and

22 (5) will not duplicate the functions of existing
23 transmission facilities or proposed facilities which
24 are the subject of ongoing or approved siting and re-
25 lated permitting proceedings.

1 (c) OTHER FUNDS.—

2 (1) IN GENERAL.—In carrying out a Project
3 under subsection (a) or (b), the Secretary may ac-
4 cept and use funds contributed by another entity for
5 the purpose of carrying out the Project.

6 (2) AVAILABILITY.—The contributed funds
7 shall be available for expenditure for the purpose of
8 carrying out the Project—

9 (A) without fiscal year limitation; and

10 (B) as if the funds had been appropriated
11 specifically for that Project.

12 (3) ALLOCATION OF COSTS.—In carrying out a
13 Project under subsection (a) or (b), any costs of the
14 Project not paid for by contributions from another
15 entity shall be collected through rates charged to
16 customers using the new transmission capability pro-
17 vided by the Project and allocated equitably among
18 these project beneficiaries using the new trans-
19 mission capability.

20 (d) RELATIONSHIP TO OTHER LAWS.—Nothing in
21 this section affects any requirement of—

22 (1) any Federal environmental law, including
23 the National Environmental Policy Act of 1969 (42
24 U.S.C. 4321 et seq.);

1 (2) any Federal or State law relating to the
2 siting of energy facilities; or

3 (3) any existing authorizing statutes.

4 (e) SAVINGS CLAUSE.—Nothing in this section shall
5 constrain or restrict an Administrator in the utilization
6 of other authority delegated to the Administrator of
7 WAPA or SWPA.

8 (f) SECRETARIAL DETERMINATIONS.—Any deter-
9 mination made pursuant to subsections (a) or (b) shall
10 be based on findings by the Secretary using the best avail-
11 able data.

12 (g) MAXIMUM FUNDING AMOUNT.—The Secretary
13 shall not accept and use more than \$100,000,000 under
14 subsection (c)(1) for the period encompassing fiscal years
15 2006 through 2015.

16 **SEC. 1223. TRANSMISSION SYSTEM MONITORING.**

17 Within 6 months after the date of enactment of this
18 Act, the Secretary of Energy and the Federal Energy Reg-
19 ulatory Commission shall study and report to Congress on
20 the steps which must be taken to establish a system to
21 make available to all transmission system owners and Re-
22 gional Transmission Organizations (as defined in the Fed-
23 eral Power Act) within the Eastern and Western Inter-
24 connections real-time information on the functional status
25 of all transmission lines within such Interconnections. In

1 such study, the Commission shall assess technical means
2 for implementing such transmission information system
3 and identify the steps the Commission or Congress must
4 take to require the implementation of such system.

5 **SEC. 1224. ADVANCED TRANSMISSION TECHNOLOGIES.**

6 (a) **AUTHORITY.**—The Federal Energy Regulatory
7 Commission, in the exercise of its authorities under the
8 Federal Power Act and the Public Utility Regulatory Poli-
9 cies Act of 1978, shall encourage the deployment of ad-
10 vanced transmission technologies.

11 (b) **DEFINITION.**—For the purposes of this section,
12 the term “advanced transmission technologies” means
13 technologies that increase the capacity, efficiency, or reli-
14 ability of existing or new transmission facilities, including,
15 but not limited to—

16 (1) high-temperature lines (including super-
17 conducting cables);

18 (2) underground cables;

19 (3) advanced conductor technology (including
20 advanced composite conductors, high-temperature
21 low-sag conductors, and fiber optic temperature
22 sensing conductors);

23 (4) high-capacity ceramic electric wire, connec-
24 tors, and insulators;

- 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, 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); and
- 20 (18) any other technologies the Commission
- 21 considers appropriate.
- 22 (c) OBSOLETE OR IMPRACTICABLE TECH-
- 23 NOLOGIES.—The Commission is authorized to cease en-
- 24 couraging the deployment of any technology described in

1 this section on a finding that such technology has been
2 rendered obsolete or otherwise impracticable to deploy.

3 **SEC. 1225. ELECTRIC TRANSMISSION AND DISTRIBUTION**
4 **PROGRAMS.**

5 (a) **ELECTRIC TRANSMISSION AND DISTRIBUTION**
6 **PROGRAM.**—The Secretary of Energy (hereinafter in this
7 section referred to as the “Secretary”) acting through the
8 Director of the Office of Electric Transmission and Dis-
9 tribution shall establish a comprehensive research, devel-
10 opment, demonstration and commercial application pro-
11 gram to promote improved reliability and efficiency of
12 electrical transmission and distribution systems. This pro-
13 gram shall include—

14 (1) advanced energy delivery and storage tech-
15 nologies, materials, and systems, including new
16 transmission technologies, such as flexible alter-
17 nating current transmission systems, composite con-
18 ductor materials and other technologies that enhance
19 reliability, operational flexibility, or power-carrying
20 capability;

21 (2) advanced grid reliability and efficiency tech-
22 nology development;

23 (3) technologies contributing to significant load
24 reductions;

1 (4) advanced metering, load management, and
2 control technologies;

3 (5) technologies to enhance existing grid compo-
4 nents;

5 (6) the development and use of high-tempera-
6 ture superconductors to—

7 (A) enhance the reliability, operational
8 flexibility, or power-carrying capability of elec-
9 tric transmission or distribution systems; or

10 (B) increase the efficiency of electric en-
11 ergy generation, transmission, distribution, or
12 storage systems;

13 (7) integration of power systems, including sys-
14 tems to deliver high-quality electric power, electric
15 power reliability, and combined heat and power;

16 (8) supply of electricity to the power grid by
17 small scale, distributed and residential-based power
18 generators;

19 (9) the development and use of advanced grid
20 design, operation and planning tools;

21 (10) any other infrastructure technologies, as
22 appropriate; and

23 (11) technology transfer and education.

24 (b) PROGRAM PLAN.—Not later than 1 year after the
25 date of the enactment of this legislation, the Secretary,

1 in consultation with other appropriate Federal agencies,
2 shall prepare and transmit to Congress a 5-year program
3 plan to guide activities under this section. In preparing
4 the program plan, the Secretary may consult with utilities,
5 energy services providers, manufacturers, institutions of
6 higher education, other appropriate State and local agen-
7 cies, environmental organizations, professional and tech-
8 nical societies, and any other persons the Secretary con-
9 siders appropriate.

10 (c) IMPLEMENTATION.—The Secretary shall consider
11 implementing this program using a consortium of indus-
12 try, university and national laboratory participants.

13 (d) REPORT.—Not later than 2 years after the trans-
14 mittal of the plan under subsection (b), the Secretary shall
15 transmit a report to Congress describing the progress
16 made under this section and identifying any additional re-
17 sources needed to continue the development and commer-
18 cial application of transmission and distribution infra-
19 structure technologies.

20 (e) POWER DELIVERY RESEARCH INITIATIVE.—

21 (1) IN GENERAL.—The Secretary shall establish
22 a research, development, demonstration, and com-
23 mercial application initiative specifically focused on
24 power delivery utilizing components incorporating
25 high temperature superconductivity.

1 (2) GOALS.—The goals of this initiative shall be
2 to—

3 (A) establish facilities to develop high tem-
4 perature superconductivity power applications
5 in partnership with manufacturers and utilities;

6 (B) provide technical leadership for estab-
7 lishing reliability for high temperature super-
8 conductivity power applications including suit-
9 able modeling and analysis;

10 (C) facilitate commercial transition toward
11 direct current power transmission, storage, and
12 use for high power systems utilizing high tem-
13 perature superconductivity; and

14 (D) facilitate the integration of very low
15 impedance high temperature superconducting
16 wires and cables in existing electric networks to
17 improve system performance, power flow control
18 and reliability.

19 (3) REQUIREMENTS.—The initiative shall in-
20 clude—

21 (A) feasibility analysis, planning, research,
22 and design to construct demonstrations of
23 superconducting links in high power, direct cur-
24 rent and controllable alternating current trans-
25 mission systems;

1 (B) public-private partnerships to dem-
2 onstrate deployment of high temperature super-
3 conducting cable into testbeds simulating a re-
4 alistic transmission grid and under varying
5 transmission conditions, including actual grid
6 insertions; and

7 (C) testbeds developed in cooperation with
8 national laboratories, industries, and univer-
9 sities to demonstrate these technologies, pre-
10 pare the technologies for commercial introduc-
11 tion, and address cost or performance road-
12 blocks to successful commercial use.

13 (4) AUTHORIZATION OF APPROPRIATIONS.—For
14 purposes of carrying out this subsection, there are
15 authorized to be appropriated—

16 (A) for fiscal year 2006, \$15,000,000;

17 (B) for fiscal year 2007, \$20,000,000;

18 (C) for fiscal year 2008, \$30,000,000;

19 (D) for fiscal year 2009, \$35,000,000; and

20 (E) for fiscal year 2010, \$40,000,000.

21 **SEC. 1226. ADVANCED POWER SYSTEM TECHNOLOGY IN-**
22 **CENTIVE PROGRAM.**

23 (a) PROGRAM.—The Secretary of Energy is author-
24 ized to establish an Advanced Power System Technology
25 Incentive Program to support the deployment of certain

1 advanced power system technologies and to improve and
2 protect certain critical governmental, industrial, and com-
3 mercial processes. Funds provided under this section shall
4 be used by the Secretary to make incentive payments to
5 eligible owners or operators of advanced power system
6 technologies to increase power generation through en-
7 hanced operational, economic, and environmental perform-
8 ance. Payments under this section may only be made upon
9 receipt by the Secretary of an incentive payment applica-
10 tion establishing an applicant as either—

11 (1) a qualifying advanced power system tech-
12 nology facility; or

13 (2) a qualifying security and assured power fa-
14 cility.

15 (b) INCENTIVES.—Subject to availability of funds, a
16 payment of 1.8 cents per kilowatt-hour shall be paid to
17 the owner or operator of a qualifying advanced power sys-
18 tem technology facility under this section for electricity
19 generated at such facility. An additional 0.7 cents per kilo-
20 watt-hour shall be paid to the owner or operator of a quali-
21 fying security and assured power facility for electricity
22 generated at such facility. Any facility qualifying under
23 this section shall be eligible for an incentive payment for
24 up to, but not more than, the first 10,000,000 kilowatt-
25 hours produced in any fiscal year.

1 (c) ELIGIBILITY.—For purposes of this section:

2 (1) QUALIFYING ADVANCED POWER SYSTEM
3 TECHNOLOGY FACILITY.—The term “qualifying ad-
4 vanced power system technology facility” means a
5 facility using an advanced fuel cell, turbine, or hy-
6 brid power system or power storage system to gen-
7 erate or store electric energy.

8 (2) QUALIFYING SECURITY AND ASSURED
9 POWER FACILITY.—The term “qualifying security
10 and assured power facility” means a qualifying ad-
11 vanced power system technology facility determined
12 by the Secretary of Energy, in consultation with the
13 Secretary of Homeland Security, to be in critical
14 need of secure, reliable, rapidly available, high-qual-
15 ity power for critical governmental, industrial, or
16 commercial applications.

17 (d) AUTHORIZATION.—There are authorized to be ap-
18 propriated to the Secretary of Energy for the purposes
19 of this section, \$10,000,000 for each of the fiscal years
20 2006 through 2012.

21 **SEC. 1227. OFFICE OF ELECTRIC TRANSMISSION AND DIS-**
22 **TRIBUTION.**

23 (a) CREATION OF AN OFFICE OF ELECTRIC TRANS-
24 MISSION AND DISTRIBUTION.—Title II of the Department
25 of Energy Organization Act (42 U.S.C. 7131 et seq.) (as

1 amended by section 502(a) of this Act) is amended by in-
2 serting the following after section 217, as added by title
3 V of this Act:

4 **“SEC. 218. OFFICE OF ELECTRIC TRANSMISSION AND DIS-**
5 **TRIBUTION.**

6 “(a) ESTABLISHMENT.—There is established within
7 the Department an Office of Electric Transmission and
8 Distribution. This Office shall be headed by a Director,
9 subject to the authority of the Secretary. The Director
10 shall be appointed by the Secretary. The Director shall
11 be compensated at the annual rate prescribed for level IV
12 of the Executive Schedule under section 5315 of title 5,
13 United States Code.

14 “(b) DIRECTOR.—The Director shall—

15 “(1) coordinate and develop a comprehensive,
16 multi-year strategy to improve the Nation’s elec-
17 tricity transmission and distribution;

18 “(2) implement or, where appropriate, coordi-
19 nate the implementation of, the recommendations
20 made in the Secretary’s May 2002 National Trans-
21 mission Grid Study;

22 “(3) oversee research, development, and dem-
23 onstration to support Federal energy policy related
24 to electricity transmission and distribution;

1 “(4) grant authorizations for electricity import
2 and export pursuant to section 202(c), (d), (e), and
3 (f) of the Federal Power Act (16 U.S.C. 824a);

4 “(5) perform other functions, assigned by the
5 Secretary, related to electricity transmission and dis-
6 tribution; and

7 “(6) develop programs for workforce training in
8 power and transmission engineering.”.

9 (b) CONFORMING AMENDMENTS.—(1) The table of
10 contents of the Department of Energy Organization Act
11 (42 U.S.C. 7101 note) is amended by inserting after the
12 item relating to section 217 the following new item:

“Sec. 218. Office of Electric Transmission and Distribution.”.

13 (2) Section 5315 of title 5, United States Code, is
14 amended by inserting after the item relating to “Inspector
15 General, Department of Energy.” the following:

16 “Director, Office of Electric Transmission and
17 Distribution, Department of Energy.”.

18 **Subtitle C—Transmission**
19 **Operation Improvements**

20 **SEC. 1231. OPEN NONDISCRIMINATORY ACCESS.**

21 Part II of the Federal Power Act (16 U.S.C. 824 et
22 seq.) is amended by inserting after section 211 the fol-
23 lowing new section:

1 **“SEC. 211A. OPEN ACCESS BY UNREGULATED TRANSMIT-**
2 **TING UTILITIES.**

3 “(a) TRANSMISSION SERVICES.—Subject to section
4 212(h), the Commission may, by rule or order, require an
5 unregulated transmitting utility to provide transmission
6 services—

7 “(1) at rates that are comparable to those that
8 the unregulated transmitting utility charges itself;
9 and

10 “(2) on terms and conditions (not relating to
11 rates) that are comparable to those under which
12 such unregulated transmitting utility provides trans-
13 mission services to itself and that are not unduly
14 discriminatory or preferential.

15 “(b) EXEMPTION.—The Commission shall exempt
16 from any rule or order under this section any unregulated
17 transmitting utility that—

18 “(1) sells no more than 4,000,000 megawatt
19 hours of electricity per year; or

20 “(2) does not own or operate any transmission
21 facilities that are necessary for operating an inter-
22 connected transmission system (or any portion
23 thereof); or

24 “(3) meets other criteria the Commission deter-
25 mines to be in the public interest.

1 “(c) LOCAL DISTRIBUTION FACILITIES.—The re-
2 quirements of subsection (a) shall not apply to facilities
3 used in local distribution.

4 “(d) EXEMPTION TERMINATION.—Whenever the
5 Commission, after an evidentiary hearing held upon a
6 complaint and after giving consideration to reliability
7 standards established under section 215, finds on the
8 basis of a preponderance of the evidence that any exemp-
9 tion granted pursuant to subsection (b) unreasonably im-
10 pairs the continued reliability of an interconnected trans-
11 mission system, it shall revoke the exemption granted to
12 that transmitting utility.

13 “(e) APPLICATION TO UNREGULATED TRANSMIT-
14 TING UTILITIES.—The rate changing procedures applica-
15 ble to public utilities under subsections (c) and (d) of sec-
16 tion 205 are applicable to unregulated transmitting utili-
17 ties for purposes of this section.

18 “(f) REMAND.—In exercising its authority under
19 paragraph (1) of subsection (a), the Commission may re-
20 mand transmission rates to an unregulated transmitting
21 utility for review and revision where necessary to meet the
22 requirements of subsection (a).

23 “(g) OTHER REQUESTS.—The provision of trans-
24 mission services under subsection (a) does not preclude a
25 request for transmission services under section 211.

1 “(h) LIMITATION.—The Commission may not require
2 a State or municipality to take action under this section
3 that would violate a private activity bond rule for purposes
4 of section 141 of the Internal Revenue Code of 1986 (26
5 U.S.C. 141).

6 “(i) TRANSFER OF CONTROL OF TRANSMITTING FA-
7 CILITIES.—Nothing in this section authorizes the Commis-
8 sion to require an unregulated transmitting utility to
9 transfer control or operational control of its transmitting
10 facilities to an RTO or any other Commission-approved
11 independent transmission organization designated to pro-
12 vide nondiscriminatory transmission access.

13 “(j) DEFINITION.—For purposes of this section, the
14 term ‘unregulated transmitting utility’ means an entity
15 that—

16 “(1) owns or operates facilities used for the
17 transmission of electric energy in interstate com-
18 merce; and

19 “(2) is an entity described in section 201(f).”.

20 **SEC. 1232. SENSE OF CONGRESS ON REGIONAL TRANS-**
21 **MISSION ORGANIZATIONS.**

22 It is the sense of Congress that, in order to promote
23 fair, open access to electric transmission service, benefit
24 retail consumers, facilitate wholesale competition, improve
25 efficiencies in transmission grid management, promote

1 grid reliability, remove opportunities for unduly discrimi-
2 natory or preferential transmission practices, and provide
3 for the efficient development of transmission infrastruc-
4 ture needed to meet the growing demands of competitive
5 wholesale power markets, all transmitting utilities in inter-
6 state commerce should voluntarily become members of Re-
7 gional Transmission Organizations as defined in section
8 3 of the Federal Power Act.

9 **SEC. 1233. REGIONAL TRANSMISSION ORGANIZATION AP-**
10 **PLICATIONS PROGRESS REPORT.**

11 Not later than 120 days after the date of enactment
12 of this section, the Federal Energy Regulatory Commis-
13 sion shall submit to Congress a report containing each of
14 the following:

15 (1) A list of all regional transmission organiza-
16 tion applications filed at the Commission pursuant
17 to subpart F of part 35 of title 18, Code of Federal
18 Regulations (in this section referred to as “Order
19 No. 2000”), including an identification of each pub-
20 lic utility and other entity included within the pro-
21 posed membership of the regional transmission orga-
22 nization.

23 (2) A brief description of the status of each
24 pending regional transmission organization applica-
25 tion, including a precise explanation of how each

1 fails to comply with the minimal requirements of
2 Order No. 2000 and what steps need to be taken to
3 bring each application into such compliance.

4 (3) For any application that has not been fi-
5 nally approved by the Commission, a detailed de-
6 scription of every aspect of the application that the
7 Commission has determined does not conform to the
8 requirements of Order No. 2000.

9 (4) For any application that has not been fi-
10 nally approved by the Commission, an explanation
11 by the Commission of why the items described pur-
12 suant to paragraph (3) constitute material non-
13 compliance with the requirements of the Commis-
14 sion's Order No. 2000 sufficient to justify denial of
15 approval by the Commission.

16 (5) For all regional transmission organization
17 applications filed pursuant to the Commission's
18 Order No. 2000, whether finally approved or not—

19 (A) a discussion of that regional trans-
20 mission organization's efforts to minimize rate
21 seams between itself and—

22 (i) other regional transmission organi-
23 zations; and

24 (ii) entities not participating in a re-
25 gional transmission organization;

1 (B) a discussion of the impact of such
2 seams on consumers and wholesale competition;
3 and

4 (C) a discussion of minimizing cost-shifting
5 on consumers.

6 **SEC. 1234. FEDERAL UTILITY PARTICIPATION IN REGIONAL**
7 **TRANSMISSION ORGANIZATIONS.**

8 (a) DEFINITIONS.—For purposes of this section—

9 (1) APPROPRIATE FEDERAL REGULATORY AU-
10 THORITY.—The term “appropriate Federal regu-
11 latory authority” means—

12 (A) with respect to a Federal power mar-
13 keting agency (as defined in the Federal Power
14 Act), the Secretary of Energy, except that the
15 Secretary may designate the Administrator of a
16 Federal power marketing agency to act as the
17 appropriate Federal regulatory authority with
18 respect to the transmission system of that Fed-
19 eral power marketing agency; and

20 (B) with respect to the Tennessee Valley
21 Authority, the Board of Directors of the Ten-
22 nessee Valley Authority.

23 (2) FEDERAL UTILITY.—The term “Federal
24 utility” means a Federal power marketing agency or
25 the Tennessee Valley Authority.

1 (3) TRANSMISSION SYSTEM.—The term “trans-
2 mission system” means electric transmission facili-
3 ties owned, leased, or contracted for by the United
4 States and operated by a Federal utility.

5 (b) TRANSFER.—The appropriate Federal regulatory
6 authority is authorized to enter into a contract, agreement
7 or other arrangement transferring control and use of all
8 or part of the Federal utility’s transmission system to an
9 RTO or ISO (as defined in the Federal Power Act), ap-
10 proved by the Federal Energy Regulatory Commission.
11 Such contract, agreement or arrangement shall include—

12 (1) performance standards for operation and
13 use of the transmission system that the head of the
14 Federal utility determines necessary or appropriate,
15 including standards that assure recovery of all the
16 Federal utility’s costs and expenses related to the
17 transmission facilities that are the subject of the
18 contract, agreement or other arrangement; consist-
19 ency with existing contracts and third-party financ-
20 ing arrangements; and consistency with said Federal
21 utility’s statutory authorities, obligations, and limi-
22 tations;

23 (2) provisions for monitoring and oversight by
24 the Federal utility of the RTO’s or ISO’s fulfillment
25 of the terms and conditions of the contract, agree-

1 ment or other arrangement, including a provision for
2 the resolution of disputes through arbitration or
3 other means with the regional transmission organi-
4 zation or with other participants, notwithstanding
5 the obligations and limitations of any other law re-
6 garding arbitration; and

7 (3) a provision that allows the Federal utility to
8 withdraw from the RTO or ISO and terminate the
9 contract, agreement or other arrangement in accord-
10 ance with its terms.

11 Neither this section, actions taken pursuant to it, nor any
12 other transaction of a Federal utility using an RTO or
13 ISO shall confer upon the Federal Energy Regulatory
14 Commission jurisdiction or authority over the Federal util-
15 ity's electric generation assets, electric capacity or energy
16 that the Federal utility is authorized by law to market,
17 or the Federal utility's power sales activities.

18 (c) EXISTING STATUTORY AND OTHER OBLIGA-
19 TIONS.—

20 (1) SYSTEM OPERATION REQUIREMENTS.—No
21 statutory provision requiring or authorizing a Fed-
22 eral utility to transmit electric power or to construct,
23 operate or maintain its transmission system shall be
24 construed to prohibit a transfer of control and use

1 of its transmission system pursuant to, and subject
2 to all requirements of subsection (b).

3 (2) OTHER OBLIGATIONS.—This subsection
4 shall not be construed to—

5 (A) suspend, or exempt any Federal utility
6 from, any provision of existing Federal law, in-
7 cluding but not limited to any requirement or
8 direction relating to the use of the Federal util-
9 ity’s transmission system, environmental protec-
10 tion, fish and wildlife protection, flood control,
11 navigation, water delivery, or recreation; or

12 (B) authorize abrogation of any contract
13 or treaty obligation.

14 (3) REPEAL.—Section 311 of title III of Appen-
15 dix B of the Act of October 27, 2000 (P.L. 106–
16 377, section 1(a)(2); 114 Stat. 1441, 1441A–80; 16
17 U.S.C. 824n) is repealed.

18 **SEC. 1235. STANDARD MARKET DESIGN.**

19 (a) REMAND.—The Commission’s proposed rule-
20 making entitled “Remedying Undue Discrimination
21 through Open Access Transmission Service and Standard
22 Electricity Market Design” (Docket No. RM01–12–000)
23 (“SMD NOPR”) is remanded to the Commission for re-
24 consideration. No final rule mandating a standard elec-
25 tricity market design pursuant to the proposed rule-

1 making, including any rule or order of general applica-
2 bility within the scope of the proposed rulemaking, may
3 be issued before October 31, 2006, or take effect before
4 December 31, 2006. Any final rule issued by the Commis-
5 sion pursuant to the proposed rulemaking shall be pre-
6 ceded by a second notice of proposed rulemaking issued
7 after the date of enactment of this Act and an opportunity
8 for public comment.

9 (b) SAVINGS CLAUSE.—This section shall not be con-
10 strued to modify or diminish any authority or obligation
11 the Commission has under this Act, the Federal Power
12 Act, or other applicable law, including, but not limited to,
13 any authority to—

14 (1) issue any rule or order (of general or par-
15 ticular applicability) pursuant to any such authority
16 or obligation; or

17 (2) act on a filing or filings by 1 or more trans-
18 mitting utilities for the voluntary formation of a Re-
19 gional Transmission Organization or Independent
20 System Operator (as defined in the Federal Power
21 Act) (and related market structures or rules) or vol-
22 untary modification of an existing Regional Trans-
23 mission Organization or Independent System Oper-
24 ator (and related market structures or rules).

1 **SEC. 1236. NATIVE LOAD SERVICE OBLIGATION.**

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. 217. NATIVE LOAD SERVICE OBLIGATION.**

5 “(a) MEETING SERVICE OBLIGATIONS.—(1) Any
6 load-serving entity that, as of the date of enactment of
7 this section—

8 “(A) owns generation facilities, markets the
9 output of Federal generation facilities, or holds
10 rights under 1 or more wholesale contracts to pur-
11 chase electric energy, for the purpose of meeting a
12 service obligation, and

13 “(B) by reason of ownership of transmission fa-
14 cilities, or 1 or more contracts or service agreements
15 for firm transmission service, holds firm trans-
16 mission rights for delivery of the output of such gen-
17 eration facilities or such purchased energy to meet
18 such service obligation,

19 is entitled to use such firm transmission rights, or, equiva-
20 lent tradable or financial transmission rights, in order to
21 deliver such output or purchased energy, or the output of
22 other generating facilities or purchased energy to the ex-
23 tent deliverable using such rights, to the extent required
24 to meet its service obligation.

25 “(2) To the extent that all or a portion of the service
26 obligation covered by such firm transmission rights or

1 equivalent tradable or financial transmission rights is
2 transferred to another load-serving entity, the successor
3 load-serving entity shall be entitled to use the firm trans-
4 mission rights or equivalent tradable or financial trans-
5 mission rights associated with the transferred service obli-
6 gation. Subsequent transfers to another load-serving enti-
7 ty, or back to the original load-serving entity, shall be enti-
8 tled to the same rights.

9 “(3) The Commission shall exercise its authority
10 under this Act in a manner that facilitates the planning
11 and expansion of transmission facilities to meet the rea-
12 sonable needs of load-serving entities to satisfy their serv-
13 ice obligations, and enables load-serving entities to secure
14 firm transmission rights (or equivalent tradable or finan-
15 cial rights) on a long term basis for long term power sup-
16 ply arrangements made, or planned, to meet such needs.

17 “(b) ALLOCATION OF TRANSMISSION RIGHTS.—
18 Nothing in subsections (a)(1) and (a)(2) of this section
19 shall affect any existing or future methodology employed
20 by an RTO or ISO for allocating or auctioning trans-
21 mission rights if such RTO or ISO was authorized by the
22 Commission to allocate or auction financial transmission
23 rights on its system as of January 1, 2005, and the Com-
24 mission determines that any future allocation or auction
25 is just, reasonable and not unduly discriminatory or pref-

1 erential, provided, however, that if such an RTO or ISO
2 never allocated financial transmission rights on its system
3 that pertained to a period before January 1, 2005, with
4 respect to any application by such RTO or ISO that would
5 change its methodology the Commission shall exercise its
6 authority in a manner consistent with the Act and the
7 policies expressed in subsections (a)(1) and (a)(2) as ap-
8 plied to firm transmission rights held by a load serving
9 entity as of January 1, 2005, to the extent the associated
10 generation ownership or power purchase arrangements re-
11 main in effect.

12 “(c) CERTAIN TRANSMISSION RIGHTS.—The Com-
13 mission may exercise authority under this Act to make
14 transmission rights not used to meet an obligation covered
15 by subsection (a) available to other entities in a manner
16 determined by the Commission to be just, reasonable, and
17 not unduly discriminatory or preferential.

18 “(d) OBLIGATION TO BUILD.—Nothing in this Act
19 shall relieve a load-serving entity from any obligation
20 under State or local law to build transmission or distribu-
21 tion facilities adequate to meet its service obligations.

22 “(e) CONTRACTS.—Nothing in this section shall pro-
23 vide a basis for abrogating any contract or service agree-
24 ment for firm transmission service or rights in effect as
25 of the date of the enactment of this subsection. If an ISO

1 in the Western Interconnection had allocated financial
2 transmission rights prior to the date of enactment of this
3 section but had not done so with respect to one or more
4 load-serving entities' firm transmission rights held under
5 contracts to which the preceding sentence applies (or held
6 by reason of ownership of transmission facilities), such
7 load-serving entities may not be required, without their
8 consent, to convert such firm transmission rights to
9 tradable or financial rights, except where the load-serving
10 entity has voluntarily joined the ISO as a participating
11 transmission owner (or its successor) in accordance with
12 the ISO tariff.

13 “(f) WATER PUMPING FACILITIES.—The Commis-
14 sion shall ensure that any entity described in section
15 201(f) that owns transmission facilities used predomi-
16 nately to support its own water pumping facilities shall
17 have, with respect to such facilities, protections for trans-
18 mission service comparable to those provided to load-serv-
19 ing entities pursuant to this section.

20 “(g) FERC RULEMAKING ON LONG-TERM TRANS-
21 MISSION RIGHTS IN ORGANIZED MARKETS.—Within one
22 year after the date of enactment of this section and after
23 notice and an opportunity for comment, the Commission
24 shall by rule or order implement subsection (a)(3) in Com-

1 mission-approved RTOs and ISOs with organized elec-
2 tricity markets.

3 “(h) ERCOT.—This section shall not apply within
4 the area referred to in section 212(k)(2)(A).

5 “(i) JURISDICTION.—This section does not authorize
6 the Commission to take any action not otherwise within
7 its jurisdiction.

8 “(j) EFFECT OF EXERCISING RIGHTS.—An entity
9 that lawfully exercises rights granted under subsection (a)
10 shall not be considered by such action as engaging in
11 undue discrimination or preference under this Act.

12 “(k) TVA AREA.—For purposes of subsection
13 (a)(1)(B), a load-serving entity that is located within the
14 service area of the Tennessee Valley Authority and that
15 has a firm wholesale power supply contract with the Ten-
16 nessee Valley Authority shall be deemed to hold firm
17 transmission rights for the transmission of such power.

18 “(l) DEFINITIONS.—For purposes of this section:

19 “(1) The term ‘distribution utility’ means an
20 electric utility that has a service obligation to end-
21 users or to a State utility or electric cooperative
22 that, directly or indirectly, through 1 or more addi-
23 tional State utilities or electric cooperatives, provides
24 electric service to end-users.

1 “(2) The term ‘load-serving entity’ means a dis-
2 tribution utility or an electric utility that has a serv-
3 ice obligation.

4 “(3) The term ‘service obligation’ means a re-
5 quirement applicable to, or the exercise of authority
6 granted to, an electric utility under Federal, State
7 or local law or under long-term contracts to provide
8 electric service to end-users or to a distribution util-
9 ity.

10 “(4) The term ‘State utility’ means a State or
11 any political subdivision of a State, or any agency,
12 authority, or instrumentality of any 1 or more of the
13 foregoing, or a corporation which is wholly owned,
14 directly or indirectly, by any 1 or more of the fore-
15 going, competent to carry on the business of devel-
16 oping, transmitting, utilizing or distributing power”.

17 **SEC. 1237. STUDY ON THE BENEFITS OF ECONOMIC DIS-**
18 **PATCH.**

19 (a) **STUDY.**—The Secretary of Energy, in coordina-
20 tion and consultation with the States, shall conduct a
21 study on—

22 (1) the procedures currently used by electric
23 utilities to perform economic dispatch;

24 (2) identifying possible revisions to those proce-
25 dures to improve the ability of nonutility generation

1 resources to offer their output for sale for the pur-
2 pose of inclusion in economic dispatch; and

3 (3) the potential benefits to residential, com-
4 mercial, and industrial electricity consumers nation-
5 ally and in each state if economic dispatch proce-
6 dures were revised to improve the ability of non-
7 utility generation resources to offer their output for
8 inclusion in economic dispatch.

9 (b) DEFINITION.—The term “economic dispatch”
10 when used in this section means the operation of genera-
11 tion facilities to produce energy at the lowest cost to reli-
12 ably serve consumers, recognizing any operational limits
13 of generation and transmission facilities.

14 (c) REPORT TO CONGRESS AND THE STATES.—Not
15 later than 90 days after the date of enactment of this Act,
16 and on a yearly basis following, the Secretary of Energy
17 shall submit a report to Congress and the States on the
18 results of the study conducted under subsection (a), in-
19 cluding recommendations to Congress and the States for
20 any suggested legislative or regulatory changes.

21 **Subtitle D—Transmission Rate** 22 **Reform**

23 **SEC. 1241. TRANSMISSION INFRASTRUCTURE INVESTMENT.**

24 Part II of the Federal Power Act (16 U.S.C. 824 et
25 seq.) is amended by adding at the end the following:

1 **“SEC. 218. TRANSMISSION INFRASTRUCTURE INVESTMENT.**

2 “(a) **RULEMAKING REQUIREMENT.**—Within 1 year
3 after the enactment of this section, the Commission shall
4 establish, by rule, incentive-based (including, but not lim-
5 ited to performance-based) rate treatments for the trans-
6 mission of electric energy in interstate commerce by public
7 utilities for the purpose of benefiting consumers by ensur-
8 ing reliability and reducing the cost of delivered power by
9 reducing transmission congestion. Such rule shall—

10 “(1) promote reliable and economically efficient
11 transmission and generation of electricity by pro-
12 moting capital investment in the enlargement, im-
13 provement, maintenance and operation of facilities
14 for the transmission of electric energy in interstate
15 commerce;

16 “(2) provide a return on equity that attracts
17 new investment in transmission facilities (including
18 related transmission technologies);

19 “(3) encourage deployment of transmission
20 technologies and other measures to increase the ca-
21 pacity and efficiency of existing transmission facili-
22 ties and improve the operation of such facilities; and

23 “(4) allow recovery of all prudently incurred
24 costs necessary to comply with mandatory reliability
25 standards issued pursuant to section 215 of this
26 Act.

1 The Commission may, from time to time, revise such rule.

2 “(b) ADDITIONAL INCENTIVES FOR RTO PARTICIPA-
3 TION.—In the rule issued under this section, the Commis-
4 sion shall, to the extent within its jurisdiction, provide for
5 incentives to each transmitting utility or electric utility
6 that joins a Regional Transmission Organization or Inde-
7 pendent System Operator. Incentives provided by the
8 Commission pursuant to such rule shall include—

9 “(1) recovery of all prudently incurred costs to
10 develop and participate in any proposed or approved
11 RTO, ISO, or independent transmission company;

12 “(2) recovery of all costs previously approved by
13 a State commission which exercised jurisdiction over
14 the transmission facilities prior to the utility’s par-
15 ticipation in the RTO or ISO, including costs nec-
16 essary to honor preexisting transmission service con-
17 tracts, in a manner which does not reduce the reve-
18 nues the utility receives for transmission services for
19 a reasonable transition period after the utility joins
20 the RTO or ISO;

21 “(3) recovery as an expense in rates of the
22 costs prudently incurred to conduct transmission
23 planning and reliability activities, including the costs
24 of participating in RTO, ISO and other regional
25 planning activities and design, study and other

1 precertification costs involved in seeking permits and
2 approvals for proposed transmission facilities;

3 “(4) a current return in rates for construction
4 work in progress for transmission facilities and full
5 recovery of prudently incurred costs for constructing
6 transmission facilities;

7 “(5) formula transmission rates; and

8 “(6) a maximum 15 year accelerated deprecia-
9 tion on new transmission facilities for rate treatment
10 purposes.

11 The Commission shall ensure that any costs recoverable
12 pursuant to this subsection may be recovered by such util-
13 ity through the transmission rates charged by such utility
14 or through the transmission rates charged by the RTO
15 or ISO that provides transmission service to such utility.

16 “(c) **JUST AND REASONABLE RATES.**—All rates ap-
17 proved under the rules adopted pursuant to this section,
18 including any revisions to such rules, are subject to the
19 requirement of sections 205 and 206 that all rates,
20 charges, terms, and conditions be just and reasonable and
21 not unduly discriminatory or preferential.”.

22 **Subtitle E—Amendments to PURPA**

23 **SEC. 1251. NET METERING AND ADDITIONAL STANDARDS.**

24 (a) **ADOPTION OF STANDARDS.**—Section 111(d) of
25 the Public Utility Regulatory Policies Act of 1978 (16

1 U.S.C. 2621(d)) is amended by adding at the end the fol-
2 lowing:

3 “(11) NET METERING.—Each electric utility
4 shall make available upon request net metering serv-
5 ice to any electric consumer that the electric utility
6 serves. For purposes of this paragraph, the term
7 ‘net metering service’ means service to an electric
8 consumer under which electric energy generated by
9 that electric consumer from an eligible on-site gener-
10 ating facility and delivered to the local distribution
11 facilities may be used to offset electric energy pro-
12 vided by the electric utility to the electric consumer
13 during the applicable billing period.

14 “(12) FUEL SOURCES.—Each electric utility
15 shall develop a plan to minimize dependence on 1
16 fuel source and to ensure that the electric energy it
17 sells to consumers is generated using a diverse range
18 of fuels and technologies, including renewable tech-
19 nologies.

20 “(13) FOSSIL FUEL GENERATION EFFI-
21 CIENCY.—Each electric utility shall develop and im-
22 plement a 10-year plan to increase the efficiency of
23 its fossil fuel generation.”.

24 (b) COMPLIANCE.—

1 (1) TIME LIMITATIONS.—Section 112(b) of the
2 Public Utility Regulatory Policies Act of 1978 (16
3 U.S.C. 2622(b)) is amended by adding at the end
4 the following:

5 “(3)(A) Not later than 2 years after the enactment
6 of this paragraph, each State regulatory authority (with
7 respect to each electric utility for which it has ratemaking
8 authority) and each nonregulated electric utility shall com-
9 mence the consideration referred to in section 111, or set
10 a hearing date for such consideration, with respect to each
11 standard established by paragraphs (11) through (13) of
12 section 111(d).

13 “(B) Not later than 3 years after the date of the en-
14 actment of this paragraph, each State regulatory authority
15 (with respect to each electric utility for which it has rate-
16 making authority), and each nonregulated electric utility,
17 shall complete the consideration, and shall make the deter-
18 mination, referred to in section 111 with respect to each
19 standard established by paragraphs (11) through (13) of
20 section 111(d).”.

21 (2) FAILURE TO COMPLY.—Section 112(c) of
22 the Public Utility Regulatory Policies Act of 1978
23 (16 U.S.C. 2622(c)) is amended by adding at the
24 end the following:

1 “In the case of each standard established by paragraphs
2 (11) through (13) of section 111(d), the reference con-
3 tained in this subsection to the date of enactment of this
4 Act shall be deemed to be a reference to the date of enact-
5 ment of such paragraphs (11) through (13).”.

6 (3) PRIOR STATE ACTIONS.—

7 (A) IN GENERAL.—Section 112 of the
8 Public Utility Regulatory Policies Act of 1978
9 (16 U.S.C. 2622) is amended by adding at the
10 end the following:

11 “(d) PRIOR STATE ACTIONS.—Subsections (b) and
12 (c) of this section shall not apply to the standards estab-
13 lished by paragraphs (11) through (13) of section 111(d)
14 in the case of any electric utility in a State if, before the
15 enactment of this subsection—

16 “(1) the State has implemented for such utility
17 the standard concerned (or a comparable standard);

18 “(2) the State regulatory authority for such
19 State or relevant nonregulated electric utility has
20 conducted a proceeding to consider implementation
21 of the standard concerned (or a comparable stand-
22 ard) for such utility; or

23 “(3) the State legislature has voted on the im-
24 plementation of such standard (or a comparable
25 standard) for such utility.”.

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 Utili-
12 ties 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.—

16 “(A) Not later than 18 months after the
17 date of enactment of this paragraph, each elec-
18 tric utility shall offer each of its customer class-
19 es, and provide individual customers upon cus-
20 tomer request, a time-based rate schedule under
21 which the rate charged by the electric utility
22 varies during different time periods and reflects
23 the variance, if any, in the utility’s costs of gen-
24 erating and purchasing electricity at the whole-
25 sale level. The time-based rate schedule shall

1 enable the electric consumer to manage energy
2 use and cost through advanced metering and
3 communications technology.

4 “(B) The types of time-based rate sched-
5 ules that may be offered under the schedule re-
6 ferred to in subparagraph (A) include, among
7 others—

8 “(i) time-of-use pricing whereby elec-
9 tricity prices are set for a specific time pe-
10 riod on an advance or forward basis, typi-
11 cally not changing more often than twice a
12 year, based on the utility’s cost of gener-
13 ating and/or purchasing such electricity at
14 the wholesale level for the benefit of the
15 consumer. Prices paid for energy consumed
16 during these periods shall be pre-estab-
17 lished and known to consumers in advance
18 of such consumption, allowing them to
19 vary their demand and usage in response
20 to such prices and manage their energy
21 costs by shifting usage to a lower cost pe-
22 riod or reducing their consumption overall;

23 “(ii) critical peak pricing whereby
24 time-of-use prices are in effect except for
25 certain peak days, when prices may reflect

1 the costs of generating and/or purchasing
2 electricity at the wholesale level and when
3 consumers may receive additional discounts
4 for reducing peak period energy consump-
5 tion;

6 “(iii) real-time pricing whereby elec-
7 tricity prices are set for a specific time pe-
8 riod on an advanced or forward basis, re-
9 flecting the utility’s cost of generating and/
10 or purchasing electricity at the wholesale
11 level, and may change as often as hourly;
12 and

13 “(iv) credits for consumers with large
14 loads who enter into pre-established peak
15 load reduction agreements that reduce a
16 utility’s planned capacity obligations.

17 “(C) Each electric utility subject to sub-
18 paragraph (A) shall provide each customer re-
19 questing a time-based rate with a time-based
20 meter capable of enabling the utility and cus-
21 tomer to offer and receive such rate, respec-
22 tively.

23 “(D) For purposes of implementing this
24 paragraph, any reference contained in this sec-
25 tion to the date of enactment of the Public Util-

1 ity Regulatory Policies Act of 1978 shall be
2 deemed to be a reference to the date of enact-
3 ment of this paragraph.

4 “(E) In a State that permits third-party
5 marketers to sell electric energy to retail elec-
6 tric consumers, such consumers shall be entitled
7 to receive the same time-based metering and
8 communications device and service as a retail
9 electric consumer of the electric utility.

10 “(F) Notwithstanding subsections (b) and
11 (c) of section 112, each State regulatory au-
12 thority shall, not later than 18 months after the
13 date of enactment of this paragraph conduct an
14 investigation in accordance with section 115(i)
15 and issue a decision whether it is appropriate to
16 implement the standards set out in subpara-
17 graphs (A) and (C).”.

18 (b) STATE INVESTIGATION OF DEMAND RESPONSE
19 AND TIME-BASED METERING.—Section 115 of the Public
20 Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2625)
21 is amended as follows:

22 (1) By inserting in subsection (b) after the
23 phrase “the standard for time-of-day rates estab-
24 lished by section 111(d)(3)” the following: “and the

1 standard for time-based metering and communica-
2 tions established by section 111(d)(14)”.

3 (2) By inserting in subsection (b) after the
4 phrase “are likely to exceed the metering” the fol-
5 lowing: “and communications”.

6 (3) By adding the at the end the following:

7 “(i) TIME-BASED METERING AND COMMUNICA-
8 TIONS.—In making a determination with respect to the
9 standard established by section 111(d)(14), the investiga-
10 tion requirement of section 111(d)(14)(F) shall be as fol-
11 lows: Each State regulatory authority shall conduct an in-
12 vestigation and issue a decision whether or not it is appro-
13 priate for electric utilities to provide and install time-based
14 meters and communications devices for each of their cus-
15 tomers which enable such customers to participate in time-
16 based pricing rate schedules and other demand response
17 programs.”.

18 (c) FEDERAL ASSISTANCE ON DEMAND RE-
19 SPONSE.—Section 132(a) of the Public Utility Regulatory
20 Policies Act of 1978 (16 U.S.C. 2642(a)) is amended by
21 striking “and” at the end of paragraph (3), striking the
22 period at the end of paragraph (4) and inserting “; and”,
23 and by adding the following at the end thereof:

24 “(5) technologies, techniques, and rate-making
25 methods related to advanced metering and commu-

1 communications and the use of these technologies, tech-
2 niques and methods in demand response programs.”.

3 (d) FEDERAL GUIDANCE.—Section 132 of the Public
4 Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642)
5 is amended by adding the following at the end thereof:

6 “(d) DEMAND RESPONSE.—The Secretary shall be
7 responsible for—

8 “(1) educating consumers on the availability,
9 advantages, and benefits of advanced metering and
10 communications technologies, including the funding
11 of demonstration or pilot projects;

12 “(2) working with States, utilities, other energy
13 providers and advanced metering and communica-
14 tions experts to identify and address barriers to the
15 adoption of demand response programs; and

16 “(3) not later than 180 days after the date of
17 enactment of the Energy Policy Act of 2005, pro-
18 viding Congress with a report that identifies and
19 quantifies the national benefits of demand response
20 and makes a recommendation on achieving specific
21 levels of such benefits by January 1, 2007.”.

22 (e) DEMAND RESPONSE AND REGIONAL COORDINA-
23 TION.—

24 (1) IN GENERAL.—It is the policy of the United
25 States to encourage States to coordinate, on a re-

1 gional basis, State energy policies to provide reliable
2 and affordable demand response services to the pub-
3 lic.

4 (2) TECHNICAL ASSISTANCE.—The Secretary of
5 Energy shall provide technical assistance to States
6 and regional organizations formed by 2 or more
7 States to assist them in—

8 (A) identifying the areas with the greatest
9 demand response potential;

10 (B) identifying and resolving problems in
11 transmission and distribution networks, includ-
12 ing through the use of demand response;

13 (C) developing plans and programs to use
14 demand response to respond to peak demand or
15 emergency needs; and

16 (D) identifying specific measures con-
17 sumers can take to participate in these demand
18 response programs.

19 (3) REPORT.—Not later than 1 year after the
20 date of enactment of the Energy Policy Act of 2005,
21 the Commission shall prepare and publish an annual
22 report, by appropriate region, that assesses demand
23 response resources, including those available from all
24 consumer classes, and which identifies and reviews—

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.

21 (f) FEDERAL ENCOURAGEMENT OF DEMAND RE-
22 SPONSE DEVICES.—It is the policy of the United States
23 that time-based pricing and other forms of demand re-
24 sponse, whereby electricity customers are provided with
25 electricity price signals and the ability to benefit by re-

1 sponding to them, shall be encouraged, the deployment of
2 such technology and devices that enable electricity cus-
3 tomers to participate in such pricing and demand response
4 systems shall be facilitated, and unnecessary barriers to
5 demand response participation in energy, capacity and an-
6 cillary service markets shall be eliminated. It is further
7 the policy of the United States that the benefits of such
8 demand response that accrue to those not deploying such
9 technology and devices, but who are part of the same re-
10 gional electricity entity, shall be recognized.

11 (g) TIME LIMITATIONS.—Section 112(b) of the Pub-
12 lic Utility Regulatory Policies Act of 1978 (16 U.S.C.
13 2622(b)) is amended by adding at the end the following:

14 “(4)(A) Not later than 1 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 electric utility shall commence the consideration re-
19 ferred to in section 111, or set a hearing date for
20 such consideration, with respect to the standard es-
21 tablished by paragraph (14) of section 111(d).

22 “(B) Not later than 2 years after the date of
23 the enactment of this paragraph, each State regu-
24 latory authority (with respect to each electric utility
25 for which it has ratemaking authority), and each

1 nonregulated electric utility, shall complete the con-
2 sideration, and shall make the determination, re-
3 ferred to in section 111 with respect to the standard
4 established by paragraph (14) of section 111(d).”.

5 (h) FAILURE TO COMPLY.—Section 112(c) of the
6 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.
7 2622(c)) is amended by adding at the end the following:
8 “In the case of the standard established by paragraph (14)
9 of section 111(d), the reference contained in this sub-
10 section to the date of enactment of this Act shall be
11 deemed to be a reference to the date of enactment of such
12 paragraph (14).”.

13 (i) PRIOR STATE ACTIONS REGARDING SMART ME-
14 TERING STANDARDS.—

15 (1) IN GENERAL.—Section 112 of the Public
16 Utility Regulatory Policies Act of 1978 (16 U.S.C.
17 2622) is amended by adding at the end the fol-
18 lowing:

19 “(e) PRIOR STATE ACTIONS.—Subsections (b) and
20 (c) of this section shall not apply to the standard estab-
21 lished by paragraph (14) of section 111(d) in the case of
22 any electric utility in a State if, before the enactment of
23 this subsection—

24 “(1) the State has implemented for such utility
25 the standard concerned (or a comparable standard);

1 “(2) the State regulatory authority for such
2 State or relevant nonregulated electric utility has
3 conducted a proceeding to consider implementation
4 of the standard concerned (or a comparable stand-
5 ard) for such utility within the previous 3 years; or

6 “(3) the State legislature has voted on the im-
7 plementation of such standard (or a comparable
8 standard) for such utility within the previous 3
9 years.”.

10 (2) CROSS REFERENCE.—Section 124 of such
11 Act (16 U.S.C. 2634) is amended by adding the fol-
12 lowing at the end thereof: “In the case of the stand-
13 ard established by paragraph (14) of section 111(d),
14 the reference contained in this subsection to the date
15 of enactment of this Act shall be deemed to be a ref-
16 erence to the date of enactment of such paragraph
17 (14).”.

18 **SEC. 1253. COGENERATION AND SMALL POWER PRODUC-**
19 **TION PURCHASE AND SALE REQUIREMENTS.**

20 (a) TERMINATION OF MANDATORY PURCHASE AND
21 SALE REQUIREMENTS.—Section 210 of the Public Utility
22 Regulatory Policies Act of 1978 (16 U.S.C. 824a–3) is
23 amended by adding at the end the following:

24 “(m) TERMINATION OF MANDATORY PURCHASE AND
25 SALE REQUIREMENTS.—

1 “(1) OBLIGATION TO PURCHASE.—After the
2 date of enactment of this subsection, no electric util-
3 ity shall be required to enter into a new contract or
4 obligation to purchase electric energy from a quali-
5 fying cogeneration facility or a qualifying small
6 power production facility under this section if the
7 Commission finds that the qualifying cogeneration
8 facility or qualifying small power production facility
9 has nondiscriminatory access to—

10 “(A)(i) independently administered, auc-
11 tion-based day ahead and real time wholesale
12 markets for the sale of electric energy; and

13 “(ii) wholesale markets for long-term sales
14 of capacity and electric energy; or

15 “(B)(i) transmission and interconnection
16 services that are provided by a Commission-ap-
17 proved regional transmission entity and admin-
18 istered pursuant to an open access transmission
19 tariff that affords nondiscriminatory treatment
20 to all customers; and

21 “(ii) competitive wholesale markets that
22 provide a meaningful opportunity to sell capac-
23 ity, including long-term and short-term sales,
24 and electric energy, including long-term, short-
25 term and real-time sales, to buyers other than

1 the utility to which the qualifying facility is
2 interconnected. In determining whether a mean-
3 ingful opportunity to sell exists, the Commis-
4 sion shall consider, among other factors, evi-
5 dence of transactions within the relevant mar-
6 ket; 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).

22 “(B) For the purposes of this paragraph, the
23 term ‘existing qualifying cogeneration facility’ means
24 a facility that—

1 “(i) was a qualifying cogeneration facility
2 on the date of enactment of subsection (m); or

3 “(ii) had filed with the Commission a no-
4 tice of self-certification, self recertification or
5 an application for Commission certification
6 under 18 C.F.R. 292.207 prior to the date on
7 which the Commission issues the final rule re-
8 quired by subsection (n).

9 “(3) COMMISSION REVIEW.—Any electric utility
10 may file an application with the Commission for re-
11 lief from the mandatory purchase obligation pursu-
12 ant to this subsection on a service territory-wide
13 basis. Such application shall set forth the factual
14 basis upon which relief is requested and describe
15 why the conditions set forth in subparagraphs (A),
16 (B) or (C) of paragraph (1) of this subsection have
17 been met. After notice, including sufficient notice to
18 potentially affected qualifying cogeneration facilities
19 and qualifying small power production facilities, and
20 an opportunity for comment, the Commission shall
21 make a final determination within 90 days of such
22 application regarding whether the conditions set
23 forth in subparagraphs (A), (B) or (C) of paragraph
24 (1) have been met.

1 “(4) REINSTATEMENT OF OBLIGATION TO PUR-
2 CHASE.—At any time after the Commission makes a
3 finding under paragraph (3) relieving an electric
4 utility of its obligation to purchase electric energy,
5 a qualifying cogeneration facility, a qualifying small
6 power production facility, a State agency, or any
7 other affected person may apply to the Commission
8 for an order reinstating the electric utility’s obliga-
9 tion to purchase electric energy under this section.
10 Such application shall set forth the factual basis
11 upon which the application is based and describe
12 why the conditions set forth in subparagraphs (A),
13 (B) or (C) of paragraph (1) of this subsection are
14 no longer met. After notice, including sufficient no-
15 tice to potentially affected utilities, and opportunity
16 for comment, the Commission shall issue an order
17 within 90 days of such application reinstating the
18 electric utility’s obligation to purchase electric en-
19 ergy under this section if the Commission finds that
20 the conditions set forth in subparagraphs (A), (B) or
21 (C) of paragraph (1) which relieved the obligation to
22 purchase, are no longer met.

23 “(5) OBLIGATION TO SELL.—After the date of
24 enactment of this subsection, no electric utility shall
25 be required to enter into a new contract or obliga-

1 tion to sell electric energy to a qualifying cogenera-
2 tion facility or a qualifying small power production
3 facility under this section if the Commission finds
4 that—

5 “(A) competing retail electric suppliers are
6 willing and able to sell and deliver electric en-
7 ergy to the qualifying cogeneration facility or
8 qualifying small power production facility; and

9 “(B) the electric utility is not required by
10 State law to sell electric energy in its service
11 territory.

12 “(6) NO EFFECT ON EXISTING RIGHTS AND
13 REMEDIES.—Nothing in this subsection affects the
14 rights or remedies of any party under any contract
15 or obligation, in effect or pending approval before
16 the appropriate State regulatory authority or non-
17 regulated electric utility on the date of enactment of
18 this subsection, to purchase electric energy or capac-
19 ity from or to sell electric energy or capacity to a
20 qualifying cogeneration facility or qualifying small
21 power production facility under this Act (including
22 the right to recover costs of purchasing electric en-
23 ergy or capacity).

24 “(7) RECOVERY OF COSTS.—(A) The Commis-
25 sion shall issue and enforce such regulations as are

1 necessary to ensure that an electric utility that pur-
2 chases electric energy or capacity from a qualifying
3 cogeneration facility or qualifying small power pro-
4 duction facility in accordance with any legally en-
5 forceable obligation entered into or imposed under
6 this section recovers all prudently incurred costs as-
7 sociated with the purchase.

8 “(B) A regulation under subparagraph (A) shall
9 be enforceable in accordance with the provisions of
10 law applicable to enforcement of regulations under
11 the Federal Power Act (16 U.S.C. 791a et seq.).

12 “(n) RULEMAKING FOR NEW QUALIFYING FACILI-
13 TIES.—(1)(A) Not later than 180 days after the date of
14 enactment of this section, the Commission shall issue a
15 rule revising the criteria in 18 C.F.R. 292.205 for new
16 qualifying cogeneration facilities seeking to sell electric en-
17 ergy pursuant to section 210 of this Act to ensure—

18 “(i) that the thermal energy output of a new
19 qualifying cogeneration facility is used in a produc-
20 tive and beneficial manner;

21 “(ii) the electrical, thermal, and chemical out-
22 put of the cogeneration facility is used fundamen-
23 tally for industrial, commercial, or institutional pur-
24 poses and is not intended fundamentally for sale to
25 an electric utility, taking into account technological,

1 efficiency, economic, and variable thermal energy re-
2 quirements, as well as State laws applicable to sales
3 of electric energy from a qualifying facility to its
4 host facility; and

5 “(iii) continuing progress in the development of
6 efficient electric energy generating technology.

7 “(B) The rule issued pursuant to paragraph (1)(A)
8 of this subsection shall be applicable only to facilities that
9 seek to sell electric energy pursuant to section 210 of this
10 Act. For all other purposes, except as specifically provided
11 in subsection (m)(2)(A), qualifying facility status shall be
12 determined in accordance with the rules and regulations
13 of this Act.

14 “(2) Notwithstanding rule revisions under paragraph
15 (1), the Commission’s criteria for qualifying cogeneration
16 facilities in effect prior to the date on which the Commis-
17 sion issues the final rule required by paragraph (1) shall
18 continue to apply to any cogeneration facility that—

19 “(A) was a qualifying cogeneration facility on
20 the date of enactment of subsection (m), or

21 “(B) had filed with the Commission a notice of
22 self-certification, self-recertification or an application
23 for Commission certification under 18 C.F.R.
24 292.207 prior to the date on which the Commission
25 issues the final rule required by paragraph (1).”.

1 (b) ELIMINATION OF OWNERSHIP LIMITATIONS.—

2 (1) QUALIFYING SMALL POWER PRODUCTION
3 FACILITY.—Section 3(17)(C) of the Federal Power
4 Act (16 U.S.C. 796(17)(C)) is amended to read as
5 follows:

6 “(C) ‘qualifying small power production fa-
7 cility’ means a small power production facility
8 that the Commission determines, by rule, meets
9 such requirements (including requirements re-
10 specting fuel use, fuel efficiency, and reliability)
11 as the Commission may, by rule, prescribe;”.

12 (2) QUALIFYING COGENERATION FACILITY.—
13 Section 3(18)(B) of the Federal Power Act (16
14 U.S.C. 796(18)(B)) is amended to read as follows:

15 “(B) ‘qualifying cogeneration facility’
16 means a cogeneration facility that the Commis-
17 sion determines, by rule, meets such require-
18 ments (including requirements respecting min-
19 imum size, fuel use, and fuel efficiency) as the
20 Commission may, by rule, prescribe;”.

21 **SEC. 1254. INTERCONNECTION.**

22 (a) ADOPTION OF STANDARDS.—Section 111(d) of
23 the Public Utility Regulatory Policies Act of 1978 (16
24 U.S.C. 2621(d)) is amended by adding at the end the fol-
25 lowing:

1 “(16) INTERCONNECTION.—Each electric utility
2 shall make available, upon request, interconnection
3 service to any electric consumer that the electric
4 utility serves. For purposes of this paragraph, the
5 term ‘interconnection service’ means service to an
6 electric consumer under which an on-site generating
7 facility on the consumer’s premises shall be con-
8 nected to the local distribution facilities. Inter-
9 connection services shall be offered based upon the
10 standards developed by the Institute of Electrical
11 and Electronics Engineers: IEEE Standard 1547 for
12 Interconnecting Distributed Resources with Electric
13 Power Systems, as they may be amended from time
14 to time. In addition, agreements and procedures
15 shall be established whereby the services are offered
16 shall promote current best practices of interconnec-
17 tion for distributed generation, including but not
18 limited to practices stipulated in model codes adopt-
19 ed by associations of state regulatory agencies. All
20 such agreements and procedures shall be just and
21 reasonable, and not unduly discriminatory or pref-
22 erential.”.

23 (b) COMPLIANCE.—

24 (1) TIME LIMITATIONS.—Section 112 (b) of the
25 Public Utility Regulatory Policies Act of 1978 (16

1 U.S.C. 2622(b)) is amended by adding at the end
2 the following:

3 “(3)(A) Not later than one year after the enact-
4 ment of this paragraph, each State regulatory au-
5 thority (with respect to each electric utility for which
6 it has ratemaking authority) and each nonregulated
7 utility shall commence the consideration referred to
8 in section 111, or set a hearing date for consider-
9 ation, with respect to the standard established by
10 paragraph (16) of section 111(d).

11 “(B) Not later than two years after the date of
12 the enactment of the this paragraph, each State reg-
13 ulatory authority (with respect to each electric utility
14 for which it has ratemaking authority), and each
15 nonregulated electric utility, shall complete the con-
16 sideration, and shall make the determination, re-
17 ferred to in section 111 with respect to each stand-
18 ard established by paragraph (16) of section
19 111(d).”.

20 (2) FAILURE TO COMPLY.—Section 112 (d) f
21 the Public Utility Regulatory Policies Act of 1978
22 (16 U.S.C. 2622 (c)) is amended by adding at the
23 end the following: “In the case of the standard es-
24 tablished by paragraph (16), the reference contained
25 in this subsection to the date of enactment of this

1 Act shall be deemed to be a reference to the date of
2 enactment of paragraph (16).”.

3 (3) PRIOR STATE ACTIONS.—

4 (A) IN GENERAL.—Section 112 of the
5 Public Utility Regulatory Policies Act of 1978
6 (16 U.S.C. 2622) is amended by adding at the
7 end the following:

8 “(d) PRIOR STATE ACTIONS.—Subsections (b) and
9 (c) of this section shall not apply to the standards estab-
10 lished by paragraphs (16) of section 111(d) in the case
11 of any electric utility in a State if, before the enactment
12 of this subsection—

13 “(1) the State has implemented for such utility
14 the standard concerned (or a comparable standard);

15 “(2) the State regulatory authority for such
16 State or relevant nonregulated electric utility has
17 conducted a proceeding to consider implementation
18 of the standard concerned (or a comparable stand-
19 ard) for such utility; or

20 “(3) the State legislature has voted on the im-
21 plementation of such standard (or a comparable
22 standard) for such utility.”.

23 (B) CROSS REFERENCE.—Section 124 of
24 such Act (16 U.S.C. 2634) is amended by add-
25 ing the following at the end thereof: “In the

1 case of each standard established by paragraph
2 (16) of section 111(d), the reference contained
3 in this subsection to the date of enactment of
4 the Act shall be deemed to be a reference to the
5 date of enactment of paragraph (16).”.

6 **Subtitle F—Repeal of PUHCA**

7 **SEC. 1261. SHORT TITLE.**

8 This subtitle may be cited as the “Public Utility
9 Holding Company Act of 2005”.

10 **SEC. 1262. DEFINITIONS.**

11 For purposes of this subtitle:

12 (1) **AFFILIATE.**—The term “affiliate” of a com-
13 pany means any company, 5 percent or more of the
14 outstanding voting securities of which are owned,
15 controlled, or held with power to vote, directly or in-
16 directly, by such company.

17 (2) **ASSOCIATE COMPANY.**—The term “associate
18 company” of a company means any company in the
19 same holding company system with such company.

20 (3) **COMMISSION.**—The term “Commission”
21 means the Federal Energy Regulatory Commission.

22 (4) **COMPANY.**—The term “company” means a
23 corporation, partnership, association, joint stock
24 company, business trust, or any organized group of
25 persons, whether incorporated or not, or a receiver,

1 trustee, or other liquidating agent of any of the fore-
2 going.

3 (5) ELECTRIC UTILITY COMPANY.—The term
4 “electric utility company” means any company that
5 owns or operates facilities used for the generation,
6 transmission, or distribution of electric energy for
7 sale.

8 (6) EXEMPT WHOLESALE GENERATOR AND
9 FOREIGN UTILITY COMPANY.—The terms “exempt
10 wholesale generator” and “foreign utility company”
11 have the same meanings as in sections 32 and 33,
12 respectively, of the Public Utility Holding Company
13 Act of 1935 (15 U.S.C. 79z–5a, 79z–5b), as those
14 sections existed on the day before the effective date
15 of this subtitle.

16 (7) GAS UTILITY COMPANY.—The term “gas
17 utility company” means any company that owns or
18 operates facilities used for distribution at retail
19 (other than the distribution only in enclosed portable
20 containers or distribution to tenants or employees of
21 the company operating such facilities for their own
22 use and not for resale) of natural or manufactured
23 gas for heat, light, or power.

24 (8) HOLDING COMPANY.—The term “holding
25 company” means—

1 (A) any company that directly or indirectly
2 owns, controls, or holds, with power to vote, 10
3 percent or more of the outstanding voting secu-
4 rities of a public-utility company or of a holding
5 company of any public-utility company; and

6 (B) any person, determined by the Com-
7 mission, after notice and opportunity for hear-
8 ing, to exercise directly or indirectly (either
9 alone or pursuant to an arrangement or under-
10 standing with 1 or more persons) such a con-
11 trolling influence over the management or poli-
12 cies of any public-utility company or holding
13 company as to make it necessary or appropriate
14 for the rate protection of utility customers with
15 respect to rates that such person be subject to
16 the obligations, duties, and liabilities imposed
17 by this subtitle upon holding companies.

18 (9) HOLDING COMPANY SYSTEM.—The term
19 “holding company system” means a holding com-
20 pany, together with its subsidiary companies.

21 (10) JURISDICTIONAL RATES.—The term “ju-
22 risdictional rates” means rates accepted or estab-
23 lished by the Commission for the transmission of
24 electric energy in interstate commerce, the sale of
25 electric energy at wholesale in interstate commerce,

1 the transportation of natural gas in interstate com-
2 merce, and the sale in interstate commerce of nat-
3 ural gas for resale for ultimate public consumption
4 for domestic, commercial, industrial, or any other
5 use.

6 (11) NATURAL GAS COMPANY.—The term “nat-
7 ural gas company” means a person engaged in the
8 transportation of natural gas in interstate commerce
9 or the sale of such gas in interstate commerce for
10 resale.

11 (12) PERSON.—The term “person” means an
12 individual or company.

13 (13) PUBLIC UTILITY.—The term “public util-
14 ity” means any person who owns or operates facili-
15 ties used for transmission of electric energy in inter-
16 state commerce or sales of electric energy at whole-
17 sale in interstate commerce.

18 (14) PUBLIC-UTILITY COMPANY.—The term
19 “public-utility company” means an electric utility
20 company or a gas utility company.

21 (15) STATE COMMISSION.—The term “State
22 commission” means any commission, board, agency,
23 or officer, by whatever name designated, of a State,
24 municipality, or other political subdivision of a State

1 that, under the laws of such State, has jurisdiction
2 to regulate public utility companies.

3 (16) SUBSIDIARY COMPANY.—The term “sub-
4 sidiary company” of a holding company means—

5 (A) any company, 10 percent or more of
6 the outstanding voting securities of which are
7 directly or indirectly owned, controlled, or held
8 with power to vote, by such holding company;
9 and

10 (B) any person, the management or poli-
11 cies of which the Commission, after notice and
12 opportunity for hearing, determines to be sub-
13 ject to a controlling influence, directly or indi-
14 rectly, by such holding company (either alone or
15 pursuant to an arrangement or understanding
16 with 1 or more other persons) so as to make it
17 necessary for the rate protection of utility cus-
18 tomers with respect to rates that such person
19 be subject to the obligations, duties, and liabil-
20 ities imposed by this subtitle upon subsidiary
21 companies of holding companies.

22 (17) VOTING SECURITY.—The term “voting se-
23 curity” means any security presently entitling the
24 owner or holder thereof to vote in the direction or
25 management of the affairs of a company.

1 **SEC. 1263. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**
2 **PANY ACT OF 1935.**

3 The Public Utility Holding Company Act of 1935 (15
4 U.S.C. 79 et seq.) is repealed.

5 **SEC. 1264. FEDERAL ACCESS TO BOOKS AND RECORDS.**

6 (a) **IN GENERAL.**—Each holding company and each
7 associate company thereof shall maintain, and shall make
8 available to the Commission, such books, accounts, memo-
9 randa, and other records as the Commission determines
10 are relevant to costs incurred by a public utility or natural
11 gas company that is an associate company of such holding
12 company and necessary or appropriate for the protection
13 of utility customers with respect to jurisdictional rates.

14 (b) **AFFILIATE COMPANIES.**—Each affiliate of a hold-
15 ing company or of any subsidiary company of a holding
16 company shall maintain, and shall make available to the
17 Commission, such books, accounts, memoranda, and other
18 records with respect to any transaction with another affil-
19 iate, as the Commission determines are relevant to costs
20 incurred by a public utility or natural gas company that
21 is an associate company of such holding company and nec-
22 essary or appropriate for the protection of utility cus-
23 tomers with respect to jurisdictional rates.

24 (c) **HOLDING COMPANY SYSTEMS.**—The Commission
25 may examine the books, accounts, memoranda, and other
26 records of any company in a holding company system, or

1 any affiliate thereof, as the Commission determines are
2 relevant to costs incurred by a public utility or natural
3 gas company within such holding company system and
4 necessary or appropriate for the protection of utility cus-
5 tomers with respect to jurisdictional rates.

6 (d) CONFIDENTIALITY.—No member, officer, or em-
7 ployee of the Commission shall divulge any fact or infor-
8 mation that may come to his or her knowledge during the
9 course of examination of books, accounts, memoranda, or
10 other records as provided in this section, except as may
11 be directed by the Commission or by a court of competent
12 jurisdiction.

13 **SEC. 1265. STATE ACCESS TO BOOKS AND RECORDS.**

14 (a) IN GENERAL.—Upon the written request of a
15 State commission having jurisdiction to regulate a public-
16 utility company in a holding company system, the holding
17 company or any associate company or affiliate thereof,
18 other than such public-utility company, wherever located,
19 shall produce for inspection books, accounts, memoranda,
20 and other records that—

21 (1) have been identified in reasonable detail in
22 a proceeding before the State commission;

23 (2) the State commission determines are rel-
24 evant to costs incurred by such public-utility com-
25 pany; and

1 (3) are necessary for the effective discharge of
2 the responsibilities of the State commission with re-
3 spect to such proceeding.

4 (b) LIMITATION.—Subsection (a) does not apply to
5 any person that is a holding company solely by reason of
6 ownership of 1 or more qualifying facilities under the Pub-
7 lic Utility Regulatory Policies Act of 1978 (16 U.S.C.
8 2601 et seq.).

9 (c) CONFIDENTIALITY OF INFORMATION.—The pro-
10 duction of books, accounts, memoranda, and other records
11 under subsection (a) shall be subject to such terms and
12 conditions as may be necessary and appropriate to safe-
13 guard against unwarranted disclosure to the public of any
14 trade secrets or sensitive commercial information.

15 (d) EFFECT ON STATE LAW.—Nothing in this sec-
16 tion shall preempt applicable State law concerning the pro-
17 vision of books, accounts, memoranda, and other records,
18 or in any way limit the rights of any State to obtain books,
19 accounts, memoranda, and other records under any other
20 Federal law, contract, or otherwise.

21 (e) COURT JURISDICTION.—Any United States dis-
22 trict court located in the State in which the State commis-
23 sion referred to in subsection (a) is located shall have ju-
24 risdiction to enforce compliance with this section.

1 **SEC. 1266. EXEMPTION AUTHORITY.**

2 (a) RULEMAKING.—Not later than 90 days after the
3 effective date of this subtitle, the Commission shall issue
4 a final rule to exempt from the requirements of section
5 1264 (relating to Federal access to books and records) any
6 person that is a holding company, solely with respect to
7 1 or more—

8 (1) qualifying facilities under the Public Utility
9 Regulatory Policies Act of 1978 (16 U.S.C. 2601 et
10 seq.);

11 (2) exempt wholesale generators; or

12 (3) foreign utility companies.

13 (b) OTHER AUTHORITY.—The Commission shall ex-
14 empt a person or transaction from the requirements of
15 section 1264 (relating to Federal access to books and
16 records) if, upon application or upon the motion of the
17 Commission—

18 (1) the Commission finds that the books, ac-
19 counts, memoranda, and other records of any person
20 are not relevant to the jurisdictional rates of a pub-
21 lic utility or natural gas company; or

22 (2) the Commission finds that any class of
23 transactions is not relevant to the jurisdictional
24 rates of a public utility or natural gas company.

1 **SEC. 1267. AFFILIATE TRANSACTIONS.**

2 (a) COMMISSION AUTHORITY UNAFFECTED.—Noth-
3 ing in this subtitle shall limit the authority of the Commis-
4 sion under the Federal Power Act (16 U.S.C. 791a et seq.)
5 to require that jurisdictional rates are just and reasonable,
6 including the ability to deny or approve the pass through
7 of costs, the prevention of cross-subsidization, and the
8 issuance of such rules and regulations as are necessary
9 or appropriate for the protection of utility consumers.

10 (b) RECOVERY OF COSTS.—Nothing in this subtitle
11 shall preclude the Commission or a State commission from
12 exercising its jurisdiction under otherwise applicable law
13 to determine whether a public-utility company, public util-
14 ity, or natural gas company may recover in rates any costs
15 of an activity performed by an associate company, or any
16 costs of goods or services acquired by such public-utility
17 company from an associate company.

18 **SEC. 1268. APPLICABILITY.**

19 Except as otherwise specifically provided in this sub-
20 title, no provision of this subtitle shall apply to, or be
21 deemed to include—

22 (1) the United States;

23 (2) a State or any political subdivision of a
24 State;

25 (3) any foreign governmental authority not op-
26 erating in the United States;

1 (4) any agency, authority, or instrumentality of
2 any entity referred to in paragraph (1), (2), or (3);
3 or

4 (5) any officer, agent, or employee of any entity
5 referred to in paragraph (1), (2), (3), or (4) acting
6 as such in the course of his or her official duty.

7 **SEC. 1269. EFFECT ON OTHER REGULATIONS.**

8 Nothing in this subtitle precludes the Commission or
9 a State commission from exercising its jurisdiction under
10 otherwise applicable law to protect utility customers.

11 **SEC. 1270. ENFORCEMENT.**

12 The Commission shall have the same powers as set
13 forth in sections 306 through 317 of the Federal Power
14 Act (16 U.S.C. 825e–825p) to enforce the provisions of
15 this subtitle.

16 **SEC. 1271. SAVINGS PROVISIONS.**

17 (a) IN GENERAL.—Nothing in this subtitle, or other-
18 wise in the Public Utility Holding Company Act of 1935,
19 or rules, regulations, or orders thereunder, prohibits a per-
20 son from engaging in or continuing to engage in activities
21 or transactions in which it is legally engaged or authorized
22 to engage on the date of enactment of this Act, if that
23 person continues to comply with the terms (other than an
24 expiration date or termination date) of any such author-
25 ization, whether by rule or by order.

1 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—
2 Nothing in this subtitle limits the authority of the Com-
3 mission under the Federal Power Act (16 U.S.C. 791a et
4 seq.) or the Natural Gas Act (15 U.S.C. 717 et seq.).

5 **SEC. 1272. IMPLEMENTATION.**

6 Not later than 12 months after the date of enactment
7 of this subtitle, the Commission shall—

8 (1) issue such regulations as may be necessary
9 or appropriate to implement this subtitle (other than
10 section 1265, relating to State access to books and
11 records); and

12 (2) submit to Congress detailed recommenda-
13 tions on technical and conforming amendments to
14 Federal law necessary to carry out this subtitle and
15 the amendments made by this subtitle.

16 **SEC. 1273. TRANSFER OF RESOURCES.**

17 All books and records that relate primarily to the
18 functions transferred to the Commission under this sub-
19 title shall be transferred from the Securities and Exchange
20 Commission to the Commission.

21 **SEC. 1274. EFFECTIVE DATE.**

22 (a) IN GENERAL.—Except for section 1272 (relating
23 to implementation), this subtitle shall take effect 12
24 months after the date of enactment of this subtitle.

1 (b) COMPLIANCE WITH CERTAIN RULES.—If the
2 Commission approves and makes effective any final rule-
3 making modifying the standards of conduct governing en-
4 tities that own, operate, or control facilities for trans-
5 mission of electricity in interstate commerce or transpor-
6 tation of natural gas in interstate commerce prior to the
7 effective date of this subtitle, any action taken by a public-
8 utility company or utility holding company to comply with
9 the requirements of such rulemaking shall not subject
10 such public-utility company or utility holding company to
11 any regulatory requirement applicable to a holding com-
12 pany under the Public Utility Holding Company Act of
13 1935 (15 U.S.C. 79 et seq.).

14 **SEC. 1275. SERVICE ALLOCATION.**

15 (a) FERC REVIEW.—In the case of non-power goods
16 or administrative or management services provided by an
17 associate company organized specifically for the purpose
18 of providing such goods or services to any public utility
19 in the same holding company system, at the election of
20 the system or a State commission having jurisdiction over
21 the public utility, the Commission, after the effective date
22 of this subtitle, shall review and authorize the allocation
23 of the costs for such goods or services to the extent rel-
24 evant to that associate company in order to assure that

1 each allocation is appropriate for the protection of inves-
2 tors and consumers of such public utility.

3 (b) COST ALLOCATION.—Nothing in this section shall
4 preclude the Commission or a State commission from exer-
5 cising its jurisdiction under other applicable law with re-
6 spect to the review or authorization of any costs allocated
7 to a public utility in a holding company system located
8 in the affected State as a result of the acquisition of non-
9 power goods or administrative and management services
10 by such public utility from an associate company orga-
11 nized specifically for that purpose.

12 (c) RULES.—Not later than 6 months after the date
13 of enactment of this Act, the Commission shall issue rules
14 (which rules shall be effective no earlier than the effective
15 date of this subtitle) to exempt from the requirements of
16 this section any company in a holding company system
17 whose public utility operations are confined substantially
18 to a single State and any other class of transactions that
19 the Commission finds is not relevant to the jurisdictional
20 rates of a public utility.

21 (d) PUBLIC UTILITY.—As used in this section, the
22 term “public utility” has the meaning given that term in
23 section 201(e) of the Federal Power Act.

1 **SEC. 1276. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated such funds
3 as may be necessary to carry out this subtitle.

4 **SEC. 1277. CONFORMING AMENDMENTS TO THE FEDERAL**
5 **POWER ACT.**

6 (a) CONFLICT OF JURISDICTION.—Section 318 of the
7 Federal Power Act (16 U.S.C. 825q) is repealed.

8 (b) DEFINITIONS.—(1) Section 201(g)(5) of the Fed-
9 eral Power Act (16 U.S.C. 824(g)(5)) is amended by strik-
10 ing “1935” and inserting “2005”.

11 (2) Section 214 of the Federal Power Act (16 U.S.C.
12 824m) is amended by striking “1935” and inserting
13 “2005”.

14 **Subtitle G—Market Transparency,**
15 **Enforcement, and Consumer**
16 **Protection**

17 **SEC. 1281. MARKET TRANSPARENCY RULES.**

18 Part II of the Federal Power Act (16 U.S.C. 824 et
19 seq.) is amended by adding at the end the following:

20 **“SEC. 220. MARKET TRANSPARENCY RULES.**

21 “(a) IN GENERAL.—Not later than 180 days after
22 the date of enactment of this section, the Commission
23 shall issue rules establishing an electronic information sys-
24 tem to provide the Commission and the public with access
25 to such information as is necessary or appropriate to fa-
26 cilitate price transparency and participation in markets

1 subject to the Commission’s jurisdiction under this Act.
2 Such systems shall provide information about the avail-
3 ability and market price of wholesale electric energy and
4 transmission services to the Commission, State commis-
5 sions, buyers and sellers of wholesale electric energy, users
6 of transmission services, and the public on a timely basis.
7 The Commission shall have authority to obtain such infor-
8 mation from any electric utility or transmitting utility, in-
9 cluding any entity described in section 201(f).

10 “(b) EXEMPTIONS.—The Commission shall exempt
11 from disclosure information it determines would, if dis-
12 closed, be detrimental to the operation of an effective mar-
13 ket or jeopardize system security. This section shall not
14 apply to transactions for the purchase or sale of wholesale
15 electric energy or transmission services within the area de-
16 scribed in section 212(k)(2)(A). In determining the infor-
17 mation to be made available under this section and time
18 to make such information available, the Commission shall
19 seek to ensure that consumers and competitive markets
20 are protected from the adverse effects of potential collu-
21 sion or other anti-competitive behaviors that can be facili-
22 tated by untimely public disclosure of transaction-specific
23 information.

24 “(c) COMMODITY FUTURES TRADING COMMIS-
25 SION.—This section shall not affect the exclusive jurisdic-

1 tion of the Commodity Futures Trading Commission with
2 respect to accounts, agreements, contracts, or transactions
3 in commodities under the Commodity Exchange Act (7
4 U.S.C. 1 et seq.).

5 “(d) SAVINGS PROVISION.—In exercising its author-
6 ity under this section, the Commission shall not—

7 “(1) compete with, or displace from the market
8 place, any price publisher; or

9 “(2) regulate price publishers or impose any re-
10 quirements on the publication of information.”.

11 **SEC. 1282. MARKET MANIPULATION.**

12 Part II of the Federal Power Act (16 U.S.C. 824 et
13 seq.) is amended by adding at the end the following:

14 **“SEC. 221. PROHIBITION ON FILING FALSE INFORMATION.**

15 “No person or other entity (including an entity de-
16 scribed in section 201(f)) shall willfully and knowingly re-
17 port any information relating to the price of electricity
18 sold at wholesale or availability of transmission capacity,
19 which information the person or any other entity knew to
20 be false at the time of the reporting, to a Federal agency
21 with intent to fraudulently affect the data being compiled
22 by such Federal agency.

23 **“SEC. 222. PROHIBITION ON ROUND TRIP TRADING.**

24 “(a) PROHIBITION.—No person or other entity (in-
25 cluding an entity described in section 201(f)) shall willfully

1 and knowingly enter into any contract or other arrange-
2 ment to execute a ‘round trip trade’ for the purchase or
3 sale of electric energy at wholesale.

4 “(b) DEFINITION.—For the purposes of this section,
5 the term ‘round trip trade’ means a transaction, or com-
6 bination of transactions, in which a person or any other
7 entity—

8 “(1) enters into a contract or other arrange-
9 ment to purchase from, or sell to, any other person
10 or other entity electric energy at wholesale;

11 “(2) simultaneously with entering into the con-
12 tract or arrangement described in paragraph (1), ar-
13 ranges a financially offsetting trade with such other
14 person or entity for the same such electric energy,
15 at the same location, price, quantity and terms so
16 that, collectively, the purchase and sale transactions
17 in themselves result in no financial gain or loss; and

18 “(3) enters into the contract or arrangement
19 with a specific intent to fraudulently affect reported
20 revenues, trading volumes, or prices.”.

21 **SEC. 1283. ENFORCEMENT.**

22 (a) COMPLAINTS.—Section 306 of the Federal Power
23 Act (16 U.S.C. 825e) is amended as follows:

24 (1) By inserting “electric utility,” after “Any
25 person,”.

1 (2) By inserting “, transmitting utility,” after
2 “licensee” each place it appears.

3 (b) REVIEW OF COMMISSION ORDERS.—Section
4 313(a) of the Federal Power Act (16 U.S.C. 8251) is
5 amended by inserting “electric utility,” after “person,” in
6 the first 2 places it appears and by striking “any person
7 unless such person” and inserting “any entity unless such
8 entity”.

9 (c) INVESTIGATIONS.—Section 307(a) of the Federal
10 Power Act (16 U.S.C. 825f(a)) is amended as follows:

11 (1) By inserting “, electric utility, transmitting
12 utility, or other entity” after “person” each time it
13 appears.

14 (2) By striking the period at the end of the
15 first sentence and inserting the following: “or in ob-
16 taining information about the sale of electric energy
17 at wholesale in interstate commerce and the trans-
18 mission of electric energy in interstate commerce.”.

19 (d) CRIMINAL PENALTIES.—Section 316 of the Fed-
20 eral Power Act (16 U.S.C. 825o) is amended—

21 (1) in subsection (a), by striking “\$5,000” and
22 inserting “\$1,000,000”, and by striking “two years”
23 and inserting “5 years”;

24 (2) in subsection (b), by striking “\$500” and
25 inserting “\$25,000”; and

1 (3) by striking subsection (c).

2 (e) CIVIL PENALTIES.—Section 316A of the Federal
3 Power Act (16 U.S.C. 825o–1) is amended as follows:

4 (1) In subsections (a) and (b), by striking “sec-
5 tion 211, 212, 213, or 214” each place it appears
6 and inserting “Part II”.

7 (2) In subsection (b), by striking “\$10,000”
8 and inserting “\$1,000,000”.

9 **SEC. 1284. REFUND EFFECTIVE DATE.**

10 Section 206(b) of the Federal Power Act (16 U.S.C.
11 824e(b)) is amended as follows:

12 (1) By striking “the date 60 days after the fil-
13 ing of such complaint nor later than 5 months after
14 the expiration of such 60-day period” in the second
15 sentence and inserting “the date of the filing of such
16 complaint nor later than 5 months after the filing of
17 such complaint”.

18 (2) By striking “60 days after” in the third
19 sentence and inserting “of”.

20 (3) By striking “expiration of such 60-day pe-
21 riod” in the third sentence and inserting “publica-
22 tion date”.

23 (4) By striking the fifth sentence and inserting
24 the following: “If no final decision is rendered by the
25 conclusion of the 180-day period commencing upon

1 initiation of a proceeding pursuant to this section,
2 the Commission shall state the reasons why it has
3 failed to do so and shall state its best estimate as
4 to when it reasonably expects to make such deci-
5 sion.”.

6 **SEC. 1285. REFUND AUTHORITY.**

7 Section 206 of the Federal Power Act (16 U.S.C.
8 824e) is amended by adding the following new subsection
9 at the end thereof:

10 “(e)(1) Except as provided in paragraph (2), if an
11 entity described in section 201(f) voluntarily makes a
12 short-term sale of electric energy and the sale violates
13 Commission rules in effect at the time of the sale, such
14 entity shall be subject to the Commission’s refund author-
15 ity under this section with respect to such violation.

16 “(2) This section shall not apply to—

17 “(A) any entity that sells less than 8,000,000
18 megawatt hours of electricity per year; or

19 “(B) any electric cooperative.

20 “(3) For purposes of this subsection, the term ‘short-
21 term sale’ means an agreement for the sale of electric en-
22 ergy at wholesale in interstate commerce that is for a pe-
23 riod of 31 days or less (excluding monthly contracts sub-
24 ject to automatic renewal).

1 “(4) The Commission shall have refund authority
2 under subsection (e)(1) with respect to a voluntary short-
3 term sale of electric energy by the Bonneville Power Ad-
4 ministration (in this section ‘Bonneville’) only if the sale
5 is at an unjust and unreasonable rate and, in that event,
6 may order a refund only for short-term sales made by
7 Bonneville at rates that are higher than the highest just
8 and reasonable rate charged by any other entity for a
9 short-term sale of electric energy in the same geographic
10 market for the same, or most nearly comparable, period
11 as the sale by Bonneville.

12 “(5) With respect to any Federal power marketing
13 agency or the Tennessee Valley Authority, the Commission
14 shall not assert or exercise any regulatory authority or
15 powers under subsection (e)(1) other than the ordering of
16 refunds to achieve a just and reasonable rate.”.

17 **SEC. 1286. SANCTITY OF CONTRACT.**

18 (a) IN GENERAL.—The Federal Energy Regulatory
19 Commission (in this section, “the Commission”) shall have
20 no authority to abrogate or modify any provision of an
21 executed contract or executed contract amendment de-
22 scribed in subsection (b) that has been entered into or
23 taken effect, except upon a finding that failure to take
24 such action would be contrary to the public interest.

1 (b) LIMITATION.—Except as provided in subsection
2 (c), this section shall apply only to a contract or contract
3 amendment—

4 (1) executed on or after the date of enactment
5 of this Act; and

6 (2) entered into—

7 (A) for the purchase or sale of electric en-
8 ergy under section 205 of the Federal Power
9 Act (16 U.S.C. 824d) where the seller has been
10 authorized by the Commission to charge mar-
11 ket-based rates; or

12 (B) under section 4 of the Natural Gas
13 Act (15 U.S.C. 717c) where the natural gas
14 company has been authorized by the Commis-
15 sion to charge market-based rates for the serv-
16 ice described in the contract.

17 (c) EXCLUSION.—This section shall not apply to an
18 executed contract or executed contract amendment that
19 expressly provides for a standard of review other than the
20 public interest standard.

21 (d) SAVINGS PROVISION.—With respect to contracts
22 to which this section does not apply, nothing in this sec-
23 tion alters existing law regarding the applicable standard
24 of review for a contract subject to the jurisdiction of the
25 Commission.

1 **SEC. 1287. CONSUMER PRIVACY AND UNFAIR TRADE PRAC-**
2 **TICES.**

3 (a) PRIVACY.—The Federal Trade Commission may
4 issue rules protecting the privacy of electric consumers
5 from the disclosure of consumer information obtained in
6 connection with the sale or delivery of electric energy to
7 electric consumers.

8 (b) SLAMMING.—The Federal Trade Commission
9 may issue rules prohibiting the change of selection of an
10 electric utility except with the informed consent of the
11 electric consumer or if approved by the appropriate State
12 regulatory authority.

13 (c) CRAMMING.—The Federal Trade Commission
14 may issue rules prohibiting the sale of goods and services
15 to an electric consumer unless expressly authorized by law
16 or the electric consumer.

17 (d) RULEMAKING.—The Federal Trade Commission
18 shall proceed in accordance with section 553 of title 5,
19 United States Code, when prescribing a rule under this
20 section.

21 (e) STATE AUTHORITY.—If the Federal Trade Com-
22 mission determines that a State's regulations provide
23 equivalent or greater protection than the provisions of this
24 section, such State regulations shall apply in that State
25 in lieu of the regulations issued by the Commission under
26 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 **Subtitle H—Merger Reform**

12 **SEC. 1291. MERGER REVIEW REFORM AND ACCOUNT-** 13 **ABILITY.**

14 (a) MERGER REVIEW REFORM.—Within 180 days
15 after the date of enactment of this Act, the Secretary of
16 Energy, in consultation with the Federal Energy Regu-
17 latory Commission and the Attorney General of the United
18 States, shall prepare, and transmit to Congress each of
19 the following:

20 (1) A study of the extent to which the authori-
21 ties vested in the Federal Energy Regulatory Com-
22 mission under section 203 of the Federal Power Act
23 are duplicative of authorities vested in—

24 (A) other agencies of Federal and State
25 Government; and

1 (B) the Federal Energy Regulatory Com-
2 mission, including under sections 205 and 206
3 of the Federal Power Act.

4 (2) Recommendations on reforms to the Fed-
5 eral Power Act that would eliminate any unneces-
6 sary duplication in the exercise of regulatory author-
7 ity or unnecessary delays in the approval (or dis-
8 approval) of applications for the sale, lease, or other
9 disposition of public utility facilities.

10 (b) MERGER REVIEW ACCOUNTABILITY.—Not later
11 than 1 year after the date of enactment of this Act and
12 annually thereafter, with respect to all orders issued with-
13 in the preceding year that impose a condition on a sale,
14 lease, or other disposition of public utility facilities under
15 section 203(b) of the Federal Power Act, the Federal En-
16 ergy Regulatory Commission shall transmit a report to
17 Congress explaining each of the following:

18 (1) The condition imposed.

19 (2) Whether the Commission could have im-
20 posed such condition by exercising its authority
21 under any provision of the Federal Power Act other
22 than under section 203(b).

23 (3) If the Commission could not have imposed
24 such condition other than under section 203(b), why

1 the Commission determined that such condition was
2 consistent with the public interest.

3 **SEC. 1292. ELECTRIC UTILITY MERGERS.**

4 (a) AMENDMENT.—Section 203(a) of the Federal
5 Power Act (16 U.S.C. 824b(a)) is amended to read as fol-
6 lows:

7 “(a)(1) No public utility shall, without first having
8 secured an order of the Commission authorizing it to do
9 so—

10 “(A) sell, lease, or otherwise dispose of the
11 whole of its facilities subject to the jurisdiction of
12 the Commission, or any part thereof of a value in
13 excess of \$10,000,000;

14 “(B) merge or consolidate, directly or indi-
15 rectly, such facilities or any part thereof with those
16 of any other person, by any means whatsoever; or

17 “(C) purchase, acquire, or take any security
18 with a value in excess of \$10,000,000 of any other
19 public utility.

20 “(2) No holding company in a holding company sys-
21 tem that includes a public utility shall purchase, acquire,
22 or take any security with a value in excess of \$10,000,000
23 of, or, by any means whatsoever, directly or indirectly,
24 merge or consolidate with, a public utility or a holding
25 company in a holding company system that includes a

1 public utility with a value in excess of \$10,000,000 with-
2 out first having secured an order of the Commission au-
3 thorizing it to do so.

4 “(3) Upon receipt of an application for such approval
5 the Commission shall give reasonable notice in writing to
6 the Governor and State commission of each of the States
7 in which the physical property affected, or any part there-
8 of, is situated, and to such other persons as it may deem
9 advisable.

10 “(4) After notice and opportunity for hearing, the
11 Commission shall approve the proposed disposition, con-
12 solidation, acquisition, or change in control, if it finds that
13 the proposed transaction will be consistent with the public
14 interest. In evaluating whether a transaction will be con-
15 sistent with the public interest, the Commission shall con-
16 sider whether the proposed transaction—

17 “(A) will adequately protect consumer interests;

18 “(B) will be consistent with competitive whole-
19 sale markets;

20 “(C) will impair the financial integrity of any
21 public utility that is a party to the transaction or an
22 associate company of any party to the transaction;
23 and

24 “(D) satisfies such other criteria as the Com-
25 mission considers consistent with the public interest.

1 “(5) The Commission shall, by rule, adopt procedures
2 for the expeditious consideration of applications for the
3 approval of dispositions, consolidations, or acquisitions
4 under this section. Such rules shall identify classes of
5 transactions, or specify criteria for transactions, that nor-
6 mally meet the standards established in paragraph (4).
7 The Commission shall provide expedited review for such
8 transactions. The Commission shall grant or deny any
9 other application for approval of a transaction not later
10 than 180 days after the application is filed. If the Com-
11 mission does not act within 180 days, such application
12 shall be deemed granted unless the Commission finds,
13 based on good cause, that further consideration is required
14 to determine whether the proposed transaction meets the
15 standards of paragraph (4) and issues an order tolling the
16 time for acting on the application for not more than 180
17 days, at the end of which additional period the Commis-
18 sion shall grant or deny the application.

19 “(6) For purposes of this subsection, the terms ‘asso-
20 ciate company’, ‘holding company’, and ‘holding company
21 system’ have the meaning given those terms in the Public
22 Utility Holding Company Act of 2005.”.

23 (b) EFFECTIVE DATE.—The amendments made by
24 this section shall take effect 12 months after the date of
25 enactment of this section.

Subtitle I—Definitions

2 SEC. 1295. DEFINITIONS.

3 (a) ELECTRIC UTILITY.—Section 3(22) of the Fed-
4 eral Power Act (16 U.S.C. 796(22)) is amended to read
5 as follows:

6 “(22) ELECTRIC UTILITY.—The term ‘electric
7 utility’ means any person or Federal or State agency
8 (including any entity described in section 201(f))
9 that sells electric energy; such term includes the
10 Tennessee Valley Authority and each Federal power
11 marketing administration.”.

12 (b) TRANSMITTING UTILITY.—Section 3(23) of the
13 Federal Power Act (16 U.S.C. 796(23)) is amended to
14 read as follows:

15 “(23) TRANSMITTING UTILITY.—The term
16 ‘transmitting utility’ means an entity, including any
17 entity described in section 201(f), that owns, oper-
18 ates, or controls facilities used for the transmission
19 of electric energy—

20 “(A) in interstate commerce; or

21 “(B) for the sale of electric energy at
22 wholesale.”.

23 (c) ADDITIONAL DEFINITIONS.—Section 3 of the
24 Federal Power Act (16 U.S.C. 796) is amended by adding
25 at the end the following:

1 “(26) ELECTRIC COOPERATIVE.—The term
2 ‘electric cooperative’ means a cooperatively owned
3 electric utility.

4 “(27) RTO.—The term ‘Regional Transmission
5 Organization’ or ‘RTO’ means an entity of sufficient
6 regional scope approved by the Commission to exer-
7 cise operational or functional control of facilities
8 used for the transmission of electric energy in inter-
9 state commerce and to ensure nondiscriminatory ac-
10 cess to such facilities.

11 “(28) ISO.—The term ‘Independent System
12 Operator’ or ‘ISO’ means an entity approved by the
13 Commission to exercise operational or functional
14 control of facilities used for the transmission of elec-
15 tric energy in interstate commerce and to ensure
16 nondiscriminatory access to such facilities.”.

17 (d) COMMISSION.—For the purposes of this title, the
18 term “Commission” means the Federal Energy Regu-
19 latory Commission.

20 (e) APPLICABILITY.—Section 201(f) of the Federal
21 Power Act (16 U.S.C. 824(f)) is amended by adding after
22 “political subdivision of a state,” the following: “an elec-
23 tric cooperative that has financing under the Rural Elec-
24 trification Act of 1936 (7 U.S.C. 901 et seq.) or that sells

1 less than 4,000,000 megawatt hours of electricity per
2 year.”.

3 **Subtitle J—Technical and** 4 **Conforming Amendments**

5 **SEC. 1297. CONFORMING AMENDMENTS.**

6 The Federal Power Act is amended as follows:

7 (1) Section 201(b)(2) of such Act (16 U.S.C.
8 824(b)(2)) is amended as follows:

9 (A) In the first sentence by striking “210,
10 211, and 212” and inserting “203(a)(2),
11 206(e), 210, 211, 211A, 212, 215, 216, 217,
12 218, 219, 220, 221, and 222”.

13 (B) In the second sentence by striking
14 “210 or 211” and inserting “203(a)(2), 206(e),
15 210, 211, 211A, 212, 215, 216, 217, 218, 219,
16 220, 221, and 222”.

17 (C) Section 201(b)(2) of such Act is
18 amended by striking “The” in the first place it
19 appears and inserting “Notwithstanding section
20 201(f), the” and in the second sentence after
21 “any order” by inserting “or rule”.

22 (2) Section 201(e) of such Act is amended by
23 striking “210, 211, or 212” and inserting “206(e),
24 206(f), 210, 211, 211A, 212, 215, 216, 217, 218,
25 219, 220, 221, and 222”.

1 (3) Section 206 of such Act (16 U.S.C. 824e)
2 is amended as follows:

3 (A) In subsection (b), in the seventh sen-
4 tence, by striking “the public utility to make”.

5 (B) In the first sentence of subsection (a),
6 by striking “hearing had” and inserting “hear-
7 ing held”.

8 (4) Section 211(c) of such Act (16 U.S.C.
9 824j(c)) is amended by—

10 (A) striking “(2)”;

11 (B) striking “(A)” and inserting “(1)”;

12 (C) striking “(B)” and inserting “(2)”;

13 and

14 (D) striking “termination of modification”
15 and inserting “termination or modification”.

16 (5) Section 211(d)(1) of such Act (16 U.S.C.
17 824j(d)(1)) is amended by striking “electric utility”
18 the second time it appears and inserting “transmit-
19 ting utility”.

20 (6) Section 315 (c) of such Act (16 U.S.C.
21 825n(c)) is amended by striking “subsection” and
22 inserting “section”.

1 **Subtitle K—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 BOARD ON ECONOMIC DISPATCH.**

6 “(a) **IN GENERAL.**—The Commission shall convene
7 a joint board pursuant to section 209 of this Act to study
8 the issue of security constrained economic dispatch for a
9 market region.

10 “(b) **MEMBERSHIP.**—The Commission shall request
11 each State to nominate a representative for such joint
12 board.

13 “(c) **POWERS.**—The board’s sole authority shall be
14 to consider issues relevant to what constitutes ‘security
15 constrained economic dispatch’ and how such a mode of
16 operating an electric energy system affects or enhances the
17 reliability and affordability of service to customers.

18 “(d) **REPORT TO THE CONGRESS.**—The board shall
19 issue a report on these matters within one year of enact-
20 ment of this section, including any consensus rec-
21 ommendations for statutory or regulatory reform.”.

1 **TITLE XIV—MISCELLANEOUS**
2 **Subtitle C—Other Provisions**

3 **SEC. 1441. CONTINUATION OF TRANSMISSION SECURITY**
4 **ORDER.**

5 Department of Energy Order No. 202–03–2, issued
6 by the Secretary of Energy on August 28, 2003, shall re-
7 main in effect unless rescinded by Federal statute.

8 **SEC. 1442. REVIEW OF AGENCY DETERMINATIONS.**

9 Section 7 of the Natural Gas Act (15 U.S.C. 717f)
10 is amended by adding at the end the following:

11 “(i)(1) The United States Court of Appeals for the
12 District of Columbia Circuit shall have original and exclu-
13 sive jurisdiction over any civil action—

14 “(A) for review of any order or action of any
15 Federal or State administrative agency or officer to
16 issue, condition, or deny any permit, license, concur-
17 rence, or approval issued under authority of any
18 Federal law, other than the Coastal Zone Manage-
19 ment Act of 1972 (16 U.S.C. 1451 et seq.), required
20 for the construction of a natural gas pipeline for
21 which a certificate of public convenience and neces-
22 sity is issued by the Commission under this section;

23 “(B) alleging unreasonable delay by any Fed-
24 eral or State administrative agency or officer in en-

1 tering an order or taking other action described in
2 subparagraph (A); or

3 “(C) challenging any decision made or action
4 taken under this subsection.

5 “(2)(A) If the Court finds that the order, action, or
6 failure to act is not consistent with the public convenience
7 and necessity (as determined by the Commission under
8 this section), or would prevent the construction and oper-
9 ation of natural gas facilities authorized by the certificate
10 of public convenience and necessity, the permit, license,
11 concurrence, or approval that is the subject of the order,
12 action, or failure to act shall be deemed to have been
13 issued subject to any conditions set forth in the reviewed
14 order or action that the Court finds to be consistent with
15 the public convenience and necessity.

16 “(B) For purposes of paragraph (1)(B), the failure
17 of an agency or officer to issue any such permit, license,
18 concurrence, or approval within the later of 1 year after
19 the date of filing of an application for the permit, license,
20 concurrence, or approval or 60 days after the date of
21 issuance of the certificate of public convenience and neces-
22 sity under this section, shall be considered to be unreason-
23 able delay unless the Court, for good cause shown, deter-
24 mines otherwise.

1 “(C) The Court shall set any action brought under
2 paragraph (1) for expedited consideration.”.

3 **SEC. 1443. ATTAINMENT DATES FOR DOWNWIND OZONE**
4 **NONATTAINMENT AREAS.**

5 Section 181 of the Clean Air Act (42 U.S.C.7511)
6 is amended by adding the following new subsection at the
7 end thereof:

8 “(d) **EXTENDED ATTAINMENT DATE FOR CERTAIN**
9 **DOWNWIND AREAS.—**

10 “(1) **DEFINITIONS.—**(A) The term ‘upwind
11 area’ means an area that—

12 “(i) significantly contributes to nonattain-
13 ment in another area, hereinafter referred to as
14 a ‘downwind area’; and

15 “(ii) is either—

16 “(I) a nonattainment area with a later
17 attainment date than the downwind area,
18 or

19 “(II) an area in another State that
20 the Administrator has found to be signifi-
21 cantly contributing to nonattainment in
22 the downwind area in violation of section
23 110(a)(2)(D) and for which the Adminis-
24 trator has established requirements
25 through notice and comment rulemaking to

1 eliminate the emissions causing such sig-
2 nificant contribution.

3 “(B) The term ‘current classification’ means
4 the classification of a downwind area under this sec-
5 tion at the time of the determination under para-
6 graph (2).

7 “(2) EXTENSION.—If the Administrator—

8 “(A) determines that any area is a down-
9 wind area with respect to a particular national
10 ambient air quality standard for ozone; and

11 “(B) approves a plan revision for such
12 area as provided in paragraph (3) prior to a re-
13 classification under subsection (b)(2)(A),
14 the Administrator, in lieu of such reclassification,
15 shall extend the attainment date for such downwind
16 area for such standard in accordance with paragraph
17 (5).

18 “(3) REQUIRED APPROVAL.—In order to extend
19 the attainment date for a downwind area under this
20 subsection, the Administrator must approve a revi-
21 sion of the applicable implementation plan for the
22 downwind area for such standard that—

23 “(A) complies with all requirements of this
24 Act applicable under the current classification
25 of the downwind area, including any require-

1 ments applicable to the area under section
2 172(c) for such standard; and

3 “(B) includes any additional measures
4 needed to demonstrate attainment by the ex-
5 tended attainment date provided under this
6 subsection.

7 “(4) PRIOR RECLASSIFICATION DETERMINA-
8 TION.—If, no more than 18 months prior to the date
9 of enactment of this subsection, the Administrator
10 made a reclassification determination under sub-
11 section (b)(2)(A) for any downwind area, and the
12 Administrator approves the plan revision referred to
13 in paragraph (3) for such area within 12 months
14 after the date of enactment of this subsection, the
15 reclassification shall be withdrawn and the attain-
16 ment date extended in accordance with paragraph
17 (5) upon such approval. The Administrator shall
18 also withdraw a reclassification determination under
19 subsection (b)(2)(A) made after the date of enact-
20 ment of this subsection and extend the attainment
21 date in accordance with paragraph (5) if the Admin-
22 istrator approves the plan revision referred to in
23 paragraph (3) within 12 months of the date the re-
24 classification determination under subsection
25 (b)(2)(A) is issued. In such instances the ‘current

1 classification' used for evaluating the revision of the
2 applicable implementation plan under paragraph (3)
3 shall be the classification of the downwind area
4 under this section immediately prior to such reclassi-
5 fication.

6 “(5) EXTENDED DATE.—The attainment date
7 extended under this subsection shall provide for at-
8 tainment of such national ambient air quality stand-
9 ard for ozone in the downwind area as expeditiously
10 as practicable but no later than the date on which
11 the last reductions in pollution transport necessary
12 for attainment in the downwind area are required to
13 be achieved by the upwind area or areas.”.

14 **SEC. 1444. ENERGY PRODUCTION INCENTIVES.**

15 (a) IN GENERAL.—A State may provide to any enti-
16 ty—

17 (1) a credit against any tax or fee owed to the
18 State under a State law, or

19 (2) any other tax incentive,
20 determined by the State to be appropriate, in the amount
21 calculated under and in accordance with a formula deter-
22 mined by the State, for production described in subsection
23 (b) in the State by the entity that receives such credit or
24 such incentive.

1 (b) ELIGIBLE ENTITIES.—Subsection (a) shall apply
2 with respect to the production in the State of—

3 (1) electricity from coal mined in the State and
4 used in a facility, if such production meets all appli-
5 cable Federal and State laws and if such facility
6 uses scrubbers or other forms of clean coal tech-
7 nology,

8 (2) electricity from a renewable source such as
9 wind, solar, or biomass, or

10 (3) ethanol.

11 (c) EFFECT ON INTERSTATE COMMERCE.—Any ac-
12 tion taken by a State in accordance with this section with
13 respect to a tax or fee payable, or incentive applicable,
14 for any period beginning after the date of the enactment
15 of this Act shall—

16 (1) be considered to be a reasonable regulation
17 of commerce; and

18 (2) not be considered to impose an undue bur-
19 den on interstate commerce or to otherwise impair,
20 restrain, or discriminate, against interstate com-
21 merce.

22 **SEC. 1446. REGULATION OF CERTAIN OIL USED IN TRANS-**
23 **FORMERS.**

24 Notwithstanding any other provision of law, or rule
25 promulgated by the Environmental Protection Agency,

1 vegetable oil made from soybeans and used in electric
2 transformers as thermal insulation shall not be regulated
3 as an oil as defined under section 2(a)(1)(A) of the Edible
4 Oil Regulatory Reform Act (33 U.S.C. 2720(a)(1)(A)).

5 **SEC. 1447. RISK ASSESSMENTS.**

6 Subtitle B of title XXX of the Energy Policy Act of
7 1992 is amended by adding at the end the following new
8 section:

9 **“SEC. 3022. RISK ASSESSMENT.**

10 “Federal agencies conducting assessments of risks to
11 human health and the environment from energy tech-
12 nology, production, transport, transmission, distribution,
13 storage, use, or conservation activities shall use sound and
14 objective scientific practices in assessing such risks, shall
15 consider the best available science (including peer reviewed
16 studies), and shall include a description of the weight of
17 the scientific evidence concerning such risks.”

18 **SEC. 1448. OXYGEN-FUEL.**

19 (a) PROGRAM.—The Secretary of Energy shall estab-
20 lish a program on oxygen-fuel systems. If feasible, the pro-
21 gram shall include renovation of at least one existing large
22 unit and one existing small unit, and construction of one
23 new large unit and one new small unit. Cost sharing shall
24 not be required.

1 (b) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to the Secretary for car-
3 rying out this section—

4 (1) \$100,000,000 for fiscal year 2006;

5 (2) \$100,000,000 for fiscal year 2007; and

6 (3) \$100,000,000 for fiscal year 2008.

7 (c) DEFINITIONS.—For purposes of this section—

8 (1) the term “large unit” means a unit with a
9 generating capacity of 100 megawatts or more;

10 (2) the term “oxygen-fuel systems” means sys-
11 tems that utilize fuel efficiency benefits of oil, gas,
12 coal, and biomass combustion using substantially
13 pure oxygen, with high flame temperatures and the
14 exclusion of air from the boiler, in industrial or elec-
15 tric utility steam generating units; and

16 (3) the term “small unit” means a unit with a
17 generating capacity in the 10–50 megawatt range.

18 **SEC. 1449. PETROCHEMICAL AND OIL REFINERY FACILITY**

19 **HEALTH ASSESSMENT.**

20 (a) ESTABLISHMENT.—The Secretary of Energy
21 shall conduct a study of direct and significant health im-
22 pacts to persons resulting from living in proximity to pe-
23 trochemical and oil refinery facilities. The Secretary shall
24 consult with the Director of the National Cancer Institute
25 and other Federal Government bodies with expertise in the

1 field it deems appropriate in the design of such study. The
2 study shall be conducted according to sound and objective
3 scientific practices and present the weight of the scientific
4 evidence. The Secretary shall obtain scientific peer review
5 of the draft study.

6 (b) REPORT TO CONGRESS.—The Secretary shall
7 transmit the results of the study to Congress within 6
8 months of the enactment of this section.

9 (c) AUTHORIZATION OF APPROPRIATIONS.—There
10 are authorized to be appropriated to the Secretary for ac-
11 tivities under this section such sums as are necessary for
12 the completion of the study.

13 **TITLE XV—ETHANOL AND**
14 **MOTOR FUELS**
15 **Subtitle A—General Provisions**

16 **SEC. 1501. RENEWABLE CONTENT OF MOTOR VEHICLE**
17 **FUEL.**

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 (q); and

22 (2) by inserting after subsection (n) the fol-
23 lowing:

24 “(o) RENEWABLE FUEL PROGRAM.—

25 “(1) DEFINITIONS.—In this section:

1 “(A) ETHANOL.—(i) The term ‘cellulosic
2 biomass ethanol’ means ethanol derived from
3 any lignocellulosic or hemicellulosic matter that
4 is available on a renewable or recurring basis,
5 including—

6 “(I) dedicated energy crops and trees;

7 “(II) wood and wood residues;

8 “(III) plants;

9 “(IV) grasses;

10 “(V) agricultural residues; and

11 “(VI) fibers.

12 “(ii) The term ‘waste derived ethanol’
13 means ethanol derived from—

14 “(I) animal wastes, including poultry
15 fats and poultry wastes, and other waste
16 materials; or

17 “(II) municipal solid waste.

18 “(B) RENEWABLE FUEL.—

19 “(i) IN GENERAL.—The term ‘renew-
20 able fuel’ means motor vehicle fuel that—

21 “(I)(aa) is produced from grain,
22 starch, oilseeds, or other biomass; or

23 “(bb) is natural gas produced
24 from a biogas source, including a
25 landfill, sewage waste treatment plant,

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 cellulosic biomass eth-
9 anol, waste derived ethanol, and biodiesel
10 (as defined in section 312(f) of the Energy
11 Policy Act of 1992 (42 U.S.C. 13220(f))
12 and any blending components derived from
13 renewable fuel (provided that only the re-
14 newable fuel portion of any such blending
15 component shall be considered part of the
16 applicable volume under the renewable fuel
17 program established by this subsection).

18 “(C) SMALL REFINERY.—The term ‘small
19 refinery’ means a refinery for which average ag-
20 gregate daily crude oil throughput for the cal-
21 endar year (as determined by dividing the ag-
22 gregate throughput for the calendar year by the
23 number of days in the calendar year) does not
24 exceed 75,000 barrels.

25 “(2) RENEWABLE FUEL PROGRAM.—

1 “(A) IN GENERAL.—Not later than 1 year
2 after the enactment of this subsection, the Ad-
3 ministrator shall promulgate regulations ensur-
4 ing that motor vehicle fuel sold or dispensed to
5 consumers in the contiguous United States, on
6 an annual average basis, contains the applicable
7 volume of renewable fuel as specified in sub-
8 paragraph (B). Regardless of the date of pro-
9 mulgation, such regulations shall contain com-
10 pliance provisions for refiners, blenders, and
11 importers, as appropriate, to ensure that the re-
12 quirements of this section are met, but shall not
13 restrict where renewable fuel can be used, or
14 impose any per-gallon obligation for the use of
15 renewable fuel. If the Administrator does not
16 promulgate such regulations, the applicable per-
17 centage referred to in paragraph (4), on a vol-
18 ume percentage of gasoline basis, shall be 2.2
19 in 2005.

20 “(B) APPLICABLE VOLUME.—

21 “(i) CALENDAR YEARS 2005 THROUGH
22 2012.—For the purpose of subparagraph
23 (A), the applicable volume for any of cal-
24 endar years 2005 through 2012 shall be

1 determined in accordance with the fol-
2 lowing table:

“Calendar year	Applicable volume of renewable fuel (in billions of gallons)
2005	3.1
2006	3.3
2007	3.5
2008	3.8
2009	4.1
2010	4.4
2011	4.7
2012	5.0

3 “(ii) CALENDAR YEAR 2013 AND
4 THEREAFTER.—For the purpose of sub-
5 paragraph (A), the applicable volume for
6 calendar year 2013 and each calendar year
7 thereafter shall be equal to the product ob-
8 tained by multiplying—

9 “(I) the number of gallons of
10 gasoline that the Administrator esti-
11 mates will be sold or introduced into
12 commerce in the calendar year; and

13 “(II) the ratio that—

14 “(aa) 5.0 billion gallons of
15 renewable fuels; bears to

16 “(bb) the number of gallons
17 of gasoline sold or introduced
18 into commerce in calendar year
19 2012.

1 “(3) NON-CONTIGUOUS STATE OPT-IN.—Upon
2 the petition of a non-contiguous State, the Adminis-
3 trator may allow the renewable fuel program estab-
4 lished by subtitle A of title XV of the Energy Policy
5 Act of 2005 to apply in such non-contiguous State
6 at the same time or any time after the Adminis-
7 trator promulgates regulations under paragraph (2).
8 The Administrator may promulgate or revise regula-
9 tions under paragraph (2), establish applicable per-
10 centages under paragraph (4), provide for the gen-
11 eration of credits under paragraph (6), and take
12 such other actions as may be necessary to allow for
13 the application of the renewable fuels program in a
14 non-contiguous State.

15 “(4) APPLICABLE PERCENTAGES.—

16 “(A) PROVISION OF ESTIMATE OF VOL-
17 UMES OF GASOLINE SALES.—Not later than Oc-
18 tober 31 of each of calendar years 2005
19 through 2011, the Administrator of the Energy
20 Information Administration shall provide to the
21 Administrator of the Environmental Protection
22 Agency an estimate of the volumes of gasoline
23 that will be sold or introduced into commerce in
24 the United States during the following calendar
25 year.

1 “(B) DETERMINATION OF APPLICABLE
2 PERCENTAGES.—

3 “(i) IN GENERAL.—Not later than
4 November 30 of each of the calendar years
5 2005 through 2011, based on the estimate
6 provided under subparagraph (A), the Ad-
7 ministrator shall determine and publish in
8 the Federal Register, with respect to the
9 following calendar year, the renewable fuel
10 obligation that ensures that the require-
11 ments of paragraph (2) are met.

12 “(ii) REQUIRED ELEMENTS.—The re-
13 newable fuel obligation determined for a
14 calendar year under clause (i) shall—

15 “(I) be applicable to refiners,
16 blenders, and importers, as appro-
17 priate;

18 “(II) be expressed in terms of a
19 volume percentage of gasoline sold or
20 introduced into commerce; and

21 “(III) subject to subparagraph
22 (C)(i), consist of a single applicable
23 percentage that applies to all cat-
24 egories of persons specified in sub-
25 clause (I).

1 “(C) ADJUSTMENTS.—In determining the
2 applicable percentage for a calendar year, the
3 Administrator shall make adjustments—

4 “(i) to prevent the imposition of re-
5 dundant obligations to any person specified
6 in subparagraph (B)(ii)(I); and

7 “(ii) to account for the use of renew-
8 able fuel during the previous calendar year
9 by small refineries that are exempt under
10 paragraph (11).

11 “(5) EQUIVALENCY.—For the purpose of para-
12 graph (2), 1 gallon of either cellulosic biomass eth-
13 anol or waste derived ethanol—

14 “(A) shall be considered to be the equiva-
15 lent of 1.5 gallon of renewable fuel; or

16 “(B) if the cellulosic biomass ethanol or
17 waste derived ethanol is derived from agricul-
18 tural residue or wood residue or is an agricul-
19 tural byproduct (as that term is used in section
20 919 of the Energy Policy Act of 2005), shall be
21 considered to be the equivalent of 2.5 gallons of
22 renewable fuel.

23 “(6) CREDIT PROGRAM.—

24 “(A) IN GENERAL.—The regulations pro-
25 mulgated to carry out this subsection shall pro-

1 vide for the generation of an appropriate
2 amount of credits by any person that refines,
3 blends, or imports gasoline that contains a
4 quantity of renewable fuel that is greater than
5 the quantity required under paragraph (2).
6 Such regulations shall provide for the genera-
7 tion of an appropriate amount of credits for
8 biodiesel fuel. If a small refinery notifies the
9 Administrator that it waives the exemption pro-
10 vided paragraph (11), the regulations shall pro-
11 vide for the generation of credits by the small
12 refinery beginning in the year following such
13 notification.

14 “(B) USE OF CREDITS.—A person that
15 generates credits under subparagraph (A) may
16 use the credits, or transfer all or a portion of
17 the credits to another person, for the purpose
18 of complying with paragraph (2).

19 “(C) LIFE OF CREDITS.—A credit gen-
20 erated under this paragraph shall be valid to
21 show compliance—

22 “(i) in the calendar year in which the
23 credit was generated or the next calendar
24 year; or

1 “(ii) in the calendar year in which the
2 credit was generated or next two consecu-
3 tive calendar years if the Administrator
4 promulgates regulations under paragraph
5 (7).

6 “(D) INABILITY TO PURCHASE SUFFICIENT
7 CREDITS.—The regulations promulgated to
8 carry out this subsection shall include provi-
9 sions allowing any person that is unable to gen-
10 erate or purchase sufficient credits to meet the
11 requirements under paragraph (2) to carry for-
12 ward a renewable fuel deficit provided that, in
13 the calendar year following the year in which
14 the renewable fuel deficit is created, such per-
15 son shall achieve compliance with the renewable
16 fuel requirement under paragraph (2), and shall
17 generate or purchase additional renewable fuel
18 credits to offset the renewable fuel deficit of the
19 previous year.

20 “(7) SEASONAL VARIATIONS IN RENEWABLE
21 FUEL USE.—

22 “(A) STUDY.—For each of the calendar
23 years 2005 through 2012, the Administrator of
24 the Energy Information Administration shall
25 conduct a study of renewable fuels blending to

1 determine whether there are excessive seasonal
2 variations in the use of renewable fuels.

3 “(B) REGULATION OF EXCESSIVE SEA-
4 SONAL VARIATIONS.—If, for any calendar year,
5 the Administrator of the Energy Information
6 Administration, based on the study under sub-
7 paragraph (A), makes the determinations speci-
8 fied in subparagraph (C), the Administrator
9 shall promulgate regulations to ensure that 35
10 percent or more of the quantity of renewable
11 fuels necessary to meet the requirement of
12 paragraph (2) is used during each of the peri-
13 ods specified in subparagraph (D) of each sub-
14 sequent calendar year.

15 “(C) DETERMINATIONS.—The determina-
16 tions referred to in subparagraph (B) are
17 that—

18 “(i) less than 35 percent of the quan-
19 tity of renewable fuels necessary to meet
20 the requirement of paragraph (2) has been
21 used during one of the periods specified in
22 subparagraph (D) of the calendar year;

23 “(ii) a pattern of excessive seasonal
24 variation described in clause (i) will con-
25 tinue in subsequent calendar years; and

1 “(iii) promulgating regulations or
2 other requirements to impose a 35 percent
3 or more seasonal use of renewable fuels
4 will not prevent or interfere with the at-
5 tainment of national ambient air quality
6 standards or significantly increase the
7 price of motor fuels to the consumer.

8 “(D) PERIODS.—The two periods referred
9 to in this paragraph are—

10 “(i) April through September; and

11 “(ii) January through March and Oc-
12 tober through December.

13 “(E) EXCLUSIONS.—Renewable fuels
14 blended or consumed in 2005 in a State which
15 has received a waiver under section 209(b) shall
16 not be included in the study in subparagraph
17 (A).

18 “(8) WAIVERS.—

19 “(A) IN GENERAL.—The Administrator, in
20 consultation with the Secretary of Agriculture
21 and the Secretary of Energy, may waive the re-
22 quirement of paragraph (2) in whole or in part
23 on petition by one or more States by reducing
24 the national quantity of renewable fuel required
25 under this subsection—

1 “(i) based on a determination by the
2 Administrator, after public notice and op-
3 portunity for comment, that implementa-
4 tion of the requirement would severely
5 harm the economy or environment of a
6 State, a region, or the United States; or

7 “(ii) based on a determination by the
8 Administrator, after public notice and op-
9 portunity for comment, that there is an in-
10 adequate domestic supply or distribution
11 capacity to meet the requirement.

12 “(B) PETITIONS FOR WAIVERS.—The Ad-
13 ministrator, in consultation with the Secretary
14 of Agriculture and the Secretary of Energy,
15 shall approve or disapprove a State petition for
16 a waiver of the requirement of paragraph (2)
17 within 90 days after the date on which the peti-
18 tion is received by the Administrator.

19 “(C) TERMINATION OF WAIVERS.—A waiv-
20 er granted under subparagraph (A) shall termi-
21 nate after 1 year, but may be renewed by the
22 Administrator after consultation with the Sec-
23 retary of Agriculture and the Secretary of En-
24 ergy.

1 “(9) STUDY AND WAIVER FOR INITIAL YEAR OF
2 PROGRAM.—Not later than 180 days after the enact-
3 ment of this subsection, the Secretary of Energy
4 shall complete for the Administrator a study assess-
5 ing whether the renewable fuels requirement under
6 paragraph (2) will likely result in significant adverse
7 consumer impacts in 2005, on a national, regional,
8 or State basis. Such study shall evaluate renewable
9 fuel supplies and prices, blendstock supplies, and
10 supply and distribution system capabilities. Based
11 on such study, the Secretary shall make specific rec-
12 ommendations to the Administrator regarding waiv-
13 er of the requirements of paragraph (2), in whole or
14 in part, to avoid any such adverse impacts. Within
15 270 days after the enactment of this subsection, the
16 Administrator shall, consistent with the rec-
17 ommendations of the Secretary, waive, in whole or in
18 part, the renewable fuels requirement under para-
19 graph (2) by reducing the national quantity of re-
20 newable fuel required under this subsection in 2005.
21 This paragraph shall not be interpreted as limiting
22 the Administrator’s authority to waive the require-
23 ments of paragraph (2) in whole, or in part, under
24 paragraph (8) or paragraph (10), pertaining to
25 waivers.

1 “(10) ASSESSMENT AND WAIVER.—The Admin-
2 istrator, in consultation with the Secretary of En-
3 ergy and the Secretary of Agriculture, shall evaluate
4 the requirement of paragraph (2) and determine,
5 prior to January 1, 2007, and prior to January 1
6 of any subsequent year in which the applicable vol-
7 ume of renewable fuel is increased under paragraph
8 (2)(B), whether the requirement of paragraph (2),
9 including the applicable volume of renewable fuel
10 contained in paragraph (2)(B) should remain in ef-
11 fect, in whole or in part, during 2007 or any year
12 or years subsequent to 2007. In evaluating the re-
13 quirement of paragraph (2) and in making any de-
14 termination under this section, the Administrator
15 shall consider the best available information and
16 data collected by accepted methods or best available
17 means regarding—

18 “(A) the capacity of renewable fuel pro-
19 ducers to supply an adequate amount of renew-
20 able fuel at competitive prices to fulfill the re-
21 quirement of paragraph (2);

22 “(B) the potential of the requirement of
23 paragraph (2) to significantly raise the price of
24 gasoline, food (excluding the net price impact
25 on the requirement in paragraph (2) on com-

1 commodities used in the production of ethanol), or
2 heating oil for consumers in any significant
3 area or region of the country above the price
4 that would otherwise apply to such commodities
5 in the absence of such requirement;

6 “(C) the potential of the requirement of
7 paragraph (2) to interfere with the supply of
8 fuel in any significant gasoline market or region
9 of the country, including interference with the
10 efficient operation of refiners, blenders, import-
11 ers, wholesale suppliers, and retail vendors of
12 gasoline, and other motor fuels; and

13 “(D) the potential of the requirement of
14 paragraph (2) to cause or promote exceedances
15 of Federal, State, or local air quality standards.

16 If the Administrator determines, by clear and con-
17 vincing information, after public notice and the op-
18 portunity for comment, that the requirement of
19 paragraph (2) would have significant and meaning-
20 ful adverse impact on the supply of fuel and related
21 infrastructure or on the economy, public health, or
22 environment of any significant area or region of the
23 country, the Administrator may waive, in whole or
24 in part, the requirement of paragraph (2) in any one
25 year for which the determination is made for that

1 area or region of the country, except that any such
2 waiver shall not have the effect of reducing the ap-
3 plicable volume of renewable fuel specified in para-
4 graph (2)(B) with respect to any year for which the
5 determination is made. In determining economic im-
6 pact under this paragraph, the Administrator shall
7 not consider the reduced revenues available from the
8 Highway Trust Fund (section 9503 of the Internal
9 Revenue Code of 1986) as a result of the use of eth-
10 anol.

11 “(11) SMALL REFINERIES.—

12 “(A) IN GENERAL.—The requirement of
13 paragraph (2) shall not apply to small refineries
14 until the first calendar year beginning more
15 than 5 years after the first year set forth in the
16 table in paragraph (2)(B)(i). Not later than De-
17 cember 31, 2007, the Secretary of Energy shall
18 complete for the Administrator a study to de-
19 termine whether the requirement of paragraph
20 (2) would impose a disproportionate economic
21 hardship on small refineries. For any small re-
22 finery that the Secretary of Energy determines
23 would experience a disproportionate economic
24 hardship, the Administrator shall extend the

1 small refinery exemption for such small refinery
2 for no less than two additional years.

3 “(B) ECONOMIC HARDSHIP.—

4 “(i) EXTENSION OF EXEMPTION.—A
5 small refinery may at any time petition the
6 Administrator for an extension of the ex-
7 emption from the requirement of para-
8 graph (2) for the reason of dispropor-
9 tionate economic hardship. In evaluating a
10 hardship petition, the Administrator, in
11 consultation with the Secretary of Energy,
12 shall consider the findings of the study in
13 addition to other economic factors.

14 “(ii) DEADLINE FOR ACTION ON PETI-
15 TIONS.—The Administrator shall act on
16 any petition submitted by a small refinery
17 for a hardship exemption not later than 90
18 days after the receipt of the petition.

19 “(C) CREDIT PROGRAM.—If a small refin-
20 ery notifies the Administrator that it waives the
21 exemption provided by this Act, the regulations
22 shall provide for the generation of credits by
23 the small refinery beginning in the year fol-
24 lowing such notification.

1 “(D) OPT-IN FOR SMALL REFINERS.—A
2 small refinery shall be subject to the require-
3 ments of this section if it notifies the Adminis-
4 trator that it waives the exemption under sub-
5 paragraph (A).

6 “(12) ETHANOL MARKET CONCENTRATION
7 ANALYSIS.—

8 “(A) ANALYSIS.—

9 “(i) IN GENERAL.—Not later than
10 180 days after the date of enactment of
11 this subsection, and annually thereafter,
12 the Federal Trade Commission shall per-
13 form a market concentration analysis of
14 the ethanol production industry using the
15 Herfindahl-Hirschman Index to determine
16 whether there is sufficient competition
17 among industry participants to avoid price
18 setting and other anticompetitive behavior.

19 “(ii) SCORING.—For the purpose of
20 scoring under clause (i) using the
21 Herfindahl-Hirschman Index, all mar-
22 keting arrangements among industry par-
23 ticipants shall be considered.

24 “(B) REPORT.—Not later than December
25 1, 2005, and annually thereafter, the Federal

1 Trade Commission shall submit to Congress
2 and the Administrator a report on the results
3 of the market concentration analysis performed
4 under subparagraph (A)(i).”.

5 (b) PENALTIES AND ENFORCEMENT.—Section
6 211(d) of the Clean Air Act (42 U.S.C. 7545(d)) is
7 amended as follows:

8 (1) In paragraph (1)—

9 (A) in the first sentence, by striking “or
10 (n)” each place it appears and inserting “(n),
11 or (o)”; and

12 (B) in the second sentence, by striking “or
13 (m)” and inserting “(m), or (o)”.

14 (2) In the first sentence of paragraph (2), by
15 striking “and (n)” each place it appears and insert-
16 ing “(n), and (o)”.

17 (c) SURVEY OF RENEWABLE FUEL MARKET.—

18 (1) SURVEY AND REPORT.—Not later than De-
19 cember 1, 2006, and annually thereafter, the Admin-
20 istrator of the Environmental Protection Agency (in
21 consultation with the Secretary of Energy acting
22 through the Administrator of the Energy Informa-
23 tion Administration) shall—

24 (A) conduct, with respect to each conven-
25 tional gasoline use area and each reformulated

1 gasoline use area in each State, a survey to de-
2 termine the market shares of—

3 (i) conventional gasoline containing
4 ethanol;

5 (ii) reformulated gasoline containing
6 ethanol;

7 (iii) conventional gasoline containing
8 renewable fuel; and

9 (iv) reformulated gasoline containing
10 renewable fuel; and

11 (B) submit to Congress, and make publicly
12 available, a report on the results of the survey
13 under subparagraph (A).

14 (2) RECORDKEEPING AND REPORTING RE-
15 QUIREMENTS.—The Administrator of the Environ-
16 mental Protection Agency (hereinafter in this sub-
17 section referred to as the “Administrator”) may re-
18 quire any refiner, blender, or importer to keep such
19 records and make such reports as are necessary to
20 ensure that the survey conducted under paragraph
21 (1) is accurate. The Administrator, to avoid dupli-
22 cative requirements, shall rely, to the extent prac-
23 ticable, on existing reporting and recordkeeping re-
24 quirements and other information available to the

1 Administrator including gasoline distribution pat-
2 terns that include multistate use areas.

3 (3) APPLICABLE LAW.—Activities carried out
4 under this subsection shall be conducted in a man-
5 ner designed to protect confidentiality of individual
6 responses.

7 **SEC. 1502. FUELS SAFE HARBOR.**

8 (a) IN GENERAL.—Notwithstanding any other provi-
9 sion of Federal or State law, no renewable fuel, as defined
10 by section 211(o)(1) of the Clean Air Act, or methyl ter-
11 tiary butyl ether (hereinafter in this section referred to as
12 “MTBE”), used or intended to be used as a motor vehicle
13 fuel, nor any motor vehicle fuel containing such renewable
14 fuel or MTBE, shall be deemed a defective product by vir-
15 tue of the fact that it is, or contains, such a renewable
16 fuel or MTBE, if it does not violate a control or prohibi-
17 tion imposed by the Administrator of the Environmental
18 Protection Agency (hereinafter in this section referred to
19 as the “Administrator”) under section 211 of such Act,
20 and the manufacturer is in compliance with all requests
21 for information under subsection (b) of such section 211
22 of such Act. If the safe harbor provided by this section
23 does not apply, the existence of a claim of defective prod-
24 uct shall be determined under otherwise applicable law.
25 Nothing in this subsection shall be construed to affect the

1 liability of any person for environmental remediation costs,
2 drinking water contamination, negligence for spills or
3 other reasonably foreseeable events, public or private nuisance,
4 trespass, breach of warranty, breach of contract,
5 or any other liability other than liability based upon a
6 claim of defective product.

7 (b) EFFECTIVE DATE.—This section shall be effective
8 as of September 5, 2003, and shall apply with respect
9 to all claims filed on or after that date.

10 **SEC. 1503. FINDINGS AND MTBE TRANSITION ASSISTANCE.**

11 (a) FINDINGS.—Congress finds that—

12 (1) since 1979, methyl tertiary butyl ether
13 (hereinafter in this section referred to as “MTBE”)
14 has been used nationwide at low levels in gasoline to
15 replace lead as an octane booster or anti-knocking
16 agent;

17 (2) Public Law 101–549 (commonly known as
18 the “Clean Air Act Amendments of 1990”) (42
19 U.S.C. 7401 et seq.) established a fuel oxygenate
20 standard under which reformulated gasoline must
21 contain at least 2 percent oxygen by weight;

22 (3) at the time of the adoption of the fuel oxygen
23 standard, Congress was aware that significant
24 use of MTBE would result from the adoption of that
25 standard, and that the use of MTBE would likely be

1 important to the cost-effective implementation of
2 that program;

3 (4) Congress was aware that gasoline and its
4 component additives can and do leak from storage
5 tanks;

6 (5) 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 (6) having previously required oxygenates like
13 MTBE for air quality purposes, Congress has—

14 (A) reconsidered the relative value of
15 MTBE in gasoline;

16 (B) decided to establish a date certain for
17 action by the Environmental Protection Agency
18 to prohibit the use of MTBE in gasoline; and

19 (C) decided to provide for the elimination
20 of the oxygenate requirement for reformulated
21 gasoline and to provide for a renewable fuels
22 content requirement for motor fuel; and

23 (7) it is appropriate for Congress to provide
24 some limited transition assistance—

1 (A) to merchant producers of MTBE who
2 produced MTBE in response to a market cre-
3 ated by the oxygenate requirement contained in
4 the Clean Air Act; and

5 (B) for the purpose of mitigating any fuel
6 supply problems that may result from the elimi-
7 nation of the oxygenate requirement for refor-
8 mulated gasoline and from the decision to es-
9 tablish a date certain for action by the Environ-
10 mental Protection Agency to prohibit the use of
11 MTBE in gasoline.

12 (b) PURPOSES.—The purpose of this section is to
13 provide assistance to merchant producers of MTBE in
14 making the transition from producing MTBE to producing
15 other fuel additives.

16 (c) MTBE MERCHANT PRODUCER CONVERSION AS-
17 SISTANCE.—Section 211(c) of the Clean Air Act (42
18 U.S.C. 7545(c)) is amended by adding at the end the fol-
19 lowing:

20 “(5) MTBE MERCHANT PRODUCER CONVER-
21 SION ASSISTANCE.—

22 “(A) IN GENERAL.—

23 “(i) GRANTS.—The Secretary of En-
24 ergy, in consultation with the Adminis-
25 trator, may make grants to merchant pro-

1 ducers of methyl tertiary butyl ether (here-
2 inafter in this subsection referred to as
3 ‘MTBE’) in the United States to assist the
4 producers in the conversion of eligible pro-
5 duction facilities described in subpara-
6 graph (C) to the production of iso-octane,
7 iso-octene, alkylates, or renewable fuels.

8 “(ii) DETERMINATION.—The Admin-
9 istrator, in consultation with the Secretary
10 of Energy, may determine that transition
11 assistance for the production of iso-octane,
12 iso-octene, alkylates, or renewable fuels is
13 inconsistent with the provisions of sub-
14 paragraph (B) and, on that basis, may
15 deny applications for grants authorized by
16 this paragraph.

17 “(B) FURTHER GRANTS.—The Secretary
18 of Energy, in consultation with the Adminis-
19 trator, may also further make grants to mer-
20 chant producers of MTBE in the United States
21 to assist the producers in the conversion of eli-
22 gible production facilities described in subpara-
23 graph (C) to the production of such other fuel
24 additives (unless the Administrator determines
25 that such fuel additives may reasonably be an-

1 anticipated to endanger public health or the envi-
2 ronment) that, consistent with this subsection—

3 “(i) have been registered and have
4 been tested or are being tested in accord-
5 ance with the requirements of this section;
6 and

7 “(ii) will contribute to replacing gaso-
8 line volumes lost as a result of amend-
9 ments made to subsection (k) of this sec-
10 tion by section 1504(a) and 1506 of the
11 Energy Policy Act of 2005.

12 “(C) ELIGIBLE PRODUCTION FACILI-
13 TIES.—A production facility shall be eligible to
14 receive a grant under this paragraph if the pro-
15 duction facility—

16 “(i) is located in the United States;
17 and

18 “(ii) produced MTBE for consump-
19 tion before April 1, 2003 and ceased pro-
20 duction at any time after the date of en-
21 actment of this paragraph.

22 “(D) AUTHORIZATION OF APPROPRIA-
23 TIONS.—There are authorized to be appro-
24 priated to carry out this paragraph
25 \$250,000,000 for each of fiscal years 2005

1 through 2012, to remain available until ex-
2 pended.”.

3 **SEC. 1504. USE OF MTBE.**

4 (a) IN GENERAL.—Subject to subsections (e) and (f),
5 not later than December 31, 2014, the use of methyl ter-
6 tiary butyl ether (hereinafter in this section referred to
7 as “MTBE”) in motor vehicle fuel in any State other than
8 a State described in subsection (c) is prohibited.

9 (b) REGULATIONS.—The Administrator of the Envi-
10 ronmental Protection Agency (hereafter referred to in this
11 section as the “Administrator”) shall promulgate regula-
12 tions to effect the prohibition in subsection (a).

13 (c) STATES THAT AUTHORIZE USE.—A State de-
14 scribed in this subsection is a State in which the Governor
15 of the State submits a notification to the Administrator
16 authorizing the use of MTBE in motor vehicle fuel sold
17 or used in the State.

18 (d) PUBLICATION OF NOTICE.—The Administrator
19 shall publish in the Federal Register each notice submitted
20 by a State under subsection (c).

21 (e) TRACE QUANTITIES.—In carrying out subsection
22 (a), the Administrator may allow trace quantities of
23 MTBE, not to exceed 0.5 percent by volume, to be present
24 in motor vehicle fuel in cases that the Administrator deter-
25 mines to be appropriate.

1 (f) LIMITATION.—The Administrator, under author-
2 ity of subsection (a), shall not prohibit or control the pro-
3 duction of MTBE for export from the United States or
4 for any other use other than for use in motor vehicle fuel.

5 (g) EFFECT ON STATE LAW.—The amendments
6 made by this title have no effect regarding any available
7 authority of States to limit the use of methyl tertiary butyl
8 ether in motor vehicle fuel.

9 **SEC. 1505. NATIONAL ACADEMY OF SCIENCES REVIEW AND**
10 **PRESIDENTIAL DETERMINATION.**

11 (a) NAS REVIEW.—Not later than May 31, 2013, the
12 Secretary shall enter into an arrangement with the Na-
13 tional Academy of Sciences to review the use of methyl
14 tertiary butyl ether (hereafter referred to in this section
15 as “MTBE”) in fuel and fuel additives. The review shall
16 only use the best available scientific information and data
17 collected by accepted methods or the best available means.
18 The review shall examine the use of MTBE in fuel and
19 fuel additives, significant beneficial and detrimental ef-
20 fects of this use on environmental quality or public health
21 or welfare including the costs and benefits of such effects,
22 likely effects of controls or prohibitions on MTBE regard-
23 ing fuel availability and price, and other appropriate and
24 reasonable actions that are available to protect the envi-
25 ronment or public health or welfare from any detrimental

1 effects of the use of MTBE in fuel or fuel additives. The
2 review shall be peer-reviewed prior to publication and all
3 supporting data and analytical models shall be available
4 to the public. The review shall be completed no later than
5 May 31, 2014.

6 (b) **PRESIDENTIAL DETERMINATION.**—No later than
7 June 30, 2014, the President may make a determination
8 that restrictions on the use of MTBE to be implemented
9 pursuant to section 1504 shall not take place and that
10 the legal authority contained in section 1504 to prohibit
11 the use of MTBE in motor vehicle fuel shall become null
12 and void.

13 **SEC. 1506. ELIMINATION OF OXYGEN CONTENT REQUIRE-**
14 **MENT FOR REFORMULATED GASOLINE.**

15 (a) **ELIMINATION.**—

16 (1) **IN GENERAL.**—Section 211(k) of the Clean
17 Air Act (42 U.S.C. 7545(k)) is amended as follows:

18 (A) In paragraph (2)—

19 (i) in the second sentence of subpara-
20 graph (A), by striking “(including the oxy-
21 gen content requirement contained in sub-
22 paragraph (B))”;

23 (ii) by striking subparagraph (B); and

1 (iii) by redesignating subparagraphs
2 (C) and (D) as subparagraphs (B) and
3 (C), respectively.

4 (B) In paragraph (3)(A), by striking
5 clause (v).

6 (C) In paragraph (7)—

7 (i) in subparagraph (A)—

8 (I) by striking clause (i); and

9 (II) by redesignating clauses (ii)
10 and (iii) as clauses (i) and (ii), respec-
11 tively; and

12 (ii) in subparagraph (C)—

13 (I) by striking clause (ii).

14 (II) by redesignating clause (iii)
15 as clause (ii).

16 (2) EFFECTIVE DATE.—The amendments made
17 by paragraph (1) take effect 270 days after the date
18 of enactment of this Act, except that such amend-
19 ments shall take effect upon such date of enactment
20 in any State that has received a waiver under sec-
21 tion 209(b) of the Clean Air Act.

22 (b) MAINTENANCE OF TOXIC AIR POLLUTANT EMIS-
23 SION REDUCTIONS.—Section 211(k)(1) of the Clean Air
24 Act (42 U.S.C. 7545(k)(1)) is amended as follows:

1 (1) By striking “Within 1 year after the enact-
2 ment of the Clean Air Act Amendments of 1990,”
3 and inserting the following:

4 “(A) IN GENERAL.—Not later than No-
5 vember 15, 1991,”.

6 (2) By adding at the end the following:

7 “(B) MAINTENANCE OF TOXIC AIR POL-
8 LUTANT EMISSIONS REDUCTIONS FROM REFOR-
9 MULATED GASOLINE.—

10 “(i) DEFINITIONS.—In this subpara-
11 graph the term ‘PADD’ means a Petro-
12 leum Administration for Defense District.

13 “(ii) REGULATIONS REGARDING EMIS-
14 SIONS OF TOXIC AIR POLLUTANTS.—Not
15 later than 270 days after the date of en-
16 actment of this subparagraph the Adminis-
17 trator shall establish, for each refinery or
18 importer, standards for toxic air pollutants
19 from use of the reformulated gasoline pro-
20 duced or distributed by the refinery or im-
21 porter that maintain the reduction of the
22 average annual aggregate emissions of
23 toxic air pollutants for reformulated gaso-
24 line produced or distributed by the refinery
25 or importer during calendar years 1999

1 and 2000, determined on the basis of data
2 collected by the Administrator with respect
3 to the refinery or importer.

4 “(iii) STANDARDS APPLICABLE TO
5 SPECIFIC REFINERIES OR IMPORTERS.—

6 “(I) APPLICABILITY OF STAND-
7 ARDS.—For any calendar year, the
8 standards applicable to a refinery or
9 importer under clause (ii) shall apply
10 to the quantity of gasoline produced
11 or distributed by the refinery or im-
12 porter in the calendar year only to the
13 extent that the quantity is less than
14 or equal to the average annual quan-
15 tity of reformulated gasoline produced
16 or distributed by the refinery or im-
17 porter during calendar years 1999
18 and 2000.

19 “(II) APPLICABILITY OF OTHER
20 STANDARDS.—For any calendar year,
21 the quantity of gasoline produced or
22 distributed by a refinery or importer
23 that is in excess of the quantity sub-
24 ject to subclause (I) shall be subject
25 to standards for toxic air pollutants

1 promulgated under subparagraph (A)
2 and paragraph (3)(B).

3 “(iv) CREDIT PROGRAM.—The Admin-
4 istrator shall provide for the granting and
5 use of credits for emissions of toxic air pol-
6 lutants in the same manner as provided in
7 paragraph (7).

8 “(v) REGIONAL PROTECTION OF
9 TOXICS REDUCTION BASELINES.—

10 “(I) IN GENERAL.—Not later
11 than 60 days after the date of enact-
12 ment of this subparagraph, and not
13 later than April 1 of each calendar
14 year that begins after that date of en-
15 actment, the Administrator shall pub-
16 lish in the Federal Register a report
17 that specifies, with respect to the pre-
18 vious calendar year—

19 “(aa) the quantity of refor-
20 mulated gasoline produced that is
21 in excess of the average annual
22 quantity of reformulated gasoline
23 produced in 1999 and 2000; and

24 “(bb) the reduction of the
25 average annual aggregate emis-

1 sions of toxic air pollutants in
2 each PADD, based on retail sur-
3 vey data or data from other ap-
4 propriate sources.

5 “(II) EFFECT OF FAILURE TO
6 MAINTAIN AGGREGATE TOXICS RE-
7 DUCTIONS.—If, in any calendar year,
8 the reduction of the average annual
9 aggregate emissions of toxic air pol-
10 lutants in a PADD fails to meet or
11 exceed the reduction of the average
12 annual aggregate emissions of toxic
13 air pollutants in the PADD in cal-
14 endar years 1999 and 2000, the Ad-
15 ministrator, not later than 90 days
16 after the date of publication of the re-
17 port for the calendar year under sub-
18 clause (I), shall—

19 “(aa) identify, to the max-
20 imum extent practicable, the rea-
21 sons for the failure, including the
22 sources, volumes, and character-
23 istics of reformulated gasoline
24 that contributed to the failure;
25 and

1 “(bb) promulgate revisions
2 to the regulations promulgated
3 under clause (ii), to take effect
4 not earlier than 180 days but not
5 later than 270 days after the
6 date of promulgation, to provide
7 that, notwithstanding clause
8 (iii)(II), all reformulated gasoline
9 produced or distributed at each
10 refinery or importer shall meet
11 the standards applicable under
12 clause (ii) not later than April 1
13 of the year following the report
14 in subclause (II) and for subse-
15 quent years.

16 “(vi) REGULATIONS TO CONTROL
17 HAZARDOUS AIR POLLUTANTS FROM
18 MOTOR VEHICLES AND MOTOR VEHICLE
19 FUELS.—Not later than July 1, 2005, the
20 Administrator shall promulgate final regu-
21 lations to control hazardous air pollutants
22 from motor vehicles and motor vehicle
23 fuels, as provided for in section 80.1045 of
24 title 40, Code of Federal Regulations (as

1 in effect on the date of enactment of this
2 subparagraph).”.

3 (c) CONSOLIDATION IN REFORMULATED GASOLINE
4 REGULATIONS.—Not later than 180 days after the date
5 of enactment of this Act, the Administrator of the Envi-
6 ronmental Protection Agency shall revise the reformulated
7 gasoline regulations under subpart D of part 80 of title
8 40, Code of Federal Regulations, to consolidate the regula-
9 tions applicable to VOC-Control Regions 1 and 2 under
10 section 80.41 of that title by eliminating the less stringent
11 requirements applicable to gasoline designated for VOC-
12 Control Region 2 and instead applying the more stringent
13 requirements applicable to gasoline designated for VOC-
14 Control Region 1.

15 (d) SAVINGS CLAUSE.—Nothing in this section is in-
16 tended to affect or prejudice either any legal claims or ac-
17 tions with respect to regulations promulgated by the Ad-
18 ministrator of the Environmental Protection Agency
19 (hereinafter in this subsection referred to as the “Admin-
20 istrator”) prior to the date of enactment of this Act re-
21 garding emissions of toxic air pollutants from motor vehi-
22 cles or the adjustment of standards applicable to a specific
23 refinery or importer made under such prior regulations
24 and the Administrator may apply such adjustments to the
25 standards applicable to such refinery or importer under

1 clause (iii)(I) of section 211(k)(1)(B) of the Clean Air Act,
2 except that—

3 (1) the Administrator shall revise such adjust-
4 ments to be based only on calendar years 1999–
5 2000; and

6 (2) for adjustments based on toxic air pollutant
7 emissions from reformulated gasoline significantly
8 below the national annual average emissions of toxic
9 air pollutants from all reformulated gasoline, the
10 Administrator may revise such adjustments to take
11 account of the scope of Federal or State prohibitions
12 on the use of methyl tertiary butyl ether imposed
13 after the date of the enactment of this paragraph,
14 except that any such adjustment shall require such
15 refiner or importer, to the greatest extent prac-
16 ticable, to maintain the reduction achieved during
17 calendar years 1999–2000 in the average annual ag-
18 gregate emissions of toxic air pollutants from refor-
19 mulated gasoline produced or distributed by the re-
20 finery or importer; *Provided*, that any such adjust-
21 ment shall not be made at a level below the average
22 percentage of reductions of emissions of toxic air
23 pollutants for reformulated gasoline supplied to
24 PADD I during calendar years 1999–2000.

1 **SEC. 1507. ANALYSES OF MOTOR VEHICLE FUEL CHANGES.**

2 Section 211 of the Clean Air Act (42 U.S.C. 7545)
3 is amended by inserting after subsection (o) the following:

4 “(p) ANALYSES OF MOTOR VEHICLE FUEL CHANGES
5 AND EMISSIONS MODEL.—

6 “(1) ANTI-BACKSLIDING ANALYSIS.—

7 “(A) DRAFT ANALYSIS.—Not later than 4
8 years after the date of enactment of this sub-
9 section, the Administrator shall publish for pub-
10 lic comment a draft analysis of the changes in
11 emissions of air pollutants and air quality due
12 to the use of motor vehicle fuel and fuel addi-
13 tives resulting from implementation of the
14 amendments made by subtitle A of title XV of
15 the Energy Policy Act of 2005.

16 “(B) FINAL ANALYSIS.—After providing a
17 reasonable opportunity for comment but not
18 later than 5 years after the date of enactment
19 of this paragraph, the Administrator shall pub-
20 lish the analysis in final form.

21 “(2) EMISSIONS MODEL.—For the purposes of
22 this subsection, as soon as the necessary data are
23 available, the Administrator shall develop and final-
24 ize an emissions model that reasonably reflects the
25 effects of gasoline characteristics or components on

1 emissions from vehicles in the motor vehicle fleet
2 during calendar year 2005.”.

3 **SEC. 1508. DATA COLLECTION.**

4 Section 205 of the Department of Energy Organiza-
5 tion Act (42 U.S.C. 7135) is amended by adding at the
6 end the following:

7 “(m) RENEWABLE FUELS SURVEY.—(1) In order to
8 improve the ability to evaluate the effectiveness of the Na-
9 tion’s renewable fuels mandate, the Administrator shall
10 conduct and publish the results of a survey of renewable
11 fuels demand in the motor vehicle fuels market in the
12 United States monthly, and in a manner designed to pro-
13 tect the confidentiality of individual responses. In con-
14 ducting the survey, the Administrator shall collect infor-
15 mation both on a national and regional basis, including
16 each of the following:

17 “(A) The quantity of renewable fuels produced.

18 “(B) The quantity of renewable fuels blended.

19 “(C) The quantity of renewable fuels imported.

20 “(D) The quantity of renewable fuels de-
21 manded.

22 “(E) Market price data.

23 “(F) Such other analyses or evaluations as the
24 Administrator finds is necessary to achieve the pur-
25 poses of this section.

1 “(2) The Administrator shall also collect or estimate
2 information both on a national and regional basis, pursu-
3 ant to subparagraphs (A) through (F) of paragraph (1),
4 for the 5 years prior to implementation of this subsection.

5 “(3) This subsection does not affect the authority of
6 the Administrator to collect data under section 52 of the
7 Federal Energy Administration Act of 1974 (15 U.S.C.
8 790a).”.

9 **SEC. 1509. REDUCING THE PROLIFERATION OF STATE FUEL**
10 **CONTROLS.**

11 (a) EPA APPROVAL OF STATE PLANS WITH FUEL
12 CONTROLS.—Section 211(c)(4)(C) of the Clean Air Act
13 (42 U.S.C. 7545(c)(4)(C)) is amended by adding at the
14 end the following: “The Administrator shall not approve
15 a control or prohibition respecting the use of a fuel or fuel
16 additive under this subparagraph unless the Adminis-
17 trator, after consultation with the Secretary of Energy,
18 publishes in the Federal Register a finding that, in the
19 Administrator’s judgment, such control or prohibition will
20 not cause fuel supply or distribution interruptions or have
21 a significant adverse impact on fuel producibility in the
22 affected area or contiguous areas.”.

23 (b) STUDY.—The Administrator of the Environ-
24 mental Protection Agency (hereinafter in this subsection
25 referred to as the “Administrator”), in cooperation with

1 the Secretary of Energy, shall undertake a study of the
2 projected effects on air quality, the proliferation of fuel
3 blends, fuel availability, and fuel costs of providing a pref-
4 erence for each of the following:

5 (A) Reformulated gasoline referred to in sub-
6 section (k) of section 211 of the Clean Air Act.

7 (B) A low RVP gasoline blend that has been
8 certified by the Administrator as having a Reid
9 Vapor Pressure of 7.0 pounds per square inch (psi).

10 (C) A low RVP gasoline blend that has been
11 certified by the Administrator as having a Reid
12 Vapor Pressure of 7.8 pounds per square inch (psi).

13 In carrying out such study, the Administrator shall obtain
14 comments from affected parties. The Administrator shall
15 submit the results of such study to the Congress not later
16 than 18 months after the date of enactment of this Act,
17 together with any recommended legislative changes.

18 **SEC. 1510. FUEL SYSTEM REQUIREMENTS HARMONIZATION**

19 **STUDY.**

20 (a) STUDY.—

21 (1) IN GENERAL.—The Administrator of the
22 Environmental Protection Agency (hereinafter in
23 this section referred to as the “Administrator”) and
24 the Secretary of Energy shall jointly conduct a study

1 of Federal, State, and local requirements concerning
2 motor vehicle fuels, including—

3 (A) requirements relating to reformulated
4 gasoline, volatility (measured in Reid vapor
5 pressure), oxygenated fuel, and diesel fuel; and

6 (B) other requirements that vary from
7 State to State, region to region, or locality to
8 locality.

9 (2) REQUIRED ELEMENTS.—The study shall as-
10 sess—

11 (A) the effect of the variety of require-
12 ments described in paragraph (1) on the supply,
13 quality, and price of motor vehicle fuels avail-
14 able to consumers in various States and local-
15 ities;

16 (B) the effect of the requirements de-
17 scribed in paragraph (1) on achievement of—

18 (i) national, regional, and local air
19 quality standards and goals; and

20 (ii) related environmental and public
21 health protection standards and goals;

22 (C) the effect of Federal, State, and local
23 motor vehicle fuel regulations, including mul-
24 tiple motor vehicle fuel requirements, on—

25 (i) domestic refineries;

- 1 (ii) the fuel distribution system; and
- 2 (iii) industry investment in new capac-
- 3 ity;
- 4 (D) the effect of the requirements de-
- 5 scribed in paragraph (1) on emissions from ve-
- 6 hicles, refineries, and fuel handling facilities;
- 7 (E) the feasibility of developing national or
- 8 regional motor vehicle fuel slates for the 48
- 9 contiguous States that, while improving air
- 10 quality at the national, regional and local levels
- 11 consistent with the attainment of national am-
- 12 bient air quality standards, could—
- 13 (i) enhance flexibility in the fuel dis-
- 14 tribution infrastructure and improve fuel
- 15 fungibility;
- 16 (ii) reduce price volatility and costs to
- 17 consumers and producers;
- 18 (iii) provide increased liquidity to the
- 19 gasoline market; and
- 20 (iv) enhance fuel quality, consistency,
- 21 and supply;
- 22 (F) the feasibility of providing incentives
- 23 to promote cleaner burning motor vehicle fuel;
- 24 and

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, the reformu-
7 lated gasoline program, the renewable content
8 requirements established by this subtitle, State
9 programs regarding gasoline volatility, and any
10 other requirements imposed by States or local-
11 ities affecting the composition of motor fuel.

12 (b) REPORT.—

13 (1) IN GENERAL.—Not later than December 31,
14 2007, the Administrator and the Secretary of En-
15 ergy shall submit to Congress a report on the results
16 of the study conducted under subsection (a).

17 (2) RECOMMENDATIONS.—

18 (A) IN GENERAL.—The report under this
19 subsection shall contain recommendations for
20 legislative and administrative actions that may
21 be taken—

22 (i) to improve air quality;

23 (ii) to reduce costs to consumers and
24 producers; and

25 (iii) to increase supply liquidity.

1 (B) REQUIRED CONSIDERATIONS.—The
2 recommendations under subparagraph (A) shall
3 take into account the need to provide advance
4 notice of required modifications to refinery and
5 fuel distribution systems in order to ensure an
6 adequate supply of motor vehicle fuel in all
7 States.

8 (3) CONSULTATION.—In developing the report
9 under this subsection, the Administrator and the
10 Secretary of Energy shall consult with—

11 (A) the Governors of the States;

12 (B) automobile manufacturers;

13 (C) motor vehicle fuel producers and dis-
14 tributors; and

15 (D) the public.

16 **SEC. 1511. COMMERCIAL BYPRODUCTS FROM MUNICIPAL**
17 **SOLID WASTE AND CELLULOSIC BIOMASS**
18 **LOAN GUARANTEE PROGRAM.**

19 (a) DEFINITION OF MUNICIPAL SOLID WASTE.—In
20 this section, the term “municipal solid waste” has the
21 meaning given the term “solid waste” in section 1004 of
22 the Solid Waste Disposal Act (42 U.S.C. 6903).

23 (b) ESTABLISHMENT OF PROGRAM.—The Secretary
24 of Energy (hereinafter in this section referred to as the
25 “Secretary”) shall establish a program to provide guaran-

1 tees of loans by private institutions for the construction
2 of facilities for the processing and conversion of municipal
3 solid waste and cellulosic biomass into fuel ethanol and
4 other commercial byproducts.

5 (c) REQUIREMENTS.—The Secretary may provide a
6 loan guarantee under subsection (b) to an applicant if—

7 (1) without a loan guarantee, credit is not
8 available to the applicant under reasonable terms or
9 conditions sufficient to finance the construction of a
10 facility described in subsection (b);

11 (2) the prospective earning power of the appli-
12 cant and the character and value of the security
13 pledged provide a reasonable assurance of repayment
14 of the loan to be guaranteed in accordance with the
15 terms of the loan; and

16 (3) the loan bears interest at a rate determined
17 by the Secretary to be reasonable, taking into ac-
18 count the current average yield on outstanding obli-
19 gations of the United States with remaining periods
20 of maturity comparable to the maturity of the loan.

21 (d) CRITERIA.—In selecting recipients of loan guar-
22 antees from among applicants, the Secretary shall give
23 preference to proposals that—

24 (1) meet all applicable Federal and State per-
25 mitting requirements;

1 (2) are most likely to be successful; and

2 (3) are located in local markets that have the
3 greatest need for the facility because of—

4 (A) the limited availability of land for
5 waste disposal;

6 (B) the availability of sufficient quantities
7 of cellulosic biomass; or

8 (C) a high level of demand for fuel ethanol
9 or other commercial byproducts of the facility.

10 (e) MATURITY.—A loan guaranteed under subsection
11 (b) shall have a maturity of not more than 20 years.

12 (f) TERMS AND CONDITIONS.—The loan agreement
13 for a loan guaranteed under subsection (b) shall provide
14 that no provision of the loan agreement may be amended
15 or waived without the consent of the Secretary.

16 (g) ASSURANCE OF REPAYMENT.—The Secretary
17 shall require that an applicant for a loan guarantee under
18 subsection (b) provide an assurance of repayment in the
19 form of a performance bond, insurance, collateral, or other
20 means acceptable to the Secretary in an amount equal to
21 not less than 20 percent of the amount of the loan.

22 (h) GUARANTEE FEE.—The recipient of a loan guar-
23 antee under subsection (b) shall pay the Secretary an
24 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.

22 **SEC. 1512. CELLULOSIC BIOMASS AND WASTE-DERIVED**
23 **ETHANOL CONVERSION ASSISTANCE.**

24 Section 211 of the Clean Air Act (42 U.S.C. 7545)
25 is amended by adding at the end the following:

1 “(r) CELLULOSIC BIOMASS AND WASTE-DERIVED
2 ETHANOL CONVERSION ASSISTANCE.—

3 “(1) IN GENERAL.—The Secretary of Energy
4 may provide grants to merchant producers of cel-
5 lulosic biomass ethanol and waste-derived ethanol in
6 the United States to assist the producers in building
7 eligible production facilities described in paragraph
8 (2) for the production of ethanol.

9 “(2) ELIGIBLE PRODUCTION FACILITIES.—A
10 production facility shall be eligible to receive a grant
11 under this subsection if the production facility—

12 “(A) is located in the United States; and

13 “(B) uses cellulosic biomass or waste-de-
14 rived feedstocks derived from agricultural resi-
15 dues, wood residues, municipal solid waste, or
16 agricultural byproducts as that term is used in
17 section 919 of the Energy Policy Act of 2005.

18 “(3) AUTHORIZATION OF APPROPRIATIONS.—
19 There are authorized to be appropriated the fol-
20 lowing amounts to carry out this subsection:

21 “(A) \$100,000,000 for fiscal year 2005.

22 “(B) \$250,000,000 for fiscal year 2006.

23 “(C) \$400,000,000 for fiscal year 2007.”.

1 **SEC. 1513. BLENDING OF COMPLIANT REFORMULATED GAS-**
2 **OLINES.**

3 Section 211 of the Clean Air Act (42 U.S.C. 7545)
4 is amended by adding at the end the following:

5 “(s) BLENDING OF COMPLIANT REFORMULATED
6 GASOLINES.—

7 “(1) IN GENERAL.—Notwithstanding sub-
8 sections (h) and (k) and subject to the limitations in
9 paragraph (2) of this subsection, it shall not be a
10 violation of this subtitle for a gasoline retailer, dur-
11 ing any month of the year, to blend at a retail loca-
12 tion batches of ethanol-blended and non-ethanol-
13 blended reformulated gasoline, provided that—

14 “(A) each batch of gasoline to be blended
15 has been individually certified as in compliance
16 with subsections (h) and (k) prior to being
17 blended;

18 “(B) the retailer notifies the Administrator
19 prior to such blending, and identifies the exact
20 location of the retail station and the specific
21 tank in which such blending will take place;

22 “(C) the retailer retains and, as requested
23 by the Administrator or the Administrator’s
24 designee, makes available for inspection such
25 certifications accounting for all gasoline at the
26 retail outlet; and

1 “(D) the retailer does not, between June 1
2 and September 15 of each year, blend a batch
3 of VOC-controlled, or ‘summer’, gasoline with a
4 batch of non-VOC-controlled, or ‘winter’, gaso-
5 line (as these terms are defined under sub-
6 sections (h) and (k)).

7 “(2) LIMITATIONS.—

8 “(A) FREQUENCY LIMITATION.—A retailer
9 shall only be permitted to blend batches of com-
10 pliant reformulated gasoline under this sub-
11 section a maximum of two blending periods be-
12 tween May 1 and September 15 of each cal-
13 endar year.

14 “(B) DURATION OF BLENDING PERIOD.—
15 Each blending period authorized under sub-
16 paragraph (A) shall extend for a period of no
17 more than 10 consecutive calendar days.

18 “(3) SURVEYS.—A sample of gasoline taken
19 from a retail location that has blended gasoline with-
20 in the past 30 days and is in compliance with sub-
21 paragraphs (A), (B), (C), and (D) of paragraph (1)
22 shall not be used in a VOC survey mandated by 40
23 C.F.R. Part 80.

24 “(4) STATE IMPLEMENTATION PLANS.—A State
25 shall be held harmless and shall not be required to

1 revise its State implementation plan under section
2 110 to account for the emissions from blended gaso-
3 line authorized under paragraph (1).

4 “(5) PRESERVATION OF STATE LAW.—Nothing
5 in this subsection shall—

6 “(A) preempt existing State laws or regu-
7 lations regulating the blending of compliant
8 gasolines; or

9 “(B) prohibit a State from adopting such
10 restrictions in the future.

11 “(6) REGULATIONS.—The Administrator shall
12 promulgate, after notice and comment, regulations
13 implementing this subsection within one year after
14 the date of enactment of this subsection.

15 “(7) EFFECTIVE DATE.—This subsection shall
16 become effective 15 months after the date of its en-
17 actment and shall apply to blended batches of refor-
18 mulated gasoline on or after that date, regardless of
19 whether the implementing regulations required by
20 paragraph (6) have been promulgated by the Admin-
21 istrator by that date.

22 “(8) LIABILITY.—No person other than the
23 person responsible for blending under this subsection
24 shall be subject to an enforcement action or pen-
25 alties under subsection (d) solely arising from the

1 blending of compliant reformulated gasolines by the
2 retailers.

3 “(9) FORMULATION OF GASOLINE.—This sub-
4 section does not grant authority to the Adminis-
5 trator or any State (or any subdivision thereof) to
6 require reformulation of gasoline at the refinery to
7 adjust for potential or actual emissions increases due
8 to the blending authorized by this subsection.”.

9 **Subtitle B—Underground Storage** 10 **Tank Compliance**

11 **SEC. 1521. SHORT TITLE.**

12 This subtitle may be cited as the “Underground Stor-
13 age Tank Compliance Act of 2005”.

14 **SEC. 1522. LEAKING UNDERGROUND STORAGE TANKS.**

15 (a) IN GENERAL.—Section 9004 of the Solid Waste
16 Disposal Act (42 U.S.C. 6991e) is amended by adding at
17 the end the following:

18 “(f) TRUST FUND DISTRIBUTION.—

19 “(1) IN GENERAL.—

20 “(A) AMOUNT AND PERMITTED USES OF
21 DISTRIBUTION.—The Administrator shall dis-
22 tribute to States not less than 80 percent of the
23 funds from the Trust Fund that are made
24 available to the Administrator under section
25 9014(2)(A) for each fiscal year for use in pay-

1 ing the reasonable costs, incurred under a coop-
2 erative agreement with any State for—

3 “(i) corrective actions taken by the
4 State under section 9003(h)(7)(A);

5 “(ii) necessary administrative ex-
6 penses, as determined by the Adminis-
7 trator, that are directly related to State
8 fund or State assurance programs under
9 subsection (c)(1); or

10 “(iii) enforcement, by a State or a
11 local government, of State or local regula-
12 tions pertaining to underground storage
13 tanks regulated under this subtitle.

14 “(B) USE OF FUNDS FOR ENFORCE-
15 MENT.—In addition to the uses of funds au-
16 thorized under subparagraph (A), the Adminis-
17 trator may use funds from the Trust Fund that
18 are not distributed to States under subpara-
19 graph (A) for enforcement of any regulation
20 promulgated by the Administrator under this
21 subtitle.

22 “(C) PROHIBITED USES.—Funds provided
23 to a State by the Administrator under subpara-
24 graph (A) shall not be used by the State to pro-
25 vide financial assistance to an owner or oper-

1 ator to meet any requirement relating to under-
2 ground storage tanks under subparts B, C, D,
3 H, and G of part 280 of title 40, Code of Fed-
4 eral Regulations (as in effect on the date of en-
5 actment of this subsection).

6 “(2) ALLOCATION.—

7 “(A) PROCESS.—Subject to subparagraphs
8 (B) and (C), in the case of a State with which
9 the Administrator has entered into a coopera-
10 tive agreement under section 9003(h)(7)(A),
11 the Administrator shall distribute funds from
12 the Trust Fund to the State using an allocation
13 process developed by the Administrator.

14 “(B) DIVERSION OF STATE FUNDS.—The
15 Administrator shall not distribute funds under
16 subparagraph (A)(iii) of subsection (f)(1) to
17 any State that has diverted funds from a State
18 fund or State assurance program for purposes
19 other than those related to the regulation of un-
20 derground storage tanks covered by this sub-
21 title, with the exception of those transfers that
22 had been completed earlier than the date of en-
23 actment of this subsection.

1 “(C) REVISIONS TO PROCESS.—The Ad-
2 ministrators may revise the allocation process re-
3 ferred to in subparagraph (A) after—

4 “(i) consulting with State agencies re-
5 sponsible for overseeing corrective action
6 for releases from underground storage
7 tanks; and

8 “(ii) taking into consideration, at a
9 minimum, each of the following:

10 “(I) The number of confirmed re-
11 leases from federally regulated leaking
12 underground storage tanks in the
13 States.

14 “(II) The number of federally
15 regulated underground storage tanks
16 in the States.

17 “(III) The performance of the
18 States in implementing and enforcing
19 the program.

20 “(IV) The financial needs of the
21 States.

22 “(V) The ability of the States to
23 use the funds referred to in subpara-
24 graph (A) in any year.

1 “(3) DISTRIBUTIONS TO STATE AGENCIES.—
2 Distributions from the Trust Fund under this sub-
3 section shall be made directly to a State agency
4 that—

5 “(A) enters into a cooperative agreement
6 referred to in paragraph (2)(A); or

7 “(B) is enforcing a State program ap-
8 proved under this section.”.

9 (b) WITHDRAWAL OF APPROVAL OF STATE
10 FUNDS.—Section 9004(c) of the Solid Waste Disposal Act
11 (42 U.S.C. 6991c(c)) is amended by inserting the fol-
12 lowing new paragraph at the end thereof:

13 “(6) WITHDRAWAL OF APPROVAL.—After an
14 opportunity for good faith, collaborative efforts to
15 correct financial deficiencies with a State fund, the
16 Administrator may withdraw approval of any State
17 fund or State assurance program to be used as a fi-
18 nancial responsibility mechanism without with-
19 drawing approval of a State underground storage
20 tank program under section 9004(a).”.

21 (c) ABILITY TO PAY.—Section 9003(h)(6) of the
22 Solid Waste Disposal Act (42 U.S.C. 6591a(h)(6)) is
23 amended by adding the following new subparagraph at the
24 end thereof:

1 “(E) INABILITY OR LIMITED ABILITY TO
2 PAY.—

3 “(i) IN GENERAL.—In determining
4 the level of recovery effort, or amount that
5 should be recovered, the Administrator (or
6 the State pursuant to paragraph (7)) shall
7 consider the owner or operator’s ability to
8 pay. An inability or limited ability to pay
9 corrective action costs must be dem-
10 onstrated to the Administrator (or the
11 State pursuant to paragraph (7)) by the
12 owner or operator.

13 “(ii) CONSIDERATIONS.—In deter-
14 mining whether or not a demonstration is
15 made under clause (i), the Administrator
16 (or the State pursuant to paragraph (7))
17 shall take into consideration the ability of
18 the owner or operator to pay corrective ac-
19 tion costs and still maintain its basic busi-
20 ness operations, including consideration of
21 the overall financial condition of the owner
22 or operator and demonstrable constraints
23 on the ability of the owner or operator to
24 raise revenues.

1 “(iii) INFORMATION.—An owner or
2 operator requesting consideration under
3 this subparagraph shall promptly provide
4 the Administrator (or the State pursuant
5 to paragraph (7)) with all relevant infor-
6 mation needed to determine the ability of
7 the owner or operator to pay corrective ac-
8 tion costs.

9 “(iv) ALTERNATIVE PAYMENT METH-
10 ODS.—The Administrator (or the State
11 pursuant to paragraph (7)) shall consider
12 alternative payment methods as may be
13 necessary or appropriate if the Adminis-
14 trator (or the State pursuant to paragraph
15 (7)) determines that an owner or operator
16 cannot pay all or a portion of the costs in
17 a lump sum payment.

18 “(v) MISREPRESENTATION.—If an
19 owner or operator provides false informa-
20 tion or otherwise misrepresents their finan-
21 cial situation under clause (ii), the Admin-
22 istrator (or the State pursuant to para-
23 graph (7)) shall seek full recovery of the
24 costs of all such actions pursuant to the
25 provisions of subparagraph (A) without

1 consideration of the factors in subpara-
2 graph (B).”.

3 **SEC. 1523. INSPECTION OF UNDERGROUND STORAGE**
4 **TANKS.**

5 (a) INSPECTION REQUIREMENTS.—Section 9005 of
6 the Solid Waste Disposal Act (42 U.S.C. 6991d) is amend-
7 ed by inserting the following new subsection at the end
8 thereof:

9 “(c) INSPECTION REQUIREMENTS.—

10 “(1) UNINSPECTED TANKS.—In the case of un-
11 derground storage tanks regulated under this sub-
12 title that have not undergone an inspection since De-
13 cember 22, 1998, not later than 2 years after the
14 date of enactment of this subsection, the Adminis-
15 trator or a State that receives funding under this
16 subtitle, as appropriate, shall conduct on-site inspec-
17 tions of all such tanks to determine compliance with
18 this subtitle and the regulations under this subtitle
19 (40 C.F.R. 280) or a requirement or standard of a
20 State program developed under section 9004.

21 “(2) PERIODIC INSPECTIONS.—After completion
22 of all inspections required under paragraph (1), the
23 Administrator or a State that receives funding under
24 this subtitle, as appropriate, shall conduct on-site in-
25 spections of each underground storage tank regu-

1 lated under this subtitle at least once every 3 years
2 to determine compliance with this subtitle and the
3 regulations under this subtitle (40 C.F.R. 280) or a
4 requirement or standard of a State program devel-
5 oped under section 9004. The Administrator may ex-
6 tend for up to one additional year the first 3-year
7 inspection interval under this paragraph if the State
8 demonstrates that it has insufficient resources to
9 complete all such inspections within the first 3-year
10 period.

11 “(3) INSPECTION AUTHORITY.—Nothing in this
12 section shall be construed to diminish the Adminis-
13 trator’s or a State’s authorities under section
14 9005(a).”.

15 (b) STUDY OF ALTERNATIVE INSPECTION PRO-
16 GRAMS.—The Administrator of the Environmental Protec-
17 tion Agency, in coordination with a State, shall gather in-
18 formation on compliance assurance programs that could
19 serve as an alternative to the inspection programs under
20 section 9005(c) of the Solid Waste Disposal Act (42
21 U.S.C. 6991d(c)) and shall, within 4 years after the date
22 of enactment of this Act, submit a report to the Congress
23 containing the results of such study.

1 **SEC. 1524. OPERATOR TRAINING.**

2 (a) IN GENERAL.—Section 9010 of the Solid Waste
3 Disposal Act (42 U.S.C. 6991i) is amended to read as fol-
4 lows:

5 **“SEC. 9010. OPERATOR TRAINING.**

6 “(a) GUIDELINES.—

7 “(1) IN GENERAL.—Not later than 2 years
8 after the date of enactment of the Underground
9 Storage Tank Compliance Act of 2005, in consulta-
10 tion and cooperation with States and after public no-
11 tice and opportunity for comment, the Administrator
12 shall publish guidelines that specify training require-
13 ments for—

14 “(A) persons having primary responsibility
15 for on-site operation and maintenance of under-
16 ground storage tank systems;

17 “(B) persons having daily on-site responsi-
18 bility for the operation and maintenance of un-
19 derground storage tanks systems; and

20 “(C) daily, on-site employees having pri-
21 mary responsibility for addressing emergencies
22 presented by a spill or release from an under-
23 ground storage tank system.

24 “(2) CONSIDERATIONS.—The guidelines de-
25 scribed in paragraph (1) shall take into account—

1 “(A) State training programs in existence
2 as of the date of publication of the guidelines;

3 “(B) training programs that are being em-
4 ployed by tank owners and tank operators as of
5 the date of enactment of the Underground Stor-
6 age Tank Compliance Act of 2005;

7 “(C) the high turnover rate of tank opera-
8 tors and other personnel;

9 “(D) the frequency of improvement in un-
10 derground storage tank equipment technology;

11 “(E) the nature of the businesses in which
12 the tank operators are engaged;

13 “(F) the substantial differences in the
14 scope and length of training needed for the dif-
15 ferent classes of persons described in subpara-
16 graphs (A), (B), and (C) of paragraph (1); and

17 “(G) such other factors as the Adminis-
18 trator determines to be necessary to carry out
19 this section.

20 “(b) STATE PROGRAMS.—

21 “(1) IN GENERAL.—Not later than 2 years
22 after the date on which the Administrator publishes
23 the guidelines under subsection (a)(1), each State
24 that receives funding under this subtitle shall de-
25 velop State-specific training requirements that are

1 consistent with the guidelines developed under sub-
2 section (a)(1).

3 “(2) REQUIREMENTS.—State requirements de-
4 scribed in paragraph (1) shall—

5 “(A) be consistent with subsection (a);

6 “(B) be developed in cooperation with tank
7 owners and tank operators;

8 “(C) take into consideration training pro-
9 grams implemented by tank owners and tank
10 operators as of the date of enactment of this
11 section; and

12 “(D) be appropriately communicated to
13 tank owners and operators.

14 “(3) FINANCIAL INCENTIVE.—The Adminis-
15 trator may award to a State that develops and im-
16 plements requirements described in paragraph (1),
17 in addition to any funds that the State is entitled to
18 receive under this subtitle, not more than \$200,000,
19 to be used to carry out the requirements.

20 “(c) TRAINING.—All persons that are subject to the
21 operator training requirements of subsection (a) shall—

22 “(1) meet the training requirements developed
23 under subsection (b); and

24 “(2) repeat the applicable requirements devel-
25 oped under subsection (b), if the tank for which they

1 have primary daily on-site management responsibil-
2 ities is determined to be out of compliance with—

3 “(A) a requirement or standard promul-
4 gated by the Administrator under section 9003;
5 or

6 “(B) a requirement or standard of a State
7 program approved under section 9004.”.

8 (b) STATE PROGRAM REQUIREMENT.—Section
9 9004(a) of the Solid Waste Disposal Act (42 U.S.C.
10 6991c(a)) is amended by striking “and” at the end of
11 paragraph (7), by striking the period at the end of para-
12 graph (8) and inserting “; and”, and by adding the fol-
13 lowing new paragraph at the end thereof:

14 “(9) State-specific training requirements as re-
15 quired by section 9010.”.

16 (c) ENFORCEMENT.—Section 9006(d)(2) of such Act
17 (42 U.S.C. 6991e) is amended as follows:

18 (1) By striking “or” at the end of subpara-
19 graph (B).

20 (2) By adding the following new subparagraph
21 after subparagraph (C):

22 “(D) the training requirements established by
23 States pursuant to section 9010 (relating to oper-
24 ator training); or”.

1 (d) TABLE OF CONTENTS.—The item relating to sec-
2 tion 9010 in table of contents for the Solid Waste Disposal
3 Act is amended to read as follows:

“Sec. 9010. Operator training.”.

4 **SEC. 1525. REMEDIATION FROM OXYGENATED FUEL ADDI-**
5 **TIVES.**

6 Section 9003(h) of the Solid Waste Disposal Act (42
7 U.S.C. 6991b(h)) is amended as follows:

8 (1) In paragraph (7)(A)—

9 (A) by striking “paragraphs (1) and (2) of
10 this subsection” and inserting “paragraphs (1),
11 (2), and (12)” ; and

12 (B) by striking “and including the authori-
13 ties of paragraphs (4), (6), and (8) of this sub-
14 section” and inserting “and the authority under
15 sections 9011 and 9012 and paragraphs (4),
16 (6), and (8),”.

17 (2) By adding at the end the following:

18 “(12) REMEDIATION OF OXYGENATED FUEL
19 CONTAMINATION.—

20 “(A) IN GENERAL.—The Administrator
21 and the States may use funds made available
22 under section 9014(2)(B) to carry out correc-
23 tive actions with respect to a release of a fuel
24 containing an oxygenated fuel additive that pre-

1 sents a threat to human health or welfare or
2 the environment.

3 “(B) APPLICABLE AUTHORITY.—The Ad-
4 ministrators or a State shall carry out subpara-
5 graph (A) in accordance with paragraph (2),
6 and in the case of a State, in accordance with
7 a cooperative agreement entered into by the Ad-
8 ministrators and the State under paragraph
9 (7).”.

10 **SEC. 1526. RELEASE PREVENTION, COMPLIANCE, AND EN-**
11 **FORCEMENT.**

12 (a) RELEASE PREVENTION AND COMPLIANCE.—Sub-
13 title I of the Solid Waste Disposal Act (42 U.S.C. 6991
14 et seq.) is amended by adding at the end the following:

15 **“SEC. 9011. USE OF FUNDS FOR RELEASE PREVENTION AND**
16 **COMPLIANCE.**

17 “Funds made available under section 9014(2)(D)
18 from the Trust Fund may be used to conduct inspections,
19 issue orders, or bring actions under this subtitle—

20 “(1) by a State, in accordance with a grant or
21 cooperative agreement with the Administrator, of
22 State regulations pertaining to underground storage
23 tanks regulated under this subtitle; and

1 “(2) by the Administrator, for tanks regulated
2 under this subtitle (including under a State program
3 approved under section 9004).”.

4 (b) GOVERNMENT-OWNED TANKS.—Section 9003 of
5 the Solid Waste Disposal Act (42 U.S.C. 6991b) is amend-
6 ed by adding at the end the following:

7 “(i) GOVERNMENT-OWNED TANKS.—

8 “(1) STATE COMPLIANCE REPORT.—(A) Not
9 later than 2 years after the date of enactment of
10 this subsection, each State that receives funding
11 under this subtitle shall submit to the Administrator
12 a State compliance report that—

13 “(i) lists the location and owner of each
14 underground storage tank described in subpara-
15 graph (B) in the State that, as of the date of
16 submission of the report, is not in compliance
17 with section 9003; and

18 “(ii) specifies the date of the last inspec-
19 tion and describes the actions that have been
20 and will be taken to ensure compliance of the
21 underground storage tank listed under clause
22 (i) with this subtitle.

23 “(B) An underground storage tank described in
24 this subparagraph is an underground storage tank
25 that is—

1 “(i) regulated under this subtitle; and

2 “(ii) owned or operated by the Federal,
3 State, or local government.

4 “(C) The Administrator shall make each report,
5 received under subparagraph (A), available to the
6 public through an appropriate media.

7 “(2) FINANCIAL INCENTIVE.—The Adminis-
8 trator may award to a State that develops a report
9 described in paragraph (1), in addition to any other
10 funds that the State is entitled to receive under this
11 subtitle, not more than \$50,000, to be used to carry
12 out the report.

13 “(3) NOT A SAFE HARBOR.—This subsection
14 does not relieve any person from any obligation or
15 requirement under this subtitle.”.

16 (c) PUBLIC RECORD.—Section 9002 of the Solid
17 Waste Disposal Act (42 U.S.C. 6991a) is amended by add-
18 ing at the end the following:

19 “(d) PUBLIC RECORD.—

20 “(1) IN GENERAL.—The Administrator shall re-
21 quire each State that receives Federal funds to carry
22 out this subtitle to maintain, update at least annu-
23 ally, and make available to the public, in such man-
24 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):

21 “(1) The compliance history of an owner or op-
22 erator in accordance with this subtitle or a program
23 approved under section 9004.

24 “(2) Any other factor the Administrator con-
25 siders appropriate.”.

1 (e) TABLE OF CONTENTS.—The table of contents for
2 such subtitle I is amended by adding the following new
3 item at the end thereof:

“Sec. 9011. Use of funds for release prevention and compliance.”.

4 **SEC. 1527. DELIVERY PROHIBITION.**

5 (a) IN GENERAL.—Subtitle I of the Solid Waste Dis-
6 posal Act (42 U.S.C. 6991 et seq.) is amended by adding
7 at the end the following:

8 **“SEC. 9012. DELIVERY PROHIBITION.**

9 “(a) REQUIREMENTS.—

10 “(1) PROHIBITION OF DELIVERY OR DE-
11 POSIT.—Beginning 2 years after the date of enact-
12 ment of this section, it shall be unlawful to deliver
13 to, deposit into, or accept a regulated substance into
14 an underground storage tank at a facility which has
15 been identified by the Administrator or a State im-
16 plementing agency to be ineligible for fuel delivery or
17 deposit.

18 “(2) GUIDANCE.—Within 1 year after the date
19 of enactment of this section, the Administrator and
20 States that receive funding under this subtitle shall,
21 in consultation with the underground storage tank
22 owner and product delivery industries, for territory
23 for which they are the primary implementing agen-
24 cies, publish guidelines detailing the specific proc-
25 esses and procedures they will use to implement the

1 provisions of this section. The processes and proce-
2 dures include, at a minimum—

3 “(A) the criteria for determining which un-
4 derground storage tank facilities are ineligible
5 for delivery or deposit;

6 “(B) the mechanisms for identifying which
7 facilities are ineligible for delivery or deposit to
8 the underground storage tank owning and fuel
9 delivery industries;

10 “(C) the process for reclassifying ineligible
11 facilities as eligible for delivery or deposit; and

12 “(D) a delineation of, or a process for de-
13 termining, the specified geographic areas sub-
14 ject to paragraph (4).

15 “(3) DELIVERY PROHIBITION NOTICE.—

16 “(A) ROSTER.—The Administrator and
17 each State implementing agency that receives
18 funding under this subtitle shall establish with-
19 in 24 months after the date of enactment of
20 this section a Delivery Prohibition Roster list-
21 ing underground storage tanks under the Ad-
22 ministrator’s or the State’s jurisdiction that are
23 determined to be ineligible for delivery or de-
24 posit pursuant to paragraph (2).

1 “(B) NOTIFICATION.—The Administrator
2 and each State, as appropriate, shall make
3 readily known, to underground storage tank
4 owners and operators and to product delivery
5 industries, the underground storage tanks listed
6 on a Delivery Prohibition Roster by:

7 “(i) posting such Rosters, including
8 the physical location and street address of
9 each listed underground storage tank, on
10 official web sites and, if the Administrator
11 or the State so chooses, other electronic
12 means;

13 “(ii) updating these Rosters periodi-
14 cally; and

15 “(iii) installing a tamper-proof tag,
16 seal, or other device blocking the fill pipes
17 of such underground storage tanks to pre-
18 vent the delivery of product into such un-
19 derground storage tanks.

20 “(C) ROSTER UPDATES.—The Adminis-
21 trator and the State shall update the Delivery
22 Prohibition Rosters as appropriate, but not less
23 than once a month on the first day of the
24 month.

25 “(D) TAMPERING WITH DEVICE.—

1 “(i) PROHIBITION.—It shall be unlaw-
2 ful for any person, other than an author-
3 ized representative of the Administrator or
4 a State, as appropriate, to remove, tamper
5 with, destroy, or damage a device installed
6 by the Administrator or a State, as appro-
7 priate, under subparagraph (B)(iii) of this
8 subsection.

9 “(ii) CIVIL PENALTIES.—Any person
10 violating clause (i) of this subparagraph
11 shall be subject to a civil penalty not to ex-
12 ceed \$10,000 for each violation.

13 “(4) LIMITATION.—

14 “(A) RURAL AND REMOTE AREAS.—Sub-
15 ject to subparagraph (B), the Administrator or
16 a State shall not include an underground stor-
17 age tank on a Delivery Prohibition Roster
18 under paragraph (3) if an urgent threat to pub-
19 lic health, as determined by the Administrator,
20 does not exist and if such a delivery prohibition
21 would jeopardize the availability of, or access
22 to, fuel in any rural and remote areas.

23 “(B) APPLICABILITY OF LIMITATION.—
24 The limitation under subparagraph (A) shall
25 apply only during the 180-day period following

1 the date of a determination by the Adminis-
2 trator or the appropriate State that exercising
3 the authority of paragraph (3) is limited by
4 subparagraph (A).

5 “(b) EFFECT ON STATE AUTHORITY.—Nothing in
6 this section shall affect the authority of a State to prohibit
7 the delivery of a regulated substance to an underground
8 storage tank.

9 “(c) DEFENSE TO VIOLATION.—A person shall not
10 be in violation of subsection (a)(1) if the underground
11 storage tank into which a regulated substance is delivered
12 is not listed on the Administrator’s or the appropriate
13 State’s Prohibited Delivery Roster 7 calendar days prior
14 to the delivery being made.”.

15 (b) ENFORCEMENT.—Section 9006(d)(2) of such Act
16 (42 U.S.C. 6991e(d)(2)) is amended as follows:

17 (1) By adding the following new subparagraph
18 after subparagraph (D):

19 “(E) the delivery prohibition requirement estab-
20 lished by section 9012,”.

21 (2) By adding the following new sentence at the
22 end thereof: “Any person making or accepting a de-
23 livery or deposit of a regulated substance to an un-
24 derground storage tank at an ineligible facility in

1 violation of section 9012 shall also be subject to the
2 same civil penalty for each day of such violation.”.

3 (c) TABLE OF CONTENTS.—The table of contents for
4 such subtitle I is amended by adding the following new
5 item at the end thereof:

“Sec. 9012. Delivery prohibition.”.

6 **SEC. 1528. FEDERAL FACILITIES.**

7 Section 9007 of the Solid Waste Disposal Act (42
8 U.S.C. 6991f) is amended to read as follows:

9 **“SEC. 9007. FEDERAL FACILITIES.**

10 “(a) IN GENERAL.—Each department, agency, and
11 instrumentality of the executive, legislative, and judicial
12 branches of the Federal Government (1) having jurisdic-
13 tion over any underground storage tank or underground
14 storage tank system, or (2) engaged in any activity result-
15 ing, or which may result, in the installation, operation,
16 management, or closure of any underground storage tank,
17 release response activities related thereto, or in the deliv-
18 ery, acceptance, or deposit of any regulated substance to
19 an underground storage tank or underground storage tank
20 system shall be subject to, and comply with, all Federal,
21 State, interstate, and local requirements, both substantive
22 and procedural (including any requirement for permits or
23 reporting or any provisions for injunctive relief and such
24 sanctions as may be imposed by a court to enforce such
25 relief), respecting underground storage tanks in the same

1 manner, and to the same extent, as any person is subject
2 to such requirements, including the payment of reasonable
3 service charges. The Federal, State, interstate, and local
4 substantive and procedural requirements referred to in
5 this subsection include, but are not limited to, all adminis-
6 trative orders and all civil and administrative penalties
7 and fines, regardless of whether such penalties or fines
8 are punitive or coercive in nature or are imposed for iso-
9 lated, intermittent, or continuing violations. The United
10 States hereby expressly waives any immunity otherwise
11 applicable to the United States with respect to any such
12 substantive or procedural requirement (including, but not
13 limited to, any injunctive relief, administrative order or
14 civil or administrative penalty or fine referred to in the
15 preceding sentence, or reasonable service charge). The rea-
16 sonable service charges referred to in this subsection in-
17 clude, but are not limited to, fees or charges assessed in
18 connection with the processing and issuance of permits,
19 renewal of permits, amendments to permits, review of
20 plans, studies, and other documents, and inspection and
21 monitoring of facilities, as well as any other nondiscrim-
22 inatory charges that are assessed in connection with a
23 Federal, State, interstate, or local underground storage
24 tank regulatory program. Neither the United States, nor
25 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
22 appropriation as a part of the budgetary process and the
23 Congress shall have failed to make available such re-
24 quested appropriation. Any exemption shall be for a period
25 not in excess of one year, but additional exemptions may

1 be granted for periods not to exceed one year upon the
2 President's making a new determination. The President
3 shall report each January to the Congress all exemptions
4 from the requirements of this section granted during the
5 preceding calendar year, together with his reason for
6 granting each such exemption.

7 “(b) REVIEW OF AND REPORT ON FEDERAL UNDER-
8 GROUND STORAGE TANKS.—

9 “(1) REVIEW.—Not later than 12 months after
10 the date of enactment of the Underground Storage
11 Tank Compliance Act of 2005, each Federal agency
12 that owns or operates 1 or more underground stor-
13 age tanks, or that manages land on which 1 or more
14 underground storage tanks are located, shall submit
15 to the Administrator, the Committee on Energy and
16 Commerce of the United States House of Represent-
17 atives, and the Committee on the Environment and
18 Public Works of the United States Senate a compli-
19 ance strategy report that—

20 “(A) lists the location and owner of each
21 underground storage tank described in this
22 paragraph;

23 “(B) lists all tanks that are not in compli-
24 ance with this subtitle that are owned or oper-
25 ated by the Federal agency;

1 “(C) specifies the date of the last inspec-
2 tion by a State or Federal inspector of each un-
3 derground storage tank owned or operated by
4 the agency;

5 “(D) lists each violation of this subtitle re-
6 specting any underground storage tank owned
7 or operated by the agency;

8 “(E) describes the operator training that
9 has been provided to the operator and other
10 persons having primary daily on-site manage-
11 ment responsibility for the operation and main-
12 tenance of underground storage tanks owned or
13 operated by the agency; and

14 “(F) describes the actions that have been
15 and will be taken to ensure compliance for each
16 underground storage tank identified under sub-
17 paragraph (B).

18 “(2) NOT A SAFE HARBOR.—This subsection
19 does not relieve any person from any obligation or
20 requirement under this subtitle.”.

21 **SEC. 1529. TANKS ON TRIBAL LANDS.**

22 (a) IN GENERAL.—Subtitle I of the Solid Waste Dis-
23 posal Act (42 U.S.C. 6991 et seq.) is amended by adding
24 the following at the end thereof:

1 **“SEC. 9013. TANKS ON TRIBAL LANDS.**

2 “(a) STRATEGY.—The Administrator, in coordination
3 with Indian tribes, shall, not later than 1 year after the
4 date of enactment of this section, develop and implement
5 a strategy—

6 “(1) giving priority to releases that present the
7 greatest threat to human health or the environment,
8 to take necessary corrective action in response to re-
9 leases from leaking underground storage tanks lo-
10 cated wholly within the boundaries of—

11 “(A) an Indian reservation; or

12 “(B) any other area under the jurisdiction
13 of an Indian tribe; and

14 “(2) to implement and enforce requirements
15 concerning underground storage tanks located wholly
16 within the boundaries of—

17 “(A) an Indian reservation; or

18 “(B) any other area under the jurisdiction
19 of an Indian tribe.

20 “(b) REPORT.—Not later than 2 years after the date
21 of enactment of this section, the Administrator shall sub-
22 mit to Congress a report that summarizes the status of
23 implementation and enforcement of this subtitle in areas
24 located wholly within—

25 “(1) the boundaries of Indian reservations; and

1 “(2) any other areas under the jurisdiction of
2 an Indian tribe.

3 The Administrator shall make the report under this sub-
4 section available to the public.

5 “(c) NOT A SAFE HARBOR.—This section does not
6 relieve any person from any obligation or requirement
7 under this subtitle.

8 “(d) STATE AUTHORITY.—Nothing in this section
9 applies to any underground storage tank that is located
10 in an area under the jurisdiction of a State, or that is
11 subject to regulation by a State, as of the date of enact-
12 ment of this section.”.

13 (b) TABLE OF CONTENTS.—The table of contents for
14 such subtitle I is amended by adding the following new
15 item at the end thereof:

 “Sec. 9013. Tanks on Tribal lands.”.

16 **SEC. 1530. ADDITIONAL MEASURES TO PROTECT GROUND-**
17 **WATER.**

18 (a) IN GENERAL.—Section 9003 of the Solid Waste
19 Disposal Act (42 U.S.C. 6991b) is amended by adding the
20 following new subsection at the end:

21 “(i) ADDITIONAL MEASURES TO PROTECT GROUND-
22 WATER FROM CONTAMINATION.—The Administrator shall
23 require each State that receives funding under this sub-
24 title to require one of the following:

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
22 other underground storage tanks and connected
23 pipes comprising such system.

24 “(D) Each installation of a new motor fuel dis-
25 penser system, after the effective date of this sub-

1 section, shall include under-dispenser spill contain-
2 ment if the new dispenser is within 1,000 feet of any
3 existing community water system or any existing po-
4 table drinking water well.

5 “(E) This paragraph shall not apply to repairs
6 to an underground storage tank, piping, or dispenser
7 that are meant to restore a tank, pipe, or dispenser
8 to operating condition

9 “(F) As used in this subsection:

10 “(i) The term ‘secondarily contained’
11 means a release detection and prevention sys-
12 tem that meets the requirements of 40 CFR
13 280.43(g), but shall not include under-dispenser
14 spill containment or control systems.

15 “(ii) The term ‘underground storage tank’
16 has the meaning given to it in section 9001, ex-
17 cept that such term does not include tank com-
18 binations or more than a single underground
19 pipe connected to a tank.

20 “(iii) The term ‘installation of a new motor
21 fuel dispenser system’ means the installation of
22 a new motor fuel dispenser and the equipment
23 necessary to connect the dispenser to the under-
24 ground storage tank system, but does not mean
25 the installation of a motor fuel dispenser in-

1 stalled separately from the equipment need to
2 connect the dispenser to the underground stor-
3 age tank system.

4 “(G) The Administrator may issue regulations
5 or guidelines implementing the requirements of this
6 subsection.

7 “(2) EVIDENCE OF FINANCIAL RESPONSIBILITY
8 AND CERTIFICATION.—

9 “(A) MANUFACTURER AND INSTALLER FI-
10 NANCIAL RESPONSIBILITY.—A person that
11 manufactures an underground storage tank or
12 piping for an underground storage tank system
13 or that installs an underground storage tank
14 system is required to maintain evidence of fi-
15 nancial responsibility under section 9003(d) in
16 order to provide for the costs of corrective ac-
17 tions directly related to releases caused by im-
18 proper manufacture or installation unless the
19 person can demonstrate themselves to be al-
20 ready covered as an owner or operator of an
21 underground storage tank under section 9003.

22 “(B) INSTALLER CERTIFICATION.—The
23 Administrator and each State that receives
24 funding under this subtitle, as appropriate,

1 shall require that a person that installs an un-
2 derground storage tank system is—

3 “(i) certified or licensed by the tank
4 and piping manufacturer;

5 “(ii) certified or licensed by the Ad-
6 ministrator or a State, as appropriate;

7 “(iii) has their underground storage
8 tank system installation certified by a reg-
9 istered professional engineer with edu-
10 cation and experience in underground stor-
11 age tank system installation;

12 “(iv) has had their installation of the
13 underground storage tank inspected and
14 approved by the Administrator or the
15 State, as appropriate;

16 “(v) compliant with a code of practice
17 developed by a nationally recognized asso-
18 ciation of independent testing laboratory
19 and in accordance with the manufacturers
20 instructions; or

21 “(vi) compliant with another method
22 that is determined by the Administrator or
23 a State, as appropriate, to be no less pro-
24 tective of human health and the environ-
25 ment.”.

1 (b) EFFECTIVE DATE.—This subsection shall take
2 effect 18 months after the date of enactment of this sub-
3 section

4 (c) PROMULGATION OF REGULATIONS OR GUIDE-
5 LINES.—The Administrator shall issue regulations or
6 guidelines implementing the requirements of this sub-
7 section, including guidance to differentiate between the
8 terms “repair” and “replace” for the purposes of section
9 9003(i)(1) of the Solid Waste Disposal Act.

10 (d) PENALTIES.—Section 9006(d)(2) of such Act (42
11 U.S.C. 6991e(d)(2)) is amended as follows:

12 (1) By striking “or” at the end of subpara-
13 graph (B).

14 (2) By inserting “; or” at the end of subpara-
15 graph (C).

16 (3) By adding the following new subparagraph
17 after subparagraph (C):

18 “(D) the requirements establishd in section
19 9003(i),”.

20 **SEC. 1531. AUTHORIZATION OF APPROPRIATIONS.**

21 (a) IN GENERAL.—Subtitle I of the Solid Waste Dis-
22 posal Act (42 U.S.C. 6991 et seq.) is amended by adding
23 at the end the following:

1 **“SEC. 9014. AUTHORIZATION OF APPROPRIATIONS.**

2 “There are authorized to be appropriated to the Ad-
3 ministrator the following amounts:

4 “(1) To carry out subtitle I (except sections
5 9003(h), 9005(c), 9011 and 9012) \$50,000,000 for
6 each of fiscal years 2005 through 2009.

7 “(2) From the Trust Fund, notwithstanding
8 section 9508(c)(1) of the Internal Revenue Code of
9 1986:

10 “(A) to carry out section 9003(h) (except
11 section 9003(h)(12)) \$200,000,000 for each of
12 fiscal years 2005 through 2009;

13 “(B) to carry out section 9003(h)(12),
14 \$200,000,000 for each of fiscal years 2005
15 through 2009;

16 “(C) to carry out sections 9004(f) and
17 9005(c) \$100,000,000 for each of fiscal years
18 2005 through 2009; and

19 “(D) to carry out sections 9011 and 9012
20 \$55,000,000 for each of fiscal years 2005
21 through 2009.”.

22 (b) TABLE OF CONTENTS.—The table of contents for
23 such subtitle I is amended by adding the following new
24 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-
21 fined in or established under the Alaska Native
22 Claims Settlement Act (43 U.S.C. 1601 et
23 seq.); and”.

24 (4) By inserting after paragraph (8) (as red-
25 igned by paragraph (2) of this subsection) the fol-
26 lowing:

1 “(9) TRUST FUND.—The term ‘Trust Fund’
2 means the Leaking Underground Storage Tank
3 Trust Fund established by section 9508 of the Inter-
4 nal Revenue Code of 1986.”.

5 (b) CONFORMING AMENDMENTS.—The Solid Waste
6 Disposal Act (42 U.S.C. 6901 and following) is amended
7 as follows:

8 (1) Section 9003(f) (42 U.S.C. 6991b(f)) is
9 amended—

10 (A) in paragraph (1), by striking
11 “9001(2)(B)” and inserting “9001(7)(B)”; and

12 (B) in paragraphs (2) and (3), by striking
13 “9001(2)(A)” each place it appears and insert-
14 ing “9001(7)(A)”.

15 (2) Section 9003(h) (42 U.S.C. 6991b(h)) is
16 amended in paragraphs (1), (2)(C), (7)(A), and (11)
17 by striking “Leaking Underground Storage Tank
18 Trust Fund” each place it appears and inserting
19 “Trust Fund”.

20 (3) Section 9009 (42 U.S.C. 6991h) is amend-
21 ed—

22 (A) in subsection (a), by striking
23 “9001(2)(B)” and inserting “9001(7)(B)”; and

1 (B) in subsection (d), by striking “section
2 9001(1) (A) and (B)” and inserting “subpara-
3 graphs (A) and (B) of section 9001(10)”.

4 **SEC. 1533. TECHNICAL AMENDMENTS.**

5 The Solid Waste Disposal Act is amended as follows:

6 (1) Section 9001(4)(A) (42 U.S.C. 6991(4)(A))
7 is amended by striking “sustances” and inserting
8 “substances”.

9 (2) Section 9003(f)(1) (42 U.S.C. 6991b(f)(1))
10 is amended by striking “subsection (e) and (d) of
11 this section” and inserting “subsections (e) and
12 (d)”.

13 (3) Section 9004(a) (42 U.S.C. 6991c(a)) is
14 amended by striking “in 9001(2) (A) or (B) or
15 both” and inserting “in subparagraph (A) or (B) of
16 section 9001(7)”.

17 (4) Section 9005 (42 U.S.C. 6991d) is amend-
18 ed—

19 (A) in subsection (a), by striking “study
20 taking” and inserting “study, taking”;

21 (B) in subsection (b)(1), by striking
22 “relevent” and inserting “relevant”; and

23 (C) in subsection (b)(4), by striking
24 “Evironmental” and inserting “Environ-
25 mental”.

1 **Subtitle C—Boutique Fuels**

2 **SEC. 1541. REDUCING THE PROLIFERATION OF BOUTIQUE** 3 **FUELS.**

4 (a) TEMPORARY WAIVERS DURING SUPPLY EMER-
5 GENCIES.—Section 211(c)(4)(C) of the Clean Air Act (42
6 U.S.C. 7545(c)(4)(C)) is amended by inserting “(i)” after
7 “(C)” and by adding the following new clauses at the end
8 thereof:

9 “(ii) The Administrator may temporarily waive a con-
10 trol or prohibition respecting the use of a fuel or fuel addi-
11 tive required or regulated by the Administrator pursuant
12 to subsection (c), (h), (i), (k), or (m) of this section or
13 prescribed in an applicable implementation plan under sec-
14 tion 110 approved by the Administrator under clause (i)
15 of this subparagraph if, after consultation with, and con-
16 currence by, the Secretary of Energy, the Administrator
17 determines that—

18 “(I) extreme and unusual fuel or fuel additive
19 supply circumstances exist in a State or region of
20 the Nation which prevent the distribution of an ade-
21 quate supply of the fuel or fuel additive to con-
22 sumers;

23 “(II) such extreme and unusual fuel and fuel
24 additive supply circumstances are the result of a
25 natural disaster, an Act of God, a pipeline or refin-

1 ery equipment failure, or another event that could
2 not reasonably have been foreseen or prevented and
3 not the lack of prudent planning on the part of the
4 suppliers of the fuel or fuel additive to such State
5 or region; and

6 “(III) it is in the public interest to grant the
7 waiver (for example, when a waiver is necessary to
8 meet projected temporary shortfalls in the supply of
9 the fuel or fuel additive in a State or region of the
10 Nation which cannot otherwise be compensated for).

11 “(iii) If the Administrator makes the determinations
12 required under clause (ii), such a temporary extreme and
13 unusual fuel and fuel additive supply circumstances waiver
14 shall be permitted only if—

15 “(I) the waiver applies to the smallest geo-
16 graphic area necessary to address the extreme and
17 unusual fuel and fuel additive supply circumstances;

18 “(II) the waiver is effective for a period of 20
19 calendar days or, if the Administrator determines
20 that a shorter waiver period is adequate, for the
21 shortest practicable time period necessary to permit
22 the correction of the extreme and unusual fuel and
23 fuel additive supply circumstances and to mitigate
24 impact on air quality;

1 “(III) the waiver permits a transitional period,
2 the exact duration of which shall be determined by
3 the Administrator, after the termination of the tem-
4 porary waiver to permit wholesalers and retailers to
5 blend down their wholesale and retail inventory;

6 “(IV) the waiver applies to all persons in the
7 motor fuel distribution system; and

8 “(V) the Administrator has given public notice
9 to all parties in the motor fuel distribution system,
10 and local and State regulators, in the State or re-
11 gion to be covered by the waiver.

12 The term ‘motor fuel distribution system’ as used in this
13 clause shall be defined by the Administrator through rule-
14 making.

15 “(iv) Within 180 days of the date of enactment of
16 this clause, the Administrator shall promulgate regula-
17 tions to implement clauses (ii) and (iii).

18 “(v) Nothing in this subparagraph shall—

19 “(I) limit or otherwise affect the application of
20 any other waiver authority of the Administrator pur-
21 suant to this section or pursuant to a regulation
22 promulgated pursuant to this section; and

23 “(II) subject any State or person to an enforce-
24 ment action, penalties, or liability solely arising from

1 actions taken pursuant to the issuance of a waiver
2 under this subparagraph.”.

3 (b) LIMIT ON NUMBER OF BOUTIQUE FUELS.—Sec-
4 tion 211(c)(4)(C) of the Clean Air Act (42 U.S.C.
5 7545(c)(4)), as amended by subsection (a), is further
6 amended by adding at the end the following:

7 “(v)(I) The Administrator shall have no authority,
8 when considering a State implementation plan or a State
9 implementation plan revision, to approve under this para-
10 graph any fuel included in such plan or revision if the ef-
11 fect of such approval increases the total number of fuels
12 approved under this paragraph as of September 1, 2004,
13 in all State implementation plans.

14 “(II) The Administrator, in consultation with the
15 Secretary of Energy, shall determine the total number of
16 fuels approved under this paragraph as of September 1,
17 2004, in all State implementation plans and shall publish
18 a list of such fuels, including the states and Petroleum
19 Administration for Defense District in which they are
20 used, in the Federal Register for public review and com-
21 ment no later than 90 days after enactment.

22 “(III) The Administrator shall remove a fuel from the
23 list published under subclause (II) if a fuel ceases to be
24 included in a State implementation plan or if a fuel in
25 a State implementation plan is identical to a Federal fuel

1 formulation implemented by the Administrator, but the
2 Administrator shall not reduce the total number of fuels
3 authorized under the list published under subclause (II).

4 “(IV) Subclause (I) shall not limit the Administra-
5 tor’s authority to approve a control or prohibition respect-
6 ing any new fuel under this paragraph in a State imple-
7 mentation plan or revision to a State implementation plan
8 if such new fuel:

9 “(aa) completely replaces a fuel on the list pub-
10 lished under subclause (II); or

11 “(bb) does not increase the total number of
12 fuels on the list published under subclause (II) as of
13 September 1, 2004.

14 In the event that the total number of fuels on the list pub-
15 lished under subclause (II) at the time of the Administra-
16 tor’s consideration of a control or prohibition respecting
17 a new fuel is lower than the total number of fuels on such
18 list as of September 1, 2004, the Administrator may ap-
19 prove a control or prohibition respecting a new fuel under
20 this subclause if the Administrator, after consultation with
21 the Secretary of Energy, publishes in the Federal Register
22 after notice and comment a finding that, in the Adminis-
23 trator’s judgment, such control or prohibition respecting
24 a new fuel will not cause fuel supply or distribution inter-

1 ruptions or have a significant adverse impact on fuel
2 producibility in the affected area or contiguous areas.

3 “(V) The Administrator shall have no authority
4 under this paragraph, when considering any particular
5 State’s implementation plan or a revision to that State’s
6 implementation plan, to approve any fuel unless that fuel
7 was, as of the date of such consideration, approved in at
8 least one State implementation plan in the applicable Pe-
9 troleum Administration for Defense District. However, the
10 Administrator may approve as part of a State implementa-
11 tion plan or State implementation plan revision a fuel with
12 a summertime Reid Vapor Pressure of 7.0 psi. In no event
13 shall such approval by the Administrator cause an increase
14 in the total number of fuels on the list published under
15 subclause (II).

16 “(VI) Nothing in this clause shall be construed to
17 have any effect regarding any available authority of States
18 to require the use of any fuel additive registered in accord-
19 ance with subsection (b), including any fuel additive reg-
20 istered in accordance with subsection (b) after the enact-
21 ment of this subclause.”.

22 (c) STUDY AND REPORT TO CONGRESS ON BOU-
23 TIQUE FUELS.—

24 (1) JOINT STUDY.—The Administrator of the
25 Environmental Protection Agency and the Secretary

1 of Energy shall undertake a study of the effects on
2 air quality, on the number of fuel blends, on fuel
3 availability, on fuel fungibility, and on fuel costs of
4 the State plan provisions adopted pursuant to sec-
5 tion 211(c)(4)(C) of the Clean Air Act (42 U.S.C.
6 7545(c)(4)(C)).

7 (2) FOCUS OF STUDY.—The primary focus of
8 the study required under paragraph (1) shall be to
9 determine how to develop a Federal fuels system
10 that maximizes motor fuel fungibility and supply,
11 preserves air quality standards, and reduces motor
12 fuel price volatility that results from the prolifera-
13 tion of boutique fuels, and to recommend to Con-
14 gress such legislative changes as are necessary to
15 implement such a system. The study should include
16 the impacts on overall energy supply, distribution,
17 and use as a result of the legislative changes rec-
18 ommended.

19 (3) RESPONSIBILITY OF ADMINISTRATOR.—In
20 carrying out the study required by this section, the
21 Administrator shall coordinate obtaining comments
22 from affected parties interested in the air quality
23 impact assessment portion of the study. The Admin-
24 istrator shall use sound and objective science prac-
25 tices, shall consider the best available science, and

1 shall consider and include a description of the
2 weight of the scientific evidence.

3 (4) RESPONSIBILITY OF SECRETARY.—In car-
4 rying out the study required by this section, the Sec-
5 retary shall coordinate obtaining comments from af-
6 fected parties interested in the fuel availability,
7 number of fuel blends, fuel fungibility and fuel costs
8 portion of the study.

9 (5) REPORT TO CONGRESS.—The Administrator
10 and the Secretary jointly shall submit the results of
11 the study required by this section in a report to the
12 Congress not later than 12 months after the date of
13 the enactment of this Act, together with any rec-
14 ommended regulatory and legislative changes. Such
15 report shall be submitted to the Committee on En-
16 ergy and Commerce of the House of Representatives
17 and the Committee on Environment and Public
18 Works of the Senate.

19 (6) AUTHORIZATION OF APPROPRIATIONS.—
20 There is authorized to be appropriated jointly to the
21 Administrator and the Secretary \$500,000 for the
22 completion of the study required under this sub-
23 section.

24 (d) DEFINITIONS.—In this section:

1 (1) The term “Administrator” means the Ad-
2 ministrator of the Environmental Protection Agency.

3 (2) The term “Secretary” means the Secretary
4 of Energy.

5 (3) The term “fuel” means gasoline, diesel fuel,
6 and any other liquid petroleum product commercially
7 known as gasoline and diesel fuel for use in highway
8 and nonroad motor vehicles.

9 (4) The term “a control or prohibition respect-
10 ing a new fuel” means a control or prohibition on
11 the formulation, composition, or emissions character-
12 istics of a fuel that would require the increase or de-
13 crease of a constituent in gasoline or diesel fuel.

14 **TITLE XVI—STUDIES**

15 **SEC. 1601. STUDY ON INVENTORY OF PETROLEUM AND** 16 **NATURAL GAS STORAGE.**

17 (a) DEFINITION.—For purposes of this section “pe-
18 troleum” means crude oil, motor gasoline, jet fuel, dis-
19 tillates, and propane.

20 (b) STUDY.—The Secretary of Energy shall conduct
21 a study on petroleum and natural gas storage capacity and
22 operational inventory levels, nationwide and by major geo-
23 graphical regions.

24 (c) CONTENTS.—The study shall address—

1 (1) historical normal ranges for petroleum and
2 natural gas inventory levels;

3 (2) historical and projected storage capacity
4 trends;

5 (3) estimated operation inventory levels below
6 which outages, delivery slowdown, rationing, inter-
7 ruptions in service, or other indicators of shortage
8 begin to appear;

9 (4) explanations for inventory levels dropping
10 below normal ranges; and

11 (5) the ability of industry to meet United
12 States demand for petroleum and natural gas with-
13 out shortages or price spikes, when inventory levels
14 are below normal ranges.

15 (d) REPORT TO CONGRESS.—Not later than 1 year
16 after the date of enactment of this Act, the Secretary of
17 Energy shall submit a report to Congress on the results
18 of the study, including findings and any recommendations
19 for preventing future supply shortages.

20 **SEC. 1605. STUDY OF ENERGY EFFICIENCY STANDARDS.**

21 The Secretary of Energy shall contract with the Na-
22 tional Academy of Sciences for a study, to be completed
23 within 1 year after the date of enactment of this Act, to
24 examine whether the goals of energy efficiency standards
25 are best served by measurement of energy consumed, and

1 efficiency improvements, at the actual site of energy con-
2 sumption, or through the full fuel cycle, beginning at the
3 source of energy production. The Secretary shall submit
4 the report to Congress.

5 **SEC. 1606. TELECOMMUTING STUDY.**

6 (a) **STUDY REQUIRED.**—The Secretary, in consulta-
7 tion with the Commission, the Director of the Office of
8 Personnel Management, the Administrator of General
9 Services, and the Administrator of NTIA, shall conduct
10 a study of the energy conservation implications of the
11 widespread adoption of telecommuting by Federal employ-
12 ees in the United States.

13 (b) **REQUIRED SUBJECTS OF STUDY.**—The study re-
14 quired by subsection (a) shall analyze the following sub-
15 jects in relation to the energy saving potential of telecom-
16 muting by Federal employees:

17 (1) Reductions of energy use and energy costs
18 in commuting and regular office heating, cooling,
19 and other operations.

20 (2) Other energy reductions accomplished by
21 telecommuting.

22 (3) Existing regulatory barriers that hamper
23 telecommuting, including barriers to broadband tele-
24 communications services deployment.

1 (4) Collateral benefits to the environment, fam-
2 ily life, and other values.

3 (c) REPORT REQUIRED.—The Secretary shall submit
4 to the President and Congress a report on the study re-
5 quired by this section not later than 6 months after the
6 date of enactment of this Act. Such report shall include
7 a description of the results of the analysis of each of the
8 subject described in subsection (b).

9 (d) DEFINITIONS.—As used in this section:

10 (1) SECRETARY.—The term “Secretary” means
11 the Secretary of Energy.

12 (2) COMMISSION.—The term “Commission”
13 means the Federal Communications Commission.

14 (3) NTLA.—The term “NTLA” means the Na-
15 tional Telecommunications and Information Admin-
16 istration of the Department of Commerce.

17 (4) TELECOMMUTING.—The term “telecom-
18 muting” means the performance of work functions
19 using communications technologies, thereby elimi-
20 nating or substantially reducing the need to com-
21 mute to and from traditional worksites.

22 (5) FEDERAL EMPLOYEE.—The term “Federal
23 employee” has the meaning provided the term “em-
24 ployee” by section 2105 of title 5, United States
25 Code.

1 **SEC. 1607. LIHEAP REPORT.**

2 Not later than 1 year after the date of enactment
3 of this Act, the Secretary of Health and Human Services
4 shall transmit to Congress a report on how the Low-In-
5 come Home Energy Assistance Program could be used
6 more effectively to prevent loss of life from extreme tem-
7 peratures. In preparing such report, the Secretary shall
8 consult with appropriate officials in all 50 States and the
9 District of Columbia.

10 **SEC. 1608. OIL BYPASS FILTRATION TECHNOLOGY.**

11 The Secretary of Energy and the Administrator of
12 the Environmental Protection Agency shall—

13 (1) conduct a joint study of the benefits of oil
14 bypass filtration technology in reducing demand for
15 oil and protecting the environment;

16 (2) examine the feasibility of using oil bypass
17 filtration technology in Federal motor vehicle fleets;
18 and

19 (3) include in such study, prior to any deter-
20 mination of the feasibility of using oil bypass filtra-
21 tion technology, the evaluation of products and var-
22 ious manufacturers.

23 **SEC. 1609. TOTAL INTEGRATED THERMAL SYSTEMS.**

24 The Secretary of Energy shall—

1 (1) conduct a study of the benefits of total inte-
2 grated thermal systems in reducing demand for oil
3 and protecting the environment; and

4 (2) examine the feasibility of using total inte-
5 grated thermal systems in Department of Defense
6 and other Federal motor vehicle fleets.

7 **SEC. 1610. UNIVERSITY COLLABORATION.**

8 Not later than 2 years after the date of enactment
9 of this Act, the Secretary of Energy shall transmit to Con-
10 gress a report that examines the feasibility of promoting
11 collaborations between large institutions of higher edu-
12 cation and small institutions of higher education through
13 grants, contracts, and cooperative agreements made by the
14 Secretary for energy projects. The Secretary shall also
15 consider providing incentives for the inclusion of small in-
16 stitutions of higher education, including minority-serving
17 institutions, in energy research grants, contracts, and co-
18 operative agreements.

19 **SEC. 1611. RELIABILITY AND CONSUMER PROTECTION AS-**
20 **SESSMENT.**

21 Not later than 5 years after the date of enactment
22 of this Act, and each 5 years thereafter, the Federal En-
23 ergy Regulatory Commission shall assess the effects of the
24 exemption of electric cooperatives and government-owned
25 utilities from Commission regulation under section 201(f)

1 of the Federal Power Act. The assessment shall include
2 any effects on—

3 (1) reliability of interstate electric transmission
4 networks;

5 (2) benefit to consumers, and efficiency, of
6 competitive wholesale electricity markets;

7 (3) just and reasonable rates for electricity con-
8 sumers; and

9 (4) the ability of the Commission to protect
10 electricity consumers.

11 If the Commission finds that the 201(f) exemption results
12 in adverse effects on consumers or electric reliability, the
13 Commission shall make appropriate recommendations to
14 Congress pursuant to section 311 of the Federal Power
15 Act.

16 **SEC. 1612. REPORT ON ENERGY INTEGRATION WITH LATIN**
17 **AMERICA.**

18 The Secretary of Energy shall submit an annual re-
19 port to the Committee on Energy and Commerce of the
20 United States House of Representatives and to the Com-
21 mittee on Energy and Natural Resources of the United
22 States Senate concerning the status of energy export de-
23 velopment in Latin America and efforts by the Secretary
24 and other departments and agencies of the United States
25 to promote energy integration with Latin America. The

1 report shall contain a detailed analysis of the status of
2 energy export development in Mexico and a description of
3 all significant efforts by the Secretary and other depart-
4 ments and agencies to promote a constructive relationship
5 with Mexico regarding the development of that nation's
6 energy capacity. In particular this report shall outline ef-
7 forts the Secretary and other departments and agencies
8 have made to ensure that regulatory approval and over-
9 sight of United States/Mexico border projects that result
10 in the expansion of Mexican energy capacity are effectively
11 coordinated across departments and with the Mexican gov-
12 ernment.

13 **SEC. 1613. LOW-VOLUME GAS RESERVOIR STUDY.**

14 (a) STUDY.—The Secretary of Energy shall make a
15 grant to an organization of oil and gas producing States,
16 specifically those containing significant numbers of mar-
17 ginal oil and natural gas wells, for conducting an annual
18 study of low-volume natural gas reservoirs. Such organiza-
19 tion shall work with the State geologist of each State being
20 studied.

21 (b) CONTENTS.—The studies under this section
22 shall—

23 (1) determine the status and location of mar-
24 ginal wells and gas reservoirs;

1 (2) gather the production information of these
2 marginal wells and reservoirs;

3 (3) estimate the remaining producible reserves
4 based on variable pipeline pressures;

5 (4) locate low-pressure gathering facilities and
6 pipelines;

7 (5) recommend incentives which will enable the
8 continued production of these resources;

9 (6) produce maps and literature to disseminate
10 to States to promote conservation of natural gas re-
11 serves; and

12 (7) evaluate the amount of natural gas that is
13 being wasted through the practice of venting or flar-
14 ing of natural gas produced in association with
15 crude oil well production.

16 (c) DATA ANALYSIS.—Data development and anal-
17 ysis under this section shall be performed by an institution
18 of higher education with GIS capabilities. If the organiza-
19 tion receiving the grant under subsection (a) does not have
20 GIS capabilities, such organization shall contract with one
21 or more entities with—

22 (1) technological capabilities and resources to
23 perform advanced image processing, GIS program-
24 ming, and data analysis; and

25 (2) the ability to—

1 (A) process remotely sensed imagery with
2 high spatial resolution;

3 (B) deploy global positioning systems;

4 (C) process and synthesize existing, vari-
5 able-format gas well, pipeline, gathering facility,
6 and reservoir data;

7 (D) create and query GIS databases with
8 infrastructure location and attribute informa-
9 tion;

10 (E) write computer programs to customize
11 relevant GIS software;

12 (F) generate maps, charts, and graphs
13 which summarize findings from data research
14 for presentation to different audiences; and

15 (G) deliver data in a variety of formats, in-
16 cluding Internet Map Server for query and dis-
17 play, desktop computer display, and access
18 through handheld personal digital assistants.

19 (d) AUTHORIZATION OF APPROPRIATIONS.—There
20 are authorized to be appropriated to the Secretary of En-
21 ergy for carrying out this section—

22 (1) \$1,500,000 for fiscal year 2006; and

23 (2) \$450,000 for each of the fiscal years 2007
24 through 2010.

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.

○