

109TH CONGRESS  
1ST SESSION

# H. R. 6

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

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 18, 2005

Mr. BARTON of Texas (for himself, Mr. POMBO, and Mr. THOMAS) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and the Workforce, Financial Services, Agriculture, Resources, Science, Ways and Means, and Transportation and Infrastructure, 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

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## A BILL

To ensure jobs for our future with secure, affordable, 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.

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- Sec. 101. Energy and water saving measures in congressional buildings.
- Sec. 102. Energy management requirements.
- Sec. 103. Energy use measurement and accountability.
- 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.
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- 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.
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- Sec. 135. Preemption.
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- Sec. 141. Capacity building for energy-efficient, affordable housing.
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- Sec. 143. FHA mortgage insurance incentives for energy efficient housing.
- Sec. 144. Public housing capital fund.
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- Sec. 149. Energy strategy for HUD.

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- 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.
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### Subtitle C—Hydroelectric

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- 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.

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- Sec. 302. National Oilheat Research Alliance.
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- Sec. 320. Liquefaction or gasification natural gas terminals.
- Sec. 327. Hydraulic fracturing.
- Sec. 328. Oil and gas exploration and production defined.
- Sec. 329. Outer Continental Shelf provisions.
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## 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. 355. Encouraging Great Lakes oil and gas drilling ban.
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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—

11                    “(1) shall develop, update, and implement a  
12 cost-effective energy conservation and management  
13 plan (referred to in this section as the ‘plan’) for all  
14 facilities administered by Congress (referred to in  
15 this section as ‘congressional buildings’) to meet the  
16 energy performance requirements for Federal build-  
17 ings established under section 543(a)(1); and

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

21            “(b) PLAN REQUIREMENTS.—The plan shall in-  
22 clude—

23                    “(1) a description of the life cycle cost analysis  
24 used to determine the cost-effectiveness of proposed  
25 energy efficiency projects;

1           “(2) a schedule of energy surveys to ensure  
2 complete surveys of all congressional buildings every  
3 5 years to determine the cost and payback period of  
4 energy and water conservation measures;

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

7           “(4) the results of a study of the costs and ben-  
8 efits of installation of submetering in congressional  
9 buildings; and

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

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

18           “(1) energy expenditures and savings estimates  
19 for each facility;

20           “(2) energy management and conservation  
21 projects; and

22           “(3) future priorities to ensure compliance with  
23 this section.”.

24           (b) TABLE OF CONTENTS AMENDMENT.—The table  
25 of contents of the National Energy Conservation Policy



1 Act is amended by adding at the end of the items relating  
2 to part 3 of title V the following new item:

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

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

5 (d) ENERGY INFRASTRUCTURE.—The Architect of  
6 the Capitol, building on the Master Plan Study completed  
7 in July 2000, shall commission a study to evaluate the  
8 energy infrastructure of the Capital Complex to determine  
9 how the infrastructure could be augmented to become  
10 more energy efficient, using unconventional and renewable  
11 energy resources, in a way that would enable the Complex  
12 to have reliable utility service in the event of power fluc-  
13 tuations, shortages, or outages.

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

18 **SEC. 102. ENERGY MANAGEMENT REQUIREMENTS.**

19 (a) ENERGY REDUCTION GOALS.—

20 (1) AMENDMENT.—Section 543(a)(1) of the  
21 National Energy Conservation Policy Act (42 U.S.C.  
22 8253(a)(1)) is amended by striking “its Federal  
23 buildings so that” and all that follows through the  
24 end and inserting “the Federal buildings of the  
25 agency (including each industrial or laboratory facil-

1       ity) so that the energy consumption per gross square  
 2       foot of the Federal buildings of the agency in fiscal  
 3       years 2006 through 2015 is reduced, as compared  
 4       with the energy consumption per gross square foot  
 5       of the Federal buildings of the agency in fiscal year  
 6       2003, by the percentage specified in the following  
 7       table:

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

8               (2) REPORTING BASELINE.—The energy reduc-  
 9       tion goals and baseline established in paragraph (1)  
 10       of section 543(a) of the National Energy Conserva-  
 11       tion Policy Act (42 U.S.C. 8253(a)(1)), as amended  
 12       by this subsection, supersede all previous goals and  
 13       baselines under such paragraph, and related report-  
 14       ing requirements.

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

19               “(3) Not later than December 31, 2014, the Sec-  
 20       retary shall review the results of the implementation of

1 the energy performance requirement established under  
2 paragraph (1) and submit to Congress recommendations  
3 concerning energy performance requirements for fiscal  
4 years 2016 through 2025.”.

5 (c) EXCLUSIONS.—Section 543(c)(1) of the National  
6 Energy Conservation Policy Act (42 U.S.C. 8253(c)(1))  
7 is amended by striking “An agency may exclude” and all  
8 that follows through the end and inserting “(A) An agency  
9 may exclude, from the energy performance requirement  
10 for a fiscal year established under subsection (a) and the  
11 energy management requirement established under sub-  
12 section (b), any Federal building or collection of Federal  
13 buildings, if the head of the agency finds that—

14 (i) compliance with those requirements would  
15 be impracticable;

16 (ii) the agency has completed and submitted  
17 all federally required energy management reports;

18 (iii) the agency has achieved compliance with  
19 the energy efficiency requirements of this Act, the  
20 Energy Policy Act of 1992, Executive orders, and  
21 other Federal law; and

22 (iv) the agency has implemented all prac-  
23 ticable, life cycle cost-effective projects with respect  
24 to the Federal building or collection of Federal  
25 buildings to be excluded.

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

3 “(i) the energy intensiveness of activities car-  
4 ried out in the Federal building or collection of Fed-  
5 eral buildings; or

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

9 (d) REVIEW BY SECRETARY.—Section 543(c)(2) of  
10 the National Energy Conservation Policy Act (42 U.S.C.  
11 8253(c)(2)) is amended—

12 (1) by striking “impracticability standards” and  
13 inserting “standards for exclusion”;

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

16 (3) by striking “energy consumption require-  
17 ments” and inserting “requirements of subsections  
18 (a) and (b)(1)”.

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

22 “(3) Not later than 180 days after the date of enact-  
23 ment of this paragraph, the Secretary shall issue guide-  
24 lines that establish criteria for exclusions under paragraph  
25 (1).”.

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

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

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

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

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

21 (h) CONFORMING AMENDMENT.—Section 550(d) of  
22 the National Energy Conservation Policy Act (42 U.S.C.  
23 8258b(d)) is amended in the second sentence by striking  
24 “the 20 percent reduction goal established under section  
25 543(a) of the National Energy Conservation Policy Act

1 (42 U.S.C. 8253(a)).” and inserting “each of the energy  
2 reduction goals established under section 543(a).”.

3 **SEC. 103. ENERGY USE MEASUREMENT AND ACCOUNT-**  
4 **ABILITY.**

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

8 “(e) METERING OF ENERGY USE.—

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

23 “(2) GUIDELINES.—

24 “(A) IN GENERAL.—Not later than 180  
25 days after the date of enactment of this sub-

1 section, the Secretary, in consultation with the  
2 Department of Defense, the General Services  
3 Administration, representatives from the meter-  
4 ing industry, utility industry, energy services in-  
5 dustry, energy efficiency industry, energy effi-  
6 ciency advocacy organizations, national labora-  
7 tories, universities, and Federal facility energy  
8 managers, shall establish guidelines for agencies  
9 to carry out paragraph (1).

10 “(B) REQUIREMENTS FOR GUIDELINES.—

11 The guidelines shall—

12 “(i) take into consideration—

13 “(I) the cost of metering and  
14 submetering and the reduced cost of  
15 operation and maintenance expected  
16 to result from metering and sub-  
17 metering;

18 “(II) the extent to which meter-  
19 ing and submetering are expected to  
20 result in increased potential for en-  
21 ergy management, increased potential  
22 for energy savings and energy effi-  
23 ciency improvement, and cost and en-  
24 ergy savings due to utility contract  
25 aggregation; and

1                   “(III) the measurement and  
2                   verification protocols of the Depart-  
3                   ment of Energy;

4                   “(ii) include recommendations con-  
5                   cerning the amount of funds and the num-  
6                   ber of trained personnel necessary to gath-  
7                   er and use the metering information to  
8                   track and reduce energy use;

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

17                  “(iv) establish exclusions from the re-  
18                  quirements specified in paragraph (1)  
19                  based on the de minimis quantity of energy  
20                  use of a Federal building, industrial proc-  
21                  ess, or structure.

22                  “(3) PLAN.—Not later than 6 months after the  
23                  date guidelines are established under paragraph (2),  
24                  in a report submitted by the agency under section  
25                  548(a), each agency shall submit to the Secretary a



1 plan describing how the agency will implement the  
2 requirements of paragraph (1), including (A) how  
3 the agency will designate personnel primarily respon-  
4 sible for achieving the requirements and (B) dem-  
5 onstration by the agency, complete with documenta-  
6 tion, of any finding that advanced meters or ad-  
7 vanced metering devices, as defined in paragraph  
8 (1), are not practicable.”.

9 **SEC. 104. PROCUREMENT OF ENERGY EFFICIENT PROD-**  
10 **UCTS.**

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

15 **“SEC. 553. FEDERAL PROCUREMENT OF ENERGY EFFI-**  
16 **CIENT PRODUCTS.**

17 “(a) DEFINITIONS.—In this section:

18 “(1) AGENCY.—The term ‘agency’ has the  
19 meaning given that term in section 7902(a) of title  
20 5, United States Code.

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

24 “(3) ENERGY STAR PROGRAM.—The term ‘En-  
25 ergy Star program’ means the program established

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

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

9 “(b) PROCUREMENT OF ENERGY EFFICIENT PROD-  
10 UCTS.—

11 “(1) REQUIREMENT.—To meet the require-  
12 ments of an agency for an energy consuming prod-  
13 uct, the head of the agency shall, except as provided  
14 in paragraph (2), procure—

15 “(A) an Energy Star product; or

16 “(B) a FEMP designated product.

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

21 “(A) an Energy Star product or FEMP  
22 designated product is not cost-effective over the  
23 life of the product taking energy cost savings  
24 into account; or

1           “(B) no Energy Star product or FEMP  
2           designated product is reasonably available that  
3           meets the functional requirements of the agen-  
4           cy.

5           “(3) PROCUREMENT PLANNING.—The head of  
6           an agency shall incorporate into the specifications  
7           for all procurements involving energy consuming  
8           products and systems, including guide specifications,  
9           project specifications, and construction, renovation,  
10          and services contracts that include provision of en-  
11          ergy consuming products and systems, and into the  
12          factors for the evaluation of offers received for the  
13          procurement, criteria for energy efficiency that are  
14          consistent with the criteria used for rating Energy  
15          Star products and for rating FEMP designated  
16          products.

17          “(c) LISTING OF ENERGY EFFICIENT PRODUCTS IN  
18          FEDERAL CATALOGS.—Energy Star products and FEMP  
19          designated products shall be clearly identified and promi-  
20          nently displayed in any inventory or listing of products  
21          by the General Services Administration or the Defense Lo-  
22          gistics Agency. The General Services Administration or  
23          the Defense Logistics Agency shall supply only Energy  
24          Star products or FEMP designated products for all prod-  
25          uct categories covered by the Energy Star program or the

1 Federal Energy Management Program, except in cases  
2 where the agency ordering a product specifies in writing  
3 that no Energy Star product or FEMP designated product  
4 is available to meet the buyer’s functional requirements,  
5 or that no Energy Star product or FEMP designated  
6 product is cost-effective for the intended application over  
7 the life of the product, taking energy cost savings into ac-  
8 count.

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

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

24               “(A) determined by the Secretary to be effective  
25       in increasing the efficiency of air conditioning and

1 refrigeration equipment without having an adverse  
2 impact on air conditioning performance (including  
3 cooling capacity) or equipment useful life;

4 “(B) determined by the Administrator of the  
5 Environmental Protection Agency to be environ-  
6 mentally safe; and

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

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

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

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

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

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

2 (a) LIMITATIONS.—

3 (1) IN GENERAL.—Section 801(a) of the Na-  
4 tional Energy Conservation Policy Act (42 U.S.C.  
5 8287(a)) is amended by adding at the end the fol-  
6 lowing subparagraph:

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

21 (2) DEFINITION.—Section 804(1) of the Na-  
22 tional Energy Conservation Policy Act (42 U.S.C.  
23 8287e(1)) is amended to read as follows:

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

1           (3) VALIDITY OF CONTRACTS.—The amend-  
2           ments made by this subsection shall not affect the  
3           validity of contracts entered into under title VIII of  
4           the National Energy Conservation Policy Act (42  
5           U.S.C. 8287 et seq.) before the date of enactment  
6           of this Act, or of contracts described in subsection  
7           (h).

8           (b) PERMANENT EXTENSION.—Effective October 1,  
9           2006, section 801(c) of the National Energy Conservation  
10          Policy Act (42 U.S.C. 8287(c)) is repealed.

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

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

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

1           “(A) the lease or purchase of operating  
2           equipment, improvements, altered operation and  
3           maintenance, or technical services;

4           “(B) the increased efficient use of existing  
5           energy sources by cogeneration or heat recovery,  
6           excluding any cogeneration process for  
7           other than a federally owned building or build-  
8           ings or other federally owned facilities; or

9           “(C) the increased efficient use of existing  
10          water sources in either interior or exterior ap-  
11          plications.”.

12          (e) ENERGY SAVINGS CONTRACT.—Section 804(3) of  
13          the National Energy Conservation Policy Act (42 U.S.C.  
14          8287c(3)) is amended to read as follows:

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



1       ments and procedures of section 3307 of title 40,  
2       United States Code.”.

3       (f) ENERGY OR WATER CONSERVATION MEASURE.—

4       Section 804(4) of the National Energy Conservation Pol-  
5       icy Act (42 U.S.C. 8287c(4)) is amended to read as fol-  
6       lows:

7               “(4) The term ‘energy or water conservation  
8       measure’ means—

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

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

19       (g) REVIEW.—Not later than 180 days after the date  
20       of the enactment of this Act, the Secretary of Energy shall  
21       complete a review of the Energy Savings Performance  
22       Contract program to identify statutory, regulatory, and  
23       administrative obstacles that prevent Federal agencies  
24       from fully utilizing the program. In addition, this review  
25       shall identify all areas for increasing program flexibility

1 and effectiveness, including audit and measurement  
2 verification requirements, accounting for energy use in de-  
3 termining savings, contracting requirements, including the  
4 identification of additional qualified contractors, and en-  
5 ergy efficiency services covered. The Secretary shall report  
6 these findings to Congress and shall implement identified  
7 administrative and regulatory changes to increase pro-  
8 gram flexibility and effectiveness to the extent that such  
9 changes are consistent with statutory authority.

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

17 **SEC. 107. VOLUNTARY COMMITMENTS TO REDUCE INDUS-**  
18 **TRIAL ENERGY INTENSITY.**

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

1 (b) RECOGNITION.—The Secretary of Energy, in co-  
2 operation with the Administrator of the Environmental  
3 Protection Agency and other appropriate Federal agen-  
4 cies, shall recognize and publicize the achievements of par-  
5 ticipants in voluntary agreements under this section.

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

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

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

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

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

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

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

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

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

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

1       “(3) REVISED FEDERAL BUILDING ENERGY EFFI-  
2 CIENCY PERFORMANCE STANDARDS.—

3           “(A) IN GENERAL.—Not later than 1 year after  
4 the date of enactment of this paragraph, the Sec-  
5 retary of Energy shall establish, by rule, revised  
6 Federal building energy efficiency performance  
7 standards that require that—

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

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

17           “(II) sustainable design principles are  
18 applied to the siting, design, and construc-  
19 tion of all new and replacement buildings;  
20 and

21           “(ii) where water is used to achieve energy  
22 efficiency, water conservation technologies shall  
23 be applied to the extent they are life-cycle cost  
24 effective.

1           “(B) ADDITIONAL REVISIONS.—Not later than  
2           1 year after the date of approval of each subsequent  
3           revision of the ASHRAE Standard or the Inter-  
4           national Energy Conservation Code, as appropriate,  
5           the Secretary of Energy shall determine, based on  
6           the cost-effectiveness of the requirements under the  
7           amendments, whether the revised standards estab-  
8           lished under this paragraph should be updated to re-  
9           flect the amendments.

10           “(C) STATEMENT ON COMPLIANCE OF NEW  
11           BUILDINGS.—In the budget request of the Federal  
12           agency for each fiscal year and each report sub-  
13           mitted by the Federal agency under section 548(a)  
14           of the National Energy Conservation Policy Act (42  
15           U.S.C. 8258(a)), the head of each Federal agency  
16           shall include—

17                   “(i) a list of all new Federal buildings  
18                   owned, operated, or controlled by the Federal  
19                   agency; and

20                   “(ii) a statement concerning whether the  
21                   Federal buildings meet or exceed the revised  
22                   standards established under this paragraph.”.

23 **SEC. 111. DAYLIGHT SAVINGS.**

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

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

3 (2) by striking “October” and inserting “No-  
4 vember”.

5 (b) REPORT TO CONGRESS.—Not later than 9  
6 months after the date of enactment of this Act, the Sec-  
7 retary of Energy shall report to Congress on the impact  
8 this section on energy consumption in the United States.

9 **Subtitle B—Energy Assistance and**  
10 **State Programs**

11 **SEC. 121. LOW INCOME HOME ENERGY ASSISTANCE PRO-**  
12 **GRAM.**

13 (a) AUTHORIZATION OF APPROPRIATIONS.—Section  
14 2602(b) of the Low-Income Home Energy Assistance Act  
15 of 1981 (42 U.S.C. 8621(b)) is amended by striking “and  
16 \$2,000,000,000 for each of fiscal years 2002 through  
17 2004” and inserting “and \$5,100,000,000 for each of fis-  
18 cal years 2005 through 2007”.

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

22 “RENEWABLE FUELS

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

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

5 **SEC. 122. WEATHERIZATION ASSISTANCE.**

6 (a) AUTHORIZATION OF APPROPRIATIONS.—Section  
7 422 of the Energy Conservation and Production Act (42  
8 U.S.C. 6872) is amended by striking “for fiscal years  
9 1999 through 2003 such sums as may be necessary” and  
10 inserting “\$500,000,000 for fiscal year 2006,  
11 \$600,000,000 for fiscal year 2007, and \$700,000,000 for  
12 fiscal year 2008”.

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

17 **SEC. 123. STATE ENERGY PROGRAMS.**

18 (a) STATE ENERGY CONSERVATION PLANS.—Section  
19 362 of the Energy Policy and Conservation Act (42 U.S.C.  
20 6322) is amended by inserting at the end the following  
21 new subsection:

22 “(g) The Secretary shall, at least once every 3 years,  
23 invite the Governor of each State to review and, if nec-  
24 essary, revise the energy conservation plan of such State  
25 submitted under subsection (b) or (e). Such reviews should



1 consider the energy conservation plans of other States  
2 within the region, and identify opportunities and actions  
3 carried out in pursuit of common energy conservation  
4 goals.”.

5 (b) STATE ENERGY EFFICIENCY GOALS.—Section  
6 364 of the Energy Policy and Conservation Act (42 U.S.C.  
7 6324) is amended to read as follows:

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

17 (c) AUTHORIZATION OF APPROPRIATIONS.—Section  
18 365(f) of the Energy Policy and Conservation Act (42  
19 U.S.C. 6325(f)) is amended by striking “for fiscal years  
20 1999 through 2003 such sums as may be necessary” and  
21 inserting “\$100,000,000 for each of the fiscal years 2006  
22 and 2007 and \$125,000,000 for fiscal year 2008”.

23 **SEC. 124. ENERGY EFFICIENT APPLIANCE REBATE PRO-**  
24 **GRAMS.**

25 (a) DEFINITIONS.—In this section:

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

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

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

12           (4) SECRETARY.—The term “Secretary” means  
13 the Secretary of Energy.

14           (5) STATE ENERGY OFFICE.—The term “State  
15 energy office” means the State agency responsible  
16 for developing State energy conservation plans under  
17 section 362 of the Energy Policy and Conservation  
18 Act (42 U.S.C. 6322).

19           (6) STATE PROGRAM.—The term “State pro-  
20 gram” means a State energy efficient appliance re-  
21 bate program described in subsection (b)(1).

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

24           (1) establishes (or has established) a State en-  
25 ergy efficient appliance rebate program to provide

1 rebates to residential consumers for the purchase of  
2 residential Energy Star products to replace used ap-  
3 pliances of the same type;

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

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

11 (c) AMOUNT OF ALLOCATIONS.—

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

22 (2) MINIMUM ALLOCATIONS.—For each fiscal  
23 year, the amounts allocated under this subsection  
24 shall be adjusted proportionately so that no eligible

1 State is allocated a sum that is less than an amount  
2 determined by the Secretary.

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

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

12 (1) the amount of the allocation to the State  
13 energy office under subsection (c);

14 (2) the amount of any Federal or State tax in-  
15 centive available for the purchase of the residential  
16 Energy Star product; and

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

24 (f) AUTHORIZATION OF APPROPRIATIONS.—There  
25 are authorized to be appropriated to the Secretary to carry

1 out this section \$50,000,000 for each of the fiscal years  
2 2006 through 2010.

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

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

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

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

1 (b) ADMINISTRATION.—State energy offices receiving  
2 grants under this section shall—

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

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

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

16 **SEC. 126. LOW INCOME COMMUNITY ENERGY EFFICIENCY**  
17 **PILOT PROGRAM.**

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

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

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

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

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

10 (4) planning and development assistance for in-  
11 creasing the energy efficiency of buildings and facili-  
12 ties; and

13 (5) technical and financial assistance to local  
14 government and private entities on developing new  
15 renewable and distributed sources of power or com-  
16 bined heat and power generation.

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

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

5 **Subtitle C—Energy Efficient**  
6 **Products**

7 **SEC. 131. ENERGY STAR PROGRAM.**

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

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

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

24 “(1) promote Energy Star compliant tech-  
25 nologies as the preferred technologies in the market-



1 place for achieving energy efficiency and to reduce  
2 pollution;

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

6 “(3) preserve the integrity of the Energy Star  
7 label;

8 “(4) solicit comments from interested parties  
9 prior to establishing or revising an Energy Star  
10 product category, specification, or criterion (or effective  
11 dates for any of the foregoing);

12 “(5) upon adoption of a new or revised product  
13 category, specification, or criterion, provide reasonable  
14 notice to interested parties of any changes (including  
15 effective dates) in product categories, specifications,  
16 or criteria along with an explanation of  
17 such changes and, where appropriate, responses to  
18 comments submitted by interested parties; and

19 “(6) provide appropriate lead time (which shall  
20 be 9 months, unless the Agency or Department determines  
21 otherwise) prior to the effective date for a  
22 new or a significant revision to a product category,  
23 specification, or criterion, taking into account the  
24 timing requirements of the manufacturing, product

1 marketing, and distribution process for the specific  
2 product addressed.”.

3 (b) TABLE OF CONTENTS AMENDMENT.—The table  
4 of contents of the Energy Policy and Conservation Act is  
5 amended by inserting after the item relating to section  
6 324 the following new item:

“Sec. 324A. Energy Star program.”.

7 **SEC. 132. HVAC MAINTENANCE CONSUMER EDUCATION**  
8 **PROGRAM.**

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

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

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

16 **SEC. 133. ENERGY CONSERVATION STANDARDS FOR ADDI-**  
17 **TIONAL PRODUCTS.**

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

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

1 not include any lamp not described in subparagraph  
2 (D) that is excluded by the Secretary, by rule, be-  
3 cause the lamp is designed for special applications  
4 and is unlikely to be used in general purpose appli-  
5 cations.”; and

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

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

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

14 “(A) are not consumer products regulated  
15 under this Act; and

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

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

24 “(35) The term ‘illuminated exit sign’ means a  
25 sign that—

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

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

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

11           “(i) has an input voltage of 34.5 kilovolts  
12 or less;

13           “(ii) has an output voltage of 600 volts or  
14 less; and

15           “(iii) is rated for operation at a frequency  
16 of 60 Hertz.

17           “(B) The term ‘distribution transformer’ does  
18 not include—

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

23           “(ii) transformers, such as those commonly  
24 known as drive transformers, rectifier trans-  
25 formers, auto-transformers, Uninterruptible

1 Power System transformers, impedance trans-  
2 formers, regulating transformers, sealed and  
3 nonventilating transformers, machine tool  
4 transformers, welding transformers, grounding  
5 transformers, or testing transformers, that are  
6 designed to be used in a special purpose appli-  
7 cation and are unlikely to be used in general  
8 purpose applications; or

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

12 “(I) the transformer is designed for a  
13 special application;

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

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

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

22 “(A) has an input voltage of 600 volts or  
23 less;

24 “(B) is air-cooled; and

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

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

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

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

9           as defined on an individual product basis by the Sec-  
10          retary.

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

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

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

1           “(42) The term ‘unit heater’ means a self-con-  
2           tained fan-type heater designed to be installed with-  
3           in the heated space, except that such term does not  
4           include a warm air furnace.

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

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

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

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

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

23           (1) in subsection (b), by adding at the end the  
24          following:



1       “(9) Test procedures for illuminated exit signs shall  
2 be based on the test method used under Version 2.0 of  
3 the Energy Star program of the Environmental Protection  
4 Agency for illuminated exit signs.

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

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

23       “(12) Test procedures for medium base compact fluo-  
24 rescent lamps shall be based on the test methods used  
25 under the August 9, 2001, version of the Energy Star pro-

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

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

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

15 “(f) **ADDITIONAL CONSUMER AND COMMERCIAL**  
16 **PRODUCTS.**—The Secretary shall, not later than 24  
17 months after the date of enactment of this subsection, pre-  
18 scribe testing requirements for suspended ceiling fans, re-  
19 frigerated bottled or canned beverage vending machines,  
20 and commercial refrigerators, freezers, and refrigerator-  
21 freezers. Such testing requirements shall be based on ex-  
22 isting test procedures used in industry to the extent prac-  
23 tical and reasonable. In the case of suspended ceiling fans,  
24 such test procedures shall include efficiency at both max-

1 imum output and at an output no more than 50 percent  
2 of the maximum output.”.

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

6 “(u) BATTERY CHARGER AND EXTERNAL POWER  
7 SUPPLY ELECTRIC ENERGY CONSUMPTION.—

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

1       oping energy conservation standards for energy use  
2       for these products.

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

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

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

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

1           “(3) RULEMAKING.—The Secretary shall not  
2           propose a standard under this section unless the  
3           Secretary has issued applicable test procedures for  
4           each product pursuant to section 323.

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

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

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

1 shall use the criteria and procedures contained in sub-  
2 sections (o) and (p). Any standard prescribed under this  
3 subsection shall apply to products manufactured 3 years  
4 after the date of publication of a final rule establishing  
5 such standard.

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

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

13               “(1) shall consume not more than 190 watts of  
14 power; and

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

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

1       “(z) TRAFFIC SIGNAL MODULES.—Traffic signal  
2 modules manufactured on or after January 1, 2006, shall  
3 meet the performance requirements used under the En-  
4 ergy Star program of the Environmental Protection Agen-  
5 cy for traffic signals, as in effect on the date of enactment  
6 of this subsection, and shall be installed with compatible,  
7 electrically connected signal control interface devices and  
8 conflict monitoring systems.

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

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

1 requirements for color quality (CRI); power factor; oper-  
2 ating frequency; and maximum allowable start time based  
3 on the requirements prescribed by the August 9, 2001,  
4 version of the Energy Star Program Requirements for  
5 Compact Fluorescent Lamps. The Secretary may, by rule,  
6 revise these requirements or establish other requirements  
7 considering energy savings, cost effectiveness, and con-  
8 sumer satisfaction.

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

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

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



1 lished under subsections (w) through (bb) take ef-  
2 fect.

3 “(dd) CEILING FANS.—

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

7 “(A) Lighting controls operate independ-  
8 ently from fan speed controls.

9 “(B) Adjustable speed controls (either  
10 more than 1 speed or variable speed).

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

19 “(2) REVISED STANDARDS.—

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

1           “(B) SPECIAL CONSIDERATION.—If the  
2           Secretary sets such standards, the Secretary  
3           shall consider—

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

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

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

18           (d) RESIDENTIAL FURNACE FANS.—Section  
19           325(f)(3) of the Energy Policy and Conservation Act (42  
20           U.S.C. 6295(f)(3)) is amended by adding the following  
21           new subparagraph at the end:

22                   “(D) Notwithstanding any provision of this Act, the  
23           Secretary may consider, and prescribe, if the requirements  
24           of subsection (o) of this section are met, energy efficiency

1 or energy use standards for electricity used for purposes  
2 of circulating air through duct work.”.

3 **SEC. 134. ENERGY LABELING.**

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

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

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

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

25 “(I) January 1, 2009; or

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

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

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

19 **SEC. 135. PREEMPTION.**

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

23           “(h) CEILING FANS.—Effective on January 1, 2006,  
24 this section shall apply to and supersede all State and local

1 standards prescribed or enacted for ceiling fans and ceil-  
2 ing fan light kits.”.

3 **SEC. 136. STATE CONSUMER PRODUCT ENERGY EFFI-  
4 CIENCY STANDARDS.**

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

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

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

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

18 **Subtitle D—Public Housing**

19 **SEC. 141. CAPACITY BUILDING FOR ENERGY-EFFICIENT, AF-  
20 FORDABLE HOUSING.**

21 Section 4(b) of the HUD Demonstration Act of 1993  
22 (42 U.S.C. 9816 note) is amended—

23 (1) in paragraph (1), by inserting before the  
24 semicolon at the end the following: “, including ca-  
25 pabilities regarding the provision of energy efficient,

1 affordable housing and residential energy conserva-  
2 tion measures”; and

3 (2) in paragraph (2), by inserting before the  
4 semicolon the following: “, including such activities  
5 relating to the provision of energy efficient, afford-  
6 able housing and residential energy conservation  
7 measures that benefit low-income families”.

8 **SEC. 142. INCREASE OF CDBG PUBLIC SERVICES CAP FOR**  
9 **ENERGY CONSERVATION AND EFFICIENCY**  
10 **ACTIVITIES.**

11 Section 105(a)(8) of the Housing and Community  
12 Development Act of 1974 (42 U.S.C. 5305(a)(8)) is  
13 amended—

14 (1) by inserting “or efficiency” after “energy  
15 conservation”;

16 (2) by striking “, and except that” and insert-  
17 ing “; except that”; and

18 (3) by inserting before the semicolon at the end  
19 the following: “; and except that each percentage  
20 limitation under this paragraph on the amount of  
21 assistance provided under this title that may be used  
22 for the provision of public services is hereby in-  
23 creased by 10 percent, but such percentage increase  
24 may be used only for the provision of public services  
25 concerning energy conservation or efficiency”.

1 **SEC. 143. FHA MORTGAGE INSURANCE INCENTIVES FOR**  
2 **ENERGY EFFICIENT HOUSING.**

3 (a) SINGLE FAMILY HOUSING MORTGAGE INSUR-  
4 ANCE.—Section 203(b)(2) of the National Housing Act  
5 (12 U.S.C. 1709(b)(2)) is amended, in the first undesig-  
6 nated paragraph beginning after subparagraph (B)(ii)(IV)  
7 (relating to solar energy systems), by striking “20 per-  
8 cent” and inserting “30 percent”.

9 (b) MULTIFAMILY HOUSING MORTGAGE INSUR-  
10 ANCE.—Section 207(c) of the National Housing Act (12  
11 U.S.C. 1713(c)) is amended, in the last undesignated  
12 paragraph beginning after paragraph (3) (relating to solar  
13 energy systems and residential energy conservation meas-  
14 ures), by striking “20 percent” and inserting “30 per-  
15 cent”.

16 (c) COOPERATIVE HOUSING MORTGAGE INSUR-  
17 ANCE.—Section 213(p) of the National Housing Act (12  
18 U.S.C. 1715e(p)) is amended by striking “20 per centum”  
19 and inserting “30 percent”.

20 (d) REHABILITATION AND NEIGHBORHOOD CON-  
21 SERVATION HOUSING MORTGAGE INSURANCE.—Section  
22 220(d)(3)(B)(iii)(IV) of the National Housing Act (12  
23 U.S.C. 1715k(d)(3)(B)(iii)(IV)) is amended—

24 (1) by striking “with respect to rehabilitation  
25 projects involving not more than five family units,”;  
26 and

1           (2) by striking “20 per centum” and inserting  
2           “30 percent”.

3           (e) **LOW-INCOME MULTIFAMILY HOUSING MORT-**  
4 **GAGE INSURANCE.**—Section 221(k) of the National Hous-  
5 ing Act (12 U.S.C. 1715l(k)) is amended by striking “20  
6 per centum” and inserting “30 percent”.

7           (f) **ELDERLY HOUSING MORTGAGE INSURANCE.**—  
8 Section 231(c)(2)(C) of the National Housing Act (12  
9 U.S.C. 1715v(c)(2)(C)) is amended by striking “20 per  
10 centum” and inserting “30 percent”.

11          (g) **CONDOMINIUM HOUSING MORTGAGE INSUR-**  
12 **ANCE.**—Section 234(j) of the National Housing Act (12  
13 U.S.C. 1715y(j)) is amended by striking “20 per centum”  
14 and inserting “30 percent”.

15 **SEC. 144. PUBLIC HOUSING CAPITAL FUND.**

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

18           (1) in subsection (d)(1)—

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

21                (B) in subparagraph (J), by striking the  
22                period at the end and inserting a semicolon;  
23                and

24                (C) by adding at the end the following new  
25                subparagraphs:



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

11           “(L) integrated utility management and  
12 capital planning to maximize energy conserva-  
13 tion and efficiency measures.”; and

14 (2) in subsection (e)(2)(C)—

15           (A) by striking “The” and inserting the  
16 following:

17                   “(i) IN GENERAL.—The”; and

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

19                   “(ii) THIRD PARTY CONTRACTS.—

20                   Contracts described in clause (i) may in-  
21                   clude contracts for equipment conversions  
22                   to less costly utility sources, projects with  
23                   resident-paid utilities, and adjustments to  
24                   frozen base year consumption, including  
25                   systems repaired to meet applicable build-

1 ing and safety codes and adjustments for  
2 occupancy rates increased by rehabilita-  
3 tion.

4 “(iii) TERM OF CONTRACT.—The total  
5 term of a contract described in clause (i)  
6 shall not exceed 20 years to allow longer  
7 payback periods for retrofits, including  
8 windows, heating system replacements,  
9 wall insulation, site-based generation, ad-  
10 vanced energy savings technologies, includ-  
11 ing renewable energy generation, and other  
12 such retrofits.”.

13 **SEC. 145. GRANTS FOR ENERGY-CONSERVING IMPROVE-**  
14 **MENTS FOR ASSISTED HOUSING.**

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

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

19 (2) by inserting after “1959,” the following:  
20 “which are eligible multifamily housing projects (as  
21 such term is defined in section 512 of the Multi-  
22 family Assisted Housing Reform and Affordability  
23 Act of 1997 (42 U.S.C. 1437f note)) and are subject  
24 to mortgage restructuring and rental assistance suf-  
25 ficiency plans under such Act,”; and

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

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

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

18 **SEC. 148. ENERGY EFFICIENCY STANDARDS.**

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

21                   (1) in subsection (a)—

22                           (A) in paragraph (1)—

23                                   (i) by striking “1 year after the date  
24                                   of the enactment of the Energy Policy Act

1 of 1992” and inserting “September 30,  
2 2006”;

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

5 (iii) in subparagraph (B), by striking  
6 the period at the end and inserting “;  
7 and”; and

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

10 “(C) rehabilitation and new construction of  
11 public and assisted housing funded by HOPE  
12 VI revitalization grants under section 24 of the  
13 United States Housing Act of 1937 (42 U.S.C.  
14 1437v), where such standards are determined  
15 to be cost effective by the Secretary of Housing  
16 and Urban Development.”; and

17 (B) in paragraph (2), by striking “Council  
18 of American” and all that follows through  
19 “90.1–1989’”)” and inserting “2003 Inter-  
20 national Energy Conservation Code”;

21 (2) in subsection (b)—

22 (A) by striking “within 1 year after the  
23 date of the enactment of the Energy Policy Act  
24 of 1992” and inserting “by September 30,  
25 2006”; and

1 (B) by striking “CABO” and all that fol-  
2 lows through “1989” and inserting “the 2003  
3 International Energy Conservation Code”; and  
4 (3) in subsection (c)—

5 (A) in the heading, by striking “MODEL  
6 ENERGY CODE” and inserting “THE INTER-  
7 NATIONAL ENERGY CONSERVATION CODE”;  
8 and

9 (B) by striking “CABO” and all that fol-  
10 lows through “1989” and inserting “the 2003  
11 International Energy Conservation Code”.

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

13 The Secretary of Housing and Urban Development  
14 shall develop and implement an integrated strategy to re-  
15 duce utility expenses through cost-effective energy con-  
16 servation and efficiency measures and energy efficient de-  
17 sign and construction of public and assisted housing. The  
18 energy strategy shall include the development of energy  
19 reduction goals and incentives for public housing agencies.  
20 The Secretary shall submit a report to Congress, not later  
21 than 1 year after the date of the enactment of this Act,  
22 on the energy strategy and the actions taken by the De-  
23 partment of Housing and Urban Development to monitor  
24 the energy usage of public housing agencies and shall sub-

1 mit an update every 2 years thereafter on progress in im-  
2 plementing the strategy.

## 3 **TITLE II—RENEWABLE ENERGY**

### 4 **Subtitle A—General Provisions**

#### 5 **SEC. 201. ASSESSMENT OF RENEWABLE ENERGY RE-** 6 **SOURCES.**

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

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

22 (1) a detailed inventory describing the available  
23 amount and characteristics of the renewable energy  
24 resources; and

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

15          (c) **AUTHORIZATION OF APPROPRIATIONS.**—For the  
16          purposes of this section, there are authorized to be appro-  
17          priated to the Secretary of Energy \$10,000,000 for each  
18          of fiscal years 2006 through 2010.

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

20          (a) **INCENTIVE PAYMENTS.**—Section 1212(a) of the  
21          Energy Policy Act of 1992 (42 U.S.C. 13317(a)) is  
22          amended by striking “and which satisfies” and all that  
23          follows through “Secretary shall establish.” and inserting  
24          “. If there are insufficient appropriations to make full pay-  
25          ments for electric production from all qualified renewable

1 energy facilities in any given year, the Secretary shall as-  
2 sign 60 percent of appropriated funds for that year to fa-  
3 cilities that use solar, wind, geothermal, or closed-loop  
4 (dedicated energy crops) biomass technologies to generate  
5 electricity, and assign the remaining 40 percent to other  
6 projects. The Secretary may, after transmitting to Con-  
7 gress an explanation of the reasons therefor, alter the per-  
8 centage requirements of the preceding sentence.”.

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

12 (1) by striking “a State or any political” and  
13 all that follows through “nonprofit electrical cooper-  
14 ative” and inserting “a not-for-profit electric cooper-  
15 ative, a public utility described in section 115 of the  
16 Internal Revenue Code of 1986, a State, Common-  
17 wealth, territory, or possession of the United States  
18 or the District of Columbia, or a political subdivision  
19 thereof, or an Indian tribal government or subdivi-  
20 sion thereof,”; and

21 (2) by inserting “landfill gas, livestock methane,  
22 ocean (tidal, wave, current, and thermal),” after  
23 “wind, biomass,”.

24 (c) ELIGIBILITY WINDOW.—Section 1212(c) of the  
25 Energy Policy Act of 1992 (42 U.S.C. 13317(c)) is



1 amended by striking “during the 10-fiscal year period be-  
2 ginning with the first full fiscal year occurring after the  
3 enactment of this section” and inserting “after October  
4 1, 2005, and before October 1, 2015”.

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

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

14 (f) AUTHORIZATION OF APPROPRIATIONS.—Section  
15 1212(g) of the Energy Policy Act of 1992 (42 U.S.C.  
16 13317(g)) is amended to read as follows:

17 “(g) AUTHORIZATION OF APPROPRIATIONS.—

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

22 “(2) AVAILABILITY OF FUNDS.—Funds made  
23 available under paragraph (1) shall remain available  
24 until expended.”.

1 **SEC. 203. FEDERAL PURCHASE REQUIREMENT.**

2 (a) REQUIREMENT.—The President, acting through  
3 the Secretary of Energy, shall seek to ensure that, to the  
4 extent economically feasible and technically practicable, of  
5 the total amount of electric energy the Federal Govern-  
6 ment consumes during any fiscal year, the following  
7 amounts shall be renewable energy:

8 (1) Not less than 3 percent in fiscal years 2007  
9 through 2009.

10 (2) Not less than 5 percent in fiscal years 2010  
11 through 2012.

12 (3) Not less than 7.5 percent in fiscal year  
13 2013 and each fiscal year thereafter.

14 (b) DEFINITIONS.—In this section:

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

18 (A) any of the following forest-related re-  
19 sources: mill residues, precommercial thinnings,  
20 slash, and brush, or nonmerchantable material;

21 (B) solid wood waste materials, including  
22 waste pallets, crates, dunnage, manufacturing  
23 and construction wood wastes (other than pres-  
24 sure-treated, chemically-treated, or painted  
25 wood wastes), and landscape or right-of-way  
26 tree trimmings, but not including municipal

1 solid waste (garbage), gas derived from the bio-  
2 degradation of solid waste, or paper that is  
3 commonly recycled;

4 (C) agriculture wastes, including orchard  
5 tree crops, vineyard, grain, legumes, sugar, and  
6 other crop by-products or residues, and live-  
7 stock waste nutrients; or

8 (D) a plant that is grown exclusively as a  
9 fuel for the production of electricity.

10 (2) RENEWABLE ENERGY.—The term “renew-  
11 able energy” means electric energy generated from  
12 solar, wind, biomass, landfill gas, ocean (tidal, wave,  
13 current, and thermal), geothermal, municipal solid  
14 waste, or new hydroelectric generation capacity  
15 achieved from increased efficiency or additions of  
16 new capacity at an existing hydroelectric project.

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

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

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

24 (3) the renewable energy is produced on Indian  
25 land as defined in title XXVI of the Energy Policy

1 Act of 1992 (25 U.S.C. 3501 et seq.) and used at  
2 a Federal facility.

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

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

9 Section 604 of the Act entitled “An Act to authorize  
10 appropriations for certain insular areas of the United  
11 States, and for other purposes”, approved December 24,  
12 1980 (48 U.S.C. 1492), is amended—

13 (1) in subsection (a)(4) by striking the period  
14 and inserting a semicolon;

15 (2) by adding at the end of subsection (a) the  
16 following new paragraphs:

17 “(5) electric power transmission and distribu-  
18 tion lines in insular areas are inadequate to with-  
19 stand damage caused by the hurricanes and ty-  
20 phoons which frequently occur in insular areas and  
21 such damage often costs millions of dollars to repair;  
22 and

23 “(6) the refinement of renewable energy tech-  
24 nologies since the publication of the 1982 Territorial  
25 Energy Assessment prepared pursuant to subsection

1 (c) reveals the need to reassess the state of energy  
2 production, consumption, infrastructure, reliance on  
3 imported energy, opportunities for energy conserva-  
4 tion and increased energy efficiency, and indigenous  
5 sources in regard to the insular areas.”;

6 (3) by amending subsection (e) to read as fol-  
7 lows:

8 “(e)(1) The Secretary of the Interior, in consultation  
9 with the Secretary of Energy and the head of government  
10 of each insular area, shall update the plans required under  
11 subsection (e) by—

12 “(A) updating the contents required by sub-  
13 section (c);

14 “(B) drafting long-term energy plans for such  
15 insular areas with the objective of reducing, to the  
16 extent feasible, their reliance on energy imports by  
17 the year 2012, increasing energy conservation and  
18 energy efficiency, and maximizing, to the extent fea-  
19 sible, use of indigenous energy sources; and

20 “(C) drafting long-term energy transmission  
21 line plans for such insular areas with the objective  
22 that the maximum percentage feasible of electric  
23 power transmission and distribution lines in each in-  
24 sular area be protected from damage caused by hur-  
25 ricanes and typhoons.

1 “(2) Not later than December 31, 2006, the Sec-  
2 retary of the Interior shall submit to Congress the updated  
3 plans for each insular area required by this subsection.”;  
4 and

5 (4) by amending subsection (g)(4) to read as  
6 follows:

7 “(4) POWER LINE GRANTS FOR INSULAR  
8 AREAS.—

9 “(A) IN GENERAL.—The Secretary of the  
10 Interior is authorized to make grants to govern-  
11 ments of insular areas of the United States to  
12 carry out eligible projects to protect electric  
13 power transmission and distribution lines in  
14 such insular areas from damage caused by hur-  
15 ricanes and typhoons.

16 “(B) ELIGIBLE PROJECTS.—The Secretary  
17 may award grants under subparagraph (A) only  
18 to governments of insular areas of the United  
19 States that submit written project plans to the  
20 Secretary for projects that meet the following  
21 criteria:

22 “(i) The project is designed to protect  
23 electric power transmission and distribu-  
24 tion lines located in 1 or more of the insu-

1 lar areas of the United States from dam-  
2 age caused by hurricanes and typhoons.

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

6 “(iii) The project addresses 1 or more  
7 problems that have been repetitive or that  
8 pose a significant risk to public health and  
9 safety.

10 “(iv) The project is not likely to cost  
11 more than the value of the reduction in di-  
12 rect damage and other negative impacts  
13 that the project is designed to prevent or  
14 mitigate. The cost benefit analysis required  
15 by this criterion shall be computed on a  
16 net present value basis.

17 “(v) The project design has taken into  
18 consideration long-term changes to the  
19 areas and persons it is designed to protect  
20 and has manageable future maintenance  
21 and modification requirements.

22 “(vi) The project plan includes an  
23 analysis of a range of options to address  
24 the problem it is designed to prevent or

1 mitigate and a justification for the selec-  
2 tion of the project in light of that analysis.

3 “(vii) The applicant has demonstrated  
4 to the Secretary that the matching funds  
5 required by subparagraph (D) are avail-  
6 able.

7 “(C) PRIORITY.—When making grants  
8 under this paragraph, the Secretary shall give  
9 priority to grants for projects which are likely  
10 to—

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

13 “(ii) best conform with plans that  
14 have been approved by the Federal Govern-  
15 ment or the government of the insular area  
16 where the project is to be carried out for  
17 development or hazard mitigation for that  
18 insular area.

19 “(D) MATCHING REQUIREMENT.—The  
20 Federal share of the cost for a project for which  
21 a grant is provided under this paragraph shall  
22 not exceed 75 percent of the total cost of that  
23 project. The non-Federal share of the cost may  
24 be provided in the form of cash or services.



1           “(E) TREATMENT OF FUNDS FOR CERTAIN  
2           PURPOSES.—Grants provided under this para-  
3           graph shall not be considered as income, a re-  
4           source, or a duplicative program when deter-  
5           mining eligibility or benefit levels for Federal  
6           major disaster and emergency assistance.

7           “(F) AUTHORIZATION OF APPROPRIA-  
8           TIONS.—There are authorized to be appro-  
9           priated to carry out this paragraph \$5,000,000  
10          for each fiscal year beginning after the date of  
11          the enactment of this paragraph.”.

12 **SEC. 205. USE OF PHOTOVOLTAIC ENERGY IN PUBLIC**  
13 **BUILDINGS.**

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

17 **“SEC. 570. USE OF PHOTOVOLTAIC ENERGY IN PUBLIC**  
18 **BUILDINGS.**

19          “(a) PHOTOVOLTAIC ENERGY COMMERCIALIZATION  
20 PROGRAM.—

21               “(1) IN GENERAL.—The Secretary may estab-  
22               lish a photovoltaic energy commercialization pro-  
23               gram for the procurement and installation of photo-  
24               voltaic solar electric systems for electric production  
25               in new and existing public buildings.

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

3           “(A) To accelerate the growth of a com-  
4 mercially viable photovoltaic industry to make  
5 this energy system available to the general pub-  
6 lic as an option which can reduce the national  
7 consumption of fossil fuel.

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

10           “(C) To attain the goal of installing solar  
11 energy systems in 20,000 Federal buildings by  
12 2010, as contained in the Federal Government’s  
13 Million Solar Roof Initiative of 1997.

14           “(D) To stimulate the general use within  
15 the Federal Government of life-cycle costing  
16 and innovative procurement methods.

17           “(E) To develop program performance  
18 data to support policy decisions on future incen-  
19 tive programs with respect to energy.

20           “(3) ACQUISITION OF PHOTOVOLTAIC SOLAR  
21 ELECTRIC SYSTEMS.—

22           “(A) IN GENERAL.—The program shall  
23 provide for the acquisition of photovoltaic solar  
24 electric systems and associated storage capa-  
25 bility for use in public buildings.

1           “(B) ACQUISITION LEVELS.—The acquisi-  
2           tion of photovoltaic electric systems shall be at  
3           a level substantial enough to allow use of low-  
4           cost production techniques with at least 150  
5           megawatts (peak) cumulative acquired during  
6           the 5 years of the program.

7           “(4) ADMINISTRATION.—The Secretary shall  
8           administer the program and shall—

9                   “(A) issue such rules and regulations as  
10                  may be appropriate to monitor and assess the  
11                  performance and operation of photovoltaic solar  
12                  electric systems installed pursuant to this sub-  
13                  section;

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

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

18           “(b) PHOTOVOLTAIC SYSTEMS EVALUATION PRO-  
19           GRAM.—

20                   “(1) IN GENERAL.—Not later than 60 days  
21                  after the date of enactment of this section, the Sec-  
22                  retary shall establish a photovoltaic solar energy sys-  
23                  tems evaluation program to evaluate such photo-  
24                  voltaic solar energy systems as are required in public  
25                  buildings.

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

5           “(c) AUTHORIZATION OF APPROPRIATIONS.—

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

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

16           (b) CONFORMING AMENDMENT.—The table of sec-  
17 tions for the National Energy Conservation Policy Act is  
18 amended by inserting after the item relating to section  
19 569 the following:

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

20 **SEC. 206. GRANTS TO IMPROVE THE COMMERCIAL VALUE**  
21 **OF FOREST BIOMASS FOR ELECTRIC ENERGY,**  
22 **USEFUL HEAT, TRANSPORTATION FUELS, PE-**  
23 **TROLEUM-BASED PRODUCT SUBSTITUTES,**  
24 **AND OTHER COMMERCIAL PURPOSES.**

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

1           (1) Thousands of communities in the United  
2 States, many located near Federal lands, are at risk  
3 to wildfire. Approximately 190,000,000 acres of land  
4 managed by the Secretary of Agriculture and the  
5 Secretary of the Interior are at risk of catastrophic  
6 fire in the near future. The accumulation of heavy  
7 forest fuel loads continues to increase as a result of  
8 disease, insect infestations, and drought, further  
9 raising the risk of fire each year.

10           (2) In addition, more than 70,000,000 acres  
11 across all land ownerships are at risk to higher than  
12 normal mortality over the next 15 years from insect  
13 infestation and disease. High levels of tree mortality  
14 from insects and disease result in increased fire risk,  
15 loss of old growth, degraded watershed conditions,  
16 and changes in species diversity and productivity, as  
17 well as diminished fish and wildlife habitat and de-  
18 creased timber values.

19           (3) Preventive treatments such as removing fuel  
20 loading, ladder fuels, and hazard trees, planting  
21 proper species mix and restoring and protecting  
22 early successional habitat, and other specific restora-  
23 tion treatments designed to reduce the susceptibility  
24 of forest land, woodland, and rangeland to insect  
25 outbreaks, disease, and catastrophic fire present the

1 greatest opportunity for long-term forest health by  
2 creating a mosaic of species-mix and age distribu-  
3 tion. Such prevention treatments are widely acknowl-  
4 edged to be more successful and cost effective than  
5 suppression treatments in the case of insects, dis-  
6 ease, and fire.

7 (4) The byproducts of preventive treatment  
8 (wood, brush, thinnings, chips, slash, and other haz-  
9 ardous fuels) removed from forest lands, woodlands  
10 and rangelands represent an abundant supply of bio-  
11 mass for biomass-to-energy facilities and raw mate-  
12 rial for business. There are currently few markets  
13 for the extraordinary volumes of byproducts being  
14 generated as a result of the necessary large-scale  
15 preventive treatment activities.

16 (5) The United States should—

17 (A) promote economic and entrepreneurial  
18 opportunities in using byproducts removed  
19 through preventive treatment activities related  
20 to hazardous fuels reduction, disease, and insect  
21 infestation; and

22 (B) develop and expand markets for tradi-  
23 tionally underused wood and biomass as an out-  
24 let for byproducts of preventive treatment ac-  
25 tivities.

1 (b) DEFINITIONS.—In this section:

2 (1) BIOMASS.—The term “biomass” means  
3 trees and woody plants, including limbs, tops, needles,  
4 and other woody parts, and byproducts of preventive  
5 treatment, such as wood, brush, thinnings,  
6 chips, and slash, that are removed—

7 (A) to reduce hazardous fuels; or

8 (B) to reduce the risk of or to contain disease  
9 or insect infestation.

10 (2) INDIAN TRIBE.—The term “Indian tribe”  
11 has the meaning given the term in section 4(e) of  
12 the Indian Self-Determination and Education Assistance  
13 Act (25 U.S.C. 450b(e)).

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

15 (A) an individual;

16 (B) a community (as determined by the  
17 Secretary concerned);

18 (C) an Indian tribe;

19 (D) a small business, micro-business, or a  
20 corporation that is incorporated in the United  
21 States; and

22 (E) a nonprofit organization.

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

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

4 (i) has a population of not more than  
5 50,000 individuals; and

6 (ii) the Secretary concerned, in the  
7 sole discretion of the Secretary concerned,  
8 determines contains or is located near  
9 land, the condition of which is at signifi-  
10 cant risk of catastrophic wildfire, disease,  
11 or insect infestation or which suffers from  
12 disease or insect infestation; or

13 (B) any county that—

14 (i) is not contained within a metro-  
15 politan statistical area; and

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

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



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

3 (B) the Secretary of the Interior with re-  
4 spect to Federal lands under the jurisdiction of  
5 the Secretary of the Interior and Indian lands.

6 (c) BIOMASS COMMERCIAL USE GRANT PROGRAM.—

7 (1) IN GENERAL.—The Secretary concerned  
8 may make grants to any person that owns or oper-  
9 ates a facility that uses biomass as a raw material  
10 to produce electric energy, sensible heat, transpor-  
11 tation fuels, or substitutes for petroleum-based prod-  
12 ucts to offset the costs incurred to purchase biomass  
13 for use by such facility.

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

17 (3) MONITORING OF GRANT RECIPIENT ACTIVI-  
18 TIES.—As a condition of a grant under this sub-  
19 section, the grant recipient shall keep such records  
20 as the Secretary concerned may require to fully and  
21 correctly disclose the use of the grant funds and all  
22 transactions involved in the purchase of biomass.  
23 Upon notice by a representative of the Secretary  
24 concerned, the grant recipient shall afford the rep-  
25 resentative reasonable access to the facility that pur-

1 chases or uses biomass and an opportunity to exam-  
2 ine the inventory and records of the facility.

3 (d) IMPROVED BIOMASS USE GRANT PROGRAM.—

4 (1) IN GENERAL.—The Secretary concerned  
5 may make grants to persons to offset the cost of  
6 projects to develop or research opportunities to im-  
7 prove the use of, or add value to, biomass. In mak-  
8 ing such grants, the Secretary concerned shall give  
9 preference to persons in preferred communities.

10 (2) SELECTION.—The Secretary concerned shall  
11 select a grant recipient under paragraph (1) after  
12 giving consideration to the anticipated public bene-  
13 fits of the project, including the potential to develop  
14 thermal or electric energy resources or affordable en-  
15 ergy, opportunities for the creation or expansion of  
16 small businesses and micro-businesses, and the po-  
17 tential for new job creation.

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

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

24 (f) REPORT.—Not later than October 1, 2012, the  
25 Secretary of Agriculture, in consultation with the Sec-

1   retary of the Interior, shall submit to the Committee on  
2   Energy and Natural Resources and the Committee on Ag-  
3   riculture, Nutrition, and Forestry of the Senate and the  
4   Committee on Resources, the Committee on Energy and  
5   Commerce, and the Committee on Agriculture of the  
6   House of Representatives a report describing the results  
7   of the grant programs authorized by this section. The re-  
8   port shall include the following:

9           (1) An identification of the size, type, and the  
10          use of biomass by persons that receive grants under  
11          this section.

12          (2) The distance between the land from which  
13          the biomass was removed and the facility that used  
14          the biomass.

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

18   **SEC. 207. BIOBASED PRODUCTS.**

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

1 **SEC. 208. RENEWABLE ENERGY SECURITY.**

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

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

7 (2) in paragraph (3), by striking “\$2,500 per  
8 dwelling unit average provided in paragraph (1)”  
9 and inserting “dwelling unit averages provided in  
10 paragraphs (1) and (4)”; and

11 (3) by adding at the end the following new  
12 paragraphs:

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

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

18 “(i) establish the criteria which are to be used  
19 in prescribing performance and quality standards  
20 under paragraph (6)(A)(ii) or in specifying any form  
21 of renewable energy under paragraph (6)(A)(i)(I);  
22 and

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

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

6       “(C) Each month the Secretary shall publish a report  
7 of any request under subparagraph (A)(ii) which has been  
8 denied during the preceding month and the reasons for  
9 the denial.

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

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

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

19               “(iii) available Federal subsidies do not make  
20 such specification unnecessary or inappropriate (in  
21 the light of the most advantageous allocation of eco-  
22 nomic resources).

23       “(6) In this subsection—

24               “(A) the term ‘renewable energy system’ means  
25 a system which—

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

3           “(I) solar energy, energy derived from  
4 the geothermal deposits, energy derived  
5 from biomass, or any other form of renew-  
6 able energy which the Secretary specifies  
7 by regulations, for the purpose of heating  
8 or cooling such dwelling or providing hot  
9 water or electricity for use within such  
10 dwelling; or

11           “(II) wind energy for nonbusiness res-  
12 idential purposes;

13           “(ii) meets the performance and quality  
14 standards (if any) which have been prescribed  
15 by the Secretary by regulations;

16           “(iii) in the case of a combustion rated  
17 system, has a thermal efficiency rating of at  
18 least 75 percent; and

19           “(iv) in the case of a solar system, has a  
20 thermal efficiency rating of at least 15 percent;  
21 and

22           “(B) the term ‘biomass’ means any organic  
23 matter that is available on a renewable or recurring  
24 basis, including agricultural crops and trees, wood  
25 and wood wastes and residues, plants (including

1 aquatic plants), grasses, residues, fibers, and animal  
2 wastes, municipal wastes, and other waste mate-  
3 rials.”.

4 (b) DISTRICT HEATING AND COOLING PROGRAMS.—  
5 Section 172 of the Energy Policy Act of 1992 (42 U.S.C.  
6 13451 note) is amended—

7 (1) in subsection (a)—

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

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

12 (C) by adding at the end the following new  
13 paragraph:

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

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

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

23 “(2) The term ‘biomass’ means any organic  
24 matter that is available on a renewable or recurring  
25 basis, including agricultural crops and trees, wood

1 and wood wastes and residues, plants (including  
2 aquatic plants), grasses, residues, fibers, and animal  
3 wastes, municipal wastes, and other waste mate-  
4 rials.”.

5 (d) REBATE PROGRAM.—

6 (1) ESTABLISHMENT.—The Secretary of En-  
7 ergy shall establish a program providing rebates for  
8 consumers for expenditures made for the installation  
9 of a renewable energy system in connection with a  
10 dwelling unit or small business.

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

14 (A) 25 percent of the expenditures de-  
15 scribed in paragraph (1) made by the con-  
16 sumer; or

17 (B) \$3,000.

18 (3) DEFINITION.—For purposes of this sub-  
19 section, the term “renewable energy system” has the  
20 meaning given that term in section 415(c)(6)(A) of  
21 the Energy Conservation and Production Act (42  
22 U.S.C. 6865(c)(6)(A)), as added by subsection  
23 (a)(3) of this section.

24 (4) AUTHORIZATION OF APPROPRIATIONS.—

25 There are authorized to be appropriated to the Sec-



1       retary of Energy for carrying out this subsection, to  
2       remain available until expended—

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

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

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

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

7                   and

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

9       (e) RENEWABLE FUEL INVENTORY.—Not later than  
10 180 days after the date of enactment of this Act, the Sec-  
11 retary of Energy shall transmit to Congress a report con-  
12 taining—

13                   (1) an inventory of renewable fuels available for  
14 consumers; and

15                   (2) a projection of future inventories of renew-  
16 able fuels based on the incentives provided in this  
17 section

## 18                   **Subtitle C—Hydroelectric**

### 19                   **PART I—ALTERNATIVE CONDITIONS**

#### 20       **SEC. 231. ALTERNATIVE CONDITIONS AND FISHWAYS.**

21       (a) FEDERAL RESERVATIONS.—Section 4(e) of the  
22 Federal Power Act (16 U.S.C. 797(e)) is amended by in-  
23 serting after “adequate protection and utilization of such  
24 reservation.” at the end of the first proviso the following:  
25 “The license applicant shall be entitled to a determination

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

7 (b) FISHWAYS.—Section 18 of the Federal Power Act  
8 (16 U.S.C. 811) is amended by inserting after “and such  
9 fishways as may be prescribed by the Secretary of Com-  
10 merce.” the following: “The license applicant shall be enti-  
11 tled to a determination on the record, after opportunity  
12 for an expedited agency trial-type hearing of any disputed  
13 issues of material fact, with respect to such fishways. Such  
14 hearing may be conducted in accordance with procedures  
15 established by agency regulation in consultation with the  
16 Federal Energy Regulatory Commission.”.

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

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

22 “(a) ALTERNATIVE CONDITIONS.—(1) Whenever any  
23 person applies for a license for any project works within  
24 any reservation of the United States, and the Secretary  
25 of the department under whose supervision such reserva-

1 tion falls (referred to in this subsection as ‘the Secretary’)  
2 deems a condition to such license to be necessary under  
3 the first proviso of section 4(e), the license applicant may  
4 propose an alternative condition.

5 “(2) Notwithstanding the first proviso of section 4(e),  
6 the Secretary shall accept the proposed alternative condi-  
7 tion referred to in paragraph (1), and the Commission  
8 shall include in the license such alternative condition, if  
9 the Secretary determines, based on substantial evidence  
10 provided by the license applicant or otherwise available to  
11 the Secretary, that such alternative condition—

12 “(A) provides for the adequate protection and  
13 utilization of the reservation; and

14 “(B) will either—

15 “(i) cost less to implement; or

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

18 as compared to the condition initially deemed nec-  
19 essary by the Secretary.

20 “(3) The Secretary shall submit into the public  
21 record of the Commission proceeding with any condition  
22 under section 4(e) or alternative condition it accepts under  
23 this section, a written statement explaining the basis for  
24 such condition, and reason for not accepting any alter-  
25 native condition under this section. The written statement

1 must demonstrate that the Secretary gave equal consider-  
2 ation to the effects of the condition adopted and alter-  
3 natives not accepted on energy supply, distribution, cost,  
4 and use; flood control; navigation; water supply; and air  
5 quality (in addition to the preservation of other aspects  
6 of environmental quality); based on such information as  
7 may be available to the Secretary, including information  
8 voluntarily provided in a timely manner by the applicant  
9 and others. The Secretary shall also submit, together with  
10 the aforementioned written statement, all studies, data,  
11 and other factual information available to the Secretary  
12 and relevant to the Secretary's decision.

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

15       “(5) If the Secretary does not accept an applicant's  
16 alternative condition under this section, and the Commis-  
17 sion finds that the Secretary's condition would be incon-  
18 sistent with the purposes of this part, or other applicable  
19 law, the Commission may refer the dispute to the Commis-  
20 sion's Dispute Resolution Service. The Dispute Resolution  
21 Service shall consult with the Secretary and the Commis-  
22 sion and issue a non-binding advisory within 90 days. The  
23 Secretary may accept the Dispute Resolution Service advi-  
24 sory unless the Secretary finds that the recommendation  
25 will not provide for the adequate protection and utilization

1 of the reservation. The Secretary shall submit the advisory  
2 and the Secretary's final written determination into the  
3 record of the Commission's proceeding.

4 “(b) ALTERNATIVE PRESCRIPTIONS.—(1) Whenever  
5 the Secretary of the Interior or the Secretary of Commerce  
6 prescribes a fishway under section 18, the license appli-  
7 cant or licensee may propose an alternative to such pre-  
8 scription to construct, maintain, or operate a fishway.

9 “(2) Notwithstanding section 18, the Secretary of the  
10 Interior or the Secretary of Commerce, as appropriate,  
11 shall accept and prescribe, and the Commission shall re-  
12 quire, the proposed alternative referred to in paragraph  
13 (1), if the Secretary of the appropriate department deter-  
14 mines, based on substantial evidence provided by the li-  
15 censee or otherwise available to the Secretary, that such  
16 alternative—

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

19 “(B) will either—

20 “(i) cost less to implement; or

21 “(ii) result in improved operation of the  
22 project works for electricity production,  
23 as compared to the fishway initially deemed nec-  
24 essary by the Secretary.

1       “(3) The Secretary concerned shall submit into the  
2 public record of the Commission proceeding with any pre-  
3 scription under section 18 or alternative prescription it ac-  
4 cepts under this section, a written statement explaining  
5 the basis for such prescription, and reason for not accept-  
6 ing any alternative prescription under this section. The  
7 written statement must demonstrate that the Secretary  
8 gave equal consideration to the effects of the condition  
9 adopted and alternatives not accepted on energy supply,  
10 distribution, cost, and use; flood control; navigation; water  
11 supply; and air quality (in addition to the preservation of  
12 other aspects of environmental quality); based on such in-  
13 formation as may be available to the Secretary, including  
14 information voluntarily provided in a timely manner by the  
15 applicant and others. The Secretary shall also submit, to-  
16 gether with the aforementioned written statement, all  
17 studies, data, and other factual information available to  
18 the Secretary and relevant to the Secretary’s decision.

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

21       “(5) If the Secretary concerned does not accept an  
22 applicant’s alternative prescription under this section, and  
23 the Commission finds that the Secretary’s prescription  
24 would be inconsistent with the purposes of this part, or  
25 other applicable law, the Commission may refer the dis-

1 pute to the Commission’s Dispute Resolution Service. The  
2 Dispute Resolution Service shall consult with the Sec-  
3 retary and the Commission and issue a non-binding advi-  
4 sory within 90 days. The Secretary may accept the Dis-  
5 pute Resolution Service advisory unless the Secretary  
6 finds that the recommendation will be less protective than  
7 the fishway initially prescribed by the Secretary. The Sec-  
8 retary shall submit the advisory and the Secretary’s final  
9 written determination into the record of the Commission’s  
10 proceeding.”.

11 **PART II—ADDITIONAL HYDROPOWER**

12 **SEC. 241. HYDROELECTRIC PRODUCTION INCENTIVES.**

13 (a) INCENTIVE PAYMENTS.—For electric energy gen-  
14 erated and sold by a qualified hydroelectric facility during  
15 the incentive period, the Secretary of Energy (referred to  
16 in this section as the “Secretary”) shall make, subject to  
17 the availability of appropriations, incentive payments to  
18 the owner or operator of such facility. The amount of such  
19 payment made to any such owner or operator shall be as  
20 determined under subsection (e) of this section. Payments  
21 under this section may only be made upon receipt by the  
22 Secretary of an incentive payment application which estab-  
23 lishes that the applicant is eligible to receive such payment  
24 and which satisfies such other requirements as the Sec-  
25 retary deems necessary. Such application shall be in such

1 form, and shall be submitted at such time, as the Sec-  
2 retary shall establish.

3 (b) DEFINITIONS.—For purposes of this section:

4 (1) QUALIFIED HYDROELECTRIC FACILITY.—

5 The term “qualified hydroelectric facility” means a  
6 turbine or other generating device owned or solely  
7 operated by a non-Federal entity which generates  
8 hydroelectric energy for sale and which is added to  
9 an existing dam or conduit.

10 (2) EXISTING DAM OR CONDUIT.—The term

11 “existing dam or conduit” means any dam or con-  
12 duit the construction of which was completed before  
13 the date of the enactment of this section and which  
14 does not require any construction or enlargement of  
15 impoundment or diversion structures (other than re-  
16 pair or reconstruction) in connection with the instal-  
17 lation of a turbine or other generating device.

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

21 The terms defined in this subsection shall apply without  
22 regard to the hydroelectric kilowatt capacity of the facility  
23 concerned, without regard to whether the facility uses a  
24 dam owned by a governmental or nongovernmental entity,



1 and without regard to whether the facility begins oper-  
2 ation on or after the date of the enactment of this section.

3 (c) ELIGIBILITY WINDOW.—Payments may be made  
4 under this section only for electric energy generated from  
5 a qualified hydroelectric facility which begins operation  
6 during the period of 10 fiscal years beginning with the  
7 first full fiscal year occurring after the date of enactment  
8 of this subtitle.

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

15 (e) AMOUNT OF PAYMENT.—

16 (1) IN GENERAL.—Payments made by the Sec-  
17 retary under this section to the owner or operator of  
18 a qualified hydroelectric facility shall be based on  
19 the number of kilowatt hours of hydroelectric energy  
20 generated by the facility during the incentive period.  
21 For any such facility, the amount of such payment  
22 shall be 1.8 cents per kilowatt hour (adjusted as  
23 provided in paragraph (2)), subject to the avail-  
24 ability of appropriations under subsection (g), except

1 that no facility may receive more than \$750,000 in  
2 1 calendar year.

3 (2) ADJUSTMENTS.—The amount of the pay-  
4 ment made to any person under this section as pro-  
5 vided in paragraph (1) shall be adjusted for inflation  
6 for each fiscal year beginning after calendar year  
7 2005 in the same manner as provided in the provi-  
8 sions of section 29(d)(2)(B) of the Internal Revenue  
9 Code of 1986, except that in applying such provi-  
10 sions the calendar year 2005 shall be substituted for  
11 calendar year 1979.

12 (f) SUNSET.—No payment may be made under this  
13 section to any qualified hydroelectric facility after the ex-  
14 piration of the period of 20 fiscal years beginning with  
15 the first full fiscal year occurring after the date of enact-  
16 ment of this subtitle, and no payment may be made under  
17 this section to any such facility after a payment has been  
18 made with respect to such facility for a period of 10 fiscal  
19 years.

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

1 **SEC. 242. HYDROELECTRIC EFFICIENCY IMPROVEMENT.**

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

8 (b) LIMITATIONS.—Incentive payments under this  
9 section shall not exceed 10 percent of the costs of the cap-  
10 ital improvement concerned and not more than 1 payment  
11 may be made with respect to improvements at a single  
12 facility. No payment in excess of \$750,000 may be made  
13 with respect to improvements at a single facility.

14 (c) AUTHORIZATION OF APPROPRIATIONS.—There  
15 are authorized to be appropriated to carry out this section  
16 not more than \$10,000,000 for each of the fiscal years  
17 2006 through 2015.

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

19 Section 408(a)(6) of the Public Utility Regulatory  
20 Policies Act of 1978 (16 U.S.C. 2708(a)(6)) is amended  
21 by striking “April 20, 1977” and inserting “March 4,  
22 2003”.

23 **SEC. 244. INCREASED HYDROELECTRIC GENERATION AT**  
24 **EXISTING FEDERAL FACILITIES.**

25 (a) IN GENERAL.—The Secretary of the Interior and  
26 the Secretary of Energy, in consultation with the Sec-

1 retary of the Army, shall jointly conduct a study of the  
2 potential for increasing electric power production capa-  
3 bility at federally owned or operated water regulation,  
4 storage, and conveyance facilities.

5 (b) CONTENT.—The study under this section shall in-  
6 clude identification and description in detail of each facil-  
7 ity that is capable, with or without modification, of pro-  
8 ducing additional hydroelectric power, including esti-  
9 mation of the existing potential for the facility to generate  
10 hydroelectric power.

11 (c) REPORT.—The Secretaries shall submit to the  
12 Committees on Energy and Commerce, Resources, and  
13 Transportation and Infrastructure of the House of Rep-  
14 resentatives and the Committee on Energy and Natural  
15 Resources of the Senate a report on the findings, conclu-  
16 sions, and recommendations of the study under this sec-  
17 tion by not later than 18 months after the date of the  
18 enactment of this Act. The report shall include each of  
19 the following:

20 (1) The identifications, descriptions, and esti-  
21 mations referred to in subsection (b).

22 (2) A description of activities currently con-  
23 ducted or considered, or that could be considered, to  
24 produce additional hydroelectric power from each  
25 identified facility.

1           (3) A summary of prior actions taken by the  
2 Secretaries to produce additional hydroelectric power  
3 from each identified facility.

4           (4) The costs to install, upgrade, or modify  
5 equipment or take other actions to produce addi-  
6 tional hydroelectric power from each identified facil-  
7 ity and the level of Federal power customer involve-  
8 ment in the determination of such costs.

9           (5) The benefits that would be achieved by such  
10 installation, upgrade, modification, or other action,  
11 including quantified estimates of any additional en-  
12 ergy or capacity from each facility identified under  
13 subsection (b).

14           (6) A description of actions that are planned,  
15 underway, or might reasonably be considered to in-  
16 crease hydroelectric power production by replacing  
17 turbine runners, by performing generator upgrades  
18 or rewinds, or construction of pumped storage facili-  
19 ties.

20           (7) The impact of increased hydroelectric power  
21 production on irrigation, fish, wildlife, Indian tribes,  
22 river health, water quality, navigation, recreation,  
23 fishing, and flood control.

24           (8) Any additional recommendations to increase  
25 hydroelectric power production from, and reduce

1 costs and improve efficiency at, federally owned or  
2 operated water regulation, storage, and conveyance  
3 facilities.

4 **SEC. 245. SHIFT OF PROJECT LOADS TO OFF-PEAK PERI-**  
5 **ODS.**

6 (a) IN GENERAL.—The Secretary of the Interior  
7 shall—

8 (1) review electric power consumption by Bu-  
9 reau of Reclamation facilities for water pumping  
10 purposes; and

11 (2) make such adjustments in such pumping as  
12 possible to minimize the amount of electric power  
13 consumed for such pumping during periods of peak  
14 electric power consumption, including by performing  
15 as much of such pumping as possible during off-  
16 peak hours at night.

17 (b) CONSENT OF AFFECTED IRRIGATION CUSTOMERS  
18 REQUIRED.—The Secretary may not under this section  
19 make any adjustment in pumping at a facility without the  
20 consent of each person that has contracted with the  
21 United States for delivery of water from the facility for  
22 use for irrigation and that would be affected by such ad-  
23 justment.

24 (c) EXISTING OBLIGATIONS NOT AFFECTED.—This  
25 section shall not be construed to affect any existing obliga-

1 tion of the Secretary to provide electric power, water, or  
2 other benefits from Bureau of Reclamation facilities, in-  
3 cluding recreational releases.

4           **TITLE III—OIL AND GAS—**  
5                           **COMMERCE**  
6       **Subtitle A—Petroleum Reserve and**  
7                           **Home Heating Oil**

8       **SEC. 301. PERMANENT AUTHORITY TO OPERATE THE STRA-**  
9                           **TEGIC PETROLEUM RESERVE AND OTHER**  
10                           **ENERGY PROGRAMS.**

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

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

17                           “AUTHORIZATION OF APPROPRIATIONS

18                   “SEC. 166. There are authorized to be appropriated  
19 to the Secretary such sums as may be necessary to carry  
20 out this part and part D, to remain available until ex-  
21 pended.”;

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

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

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

5 (1) by inserting before section 273 (42 U.S.C.  
 6 6283) the following:

7 **“PART C—SUMMER FILL AND FUEL BUDGETING**  
 8 **PROGRAMS”;**

9 (2) by striking section 273(e) (42 U.S.C.  
 10 6283(e); relating to the expiration of summer fill  
 11 and fuel budgeting programs); and

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

14 (c) TECHNICAL AMENDMENTS.—The table of con-  
 15 tents for the Energy Policy and Conservation Act is  
 16 amended—

17 (1) by inserting after the items relating to part  
 18 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.”;

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

“PART C—SUMMER FILL AND FUEL BUDGETING PROGRAMS

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



1 ; and

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

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

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

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

21 Section 713 of the Energy Act of 2000 (42 U.S.C.  
22 6201 note) is amended by striking “4” and inserting “9”.

23 **SEC. 303. SITE SELECTION.**

24 Not later than 1 year after the date of enactment  
25 of this Act, the Secretary of Energy shall complete a pro-

1 ceeding to select, from sites that the Secretary has pre-  
2 viously studied, sites necessary to enable acquisition by the  
3 Secretary of the full authorized volume of the Strategic  
4 Petroleum Reserve.

5 **SEC. 304. SUSPENSION OF STRATEGIC PETROLEUM RE-**  
6 **SERVE DELIVERIES.**

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

11 **Subtitle B—Production Incentives**

12 **SEC. 320. LIQUEFACTION OR GASIFICATION NATURAL GAS**  
13 **TERMINALS.**

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

20 (b) DEFINITION.—Section 2 of the Natural Gas Act  
21 (15 U.S.C. 717a) is amended by adding at the end the  
22 following new paragraph:

23 “(11) ‘Liquefaction or gasification natural gas  
24 terminal’ includes all facilities located onshore or in  
25 State waters that are used to receive, unload, load,

1 store, transport, gasify, liquefy, or process natural  
2 gas that is imported to the United States from a  
3 foreign country, exported to a foreign country from  
4 the United States, or transported in interstate com-  
5 merce by waterborne tanker, but does not include—

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

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

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

18 (2) Section 3 of the Natural Gas Act (15 U.S.C.  
19 717b) is amended by adding at the end the following:

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

23 “(1) COMMISSION AUTHORIZATION RE-  
24 QUIRED.—No person shall construct, expand, or op-  
25 erate a liquefaction or gasification natural gas ter-

1 minal without an order from the Commission au-  
2 thorizing such person to do so.

3 “(2) AUTHORIZATION PROCEDURES.—

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

8 “(i) set the matter for hearing;

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

14 “(iii) decide the matter in accordance  
15 with this subsection; and

16 “(iv) issue or deny the appropriate  
17 order accordingly.

18 “(B) DESIGNATION AS LEAD AGENCY.—

19 “(i) IN GENERAL.—The Commission  
20 shall act as the lead agency for the pur-  
21 poses of coordinating all applicable Federal  
22 authorizations and for the purposes of  
23 complying with the National Environ-  
24 mental Policy Act of 1969 (42 U.S.C.

1 4312 et seq.) for a liquefaction or gasifi-  
2 cation natural gas terminal.

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

10 “(C) SCHEDULE.—

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

19 “(I) ensure expeditious comple-  
20 tion of all such proceedings; and

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

24 “(ii) FAILURE TO MEET SCHEDULE.—  
25 If a Federal or State administrative agency

1 does not complete a proceeding for an ap-  
2 proval that is required before a person may  
3 construct, expand, or operate the lique-  
4 faction or gasification natural gas ter-  
5 minal, in accordance with the schedule es-  
6 tablished by the Commission under this  
7 subparagraph, and if—

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

12 “(II) the agency has failed to act  
13 on any remand by the Court within  
14 the deadline set by the Court,  
15 that approval may be conclusively pre-  
16 sumed by the Commission.

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

1 operation of a liquefaction or gasification nat-  
2 ural gas terminal. Such record shall be the ex-  
3 clusive record for any Federal administrative  
4 proceeding that is an appeal or review of any  
5 such decision made or action taken.

6 “(E) STATE AND LOCAL SAFETY CONSID-  
7 ERATIONS.—

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

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

1           “(I) the State commission pro-  
2           vides written notice to the Commis-  
3           sion of its intention to do so; and

4           “(II) the inspections will be car-  
5           ried out in conformance with Federal  
6           regulations and guidelines.

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

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

18                 “(I) the kind and use of the facil-  
19                 ity;

20                 “(II) the existing and projected  
21                 population and demographic charac-  
22                 teristics of the location;

23                 “(III) the existing and proposed  
24                 land use near the location;



1                   “(IV) the natural and physical  
2                   aspects of the location;

3                   “(V) the medical, law enforce-  
4                   ment, and fire prevention capabilities  
5                   near the location that can respond at  
6                   the facility; and

7                   “(VI) the feasibility of remote  
8                   siting.

9                   “(F) LIMITATION.—Subparagraph (C)(ii)  
10                  shall not apply to any approval required to pro-  
11                  tect navigation, maritime safety, or maritime  
12                  security.

13                  “(3) ISSUANCE OF COMMISSION ORDER.—

14                  “(A) IN GENERAL.—The Commission shall  
15                  issue an order authorizing, in whole or in part,  
16                  the construction, expansion, or operation cov-  
17                  ered by the application to any qualified appli-  
18                  cant—

19                         “(i) unless the Commission finds such  
20                         actions or operations will not be consistent  
21                         with the public interest; and

22                         “(ii) if the Commission has found that  
23                         the applicant is—

1           “(I) able and willing to carry out  
2           the actions and operations proposed;  
3           and

4           “(II) willing to conform to the  
5           provisions of this Act and any require-  
6           ments, rules, and regulations of the  
7           Commission set forth under this Act.

8           “(B) TERMS AND CONDITIONS.—The Com-  
9           mission may by its order grant an application,  
10          in whole or in part, with such modification and  
11          upon such terms and conditions as the Commis-  
12          sion may find necessary or appropriate.

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

15                 “(i) IN GENERAL.—Any Commission  
16                 order issued pursuant to this subsection  
17                 before January 1, 2011, shall not be condi-  
18                 tioned on—

19                         “(I) a requirement that the lique-  
20                         faction or gasification natural gas ter-  
21                         minal offer service to persons other  
22                         than the person, or any affiliate there-  
23                         of, securing the order; or

24                         “(II) any regulation of the lique-  
25                         faction or gasification natural gas ter-

1 terminal's rates, charges, terms, or con-  
2 ditions of service.

3 “(ii) INAPPLICABLE TO TERMINAL  
4 EXIT PIPELINE.—Clause (i) shall not apply  
5 to any pipeline subject to the jurisdiction  
6 of the Commission under section 7 exiting  
7 a liquefaction or gasification natural gas  
8 terminal.

9 “(iii) EXPANSION OF REGULATED  
10 TERMINAL.—An order issued under this  
11 paragraph that relates to an expansion of  
12 an existing liquefaction or gasification nat-  
13 ural gas terminal, where any portion of the  
14 existing terminal continues to be subject to  
15 Commission regulation of rates, charges,  
16 terms, or conditions of service, may not re-  
17 sult in—

18 “(I) subsidization of the expan-  
19 sion by regulated terminal users;

20 “(II) degradation of service to  
21 the regulated terminal users; or

22 “(III) undue discrimination  
23 against the regulated terminal users.

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

4                   “(4) DEFINITION.—For the purposes of this  
5                   subsection, the term ‘Federal authorization’ means  
6                   any authorization required under Federal law in  
7                   order to construct, expand, or operate a liquefaction  
8                   or gasification natural gas terminal, including such  
9                   permits, special use authorizations, certifications,  
10                  opinions, or other approvals as may be required,  
11                  whether issued by a Federal or State agency.”.

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

15                  “(d) JUDICIAL REVIEW.—

16                   “(1) IN GENERAL.—The United States Court of  
17                   Appeals for the District of Columbia Circuit shall  
18                   have original and exclusive jurisdiction over any civil  
19                   action—

20                   “(A) for review of any order, action, or  
21                   failure to act of any Federal or State adminis-  
22                   trative agency to issue, condition, or deny any  
23                   permit, license, concurrence, or approval re-  
24                   quired under Federal law for the construction,

1 expansion, or operation of a liquefaction or gas-  
2 ification natural gas terminal;

3 “(B) alleging unreasonable delay, in meet-  
4 ing a schedule established under section  
5 3(d)(2)(C) or otherwise, by any Federal or  
6 State administrative agency in entering an  
7 order or taking other action described in sub-  
8 paragraph (A); or

9 “(C) challenging any decision made or ac-  
10 tion taken by the Commission under section  
11 3(d).

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

16 “(3) COURT ACTION.—If the Court finds under  
17 paragraph (1)(A) or (B) that an order, action, fail-  
18 ure to act, or delay is inconsistent with applicable  
19 Federal law, and would prevent the construction, ex-  
20 pansion, or operation of a liquefaction or gasification  
21 natural gas terminal, the order or action shall be  
22 deemed to have been issued or taken, subject to any  
23 conditions established by the Federal or State ad-  
24 ministrative agency upon remand from the Court,  
25 such conditions to be consistent with the order of

1 the Court. If the Court remands the order or action  
2 to the Federal or State agency, the Court shall set  
3 a reasonable deadline for the agency to act on re-  
4 mand.

5 “(4) UNREASONABLE DELAY.—For the pur-  
6 poses of paragraph (1)(B), the failure of an agency  
7 to issue a permit, license, concurrence, or approval  
8 within the later of—

9 “(A) 1 year after the date of filing of an  
10 application for the permit, license, concurrence,  
11 or approval; or

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

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

19 **SEC. 327. HYDRAULIC FRACTURING.**

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

23 “(1) UNDERGROUND INJECTION.—The term  
24 ‘underground injection’—

1           “(A) means the subsurface emplacement of  
2           fluids by well injection; and

3           “(B) excludes—

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

6                 “(ii) the underground injection of  
7                 fluids or propping agents pursuant to hy-  
8                 draulic fracturing operations related to oil  
9                 or gas production activities.”.

10 **SEC. 328. OIL AND GAS EXPLORATION AND PRODUCTION**

11           **DEFINED.**

12           Section 502 of the Federal Water Pollution Control  
13 Act (33 U.S.C. 1362) is amended by adding at the end  
14 the following:

15                 “(24) OIL AND GAS EXPLORATION AND PRO-  
16                 DUCTION.—The term ‘oil and gas exploration, pro-  
17                 duction, processing, or treatment operations or  
18                 transmission facilities’ means all field activities or  
19                 operations associated with exploration, production,  
20                 processing, or treatment operations, or transmission  
21                 facilities, including activities necessary to prepare a  
22                 site for drilling and for the movement and placement  
23                 of drilling equipment, whether or not such field ac-  
24                 tivities or operations may be considered to be con-  
25                 struction activities.”.

1 **SEC. 329. OUTER CONTINENTAL SHELF PROVISIONS.**

2 (a) STORAGE ON THE OUTER CONTINENTAL  
3 SHELF.—Section 5(a)(5) of the Outer Continental Shelf  
4 Lands Act (43 U.S.C. 1334(a)(5)) is amended by insert-  
5 ing “from any source” after “oil and gas”.

6 (b) DEEPWATER PROJECTS.—Section 6 of the Deep-  
7 water Port Act of 1974 (33 U.S.C. 1505) is amended by  
8 adding at the end the following:

9 “(d) RELIANCE ON ACTIVITIES OF OTHER AGEN-  
10 CIES.—In fulfilling the requirements of section 5(f)—

11 “(1) to the extent that other Federal agencies  
12 have prepared environmental impact statements, are  
13 conducting studies, or are monitoring the affected  
14 human, marine, or coastal environment, the Sec-  
15 retary may use the information derived from those  
16 activities in lieu of directly conducting such activi-  
17 ties; and

18 “(2) the Secretary may use information ob-  
19 tained from any State or local government or from  
20 any person.”.

21 (c) NATURAL GAS DEFINED.—Section 3(13) of the  
22 Deepwater Port Act of 1974 (33 U.S.C. 1502(13)) is  
23 amended to read as follows:

24 “(13) natural gas means—

25 “(A) natural gas unmixed; or



1           “(B) any mixture of natural or artificial  
2           gas, including compressed or liquefied natural  
3           gas, natural gas liquids, liquefied petroleum  
4           gas, and condensate recovered from natural  
5           gas;”.

6 **SEC. 330. APPEALS RELATING TO PIPELINE CONSTRUC-**  
7           **TION OR OFFSHORE MINERAL DEVELOP-**  
8           **MENT PROJECTS.**

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

21           (b) SENSE OF CONGRESS.—It is the sense of Con-  
22 gress that all Federal and State agencies with jurisdiction  
23 over interstate natural gas pipeline construction activities  
24 should coordinate their proceedings within the timeframes  
25 established by the Federal Energy Regulatory Commission

1 when the Commission is acting under sections 3 and 7  
2 of the Natural Gas Act (15 U.S.C. 717b, 717f) to deter-  
3 mine whether a certificate of public convenience and neces-  
4 sity should be issued for a proposed interstate natural gas  
5 pipeline.

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

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

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

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

22 and

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

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

2       “(a) AUTHORIZATION.—(1) Not later than 180 days  
3 after the date of enactment of the Energy Policy Act of  
4 2005, the Federal Energy Regulatory Commission shall  
5 issue rules directing all entities subject to the Commis-  
6 sion’s jurisdiction as provided under this Act to timely re-  
7 port information about the availability and prices of nat-  
8 ural gas sold at wholesale in interstate commerce to the  
9 Commission and price publishers.

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

12       “(3) Rules issued under this subsection requiring the  
13 reporting of information to the Commission that may be-  
14 come publicly available shall be limited to aggregate data  
15 and transaction-specific data that are otherwise required  
16 by the Commission to be made public.

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

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

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

23       “(b) TIMELY ENFORCEMENT.—No person shall be  
24 subject to any penalty under this section with respect to  
25 a violation occurring more than 3 years before the date

1 on which the Federal Energy Regulatory Commission  
2 seeks to assess a penalty.

3 “(c) LIMITATION ON COMMISSION AUTHORITY.—(1)  
4 The Commission shall not condition access to interstate  
5 pipeline transportation upon the reporting requirements  
6 authorized under this section.

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

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

## 15 **Subtitle C—Access to Federal Land**

### 16 **SEC. 344. CONSULTATION REGARDING OIL AND GAS LEAS-** 17 **ING ON PUBLIC LAND.**

18 (a) IN GENERAL.—Not later than 180 days after the  
19 date of enactment of this Act, the Secretary of the Interior  
20 and the Secretary of Agriculture shall enter into a memo-  
21 randum of understanding regarding oil and gas leasing  
22 on—

23 (1) public lands under the jurisdiction of the  
24 Secretary of the Interior; and

1           (2) National Forest System lands under the ju-  
2           isdiction of the Secretary of Agriculture.

3           (b) CONTENTS.—The memorandum of understanding  
4 shall include provisions that—

5           (1) establish administrative procedures and  
6           lines of authority that ensure timely processing of oil  
7           and gas lease applications, surface use plans of oper-  
8           ation, and applications for permits to drill, including  
9           steps for processing surface use plans and applica-  
10          tions for permits to drill consistent with the  
11          timelines established by the amendment made by  
12          section 348;

13          (2) eliminate duplication of effort by providing  
14          for coordination of planning and environmental com-  
15          pliance efforts; and

16          (3) ensure that lease stipulations are—  
17                (A) applied consistently;  
18                (B) coordinated between agencies; and  
19                (C) only as restrictive as necessary to pro-  
20          tect the resource for which the stipulations are  
21          applied.

22          (c) DATA RETRIEVAL SYSTEM.—

23           (1) IN GENERAL.—Not later than 1 year after  
24          the date of enactment of this Act, the Secretary of  
25          the Interior and the Secretary of Agriculture shall

1 establish a joint data retrieval system that is capable  
2 of—

3 (A) tracking applications and formal re-  
4 quests made in accordance with procedures of  
5 the Federal onshore oil and gas leasing pro-  
6 gram; and

7 (B) providing information regarding the  
8 status of the applications and requests within  
9 the Department of the Interior and the Depart-  
10 ment of Agriculture.

11 (2) RESOURCE MAPPING.—Not later than 2  
12 years after the date of enactment of this Act, the  
13 Secretary of the Interior and the Secretary of Agri-  
14 culture shall establish a joint Geographic Informa-  
15 tion System mapping system for use in—

16 (A) tracking surface resource values to aid  
17 in resource management; and

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

20 **SEC. 346. COMPLIANCE WITH EXECUTIVE ORDER 13211; AC-**  
21 **TIONS CONCERNING REGULATIONS THAT**  
22 **SIGNIFICANTLY AFFECT ENERGY SUPPLY,**  
23 **DISTRIBUTION, OR USE.**

24 (a) REQUIREMENT.—The head of each Federal agen-  
25 cy shall require that before the Federal agency takes any

1 action that could have a significant adverse effect on the  
2 supply of domestic energy resources from Federal public  
3 land, the Federal agency taking the action shall comply  
4 with Executive Order No. 13211 (42 U.S.C. 13201 note).

5 (b) GUIDANCE.—Not later than 180 days after the  
6 date of enactment of this Act, the Secretary of Energy  
7 shall publish guidance for purposes of this section describ-  
8 ing what constitutes a significant adverse effect on the  
9 supply of domestic energy resources under Executive  
10 Order No. 13211 (42 U.S.C. 13201 note).

11 (c) MEMORANDUM OF UNDERSTANDING.—The Sec-  
12 retary of the Interior and the Secretary of Agriculture  
13 shall include in the memorandum of understanding under  
14 section 344 provisions for implementing subsection (a) of  
15 this section.

16 **SEC. 355. ENCOURAGING GREAT LAKES OIL AND GAS**  
17 **DRILLING BAN.**

18 Congress encourages no Federal or State permit or  
19 lease to be issued for new oil and gas slant, directional,  
20 or offshore drilling in or under one or more of the Great  
21 Lakes.

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

23 Any State currently on the list of Affected States es-  
24 tablished under section 1339(b) of the Energy Policy Act  
25 of 1992 (42 U.S.C. 13368(b)) shall be removed from the

1 list if, not later than 3 years after the date of enactment  
2 of this Act, the State takes, or prior to the date of enact-  
3 ment has taken, any of the actions required for removal  
4 from the list under such section 1339(b).

## 5 **Subtitle D—Refining Revitalization**

### 6 **SEC. 371. SHORT TITLE.**

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

### 9 **SEC. 372. FINDINGS.**

10 Congress finds the following:

11 (1) It serves the national interest to increase  
12 petroleum refining capacity for gasoline, heating oil,  
13 diesel fuel, jet fuel, kerosene, and petrochemical  
14 feedstocks wherever located within the United  
15 States, to bring more supply to the markets for use  
16 by the American people. Nearly 50 percent of the  
17 petroleum in the United States is used for the pro-  
18 duction of gasoline. Refined petroleum products have  
19 a significant impact on interstate commerce.

20 (2) United States demand for refined petroleum  
21 products currently exceeds the country’s petroleum  
22 refining capacity to produce such products. By  
23 2025, United States gasoline consumption is pro-  
24 jected to rise from 8,900,000 barrels per day to  
25 12,900,000 barrels per day. Diesel fuel and home



1 heating oil are becoming larger components of an in-  
2 creasing demand for refined petroleum supply. With  
3 the increase in air travel, jet fuel consumption is  
4 projected to be 789,000 barrels per day higher in  
5 2025 than today.

6 (3) The petroleum refining industry is oper-  
7 ating at 95 percent of capacity. The United States  
8 is currently importing 5 percent of its refined petro-  
9 leum products and because of the stringent United  
10 States gasoline and diesel fuel specifications, few  
11 foreign refiners can produce the clean fuels required  
12 in the United States and the number of foreign sup-  
13 pliers that can produce United States quality gaso-  
14 line is decreasing.

15 (4) Refiners are subject to significant environ-  
16 mental and other regulations and face several new  
17 Clean Air Act requirements over the next decade.  
18 New Clean Air Act requirements will benefit the en-  
19 vironment but will also require substantial capital  
20 investment and additional government permits.

21 (5) No new refinery has been built in the  
22 United States since 1976 and many smaller domes-  
23 tic refineries have become idle since the removal of  
24 the Domestic Crude Oil Allocation Program and be-  
25 cause of regulatory uncertainty and generally low re-

1 turns on capital employed. Today, the United States  
2 has 149 refineries, down from 324 in 1981. Restora-  
3 tion of recently idled refineries alone would amount  
4 to 483,570 barrels a day in additional capacity, or  
5 approximately 3.3 percent of the total operating ca-  
6 pacity.

7 (6) Refiners have met growing demand by in-  
8 creasing the use of existing equipment and increas-  
9 ing the efficiency and capacity of existing plants.  
10 But refining capacity has begun to lag behind peak  
11 summer demand.

12 (7) Heavy industry and manufacturing jobs  
13 have closed or relocated due to barriers to invest-  
14 ment, burdensome regulation, and high costs of op-  
15 eration, among other reasons.

16 (8) Because the production and disruption in  
17 supply of refined petroleum products has a signifi-  
18 cant impact on interstate commerce, it serves the  
19 national interest to increase the domestic refining  
20 operating capacity.

21 (10) More regulatory certainty for refinery own-  
22 ers is needed to stimulate investment in increased  
23 refinery capacity and required procedures for Fed-  
24 eral, State, and local regulatory approvals need to be  
25 streamlined to ensure that increased refinery capac-



1 (A) has experienced mass layoffs at manu-  
2 facturing facilities, as determined by the Sec-  
3 retary of Labor; or

4 (B) contains an idle refinery; and

5 (2) that has an unemployment rate that exceeds  
6 the national average by at least 10 percent of the  
7 national average, as set by the Department of  
8 Labor, Bureau of Labor Statistics, at the time of  
9 the designation as a Refinery Revitalization Zone.

10 **SEC. 375. MEMORANDUM OF UNDERSTANDING.**

11 (a) IN GENERAL.—Not later than 90 days after the  
12 date of enactment of this Act, the Secretary shall enter  
13 into a memorandum of understanding with the Adminis-  
14 trator for the purposes of this subtitle. The Secretary and  
15 the Administrator shall each designate a senior official re-  
16 sponsible for, and dedicate sufficient other staff and re-  
17 sources to ensure, full implementation of the purposes of  
18 this subtitle and any regulations enacted pursuant to this  
19 subtitle.

20 (b) ADDITIONAL SIGNATORIES.—The Governor of  
21 any State, and the appropriate representative of any In-  
22 dian Tribe, with jurisdiction over a Refinery Revitalization  
23 Zone, as designated by the Secretary pursuant to section  
24 374, may be signatories to the memorandum of under-  
25 standing under this section.

1 **SEC. 376. STATE ENVIRONMENTAL PERMITTING ASSIST-**  
2 **ANCE.**

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

6 (1) the Secretary shall designate one or more  
7 employees of the Department with expertise relating  
8 to the siting and operation of refineries to provide  
9 legal and technical assistance to that Revitalization  
10 Program Qualifying State; and

11 (2) the Administrator shall designate, to pro-  
12 vide legal and technical assistance for that Revital-  
13 ization Program Qualifying State, one or more em-  
14 ployees of the Environmental Protection Agency  
15 with expertise on regulatory issues, relating to the  
16 siting and operation of refineries, with respect to  
17 each of—

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

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

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

24 (D) the Comprehensive Environmental Re-  
25 sponse, Compensation, and Liability Act of  
26 1980 (42 U.S.C. 9601 et seq.);

1 (E) the Solid Waste Disposal Act (42  
2 U.S.C. 6901 et seq.);

3 (F) the Toxic Substances Control Act (15  
4 U.S.C. 2601 et seq.);

5 (G) the National Historic Preservation Act  
6 (16 U.S.C. 470 et seq.); and

7 (H) the National Environmental Policy Act  
8 of 1969 (42 U.S.C. 4321 et seq.).

9 **SEC. 377. COORDINATION AND EXPEDITIOUS REVIEW OF**  
10 **PERMITTING PROCESS.**

11 (a) DEPARTMENT OF ENERGY AS LEAD AGENCY.—

12 Upon written request of a prospective applicant for Fed-  
13 eral authorization for a refinery facility in a Refinery Revi-  
14 talization Zone, the Department shall act as the lead Fed-  
15 eral agency for the purposes of coordinating all applicable  
16 Federal authorizations and environmental reviews of the  
17 refining facility. To the maximum extent practicable under  
18 applicable Federal law, the Secretary shall coordinate this  
19 Federal authorization and review process with any Indian  
20 Tribes and State and local agencies responsible for con-  
21 ducting any separate permitting and environmental re-  
22 views of the refining facility.

23 (b) SCHEDULE.—

24 (1) IN GENERAL.—The Secretary, in coordina-  
25 tion with the agencies with authority over Federal

1 authorizations and, as appropriate, with Indian  
2 Tribes and State and local agencies that are willing  
3 to coordinate their separate permitting and environ-  
4 mental reviews with the Federal authorizations and  
5 environmental reviews, shall establish a schedule  
6 with prompt and binding intermediate and ultimate  
7 deadlines for the review of, and Federal authoriza-  
8 tion decisions relating to, refinery facility siting and  
9 operation.

10 (2) PREAPPLICATION PROCESS.—Prior to estab-  
11 lishing the schedule, the Secretary shall provide an  
12 expeditious preapplication mechanism for applicants  
13 to confer with the agencies involved and to have  
14 each agency communicate to the prospective appli-  
15 cant within 60 days concerning—

16 (A) the likelihood of approval for a poten-  
17 tial refinery facility; and

18 (B) key issues of concern to the agencies  
19 and local community.

20 (3) SCHEDULE.—The Secretary shall consider  
21 the preapplication findings under paragraph (2) in  
22 setting the schedule and shall ensure that once an  
23 application has been submitted with such informa-  
24 tion as the Secretary considers necessary, all permit  
25 decisions and related environmental reviews under

1 all applicable Federal laws shall be completed within  
2 6 months or, where circumstances require otherwise,  
3 as soon as thereafter practicable.

4 (c) CONSOLIDATED ENVIRONMENTAL REVIEW.—

5 (1) LEAD AGENCY.—In carrying out its role as  
6 the lead Federal agency for environmental review,  
7 the Department shall coordinate all applicable Fed-  
8 eral actions for complying with the National Envi-  
9 ronmental Policy Act of 1969 (42 U.S.C. 4321 et  
10 seq.) and shall be responsible for preparing any envi-  
11 ronmental impact statement required by section  
12 102(2)(C) of that Act (42 U.S.C. 4332(2)(C)) or  
13 such other form of environmental review as is re-  
14 quired.

15 (2) CONSOLIDATION OF STATEMENTS.—In car-  
16 rying out paragraph (1), if the Department deter-  
17 mines an environmental impact statement is re-  
18 quired, the Department shall prepare a single envi-  
19 ronmental impact statement, which shall consolidate  
20 the environmental reviews of all Federal agencies  
21 considering any aspect of the project covered by the  
22 environmental impact statement.

23 (d) OTHER AGENCIES.—Each Federal agency consid-  
24 ering an aspect of the siting or operation of a refinery  
25 facility in a Refinery Revitalization Zone shall cooperate



1 with the Department and comply with the deadlines estab-  
2 lished by the Department in the preparation of any envi-  
3 ronmental impact statement or such other form of review  
4 as is required.

5 (e) EXCLUSIVE RECORD.—The Department shall,  
6 with the cooperation of Federal and State administrative  
7 agencies and officials, maintain a complete consolidated  
8 record of all decisions made or actions taken by the De-  
9 partment or by a Federal administrative agency or officer  
10 (or State administrative agency or officer acting under  
11 delegated Federal authority) with respect to the siting or  
12 operation of a refinery facility in a Refinery Revitalization  
13 Zone. Such record shall be the exclusive record for any  
14 Federal administrative proceeding that is an appeal or re-  
15 view of any such decision made or action taken.

16 (f) APPEALS.—In the event any agency has denied  
17 a Federal authorization required for a refinery facility in  
18 a Refinery Revitalization Zone, or has failed to act by a  
19 deadline established by the Secretary pursuant to sub-  
20 section (b) for deciding whether to issue the Federal au-  
21 thorization, the applicant or any State in which the refin-  
22 ery facility would be located may file an appeal with the  
23 Secretary. Based on the record maintained under sub-  
24 section (e), and in consultation with the affected agency,  
25 the Secretary may then either issue the necessary Federal

1 authorization with appropriate conditions, or deny the ap-  
2 peal. The Secretary shall issue a decision within 60 days  
3 after the filing of the appeal. In making a decision under  
4 this subsection, the Secretary shall comply with applicable  
5 requirements of Federal law, including each of the laws  
6 referred to in section 376(2)(A) through (H). Any judicial  
7 appeal of the Secretary's decision shall be to the United  
8 States Court of Appeals for the District of Columbia.

9 (g) CONFORMING REGULATIONS.—Not later than 6  
10 months after the date of enactment of this Act, the Sec-  
11 retary shall issue any regulations necessary to implement  
12 this subtitle.

13 **SEC. 378. COMPLIANCE WITH ALL ENVIRONMENTAL REGU-**  
14 **LATIONS REQUIRED.**

15 Nothing in this subtitle shall be construed to waive  
16 the applicability of environmental laws and regulations to  
17 any refinery facility.

18 **SEC. 379. DEFINITIONS.**

19 For the purposes of this subtitle, the term—

20 (1) “Administrator” means the Administrator  
21 of the Environmental Protection Agency;

22 (2) “Department” means the Department of  
23 Energy;

24 (3) “Federal authorization” means any author-  
25 ization required under Federal law (including the

1 Clean Air Act, the Federal Water Pollution Control  
2 Act, the Safe Drinking Water Act, the Comprehen-  
3 sive Environmental Response, Compensation, and  
4 Liability Act of 1980, the Solid Waste Disposal Act,  
5 the Toxic Substances Control Act, the National His-  
6 toric Preservation Act, and the National Environ-  
7 mental Policy Act of 1969) in order to site, con-  
8 struct, upgrade, or operate a refinery facility within  
9 a Refinery Revitalization Zone, including such per-  
10 mits, special use authorizations, certifications, opin-  
11 ions, or other approvals as may be required, whether  
12 issued by a Federal, State, or local agency;

13 (4) “idle refinery” means any real property site  
14 that has been used at any time for a refinery facility  
15 since December 31, 1979, that has not been in oper-  
16 ation after April 1, 2005;

17 (5) “refinery facility” means any facility de-  
18 signed and operated to receive, unload, store, proc-  
19 ess and refine raw crude oil by any chemical or  
20 physical process, including distillation, fluid catalytic  
21 cracking, hydrocracking, coking, alkylation,  
22 etherification, polymerization, catalytic reforming,  
23 isomerization, hydrotreating, blending, and any com-  
24 bination thereof;

1 (6) “Revitalization Program Qualifying State”  
 2 means a State or Indian Tribe that—

3 (A) has entered into the memorandum of  
 4 understanding pursuant to section 375(b); and

5 (B) has established a refining infrastruc-  
 6 ture coordination office that the Secretary finds  
 7 will facilitate Federal-State cooperation for the  
 8 purposes of this subtitle; and

9 (7) “Secretary” means the Secretary of Energy.

10 **TITLE IV—COAL**  
 11 **Subtitle A—Clean Coal Power**  
 12 **Initiative**

13 **SEC. 401. AUTHORIZATION OF APPROPRIATIONS.**

14 (a) CLEAN COAL POWER INITIATIVE.—There are au-  
 15 thorized to be appropriated to the Secretary of Energy (re-  
 16 ferred to in this title as the “Secretary”) to carry out the  
 17 activities authorized by this subtitle \$200,000,000 for  
 18 each of fiscal years 2006 through 2014, to remain avail-  
 19 able until expended.

20 (b) REPORT.—The Secretary shall submit to Con-  
 21 gress the report required by this subsection not later than  
 22 March 31, 2007. The report shall include, with respect  
 23 to subsection (a), a 10-year plan containing—

1           (1) a detailed assessment of whether the aggregate  
2           funding levels provided under subsection (a) are  
3           the appropriate funding levels for that program;

4           (2) a detailed description of how proposals will  
5           be solicited and evaluated, including a list of all activities  
6           expected to be undertaken;

7           (3) a detailed list of technical milestones for  
8           each coal and related technology that will be pursued;  
9           and

10          (4) a detailed description of how the program  
11          will avoid problems enumerated in General Accounting  
12          Office reports on the Clean Coal Technology  
13          Program, including problems that have resulted in  
14          unspent funds and projects that failed either financially  
15          or scientifically.

16 **SEC. 402. PROJECT CRITERIA.**

17          (a) **IN GENERAL.**—The Secretary shall not provide  
18          funding under this subtitle for any project that does not  
19          advance efficiency, environmental performance, and cost  
20          competitiveness well beyond the level of technologies that  
21          are in commercial service or have been demonstrated on  
22          a scale that the Secretary determines is sufficient to demonstrate  
23          that commercial service is viable as of the date  
24          of enactment of this Act.

1 (b) TECHNICAL CRITERIA FOR CLEAN COAL POWER  
2 INITIATIVE.—

3 (1) GASIFICATION PROJECTS.—

4 (A) IN GENERAL.—In allocating the funds  
5 made available under section 401(a), the Sec-  
6 retary shall ensure that at least 60 percent of  
7 the funds are used only for projects on coal-  
8 based gasification technologies, including gasifi-  
9 cation combined cycle, gasification fuel cells,  
10 gasification coproduction, and hybrid gasifi-  
11 cation/combustion.

12 (B) TECHNICAL MILESTONES.—The Sec-  
13 retary shall periodically set technical milestones  
14 specifying the emission and thermal efficiency  
15 levels that coal gasification projects under this  
16 subtitle shall be designed, and reasonably ex-  
17 pected, to achieve. The technical milestones  
18 shall become more restrictive during the life of  
19 the program. The Secretary shall set the peri-  
20 odic milestones so as to achieve by 2020 coal  
21 gasification projects able—

22 (i) to remove 99 percent of sulfur di-  
23 oxide;

24 (ii) to emit not more than .05 lbs of  
25 NO<sub>x</sub> per million Btu;

1 (iii) to achieve substantial reductions  
2 in mercury emissions; and

3 (iv) to achieve a thermal efficiency  
4 of—

5 (I) 60 percent for coal of more  
6 than 9,000 Btu;

7 (II) 59 percent for coal of 7,000  
8 to 9,000 Btu; and

9 (III) 50 percent for coal of less  
10 than 7,000 Btu.

11 (2) OTHER PROJECTS.—The Secretary shall pe-  
12 riodically set technical milestones and ensure that up  
13 to 40 percent of the funds appropriated pursuant to  
14 section 401(a) are used for projects not described in  
15 paragraph (1). The milestones shall specify the  
16 emission and thermal efficiency levels that projects  
17 funded under this paragraph shall be designed to  
18 and reasonably expected to achieve. The technical  
19 milestones shall become more restrictive during the  
20 life of the program. The Secretary shall set the peri-  
21 odic milestones so as to achieve by 2010 projects  
22 able—

23 (A) to remove 97 percent of sulfur dioxide;

24 (B) to emit no more than .08 lbs of NO<sub>x</sub>  
25 per million Btu;

1 (C) to achieve substantial reductions in  
2 mercury emissions; and

3 (D) to achieve a thermal efficiency of—

4 (i) 45 percent for coal of more than  
5 9,000 Btu;

6 (ii) 44 percent for coal of 7,000 to  
7 9,000 Btu; and

8 (iii) 40 percent for coal of less than  
9 7,000 Btu.

10 (3) CONSULTATION.—Before setting the tech-  
11 nical milestones under paragraphs (1)(B) and (2),  
12 the Secretary shall consult with the Administrator of  
13 the Environmental Protection Agency and interested  
14 entities, including coal producers, industries using  
15 coal, organizations to promote coal or advanced coal  
16 technologies, environmental organizations, and orga-  
17 nizations representing workers.

18 (4) EXISTING UNITS.—In the case of projects  
19 at units in existence on the date of enactment of this  
20 Act, in lieu of the thermal efficiency requirements  
21 set forth in paragraph (1)(B)(iv) and (2)(D), the  
22 milestones shall be designed to achieve an overall  
23 thermal design efficiency improvement, compared to  
24 the efficiency of the unit as operated, of not less  
25 than—



1 (A) 7 percent for coal of more than 9,000  
2 Btu;

3 (B) 6 percent for coal of 7,000 to 9,000  
4 Btu; or

5 (C) 4 percent for coal of less than 7,000  
6 Btu.

7 (5) PERMITTED USES.—In carrying out this  
8 subtitle, the Secretary may fund projects that in-  
9 clude, as part of the project, the separation and cap-  
10 ture of carbon dioxide. The thermal efficiency goals  
11 of paragraphs (1), (2), and (4) shall not apply for  
12 projects that separate and capture at least 50 per-  
13 cent of the facility’s potential emissions of carbon di-  
14 oxide.

15 (c) FINANCIAL CRITERIA.—The Secretary shall not  
16 provide a funding award under this subtitle unless the re-  
17 cipient documents to the satisfaction of the Secretary  
18 that—

19 (1) the award recipient is financially viable  
20 without the receipt of additional Federal funding;

21 (2) the recipient will provide sufficient informa-  
22 tion to the Secretary to enable the Secretary to en-  
23 sure that the award funds are spent efficiently and  
24 effectively; and

1           (3) a market exists for the technology being  
2           demonstrated or applied, as evidenced by statements  
3           of interest in writing from potential purchasers of  
4           the technology.

5           (d) FINANCIAL ASSISTANCE.—The Secretary shall  
6           provide financial assistance to projects that meet the re-  
7           quirements of subsections (a), (b), and (c) and are likely  
8           to—

9           (1) achieve overall cost reductions in the utiliza-  
10          tion of coal to generate useful forms of energy;

11          (2) improve the competitiveness of coal among  
12          various forms of energy in order to maintain a diver-  
13          sity of fuel choices in the United States to meet elec-  
14          tricity generation requirements; and

15          (3) demonstrate methods and equipment that  
16          are applicable to 25 percent of the electricity gener-  
17          ating facilities, using various types of coal, that use  
18          coal as the primary feedstock as of the date of en-  
19          actment of this Act.

20          (e) FEDERAL SHARE.—The Federal share of the cost  
21          of a coal or related technology project funded by the Sec-  
22          retary under this subtitle shall not exceed 50 percent.

23          (f) APPLICABILITY.—No technology, or level of emis-  
24          sion reduction, shall be treated as adequately dem-  
25          onstrated for purposes of section 111 of the Clean Air Act

1 (42 U.S.C. 7411), achievable for purposes of section 169  
2 of that Act (42 U.S.C. 7479), or achievable in practice  
3 for purposes of section 171 of that Act (42 U.S.C. 7501)  
4 solely by reason of the use of such technology, or the  
5 achievement of such emission reduction, by 1 or more fa-  
6 cilities receiving assistance under this subtitle.

7 **SEC. 403. REPORT.**

8 Not later than 1 year after the date of enactment  
9 of this Act, and once every 2 years thereafter through  
10 2014, the Secretary, in consultation with other appro-  
11 priate Federal agencies, shall submit to Congress a report  
12 describing—

13 (1) the technical milestones set forth in section  
14 402 and how those milestones ensure progress to-  
15 ward meeting the requirements of subsections  
16 (b)(1)(B) and (b)(2) of section 402; and

17 (2) the status of projects funded under this  
18 subtitle.

19 **SEC. 404. CLEAN COAL CENTERS OF EXCELLENCE.**

20 As part of the program authorized in section 401,  
21 the Secretary shall award competitive, merit-based grants  
22 to universities for the establishment of Centers of Excel-  
23 lence for Energy Systems of the Future. The Secretary  
24 shall provide grants to universities that show the greatest  
25 potential for advancing new clean coal technologies.

## 1 **Subtitle B—Clean Power Projects**

### 2 **SEC. 411. COAL TECHNOLOGY LOAN.**

3       There are authorized to be appropriated to the Sec-  
4 retary \$125,000,000 to provide a loan to the owner of the  
5 experimental plant constructed under United States De-  
6 partment of Energy cooperative agreement number DE-  
7 FC-22–91PC90544 on such terms and conditions as the  
8 Secretary determines, including interest rates and upfront  
9 payments.

### 10 **SEC. 412. COAL GASIFICATION.**

11       The Secretary is authorized to provide loan guaran-  
12 tees for a project to produce energy from a plant using  
13 integrated gasification combined cycle technology of at  
14 least 400 megawatts in capacity that produces power at  
15 competitive rates in deregulated energy generation mar-  
16 kets and that does not receive any subsidy (direct or indi-  
17 rect) from ratepayers.

### 18 **SEC. 414. PETROLEUM COKE GASIFICATION.**

19       The Secretary is authorized to provide loan guaran-  
20 tees for at least 5 petroleum coke gasification projects.

### 21 **SEC. 416. ELECTRON SCRUBBING DEMONSTRATION.**

22       The Secretary shall use \$5,000,000 from amounts  
23 appropriated to initiate, through the Chicago Operations  
24 Office, a project to demonstrate the viability of high-en-

1 ergy electron scrubbing technology on commercial-scale  
2 electrical generation using high-sulfur coal.

3           **Subtitle D—Coal and Related**  
4                           **Programs**

5 **SEC. 441. CLEAN AIR COAL PROGRAM.**

6           (a) AMENDMENT.—The Energy Policy Act of 1992  
7 is amended by adding the following new title at the end  
8 thereof:

9           **“TITLE XXXI—CLEAN AIR COAL**  
10                           **PROGRAM**

11 **“SEC. 3101. FINDINGS; PURPOSES; DEFINITIONS.**

12           “(a) FINDINGS.—The Congress finds that—

13                       “(1) new environmental regulations present ad-  
14 ditional challenges for coal-fired electrical generation  
15 in the private marketplace; and

16                       “(2) the Department of Energy, in cooperation  
17 with industry, has already fully developed and com-  
18 mercialized several new clean-coal technologies that  
19 will allow the clean use of coal.

20           “(b) PURPOSES.—The purposes of this title are to—

21                       “(1) promote national energy policy and energy  
22 security, diversity, and economic competitiveness  
23 benefits that result from the increased use of coal;

1           “(2) mitigate financial risks, reduce the cost,  
2           and increase the marketplace acceptance of the new  
3           clean coal technologies; and

4           “(3) advance the deployment of pollution con-  
5           trol equipment to meet the current and future obli-  
6           gations of coal-fired generation units regulated  
7           under the Clean Air Act (42 U.S.C. 7402 and fol-  
8           lowing).

9   **“SEC. 3102. AUTHORIZATION OF PROGRAM.**

10          “The Secretary shall carry out a program to facilitate  
11          production and generation of coal-based power and the in-  
12          stallation of pollution control equipment.

13   **“SEC. 3103. AUTHORIZATION OF APPROPRIATIONS.**

14          “(a) POLLUTION CONTROL PROJECTS.—There are  
15          authorized to be appropriated to the Secretary  
16          \$300,000,000 for fiscal year 2006, \$100,000,000 for fis-  
17          cal year 2007, \$40,000,000 for fiscal year 2008,  
18          \$30,000,000 for fiscal year 2009, and \$30,000,000 for fis-  
19          cal year 2010, to remain available until expended, for car-  
20          rying out the program for pollution control projects, which  
21          may include—

22                 “(1) pollution control equipment and processes  
23                 for the control of mercury air emissions;

1           “(2) pollution control equipment and processes  
2           for the control of nitrogen dioxide air emissions or  
3           sulfur dioxide emissions;

4           “(3) pollution control equipment and processes  
5           for the mitigation or collection of more than one pol-  
6           lutant;

7           “(4) advanced combustion technology for the  
8           control of at least two pollutants, including mercury,  
9           particulate matter, nitrogen oxides, and sulfur diox-  
10          ide, which may also be designed to improve the en-  
11          ergy efficiency of the unit; and

12          “(5) advanced pollution control equipment and  
13          processes designed to allow use of the waste byprod-  
14          ucts or other byproducts of the equipment or an  
15          electrical generation unit designed to allow the use  
16          of byproducts.

17 Funds appropriated under this subsection which are not  
18 awarded before fiscal year 2012 may be applied to projects  
19 under subsection (b), in addition to amounts authorized  
20 under subsection (b).

21          “(b) GENERATION PROJECTS.—There are authorized  
22 to be appropriated to the Secretary \$250,000,000 for fis-  
23 cal year 2007, \$350,000,000 for fiscal year 2008,  
24 \$400,000,000 for fiscal year 2009, \$400,000,000 for fis-  
25 cal year 2010, \$400,000,000 for fiscal year 2011,

1 \$400,000,000 for fiscal year 2012, and \$300,000,000 for  
2 fiscal year 2013, to remain available until expended, for  
3 generation projects and air pollution control projects.

4 Such projects may include—

5           “(1) coal-based electrical generation equipment  
6           and processes, including gasification combined cycle  
7           or other coal-based generation equipment and proc-  
8           esses;

9           “(2) associated environmental control equip-  
10          ment, that will be cost-effective and that is designed  
11          to meet anticipated regulatory requirements;

12          “(3) coal-based electrical generation equipment  
13          and processes, including gasification fuel cells, gas-  
14          ification coproduction, and hybrid gasification/com-  
15          bustion projects; and

16          “(4) advanced coal-based electrical generation  
17          equipment and processes, including oxidation com-  
18          bustion techniques, ultra-supercritical boilers, and  
19          chemical looping, which the Secretary determines  
20          will be cost-effective and could substantially con-  
21          tribute to meeting anticipated environmental or en-  
22          ergy needs.

23          “(c) LIMITATION.—Funds placed at risk during any  
24          fiscal year for Federal loans or loan guarantees pursuant



1 to this title may not exceed 30 percent of the total funds  
2 obligated under this title.

3 **“SEC. 3104. AIR POLLUTION CONTROL PROJECT CRITERIA.**

4 “The Secretary shall pursuant to authorizations con-  
5 tained in section 3103 provide funding for air pollution  
6 control projects designed to facilitate compliance with  
7 Federal and State environmental regulations, including  
8 any regulation that may be established with respect to  
9 mercury.

10 **“SEC. 3105. CRITERIA FOR GENERATION PROJECTS.**

11 “(a) CRITERIA.—The Secretary shall establish cri-  
12 teria on which selection of individual projects described in  
13 section 3103(b) should be based. The Secretary may mod-  
14 ify the criteria as appropriate to reflect improvements in  
15 equipment, except that the criteria shall not be modified  
16 to be less stringent. These selection criteria shall include—

17 “(1) prioritization of projects whose installation  
18 is likely to result in significant air quality improve-  
19 ments in nonattainment air quality areas;

20 “(2) prioritization of projects that result in the  
21 repowering or replacement of older, less efficient  
22 units;

23 “(3) documented broad interest in the procure-  
24 ment of the equipment and utilization of the proc-

1       esses used in the projects by electrical generator  
2       owners or operators;

3               “(4) equipment and processes beginning in  
4       2006 through 2011 that are projected to achieve an  
5       thermal efficiency of—

6                       “(A) 40 percent for coal of more than  
7       9,000 Btu per pound based on higher heating  
8       values;

9                       “(B) 38 percent for coal of 7,000 to 9,000  
10      Btu per pound based on higher heating values;  
11      and

12                      “(C) 36 percent for coal of less than 7,000  
13      Btu per pound based on higher heating values,  
14      except that energy used for coproduction or cogen-  
15      eration shall not be counted in calculating the ther-  
16      mal efficiency under this paragraph; and

17               “(5) equipment and processes beginning in  
18      2012 and 2013 that are projected to achieve an  
19      thermal efficiency of—

20                      “(A) 45 percent for coal of more than  
21      9,000 Btu per pound based on higher heating  
22      values;

23                      “(B) 44 percent for coal of 7,000 to 9,000  
24      Btu per pound based on higher heating values;  
25      and

1                   “(C) 40 percent for coal of less than 7,000  
2                   Btu per pound based on higher heating values,  
3                   except that energy used for coproduction or cogen-  
4                   eration shall not be counted in calculating the ther-  
5                   mal efficiency under this paragraph.

6                   “(b) SELECTION.—(1) In selecting the projects, up  
7 to 25 percent of the projects selected may be either co-  
8 production or cogeneration or other gasification projects,  
9 but at least 25 percent of the projects shall be for the  
10 sole purpose of electrical generation, and priority should  
11 be given to equipment and projects less than 600 MW to  
12 foster and promote standard designs.

13                   “(2) The Secretary shall give priority to projects that  
14 have been developed and demonstrated that are not yet  
15 cost competitive, and for coal energy generation projects  
16 that advance efficiency, environmental performance, or  
17 cost competitiveness significantly beyond the level of pollu-  
18 tion control equipment that is in operation on a full scale.

19 **“SEC. 3106. FINANCIAL CRITERIA.**

20                   “(a) IN GENERAL.—The Secretary shall only provide  
21 financial assistance to projects that meet the requirements  
22 of sections 3103 and 3104 and are likely to—

23                   “(1) achieve overall cost reductions in the utili-  
24 zation of coal to generate useful forms of energy;  
25                   and

1           “(2) improve the competitiveness of coal in  
2           order to maintain a diversity of domestic fuel choices  
3           in the United States to meet electricity generation  
4           requirements.

5           “(b) CONDITIONS.—The Secretary shall not provide  
6 a funding award under this title unless—

7           “(1) the award recipient is financially viable  
8           without the receipt of additional Federal funding;  
9           and

10           “(2) the recipient provides sufficient informa-  
11           tion to the Secretary for the Secretary to ensure  
12           that the award funds are spent efficiently and effec-  
13           tively.

14           “(c) EQUAL ACCESS.—The Secretary shall, to the ex-  
15           tent practical, utilize cooperative agreement, loan guar-  
16           antee, and direct Federal loan mechanisms designed to en-  
17           sure that all electrical generation owners have equal access  
18           to these technology deployment incentives. The Secretary  
19           shall develop and direct a competitive solicitation process  
20           for the selection of technologies and projects under this  
21           title.

22           **“SEC. 3107. FEDERAL SHARE.**

23           “The Federal share of the cost of a coal or related  
24           technology project funded by the Secretary under this title

1 shall not exceed 50 percent. For purposes of this title,  
 2 Federal funding includes only appropriated funds.

3 **“SEC. 3108. APPLICABILITY.**

4 “No technology, or level of emission reduction, shall  
 5 be treated as adequately demonstrated for purposes of sec-  
 6 tion 111 of the Clean Air Act (42 U.S.C. 7411), achievable  
 7 for purposes of section 169 of the Clean Air Act (42  
 8 U.S.C. 7479), or achievable in practice for purposes of  
 9 section 171 of the Clean Air Act (42 U.S.C. 7501) solely  
 10 by reason of the use of such technology, or the achieve-  
 11 ment of such emission reduction, by one or more facilities  
 12 receiving assistance under this title.”.

13 (b) TABLE OF CONTENTS AMENDMENT.—The table  
 14 of contents of the Energy Policy Act of 1992 is amended  
 15 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.”.

16 **TITLE V—INDIAN ENERGY**

17 **SEC. 501. SHORT TITLE.**

18 This title may be cited as the “Indian Tribal Energy  
 19 Development and Self-Determination Act of 2005”.

1 **SEC. 502. OFFICE OF INDIAN ENERGY POLICY AND PRO-**  
2 **GRAMS.**

3 (a) IN GENERAL.—Title II of the Department of En-  
4 ergy Organization Act (42 U.S.C. 7131 et seq.) is amend-  
5 ed by adding at the end the following:

6 “OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS

7 “SEC. 217.

8 “(a) ESTABLISHMENT.—There is established within  
9 the Department an Office of Indian Energy Policy and  
10 Programs (referred to in this section as the ‘Office’). The  
11 Office shall be headed by a Director, who shall be ap-  
12 pointed by the Secretary and compensated at a rate equal  
13 to that of level IV of the Executive Schedule under section  
14 5315 of title 5, United States Code.

15 “(b) DUTIES OF DIRECTOR.—The Director, in ac-  
16 cordance with Federal policies promoting Indian self-de-  
17 termination and the purposes of this Act, shall provide,  
18 direct, foster, coordinate, and implement energy planning,  
19 education, management, conservation, and delivery pro-  
20 grams of the Department that—

21 “(1) promote Indian tribal energy development,  
22 efficiency, and use;

23 “(2) reduce or stabilize energy costs;

24 “(3) enhance and strengthen Indian tribal en-  
25 ergy and economic infrastructure relating to natural  
26 resource development and electrification; and

1           “(4) bring electrical power and service to In-  
 2           dian land and the homes of tribal members located  
 3           on Indian lands or acquired, constructed, or im-  
 4           proved (in whole or in part) with Federal funds.”.

5           (b) CONFORMING AMENDMENTS.—

6           (1) The table of contents of the Department of  
 7           Energy Organization Act (42 U.S.C. prec. 7101) is  
 8           amended—

9                   (A) in the item relating to section 209, by  
 10                   striking “Section” and inserting “Sec.”; and

11                   (B) by striking the items relating to sec-  
 12                   tions 213 through 216 and inserting the fol-  
 13                   lowing:

“Sec. 213. Establishment of policy for National Nuclear Security Administra-  
 tion.

“Sec. 214. Establishment of security, counterintelligence, and intelligence poli-  
 cies.

“Sec. 215. Office of Counterintelligence.

“Sec. 216. Office of Intelligence.

“Sec. 217. Office of Indian Energy Policy and Programs.”.

14           (2) Section 5315 of title 5, United States Code,  
 15           is amended by inserting after the item related to the  
 16           Inspector General, Department of Energy the fol-  
 17           lowing new item:

18                   “Director, Office of Indian Energy Policy and  
 19                   Programs, Department of Energy.”.

1 **SEC. 503. INDIAN ENERGY.**

2 (a) IN GENERAL.—Title XXVI of the Energy Policy  
3 Act of 1992 (25 U.S.C. 3501 et seq.) is amended to read  
4 as follows:

5 **“TITLE XXVI—INDIAN ENERGY**  
6 **RESOURCES**

7 **“SEC. 2601. DEFINITIONS.**

8 “For purposes of this title:

9 “(1) The term ‘Director’ means the Director of  
10 the Office of Indian Energy Policy and Programs,  
11 Department of Energy.

12 “(2) The term ‘Indian land’ means—

13 “(A) any land located within the bound-  
14 aries of an Indian reservation, pueblo, or  
15 rancheria; and

16 “(B) any land not located within the  
17 boundaries of an Indian reservation, pueblo, or  
18 rancheria, the title to which is held—

19 “(i) in trust by the United States for  
20 the benefit of an Indian tribe or an indi-  
21 vidual Indian;

22 “(ii) by an Indian tribe or an indi-  
23 vidual Indian, subject to restriction against  
24 alienation under laws of the United States;

25 or



1                   “(iii) by a dependent Indian commu-  
2                   nity.

3                   “(3) The term ‘Indian reservation’ includes—

4                   “(A) an Indian reservation in existence in  
5                   any State or States as of the date of enactment  
6                   of this paragraph;

7                   “(B) a public domain Indian allotment;  
8                   and

9                   “(C) a dependent Indian community lo-  
10                  cated within the borders of the United States,  
11                  regardless of whether the community is lo-  
12                  cated—

13                  “(i) on original or acquired territory  
14                  of the community; or

15                  “(ii) within or outside the boundaries  
16                  of any particular State.

17                  “(4) The term ‘Indian tribe’ has the meaning  
18                  given the term in section 4 of the Indian Self-Deter-  
19                  mination and Education Assistance Act (25 U.S.C.  
20                  450b), except that the term ‘Indian tribe’, for the  
21                  purpose of paragraph (11) and sections 2603(b)(3)  
22                  and 2604, shall not include any Native Corporation.

23                  “(5) The term ‘integration of energy resources’  
24                  means any project or activity that promotes the loca-  
25                  tion and operation of a facility (including any pipe-

1 line, gathering system, transportation system or fa-  
2 cility, or electric transmission or distribution facility)  
3 on or near Indian land to process, refine, generate  
4 electricity from, or otherwise develop energy re-  
5 sources on, Indian land.

6 “(6) The term ‘Native Corporation’ has the  
7 meaning given the term in section 3 of the Alaska  
8 Native Claims Settlement Act (43 U.S.C. 1602).

9 “(7) The term ‘organization’ means a partner-  
10 ship, joint venture, limited liability company, or  
11 other unincorporated association or entity that is es-  
12 tablished to develop Indian energy resources.

13 “(8) The term ‘Program’ means the Indian en-  
14 ergy resource development program established  
15 under section 2602(a).

16 “(9) The term ‘Secretary’ means the Secretary  
17 of the Interior.

18 “(10) The term ‘tribal energy resource develop-  
19 ment organization’ means an organization of 2 or  
20 more entities, at least 1 of which is an Indian tribe,  
21 that has the written consent of the governing bodies  
22 of all Indian tribes participating in the organization  
23 to apply for a grant, loan, or other assistance au-  
24 thorized by section 2602.

1           “(11) The term ‘tribal land’ means any land or  
2           interests in land owned by any Indian tribe, title to  
3           which is held in trust by the United States or which  
4           is subject to a restriction against alienation under  
5           laws of the United States.

6   **“SEC. 2602. INDIAN TRIBAL ENERGY RESOURCE DEVELOP-**  
7                           **MENT.**

8           “(a) DEPARTMENT OF THE INTERIOR PROGRAM.—

9           “(1) To assist Indian tribes in the development  
10          of energy resources and further the goal of Indian  
11          self-determination, the Secretary shall establish and  
12          implement an Indian energy resource development  
13          program to assist consenting Indian tribes and tribal  
14          energy resource development organizations in achiev-  
15          ing the purposes of this title.

16          “(2) In carrying out the Program, the Sec-  
17          retary shall—

18                 “(A) provide development grants to Indian  
19                 tribes and tribal energy resource development  
20                 organizations for use in developing or obtaining  
21                 the managerial and technical capacity needed to  
22                 develop energy resources on Indian land, and to  
23                 properly account for resulting energy produc-  
24                 tion and revenues;

1           “(B) provide grants to Indian tribes and  
2           tribal energy resource development organiza-  
3           tions for use in carrying out projects to pro-  
4           mote the integration of energy resources, and to  
5           process, use, or develop those energy resources,  
6           on Indian land; and

7           “(C) provide low-interest loans to Indian  
8           tribes and tribal energy resource development  
9           organizations for use in the promotion of en-  
10          ergy resource development on Indian land and  
11          integration of energy resources.

12          “(3) There are authorized to be appropriated to  
13          carry out this subsection such sums as are necessary  
14          for each of fiscal years 2006 through 2016.

15          “(b) DEPARTMENT OF ENERGY INDIAN ENERGY  
16          EDUCATION PLANNING AND MANAGEMENT ASSISTANCE  
17          PROGRAM.—

18                 “(1) The Director shall establish programs to  
19                 assist consenting Indian tribes in meeting energy  
20                 education, research and development, planning, and  
21                 management needs.

22                 “(2) In carrying out this subsection, the Direc-  
23                 tor may provide grants, on a competitive basis, to an  
24                 Indian tribe or tribal energy resource development  
25                 organization for use in carrying out—

1           “(A) energy, energy efficiency, and energy  
2 conservation programs;

3           “(B) studies and other activities sup-  
4 porting tribal acquisitions of energy supplies,  
5 services, and facilities;

6           “(C) planning, construction, development,  
7 operation, maintenance, and improvement of  
8 tribal electrical generation, transmission, and  
9 distribution facilities located on Indian land;  
10 and

11           “(D) development, construction, and inter-  
12 connection of electric power transmission facili-  
13 ties located on Indian land with other electric  
14 transmission facilities.

15           “(3)(A) The Director may develop, in consulta-  
16 tion with Indian tribes, a formula for providing  
17 grants under this subsection.

18           “(B) In providing a grant under this sub-  
19 section, the Director shall give priority to an applica-  
20 tion received from an Indian tribe with inadequate  
21 electric service (as determined by the Director).

22           “(4) The Secretary of Energy may issue such  
23 regulations as necessary to carry out this subsection.

1           “(5) 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           “(c) DEPARTMENT OF ENERGY LOAN GUARANTEE  
5 PROGRAM.—

6           “(1) Subject to paragraph (3), the Secretary of  
7           Energy may provide loan guarantees (as defined in  
8           section 502 of the Federal Credit Reform Act of  
9           1990 (2 U.S.C. 661a)) for not more than 90 percent  
10          of the unpaid principal and interest due on any loan  
11          made to any Indian tribe for energy development.

12          “(2) A loan guarantee under this subsection  
13          shall be made by—

14                 “(A) a financial institution subject to ex-  
15                 amination by the Secretary of Energy; or

16                 “(B) an Indian tribe, from funds of the In-  
17                 dian tribe.

18          “(3) The aggregate outstanding amount guar-  
19          anteed by the Secretary of Energy at any time under  
20          this subsection shall not exceed \$2,000,000,000.

21          “(4) The Secretary of Energy may issue such  
22          regulations as the Secretary of Energy determines  
23          are necessary to carry out this subsection.

1           “(5) There are authorized to be appropriated  
2 such sums as are necessary to carry out this sub-  
3 section, to remain available until expended.

4           “(6) Not later than 1 year from the date of en-  
5 actment of this section, the Secretary of Energy  
6 shall report to Congress on the financing require-  
7 ments of Indian tribes for energy development on In-  
8 dian land.

9           “(d) FEDERAL AGENCIES-INDIAN ENERGY PREF-  
10 ERENCE.—

11           “(1) In purchasing electricity or any other en-  
12 ergy product or by-product, a Federal agency or de-  
13 partment may give preference to an energy and re-  
14 source production enterprise, partnership, consor-  
15 tium, corporation, or other type of business organi-  
16 zation the majority of the interest in which is owned  
17 and controlled by 1 or more Indian tribes.

18           “(2) In carrying out this subsection, a Federal  
19 agency or department shall not—

20           “(A) pay more than the prevailing market  
21 price for an energy product or by-product; or

22           “(B) obtain less than prevailing market  
23 terms and conditions.

1 **“SEC. 2603. INDIAN TRIBAL ENERGY RESOURCE REGULA-**  
2 **TION.**

3 “(a) GRANTS.—The Secretary may provide to Indian  
4 tribes, on an annual basis, grants for use in accordance  
5 with subsection (b).

6 “(b) USE OF FUNDS.—Funds from a grant provided  
7 under this section may be used—

8 “(1) by an Indian tribe for the development of  
9 a tribal energy resource inventory or tribal energy  
10 resource on Indian land;

11 “(2) by an Indian tribe for the development of  
12 a feasibility study or other report necessary to the  
13 development of energy resources on Indian land;

14 “(3) by an Indian tribe (other than an Indian  
15 Tribe in Alaska except the Metlakatla Indian Com-  
16 munity) for the development and enforcement of  
17 tribal laws (including regulations) relating to tribal  
18 energy resource development and the development of  
19 technical infrastructure to protect the environment  
20 under applicable law;

21 “(4) by a Native Corporation for the develop-  
22 ment and implementation of corporate policies and  
23 the development of technical infrastructure related  
24 to energy development and environmental protection  
25 under applicable law; and



1           “(5) by an Indian tribe for the training of em-  
2       ployees that—

3           “(A) are engaged in the development of en-  
4       ergy resources on Indian land; or

5           “(B) are responsible for protecting the en-  
6       vironment.

7       “(c) OTHER ASSISTANCE.—In carrying out the obli-  
8       gations of the United States under this title, the Secretary  
9       shall ensure, to the maximum extent practicable and to  
10      the extent of available resources, that upon the request  
11      of an Indian tribe, the Indian tribe shall have available  
12      scientific and technical information and expertise, for use  
13      in the Indian tribe’s regulation, development, and manage-  
14      ment of energy resources on Indian land. The Secretary  
15      may fulfill this responsibility either directly, through the  
16      use of Federal officials, or indirectly, by providing finan-  
17      cial assistance to the Indian tribe to secure independent  
18      assistance.

19      **“SEC. 2604. LEASES, BUSINESS AGREEMENTS, AND RIGHTS-**  
20                              **OF-WAY INVOLVING ENERGY DEVELOPMENT**  
21                              **OR TRANSMISSION.**

22      “(a) LEASES AND BUSINESS AGREEMENTS.—Subject  
23      to the provisions of this section—

24              “(1) an Indian tribe may, at its discretion,  
25      enter into a lease or business agreement for the pur-

1 pose of energy resource development on tribal land,  
2 including a lease or business agreement for—

3 “(A) exploration for, extraction of, proc-  
4 essing of, or other development of the Indian  
5 tribe’s energy mineral resources located on trib-  
6 al land; and

7 “(B) construction or operation of an elec-  
8 tric generation, transmission, or distribution fa-  
9 cility located on tribal land or a facility to proc-  
10 ess or refine energy resources developed on trib-  
11 al land; and

12 “(2) such lease or business agreement described  
13 in paragraph (1) shall not require the approval of  
14 the Secretary under section 2103 of the Revised  
15 Statutes (25 U.S.C. 81) or any other provision of  
16 law, if—

17 “(A) the lease or business agreement is ex-  
18 ecuted pursuant to a tribal energy resource  
19 agreement approved by the Secretary under  
20 subsection (e);

21 “(B) the term of the lease or business  
22 agreement does not exceed—

23 “(i) 30 years; or

24 “(ii) in the case of a lease for the pro-  
25 duction of oil resources, gas resources, or

1           both, 10 years and as long thereafter as oil  
2           or gas is produced in paying quantities;  
3           and

4           “(C) the Indian tribe has entered into a  
5           tribal energy resource agreement with the Sec-  
6           retary, as described in subsection (e), relating  
7           to the development of energy resources on tribal  
8           land (including the periodic review and evalua-  
9           tion of the activities of the Indian tribe under  
10          the agreement, to be conducted pursuant to the  
11          provisions required by subsection (e)(2)(D)(i)).

12          “(b) RIGHTS-OF-WAY FOR PIPELINES OR ELECTRIC  
13          TRANSMISSION OR DISTRIBUTION LINES.—An Indian  
14          tribe may grant a right-of-way over tribal land for a pipe-  
15          line or an electric transmission or distribution line without  
16          approval by the Secretary if—

17                 “(1) the right-of-way is executed in accordance  
18                 with a tribal energy resource agreement approved by  
19                 the Secretary under subsection (e);

20                 “(2) the term of the right-of-way does not ex-  
21                 ceed 30 years;

22                 “(3) the pipeline or electric transmission or dis-  
23                 tribution line serves—

24                         “(A) an electric generation, transmission,  
25                         or distribution facility located on tribal land; or

1           “(B) a facility located on tribal land that  
2           processes or refines energy resources developed  
3           on tribal land; and

4           “(4) the Indian tribe has entered into a tribal  
5           energy resource agreement with the Secretary, as de-  
6           scribed in subsection (e), relating to the development  
7           of energy resources on tribal land (including the  
8           periodic review and evaluation of the Indian tribe’s  
9           activities under such agreement described in sub-  
10          paragraphs (D) and (E) of subsection (e)(2)).

11          “(c) RENEWALS.—A lease or business agreement en-  
12          tered into or a right-of-way granted by an Indian tribe  
13          under this section may be renewed at the discretion of the  
14          Indian tribe in accordance with this section.

15          “(d) VALIDITY.—No lease, business agreement, or  
16          right-of-way relating to the development of tribal energy  
17          resources pursuant to the provisions of this section shall  
18          be valid unless the lease, business agreement, or right-of-  
19          way is authorized by the provisions of a tribal energy re-  
20          source agreement approved by the Secretary under sub-  
21          section (e)(2).

22          “(e) TRIBAL ENERGY RESOURCE AGREEMENTS.—

23                  “(1) On issuance of regulations under para-  
24                  graph (8), an Indian tribe may submit to the Sec-  
25                  retary for approval a tribal energy resource agree-

1       ment governing leases, business agreements, and  
2       rights-of-way under this section.

3           “(2)(A) Not later than 180 days after the date  
4       on which the Secretary receives a tribal energy re-  
5       source agreement submitted by an Indian tribe  
6       under paragraph (1), or not later than 60 days after  
7       the Secretary receives a revised tribal energy re-  
8       source agreement submitted by an Indian tribe  
9       under paragraph (4)(C), (or such later date as may  
10      be agreed to by the Secretary and the Indian tribe),  
11      the Secretary shall approve or disapprove the tribal  
12      energy resource agreement.

13          “(B) The Secretary shall approve a tribal en-  
14      ergy resource agreement submitted under paragraph  
15      (1) if—

16           “(i) the Secretary determines that the In-  
17      dian tribe has demonstrated that the Indian  
18      tribe has sufficient capacity to regulate the de-  
19      velopment of energy resources of the Indian  
20      tribe;

21           “(ii) the tribal energy resource agreement  
22      includes provisions required under subpara-  
23      graph (D); and

24           “(iii) the tribal energy resource agreement  
25      includes provisions that, with respect to a lease,

1 business agreement, or right-of-way under this  
2 section—

3 “(I) ensure the acquisition of nec-  
4 essary information from the applicant for  
5 the lease, business agreement, or right-of-  
6 way;

7 “(II) address the term of the lease or  
8 business agreement or the term of convey-  
9 ance of the right-of-way;

10 “(III) address amendments and re-  
11 newals;

12 “(IV) address the economic return to  
13 the Indian tribe under leases, business  
14 agreements, and rights-of-way;

15 “(V) address technical or other rel-  
16 evant requirements;

17 “(VI) establish requirements for envi-  
18 ronmental review in accordance with sub-  
19 paragraph (C);

20 “(VII) ensure compliance with all ap-  
21 plicable environmental laws;

22 “(VIII) identify final approval author-  
23 ity;

24 “(IX) provide for public notification of  
25 final approvals;

1           “(X) establish a process for consulta-  
2           tion with any affected States concerning  
3           off-reservation impacts, if any, identified  
4           pursuant to the provisions required under  
5           subparagraph (C)(i);

6           “(XI) describe the remedies for  
7           breach of the lease, business agreement, or  
8           right-of-way;

9           “(XII) require each lease, business  
10          agreement, and right-of-way to include a  
11          statement that, in the event that any of its  
12          provisions violates an express term or re-  
13          quirement set forth in the tribal energy re-  
14          source agreement pursuant to which it was  
15          executed—

16               “(aa) such provision shall be null  
17               and void; and

18               “(bb) if the Secretary determines  
19               such provision to be material, the Sec-  
20               retary shall have the authority to sus-  
21               pend or rescind the lease, business  
22               agreement, or right-of-way or take  
23               other appropriate action that the Sec-  
24               retary determines to be in the best in-  
25               terest of the Indian tribe;

1           “(XIII) require each lease, business  
2           agreement, and right-of-way to provide  
3           that it will become effective on the date on  
4           which a copy of the executed lease, busi-  
5           ness agreement, or right-of-way is deliv-  
6           ered to the Secretary in accordance with  
7           regulations adopted pursuant to this sub-  
8           section; and

9           “(XIV) include citations to tribal  
10          laws, regulations, or procedures, if any,  
11          that set out tribal remedies that must be  
12          exhausted before a petition may be sub-  
13          mitted to the Secretary pursuant to para-  
14          graph (7)(B).

15          “(C) Tribal energy resource agreements sub-  
16          mitted under paragraph (1) shall establish, and in-  
17          clude provisions to ensure compliance with, an envi-  
18          ronmental review process that, with respect to a  
19          lease, business agreement, or right-of-way under this  
20          section, provides for—

21                 “(i) the identification and evaluation of all  
22                 significant environmental impacts (as compared  
23                 with a no-action alternative), including effects  
24                 on cultural resources;



1           “(ii) the identification of proposed mitiga-  
2           tion;

3           “(iii) a process for ensuring that the public  
4           is informed of and has an opportunity to com-  
5           ment on the environmental impacts of the pro-  
6           posed action before tribal approval of the lease,  
7           business agreement, or right-of-way; and

8           “(iv) sufficient administrative support and  
9           technical capability to carry out the environ-  
10          mental review process.

11          “(D) A tribal energy resource agreement nego-  
12          tiated between the Secretary and an Indian tribe in  
13          accordance with this subsection shall include—

14               “(i) provisions requiring the Secretary to  
15               conduct a periodic review and evaluation to  
16               monitor the performance of the Indian tribe’s  
17               activities associated with the development of en-  
18               ergy resources under the tribal energy resource  
19               agreement; and

20               “(ii) when such review and evaluation re-  
21               sult in a finding by the Secretary of imminent  
22               jeopardy to a physical trust asset arising from  
23               a violation of the tribal energy resource agree-  
24               ment or applicable Federal laws, provisions au-  
25               thorizing the Secretary to take appropriate ac-

1           tions determined by the Secretary to be nec-  
2           essary to protect such asset, which actions may  
3           include reassumption of responsibility for activi-  
4           ties associated with the development of energy  
5           resources on tribal land until the violation and  
6           conditions that gave rise to such jeopardy have  
7           been corrected.

8           “(E) The periodic review and evaluation de-  
9           scribed in subparagraph (D) shall be conducted on  
10          an annual basis, except that, after the third such an-  
11          nual review and evaluation, the Secretary and the  
12          Indian tribe may mutually agree to amend the tribal  
13          energy resource agreement to authorize the review  
14          and evaluation required by subparagraph (D) to be  
15          conducted once every 2 years.

16          “(3) The Secretary shall provide notice and op-  
17          portunity for public comment on tribal energy re-  
18          source agreements submitted for approval under  
19          paragraph (1). The Secretary’s review of a tribal en-  
20          ergy resource agreement under the National Envi-  
21          ronmental Policy Act of 1969 (42 U.S.C. 4321 et  
22          seq.) shall be limited to the direct effects of that ap-  
23          proval.

24          “(4) If the Secretary disapproves a tribal en-  
25          ergy resource agreement submitted by an Indian

1       tribe under paragraph (1), the Secretary shall, not  
2       later than 10 days after the date of disapproval—

3               “(A) notify the Indian tribe in writing of  
4       the basis for the disapproval;

5               “(B) identify what changes or other ac-  
6       tions are required to address the concerns of  
7       the Secretary; and

8               “(C) provide the Indian tribe with an op-  
9       portunity to revise and resubmit the tribal en-  
10      ergy resource agreement.

11              “(5) If an Indian tribe executes a lease or busi-  
12      ness agreement or grants a right-of-way in accord-  
13      ance with a tribal energy resource agreement ap-  
14      proved under this subsection, the Indian tribe shall,  
15      in accordance with the process and requirements set  
16      forth in the Secretary’s regulations adopted pursu-  
17      ant to paragraph (8), provide to the Secretary—

18              “(A) a copy of the lease, business agree-  
19      ment, or right-of-way document (including all  
20      amendments to and renewals of the document);  
21      and

22              “(B) in the case of a tribal energy resource  
23      agreement or a lease, business agreement, or  
24      right-of-way that permits payments to be made  
25      directly to the Indian tribe, information and

1 documentation of those payments sufficient to  
2 enable the Secretary to discharge the trust re-  
3 sponsibility of the United States to enforce the  
4 terms of, and protect the Indian tribe's rights  
5 under, the lease, business agreement, or right-  
6 of-way.

7 “(6)(A) For purposes of the activities to be un-  
8 dertaken by the Secretary pursuant to this section,  
9 the Secretary shall—

10 “(i) carry out such activities in a manner  
11 consistent with the trust responsibility of the  
12 United States relating to mineral and other  
13 trust resources; and

14 “(ii) act in good faith and in the best in-  
15 terests of the Indian tribes.

16 “(B) Subject to the provisions of subsections  
17 (a)(2), (b), and (c) waiving the requirement of Sec-  
18 retarial approval of leases, business agreements, and  
19 rights-of-way executed pursuant to tribal energy re-  
20 source agreements approved under this section, and  
21 the provisions of subparagraph (D), nothing in this  
22 section shall absolve the United States from any re-  
23 sponsibility to Indians or Indian tribes, including,  
24 but not limited to, those which derive from the trust  
25 relationship or from any treaties, statutes, and other

1 laws of the United States, Executive Orders, or  
2 agreements between the United States and any In-  
3 dian tribe.

4 “(C) The Secretary shall continue to have a  
5 trust obligation to ensure that the rights and inter-  
6 ests of an Indian tribe are protected in the event  
7 that—

8 “(i) any other party to any such lease,  
9 business agreement, or right-of-way violates any  
10 applicable provision of Federal law or the terms  
11 of any lease, business agreement, or right-of-  
12 way under this section; or

13 “(ii) any provision in such lease, business  
14 agreement, or right-of-way violates any express  
15 provision or requirement set forth in the tribal  
16 energy resource agreement pursuant to which  
17 the lease, business agreement, or right-of-way  
18 was executed.

19 “(D) Notwithstanding subparagraph (B), the  
20 United States shall not be liable to any party (in-  
21 cluding any Indian tribe) for any of the negotiated  
22 terms of, or any losses resulting from the negotiated  
23 terms of, a lease, business agreement, or right-of-  
24 way executed pursuant to and in accordance with a  
25 tribal energy resource agreement approved by the

1 Secretary under paragraph (2). For the purpose of  
2 this subparagraph, the term ‘negotiated terms’  
3 means any terms or provisions that are negotiated  
4 by an Indian tribe and any other party or parties to  
5 a lease, business agreement, or right-of-way entered  
6 into pursuant to an approved tribal energy resource  
7 agreement.

8 “(7)(A) In this paragraph, the term ‘interested  
9 party’ means any person or entity the interests of  
10 which have sustained or will sustain a significant ad-  
11 verse environmental impact as a result of the failure  
12 of an Indian tribe to comply with a tribal energy re-  
13 source agreement of the Indian tribe approved by  
14 the Secretary under paragraph (2).

15 “(B) After exhaustion of tribal remedies, and in  
16 accordance with the process and requirements set  
17 forth in regulations adopted by the Secretary pursu-  
18 ant to paragraph (8), an interested party may sub-  
19 mit to the Secretary a petition to review compliance  
20 of an Indian tribe with a tribal energy resource  
21 agreement of the Indian tribe approved by the Sec-  
22 retary under paragraph (2).

23 “(C)(i) Not later than 120 days after the date  
24 on which the Secretary receives a petition under sub-  
25 paragraph (B), the Secretary shall determine wheth-

1 er the Indian tribe is not in compliance with the  
2 tribal energy resource agreement, as alleged in the  
3 petition.

4 “(ii) The Secretary may adopt procedures  
5 under paragraph (8) authorizing an extension of  
6 time, not to exceed 120 days, for making the deter-  
7 mination under clause (i) in any case in which the  
8 Secretary determines that additional time is nec-  
9 essary to evaluate the allegations of the petition.

10 “(iii) Subject to subparagraph (D), if the Sec-  
11 retary determines that the Indian tribe is not in  
12 compliance with the tribal energy resource agree-  
13 ment as alleged in the petition, the Secretary shall  
14 take such action as is necessary to ensure compli-  
15 ance with the provisions of the tribal energy resource  
16 agreement, which action may include—

17 “(I) temporarily suspending some or all ac-  
18 tivities under a lease, business agreement, or  
19 right-of-way under this section until the Indian  
20 tribe or such activities are in compliance with  
21 the provisions of the approved tribal energy re-  
22 source agreement; or

23 “(II) rescinding approval of all or part of  
24 the tribal energy resource agreement, and if all  
25 of such agreement is rescinded, reassuming the

1 responsibility for approval of any future leases,  
2 business agreements, or rights-of-way described  
3 in subsections (a) and (b).

4 “(D) Prior to seeking to ensure compliance with  
5 the provisions of the tribal energy resource agree-  
6 ment of an Indian tribe under subparagraph (C)(iii),  
7 the Secretary shall—

8 “(i) make a written determination that de-  
9 scribes the manner in which the tribal energy  
10 resource agreement has been violated;

11 “(ii) provide the Indian tribe with a writ-  
12 ten notice of the violations together with the  
13 written determination; and

14 “(iii) before taking any action described in  
15 subparagraph (C)(iii) or seeking any other rem-  
16 edy, provide the Indian tribe with a hearing and  
17 a reasonable opportunity to attain compliance  
18 with the tribal energy resource agreement.

19 “(E) An Indian tribe described in subparagraph  
20 (D) shall retain all rights to appeal as provided in  
21 regulations issued by the Secretary.

22 “(8) Not later than 1 year after the date of en-  
23 actment of the Indian Tribal Energy Development  
24 and Self-Determination Act of 2005, the Secretary



1 shall issue regulations that implement the provisions  
2 of this subsection, including—

3 “(A) criteria to be used in determining the  
4 capacity of an Indian tribe described in para-  
5 graph (2)(B)(i), including the experience of the  
6 Indian tribe in managing natural resources and  
7 financial and administrative resources available  
8 for use by the Indian tribe in implementing the  
9 approved tribal energy resource agreement of  
10 the Indian tribe;

11 “(B) a process and requirements in accord-  
12 ance with which an Indian tribe may—

13 “(i) voluntarily rescind a tribal energy  
14 resource agreement approved by the Sec-  
15 retary under this subsection; and

16 “(ii) return to the Secretary the re-  
17 sponsibility to approve any future leases,  
18 business agreements, and rights-of-way de-  
19 scribed in this subsection;

20 “(C) provisions setting forth the scope of,  
21 and procedures for, the periodic review and  
22 evaluation described in subparagraphs (D) and  
23 (E) of paragraph (2), including provisions for  
24 review of transactions, reports, site inspections,

1 and any other review activities the Secretary  
2 determines to be appropriate; and

3 “(D) provisions defining final agency ac-  
4 tions after exhaustion of administrative appeals  
5 from determinations of the Secretary under  
6 paragraph (7).

7 “(f) NO EFFECT ON OTHER LAW.—Nothing in this  
8 section affects the application of—

9 “(1) any Federal environment law;

10 “(2) the Surface Mining Control and Reclama-  
11 tion Act of 1977 (30 U.S.C. 1201 et seq.); or

12 “(3) except as otherwise provided in this title,  
13 the Indian Mineral Development Act of 1982 (25  
14 U.S.C. 2101 et seq.) and the National Environ-  
15 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

16 “(g) AUTHORIZATION OF APPROPRIATIONS.—There  
17 are authorized to be appropriated to the Secretary such  
18 sums as are necessary for each of fiscal years 2006  
19 through 2016 to implement the provisions of this section  
20 and to make grants or provide other appropriate assist-  
21 ance to Indian tribes to assist the Indian tribes in devel-  
22 oping and implementing tribal energy resource agreements  
23 in accordance with the provisions of this section.

1 **“SEC. 2605. INDIAN MINERAL DEVELOPMENT REVIEW.**

2 “(a) IN GENERAL.—The Secretary shall conduct a  
3 review of all activities being conducted under the Indian  
4 Mineral Development Act of 1982 (25 U.S.C. 2101 et  
5 seq.) as of that date.

6 “(b) REPORT.—Not later than 1 year after the date  
7 of enactment of the Indian Tribal Energy Development  
8 and Self-Determination Act of 2005, the Secretary shall  
9 submit to Congress a report that includes—

10 “(1) the results of the review;

11 “(2) recommendations to ensure that Indian  
12 tribes have the opportunity to develop Indian energy  
13 resources; and

14 “(3) an analysis of the barriers to the develop-  
15 ment of energy resources on Indian land (including  
16 legal, fiscal, market, and other barriers), along with  
17 recommendations for the removal of those barriers.

18 **“SEC. 2606. FEDERAL POWER MARKETING ADMINISTRA-**  
19 **TIONS.**

20 “(a) DEFINITIONS.—In this section:

21 “(1) The term ‘Administrator’ means the Ad-  
22 ministrator of the Bonneville Power Administration  
23 and the Administrator of the Western Area Power  
24 Administration.

25 “(2) The term ‘power marketing administra-  
26 tion’ means—

1           “(A) the Bonneville Power Administration;

2           “(B) the Western Area Power Administra-  
3           tion; and

4           “(C) any other power administration the  
5           power allocation of which is used by or for the  
6           benefit of an Indian tribe located in the service  
7           area of the administration.

8           “(b) ENCOURAGEMENT OF INDIAN TRIBAL ENERGY  
9           DEVELOPMENT.—Each Administrator shall encourage In-  
10          dian tribal energy development by taking such actions as  
11          are appropriate, including administration of programs of  
12          the Bonneville Power Administration and the Western  
13          Area Power Administration, in accordance with this sec-  
14          tion.

15          “(c) ACTION BY THE ADMINISTRATOR.—In carrying  
16          out this section, and in accordance with existing law—

17                 “(1) each Administrator shall consider the  
18                 unique relationship that exists between the United  
19                 States and Indian tribes;

20                 “(2) power allocations from the Western Area  
21                 Power Administration to Indian tribes may be used  
22                 to meet firming and reserve needs of Indian-owned  
23                 energy projects on Indian land;

24                 “(3) the Administrator of the Western Area  
25                 Power Administration may purchase non-federally

1 generated power from Indian tribes to meet the  
2 firming and reserve requirements of the Western  
3 Area Power Administration; and

4 “(4) each Administrator shall not pay more  
5 than the prevailing market price for an energy prod-  
6 uct nor obtain less than prevailing market terms and  
7 conditions.

8 “(d) ASSISTANCE FOR TRANSMISSION SYSTEM  
9 USE.—(1) An Administrator may provide technical assist-  
10 ance to Indian tribes seeking to use the high-voltage trans-  
11 mission system for delivery of electric power.

12 “(2) The costs of technical assistance provided under  
13 paragraph (1) shall be funded by the Secretary of Energy  
14 using nonreimbursable funds appropriated for that pur-  
15 pose, or by the applicable Indian tribes.

16 “(e) POWER ALLOCATION STUDY.—Not later than 2  
17 years after the date of enactment of the Indian Tribal En-  
18 ergy Development and Self-Determination Act of 2005,  
19 the Secretary of Energy shall submit to Congress a report  
20 that—

21 “(1) describes the use by Indian tribes of Fed-  
22 eral power allocations of the Western Area Power  
23 Administration (or power sold by the Southwestern  
24 Power Administration) and the Bonneville Power

1 Administration to or for the benefit of Indian tribes  
2 in service areas of those administrations; and

3 “(2) identifies—

4 “(A) the quantity of power allocated to, or  
5 used for the benefit of, Indian tribes by the  
6 Western Area Power Administration;

7 “(B) the quantity of power sold to Indian  
8 tribes by other power marketing administra-  
9 tions; and

10 “(C) barriers that impede tribal access to  
11 and use of Federal power, including an assess-  
12 ment of opportunities to remove those barriers  
13 and improve the ability of power marketing ad-  
14 ministrations to deliver Federal power.

15 “(f) AUTHORIZATION OF APPROPRIATIONS.—There  
16 are authorized to be appropriated to carry out this section  
17 \$750,000, which shall remain available until expended and  
18 shall not be reimbursable.”.

19 (b) CONFORMING AMENDMENT.—The table of con-  
20 tents for the Energy Policy Act of 1992 is amended by  
21 striking the items relating to title XXVI (other than the  
22 title heading) and inserting the 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.

“Sec. 2606. Federal Power Marketing Administrations.”.

1 **SEC. 504. CONSULTATION WITH INDIAN TRIBES.**

2 In carrying out this title and the amendments made  
3 by this title, the Secretary of Energy and the Secretary  
4 shall, as appropriate and to the maximum extent prac-  
5 ticable, involve and consult with Indian tribes.

6 **SEC. 505. FOUR CORNERS TRANSMISSION LINE PROJECT.**

7 The Dine Power Authority, an enterprise of the Nav-  
8 ajo Nation, shall be eligible to receive grants and other  
9 assistance as authorized by section 217 of the Department  
10 of Energy Organization Act, as added by section 502 of  
11 this title, and section 2602 of the Energy Policy Act of  
12 1992, as amended by this title, for activities associated  
13 with the development of a transmission line from the Four  
14 Corners Area to southern Nevada, including related power  
15 generation opportunities.

16 **TITLE VI—NUCLEAR MATTERS**  
17 **Subtitle A—Price-Anderson Act**  
18 **Amendments**

19 **SEC. 601. SHORT TITLE.**

20 This subtitle may be cited as the “Price-Anderson  
21 Amendments Act of 2005” .

22 **SEC. 602. EXTENSION OF INDEMNIFICATION AUTHORITY.**

23 (a) INDEMNIFICATION OF NUCLEAR REGULATORY  
24 COMMISSION LICENSEES.—Section 170 c. of the Atomic  
25 Energy Act of 1954 (42 U.S.C. 2210(c)) is amended—

1 (1) in the subsection heading, by striking “LI-  
2 CENSES” and inserting “LICENSEES”; and

3 (2) by striking “December 31, 2003” each  
4 place it appears and inserting “December 31,  
5 2025”.

6 (b) INDEMNIFICATION OF DEPARTMENT OF ENERGY  
7 CONTRACTORS.—Section 170 d.(1)(A) of the Atomic En-  
8 ergy Act of 1954 (42 U.S.C. 2210(d)(1)(A)) is amended  
9 by striking “December 31, 2006” and inserting “Decem-  
10 ber 31, 2025”.

11 (c) INDEMNIFICATION OF NONPROFIT EDUCATIONAL  
12 INSTITUTIONS.—Section 170 k. of the Atomic Energy Act  
13 of 1954 (42 U.S.C. 2210(k)) is amended by striking “Au-  
14 gust 1, 2002” each place it appears and inserting “Decem-  
15 ber 31, 2025”.

16 **SEC. 603. MAXIMUM ASSESSMENT.**

17 Section 170 of the Atomic Energy Act of 1954 (42  
18 U.S.C. 2210) is amended—

19 (1) in the second proviso of the third sentence  
20 of subsection b.(1)—

21 (A) by striking “\$63,000,000” and insert-  
22 ing “\$95,800,000”; and

23 (B) by striking “\$10,000,000 in any 1  
24 year” and inserting “\$15,000,000 in any 1 year



1 (subject to adjustment for inflation under sub-  
2 section t.)”; and

3 (2) in subsection t.(1)—

4 (A) by inserting “total and annual” after  
5 “amount of the maximum”;

6 (B) by striking “the date of the enactment  
7 of the Price-Anderson Amendments Act of  
8 1988” and inserting “August 20, 2003”; and

9 (C) in subparagraph (A), by striking “such  
10 date of enactment” and inserting “August 20,  
11 2003”.

12 **SEC. 604. DEPARTMENT OF ENERGY LIABILITY LIMIT.**

13 (a) INDEMNIFICATION OF DEPARTMENT OF ENERGY  
14 CONTRACTORS.—Section 170 d. of the Atomic Energy Act  
15 of 1954 (42 U.S.C. 2210(d)) is amended by striking para-  
16 graph (2) and inserting the following:

17 “(2) In an agreement of indemnification entered into  
18 under paragraph (1), the Secretary—

19 “(A) may require the contractor to provide and  
20 maintain financial protection of such a type and in  
21 such amounts as the Secretary shall determine to be  
22 appropriate to cover public liability arising out of or  
23 in connection with the contractual activity; and

24 “(B) shall indemnify the persons indemnified  
25 against such liability above the amount of the finan-

1       cial protection required, in the amount of  
2       \$10,000,000,000 (subject to adjustment for inflation  
3       under subsection t.), in the aggregate, for all per-  
4       sons indemnified in connection with the contract and  
5       for each nuclear incident, including such legal costs  
6       of the contractor as are approved by the Secretary.”.

7       (b) CONTRACT AMENDMENTS.—Section 170 d. of the  
8       Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is further  
9       amended by striking paragraph (3) and inserting the fol-  
10      lowing—

11       “(3) All agreements of indemnification under which  
12      the Department of Energy (or its predecessor agencies)  
13      may be required to indemnify any person under this sec-  
14      tion shall be deemed to be amended, on the date of enact-  
15      ment of the Price-Anderson Amendments Act of 2005, to  
16      reflect the amount of indemnity for public liability and any  
17      applicable financial protection required of the contractor  
18      under this subsection.”.

19       (c) LIABILITY LIMIT.—Section 170 e.(1)(B) of the  
20      Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(1)(B)) is  
21      amended—

22               (1) by striking “the maximum amount of finan-  
23      cial protection required under subsection b. or”; and

1           (2) by striking “paragraph (3) of subsection d.,  
2           whichever amount is more” and inserting “para-  
3           graph (2) of subsection d.”.

4 **SEC. 605. INCIDENTS OUTSIDE THE UNITED STATES.**

5           (a) AMOUNT OF INDEMNIFICATION.—Section 170  
6 d.(5) of the Atomic Energy Act of 1954 (42 U.S.C.  
7 2210(d)(5)) is amended by striking “\$100,000,000” and  
8 inserting “\$500,000,000”.

9           (b) LIABILITY LIMIT.—Section 170 e.(4) of the  
10 Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(4)) is  
11 amended by striking “\$100,000,000” and inserting  
12 “\$500,000,000”.

13 **SEC. 606. REPORTS.**

14           Section 170 p. of the Atomic Energy Act of 1954 (42  
15 U.S.C. 2210(p)) is amended by striking “August 1, 1998”  
16 and inserting “December 31, 2021”.

17 **SEC. 607. INFLATION ADJUSTMENT.**

18           Section 170 t. of the Atomic Energy Act of 1954 (42  
19 U.S.C. 2210(t)) is amended—

20           (1) by redesignating paragraph (2) as para-  
21           graph (3); and

22           (2) by inserting after paragraph (1) the fol-  
23           lowing:

24           “(2) The Secretary shall adjust the amount of indem-  
25           nification provided under an agreement of indemnification

1 under subsection d. not less than once during each 5-year  
2 period following July 1, 2003, in accordance with the ag-  
3 gregate percentage change in the Consumer Price Index  
4 since—

5 “(A) that date, in the case of the first adjust-  
6 ment under this paragraph; or

7 “(B) the previous adjustment under this para-  
8 graph.”.

9 **SEC. 608. TREATMENT OF MODULAR REACTORS.**

10 Section 170 b. of the Atomic Energy Act of 1954 (42  
11 U.S.C. 2210(b)) is amended by adding at the end the fol-  
12 lowing:

13 “(5)(A) For purposes of this section only, the Com-  
14 mission shall consider a combination of facilities described  
15 in subparagraph (B) to be a single facility having a rated  
16 capacity of 100,000 electrical kilowatts or more.

17 “(B) A combination of facilities referred to in sub-  
18 paragraph (A) is 2 or more facilities located at a single  
19 site, each of which has a rated capacity of 100,000 elec-  
20 trical kilowatts or more but not more than 300,000 elec-  
21 trical kilowatts, with a combined rated capacity of not  
22 more than 1,300,000 electrical kilowatts.”.

1 **SEC. 609. APPLICABILITY.**

2       The amendments made by sections 603, 604, and 605  
3 do not apply to a nuclear incident that occurs before the  
4 date of the enactment of this Act.

5 **SEC. 610. PROHIBITION ON ASSUMPTION BY UNITED**  
6 **STATES GOVERNMENT OF LIABILITY FOR**  
7 **CERTAIN FOREIGN INCIDENTS.**

8       Section 170 of the Atomic Energy Act of 1954 (42  
9 U.S.C. 2210) is amended by adding at the end the fol-  
10 lowing new subsection:

11       “u. PROHIBITION ON ASSUMPTION OF LIABILITY FOR  
12 CERTAIN FOREIGN INCIDENTS.—Notwithstanding this  
13 section or any other provision of law, no officer of the  
14 United States or of any department, agency, or instrumen-  
15 tality of the United States Government may enter into any  
16 contract or other arrangement, or into any amendment or  
17 modification of a contract or other arrangement, the pur-  
18 pose or effect of which would be to directly or indirectly  
19 impose liability on the United States Government, or any  
20 department, agency, or instrumentality of the United  
21 States Government, or to otherwise directly or indirectly  
22 require an indemnity by the United States Government,  
23 for nuclear incidents occurring in connection with the de-  
24 sign, construction, or operation of a production facility or  
25 utilization facility in any country whose government has  
26 been identified by the Secretary of State as engaged in

1 state sponsorship of terrorist activities (specifically includ-  
2 ing any country the government of which, as of September  
3 11, 2001, had been determined by the Secretary of State  
4 under section 620A(a) of the Foreign Assistance Act of  
5 1961 (22 U.S.C. 2371(a)), section 6(j)(1) of the Export  
6 Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)),  
7 or section 40(d) of the Arms Export Control Act (22  
8 U.S.C. 2780(d)) to have repeatedly provided support for  
9 acts of international terrorism). This subsection shall not  
10 apply to nuclear incidents occurring as a result of mis-  
11 sions, carried out under the direction of the Secretary of  
12 Energy, the Secretary of Defense, or the Secretary of  
13 State, that are necessary to safely secure, store, transport,  
14 or remove nuclear materials for nuclear safety or non-  
15 proliferation purposes.”.

16 **SEC. 611. CIVIL PENALTIES.**

17 (a) REPEAL OF AUTOMATIC REMISSION.—Section  
18 234A b.(2) of the Atomic Energy Act of 1954 (42 U.S.C.  
19 2282a(b)(2)) is amended by striking the last sentence.

20 (b) LIMITATION FOR NOT-FOR-PROFIT INSTITU-  
21 TIONS.—Subsection d. of section 234A of the Atomic En-  
22 ergy Act of 1954 (42 U.S.C. 2282a(d)) is amended to read  
23 as follows:

24 “d.(1) Notwithstanding subsection a., in the case of  
25 any not-for-profit contractor, subcontractor, or supplier,

1 the total amount of civil penalties paid under subsection  
2 a. may not exceed the total amount of fees paid within  
3 any 1-year period (as determined by the Secretary) under  
4 the contract under which the violation occurs.

5 “(2) For purposes of this section, the term ‘not-for-  
6 profit’ means that no part of the net earnings of the con-  
7 tractor, subcontractor, or supplier inures to the benefit of  
8 any natural person or for-profit artificial person.”.

9 (c) EFFECTIVE DATE.—The amendments made by  
10 this section shall not apply to any violation of the Atomic  
11 Energy Act of 1954 (42 U.S.C. 2011 et seq.) occurring  
12 under a contract entered into before the date of enactment  
13 of this section.

14 **SEC. 612. FINANCIAL ACCOUNTABILITY.**

15 (a) AMENDMENT.—Section 170 of the Atomic En-  
16 ergy Act of 1954 (42 U.S.C. 2210) is amended by adding  
17 at the end the following new subsection:

18 “v. FINANCIAL ACCOUNTABILITY.—(1) Notwith-  
19 standing subsection d., the Attorney General may bring  
20 an action in the appropriate United States district court  
21 to recover from a contractor of the Secretary (or subcon-  
22 tractor or supplier of such contractor) amounts paid by  
23 the Federal Government under an agreement of indem-  
24 nification under subsection d. for public liability resulting  
25 from conduct which constitutes intentional misconduct of

1 any corporate officer, manager, or superintendent of such  
2 contractor (or subcontractor or supplier of such con-  
3 tractor).

4 “(2) The Attorney General may recover under  
5 paragraph (1) an amount not to exceed the amount  
6 of the profit derived by the defendant from the con-  
7 tract.

8 “(3) No amount recovered from any contractor  
9 (or subcontractor or supplier of such contractor)  
10 under paragraph (1) may be reimbursed directly or  
11 indirectly by the Department of Energy.

12 “(4) Paragraph (1) shall not apply to any non-  
13 profit entity conducting activities under contract for  
14 the Secretary.

15 “(5) No waiver of a defense required under this  
16 section shall prevent a defendant from asserting  
17 such defense in an action brought under this sub-  
18 section.

19 “(6) The Secretary shall, by rule, define the  
20 terms ‘profit’ and ‘nonprofit entity’ for purposes of  
21 this subsection. Such rulemaking shall be completed  
22 not later than 180 days after the date of the enact-  
23 ment of this subsection.”.

24 (b) EFFECTIVE DATE.—The amendment made by  
25 this section shall not apply to any agreement of indem-



1 nification entered into under section 170 d. of the Atomic  
2 Energy Act of 1954 (42 U.S.C. 2210(d)) before the date  
3 of the enactment of this Act.

## 4           **Subtitle B—General Nuclear** 5                           **Matters**

### 6 **SEC. 621. LICENSES.**

7           Section 103 c. of the Atomic Energy Act of 1954 (42  
8 U.S.C. 2133(c)) is amended by inserting “from the au-  
9 thorization to commence operations” after “forty years”.

### 10 **SEC. 622. NRC TRAINING PROGRAM.**

11           (a) IN GENERAL.—In order to maintain the human  
12 resource investment and infrastructure of the United  
13 States in the nuclear sciences, health physics, and engi-  
14 neering fields, in accordance with the statutory authorities  
15 of the Nuclear Regulatory Commission relating to the ci-  
16 vilian nuclear energy program, the Nuclear Regulatory  
17 Commission shall carry out a training and fellowship pro-  
18 gram to address shortages of individuals with critical nu-  
19 clear safety regulatory skills.

### 20           (b) AUTHORIZATION OF APPROPRIATIONS.—

21           (1) IN GENERAL.—There are authorized to be  
22 appropriated to the Nuclear Regulatory Commission  
23 to carry out this section \$1,000,000 for each of fis-  
24 cal years 2005 through 2009.

1           (2) AVAILABILITY.—Funds made available  
2           under paragraph (1) shall remain available until ex-  
3           pended.

4 **SEC. 623. COST RECOVERY FROM GOVERNMENT AGENCIES.**

5           Section 161 w. of the Atomic Energy Act of 1954  
6 (42 U.S.C. 2201(w)) is amended—

7           (1) by striking “for or is issued” and all that  
8           follows through “1702” and inserting “to the Com-  
9           mission for, or is issued by the Commission, a li-  
10          cense or certificate”;

11          (2) by striking “483a” and inserting “9701”;  
12          and

13          (3) by striking “, of applicants for, or holders  
14          of, such licenses or certificates”.

15 **SEC. 624. ELIMINATION OF PENSION OFFSET.**

16          Section 161 of the Atomic Energy Act of 1954 (42  
17 U.S.C. 2201) is amended by adding at the end the fol-  
18          lowing:

19          “y. Exempt from the application of sections 8344 and  
20          8468 of title 5, United States Code, an annuitant who was  
21          formerly an employee of the Commission who is hired by  
22          the Commission as a consultant, if the Commission finds  
23          that the annuitant has a skill that is critical to the per-  
24          formance of the duties of the Commission.”.

1 **SEC. 625. ANTITRUST REVIEW.**

2 Section 105 c. of the Atomic Energy Act of 1954 (42  
3 U.S.C. 2135(c)) is amended by adding at the end the fol-  
4 lowing:

5 “(9) APPLICABILITY.—This subsection does not  
6 apply to an application for a license to construct or oper-  
7 ate a utilization facility or production facility under sec-  
8 tion 103 or 104 b. that is filed on or after the date of  
9 enactment of this paragraph.”.

10 **SEC. 626. DECOMMISSIONING.**

11 Section 161 i. of the Atomic Energy Act of 1954 (42  
12 U.S.C. 2201(i)) is amended—

13 (1) by striking “and (3)” and inserting “(3)”;  
14 and

15 (2) by inserting before the semicolon at the end  
16 the following: “, and (4) to ensure that sufficient  
17 funds will be available for the decommissioning of  
18 any production or utilization facility licensed under  
19 section 103 or 104 b., including standards and re-  
20 strictions governing the control, maintenance, use,  
21 and disbursement by any former licensee under this  
22 Act that has control over any fund for the decom-  
23 missioning of the facility”.

1 **SEC. 627. LIMITATION ON LEGAL FEE REIMBURSEMENT.**

2 Title II of the Energy Reorganization Act of 1974  
3 (42 U.S.C. 5841 et seq.) is amended by adding at the end  
4 the following new section:

5 “LIMITATION ON LEGAL FEE REIMBURSEMENT

6 “SEC. 212. The Department of Energy shall not, ex-  
7 cept as required under a contract entered into before the  
8 date of enactment of this section, reimburse any con-  
9 tractor or subcontractor of the Department for any legal  
10 fees or expenses incurred with respect to a complaint sub-  
11 sequent to—

12 “(1) an adverse determination on the merits  
13 with respect to such complaint against the con-  
14 tractor or subcontractor by the Director of the De-  
15 partment of Energy’s Office of Hearings and Ap-  
16 peals pursuant to part 708 of title 10, Code of Fed-  
17 eral Regulations, or by a Department of Labor Ad-  
18 ministrative Law Judge pursuant to section 211 of  
19 this Act; or

20 “(2) an adverse final judgment by any State or  
21 Federal court with respect to such complaint against  
22 the contractor or subcontractor for wrongful termi-  
23 nation or retaliation due to the making of disclo-  
24 sures protected under chapter 12 of title 5, United  
25 States Code, section 211 of this Act, or any com-  
26 parable State law,

1 unless the adverse determination or final judgment is re-  
2 versed upon further administrative or judicial review.”.

3 **SEC. 629. REPORT ON FEASIBILITY OF DEVELOPING COM-**  
4 **MERCIAL NUCLEAR ENERGY GENERATION**  
5 **FACILITIES AT EXISTING DEPARTMENT OF**  
6 **ENERGY SITES.**

7 Not later than 1 year after the date of the enactment  
8 of this Act, the Secretary of Energy shall submit to Con-  
9 gress a report on the feasibility of developing commercial  
10 nuclear energy generation facilities at Department of En-  
11 ergy sites in existence on the date of enactment of this  
12 Act.

13 **SEC. 630. URANIUM SALES.**

14 (a) SALES, TRANSFERS, AND SERVICES.—Section  
15 3112 of the USEC Privatization Act (42 U.S.C. 2297h-  
16 10) is amended by striking subsections (d), (e), and (f)  
17 and inserting the following:

18 “(3) The Secretary may transfer to the Corporation,  
19 notwithstanding subsections (b)(2) and (d), natural ura-  
20 nium in amounts sufficient to fulfill the Department of  
21 Energy’s commitments under Article 4(B) of the Agree-  
22 ment between the Department and the Corporation dated  
23 June 17, 2002.

24 “(d) INVENTORY SALES.—(1) In addition to the  
25 transfers and sales authorized under subsections (b) and

1 (c) and under paragraph (5) of this subsection, the United  
2 States Government may transfer or sell uranium in any  
3 form subject to paragraphs (2), (3), and (4).

4 “(2) Except as provided in subsections (b) and (c)  
5 and paragraph (5) of this subsection, no sale or transfer  
6 of uranium shall be made under this subsection by the  
7 United States Government unless—

8 “(A) the President determines that the material  
9 is not necessary for national security needs and the  
10 sale or transfer has no adverse impact on implemen-  
11 tation of existing government-to-government agree-  
12 ments;

13 “(B) the price paid to the appropriate Federal  
14 agency, if the transaction is a sale, will not be less  
15 than the fair market value of the material; and

16 “(C) the sale or transfer to commercial nuclear  
17 power end users is made pursuant to a contract of  
18 at least 3 years’ duration.

19 “(3) Except as provided in paragraph (5), the United  
20 States Government shall not make any transfer or sale  
21 of uranium in any form under this subsection that would  
22 cause the total amount of uranium transferred or sold pur-  
23 suant to this subsection that is delivered for consumption  
24 by commercial nuclear power end users to exceed—

1           “(A) 3,000,000 pounds of  $U_3O_8$  equivalent in  
2           fiscal year 2005, 2006, 2007, 2008, or 2009;

3           “(B) 5,000,000 pounds of  $U_3O_8$  equivalent in  
4           fiscal year 2010 or 2011;

5           “(C) 7,000,000 pounds of  $U_3O_8$  equivalent in  
6           fiscal year 2012; and

7           “(D) 10,000,000 pounds of  $U_3O_8$  equivalent in  
8           fiscal year 2013 or any fiscal year thereafter.

9           “(4) Except for sales or transfers under paragraph  
10 (5), for the purposes of this subsection, the recovery of  
11 uranium from uranium bearing materials transferred or  
12 sold by the United States Government to the domestic  
13 uranium industry shall be the preferred method of making  
14 uranium available. The recovered uranium shall be count-  
15 ed against the annual maximum deliveries set forth in this  
16 section, when such uranium is sold to end users.

17           “(5) The United States Government may make the  
18 following sales and transfers:

19           “(A) Sales or transfers to a Federal agency if  
20           the material is transferred for the use of the receiv-  
21           ing agency without any resale or transfer to another  
22           entity and the material does not meet commercial  
23           specifications.

1           “(B) Sales or transfers to any person for na-  
2           tional security purposes, as determined by the Sec-  
3           retary.

4           “(C) Sales or transfers to any State or local  
5           agency or nonprofit, charitable, or educational insti-  
6           tution for use other than the generation of electricity  
7           for commercial use.

8           “(D) Sales or transfers to the Department of  
9           Energy research reactor sales program.

10          “(E) Sales or transfers, at fair market value,  
11          for emergency purposes in the event of a disruption  
12          in supply to commercial nuclear power end users in  
13          the United States.

14          “(F) Sales or transfers, at fair market value,  
15          for use in a commercial reactor in the United States  
16          with nonstandard fuel requirements.

17          “(G) Sales or transfers provided for under law  
18          for use by the Tennessee Valley Authority in relation  
19          to the Department of Energy’s highly enriched ura-  
20          nium or tritium programs.

21          “(6) For purposes of this subsection, the term  
22          ‘United States Government’ does not include the Ten-  
23          nessee Valley Authority.



1       “(e) SAVINGS PROVISION.—Nothing in this sub-  
2 chapter modifies the terms of the Russian HEU Agree-  
3 ment.

4       “(f) SERVICES.—Notwithstanding any other provi-  
5 sion of this section, if the Secretary determines that the  
6 Corporation has failed, or may fail, to perform any obliga-  
7 tion under the Agreement between the Department of En-  
8 ergy and the Corporation dated June 17, 2002, and as  
9 amended thereafter, which failure could result in termi-  
10 nation of the Agreement, the Secretary shall notify Con-  
11 gress, in such a manner that affords Congress an oppor-  
12 tunity to comment, prior to a determination by the Sec-  
13 retary whether termination, waiver, or modification of the  
14 Agreement is required. The Secretary is authorized to take  
15 such action as he determines necessary under the Agree-  
16 ment to terminate, waive, or modify provisions of the  
17 Agreement to achieve its purposes.”.

18       (b) REPORT.—Not later than 3 years after the date  
19 of enactment of this Act, the Secretary of Energy shall  
20 report to Congress on the implementation of this section.  
21 The report shall include a discussion of available excess  
22 uranium inventories; all sales or transfers made by the  
23 United States Government; the impact of such sales or  
24 transfers on the domestic uranium industry, the spot mar-  
25 ket uranium price, and the national security interests of

1 the United States; and any steps taken to remediate any  
2 adverse impacts of such sales or transfers.

3 **SEC. 631. COOPERATIVE RESEARCH AND DEVELOPMENT**  
4 **AND SPECIAL DEMONSTRATION PROJECTS**  
5 **FOR THE URANIUM MINING INDUSTRY.**

6 (a) AUTHORIZATION OF APPROPRIATIONS.—There  
7 are authorized to be appropriated to the Secretary of En-  
8 ergy \$10,000,000 for each of fiscal years 2006, 2007, and  
9 2008 for—

10 (1) cooperative, cost-shared agreements between  
11 the Department of Energy and domestic uranium  
12 producers to identify, test, and develop improved in  
13 situ leaching mining technologies, including low-cost  
14 environmental restoration technologies that may be  
15 applied to sites after completion of in situ leaching  
16 operations; and

17 (2) funding for competitively selected dem-  
18 onstration projects with domestic uranium producers  
19 relating to—

20 (A) enhanced production with minimal en-  
21 vironmental impacts;

22 (B) restoration of well fields; and

23 (C) decommissioning and decontamination  
24 activities.

1 (b) DOMESTIC URANIUM PRODUCER.—For purposes  
2 of this section, the term “domestic uranium producer” has  
3 the meaning given that term in section 1018(4) of the En-  
4 ergy Policy Act of 1992 (42 U.S.C. 2296b–7(4)), except  
5 that the term shall not include any producer that has not  
6 produced uranium from domestic reserves on or after July  
7 30, 1998.

8 (c) LIMITATION.—No activities funded under this  
9 section may be carried out in the State of New Mexico.

10 **SEC. 632. WHISTLEBLOWER PROTECTION.**

11 (a) DEFINITION OF EMPLOYER.—Section 211(a)(2)  
12 of the Energy Reorganization Act of 1974 (42 U.S.C.  
13 5851(a)(2)) is amended—

14 (1) in subparagraph (C), by striking “and” at  
15 the end;

16 (2) in subparagraph (D), by striking the period  
17 at the end and inserting “; and” and

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

19 “(E) a contractor or subcontractor of the  
20 Commission.”.

21 (b) DE NOVO REVIEW.—Subsection (b) of such sec-  
22 tion 211 is amended by adding at the end the following  
23 new paragraph:

24 “(4) If the Secretary has not issued a final de-  
25 cision within 540 days after the filing of a complaint

1 under paragraph (1), and there is no showing that  
2 such delay is due to the bad faith of the person  
3 seeking relief under this paragraph, such person  
4 may bring an action at law or equity for de novo re-  
5 view in the appropriate district court of the United  
6 States, which shall have jurisdiction over such an ac-  
7 tion without regard to the amount in controversy.”.

8 **SEC. 633. MEDICAL ISOTOPE PRODUCTION.**

9 Section 134 of the Atomic Energy Act of 1954 (42  
10 U.S.C. 2160d) is amended—

11 (1) in subsection a., by striking “a. The Com-  
12 mission” and inserting “a. IN GENERAL.—Except as  
13 provided in subsection b., the Commission”;

14 (2) by redesignating subsection b. as subsection  
15 c.; and

16 (3) by inserting after subsection a. the fol-  
17 lowing:

18 “b. MEDICAL ISOTOPE PRODUCTION.—

19 “(1) DEFINITIONS.—In this subsection:

20 “(A) HIGHLY ENRICHED URANIUM.—The  
21 term ‘highly enriched uranium’ means uranium  
22 enriched to include concentration of U-235  
23 above 20 percent.

24 “(B) MEDICAL ISOTOPE.—The term ‘med-  
25 ical isotope’ includes Molybdenum 99, Iodine

1           131, Xenon 133, and other radioactive mate-  
2           rials used to produce a radiopharmaceutical for  
3           diagnostic, therapeutic procedures or for re-  
4           search and development.

5           “(C) **RADIOPHARMACEUTICAL.**—The term  
6           ‘radiopharmaceutical’ means a radioactive iso-  
7           tope that—

8                   “(i) contains byproduct material com-  
9                   bined with chemical or biological material;  
10                  and

11                   “(ii) is designed to accumulate tempo-  
12                   rarily in a part of the body for therapeutic  
13                   purposes or for enabling the production of  
14                   a useful image for use in a diagnosis of a  
15                   medical condition.

16           “(D) **RECIPIENT COUNTRY.**—The term ‘re-  
17           cipient country’ means Canada, Belgium,  
18           France, Germany, and the Netherlands.

19           “(2) **LICENSES.**—The Commission may issue a  
20           license authorizing the export (including shipment to  
21           and use at intermediate and ultimate consignees  
22           specified in the license) to a recipient country of  
23           highly enriched uranium for medical isotope produc-  
24           tion if, in addition to any other requirements of this

1 Act (except subsection a.), the Commission deter-  
2 mines that—

3 “(A) a recipient country that supplies an  
4 assurance letter to the United States Govern-  
5 ment in connection with the consideration by  
6 the Commission of the export license applica-  
7 tion has informed the United States Govern-  
8 ment that any intermediate consignees and the  
9 ultimate consignee specified in the application  
10 are required to use the highly enriched uranium  
11 solely to produce medical isotopes; and

12 “(B) the highly enriched uranium for med-  
13 ical isotope production will be irradiated only in  
14 a reactor in a recipient country that—

15 “(i) uses an alternative nuclear reac-  
16 tor fuel; or

17 “(ii) is the subject of an agreement  
18 with the United States Government to con-  
19 vert to an alternative nuclear reactor fuel  
20 when alternative nuclear reactor fuel can  
21 be used in the reactor.

22 “(3) REVIEW OF PHYSICAL PROTECTION RE-  
23 QUIREMENTS.—

24 “(A) IN GENERAL.—The Commission shall  
25 review the adequacy of physical protection re-

1           quirements that, as of the date of an applica-  
2           tion under paragraph (2), are applicable to the  
3           transportation and storage of highly enriched  
4           uranium for medical isotope production or con-  
5           trol of residual material after irradiation and  
6           extraction of medical isotopes.

7           “(B) IMPOSITION OF ADDITIONAL RE-  
8           QUIREMENTS.—If the Commission determines  
9           that additional physical protection requirements  
10          are necessary (including a limit on the quantity  
11          of highly enriched uranium that may be con-  
12          tained in a single shipment), the Commission  
13          shall impose such requirements as license condi-  
14          tions or through other appropriate means.

15          “(4) FIRST REPORT TO CONGRESS.—

16                 “(A) NAS STUDY.—The Secretary shall  
17                 enter into an arrangement with the National  
18                 Academy of Sciences to conduct a study to de-  
19                 termine—

20                         “(i) the feasibility of procuring sup-  
21                         plies of medical isotopes from commercial  
22                         sources that do not use highly enriched  
23                         uranium;

1           “(ii) the current and projected de-  
2           mand and availability of medical isotopes  
3           in regular current domestic use;

4           “(iii) the progress that is being made  
5           by the Department of Energy and others  
6           to eliminate all use of highly enriched ura-  
7           nium in reactor fuel, reactor targets, and  
8           medical isotope production facilities; and

9           “(iv) the potential cost differential in  
10          medical isotope production in the reactors  
11          and target processing facilities if the prod-  
12          ucts were derived from production systems  
13          that do not involve fuels and targets with  
14          highly enriched uranium.

15          “(B) FEASIBILITY.—For the purpose of  
16          this subsection, the use of low enriched uranium  
17          to produce medical isotopes shall be determined  
18          to be feasible if—

19                 “(i) low enriched uranium targets  
20                 have been developed and demonstrated for  
21                 use in the reactors and target processing  
22                 facilities that produce significant quantities  
23                 of medical isotopes to serve United States  
24                 needs for such isotopes;



1           “(ii) sufficient quantities of medical  
2 isotopes are available from low enriched  
3 uranium targets and fuel to meet United  
4 States domestic needs; and

5           “(iii) the average anticipated total  
6 cost increase from production of medical  
7 isotopes in such facilities without use of  
8 highly enriched uranium is less than 10  
9 percent.

10           “(C) REPORT BY THE SECRETARY.—Not  
11 later than 5 years after the date of enactment  
12 of the Energy Policy Act of 2005, the Secretary  
13 shall submit to Congress a report that—

14           “(i) contains the findings of the Na-  
15 tional Academy of Sciences made in the  
16 study under subparagraph (A); and

17           “(ii) discloses the existence of any  
18 commitments from commercial producers  
19 to provide domestic requirements for med-  
20 ical isotopes without use of highly enriched  
21 uranium consistent with the feasibility cri-  
22 teria described in subparagraph (B) not  
23 later than the date that is 4 years after  
24 the date of submission of the report.

1           “(5) SECOND REPORT TO CONGRESS.—If the  
2 study of the National Academy of Sciences deter-  
3 mines under paragraph (4)(A)(i) that the procure-  
4 ment of supplies of medical isotopes from commer-  
5 cial sources that do not use highly enriched uranium  
6 is feasible, but the Secretary is unable to report the  
7 existence of commitments under paragraph  
8 (4)(C)(ii), not later than the date that is 6 years  
9 after the date of enactment of the Energy Policy Act  
10 of 2005, the Secretary shall submit to Congress a  
11 report that describes options for developing domestic  
12 supplies of medical isotopes in quantities that are  
13 adequate to meet domestic demand without the use  
14 of highly enriched uranium consistent with the cost  
15 increase described in paragraph (4)(B)(iii).

16           “(6) CERTIFICATION.—At such time as com-  
17 mercial facilities that do not use highly enriched  
18 uranium are capable of meeting domestic require-  
19 ments for medical isotopes, within the cost increase  
20 described in paragraph (4)(B)(iii) and without im-  
21 pairing the reliable supply of medical isotopes for  
22 domestic utilization, the Secretary shall submit to  
23 Congress a certification to that effect.

24           “(7) SUNSET PROVISION.—After the Secretary  
25 submits a certification under paragraph (6), the

1 Commission shall, by rule, terminate its review of  
2 export license applications under this subsection.”.

3 **SEC. 634. FERNALD BYPRODUCT MATERIAL.**

4 Title III of the Nuclear Waste Policy Act of 1982  
5 (42 U.S.C. 10221 et seq.) is amended by adding at the  
6 end the following new section:

7 “FERNALD BYPRODUCT MATERIAL

8 “SEC. 307. Notwithstanding any other law, the mate-  
9 rial in the concrete silos at the Fernald uranium proc-  
10 essing facility managed on the date of enactment of this  
11 section by the Department shall be considered byproduct  
12 material (as defined by section 11 e.(2) of the Atomic En-  
13 ergy Act of 1954 (42 U.S.C. 2014(e)(2))). The Depart-  
14 ment may dispose of the material in a facility regulated  
15 by the Commission or by an Agreement State. If the De-  
16 partment disposes of the material in such a facility, the  
17 Commission or the Agreement State shall regulate the ma-  
18 terial as byproduct material under that Act. This material  
19 shall remain subject to the jurisdiction of the Department  
20 until it is received at a commercial, Commission-licensed,  
21 or Agreement State-licensed facility, at which time the  
22 material shall be subject to the health and safety require-  
23 ments of the Commission or the Agreement State with ju-  
24 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”;

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 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 cluding homogeneous charge compression ignition  
2 technology.

3 **SEC. 756. REDUCTION OF ENGINE IDLING OF HEAVY-DUTY**  
4 **VEHICLES.**

5 (a) DEFINITIONS.—In this section:

6 (1) ADMINISTRATOR.—The term “Adminis-  
7 trator” means the Administrator of the Environ-  
8 mental Protection Agency.

9 (2) ADVANCED TRUCK STOP ELECTRIFICATION  
10 SYSTEM.—The term “advanced truck stop elec-  
11 trification system” means a stationary system that  
12 delivers heat, air conditioning, electricity, and com-  
13 munications, and is capable of providing verifiable  
14 and auditable evidence of use of those services, to a  
15 heavy-duty vehicle and any occupants of the heavy-  
16 duty vehicle without relying on components mounted  
17 onboard the heavy-duty vehicle for delivery of those  
18 services.

19 (3) AUXILIARY POWER UNIT.—The term “auxil-  
20 iary power unit” means an integrated system that—

21 (A) provides heat, air conditioning, engine  
22 warming, and electricity to the factory-installed  
23 components on a heavy-duty vehicle as if the  
24 main drive engine of the heavy-duty vehicle  
25 were running; and



1 (B) is certified by the Administrator under  
2 part 89 of title 40, Code of Federal Regulations  
3 (or any successor regulation), as meeting appli-  
4 cable emission standards.

5 (4) HEAVY-DUTY VEHICLE.—The term “heavy-  
6 duty vehicle” means a vehicle that—

7 (A) has a gross vehicle weight rating great-  
8 er than 12,500 pounds; and

9 (B) is powered by a diesel engine.

10 (5) IDLE REDUCTION TECHNOLOGY.—The term  
11 “idle reduction technology” means an advanced  
12 truck stop electrification system, auxiliary power  
13 unit, or other device or system of devices that—

14 (A) is used to reduce long-duration idling  
15 of a heavy-duty vehicle; and

16 (B) allows for the main drive engine or  
17 auxiliary refrigeration engine of a heavy-duty  
18 vehicle to be shut down.

19 (6) LONG-DURATION IDLING.—

20 (A) IN GENERAL.—The term “long-dura-  
21 tion idling” means the operation of a main  
22 drive engine or auxiliary refrigeration engine of  
23 a heavy-duty vehicle, for a period greater than  
24 15 consecutive minutes, at a time at which the  
25 main drive engine is not engaged in gear.

1           (B) EXCLUSIONS.—The term “long-dura-  
2           tion idling” does not include the operation of a  
3           main drive engine or auxiliary refrigeration en-  
4           gine of a heavy-duty vehicle during a routine  
5           stoppage associated with traffic movement or  
6           congestion.

7           (b) IDLE REDUCTION TECHNOLOGY BENEFITS, PRO-  
8           GRAMS, AND STUDIES.—

9           (1) IN GENERAL.—Not later than 90 days after  
10          the date of enactment of this Act, the Administrator  
11          shall—

12                 (A)(i) commence a review of the mobile  
13                 source air emission models of the Environ-  
14                 mental Protection Agency used under the Clean  
15                 Air Act (42 U.S.C. 7401 et seq.) to determine  
16                 whether the models accurately reflect the emis-  
17                 sions resulting from long-duration idling of  
18                 heavy-duty vehicles and other vehicles and en-  
19                 gines; and

20                 (ii) update those models as the Adminis-  
21                 trator determines to be appropriate; and

22                 (B)(i) commence a review of the emission  
23                 reductions achieved by the use of idle reduction  
24                 technology; and

1           (ii) complete such revisions of the regula-  
2           tions and guidance of the Environmental Pro-  
3           tection Agency as the Administrator determines  
4           to be appropriate.

5           (2) DEADLINE FOR COMPLETION.—Not later  
6           than 180 days after the date of enactment of this  
7           Act, the Administrator shall—

8           (A) complete the reviews under subpara-  
9           graphs (A)(i) and (B)(i) of paragraph (1); and

10           (B) prepare and make publicly available 1  
11           or more reports on the results of the reviews.

12           (3) DISCRETIONARY INCLUSIONS.—The reviews  
13           under subparagraphs (A)(i) and (B)(i) of paragraph  
14           (1) and the reports under paragraph (2)(B) may ad-  
15           dress the potential fuel savings resulting from use of  
16           idle reduction technology.

17           (4) IDLE REDUCTION DEPLOYMENT PRO-  
18           GRAM.—

19           (A) ESTABLISHMENT.—

20           (i) IN GENERAL.—Not later than 90  
21           days after the date of enactment of this  
22           Act, the Administrator, in consultation  
23           with the Secretary of Transportation, shall  
24           establish a program to support deployment  
25           of idle reduction technology.

1           (ii) PRIORITY.—The Administrator  
2 shall give priority to the deployment of idle  
3 reduction technology based on beneficial ef-  
4 fects on air quality and ability to lessen  
5 the emission of criteria air pollutants.

6           (B) FUNDING.—

7           (i) AUTHORIZATION OF APPROPRIA-  
8 TIONS.—There are authorized to be appro-  
9 priated to the Administrator to carry out  
10 subparagraph (A) \$19,500,000 for fiscal  
11 year 2006, \$30,000,000 for fiscal year  
12 2007, and \$45,000,000 for fiscal year  
13 2008.

14           (ii) COST SHARING.—Subject to clause  
15 (iii), the Administrator shall require at  
16 least 50 percent of the costs directly and  
17 specifically related to any project under  
18 this section to be provided from non-Fed-  
19 eral sources.

20           (iii) NECESSARY AND APPROPRIATE  
21 REDUCTIONS.—The Administrator may re-  
22 duce the non-Federal requirement under  
23 clause (ii) if the Administrator determines  
24 that the reduction is necessary and appro-

1           appropriate to meet the objectives of this sec-  
2           tion.

3           (5) IDLING LOCATION STUDY.—

4           (A) IN GENERAL.—Not later than 90 days  
5           after the date of enactment of this Act, the Ad-  
6           ministrator, in consultation with the Secretary  
7           of Transportation, shall commence a study to  
8           analyze all locations at which heavy-duty vehi-  
9           cles stop for long-duration idling, including—

- 10                   (i) truck stops;
- 11                   (ii) rest areas;
- 12                   (iii) border crossings;
- 13                   (iv) ports;
- 14                   (v) transfer facilities; and
- 15                   (vi) private terminals.

16           (B) DEADLINE FOR COMPLETION.—Not  
17           later than 180 days after the date of enactment  
18           of this Act, the Administrator shall—

- 19                   (i) complete the study under subpara-  
20                   graph (A); and
- 21                   (ii) prepare and make publicly avail-  
22                   able 1 or more reports of the results of the  
23                   study.

24           (c) VEHICLE WEIGHT EXEMPTION.—Section 127(a)  
25           of title 23, United States Code, is amended—

1           (1) by designating the first through eleventh  
2 sentences as paragraphs (1) through (11), respec-  
3 tively; and

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

5           “(12) HEAVY DUTY VEHICLES.—

6                   “(A) IN GENERAL.—Subject to subpara-  
7 graphs (B) and (C), in order to promote reduc-  
8 tion of fuel use and emissions because of engine  
9 idling, the maximum gross vehicle weight limit  
10 and the axle weight limit for any heavy-duty ve-  
11 hicle equipped with an idle reduction technology  
12 shall be increased by a quantity necessary to  
13 compensate for the additional weight of the idle  
14 reduction system.

15                   “(B) MAXIMUM WEIGHT INCREASE.—The  
16 weight increase under subparagraph (A) shall  
17 be not greater than 250 pounds.

18                   “(C) PROOF.—On request by a regulatory  
19 agency or law enforcement agency, the vehicle  
20 operator shall provide proof (through dem-  
21 onstration or certification) that—

22                           “(i) the idle reduction technology is  
23 fully functional at all times; and

24                           “(ii) the 250-pound gross weight in-  
25 crease is not used for any purpose other

1                   than the use of idle reduction technology  
2                   described in subparagraph (A).”.

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. 758. HIGH OCCUPANCY VEHICLE EXCEPTION.**

22           Notwithstanding section 102(a) of title 23, United  
23 States Code, a State may permit a vehicle with fewer than  
24 2 occupants to operate in high occupancy vehicle lanes if  
25 the vehicle—



1           (1) is a dedicated vehicle (as defined in section  
2           301 of the Energy Policy Act of 1992 (42 U.S.  
3           13211)); or

4           (2) is a hybrid vehicle (as defined by the State  
5           for the purpose of this section).

6 **SEC. 759. ULTRA-EFFICIENT ENGINE TECHNOLOGY FOR**  
7           **AIRCRAFT.**

8           (a) **ULTRA-EFFICIENT ENGINE TECHNOLOGY PART-**  
9 **NEERSHIP.**—The Secretary of Energy shall enter into a co-  
10 operative agreement with the National Aeronautics and  
11 Space Administration for the development of ultra-effi-  
12 cient engine technology for aircraft.

13           (b) **PERFORMANCE OBJECTIVE.**—The Secretary of  
14 Energy shall establish the following performance objec-  
15 tives for the program set forth in subsection (a):

16           (1) A fuel efficiency increase of 10 percent.

17           (2) A reduction in the impact of landing and  
18 takeoff nitrogen oxides emissions on local air quality  
19 of 70 percent.

20           (c) **AUTHORIZATION OF APPROPRIATIONS .**—There  
21 are authorized to be appropriated to the Secretary of En-  
22 ergy for carrying out this section \$45,000,000 for each  
23 of the fiscal years 2006, 2007, 2008, 2009, and 2010.

## 1 **Subtitle E—Automobile Efficiency**

### 2 **SEC. 771. AUTHORIZATION OF APPROPRIATIONS FOR IM-** 3 **PLEMENTATION AND ENFORCEMENT OF** 4 **FUEL ECONOMY STANDARDS.**

5 In addition to any other funds authorized by law,  
6 there are authorized to be appropriated to the National  
7 Highway Traffic Safety Administration to carry out its ob-  
8 ligations with respect to average fuel economy standards  
9 \$2,000,000 for each of fiscal years 2006 through 2010.

### 10 **SEC. 772. REVISED CONSIDERATIONS FOR DECISIONS ON** 11 **MAXIMUM FEASIBLE AVERAGE FUEL ECON-** 12 **OMY.**

13 Section 32902(f) of title 49, United States Code, is  
14 amended to read as follows:

15 “(f) CONSIDERATIONS FOR DECISIONS ON MAXIMUM  
16 FEASIBLE AVERAGE FUEL ECONOMY.—When deciding  
17 maximum feasible average fuel economy under this sec-  
18 tion, the Secretary of Transportation shall consider the  
19 following matters:

20 “(1) Technological feasibility.

21 “(2) Economic practicability.

22 “(3) The effect of other motor vehicle standards  
23 of the Government on fuel economy.

24 “(4) The need of the United States to conserve  
25 energy.

1           “(5) The effects of fuel economy standards on  
2           passenger automobiles, nonpassenger automobiles,  
3           and occupant safety.

4           “(6) The effects of compliance with average fuel  
5           economy standards on levels of automobile industry  
6           employment in the United States.”.

7 **SEC. 773. EXTENSION OF MAXIMUM FUEL ECONOMY IN-**  
8                   **CREASE FOR ALTERNATIVE FUELED VEHI-**  
9                   **CLES.**

10           (a) **MANUFACTURING INCENTIVES.**—Section 32905  
11 of title 49, United States Code, is amended—

12           (1) in each of subsections (b) and (d), by strik-  
13           ing “1993–2004” and inserting “1993–2010”;

14           (2) in subsection (f), by striking “2001” and  
15           inserting “2007”; and

16           (3) in subsection (f)(1), by striking “2004” and  
17           inserting “2010”.

18           (b) **MAXIMUM FUEL ECONOMY INCREASE.**—Sub-  
19           section (a)(1) of section 32906 of title 49, United States  
20           Code, is amended—

21           (1) in subparagraph (A), by striking “the model  
22           years 1993–2004” and inserting “model years  
23           1993–2010”; and

1           (2) in subparagraph (B), by striking “the model  
2       years 2005–2008” and inserting “model years  
3       2011–2014”.

4 **SEC. 774. STUDY OF FEASIBILITY AND EFFECTS OF REDUC-**  
5 **ING USE OF FUEL FOR AUTOMOBILES.**

6       (a) IN GENERAL.—Not later than 30 days after the  
7       date of the enactment of this Act, the Administrator of  
8       the National Highway Traffic Safety Administration shall  
9       initiate a study of the feasibility and effects of reducing  
10      by model year 2014, by a significant percentage, the  
11      amount of fuel consumed by automobiles.

12      (b) SUBJECTS OF STUDY.—The study under this sec-  
13      tion shall include—

14           (1) examination of, and recommendation of al-  
15           ternatives to, the policy under current Federal law  
16           of establishing average fuel economy standards for  
17           automobiles and requiring each automobile manufac-  
18           turer to comply with average fuel economy standards  
19           that apply to the automobiles it manufactures;

20           (2) examination of how automobile manufactur-  
21           ers could contribute toward achieving the reduction  
22           referred to in subsection (a);

23           (3) examination of the potential of fuel cell  
24           technology in motor vehicles in order to determine  
25           the extent to which such technology may contribute

1 to achieving the reduction referred to in subsection  
2 (a); and

3 (4) examination of the effects of the reduction  
4 referred to in subsection (a) on—

5 (A) gasoline supplies;

6 (B) the automobile industry, including  
7 sales of automobiles manufactured in the  
8 United States;

9 (C) motor vehicle safety; and

10 (D) air quality.

11 (c) REPORT.—The Administrator shall submit to  
12 Congress a report on the findings, conclusion, and rec-  
13 ommendations of the study under this section by not later  
14 than 1 year after the date of the enactment of this Act.

## 15 **TITLE VIII—HYDROGEN**

### 16 **SEC. 801. DEFINITIONS.**

17 In this title:

18 (1) ADVISORY COMMITTEE.—The term “Advi-  
19 sory Committee” means the Hydrogen Technical and  
20 Fuel Cell Advisory Committee established under sec-  
21 tion 805.

22 (2) DEPARTMENT.—The term “Department”  
23 means the Department of Energy.

24 (3) FUEL CELL.—The term “fuel cell” means a  
25 device that directly converts the chemical energy of

1 a fuel and an oxidant into electricity by an electro-  
2 chemical process taking place at separate electrodes  
3 in the device.

4 (4) INFRASTRUCTURE.—The term “infrastruc-  
5 ture” means the equipment, systems, or facilities  
6 used to produce, distribute, deliver, or store hydro-  
7 gen.

8 (5) LIGHT DUTY VEHICLE.—The term “light  
9 duty vehicle” means a car or truck classified by the  
10 Department of Transportation as a Class I or IIA  
11 vehicle.

12 (6) SECRETARY.—The term “Secretary” means  
13 the Secretary of Energy.

14 **SEC. 802. PLAN.**

15 Not later than 6 months after the date of enactment  
16 of this Act, the Secretary shall transmit to Congress a  
17 coordinated plan for the programs described in this title  
18 and any other programs of the Department that are di-  
19 rectly related to fuel cells or hydrogen. The plan shall de-  
20 scribe, at a minimum—

21 (1) the agenda for the next 5 years for the pro-  
22 grams authorized under this title, including the  
23 agenda for each activity enumerated in section  
24 803(a);

1           (2) the types of entities that will carry out the  
2           activities under this title and what role each entity  
3           is expected to play;

4           (3) the milestones that will be used to evaluate  
5           the programs for the next 5 years;

6           (4) the most significant technical and nontech-  
7           nical hurdles that stand in the way of achieving the  
8           goals described in section 803(b), and how the pro-  
9           grams will address those hurdles; and

10          (5) the policy assumptions that are implicit in  
11          the plan, including any assumptions that would af-  
12          fect the sources of hydrogen or the marketability of  
13          hydrogen-related products.

14 **SEC. 803. PROGRAMS.**

15          (a) **ACTIVITIES.**—The Secretary, in partnership with  
16          the private sector, shall conduct programs to address—

17               (1) production of hydrogen from diverse energy  
18               sources, including—

19                       (A) fossil fuels, which may include carbon  
20                       capture and sequestration;

21                       (B) hydrogen-carrier fuels (including eth-  
22                       anol and methanol);

23                       (C) renewable energy resources, including  
24                       biomass; and

25                       (D) nuclear energy;

1           (2) use of hydrogen for commercial, industrial,  
2           and residential electric power generation;

3           (3) safe delivery of hydrogen or hydrogen-car-  
4           rier fuels, including—

5                 (A) transmission by pipeline and other dis-  
6                 tribution methods; and

7                 (B) convenient and economic refueling of  
8                 vehicles either at central refueling stations or  
9                 through distributed on-site generation;

10          (4) advanced vehicle technologies, including—

11                 (A) engine and emission control systems;

12                 (B) energy storage, electric propulsion, and  
13                 hybrid systems;

14                 (C) automotive materials; and

15                 (D) other advanced vehicle technologies;

16          (5) storage of hydrogen or hydrogen-carrier  
17          fuels, including development of materials for safe  
18          and economic storage in gaseous, liquid, or solid  
19          form at refueling facilities and onboard vehicles;

20          (6) development of safe, durable, affordable,  
21          and efficient fuel cells, including fuel-flexible fuel cell  
22          power systems, improved manufacturing processes,  
23          high-temperature membranes, cost-effective fuel  
24          processing for natural gas, fuel cell stack and system



1 reliability, low temperature operation, and cold start  
2 capability;

3 (7) development, after consultation with the pri-  
4 vate sector, of necessary codes and standards (in-  
5 cluding international codes and standards and vol-  
6 untary consensus standards adopted in accordance  
7 with OMB Circular A-119) and safety practices for  
8 the production, distribution, storage, and use of hy-  
9 drogen, hydrogen-carrier fuels, and related products;

10 (8) a public education program to develop im-  
11 proved knowledge and acceptability of hydrogen-  
12 based systems; and

13 (9) the ability of domestic automobile manufac-  
14 turers to manufacture commercially available com-  
15 petitive hybrid vehicle technologies in the United  
16 States.

17 (b) PROGRAM GOALS.—

18 (1) VEHICLES.—For vehicles, the goals of the  
19 program are—

20 (A) to enable a commitment by auto-  
21 makers no later than year 2015 to offer safe,  
22 affordable, and technically viable hydrogen fuel  
23 cell vehicles in the mass consumer market; and

24 (B) to enable production, delivery, and ac-  
25 ceptance by consumers of model year 2020 hy-

1 hydrogen fuel cell and other hydrogen-powered ve-  
2 hicles that will have—

- 3 (i) a range of at least 300 miles;  
4 (ii) improved performance and ease of  
5 driving;  
6 (iii) safety and performance com-  
7 parable to vehicle technologies in the mar-  
8 ket; and  
9 (iv) when compared to light duty vehi-  
10 cles in model year 2003—

- 11 (I) fuel economy that is substan-  
12 tially higher;  
13 (II) substantially lower emissions  
14 of air pollutants; and  
15 (III) equivalent or improved vehi-  
16 cle fuel system crash integrity and oc-  
17 cupant protection.

18 (2) HYDROGEN ENERGY AND ENERGY INFRA-  
19 STRUCTURE.—For hydrogen energy and energy in-  
20 frastructure, the goals of the program are to enable  
21 a commitment not later than 2015 that will lead to  
22 infrastructure by 2020 that will provide—

- 23 (A) safe and convenient refueling;  
24 (B) improved overall efficiency;

1 (C) widespread availability of hydrogen  
2 from domestic energy sources through—

3 (i) production, with consideration of  
4 emissions levels;

5 (ii) delivery, including transmission by  
6 pipeline and other distribution methods for  
7 hydrogen; and

8 (iii) storage, including storage in sur-  
9 face transportation vehicles;

10 (D) hydrogen for fuel cells, internal com-  
11 bustion engines, and other energy conversion  
12 devices for portable, stationary, and transpor-  
13 tation applications; and

14 (E) other technologies consistent with the  
15 Department's plan.

16 (3) FUEL CELLS.—The goals for fuel cells and  
17 their portable, stationary, and transportation appli-  
18 cations are to enable—

19 (A) safe, economical, and environmentally  
20 sound hydrogen fuel cells;

21 (B) fuel cells for light duty and other vehi-  
22 cles; and

23 (C) other technologies consistent with the  
24 Department's plan.

1           (c) DEMONSTRATION.—In carrying out the programs  
2 under this section, the Secretary shall fund a limited num-  
3 ber of demonstration projects, consistent with a deter-  
4 mination of the maturity, cost-effectiveness, and environ-  
5 mental impacts of technologies supporting each project. In  
6 selecting projects under this subsection, the Secretary  
7 shall, to the extent practicable and in the public interest,  
8 select projects that—

9           (1) involve using hydrogen and related products  
10 at existing facilities or installations, such as existing  
11 office buildings, military bases, vehicle fleet centers,  
12 transit bus authorities, or units of the National Park  
13 System;

14           (2) depend on reliable power from hydrogen to  
15 carry out essential activities;

16           (3) lead to the replication of hydrogen tech-  
17 nologies and draw such technologies into the market-  
18 place;

19           (4) include vehicle, portable, and stationary  
20 demonstrations of fuel cell and hydrogen-based en-  
21 ergy technologies;

22           (5) address the interdependency of demand for  
23 hydrogen fuel cell applications and hydrogen fuel in-  
24 frastructure;

1           (6) raise awareness of hydrogen technology  
2 among the public;

3           (7) facilitate identification of an optimum tech-  
4 nology among competing alternatives;

5           (8) address distributed generation using renew-  
6 able sources; and

7           (9) address applications specific to rural or re-  
8 mote locations, including isolated villages and is-  
9 lands, the National Park System, and tribal entities.

10 The Secretary shall give preference to projects which ad-  
11 dress multiple elements contained in paragraphs (1)  
12 through (9).

13       (d) DEPLOYMENT.—In carrying out the programs  
14 under this section, the Secretary shall, in partnership with  
15 the private sector, conduct activities to facilitate the de-  
16 ployment of hydrogen energy and energy infrastructure,  
17 fuel cells, and advanced vehicle technologies.

18       (e) FUNDING.—

19           (1) IN GENERAL.—The Secretary shall carry  
20 out the programs under this section using a competi-  
21 tive, merit-based review process and consistent with  
22 the generally applicable Federal laws and regulations  
23 governing awards of financial assistance, contracts,  
24 or other agreements.

1           (2) RESEARCH CENTERS.—Activities under this  
2 section may be carried out by funding nationally rec-  
3 ognized university-based or Federal laboratory re-  
4 search centers.

5           (f) COST SHARING.—

6           (1) RESEARCH AND DEVELOPMENT.—Except as  
7 otherwise provided in this title, for research and de-  
8 velopment programs carried out under this title the  
9 Secretary shall require a commitment from non-Fed-  
10 eral sources of at least 20 percent of the cost of the  
11 project. The Secretary may reduce or eliminate the  
12 non-Federal requirement under this paragraph if the  
13 Secretary determines that the research and develop-  
14 ment is of a basic or fundamental nature or involves  
15 technical analyses or educational activities.

16           (2) DEMONSTRATION AND COMMERCIAL APPLI-  
17 CATION.—Except as otherwise provided in this title,  
18 the Secretary shall require at least 50 percent of the  
19 costs directly and specifically related to any dem-  
20 onstration or commercial application project under  
21 this title to be provided from non-Federal sources.  
22 The Secretary may reduce the non-Federal require-  
23 ment under this paragraph if the Secretary deter-  
24 mines that the reduction is necessary and appro-  
25 priate considering the technological risks involved in

1 the project and is necessary to meet the objectives  
2 of this title.

3 (3) CALCULATION OF AMOUNT.—In calculating  
4 the amount of the non-Federal commitment under  
5 paragraph (1) or (2), the Secretary may include per-  
6 sonnel, services, equipment, and other resources.

7 (4) SIZE OF NON-FEDERAL SHARE.—The Sec-  
8 retary may consider the size of the non-Federal  
9 share in selecting projects.

10 (g) DISCLOSURE.—Section 623 of the Energy Policy  
11 Act of 1992 (42 U.S.C. 13293) relating to the protection  
12 of information shall apply to projects carried out through  
13 grants, cooperative agreements, or contracts under this  
14 title.

15 **SEC. 804. INTERAGENCY TASK FORCE.**

16 (a) ESTABLISHMENT.—Not later than 120 days after  
17 the date of enactment of this Act, the President shall es-  
18 tablish an interagency task force chaired by the Secretary  
19 with representatives from each of the following:

20 (1) The Office of Science and Technology Pol-  
21 icy within the Executive Office of the President.

22 (2) The Department of Transportation.

23 (3) The Department of Defense.

1           (4) The Department of Commerce (including  
2 the National Institute of Standards and Tech-  
3 nology).

4           (5) The Department of State.

5           (6) The Environmental Protection Agency.

6           (7) The National Aeronautics and Space Ad-  
7 ministration.

8           (8) Other Federal agencies as the Secretary de-  
9 termines appropriate.

10       (b) DUTIES.—

11           (1) PLANNING.—The interagency task force  
12 shall work toward—

13           (A) a safe, economical, and environ-  
14 mentally sound fuel infrastructure for hydrogen  
15 and hydrogen-carrier fuels, including an infra-  
16 structure that supports buses and other fleet  
17 transportation;

18           (B) fuel cells in government and other ap-  
19 plications, including portable, stationary, and  
20 transportation applications;

21           (C) distributed power generation, including  
22 the generation of combined heat, power, and  
23 clean fuels including hydrogen;

24           (D) uniform hydrogen codes, standards,  
25 and safety protocols; and



1           (E) vehicle hydrogen fuel system integrity  
2           safety performance.

3           (2) ACTIVITIES.—The interagency task force  
4           may organize workshops and conferences, may issue  
5           publications, and may create databases to carry out  
6           its duties. The interagency task force shall—

7                   (A) foster the exchange of generic, non-  
8                   proprietary information and technology among  
9                   industry, academia, and government;

10                   (B) develop and maintain an inventory and  
11                   assessment of hydrogen, fuel cells, and other  
12                   advanced technologies, including the commercial  
13                   capability of each technology for the economic  
14                   and environmentally safe production, distribu-  
15                   tion, delivery, storage, and use of hydrogen;

16                   (C) integrate technical and other informa-  
17                   tion made available as a result of the programs  
18                   and activities under this title;

19                   (D) promote the marketplace introduction  
20                   of infrastructure for hydrogen fuel vehicles; and

21                   (E) conduct an education program to pro-  
22                   vide hydrogen and fuel cell information to po-  
23                   tential end-users.

24           (c) AGENCY COOPERATION.—The heads of all agen-  
25           cies, including those whose agencies are not represented

1 on the interagency task force, shall cooperate with and  
2 furnish information to the interagency task force, the Ad-  
3 visory Committee, and the Department.

4 **SEC. 805. ADVISORY COMMITTEE.**

5 (a) ESTABLISHMENT.—The Hydrogen Technical and  
6 Fuel Cell Advisory Committee is established to advise the  
7 Secretary on the programs and activities under this title.

8 (b) MEMBERSHIP.—

9 (1) MEMBERS.—The Advisory Committee shall  
10 be comprised of not fewer than 12 nor more than 25  
11 members. The members shall be appointed by the  
12 Secretary to represent domestic industry, academia,  
13 professional societies, government agencies, Federal  
14 laboratories, previous advisory panels, and financial,  
15 environmental, and other appropriate organizations  
16 based on the Department's assessment of the tech-  
17 nical and other qualifications of committee members  
18 and the needs of the Advisory Committee.

19 (2) TERMS.—The term of a member of the Ad-  
20 visory Committee shall not be more than 3 years.  
21 The Secretary may appoint members of the Advisory  
22 Committee in a manner that allows the terms of the  
23 members serving at any time to expire at spaced in-  
24 tervals so as to ensure continuity in the functioning  
25 of the Advisory Committee. A member of the Advi-

1 sory Committee whose term is expiring may be re-  
2 appointed.

3 (3) CHAIRPERSON.—The Advisory Committee  
4 shall have a chairperson, who is elected by the mem-  
5 bers from among their number.

6 (c) REVIEW.—The Advisory Committee shall review  
7 and make recommendations to the Secretary on—

8 (1) the implementation of programs and activi-  
9 ties under this title;

10 (2) the safety, economical, and environmental  
11 consequences of technologies for the production, dis-  
12 tribution, delivery, storage, or use of hydrogen en-  
13 ergy and fuel cells; and

14 (3) the plan under section 802.

15 (d) RESPONSE.—

16 (1) CONSIDERATION OF RECOMMENDATIONS.—  
17 The Secretary shall consider, but need not adopt,  
18 any recommendations of the Advisory Committee  
19 under subsection (c).

20 (2) BIENNIAL REPORT.—The Secretary shall  
21 transmit a biennial report to Congress describing  
22 any recommendations made by the Advisory Com-  
23 mittee since the previous report. The report shall in-  
24 clude a description of how the Secretary has imple-  
25 mented or plans to implement the recommendations,

1 or an explanation of the reasons that a recommenda-  
2 tion will not be implemented. The report shall be  
3 transmitted along with the President's budget pro-  
4 posal.

5 (e) SUPPORT.—The Secretary shall provide resources  
6 necessary in the judgment of the Secretary for the Advi-  
7 sory Committee to carry out its responsibilities under this  
8 title.

9 **SEC. 806. EXTERNAL REVIEW.**

10 (a) PLAN.—The Secretary shall enter into an ar-  
11 rangement with the National Academy of Sciences to re-  
12 view the plan prepared under section 802, which shall be  
13 completed not later than 6 months after the Academy re-  
14 ceives the plan. Not later than 45 days after receiving the  
15 review, the Secretary shall transmit the review to Congress  
16 along with a plan to implement the review's recommenda-  
17 tions or an explanation of the reasons that a recommenda-  
18 tion will not be implemented.

19 (b) ADDITIONAL REVIEW.—The Secretary shall enter  
20 into an arrangement with the National Academy of  
21 Sciences under which the Academy will review the pro-  
22 grams under section 803 during the fourth year following  
23 the date of enactment of this Act. The Academy's review  
24 shall include the research priorities and technical mile-  
25 stones, and evaluate the progress toward achieving them.

1 The review shall be completed not later than 5 years after  
2 the date of enactment of this Act. Not later than 45 days  
3 after receiving the review, the Secretary shall transmit the  
4 review to Congress along with a plan to implement the  
5 review's recommendations or an explanation for the rea-  
6 sons that a recommendation will not be implemented.

7 **SEC. 807. MISCELLANEOUS PROVISIONS.**

8 (a) REPRESENTATION.—The Secretary may rep-  
9 resent the United States interests with respect to activities  
10 and programs under this title, in coordination with the  
11 Department of Transportation, the National Institute of  
12 Standards and Technology, and other relevant Federal  
13 agencies, before governments and nongovernmental orga-  
14 nizations including—

15 (1) other Federal, State, regional, and local  
16 governments and their representatives;

17 (2) industry and its representatives, including  
18 members of the energy and transportation indus-  
19 tries; and

20 (3) in consultation with the Department of  
21 State, foreign governments and their representatives  
22 including international organizations.

23 (b) REGULATORY AUTHORITY.—Nothing in this title  
24 shall be construed to alter the regulatory authority of the  
25 Department.

1 **SEC. 808. SAVINGS CLAUSE.**

2 Nothing in this title shall be construed to affect the  
3 authority of the Secretary of Transportation that may  
4 exist prior to the date of enactment of this Act with re-  
5 spect to—

6 (1) research into, and regulation of, hydrogen-  
7 powered vehicles fuel systems integrity, standards,  
8 and safety under subtitle VI of title 49, United  
9 States Code;

10 (2) regulation of hazardous materials transpor-  
11 tation under chapter 51 of title 49, United States  
12 Code;

13 (3) regulation of pipeline safety under chapter  
14 601 of title 49, United States Code;

15 (4) encouragement and promotion of research,  
16 development, and deployment activities relating to  
17 advanced vehicle technologies under section 5506 of  
18 title 49, United States Code;

19 (5) regulation of motor vehicle safety under  
20 chapter 301 of title 49, United States Code;

21 (6) automobile fuel economy under chapter 329  
22 of title 49, United States Code; or

23 (7) representation of the interests of the United  
24 States with respect to the activities and programs  
25 under the authority of title 49, United States Code.

1 **SEC. 809. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated to the Sec-  
3 retary to carry out this title, in addition to any amounts  
4 made available for these purposes under other Acts—

- 5 (1) \$546,000,000 for fiscal year 2006;
- 6 (2) \$750,000,000 for fiscal year 2007;
- 7 (3) \$850,000,000 for fiscal year 2008;
- 8 (4) \$900,000,000 for fiscal year 2009; and
- 9 (5) \$1,000,000,000 for fiscal year 2010.

10 **SEC. 810. SOLAR AND WIND TECHNOLOGIES.**

11 (a) SOLAR ENERGY TECHNOLOGIES.—The Secretary  
12 shall—

13 (1) prepare a detailed roadmap for carrying out  
14 the provisions in this subtitle related to solar energy  
15 technologies and for implementing the recommenda-  
16 tions related to solar energy technologies that are in-  
17 cluded in the report transmitted under subsection  
18 (c);

19 (2) provide for the establishment of 5 projects  
20 in geographic areas that are regionally and climati-  
21 cally diverse to demonstrate the production of hydro-  
22 gen at solar energy facilities, including one dem-  
23 onstration project at a national laboratory or institu-  
24 tion of higher education;

25 (3) establish a research and development pro-  
26 gram—

1           (A) to develop optimized concentrating  
2 solar power devices that may be used for the  
3 production of both electricity and hydrogen; and

4           (B) to evaluate the use of thermochemical  
5 cycles for hydrogen production at the tempera-  
6 tures attainable with concentrating solar power  
7 devices;

8           (4) coordinate with activities sponsored by the  
9 Department of Energy's Office of Nuclear Energy,  
10 Science, and Technology on high-temperature mate-  
11 rials, thermochemical cycles, and economic issues re-  
12 lated to solar energy;

13           (5) provide for the construction and operation  
14 of new concentrating solar power devices or solar  
15 power cogeneration facilities that produce hydrogen  
16 either concurrently with, or independently of, the  
17 production of electricity;

18           (6) support existing facilities and research pro-  
19 grams dedicated to the development and advance-  
20 ment of concentrating solar power devices; and

21           (7) establish a program—

22           (A) to research and develop methods that  
23 use electricity from photovoltaic devices for the  
24 onsite production of hydrogen, such that no in-  
25 termediate transmission or distribution infra-



1 structure is required or used and future de-  
2 mand growth may be accommodated;

3 (B) to evaluate the economics of small-  
4 scale electrolysis for hydrogen production; and

5 (C) to research the potential of modular  
6 photovoltaic devices for the development of a  
7 hydrogen infrastructure, the security implica-  
8 tions of a hydrogen infrastructure, and the ben-  
9 efits potentially derived from a hydrogen infra-  
10 structure.

11 (b) WIND ENERGY TECHNOLOGIES.—The Secretary  
12 shall—

13 (1) prepare a detailed roadmap for carrying out  
14 the provisions in this subtitle related to wind energy  
15 technologies and for implementing the recommenda-  
16 tions related to wind energy technologies that are in-  
17 cluded in the report transmitted under subsection  
18 (c); and

19 (2) provide for the establishment of 5 projects  
20 in geographic areas that are regionally and climati-  
21 cally diverse to demonstrate the production of hydro-  
22 gen at existing wind energy facilities, including one  
23 demonstration project at a national laboratory or in-  
24 stitution of higher education.

1 (c) PROGRAM SUPPORT.—The Secretary shall sup-  
2 port research programs at institutions of higher education  
3 for the development of solar energy technologies and wind  
4 energy technologies for the production of hydrogen. The  
5 research programs supported under this subsection  
6 shall—

7 (1) enhance fellowship and faculty assistance  
8 programs;

9 (2) provide support for fundamental research;

10 (3) encourage collaborative research among in-  
11 dustry, national laboratories, and institutions of  
12 higher education;

13 (4) support communication and outreach; and

14 (5) to the greatest extent possible—

15 (A) be located in geographic areas that are  
16 regionally and climatically diverse; and

17 (B) be located at part B institutions, mi-  
18 nority institutions, and institutions of higher  
19 education located in States participating in the  
20 Experimental Program to Stimulate Competi-  
21 tive Research of the Department of Energy.

22 (d) INSTITUTIONS OF HIGHER EDUCATION AND NA-  
23 TIONAL LABORATORY INTERACTIONS.—In conjunction  
24 with the programs supported under this section, the Sec-  
25 retary shall develop sabbatical, fellowship, and visiting sci-

1 entist programs to encourage national laboratories and in-  
2 stitutions of higher education to share and exchange per-  
3 sonnel.

4 (e) DEFINITIONS.—For purposes of this section—

5 (1) the term “concentrating solar power de-  
6 vices” means devices that concentrate the power of  
7 the sun by reflection or refraction to improve the ef-  
8 ficiency of a photovoltaic or thermal generation proc-  
9 ess;

10 (2) the term “institution of higher education”  
11 has the meaning given to that term in section  
12 101(a) of the Higher Education Act of 1965 (20  
13 U.S.C. 1001(a));

14 (3) the term “minority institution” has the  
15 meaning given to that term in section 365 of the  
16 Higher Education Act of 1965 (20 U.S.C. 1067k);

17 (4) the term “part B institution” has the mean-  
18 ing given to that term in section 322 of the Higher  
19 Education Act of 1965 (20 U.S.C. 1061); and

20 (5) the term “photovoltaic devices” means de-  
21 vices that convert light directly into electricity  
22 through a solid-state, semiconductor process.

1           **TITLE IX—RESEARCH AND**  
2                           **DEVELOPMENT**

3   **SEC. 900. SHORT TITLE; DEFINITIONS.**

4           (a) **SHORT TITLE.**—This title may be cited as the  
5 “Energy Research, Development, Demonstration, and  
6 Commercial Application Act of 2005”.

7           (b) **DEFINITIONS.**—For purposes of this title:

8                   (1) **APPLIED PROGRAMS.**—The term “applied  
9 programs” means the research, development, dem-  
10 onstration, and commercial application programs of  
11 the Department concerning energy efficiency, renew-  
12 able energy, nuclear energy, fossil energy, and elec-  
13 tricity transmission and distribution.

14                   (2) **BIOMASS.**—The term “biomass” means—

15                           (A) any organic material grown for the  
16 purpose of being converted to energy;

17                           (B) any organic byproduct of agriculture  
18 (including wastes from food production and  
19 processing) that can be converted into energy;  
20 or

21                           (C) any waste material that can be con-  
22 verted to energy, is segregated from other waste  
23 materials, and is derived from—

24                                   (i) any of the following forest-related  
25 resources: mill residues, precommercial

1           thinnings, slash, brush, or otherwise non-  
2           merchantable material; or

3           (ii) wood waste materials, including  
4           waste pallets, crates, dunnage, manufac-  
5           turing and construction wood wastes (other  
6           than pressure-treated, chemically-treated,  
7           or painted wood wastes), and landscape or  
8           right-of-way tree trimmings, but not in-  
9           cluding municipal solid waste, gas derived  
10          from the biodegradation of municipal solid  
11          waste, or paper that is commonly recycled.

12          (3) DEPARTMENT.—The term “Department”  
13          means the Department of Energy.

14          (4) DEPARTMENTAL MISSION.—The term “de-  
15          partmental mission” means any of the functions  
16          vested in the Secretary of Energy by the Depart-  
17          ment of Energy Organization Act (42 U.S.C. 7101  
18          et seq.) or other law.

19          (5) INSTITUTION OF HIGHER EDUCATION.—The  
20          term “institution of higher education” has the  
21          meaning given that term in section 101(a) of the  
22          Higher Education Act of 1965 (20 U.S.C. 1001(a)).

23          (6) NATIONAL LABORATORY.—The term “Na-  
24          tional Laboratory” means any of the following lab-  
25          oratories owned by the Department:

- 1 (A) Ames Laboratory.
- 2 (B) Argonne National Laboratory.
- 3 (C) Brookhaven National Laboratory.
- 4 (D) Fermi National Accelerator Labora-
- 5 tory.
- 6 (E) Idaho National Laboratory.
- 7 (F) Lawrence Berkeley National Labora-
- 8 tory.
- 9 (G) Lawrence Livermore National Labora-
- 10 tory.
- 11 (H) Los Alamos National Laboratory.
- 12 (I) National Energy Technology Labora-
- 13 tory.
- 14 (J) National Renewable Energy Labora-
- 15 tory.
- 16 (K) Oak Ridge National Laboratory.
- 17 (L) Pacific Northwest National Labora-
- 18 tory.
- 19 (M) Princeton Plasma Physics Laboratory.
- 20 (N) Sandia National Laboratories.
- 21 (O) Savannah River National Laboratory.
- 22 (P) Stanford Linear Accelerator Center.
- 23 (Q) Thomas Jefferson National Accel-
- 24 erator Facility.

1           (7) RENEWABLE ENERGY.—The term “renew-  
2           able energy” means energy from wind, sunlight, the  
3           flow of water, heat from the Earth, or biomass that  
4           can be converted into a usable form such as process  
5           heat, electricity, fuel, or space heat.

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

8           (9) STATE.—The term “State” means any of  
9           the several States, the District of Columbia, the  
10          Commonwealth of Puerto Rico, the United States  
11          Virgin Islands, Guam, American Samoa, the North-  
12          ern Mariana Islands, and any other commonwealth,  
13          territory, or possession of the United States.

14          (10) UNIVERSITY.—The term “university” has  
15          the meaning given the term “institution of higher  
16          education” in section 101 of the Higher Education  
17          Act of 1965 (20 U.S.C. 1001).

18          (11) USER FACILITY.—The term “user facility”  
19          means a research and development facility sup-  
20          ported, in whole or in part, by Departmental funds  
21          that is open, at a minimum, to all qualified United  
22          States researchers.

## 1       **Subtitle A—Science Programs**

### 2   **SEC. 901. OFFICE OF SCIENCE PROGRAMS.**

3       (a) IN GENERAL.—The Secretary shall conduct,  
4 through the Office of Science, programs of research, devel-  
5 opment, demonstration, and commercial application in  
6 high energy physics, nuclear physics, biological and envi-  
7 ronmental research, basic energy sciences, advanced sci-  
8 entific computing research, and fusion energy sciences, in-  
9 cluding activities described in this subtitle. The programs  
10 shall include support for facilities and infrastructure, edu-  
11 cation, outreach, information, analysis, and coordination  
12 activities.

### 13       (b) RARE ISOTOPE ACCELERATOR.—

14           (1) ESTABLISHMENT.—The Secretary shall con-  
15 struct and operate a Rare Isotope Accelerator. The  
16 Secretary shall commence construction no later than  
17 September 30, 2008.

### 18           (2) AUTHORIZATION OF APPROPRIATIONS.—

19 There are authorized to be appropriated to the Sec-  
20 retary such sums as may be necessary to carry out  
21 this subsection. The Secretary shall not spend more  
22 than \$1,100,000,000 in Federal funds for all activi-  
23 ties associated with the Rare Isotope Accelerator  
24 prior to operation.



1 **SEC. 902. SYSTEMS BIOLOGY PROGRAM.**

2 (a) PROGRAM.—

3 (1) ESTABLISHMENT.—The Secretary shall es-  
4 tablish a research, development, and demonstration  
5 program in genetics, protein science, and computa-  
6 tional biology to support the energy, national secu-  
7 rity, and environmental missions of the Department.

8 (2) GRANTS.—The program shall support indi-  
9 vidual researchers and multidisciplinary teams of re-  
10 searchers through competitive, merit-reviewed  
11 grants.

12 (3) CONSULTATION.—In carrying out the pro-  
13 gram, the Secretary shall consult with other Federal  
14 agencies that conduct genetic and protein research.

15 (b) GOALS.—The program shall have the goal of de-  
16 veloping technologies and methods based on the biological  
17 functions of genomes, microbes, and plants that—

18 (1) can facilitate the production of fuels, includ-  
19 ing hydrogen;

20 (2) convert carbon dioxide to organic carbon;

21 (3) detoxify soils and water, including at De-  
22 partmental facilities, contaminated with heavy met-  
23 als and radiological materials; and

24 (4) address other Department missions as iden-  
25 tified by the Secretary.

26 (c) PLAN.—

1           (1) DEVELOPMENT OF PLAN.—Not later than 1  
2           year after the date of enactment of this Act, the  
3           Secretary shall prepare and transmit to Congress a  
4           research plan describing how the program author-  
5           ized pursuant to this section will be undertaken to  
6           accomplish the program goals established in sub-  
7           section (b).

8           (2) REVIEW OF PLAN.—The Secretary shall  
9           contract with the National Academy of Sciences to  
10          review the research plan developed under this sub-  
11          section. The Secretary shall transmit the review to  
12          Congress not later than 18 months after transmittal  
13          of the research plan under paragraph (1), along with  
14          the Secretary's response to the recommendations  
15          contained in the review.

16          (d) USER FACILITIES AND ANCILLARY EQUIP-  
17          MENT.—Within the funds authorized to be appropriated  
18          pursuant to this subtitle, the amounts specified under sec-  
19          tion 910(b)(1), (c)(1), (d)(1), (e)(1), and (f)(1) shall be  
20          available for projects to develop, plan, construct, acquire,  
21          or operate special equipment, instrumentation, or facili-  
22          ties, including user facilities, for researchers conducting  
23          research, development, demonstration, and commercial ap-  
24          plication in systems biology and proteomics and associated  
25          biological disciplines.

1 (e) PROHIBITION ON BIOMEDICAL AND HUMAN CELL  
2 AND HUMAN SUBJECT RESEARCH.—

3 (1) NO BIOMEDICAL RESEARCH.—In carrying  
4 out the program under this section, the Secretary  
5 shall not conduct biomedical research.

6 (2) LIMITATIONS.—Nothing in this section shall  
7 authorize the Secretary to conduct any research or  
8 demonstrations—

9 (A) on human cells or human subjects; or

10 (B) designed to have direct application  
11 with respect to human cells or human subjects.

12 **SEC. 903. CATALYSIS RESEARCH AND DEVELOPMENT PRO-**  
13 **GRAM.**

14 (a) ESTABLISHMENT.—The Secretary shall conduct  
15 a program of research and development in catalysis  
16 science, including efforts to—

17 (1) enable molecular-level catalyst design by  
18 coupling experimental and computational ap-  
19 proaches;

20 (2) enable nanoscale, high-throughput syn-  
21 thesis, assay, and characterization; and

22 (3) synthesize catalysts with specific site archi-  
23 tectures.

24 (b) PROGRAM ACTIVITIES.—In carrying out the pro-  
25 gram under this section, the Secretary shall—

1           (1) support both individual researchers and  
2 multidisciplinary teams of researchers to pioneer  
3 new approaches in catalytic design;

4           (2) develop, plan, construct, acquire, or operate  
5 special equipment or facilities, including user facili-  
6 ties;

7           (3) support technology transfer activities to  
8 benefit industry and other users of catalysis science  
9 and engineering; and

10          (4) coordinate research and development activi-  
11 ties with industry and other Federal agencies.

12 **SEC. 904. HYDROGEN.**

13          The Secretary shall conduct a program of funda-  
14 mental research and development in support of programs  
15 authorized in title VIII.

16 **SEC. 905. ADVANCED SCIENTIFIC COMPUTING RESEARCH.**

17          The Secretary shall conduct an advanced scientific  
18 computing research and development program, including  
19 in applied mathematics and the activities authorized by  
20 the Department of Energy High-End Computing Revital-  
21 ization Act of 2004 (15 U.S.C. 5541 et seq.). The Sec-  
22 retary shall carry out this program with the goal of sup-  
23 porting departmental missions and providing the high-per-  
24 formance computational, networking, and workforce re-  
25 sources that are required for world leadership in science.

1 **SEC. 906. FUSION ENERGY SCIENCES PROGRAM.**

2 (a) DECLARATION OF POLICY.—It shall be the policy  
3 of the United States to conduct research, development,  
4 demonstration, and commercial application to provide for  
5 the scientific, engineering, and commercial infrastructure  
6 necessary to ensure that the United States is competitive  
7 with other nations in providing fusion energy for its own  
8 needs and the needs of other nations, including by dem-  
9 onstrating electric power or hydrogen production for the  
10 United States energy grid utilizing fusion energy at the  
11 earliest date possible.

12 (b) PLANNING.—

13 (1) IN GENERAL.—Not later than 180 days  
14 after the date of enactment of this Act, the Sec-  
15 retary shall transmit to Congress a plan, with pro-  
16 posed cost estimates, budgets, and lists of potential  
17 international partners, for the implementation of the  
18 policy described in subsection (a). The plan shall en-  
19 sure that—

20 (A) existing fusion research facilities are  
21 more fully utilized;

22 (B) fusion science, technology, theory, ad-  
23 vanced computation, modeling, and simulation  
24 are strengthened;

25 (C) new magnetic and inertial fusion re-  
26 search and development facilities are selected

1 based on scientific innovation, cost effective-  
2 ness, and their potential to advance the goal of  
3 practical fusion energy at the earliest date pos-  
4 sible, and those that are selected are funded at  
5 a cost-effective rate;

6 (D) communication of scientific results and  
7 methods between the fusion energy science com-  
8 munity and the broader scientific and tech-  
9 nology communities is improved;

10 (E) inertial confinement fusion facilities  
11 are utilized to the extent practicable for the  
12 purpose of inertial fusion energy research and  
13 development; and

14 (F) attractive alternative inertial and mag-  
15 netic fusion energy approaches are more fully  
16 explored.

17 (2) COSTS AND SCHEDULES.—Such plan shall  
18 also address the status of and, to the degree pos-  
19 sible, costs and schedules for—

20 (A) the design and implementation of  
21 international or national facilities for the test-  
22 ing of fusion materials; and

23 (B) the design and implementation of  
24 international or national facilities for the test-  
25 ing and development of key fusion technologies.

1 (c) UNITED STATES PARTICIPATION IN ITER.—

2 (1) IN GENERAL.—The United States may par-  
3 ticipate in ITER only in accordance with this sub-  
4 section.

5 (2) AGREEMENT.—

6 (A) IN GENERAL.—The Secretary is au-  
7 thorized to negotiate an agreement for United  
8 States participation in ITER.

9 (B) CONTENTS.—Any agreement for  
10 United States participation in ITER shall, at a  
11 minimum—

12 (i) clearly define the United States fi-  
13 nancial contribution to construction and  
14 operating costs, as well as any other costs  
15 associated with the project;

16 (ii) ensure that the share of ITER's  
17 high-technology components manufactured  
18 in the United States is at least propor-  
19 tionate to the United States financial con-  
20 tribution to ITER;

21 (iii) ensure that the United States will  
22 not be financially responsible for cost over-  
23 runs in components manufactured in other  
24 ITER participating countries;

1 (iv) guarantee the United States full  
2 access to all data generated by ITER;

3 (v) enable United States researchers  
4 to propose and carry out an equitable  
5 share of the experiments at ITER;

6 (vi) provide the United States with a  
7 role in all collective decisionmaking related  
8 to ITER; and

9 (vii) describe the process for dis-  
10 continuing or decommissioning ITER and  
11 any United States role in that process.

12 (3) PLAN.—The Secretary, in consultation with  
13 the Fusion Energy Sciences Advisory Committee,  
14 shall develop a plan for the participation of United  
15 States scientists in ITER that shall include the  
16 United States research agenda for ITER, methods  
17 to evaluate whether ITER is promoting progress to-  
18 ward making fusion a reliable and affordable source  
19 of power, and a description of how work at ITER  
20 will relate to other elements of the United States fu-  
21 sion program. The Secretary shall request a review  
22 of the plan by the National Academy of Sciences.

23 (4) LIMITATION.—No Federal funds shall be  
24 expended for the construction of ITER until the  
25 Secretary has transmitted to Congress—



1 (A) the agreement negotiated pursuant to  
2 paragraph (2) and 120 days have elapsed since  
3 that transmission;

4 (B) a report describing the management  
5 structure of ITER and providing a fixed dollar  
6 estimate of the cost of United States participa-  
7 tion in the construction of ITER, and 120 days  
8 have elapsed since that transmission;

9 (C) a report describing how United States  
10 participation in ITER will be funded without  
11 reducing funding for other programs in the Of-  
12 fice of Science, including other fusion programs,  
13 and 60 days have elapsed since that trans-  
14 mission; and

15 (D) the plan required by paragraph (3)  
16 (but not the National Academy of Sciences re-  
17 view of that plan), and 60 days have elapsed  
18 since that transmission.

19 (5) ALTERNATIVE TO ITER.—If at any time  
20 during the negotiations on ITER, the Secretary de-  
21 termines that construction and operation of ITER is  
22 unlikely or infeasible, the Secretary shall send to  
23 Congress, as part of the budget request for the fol-  
24 lowing year, a plan for implementing a domestic  
25 burning plasma experiment including costs and

1 schedules for such a plan. The Secretary shall refine  
2 such plan in full consultation with the Fusion En-  
3 ergy Sciences Advisory Committee and shall also  
4 transmit such plan to the National Academy of  
5 Sciences for review.

6 (6) DEFINITIONS.—In this subsection:

7 (A) CONSTRUCTION.— The term “con-  
8 struction” means the physical construction of  
9 the ITER facility, and the physical construc-  
10 tion, purchase, or manufacture of equipment or  
11 components that are specifically designed for  
12 the ITER facility, but does not mean the design  
13 of the facility, equipment, or components.

14 (B) ITER.—The term “ITER” means the  
15 international burning plasma fusion research  
16 project in which the President announced  
17 United States participation on January 30,  
18 2003, or any similar international project.

19 **SEC. 907. SCIENCE AND TECHNOLOGY SCHOLARSHIP PRO-**  
20 **GRAM.**

21 (a) ESTABLISHMENT OF PROGRAM.—

22 (1) IN GENERAL.—The Secretary is authorized  
23 to establish a Science and Technology Scholarship  
24 Program to award scholarships to individuals that is

1 designed to recruit and prepare students for careers  
2 in the Department.

3 (2) COMPETITIVE PROCESS.—Individuals shall  
4 be selected to receive scholarships under this section  
5 through a competitive process primarily on the basis  
6 of academic merit, with consideration given to finan-  
7 cial need and the goal of promoting the participation  
8 of individuals identified in section 33 or 34 of the  
9 Science and Engineering Equal Opportunities Act  
10 (42 U.S.C. 1885a or 1885b).

11 (3) SERVICE AGREEMENTS.—To carry out the  
12 Program the Secretary shall enter into contractual  
13 agreements with individuals selected under para-  
14 graph (2) under which the individuals agree to serve  
15 as full-time employees of the Department, for the  
16 period described in subsection (f)(1), in positions  
17 needed by the Department and for which the individ-  
18 uals are qualified, in exchange for receiving a schol-  
19 arship.

20 (b) SCHOLARSHIP ELIGIBILITY.—In order to be eligi-  
21 ble to participate in the Program, an individual must—

22 (1) be enrolled or accepted for enrollment as a  
23 full-time graduate student at an institution of higher  
24 education in an academic program or field of study

1 described in the list made available under subsection  
2 (d);

3 (2) be a United States citizen; and

4 (3) at the time of the initial scholarship award,  
5 not be a Federal employee as defined in section  
6 2105 of title 5 of the United States Code.

7 (c) APPLICATION REQUIRED.—An individual seeking  
8 a scholarship under this section shall submit an applica-  
9 tion to the Secretary at such time, in such manner, and  
10 containing such information, agreements, or assurances as  
11 the Secretary may require.

12 (d) ELIGIBLE ACADEMIC PROGRAMS.—The Secretary  
13 shall make publicly available a list of academic programs  
14 and fields of study for which scholarships under the Pro-  
15 gram may be utilized, and shall update the list as nec-  
16 essary.

17 (e) SCHOLARSHIP REQUIREMENT.—

18 (1) IN GENERAL.—The Secretary may provide a  
19 scholarship under the Program for an academic year  
20 if the individual applying for the scholarship has  
21 submitted to the Secretary, as part of the applica-  
22 tion required under subsection (c), a proposed aca-  
23 demic program leading to a degree in a program or  
24 field of study on the list made available under sub-  
25 section (d).

1           (2) DURATION OF ELIGIBILITY.—An individual  
2           may not receive a scholarship under this section for  
3           more than 4 academic years, unless the Secretary  
4           grants a waiver.

5           (3) SCHOLARSHIP AMOUNT.—The dollar  
6           amount of a scholarship under this section for an  
7           academic year shall be determined under regulations  
8           issued by the Secretary, but shall in no case exceed  
9           the cost of attendance.

10          (4) AUTHORIZED USES.—A scholarship pro-  
11          vided under this section may be expended for tuition,  
12          fees, and other authorized expenses as established by  
13          the Secretary by regulation.

14          (5) CONTRACTS REGARDING DIRECT PAYMENTS  
15          TO INSTITUTIONS.—The Secretary may enter into a  
16          contractual agreement with an institution of higher  
17          education under which the amounts provided for a  
18          scholarship under this section for tuition, fees, and  
19          other authorized expenses are paid directly to the in-  
20          stitution with respect to which the scholarship is  
21          provided.

22          (f) PERIOD OF OBLIGATED SERVICE.—

23                (1) DURATION OF SERVICE.—The period of  
24                service for which an individual shall be obligated to  
25                serve as an employee of the Department is, except

1 as provided in subsection (h)(2), 24 months for each  
2 academic year for which a scholarship under this  
3 section is provided.

4 (2) SCHEDULE FOR SERVICE.—

5 (A) IN GENERAL.—Except as provided in  
6 subparagraph (B), obligated service under para-  
7 graph (1) shall begin not later than 60 days  
8 after the individual obtains the educational de-  
9 gree for which the scholarship was provided.

10 (B) DEFERRAL.—The Secretary may defer  
11 the obligation of an individual to provide a pe-  
12 riod of service under paragraph (1) if the Sec-  
13 retary determines that such a deferral is appro-  
14 priate. The Secretary shall prescribe the terms  
15 and conditions under which a service obligation  
16 may be deferred through regulation.

17 (g) PENALTIES FOR BREACH OF SCHOLARSHIP  
18 AGREEMENT.—

19 (1) FAILURE TO COMPLETE ACADEMIC TRAIN-  
20 ING.—Scholarship recipients who fail to maintain a  
21 high level of academic standing, as defined by the  
22 Secretary by regulation, who are dismissed from  
23 their educational institutions for disciplinary rea-  
24 sons, or who voluntarily terminate academic training  
25 before graduation from the educational program for

1       which the scholarship was awarded, shall be in  
2       breach of their contractual agreement and, in lieu of  
3       any service obligation arising under such agreement,  
4       shall be liable to the United States for repayment  
5       not later than 1 year after the date of default of all  
6       scholarship funds paid to them and to the institution  
7       of higher education on their behalf under the agree-  
8       ment, except as provided in subsection (h)(2). The  
9       repayment period may be extended by the Secretary  
10      when determined to be necessary, as established by  
11      regulation.

12           (2) FAILURE TO BEGIN OR COMPLETE THE  
13      SERVICE OBLIGATION OR MEET THE TERMS AND  
14      CONDITIONS OF DEFERMENT.—A scholarship recipi-  
15      ent who, for any reason, fails to begin or complete  
16      a service obligation under this section after comple-  
17      tion of academic training, or fails to comply with the  
18      terms and conditions of deferment established by the  
19      Secretary pursuant to subsection (f)(2)(B), shall be  
20      in breach of the contractual agreement. When a re-  
21      cipient breaches an agreement for the reasons stated  
22      in the preceding sentence, the recipient shall be lia-  
23      ble to the United States for an amount equal to—

1           (A) the total amount of scholarships re-  
2           ceived by such individual under this section;  
3           plus

4           (B) the interest on the amounts of such  
5           awards which would be payable if at the time  
6           the awards were received they were loans bear-  
7           ing interest at the maximum legal prevailing  
8           rate, as determined by the Treasurer of the  
9           United States,

10          multiplied by 3.

11          (h) WAIVER OR SUSPENSION OF OBLIGATION.—

12           (1) DEATH OF INDIVIDUAL.—Any obligation of  
13           an individual incurred under the Program (or a con-  
14           tractual agreement thereunder) for service or pay-  
15           ment shall be canceled upon the death of the indi-  
16           vidual.

17           (2) IMPOSSIBILITY OR EXTREME HARDSHIP.—

18           The Secretary shall by regulation provide for the  
19           partial or total waiver or suspension of any obliga-  
20           tion of service or payment incurred by an individual  
21           under the Program (or a contractual agreement  
22           thereunder) whenever compliance by the individual is  
23           impossible or would involve extreme hardship to the  
24           individual, or if enforcement of such obligation with



1       respect to the individual would be contrary to the  
2       best interests of the Government.

3       (i) DEFINITIONS.—In this section the following defi-  
4       nitions apply:

5           (1) COST OF ATTENDANCE.—The term “cost of  
6       attendance” has the meaning given that term in sec-  
7       tion 472 of the Higher Education Act of 1965 (20  
8       U.S.C. 1087*ll*).

9           (2) PROGRAM.—The term “Program” means  
10       the Science and Technology Scholarship Program es-  
11       tablished under this section.

12   **SEC. 908. OFFICE OF SCIENTIFIC AND TECHNICAL INFOR-**  
13                           **MATION.**

14       The Secretary shall maintain within the Department  
15       the Office of Scientific and Technical Information.

16   **SEC. 909. SCIENCE AND ENGINEERING PILOT PROGRAM.**

17       (a) ESTABLISHMENT OF CONSORTIUM.—Notwith-  
18       standing section 913, the Secretary shall award a grant  
19       to Oak Ridge Associated Universities to establish a univer-  
20       sity consortium to carry out a regional pilot program for  
21       enhancing scientific, technological, engineering, and math-  
22       ematical literacy, creativity, and decisionmaking. The con-  
23       sortium shall include leading research universities, one or  
24       more universities that train substantial numbers of ele-

1 elementary and secondary school teachers, and, where appro-  
2 priate, National Laboratories.

3 (b) PROGRAM ELEMENTS.—The program shall in-  
4 clude—

5 (1) expanding strategic, formal partnerships  
6 among universities with strength in research, univer-  
7 sities that train substantial numbers of elementary  
8 and secondary school teachers, and the private sec-  
9 tor;

10 (2) combining Department expertise with one or  
11 more National Aeronautics and Space Administra-  
12 tion Educator Resource Centers;

13 (3) developing programs to permit current and  
14 future teachers to participate in ongoing research  
15 projects at National Laboratories and research uni-  
16 versities and to adapt lessons learned to the class-  
17 room;

18 (4) designing and implementing course work;

19 (5) designing and implementing a strategy for  
20 measuring and assessing progress under the pro-  
21 gram; and

22 (6) developing models for transferring knowl-  
23 edge gained under the pilot program to other insti-  
24 tutions and areas of the country.

1 (c) REPORT.—Not later than 2 years after appropria-  
2 tions are first available for the program, the Secretary  
3 shall transmit to Congress a report outlining lessons  
4 learned and containing a plan for expanding the program  
5 nationwide. The Secretary may begin implementation of  
6 such plan for expansion of the program on October 1,  
7 2008. The expansion of the program shall be subject to  
8 section 913.

9 **SEC. 910. AUTHORIZATION OF APPROPRIATIONS.**

10 (a) IN GENERAL.—In addition to amounts authorized  
11 to be appropriated under the 21st Century  
12 Nanotechnology Research and Development Act (15  
13 U.S.C. 7501 et seq.) and the Department of Energy High-  
14 End Computing Revitalization Act of 2004 (15 U.S.C.  
15 5541 et seq.), the following sums are authorized to be ap-  
16 propriated to the Secretary for the purposes of carrying  
17 out this subtitle:

18 (1) For fiscal year 2006, \$3,785,000,000.

19 (2) For fiscal year 2007, \$4,153,000,000.

20 (3) For fiscal year 2008, \$4,628,000,000.

21 (4) For fiscal year 2009, \$5,300,000,000.

22 (5) For fiscal year 2010, \$5,800,000,000.

23 (b) 2006 ALLOCATIONS.—From amounts authorized  
24 under subsection (a)(1), the following sums are authorized  
25 for fiscal year 2006:

1           (1) SYSTEMS BIOLOGY.—For activities under  
2 section 902, \$100,000,000.

3           (2) SCIENTIFIC COMPUTING.—For activities  
4 under section 905, \$252,000,000.

5           (3) FUSION ENERGY SCIENCES.—For activities  
6 under section 906, excluding activities under sub-  
7 section (c) of that section, \$335,000,000.

8           (4) SCHOLARSHIP.—For the scholarship pro-  
9 gram described in section 907, \$800,000.

10           (5) OFFICE OF SCIENTIFIC AND TECHNICAL IN-  
11 FORMATION.—For activities under section 908,  
12 \$7,000,000.

13           (6) PILOT PROGRAM.—For activities under sec-  
14 tion 909, \$4,000,000.

15           (c) 2007 ALLOCATIONS.—From amounts authorized  
16 under subsection (a)(2), the following sums are authorized  
17 for fiscal year 2007:

18           (1) SYSTEMS BIOLOGY.—For activities under  
19 section 902, such sums as may be necessary.

20           (2) SCIENTIFIC COMPUTING.—For activities  
21 under section 905, \$270,000,000.

22           (3) FUSION ENERGY SCIENCES.—For activities  
23 under section 906, excluding activities under sub-  
24 section (c) of that section, \$349,000,000.

1           (4) SCHOLARSHIP.—For the scholarship pro-  
2           gram described in section 907, \$1,600,000.

3           (5) OFFICE OF SCIENTIFIC AND TECHNICAL IN-  
4           FORMATION.—For activities under section 908,  
5           \$7,500,000.

6           (6) PILOT PROGRAM.—For activities under sec-  
7           tion 909, \$4,000,000.

8           (d) 2008 ALLOCATIONS.—From amounts authorized  
9           under subsection (a)(3), the following sums are authorized  
10          for fiscal year 2008:

11          (1) SYSTEMS BIOLOGY.—For activities under  
12          section 902, such sums as may be necessary.

13          (2) SCIENTIFIC COMPUTING.—For activities  
14          under section 905, \$350,000,000.

15          (3) FUSION ENERGY SCIENCES.—For activities  
16          under section 906, excluding activities under sub-  
17          section (c) of that section, \$362,000,000.

18          (4) SCHOLARSHIP.—For the scholarship pro-  
19          gram described in section 907, \$2,000,000.

20          (5) OFFICE OF SCIENTIFIC AND TECHNICAL IN-  
21          FORMATION.—For activities under section 908,  
22          \$8,000,000.

23          (6) PILOT PROGRAM.—For activities under sec-  
24          tion 909, \$4,000,000.

1           (e) 2009 ALLOCATIONS.—From amounts authorized  
2 under subsection (a)(4), the following sums are authorized  
3 for fiscal year 2009:

4           (1) SYSTEMS BIOLOGY.—For activities under  
5 section 902, such sums as may be necessary.

6           (2) SCIENTIFIC COMPUTING.—For activities  
7 under section 905, \$375,000,000.

8           (3) FUSION ENERGY SCIENCES.—For activities  
9 under section 906, excluding activities under sub-  
10 section (c) of that section, \$377,000,000.

11           (4) SCHOLARSHIP.—For the scholarship pro-  
12 gram described in section 907, \$2,000,000.

13           (5) OFFICE OF SCIENTIFIC AND TECHNICAL IN-  
14 FORMATION.—For activities under section 908,  
15 \$8,000,000.

16           (6) PILOT PROGRAM.—For activities under sec-  
17 tion 909, \$8,000,000.

18           (f) 2010 ALLOCATIONS.—From amounts authorized  
19 under subsection (a)(5), the following sums are authorized  
20 for fiscal year 2010:

21           (1) SYSTEMS BIOLOGY.—For activities under  
22 section 902, such sums as may be necessary.

23           (2) SCIENTIFIC COMPUTING.—For activities  
24 under section 905, \$400,000,000.

1           (3) FUSION ENERGY SCIENCES.—For activities  
2           under section 906, excluding activities under sub-  
3           section (c) of that section, \$393,000,000.

4           (4) SCHOLARSHIP.—For the scholarship pro-  
5           gram described in section 907, \$2,000,000.

6           (5) OFFICE OF SCIENTIFIC AND TECHNICAL IN-  
7           FORMATION.—For activities under section 908,  
8           \$8,500,000.

9           (6) PILOT PROGRAM.—For activities under sec-  
10          tion 909, \$8,000,000.

11          (g) ITER CONSTRUCTION.—From amounts author-  
12          ized under subsection (a) and in addition to amounts au-  
13          thorized under subsections (b)(3), (c)(3), (d)(3), (e)(3),  
14          and (f)(3), there are authorized to be appropriated to the  
15          Secretary such sums as may be necessary for ITER con-  
16          struction, consistent with the limitations of section 906(c).

17                           **Subtitle B—Research**  
18           **Administration and Operations**

19   **SEC. 911. COST SHARING.**

20          (a) RESEARCH AND DEVELOPMENT.—Except as oth-  
21          erwise provided in this title, for research and development  
22          programs carried out under this title, the Secretary shall  
23          require a commitment from non-Federal sources of at  
24          least 20 percent of the cost of the project. The Secretary  
25          may reduce or eliminate the non-Federal requirement

1 under this subsection if the Secretary determines that the  
2 research and development is of a basic or fundamental na-  
3 ture.

4 (b) DEMONSTRATION AND COMMERCIAL APPLICA-  
5 TION.—Except as otherwise provided in this title, the Sec-  
6 retary shall require at least 50 percent of the costs related  
7 to any demonstration or commercial application activities  
8 under this title to be provided from non-Federal sources.  
9 The Secretary may reduce the non-Federal requirement  
10 under this subsection if the Secretary determines that the  
11 reduction is necessary and appropriate considering the  
12 technological risks involved in the project and is necessary  
13 to meet the objectives of this title.

14 (c) CALCULATION OF AMOUNT.—In calculating the  
15 amount of the non-Federal commitment under subsection  
16 (a) or (b), the Secretary may include personnel, services,  
17 equipment, and other resources.

18 (d) SIZE OF NON-FEDERAL SHARE.—The Secretary  
19 may consider the amount of the non-Federal share in se-  
20 lecting projects under this title.

21 **SEC. 912. REPROGRAMMING.**

22 (a) DISTRIBUTION REPORT.—Not later than 60 days  
23 after the date of enactment of an Act appropriating  
24 amounts authorized under this title, the Secretary shall  
25 transmit to Congress a report explaining how such



1 amounts will be distributed among the activities author-  
2 ized by this title.

3       (b) REPROGRAMMING LETTER.—No amount author-  
4 ized by this title shall be obligated or expended for a pur-  
5 pose inconsistent with the appropriations Act appro-  
6 priating such amount, the report accompanying such ap-  
7 propriations Act, or a distribution report transmitted  
8 under subsection (a) if such obligation or expenditure  
9 would change an individual amount, as represented in  
10 such an Act, report, or distribution report, by more than  
11 2 percent or \$2,000,000, whichever is smaller, unless the  
12 Secretary has transmitted to Congress a letter of expla-  
13 nation and a period of 30 days has elapsed after Congress  
14 receives the letter.

15       (c) COMPUTATION.—The computation of the 30-day  
16 period described in subsection (b) shall exclude any day  
17 on which either House of Congress is not in session be-  
18 cause of an adjournment of more than 3 days to a day  
19 certain.

20 **SEC. 913. MERIT-BASED COMPETITION.**

21       (a) COMPETITIVE MERIT REVIEW.—Awardees of  
22 funds authorized under this title shall be selected through  
23 open competitions. Funds shall be competitively awarded  
24 only after an impartial review of the scientific and tech-  
25 nical merit of the proposals for such awards has been car-

1 ried out by or for the Department on the basis of criteria  
2 outlined by the Secretary in the solicitation of proposals.

3 (b) COMPETITION.—Competitive awards under this  
4 title shall involve competitions open to all qualified entities  
5 within one or more of the following categories:

6 (1) Institutions of higher education.

7 (2) National Laboratories.

8 (3) Nonprofit and for-profit private entities.

9 (4) State and local governments.

10 (5) Consortia of entities described in para-  
11 graphs (1) through (4).

12 (c) CONGRESSIONAL NOTIFICATION.—The Secretary  
13 shall notify Congress within 30 days after awarding more  
14 than \$500,000 through a competition described in sub-  
15 section (b) that is limited to 1 of the categories described  
16 in paragraphs (1) through (4) of subsection (b).

17 (d) WAIVERS.—The Secretary may waive the require-  
18 ment under subsection (a) requiring competition if the  
19 Secretary considers it necessary to more quickly advance  
20 research, development, demonstration, or commercial ap-  
21 plication activities. The Secretary shall notify Congress  
22 within 30 days when a waiver is granted under this sub-  
23 section. The Secretary may not delegate the waiver au-  
24 thority under this subsection for awards over \$500,000.

1 **SEC. 914. EXTERNAL TECHNICAL REVIEW OF DEPART-**  
2 **MENTAL PROGRAMS.**

3 (a) NATIONAL APPLIED ENERGY RESEARCH AND  
4 DEVELOPMENT ADVISORY COMMITTEES.—

5 (1) IN GENERAL.—The Secretary shall establish  
6 one or more advisory committees to review and ad-  
7 vise the Department's applied programs in the fol-  
8 lowing areas:

9 (A) Energy efficiency.

10 (B) Renewable energy.

11 (C) Nuclear energy.

12 (D) Fossil energy.

13 (2) EXISTING ADVISORY COMMITTEES.—The  
14 Secretary may designate an existing advisory com-  
15 mittee within the Department to fulfill the respon-  
16 sibilities of an advisory committee under this sub-  
17 section.

18 (b) OFFICE OF SCIENCE ADVISORY COMMITTEES.—

19 (1) USE OF EXISTING COMMITTEES.—Except as  
20 otherwise provided under the Federal Advisory Com-  
21 mittee Act, the Secretary shall continue to use the  
22 scientific program advisory committees chartered  
23 under the Federal Advisory Committee Act (5  
24 U.S.C. App.) by the Office of Science to oversee re-  
25 search and development programs under that Office.

1           (2) REPORT.—Before the Department issues  
2 any new guidance regarding the membership for Of-  
3 fice of Science scientific program advisory commit-  
4 tees, the Secretary shall transmit a report to the  
5 Congress outlining the reasons for the proposed  
6 changes, and 60 days must have elapsed after trans-  
7 mittal of the report before the Department may im-  
8 plement those changes.

9           (3) SCIENCE ADVISORY COMMITTEE.—

10           (A) ESTABLISHMENT.—There shall be a  
11 Science Advisory Committee for the Office of  
12 Science that includes the chairs of each of the  
13 advisory committees described in paragraph (1).

14           (B) RESPONSIBILITIES.—The Science Ad-  
15 visory Committee shall—

16           (i) advise the Director of the Office of  
17 Science on science issues;

18           (ii) advise the Director of the Office  
19 of Science with respect to the well-being  
20 and management of the National Labora-  
21 tories and Department research facilities;

22           (iii) advise the Director of the Office  
23 of Science with respect to education and  
24 workforce training activities required for  
25 effective short-term and long-term basic

1 and applied research activities of the Office  
2 of Science; and

3 (iv) advise the Director of the Office  
4 of Science with respect to the well-being of  
5 the university research programs supported  
6 by the Office of Science.

7 (c) MEMBERSHIP.—Each member of an advisory  
8 committee appointed under this section shall have signifi-  
9 cant scientific, technical, or other appropriate expertise.  
10 The membership of each committee shall represent a wide  
11 range of expertise, including, to the extent practicable,  
12 members with expertise from outside the disciplines cov-  
13 ered by the program, and a diverse set of interests.

14 (d) MEETINGS AND PURPOSES.—Each advisory com-  
15 mittee under this section shall meet at least semiannually  
16 to review and advise on the progress made by the respec-  
17 tive research, development, demonstration, and commer-  
18 cial application program or programs. The advisory com-  
19 mittee shall also review the measurable cost and perform-  
20 ance-based goals for the applied programs, and the  
21 progress on meeting such goals.

22 (e) REVIEW AND ASSESSMENT.—Not later than 6  
23 months after the date of enactment of this Act, the Sec-  
24 retary shall enter into arrangements with the National  
25 Academy of Sciences to conduct reviews and assessments

1 of the programs authorized by this title, the measurable  
2 cost and performance-based goals for the applied pro-  
3 grams, and the progress in meeting such goals. Such re-  
4 views and assessments shall be completed and reports con-  
5 taining the results of all such reviews and assessments  
6 transmitted to the Congress not later than 2 years after  
7 the date of enactment of this Act.

8 **SEC. 915. COMPETITIVE AWARD OF MANAGEMENT CON-**  
9 **TRACTS.**

10 None of the funds authorized to be appropriated to  
11 the Secretary by this title may be used to award a manage-  
12 ment and operating contract for a National Laboratory  
13 (excluding those named in subparagraphs (G), (H), (N),  
14 (O) of section 900(b)(6)), unless such contract is competi-  
15 tively awarded, or the Secretary grants, on a case-by-case  
16 basis, a waiver. The Secretary may not delegate the au-  
17 thority to grant such a waiver and shall submit to the Con-  
18 gress a report notifying it of the waiver, and setting forth  
19 the reasons for the waiver, at least 60 days prior to the  
20 date of the award of such contract.

21 **SEC. 916. NATIONAL LABORATORY DESIGNATION.**

22 After the date of enactment of this Act the Secretary  
23 shall not designate a facility that is not referred to in sec-  
24 tion 900(b)(6) as a National Laboratory.

1 **SEC. 917. REPORT ON EQUAL EMPLOYMENT OPPORTUNITY**  
2 **PRACTICES.**

3 Not later than 12 months after the date of enactment  
4 of this Act, and biennially thereafter, the Secretary shall  
5 transmit to Congress a report on the equal employment  
6 opportunity practices at National Laboratories. Such re-  
7 port shall include—

8 (1) a thorough review of each laboratory con-  
9 tractor's equal employment opportunity policies, in-  
10 cluding promotion to management and professional  
11 positions and pay raises;

12 (2) a statistical report on complaints and their  
13 disposition in the laboratories;

14 (3) a description of how equal employment op-  
15 portunity practices at the laboratories are treated in  
16 the contract and in calculating award fees for each  
17 contractor;

18 (4) a summary of disciplinary actions and their  
19 disposition by either the Department or the relevant  
20 contractors for each laboratory;

21 (5) a summary of outreach efforts to attract  
22 women and minorities to the laboratories;

23 (6) a summary of efforts to retain women and  
24 minorities in the laboratories; and

25 (7) a summary of collaboration efforts with the  
26 Office of Federal Contract Compliance Programs to

1 improve equal employment opportunity practices at  
2 the laboratories.

3 **SEC. 918. USER FACILITY BEST PRACTICES PLAN.**

4 The Secretary shall not allow any Department facility  
5 to begin functioning as a user facility after the date of  
6 enactment of this Act until the Secretary, for that facil-  
7 ity—

8 (1) develops a plan to ensure that the facility  
9 will—

10 (A) have a skilled staff to support a wide  
11 range of users;

12 (B) have a fair method for allocating time  
13 to users that provides for input from facility  
14 management, user representatives, and outside  
15 experts; and

16 (C) be operated in a safe and fiscally pru-  
17 dent manner; and

18 (2) transmits such plan to Congress and 60  
19 days have elapsed.

20 **SEC. 919. SUPPORT FOR SCIENCE AND ENERGY INFRA-**  
21 **STRUCTURE AND FACILITIES.**

22 (a) STRATEGY.—The Secretary shall develop and im-  
23 plement a strategy for infrastructure and facilities sup-  
24 ported primarily from the Office of Science and the ap-  
25 plied programs at each National Laboratory and Depart-



1 ment research facility. Such strategy shall provide cost-  
2 effective means for—

3 (1) maintaining existing facilities and infra-  
4 structure, as needed;

5 (2) closing unneeded facilities;

6 (3) making facility modifications; and

7 (4) building new facilities.

8 (b) REPORT.—

9 (1) REQUIREMENT.—The Secretary shall pre-  
10 pare and transmit to the Congress not later than  
11 June 1, 2007, a report summarizing the strategies  
12 developed under subsection (a).

13 (2) CONTENTS.—For each National Laboratory  
14 and Department research facility, for the facilities  
15 primarily used for science and energy research, such  
16 report shall contain—

17 (A) the current priority list of proposed fa-  
18 cilities and infrastructure projects, including  
19 cost and schedule requirements;

20 (B) a current 10-year plan that dem-  
21 onstrates the reconfiguration of its facilities and  
22 infrastructure to meet its missions and to ad-  
23 dress its long-term operational costs and return  
24 on investment;

1 (C) the total current budget for all facili-  
2 ties and infrastructure funding; and

3 (D) the current status of each facility and  
4 infrastructure project compared to the original  
5 baseline cost, schedule, and scope.

6 **SEC. 920. COORDINATION PLAN.**

7 (a) IN GENERAL.—The Secretary shall develop a co-  
8 ordination plan to improve coordination and collaboration  
9 in research, development, demonstration, and commercial  
10 application activities across Department organizational  
11 boundaries.

12 (b) PLAN CONTENTS.—The plan shall describe—

13 (1) how the Secretary will ensure that the ap-  
14 plied programs are coordinating their activities, in-  
15 cluding a description of specific research questions  
16 that cross organizational boundaries and of how the  
17 relevant applied programs are coordinating their ef-  
18 forts to answer those questions, and how such cross-  
19 cutting research questions will be identified in the  
20 future;

21 (2) how the Secretary will ensure that research  
22 that has been supported by the Office of Science is  
23 being or will be used by the applied programs, in-  
24 cluding a description of specific Office of Science-  
25 supported research that is relevant to the applied

1 programs and of how the applied programs have  
2 used or will use that research; and

3 (3) a description of how the Secretary will en-  
4 sure that the research agenda of the Office of  
5 Science includes research questions of concern to the  
6 applied programs, including a description of specific  
7 research questions that the Office of Science will ad-  
8 dress to assist the applied programs.

9 (c) PLAN TRANSMITTAL.—The Secretary shall trans-  
10 mit the coordination plan to Congress not later than 9  
11 months after the date of enactment of this Act, and every  
12 2 years thereafter shall transmit a revised coordination  
13 plan.

14 (d) CONFERENCE.—Not less than 6 months after the  
15 date of enactment of this Act, the Secretary shall convene  
16 a conference of program managers from the Office of  
17 Science and the applied programs to review ideas and ex-  
18 plore possibilities for effective cross-program collaboration.  
19 The Secretary also shall invite participation relevant Fed-  
20 eral agencies and other programs in the Federal Govern-  
21 ment conducting relevant research, and other stakeholders  
22 as appropriate.

23 **SEC. 921. AVAILABILITY OF FUNDS.**

24 Funds appropriated to the Secretary for activities au-  
25 thorized under this title shall remain available for three

1 years. Funds that are not obligated at the end of three  
2 years shall be returned to the Treasury.

3           **Subtitle C—Energy Efficiency**  
4           **CHAPTER 1—VEHICLES, BUILDINGS, AND**  
5           **INDUSTRIES**

6           **SEC. 922. PROGRAMS.**

7           (a) IN GENERAL.—The Secretary shall conduct pro-  
8 grams of energy efficiency research, development, dem-  
9 onstration, and commercial application, including activi-  
10 ties described in this chapter. Such programs shall be fo-  
11 cused on the following objectives:

12                   (1) Increasing the energy efficiency of vehicles,  
13 buildings, and industrial processes.

14                   (2) Reducing the Nation’s demand for energy,  
15 especially energy from foreign sources.

16                   (3) Reducing the cost of energy and making the  
17 economy more efficient and competitive.

18                   (4) Improving the Nation’s energy security.

19                   (5) Reducing the environmental impact of en-  
20 ergy-related activities.

21           (b) GOALS.—

22                   (1) INITIAL GOALS.—In accordance with the  
23 performance plan and report requirements in section  
24 4 of the Government Performance Results Act of  
25 1993, the Secretary shall transmit to the Congress,

1 along with the President's annual budget request for  
2 fiscal year 2007, a report containing outcome meas-  
3 ures with explicitly stated cost and performance  
4 baselines. The measures shall specify energy effi-  
5 ciency performance goals, with quantifiable 5-year  
6 cost and energy savings target levels, for vehicles,  
7 buildings, and industries, and any other such goals  
8 the Secretary considers appropriate.

9 (2) SUBSEQUENT TRANSMITTALS.—The Sec-  
10 retary shall transmit to the Congress, along with the  
11 President's annual budget request for each fiscal  
12 year after 2007, a report containing—

13 (A) a description, including quantitative  
14 analysis, of progress in achieving performance  
15 goals transmitted under paragraph (1), as com-  
16 pared to the baselines transmitted under para-  
17 graph (1); and

18 (B) any amendments to such goals.

19 (c) PUBLIC INPUT.—The Secretary shall consider ad-  
20 vice from industry, universities, and other interested par-  
21 ties through seeking comments in the Federal Register  
22 and other means before transmitting each report under  
23 subsection (b).

1 **SEC. 923. VEHICLES.**

2 (a) **ADVANCED, COST-EFFECTIVE TECHNOLOGIES.**—

3 The Secretary shall conduct a program of research, devel-  
4 opment, demonstration, and commercial application of ad-  
5 vanced, cost-effective technologies to improve the energy  
6 efficiency and environmental performance of light-duty  
7 and heavy-duty vehicles, including—

8 (1) hybrid and electric propulsion systems, in-  
9 cluding plug-in hybrid systems;

10 (2) advanced engines, including combustion en-  
11 gines;

12 (3) advanced materials, including high strength,  
13 lightweight materials, such as nanostructured mate-  
14 rials, composites, multimaterial parts, carbon fibers,  
15 and materials with high thermal conductivity;

16 (4) technologies for reduced drag and rolling re-  
17 sistance;

18 (5) whole-vehicle design optimization to reduce  
19 the weight of component parts and thus increase the  
20 fuel economy of the vehicle, including fiber optics to  
21 replace traditional wiring;

22 (6) thermoelectric devices that capture waste  
23 heat and convert thermal energy into electricity; and

24 (7) advanced drivetrains.

25 (b) **LOW-COST HYDROGEN PROPULSION AND INFRA-**  
26 **STRUCTURE.**—The Secretary of Energy shall—

1           (1) establish a research, development, and dem-  
2           onstration program to determine the feasibility of  
3           using hydrogen propulsion in light-weight vehicles  
4           and the integration of the associated hydrogen pro-  
5           duction infrastructure using off-the-shelf compo-  
6           nents; and

7           (2) identify universities and institutions that—

8                   (A) have expertise in researching and test-  
9                   ing vehicles fueled by hydrogen, methane, and  
10                  other fuels;

11                  (B) have expertise in integrating off-the-  
12                  shelf components to minimize cost; and

13                  (C) within two years can test a vehicle  
14                  based on an existing commercially available  
15                  platform with a curb weight of not less than  
16                  2,000 pounds before modifications, that—

17                          (i) operates solely on hydrogen gas;

18                          (ii) can travel a minimum of 300  
19                          miles under normal road conditions; and

20                          (iii) uses hydrogen produced from  
21                          water using only solar energy.

22 **SEC. 924. BUILDINGS.**

23           (a) PROGRAM.—The Secretary shall conduct a pro-  
24           gram of research, development, demonstration, and com-  
25           mercial application of cost-effective technologies, for new

1 construction and retrofit, to improve the energy efficiency  
2 and environmental performance of commercial, industrial,  
3 institutional, and residential buildings. The program shall  
4 use a whole-buildings approach, integrating work on ele-  
5 ments including—

6           (1) advanced controls, including occupancy sen-  
7           sors, daylighting controls, wireless technologies,  
8           automated responses to changes in the internal and  
9           external environment, and real time delivery of infor-  
10          mation on building system and component perform-  
11          ance;

12          (2) building envelope, including windows, roof-  
13          ing systems and materials, and building-integrated  
14          photovoltaics;

15          (3) building systems components, including—

16                (A) lighting;

17                (B) appliances, including advanced tech-  
18                nologies, such as stand-by load technologies, for  
19                office equipment, food service equipment, and  
20                laundry equipment; and

21                (C) heating, ventilation, and cooling sys-  
22                tems, including ground-source heat pumps and  
23                radiant heating; and

24          (4) onsite renewable energy generation.



1 (b) ENERGY EFFICIENT BUILDING PILOT GRANT  
2 PROGRAM.—

3 (1) IN GENERAL.—Not later than 6 months  
4 after the date of enactment of this Act, the Sec-  
5 retary shall establish a pilot program to award  
6 grants to businesses and organizations for new con-  
7 struction of energy efficient buildings, or major ren-  
8 ovations of buildings that will result in energy effi-  
9 cient buildings, to demonstrate innovative energy ef-  
10 ficiency technologies, especially those sponsored by  
11 the Department.

12 (2) AWARDS.—The Secretary shall award  
13 grants under this subsection competitively to those  
14 applicants whose proposals—

15 (A) best demonstrate—

16 (i) likelihood to meet or exceed the de-  
17 sign standards referred to in paragraph  
18 (7);

19 (ii) likelihood to maximize cost-effec-  
20 tive energy efficiency opportunities; and

21 (iii) advanced energy efficiency tech-  
22 nologies; and

23 (B) are least likely to be realized without  
24 Federal assistance.

1           (3) AMOUNT OF GRANTS.—Grants under this  
2 subsection shall be for up to 50 percent of design  
3 and energy modeling costs, not to exceed \$50,000  
4 per building. No single grantee may be eligible for  
5 more than 3 grants per year under this program.

6           (4) GRANT PAYMENTS.—

7           (A) INITIAL PAYMENT.—The Secretary  
8 shall pay 50 percent of the total amount of the  
9 grant to grant recipients upon selection.

10          (B) REMAINDER OF PAYMENT.—The Sec-  
11 retary shall pay the remaining 50 percent of the  
12 grant only after independent certification of  
13 operational buildings for compliance with the  
14 standards for energy efficient buildings de-  
15 scribed in paragraph (7).

16          (C) FAILURE TO COMPLY.—The Secretary  
17 shall not provide the remainder of the payment  
18 unless the building is certified within 6 months  
19 after operation of the completed building to  
20 meet the requirements described in subpara-  
21 graph (B), or in the case of major renovations  
22 the building is certified within 6 months of the  
23 completion of the renovations.

24          (5) REPORT TO CONGRESS.—Not later than 3  
25 years after awarding the first grant under this sub-

1 section, the Secretary shall transmit to Congress a  
2 report containing—

3 (A) the total number and dollar amount of  
4 grants awarded under this subsection; and

5 (B) an estimate of aggregate cost and en-  
6 ergy savings enabled by the pilot program  
7 under this subsection.

8 (6) ADMINISTRATIVE EXPENSES.—Administra-  
9 tive expenses for the program under this subsection  
10 shall not exceed 10 percent of appropriated funds.

11 (7) DEFINITION OF ENERGY EFFICIENT BUILD-  
12 ING.—For purposes of this subsection, the term “en-  
13 ergy efficient building” means a building that is  
14 independently certified—

15 (A) to meet or exceed the applicable  
16 United States Green Building Council’s Leader-  
17 ship in Energy and Environmental Design  
18 standards for a silver, gold, or platinum rating;  
19 and

20 (B) to achieve a reduction in energy con-  
21 sumption of—

22 (i) at least 25 percent for new con-  
23 struction, compared to the energy stand-  
24 ards set by the Federal Building Code (10  
25 CFR part 434); and

1 (ii) at least 20 percent for major ren-  
2 ovations, compared to energy consumption  
3 before renovations are begun.

4 (c) STANDARDIZATION REPORT AND PROGRAM.—

5 (1) REPORT.—The Secretary shall enter into an  
6 arrangement with the National Institute of Building  
7 Sciences to—

8 (A) conduct a comprehensive assessment of  
9 how well current voluntary consensus standards  
10 related to buildings match state-of-the-art  
11 knowledge on the design, construction, oper-  
12 ation, repair, and renovation of high-perform-  
13 ance buildings; and

14 (B) recommend steps for the Secretary to  
15 take to accelerate the development and promul-  
16 gation of voluntary consensus standards for  
17 high-performance buildings that would address  
18 all major high-performance building attributes,  
19 including energy efficiency, sustainability, safe-  
20 ty and security, life-cycle cost, and productivity.

21 (2) PROGRAM.—After receiving the report  
22 under paragraph (1), the Secretary shall establish a  
23 program of technical assistance and grants to sup-  
24 port standards development organizations in—

1 (A) the revision of existing standards, to  
2 reflect current knowledge of high-performance  
3 buildings; and

4 (B) the development and promulgation of  
5 new standards in areas important to high-per-  
6 formance buildings where there is no existing  
7 standard or where an existing standard cannot  
8 easily be modified.

9 **SEC. 925. INDUSTRIES.**

10 (a) PROGRAM.—The Secretary shall conduct a pro-  
11 gram of research, development, demonstration, and com-  
12 mercial application of advanced technologies to improve  
13 the energy efficiency, environmental performance, and  
14 process efficiency of energy-intensive and waste-intensive  
15 industries. Such program shall be focused on industries  
16 whose total annual energy consumption amounts to more  
17 than 1.0 percent of the total nationwide annual energy  
18 consumption, according to the most recent data available  
19 to the Department. Research and development efforts  
20 under this section shall give a higher priority to broad-  
21 benefit efficiency technologies that have practical applica-  
22 tion across industry sectors.

23 (b) ELECTRIC MOTOR CONTROL TECHNOLOGY.—  
24 The program conducted under subsection (a) shall include  
25 research on, and development, demonstration, and com-

1 merical application of, advanced control devices to improve  
2 the energy efficiency of electric motors, including those  
3 used in industrial processes, heating, ventilation, and cool-  
4 ing.

5 **SEC. 926. DEMONSTRATION AND COMMERCIAL APPLICA-**  
6 **TION.**

7 (a) **APPLIANCES AND TESTING.**—The Secretary shall  
8 conduct research and analysis to determine whether, given  
9 Department-sponsored and other advances in energy effi-  
10 ciency technologies, demonstration and commercial appli-  
11 cation of innovative, cost-effective energy savings and pol-  
12 lution reducing technologies could be used to improve ap-  
13 pliances and test procedures used to measure appliance  
14 efficiency.

15 (b) **BUILDING ENERGY CODES.**—The Secretary shall,  
16 in coordination with government, nongovernment, and  
17 commercial partners, conduct research and analyses of the  
18 best cost-effective practices in the development and updat-  
19 ing of building energy codes, including for manufactured  
20 housing. Analyses shall focus on how to encourage energy  
21 efficiency and adoption of newly developed energy produc-  
22 tion and use equipment.

23 (c) **ADVANCED ENERGY TECHNOLOGY TRANSFER**  
24 **CENTERS.**—

1           (1) GRANTS.—Not later than 18 months after  
2 the date of enactment of this Act, the Secretary  
3 shall make grants to nonprofit institutions, State  
4 and local governments, or universities (or consortia  
5 thereof), to establish a geographically dispersed net-  
6 work of Advanced Energy Technology Transfer Cen-  
7 ters, to be located in areas the Secretary determines  
8 have the greatest need of the services of such Cen-  
9 ters.

10           (2) ACTIVITIES.—

11           (A) IN GENERAL.—Each Center shall oper-  
12 ate a program to encourage demonstration and  
13 commercial application of advanced energy  
14 methods and technologies through education  
15 and outreach to building and industrial profes-  
16 sionals, and to other individuals and organiza-  
17 tions with an interest in efficient energy use.

18           (B) ADVISORY PANEL.—Each Center shall  
19 establish an advisory panel to advise the Center  
20 on how best to accomplish the activities under  
21 subparagraph (A).

22           (3) APPLICATION.—A person seeking a grant  
23 under this subsection shall submit to the Secretary  
24 an application in such form and containing such in-  
25 formation as the Secretary may require. The Sec-

1       retary may award a grant under this subsection to  
2       an entity already in existence if the entity is other-  
3       wise eligible under this subsection.

4               (4) SELECTION CRITERIA.—The Secretary shall  
5       award grants under this subsection on the basis of  
6       the following criteria, at a minimum:

7                   (A) The ability of the applicant to carry  
8       out the activities in paragraph (2).

9                   (B) The extent to which the applicant will  
10       coordinate the activities of the Center with  
11       other entities, such as State and local govern-  
12       ments, utilities, and educational and research  
13       institutions.

14               (5) MATCHING FUNDS.—The Secretary shall re-  
15       quire a non-Federal matching requirement of at  
16       least 50 percent of the costs of establishing and op-  
17       erating each Center.

18               (6) ADVISORY COMMITTEE.—The Secretary  
19       shall establish an advisory committee to advise the  
20       Secretary on the establishment of Centers under this  
21       subsection. The advisory committee shall be com-  
22       posed of individuals with expertise in the area of ad-  
23       vanced energy methods and technologies, including  
24       at least 1 representative from—

25                   (A) State or local energy offices;



- 1 (B) energy professionals;
- 2 (C) trade or professional associations;
- 3 (D) architects, engineers, or construction
- 4 professionals;
- 5 (E) manufacturers;
- 6 (F) the research community; and
- 7 (G) nonprofit energy or environmental or-
- 8 ganizations.

9 (7) DEFINITIONS.—For purposes of this sub-

10 section:

11 (A) ADVANCED ENERGY METHODS AND

12 TECHNOLOGIES.—The term “advanced energy

13 methods and technologies” means all methods

14 and technologies that promote energy efficiency

15 and conservation, including distributed genera-

16 tion technologies, and life-cycle analysis of en-

17 ergy use.

18 (B) CENTER.—The term “Center” means

19 an Advanced Energy Technology Transfer Cen-

20 ter established pursuant to this subsection.

21 (C) DISTRIBUTED GENERATION.—The

22 term “distributed generation” means an electric

23 power generation facility that is designed to

24 serve retail electric consumers at or near the fa-

25 cility site.

1 (d) REPORT.—Not later than 2 years after the date  
2 of enactment of this Act, and once every 3 years there-  
3 after, the Secretary shall transmit to Congress a report  
4 on the results of research and analysis under this section.  
5 In calculating cost-effectiveness for purposes of such re-  
6 ports, the Secretary shall include, at a minimum, the  
7 avoided cost of additional energy production, savings to  
8 the economy from lower peak energy prices and reduced  
9 price volatility, and the public and private benefits of re-  
10 duced pollution.

11 **SEC. 927. SECONDARY ELECTRIC VEHICLE BATTERY USE**  
12 **PROGRAM.**

13 (a) DEFINITIONS.—For purposes of this section:

14 (1) ASSOCIATED EQUIPMENT.—The term “asso-  
15 ciated equipment” means equipment located where  
16 the batteries will be used that is necessary to enable  
17 the use of the energy stored in the batteries.

18 (2) BATTERY.—The term “battery” means an  
19 energy storage device that previously has been used  
20 to provide motive power in a vehicle powered in  
21 whole or in part by electricity.

22 (b) PROGRAM.—The Secretary shall establish and  
23 conduct a research, development, demonstration, and com-  
24 mercial application program for the secondary use of bat-  
25 teries if the Secretary finds that there are sufficient num-

1 bers of such batteries to support the program. The pro-  
2 gram shall be—

3 (1) designed to demonstrate the use of batteries  
4 in secondary applications, including utility and com-  
5 mercial power storage and power quality;

6 (2) structured to evaluate the performance, in-  
7 cluding useful service life and costs, of such bat-  
8 teries in field operations, and the necessary sup-  
9 porting infrastructure, including reuse and disposal  
10 of batteries; and

11 (3) coordinated with ongoing secondary battery  
12 use programs at the National Laboratories and in  
13 industry.

14 (c) SOLICITATION.—Not later than 180 days after  
15 the date of enactment of this Act, if the Secretary finds  
16 under subsection (b) that there are sufficient numbers of  
17 batteries to support the program, the Secretary shall so-  
18 licit proposals to demonstrate the secondary use of bat-  
19 teries and associated equipment and supporting infra-  
20 structure in geographic locations throughout the United  
21 States. The Secretary may make additional solicitations  
22 for proposals if the Secretary determines that such solici-  
23 tations are necessary to carry out this section.

24 (d) SELECTION OF PROPOSALS.—

1           (1) IN GENERAL.—The Secretary shall, not  
2 later than 90 days after the closing date established  
3 by the Secretary for receipt of proposals under sub-  
4 section (c), select up to 5 proposals which may re-  
5 ceive financial assistance under this section, subject  
6 to the availability of appropriations.

7           (2) DIVERSITY; ENVIRONMENTAL EFFECT.—In  
8 selecting proposals, the Secretary shall consider di-  
9 versity of battery type, geographic and climatic di-  
10 versity, and life-cycle environmental effects of the  
11 approaches.

12           (3) LIMITATION.—No 1 project selected under  
13 this section shall receive more than 25 percent of the  
14 funds authorized for the program under this section.

15           (4) OPTIMIZATION OF FEDERAL RESOURCES.—  
16 The Secretary shall consider the extent of involve-  
17 ment of State or local government and other persons  
18 in each demonstration project to optimize use of  
19 Federal resources.

20           (5) OTHER CRITERIA.—The Secretary may con-  
21 sider such other criteria as the Secretary considers  
22 appropriate.

23           (e) CONDITIONS.—The Secretary shall require that—

1           (1) relevant information be provided to the De-  
2           partment, the users of the batteries, the proposers,  
3           and the battery manufacturers;

4           (2) the proposer provide at least 50 percent of  
5           the costs associated with the proposal; and

6           (3) the proposer provide to the Secretary such  
7           information regarding the disposal of the batteries  
8           as the Secretary may require to ensure that the pro-  
9           poser disposes of the batteries in accordance with  
10          applicable law.

11 **SEC. 928. NEXT GENERATION LIGHTING INITIATIVE.**

12          (a) **IN GENERAL.**—The Secretary shall carry out a  
13          Next Generation Lighting Initiative in accordance with  
14          this section to support research, development, demonstra-  
15          tion, and commercial application activities related to ad-  
16          vanced solid-state lighting technologies based on white  
17          light emitting diodes.

18          (b) **OBJECTIVES.**—The objectives of the initiative  
19          shall be to develop advanced solid-state organic and inor-  
20          ganic lighting technologies based on white light emitting  
21          diodes that, compared to incandescent and fluorescent  
22          lighting technologies, are longer lasting; more energy-effi-  
23          cient; and cost-competitive, and have less environmental  
24          impact.

1           (c) INDUSTRY ALLIANCE.—The Secretary shall, not  
2 later than 3 months after the date of enactment of this  
3 section, competitively select an Industry Alliance to rep-  
4 resent participants that are private, for-profit firms which,  
5 as a group, are broadly representative of United States  
6 solid state lighting research, development, infrastructure,  
7 and manufacturing expertise as a whole.

8           (d) RESEARCH.—

9               (1) IN GENERAL.—The Secretary shall carry  
10 out the research activities of the Next Generation  
11 Lighting Initiative through competitively awarded  
12 grants to researchers, including Industry Alliance  
13 participants, National Laboratories, and institutions  
14 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) DEVELOPMENT, DEMONSTRATION, AND COMMERCIAL APPLICATION.—The Secretary shall carry out a de-  
4 velopment, demonstration, and commercial application  
5 program for the Next Generation Lighting Initiative  
6 through competitively selected awards. The Secretary may  
7 give preference to participants of the Industry Alliance se-  
8 lected pursuant to subsection (c).

10 (f) INTELLECTUAL PROPERTY.—The Secretary may  
11 require, in accordance with the authorities provided in sec-  
12 tion 202(a)(ii) of title 35, United States Code, section 152  
13 of the Atomic Energy Act of 1954 (42 U.S.C. 2182), and  
14 section 9 of the Federal Nonnuclear Energy Research and  
15 Development Act of 1974 (42 U.S.C. 5908), that—

16 (1) for any new invention resulting from activi-  
17 ties under subsection (d)—

18 (A) the Industry Alliance members that  
19 are active participants in research, development,  
20 and demonstration activities related to the ad-  
21 vanced solid-state lighting technologies that are  
22 the subject of this section shall be granted first  
23 option to negotiate with the invention owner  
24 nonexclusive licenses and royalties for uses of  
25 the invention related to solid-state lighting on

1 terms that are reasonable under the cir-  
2 cumstances; and

3 (B)(i) for 1 year after a United States pat-  
4 ent is issued for the invention, the patent hold-  
5 er shall not negotiate any license or royalty  
6 with any entity that is not a participant in the  
7 Industry Alliance described in subparagraph  
8 (A); and

9 (ii) during the year described in clause (i),  
10 the invention owner shall negotiate nonexclusive  
11 licenses and royalties in good faith with any in-  
12 terested participant in the Industry Alliance de-  
13 scribed in subparagraph (A); and

14 (2) such other terms as the Secretary deter-  
15 mines are required to promote accelerated commer-  
16 cialization of inventions made under the Initiative.

17 (g) NATIONAL ACADEMY REVIEW.—The Secretary  
18 shall enter into an arrangement with the National Acad-  
19 emy of Sciences to conduct periodic reviews of the Next  
20 Generation Lighting Initiative. The Academy shall review  
21 the research priorities, technical milestones, and plans for  
22 technology transfer and progress towards achieving them.  
23 The Secretary shall consider the results of such reviews  
24 in evaluating the information obtained under subsection  
25 (d)(2).



1 (h) DEFINITIONS.—As used in this section:

2 (1) ADVANCED SOLID-STATE LIGHTING.—The  
3 term “advanced solid-state lighting” means a  
4 semiconducting device package and delivery system  
5 that produces white light using externally applied  
6 voltage.

7 (2) RESEARCH.—The term “research” includes  
8 research on the technologies, materials, and manu-  
9 facturing processes required for white light emitting  
10 diodes.

11 (3) INDUSTRY ALLIANCE.—The term “Industry  
12 Alliance” means an entity selected by the Secretary  
13 under subsection (c).

14 (4) WHITE LIGHT EMITTING DIODE.—The term  
15 “white light emitting diode” means a  
16 semiconducting package, utilizing either organic or  
17 inorganic materials, that produces white light using  
18 externally applied voltage.

19 **SEC. 929. DEFINITIONS.**

20 For the purposes of this chapter—

21 (1) the term “cost-effective” means resulting in  
22 a simple payback of costs in 10 years or less; and

23 (2) the term “whole-buildings approach” in-  
24 cludes, on a life-cycle basis, the energy use, cost of

1 operations, and ease of repair or upgrade of a build-  
2 ing.

3 **SEC. 930. AUTHORIZATION OF APPROPRIATIONS.**

4 The following sums are authorized to be appropriated  
5 to the Secretary for the purposes of carrying out this  
6 chapter:

7 (1) For fiscal year 2006, \$620,000,000, includ-  
8 ing—

9 (A) \$200,000,000 for carrying out the ve-  
10 hicles program under section 923;

11 (B) \$100,000,000 for carrying out the  
12 buildings program under section 924, of which  
13 \$10,000,000 shall be for the grant program  
14 under section 924(b);

15 (C) \$100,000,000 for carrying out the in-  
16 dustries program under section 925(a);

17 (D) \$2,000,000 for carrying out the elec-  
18 tric motor control technology program under  
19 section 925(b);

20 (E) \$10,000,000 for carrying out dem-  
21 onstration and commercial applications activi-  
22 ties under section 926;

23 (F) \$4,000,000 for carrying out the sec-  
24 ondary electric vehicle battery use program  
25 under section 927; and

1 (G) \$20,000,000 for carrying out the Next  
2 Generation Lighting Initiative under section  
3 928.

4 (2) For fiscal year 2007, \$700,000,000, includ-  
5 ing—

6 (A) \$240,000,000 for carrying out the ve-  
7 hicles program under section 923;

8 (B) \$130,000,000 for carrying out the  
9 buildings program under section 924, of which  
10 \$10,000,000 shall be for the grant program  
11 under section 924(b);

12 (C) \$115,000,000 for carrying out the in-  
13 dustries program under section 925(a);

14 (D) \$2,000,000 for carrying out the elec-  
15 tric motor control technology program under  
16 section 925(b);

17 (E) \$10,000,000 for carrying out dem-  
18 onstration and commercial applications activi-  
19 ties under section 926;

20 (F) \$7,000,000 for carrying out the sec-  
21 ondary electric vehicle battery use program  
22 under section 927; and

23 (G) \$30,000,000 for carrying out the Next  
24 Generation Lighting Initiative under section  
25 928.

1           (3) For fiscal year 2008, \$800,000,000, includ-  
2     ing—

3           (A) \$270,000,000 for carrying out the ve-  
4     hicles program under section 923;

5           (B) \$160,000,000 for carrying out the  
6     buildings program under section 924, of which  
7     \$10,000,000 shall be for the grant program  
8     under section 924(b);

9           (C) \$140,000,000 for carrying out the in-  
10    dustries program under section 925(a);

11          (D) \$2,000,000 for carrying out the elec-  
12    tric motor control technology program under  
13    section 925(b);

14          (E) \$10,000,000 for carrying out dem-  
15    onstration and commercial applications activi-  
16    ties under section 926;

17          (F) \$7,000,000 for carrying out the sec-  
18    ondary electric vehicle battery use program  
19    under section 927; and

20          (G) \$50,000,000 for carrying out the Next  
21    Generation Lighting Initiative under section  
22    928.

23          (4) For fiscal year 2009, \$925,000,000, includ-  
24    ing—

1 (A) \$310,000,000 for carrying out the ve-  
2 hicles program under section 923;

3 (B) \$200,000,000 for carrying out the  
4 buildings program under section 924, of which  
5 \$10,000,000 shall be for the grant program  
6 under section 924(b);

7 (C) \$170,000,000 for carrying out the in-  
8 dustries program under section 925(a);

9 (D) \$10,000,000 for carrying out dem-  
10 onstration and commercial applications activi-  
11 ties under section 926;

12 (E) \$7,000,000 for carrying out the sec-  
13 ondary electric vehicle battery use program  
14 under section 927; and

15 (F) \$50,000,000 for carrying out the Next  
16 Generation Lighting Initiative under section  
17 928.

18 (5) For fiscal year 2010, \$1,000,000,000, in-  
19 cluding—

20 (A) \$340,000,000 for carrying out the ve-  
21 hicles program under section 923;

22 (B) \$240,000,000 for carrying out the  
23 buildings program under section 924, of which  
24 \$10,000,000 shall be for the grant program  
25 under section 924(b);

1 (C) \$190,000,000 for carrying out the in-  
2 dustries program under section 925(a);

3 (D) \$10,000,000 for carrying out dem-  
4 onstration and commercial applications activi-  
5 ties under section 926;

6 (E) \$7,000,000 for carrying out the sec-  
7 ondary electric vehicle battery use program  
8 under section 927; and

9 (F) \$50,000,000 for carrying out the Next  
10 Generation Lighting Initiative under section  
11 928.

12 **SEC. 931. LIMITATION ON USE OF FUNDS.**

13 None of the funds authorized to be appropriated  
14 under this chapter may be used for—

15 (1) the issuance and implementation of energy  
16 efficiency regulations;

17 (2) the Weatherization Assistance Program  
18 under part A of title IV of the Energy Conservation  
19 and Production Act (42 U.S.C. 6861 et seq.);

20 (3) the State Energy Program under part D of  
21 title III of the Energy Policy and Conservation Act  
22 (42 U.S.C. 6321 et seq.); or

23 (4) the Federal Energy Management Program  
24 under part 3 of title V of the National Energy Con-  
25 servation Policy Act (42 U.S.C. 8251 et seq.).

1    **CHAPTER 2—DISTRIBUTED ENERGY AND**  
2                   **ELECTRIC ENERGY SYSTEMS**

3    **SEC. 932. DISTRIBUTED ENERGY.**

4           (a) IN GENERAL.—The Secretary shall conduct pro-  
5 grams of distributed energy resources and systems reli-  
6 ability and efficiency research, development, demonstra-  
7 tion, and commercial application to improve the reliability  
8 and efficiency of distributed energy resources and systems,  
9 including activities described in this chapter. The pro-  
10 grams shall address advanced energy technologies and sys-  
11 tems and advanced grid reliability technologies. The pro-  
12 grams shall include the integration of—

- 13           (1) renewable energy resources;
- 14           (2) fuel cells;
- 15           (3) combined heat and power systems;
- 16           (4) microturbines;
- 17           (5) advanced natural gas turbines;
- 18           (6) advanced internal combustion engine gen-  
19 erators;
- 20           (7) energy storage devices;
- 21           (8) interconnection standards, protocols, and  
22 equipment;
- 23           (9) ancillary equipment for dispatch and con-  
24 trol; and

1           (10) any other energy technologies, as appro-  
2           priate.

3           (b)    MICRO-COGENERATION   ENERGY   TECH-  
4   NOLOGY.—The Secretary shall make competitive, merit-  
5   based grants to consortia for the development of micro-  
6   cogeneration energy technology. The consortia shall ex-  
7   plore—

8           (1) the use of small-scale combined heat and  
9           power in residential heating appliances; or

10          (2) the use of excess power to operate other ap-  
11         pliances within the residence and supply excess gen-  
12         erated power to the power grid.

13         (c) GOALS.—

14           (1) INITIAL GOALS.—In accordance with the  
15         performance plan and report requirements in section  
16         4 of the Government Performance Results Act of  
17         1993, the Secretary shall transmit to the Congress,  
18         along with the President’s annual budget request for  
19         fiscal year 2007, a report containing outcome meas-  
20         ures with explicitly stated cost and performance  
21         baselines. The measures shall specify performance  
22         goals, with quantifiable 5-year cost and energy sav-  
23         ings target levels, for distributed energy resources  
24         and systems, and any other such goals the Secretary  
25         considers appropriate.



1           (2) SUBSEQUENT TRANSMITTALS.—The Sec-  
2           retary shall transmit to the Congress, along with the  
3           President’s annual budget request for each fiscal  
4           year after 2007, a report containing—

5                   (A) a description, including quantitative  
6                   analysis, of progress in achieving performance  
7                   goals transmitted under paragraph (1), as com-  
8                   pared to the baselines transmitted under para-  
9                   graph (1); and

10                   (B) any amendments to such goals.

11 **SEC. 933. ELECTRICITY TRANSMISSION AND DISTRIBUTION**  
12 **AND ENERGY ASSURANCE.**

13           (a) PROGRAM.—The Secretary shall conduct a re-  
14           search, development, demonstration, and commercial ap-  
15           plication program on advanced control devices to improve  
16           the energy efficiency and reliability of the electric trans-  
17           mission and distribution systems and to protect the Na-  
18           tion against severe energy supply disruptions. This pro-  
19           gram shall address, at a minimum—

20                   (1) advanced energy delivery and storage tech-  
21                   nologies, materials, and systems, including new  
22                   transmission technologies, such as flexible alter-  
23                   nating current transmission systems, composite con-  
24                   ductor materials, and other technologies that en-

1       hance reliability, operational flexibility, or power-car-  
2       rying capability;

3           (2) advanced grid reliability and efficiency tech-  
4       nology development;

5           (3) technologies contributing to significant load  
6       reductions;

7           (4) advanced metering, load management, and  
8       control technologies;

9           (5) technologies to enhance existing grid compo-  
10      nents;

11          (6) the development and use of high-tempera-  
12      ture superconductors to—

13           (A) enhance the reliability, operational  
14      flexibility, or power-carrying capability of elec-  
15      tric transmission or distribution systems; or

16           (B) increase the efficiency of electric en-  
17      ergy generation, transmission, distribution, or  
18      storage systems;

19          (7) integration of power systems, including sys-  
20      tems to deliver high-quality electric power, electric  
21      power reliability, and combined heat and power;

22          (8) supply of electricity to the power grid by  
23      small-scale, distributed, and residential-based power  
24      generators;

1           (9) the development and use of advanced grid  
2 design, operation, and planning tools;

3           (10) any other infrastructure technologies, as  
4 appropriate; and

5           (11) technology transfer and education.

6       (b) GOALS.—

7           (1) INITIAL GOALS.—In accordance with the  
8 performance plan and report requirements in section  
9 4 of the Government Performance Results Act of  
10 1993, the Secretary shall transmit to the Congress,  
11 along with the President’s annual budget request for  
12 fiscal year 2007, a report containing outcome meas-  
13 ures with explicitly stated cost and performance  
14 baselines. The measures shall specify performance  
15 goals, with quantifiable 5-year cost and energy sav-  
16 ings target levels, for electricity transmission and  
17 distribution and energy assurance, and any other  
18 such goals the Secretary considers appropriate.

19           (2) SUBSEQUENT TRANSMITTALS.—The Sec-  
20 retary shall transmit to the Congress, along with the  
21 President’s annual budget request for each fiscal  
22 year after 2007, a report containing—

23           (A) a description, including quantitative  
24 analysis, of progress in achieving performance  
25 goals transmitted under paragraph (1), as com-

1           pared to the baselines transmitted under para-  
2           graph (1); and

3                   (B) any amendments to such goals.

4           (c) **HIGH VOLTAGE TRANSMISSION LINES.**—As part  
5 of the program described in subsection (a), the Secretary  
6 shall award a grant to a university research program to  
7 design and test, in consultation with the Tennessee Valley  
8 Authority, state-of-the-art optimization techniques for  
9 power flow through existing high voltage transmission  
10 lines.

11 **SEC. 933A. ADVANCED PORTABLE POWER DEVICES.**

12           (a) **PROGRAM.**—The Secretary shall—

13                   (1) establish a research, development, and dem-  
14                   onstration program to develop working models of  
15                   small scale portable power devices; and

16                   (2) to the fullest extent practicable, identify and  
17                   utilize the resources of universities that have shown  
18                   expertise with respect to advanced portable power  
19                   devices for either civilian or military use.

20           (b) **ORGANIZATION.**—The universities identified and  
21 utilized under subsection (a)(2) are authorized to establish  
22 an organization to promote small scale portable power de-  
23 vices.

24           (c) **DEFINITION.**—For purposes of this section, the  
25 term “small scale portable power device” means a field

1 deployable portable mechanical or electromechanical device  
2 that can be used for applications such as communications,  
3 computation, mobility enhancement, weapons systems, op-  
4 tical devices, cooling, sensors, medical devices and active  
5 biological agent detection systems.

6 **SEC. 934. AUTHORIZATION OF APPROPRIATIONS.**

7 (a) IN GENERAL.—The following sums are author-  
8 ized to be appropriated to the Secretary for the purposes  
9 of carrying out this chapter:

10 (1) For fiscal year 2006, \$220,000,000.

11 (2) For fiscal year 2007, \$240,000,000.

12 (3) For fiscal year 2008, \$250,000,000.

13 (4) For fiscal year 2009, \$265,000,000.

14 (5) For fiscal year 2010, \$275,000,000.

15 (b) MICRO-COGENERATION ENERGY TECH-  
16 NOLOGY.—From the amounts authorized under subsection  
17 (a), \$20,000,000 for each of fiscal years 2006 and 2007  
18 are authorized for activities under section 932(b).

19 (c) ELECTRICITY TRANSMISSION AND DISTRIBUTION  
20 AND ENERGY ASSURANCE.—From the amounts author-  
21 ized under subsection (a), the following sums are author-  
22 ized for activities under section 933:

23 (1) For fiscal year 2006, \$130,000,000, of  
24 which \$2,000,000 shall be for the program under  
25 section 933(c).

1           (2) For fiscal year 2007, \$140,000,000.

2           (3) For fiscal year 2008, \$150,000,000.

3           (4) For fiscal year 2009, \$160,000,000.

4           (5) For fiscal year 2010, \$165,000,000.

## 5           **Subtitle D—Renewable Energy**

### 6   **SEC. 935. FINDINGS.**

7           Congress makes the following findings:

8           (1) Renewable energy is a growth industry  
9           around the world. However, the United States has  
10          not been investing as heavily as other countries, and  
11          is losing market share.

12          (2) Since 1996, the United States has lost sig-  
13          nificant market share in the solar industry, dropping  
14          from 44 percent of the world market to 13 percent  
15          in 2003.

16          (3) In 2003, Japan spent more than  
17          \$200,000,000 on solar research, development, dem-  
18          onstration, and commercial application and other in-  
19          centives, and Germany provided more than  
20          \$750,000,000 in low cost financing for solar photo-  
21          voltaic projects. This compares to United States  
22          Government spending of \$139,000,000 in 2003 for  
23          research, development, demonstration, and commer-  
24          cial application and other incentives.

1           (4) Germany and Japan each had domestic  
2 photovoltaic industries that employed more than  
3 10,000 people in 2003, while in the same year the  
4 United States photovoltaics industry employed only  
5 2,000 people.

6           (5) The United States is becoming increasingly  
7 dependent on imported energy.

8           (6) The high cost of fossil fuels is hurting the  
9 United States economy.

10          (7) Small reductions in peak demand can result  
11 in very large reductions in price, according to energy  
12 market experts.

13          (8) Although the United States has only 2 per-  
14 cent of the world's oil reserves and 3 percent of the  
15 world's natural gas reserves, our Nation's renewable  
16 energy resources are vast and largely untapped.

17          (9) Renewable energy can reduce the demand  
18 for imported energy, reducing costs and decreasing  
19 the variability of energy prices.

20          (10) By using domestic renewable energy re-  
21 sources, the United States can reduce the amount of  
22 money sent into unstable regions of the world and  
23 keep it in the United States.

24          (11) By supporting renewable energy research  
25 and development, and funding demonstration and

1 commercial application programs for renewable en-  
2 ergy, the United States can create an export indus-  
3 try and improve the balance of trade.

4 (12) Renewable energy can significantly reduce  
5 the environmental impacts of energy production.

6 **SEC. 936. DEFINITIONS.**

7 For purposes of this subtitle:

8 (1) **BIOBASED PRODUCT.**—The term “biobased  
9 product” means a product determined by the Sec-  
10 retary to be a commercial or industrial product  
11 (other than food or feed) that is—

12 (A) composed, in whole or in significant  
13 part, of—

14 (i) biological products;

15 (ii) renewable domestic agricultural  
16 materials (including plant, animal, and  
17 marine materials); or

18 (iii) forestry materials; and

19 (B) produced in connection with the con-  
20 version of biomass to energy or fuel.

21 (2) **CELLULOSIC BIOMASS.**—The term “cel-  
22 lulosic biomass” means a crop containing  
23 lignocellulose or hemicellulose, including barley  
24 grain, grapeseed, forest thinnings, rice bran, rice  
25 hulls, rice straw, soybean matter, sugarcane bagasse,



1 and any crop grown specifically for the purpose of  
2 producing cellulosic feedstocks.

3 **SEC. 937. PROGRAMS.**

4 (a) IN GENERAL.—The Secretary shall conduct pro-  
5 grams of renewable energy research, development, dem-  
6 onstration, and commercial application, including activi-  
7 ties described in this subtitle. Such programs shall be fo-  
8 cused on the following objectives:

9 (1) Increasing the conversion efficiency of all  
10 forms of renewable energy through improved tech-  
11 nologies.

12 (2) Decreasing the cost of renewable energy  
13 generation and delivery.

14 (3) Promoting the diversity of the energy sup-  
15 ply.

16 (4) Decreasing the Nation's dependence on for-  
17 eign energy supplies.

18 (5) Improving United States energy security.

19 (6) Decreasing the environmental impact of en-  
20 ergy-related activities.

21 (7) Increasing the export of renewable genera-  
22 tion equipment from the United States.

23 (b) GOALS.—

24 (1) INITIAL GOALS.—In accordance with the  
25 performance plan and report requirements in section

1 4 of the Government Performance Results Act of  
2 1993, the Secretary shall transmit to the Congress,  
3 along with the President's annual budget request for  
4 fiscal year 2007, a report containing outcome meas-  
5 ures with explicitly stated cost and performance  
6 baselines. The measures shall specify renewable en-  
7 ergy performance goals, with quantifiable 5-year cost  
8 and energy savings target levels, for wind power,  
9 photovoltaics, solar thermal systems (including con-  
10 centrating and solar hot water), geothermal energy,  
11 biomass-based systems, biofuels, and hydropower,  
12 and any other such goals the Secretary considers ap-  
13 propriate.

14 (2) SUBSEQUENT TRANSMITTALS.—The Sec-  
15 retary shall transmit to the Congress, along with the  
16 President's annual budget request for each fiscal  
17 year after 2007, a report containing—

18 (A) a description, including quantitative  
19 analysis, of progress in achieving performance  
20 goals transmitted under paragraph (1), as com-  
21 pared to the baselines transmitted under para-  
22 graph (1); and

23 (B) any amendments to such goals.

24 (c) PUBLIC INPUT.—The Secretary shall consider ad-  
25 vice from industry, universities, and other interested par-

1 ties through seeking comments in the Federal Register  
2 and other means before transmitting each report under  
3 subsection (b).

4 **SEC. 938. SOLAR.**

5 (a) PROGRAM.—The Secretary shall conduct a pro-  
6 gram of research, development, demonstration, and com-  
7 mercial application for solar energy, including—

- 8 (1) photovoltaics;
- 9 (2) solar hot water and solar space heating; and
- 10 (3) concentrating solar power.

11 (b) BUILDING INTEGRATION.—For photovoltaics,  
12 solar hot water, and space heating, the Secretary shall  
13 conduct research, development, demonstration, and com-  
14 mercial application to support the development of products  
15 that can be easily integrated into new and existing build-  
16 ings.

17 (c) MANUFACTURE.—The Secretary shall conduct re-  
18 search, development, demonstration, and commercial ap-  
19 plication of manufacturing techniques that can produce  
20 low-cost, high-quality solar systems.

21 **SEC. 939. BIOENERGY PROGRAMS.**

22 (a) PROGRAM.—The Secretary shall conduct a pro-  
23 gram of research, development, demonstration, and com-  
24 mercial application for cellulosic biomass, including—

- 25 (1) biomass conversion to heat and electricity;

- 1 (2) biomass conversion to liquid fuels;
- 2 (3) biobased products;
- 3 (4) integrated biorefineries that may produce
- 4 heat, electricity, liquid fuels, and biobased products;
- 5 (5) cross-cutting activities on feedstocks and
- 6 enzymes; and
- 7 (6) life-cycle economic analysis.

8 (b) BIOFUELS AND BIOBASED PRODUCTS.—The ob-  
9 jectives of the biofuels and biobased products programs  
10 under paragraphs (2), (3), and (4) of subsection (a), and  
11 of the biorefinery demonstration program under sub-  
12 section (c), shall be to develop, in partnership with indus-  
13 try—

14 (1) advanced biochemical and thermochemical  
15 conversion technologies capable of making high-value  
16 biobased chemical feedstocks and products, to sub-  
17 stitute for petroleum-based feedstocks and products,  
18 biofuels that are price-competitive with gasoline or  
19 diesel in either internal combustion engines or fuel  
20 cell-powered vehicles, and biobased products from a  
21 variety of feedstocks, including grains, cellulosic bio-  
22 mass, and agricultural byproducts; and

23 (2) advanced biotechnology processes capable of  
24 making biofuels and biobased products, with empha-

1       sis on development of biorefinery technologies, in-  
2       cluding enzyme-based processing technologies.

3       (c) BIOMASS INTEGRATED REFINERY DEMONSTRA-  
4       TION.—

5               (1) IN GENERAL.—The Secretary shall conduct  
6       a program to demonstrate the commercial applica-  
7       tion of at least 5 integrated biorefineries. The Sec-  
8       retary shall ensure geographical distribution of bio-  
9       refinery demonstrations under this subsection. The  
10      Secretary shall not provide more than \$100,000,000  
11      under this subsection for any single biorefinery dem-  
12      onstration. The Secretary shall award the biorefinery  
13      demonstrations so as to encourage—

14               (A) the demonstration of a wide variety of  
15      cellulosic biomass feedstocks;

16               (B) the commercial application of biomass  
17      technologies for a variety of uses, including—

18                       (i) liquid transportation fuels;

19                       (ii) high-value biobased chemicals;

20                       (iii) substitutes for petroleum-based  
21      feedstocks and products; and

22                       (iv) energy in the form of electricity  
23      or useful heat; and

24               (C) the demonstration of the collection and  
25      treatment of a variety of biomass feedstocks.

1           (2) PROPOSALS.—Not later than 6 months  
2 after the date of enactment of this Act, the Sec-  
3 retary shall solicit proposals for demonstration of  
4 advanced biorefineries. The Secretary shall select  
5 only proposals that—

6           (A) demonstrate that the project will be  
7 able to operate profitably without direct Federal  
8 subsidy after initial construction costs are paid;  
9 and

10           (B) enable the biorefinery to be easily rep-  
11 licated.

12       (d) UNIVERSITY BIODIESEL PROGRAM.—The Sec-  
13 retary shall establish a demonstraton program to deter-  
14 mine the feasibility of the operation of diesel electric power  
15 generators, using biodiesel fuels, with ratings as high as  
16 B100 at a university electric generation facility. The pro-  
17 gram shall examine—

18           (1) heat rates of diesel fuels with large quan-  
19 tities of cellulosic content;

20           (2) the reliability of operation of various fuel  
21 blends;

22           (3) performance in cold or freezing weather;

23           (4) stability of fuel after extended storage; and

24           (5) other criteria, as determined by the Sec-  
25 retary.

1 (e) GRANTS.—Of the funds authorized to be appro-  
2 priated for activities authorized under this section, not less  
3 than \$5,000,000 for each fiscal year shall be made avail-  
4 able for grants to Historically Black Colleges and Univer-  
5 sities, Tribal Colleges, and Hispanic-Serving Institutions.

6 **SEC. 940. WIND.**

7 (a) PROGRAM.—The Secretary shall conduct a pro-  
8 gram of research, development, demonstration, and com-  
9 mercial application for wind energy, including—

- 10 (1) low speed wind energy;
- 11 (2) offshore wind energy;
- 12 (3) testing and verification; and
- 13 (4) distributed wind energy generation.

14 (b) FACILITY.—The Secretary shall construct and op-  
15 erate a research and testing facility capable of testing the  
16 largest wind turbines that are expected to be manufac-  
17 tured in the next 15 years. The Secretary shall consider  
18 the need for testing offshore turbine designs in siting the  
19 facility. All private users of the facility shall be required  
20 to pay the Department all costs associated with their use  
21 of the facility, including capital costs prorated at normal  
22 business amortization rates.

23 (c) REGIONAL FIELD VERIFICATION PROGRAM.—Of  
24 the funds authorized to be appropriated for activities au-  
25 thorized under this section, not less than \$4,000,000 for

1 each fiscal year shall be made available for the Regional  
2 Field Verification Program of the Department.

3 **SEC. 941. GEOTHERMAL.**

4 The Secretary shall conduct a program of research,  
5 development, demonstration, and commercial application  
6 for geothermal energy. The program shall focus on devel-  
7 oping improved technologies for reducing the costs of geo-  
8 thermal energy installations, including technologies for—

9 (1) improving detection of geothermal re-  
10 sources;

11 (2) decreasing drilling costs;

12 (3) decreasing maintenance costs through im-  
13 proved materials;

14 (4) increasing the potential for other revenue  
15 sources, such as mineral production; and

16 (5) increasing the understanding of reservoir  
17 life cycle and management.

18 **SEC. 942. PHOTOVOLTAIC DEMONSTRATION PROGRAM.**

19 (a) IN GENERAL.—The Secretary shall establish a  
20 program of grants to States to demonstrate advanced pho-  
21 tovoltaic technology.

22 (b) REQUIREMENTS.—(1) To receive funding under  
23 the program under this section, a State must submit a  
24 proposal that demonstrates, to the satisfaction of the Sec-



1 retary, that the State will meet the requirements of sub-  
2 section (f).

3 (2) If a State has received funding under this section  
4 for the preceding year, the State must demonstrate, to the  
5 satisfaction of the Secretary, that it complied with the re-  
6 quirements of subsection (f) in carrying out the program  
7 during that preceding year, and that it will do so in the  
8 future.

9 (3) Except as provided in subsection (c), each State  
10 submitting a qualifying proposal shall receive funding  
11 under the program based on the proportion of United  
12 States population in the State according to the 2000 cen-  
13 sus. In each fiscal year, the portion of funds attributable  
14 under this paragraph to States that have not submitted  
15 qualifying proposals in the time and manner specified by  
16 the Secretary shall be distributed pro rata to the States  
17 that have submitted qualifying proposals in the specified  
18 time and manner.

19 (c) COMPETITION.—If more than \$80,000,000 is  
20 available for the program under this section for any fiscal  
21 year, the Secretary shall allocate 75 percent of the funds  
22 available according to subsection (b), and shall award the  
23 remaining 25 percent on a competitive basis to the States  
24 with the proposals the Secretary considers most likely to

1 encourage the widespread adoption of photovoltaic tech-  
2 nologies.

3 (d) PROPOSALS.—Not later than 6 months after the  
4 date of enactment of this Act, and in each subsequent fis-  
5 cal year for the life of the program, the Secretary shall  
6 solicit proposals from the States to participate in the pro-  
7 gram under this section.

8 (e) COMPETITIVE CRITERIA.—In awarding funds in  
9 a competitive allocation under subsection (c), the Sec-  
10 retary shall consider—

11 (1) the likelihood of a proposal to encourage the  
12 demonstration of, or lower the costs of, advanced  
13 photovoltaic technologies; and

14 (2) the extent to which a proposal is likely to—

15 (A) maximize the amount of photovoltaics  
16 demonstrated;

17 (B) maximize the proportion of non-Fed-  
18 eral cost share; and

19 (C) limit State administrative costs.

20 (f) STATE PROGRAM.—A program operated by a  
21 State with funding under this section shall provide com-  
22 petitive awards for the demonstration of advanced photo-  
23 voltaic technologies. Each State program shall—

24 (1) require a contribution of at least 60 percent  
25 per award from non-Federal sources, which may in-

1 include any combination of State, local, and private  
2 funds, except that at least 10 percent of the funding  
3 must be supplied by the State;

4 (2) limit awards for any single project to a  
5 maximum of \$1,000,000;

6 (3) prohibit any nongovernmental recipient  
7 from receiving more than \$1,000,000 per year;

8 (4) endeavor to fund recipients in the commer-  
9 cial, industrial, institutional, governmental, and resi-  
10 dential sectors;

11 (5) limit State administrative costs to no more  
12 than 10 percent of the grant;

13 (6) report annually to the Department on—

14 (A) the amount of funds disbursed;

15 (B) the amount of photovoltaics purchased;

16 and

17 (C) the results of the monitoring under  
18 paragraph (7);

19 (7) provide for measurement and verification of  
20 the output of a representative sample of the  
21 photovoltaics systems demonstrated throughout the  
22 average working life of the systems, or at least 20  
23 years; and

24 (8) require that applicant buildings must have  
25 received an independent energy efficiency audit dur-

1       ing the 6-month period preceding the filing of the  
2       application.

3       (g) UNEXPENDED FUNDS.—If a State fails to expend  
4 any funds received under subsection (b) or (c) within 3  
5 years of receipt, such remaining funds shall be returned  
6 to the Treasury.

7       (h) REPORTS.—The Secretary shall report to Con-  
8 gress 5 years after funds are first distributed to the States  
9 under this section—

10           (1) the amount of photovoltaics demonstrated;

11           (2) the number of projects undertaken;

12           (3) the administrative costs of the program;

13           (4) the amount of funds that each State has  
14 not received because of a failure to submit a quali-  
15 fying proposal, as described in subsection (b)(3);

16           (5) the results of the monitoring under sub-  
17 section (f)(7); and

18           (6) the total amount of funds distributed, in-  
19 cluding a breakdown by State.

20 **SEC. 943. ADDITIONAL PROGRAMS.**

21       (a) IN GENERAL.—The Secretary may conduct re-  
22 search, development, demonstration, and commercial ap-  
23 plication programs of—

24           (1) ocean energy, including wave energy;

25           (2) kinetic hydro turbines; and

1           (3) the combined use of renewable energy tech-  
2 nologies with one another and with other energy  
3 technologies.

4           (b) MARINE RENEWABLE ENERGY STUDY.—

5           (1) STUDY.—The Secretary shall enter into an  
6 arrangement with the National Academy of Sciences  
7 to conduct a study on—

8           (A) the feasibility of various methods of re-  
9 newable generation of energy from the ocean,  
10 including energy from waves, tides, currents,  
11 and thermal gradients; and

12           (B) the research, development, demonstra-  
13 tion, and commercial application activities re-  
14 quired to make marine renewable energy gen-  
15 eration competitive with other forms of elec-  
16 tricity generation.

17           (2) TRANSMITTAL.—Not later than 1 year after  
18 the date of enactment of this Act, the Secretary  
19 shall transmit the study to Congress along with the  
20 Secretary's recommendations for implementing the  
21 results of the study.

22           (c) RENEWABLE ENERGY IN PUBLIC BUILDINGS.—

23           (1) DEMONSTRATION AND TECHNOLOGY TRANS-  
24 FER PROGRAM.—The Secretary shall establish a pro-  
25 gram for the demonstration of innovative tech-

1 nologies for solar and other renewable energy  
2 sources in buildings owned or operated by a State or  
3 local government, and for the dissemination of infor-  
4 mation resulting from such demonstration to inter-  
5 ested parties.

6 (2) LIMIT ON FEDERAL FUNDING.—The Sec-  
7 retary shall provide under this subsection no more  
8 than 40 percent of the incremental costs of the solar  
9 or other renewable energy source project funded.

10 (3) REQUIREMENT.—As part of the application  
11 for awards under this subsection, the Secretary shall  
12 require all applicants—

13 (A) to demonstrate a continuing commit-  
14 ment to the use of solar and other renewable  
15 energy sources in buildings they own or operate;  
16 and

17 (B) to state how they expect any award to  
18 further their transition to the significant use of  
19 renewable energy.

20 **SEC. 944. ANALYSIS AND EVALUATION.**

21 (a) IN GENERAL.—The Secretary shall conduct anal-  
22 ysis and evaluation in support of the renewable energy  
23 programs under this subtitle. These activities shall be used  
24 to guide budget and program decisions, and shall in-  
25 clude—

1           (1) economic and technical analysis of renew-  
2           able energy potential, including resource assessment;

3           (2) analysis of past program performance, both  
4           in terms of technical advances and in market intro-  
5           duction of renewable energy; and

6           (3) any other analysis or evaluation that the  
7           Secretary considers appropriate.

8           (b) FUNDING.—The Secretary may designate up to  
9           1 percent of the funds appropriated for carrying out this  
10          subtitle for analysis and evaluation activities under this  
11          section.

12       **SEC. 945. AUTHORIZATION OF APPROPRIATIONS.**

13          The following sums are authorized to be appropriated  
14          to the Secretary for the purposes of carrying out this sub-  
15          title:

16               (1) For fiscal year 2006, \$465,000,000, of  
17          which—

18                       (A) \$100,000,000 shall be for carrying out  
19                       the solar program under section 938;

20                       (B) \$200,000,000 shall be for carrying out  
21                       the bioenergy program under section 939, in-  
22                       cluding \$100,000,000 for the biorefinery dem-  
23                       onstration program under section 939(c);

24                       (C) \$55,000,000 shall be for carrying out  
25                       the wind program under section 940, including

1           \$10,000,000 for the facility described in section  
2           940(b);

3           (D) \$30,000,000 shall be for carrying out  
4           the geothermal program under section 941; and

5           (E) \$50,000,000 shall be for carrying out  
6           the photovoltaic demonstration program under  
7           section 942.

8           (2) For fiscal year 2007, \$605,000,000, of  
9           which—

10           (A) \$140,000,000 shall be for carrying out  
11           the solar program under section 938;

12           (B) \$245,000,000 shall be for carrying out  
13           the bioenergy program under section 939, in-  
14           cluding \$125,000,000 for the biorefinery dem-  
15           onstration program under section 939(c);

16           (C) \$60,000,000 shall be for carrying out  
17           the wind program under section 940, including  
18           \$15,000,000 for the facility described in section  
19           940(b);

20           (D) \$30,000,000 shall be for carrying out  
21           the geothermal program under section 941; and

22           (E) \$100,000,000 shall be for carrying out  
23           the photovoltaic demonstration program under  
24           section 942.



1           (3) For fiscal year 2008, \$775,000,000, of  
2       which—

3           (A) \$200,000,000 shall be for carrying out  
4       the solar program under section 938;

5           (B) \$310,000,000 shall be for carrying out  
6       the bioenergy program under section 939, in-  
7       cluding \$150,000,000 for the biorefinery dem-  
8       onstration program under section 939(c);

9           (C) \$65,000,000 shall be for carrying out  
10      the wind program under section 940, including  
11      \$10,000,000 for the facility described in section  
12      940(b);

13          (D) \$30,000,000 shall be for carrying out  
14      the geothermal program under section 941; and

15          (E) \$150,000,000 shall be for carrying out  
16      the photovoltaic demonstration program under  
17      section 942.

18          (4) For fiscal year 2009, \$940,000,000, of  
19      which—

20          (A) \$250,000,000 shall be for carrying out  
21      the solar program under section 938;

22          (B) \$355,000,000 shall be for carrying out  
23      the bioenergy program under section 939, in-  
24      cluding \$175,000,000 for the biorefinery dem-  
25      onstration program under section 939(c);

1           (C) \$65,000,000 shall be for carrying out  
2 the wind program under section 940, including  
3 \$5,000,000 for the facility described in section  
4 940(b);

5           (D) \$30,000,000 shall be for carrying out  
6 the geothermal program under section 941; and

7           (E) \$200,000,000 shall be for carrying out  
8 the photovoltaic demonstration program under  
9 section 942.

10          (5) For fiscal year 2010, \$1,125,000,000, of  
11 which—

12           (A) \$300,000,000 shall be for carrying out  
13 the solar program under section 938;

14           (B) \$400,000,000 shall be for carrying out  
15 the bioenergy program under section 939, in-  
16 cluding \$200,000,000 for the biorefinery dem-  
17 onstration program under section 939(c);

18           (C) \$65,000,000 shall be for carrying out  
19 the wind program under section 940, including  
20 \$1,000,000 for the facility described in section  
21 940(b);

22           (D) \$30,000,000 shall be for carrying out  
23 the geothermal program under section 941; and

1           (E) \$300,000,000 shall be for carrying out  
2           the photovoltaic demonstration program under  
3           section 942.

## 4           **Subtitle E—Nuclear Energy** 5           **Programs**

### 6   **SEC. 946. DEFINITION.**

7           In this subtitle, the term “junior faculty” means a  
8   faculty member who was awarded a doctorate less than  
9   10 years before receipt of an award from the grant pro-  
10   gram described in section 949(b)(2).

### 11   **SEC. 947. PROGRAMS.**

12           (a) IN GENERAL.—The Secretary shall conduct pro-  
13   grams of civilian nuclear energy research, development,  
14   demonstration, and commercial application, including ac-  
15   tivities described in this subtitle. Programs under this sub-  
16   title shall be focused on—

17           (1) enhancing nuclear power’s viability as part  
18           of the United States energy portfolio;

19           (2) providing the technical means to reduce the  
20           likelihood of nuclear proliferation;

21           (3) maintaining a cadre of nuclear scientists  
22           and engineers;

23           (4) maintaining National Laboratory and uni-  
24           versity nuclear programs, including their infrastruc-  
25           ture;

1           (5) supporting both individual researchers and  
2 multidisciplinary teams of researchers to pioneer  
3 new approaches in nuclear energy, science, and tech-  
4 nology;

5           (6) developing, planning, constructing, acquir-  
6 ing, and operating special equipment and facilities  
7 for the use of researchers;

8           (7) supporting technology transfer and other  
9 appropriate activities to assist the nuclear energy in-  
10 dustry, and other users of nuclear science and engi-  
11 neering, including activities addressing reliability,  
12 availability, productivity, component aging, safety,  
13 and security of nuclear power plants; and

14           (8) reducing the environmental impact of nu-  
15 clear energy-related activities.

16 (b) GOALS.—

17           (1) INITIAL GOALS.—In accordance with the  
18 performance plan and report requirements in section  
19 4 of the Government Performance Results Act of  
20 1993, the Secretary shall transmit to the Congress,  
21 along with the President’s annual budget request for  
22 fiscal year 2007, a report containing outcome meas-  
23 ures with explicitly stated cost and performance  
24 baselines. The measures shall specify performance  
25 goals, with quantifiable 5-year cost improvement and

1 reliability, availability, productivity, and component  
2 aging target levels for a wide range of nuclear en-  
3 ergy technologies, and any other such goals the Sec-  
4 retary considers appropriate.

5 (2) SUBSEQUENT TRANSMITTALS.—The Sec-  
6 retary shall transmit to the Congress, along with the  
7 President’s annual budget request for each fiscal  
8 year after 2007, a report containing—

9 (A) a description, including quantitative  
10 analysis, of progress in achieving performance  
11 goals transmitted under paragraph (1), as com-  
12 pared to the baselines transmitted under para-  
13 graph (1); and

14 (B) any amendments to such goals.

15 (c) PUBLIC INPUT.—The Secretary shall consider ad-  
16 vice from industry, universities, and other interested par-  
17 ties through seeking comments in the Federal Register  
18 and other means before transmitting each report under  
19 subsection (b).

## 20 **CHAPTER 1—NUCLEAR ENERGY**

### 21 **RESEARCH PROGRAMS**

#### 22 **SEC. 948. ADVANCED FUEL RECYCLING PROGRAM.**

23 (a) IN GENERAL.—The Secretary shall conduct an  
24 advanced fuel recycling technology research, development,  
25 demonstration, and commercial application program to

1 evaluate fuel recycling or transmutation technologies  
2 which are proliferation-resistant and minimize environ-  
3 mental and public health and safety impacts, as an alter-  
4 native to aqueous reprocessing technologies deployed as of  
5 the date of enactment of this Act, in support of evaluation  
6 of alternative national strategies for spent nuclear fuel and  
7 advanced reactor concepts. The program shall be subject  
8 to annual review by the Secretary's Nuclear Energy Re-  
9 search Advisory Committee or other independent entity,  
10 as appropriate.

11 (b) INTERNATIONAL COOPERATION.—The Secretary  
12 shall seek opportunities to engage international partners  
13 with expertise in advanced fuel recycling technologies  
14 where such partnerships may help achieve program goals.

15 **SEC. 949. UNIVERSITY NUCLEAR SCIENCE AND ENGINEER-**  
16 **ING SUPPORT.**

17 (a) IN GENERAL.—The Secretary shall conduct a  
18 program to invest in human resources and infrastructure  
19 in the nuclear sciences and related fields, including health  
20 physics, nuclear engineering, and radiochemistry, con-  
21 sistent with Departmental missions related to civilian nu-  
22 clear research, development, demonstration, and commer-  
23 cial application.

24 (b) REQUIREMENTS.—In carrying out the program  
25 under this section, the Secretary shall—

1           (1) conduct a graduate and undergraduate fel-  
2           lowship program to attract new and talented stu-  
3           dents, which may include fellowships for students to  
4           spend time at National Laboratories in the areas of  
5           nuclear science, engineering, and health physics with  
6           a member of the National Laboratory staff acting as  
7           a mentor;

8           (2) conduct a junior faculty research initiation  
9           grant program to assist universities in recruiting  
10          and retaining new faculty in the nuclear sciences  
11          and engineering by awarding grants to junior faculty  
12          for research on issues related to nuclear energy engi-  
13          neering and science;

14          (3) support fundamental nuclear sciences, engi-  
15          neering, and health physics research through a nu-  
16          clear engineering education and research program;

17          (4) encourage collaborative nuclear research  
18          among industry, National Laboratories, and univer-  
19          sities; and

20          (5) support communication and outreach re-  
21          lated to nuclear science, engineering, and health  
22          physics.

23          (c) STRENGTHENING UNIVERSITY RESEARCH AND  
24          TRAINING REACTORS AND ASSOCIATED INFRASTRUC-

1 TURE.—In carrying out the program under this section,  
2 the Secretary may support—

3 (1) converting research reactors from high-en-  
4 richment fuels to low-enrichment fuels and upgrad-  
5 ing operational instrumentation;

6 (2) consortia of universities to broaden access  
7 to university research reactors;

8 (3) student training programs, in collaboration  
9 with the United States nuclear industry, in reli-  
10 censing and upgrading reactors, including through  
11 the provision of technical assistance; and

12 (4) reactor improvements as part of a focused  
13 effort that emphasizes research, training, and edu-  
14 cation, including through the Innovations in Nuclear  
15 Infrastructure and Education Program or any simi-  
16 lar program.

17 (d) OPERATIONS AND MAINTENANCE.—Funding for  
18 a project provided under this section may be used for a  
19 portion of the operating and maintenance costs of a re-  
20 search reactor at a university used in the project.

21 **SEC. 950. UNIVERSITY-NATIONAL LABORATORY INTER-**  
22 **ACTIONS.**

23 The Secretary shall conduct—

24 (1) a fellowship program for professors at uni-  
25 versities to spend sabbaticals at National Labora-



1       tories in the areas of nuclear science and technology;  
2       and

3               (2) a visiting scientist program in which Na-  
4       tional Laboratory staff can spend time in academic  
5       nuclear science and engineering departments.

6       **SEC. 951. NUCLEAR POWER 2010 PROGRAM.**

7       The Secretary shall carry out a Nuclear Power 2010  
8       Program, consistent with recommendations in the October  
9       2001 report entitled “A Roadmap to Deploy New Nuclear  
10      Power Plants in the United States by 2010” issued by  
11      the Nuclear Energy Research Advisory Committee of the  
12      Department. The Program shall include—

13              (1) the expertise and capabilities of industry,  
14      universities, and National Laboratories in evaluation  
15      of advanced nuclear fuel cycles and fuels testing;

16              (2) a variety of reactor designs suitable for both  
17      developed and developing nations;

18              (3) participation of international collaborators  
19      in research, development, and design efforts as ap-  
20      propriate; and

21              (4) university and industry participation.

22      **SEC. 952. GENERATION IV NUCLEAR ENERGY SYSTEMS INI-**  
23                              **TIATIVE.**

24      The Secretary shall carry out a Generation IV Nu-  
25      clear Energy Systems Initiative to develop an overall tech-

1 nology plan and to support research, development, dem-  
2 onstration, and commercial application necessary to make  
3 an informed technical decision about the most promising  
4 candidates for the eventual commercial application of ad-  
5 vanced fission reactor technology for the generation of  
6 electricity. The Initiative shall examine advanced prolifera-  
7 tion-resistant and passively safe reactor designs, including  
8 designs that—

9           (1) are economically competitive with other elec-  
10        tric power generation plants;

11           (2) have higher efficiency, lower cost, and im-  
12        proved safety compared to reactors in operation on  
13        the date of enactment of this Act;

14           (3) use fuels that are proliferation-resistant and  
15        have substantially reduced production of high-level  
16        waste per unit of output; and

17           (4) use improved instrumentation.

18 **SEC. 953. CIVILIAN INFRASTRUCTURE AND FACILITIES.**

19        The Secretary shall operate and maintain infrastruc-  
20        ture and facilities to support the nuclear energy research,  
21        development, demonstration, and commercial application  
22        programs, including radiological facilities management,  
23        isotope production, and facilities management.

1 **SEC. 954. NUCLEAR ENERGY RESEARCH AND DEVELOP-**  
2 **MENT INFRASTRUCTURE PLAN.**

3 In carrying out section 919, the Secretary shall—

4 (1) develop an inventory of nuclear science and  
5 engineering facilities, equipment, expertise, and  
6 other assets at all of the National Laboratories;

7 (2) develop a prioritized list of nuclear science  
8 and engineering plant and equipment improvements  
9 needed at each of the National Laboratories;

10 (3) consider the available facilities and expertise  
11 at all National Laboratories and emphasize invest-  
12 ments which complement rather than duplicate capa-  
13 bilities; and

14 (4) develop a timeline and a proposed budget  
15 for the completion of deferred maintenance on plant  
16 and equipment,

17 with the goal of ensuring that Department programs  
18 under this subtitle will be generally recognized to be  
19 among the best in the world.

20 **SEC. 955. IDAHO NATIONAL LABORATORY FACILITIES**  
21 **PLAN.**

22 (a) PLAN.—The Secretary shall develop a comprehen-  
23 sive plan for the facilities at the Idaho National Labora-  
24 tory, especially taking into account the resources available  
25 at other National Laboratories. In developing the plan, the  
26 Secretary shall—

1           (1) evaluate the facilities planning processes  
2 utilized by other physical science and engineering re-  
3 search and development institutions, both in the  
4 United States and abroad, that are generally recog-  
5 nized as being among the best in the world, and con-  
6 sider how those processes might be adapted toward  
7 developing such facilities plan;

8           (2) avoid duplicating, moving, or transferring  
9 nuclear science and engineering facilities, equipment,  
10 expertise, and other assets that currently exist at  
11 other National Laboratories;

12           (3) consider the establishment of a national  
13 transuranic analytic chemistry laboratory as a user  
14 facility at the Idaho National Laboratory;

15           (4) include a plan to develop, if feasible, the  
16 Advanced Test Reactor and Test Reactor Area into  
17 a user facility that is more readily accessible to aca-  
18 demic and industrial researchers;

19           (5) consider the establishment of a fast neutron  
20 source as a user facility;

21           (6) consider the establishment of new “hot  
22 cells” and the configuration of “hot cells” most like-  
23 ly to advance research, development, demonstration,  
24 and commercial application in nuclear science and  
25 engineering, especially in the context of the condition

1 and availability of these facilities elsewhere in the  
2 National Laboratories; and

3 (7) include a timeline and a proposed budget  
4 for the completion of deferred maintenance on plant  
5 and equipment.

6 (b) TRANSMITTAL TO CONGRESS.—Not later than  
7 one year after the date of enactment of this Act, the Sec-  
8 retary shall transmit such plan to Congress.

9 **SEC. 956. AUTHORIZATION OF APPROPRIATIONS.**

10 (a) PROGRAM AUTHORIZATION.—The following sums  
11 are authorized to be appropriated to the Secretary for the  
12 purposes of carrying out this chapter:

13 (1) \$407,000,000 for fiscal year 2006.

14 (2) \$427,000,000 for fiscal year 2007.

15 (3) \$449,000,000 for fiscal year 2008.

16 (4) \$471,000,000 for fiscal year 2009.

17 (5) \$495,000,000 for fiscal year 2010.

18 (b) UNIVERSITY SUPPORT.—Of the funds authorized  
19 under subsection (a), the following sums are authorized  
20 to be appropriated to carry out section 949:

21 (1) \$35,200,000 for fiscal year 2006.

22 (2) \$44,350,000 for fiscal year 2007.

23 (3) \$49,200,000 for fiscal year 2008.

24 (4) \$55,000,000 for fiscal year 2009.

25 (5) \$60,000,000 for fiscal year 2010.

1           **CHAPTER 2—NEXT GENERATION**  
2           **NUCLEAR PLANT PROGRAM**

3 **SEC. 957. DEFINITIONS.**

4           For purposes of this chapter:

5           (1) **CONSTRUCTION.**—The term “construction”  
6           means the physical construction of the demonstra-  
7           tion plant, and the physical construction, purchase,  
8           or manufacture of equipment or components that  
9           are specifically designed for the demonstration plant,  
10          but does not mean the design of the facility, equip-  
11          ment, or components.

12          (2) **DEMONSTRATION PLANT.**—The term “dem-  
13          onstration plant” means an advanced fission reactor  
14          power plant constructed and operated in accordance  
15          with this chapter.

16          (3) **OPERATION.**—The term “operation” means  
17          the operation of the demonstration plant, including  
18          general maintenance and provision of power, heating  
19          and cooling, and other building services that are spe-  
20          cifically for the demonstration plant, but does not  
21          mean operations that support other activities co-  
22          located with the demonstration plant.

23 **SEC. 958. NEXT GENERATION NUCLEAR POWER PLANT.**

24          (a) **IN GENERAL.**—The Secretary shall conduct a  
25          program of research, development, demonstration, and

1 commercial application of advanced nuclear fission reactor  
2 technology. The objective of this program shall be to dem-  
3 onstrate the technical and economic feasibility of an ad-  
4 vanced nuclear fission reactor power plant design for the  
5 commercial production of electricity.

6 (b) RESEARCH AND DEVELOPMENT.—The program  
7 shall include research, development, design, planning, and  
8 all other necessary activities to support the construction  
9 and operation of the demonstration plant.

10 (c) SUBSYSTEM DEMONSTRATIONS.—The Secretary  
11 shall support demonstration of enabling technologies and  
12 subsystems and other research, development, demonstra-  
13 tion, and commercial application activities necessary to  
14 support the activities in this chapter.

15 (d) CONSTRUCTION AND OPERATION.—The program  
16 shall culminate in the construction and operation of the  
17 demonstration plant based on a design selected by the Sec-  
18 retary in accordance with procedures described in the plan  
19 required by section 960(c). The demonstration plant shall  
20 be located and constructed within the United States and  
21 shall be operational, and capable of demonstrating the  
22 commercial production of electricity, by December 31,  
23 2015.

24 (e) LIMITATION.—No funds shall be expended for the  
25 construction or operation of the demonstration plant until

1 90 days have elapsed after the transmission of the plan  
2 described in section 960(c).

3 **SEC. 959. ADVISORY COMMITTEE.**

4 The Secretary shall appoint a Next Generation Nu-  
5 clear Power Plant Subcommittee of the Nuclear Energy  
6 Research Advisory Council to provide advice to the Sec-  
7 retary on technical matters and program management for  
8 the duration of the program and construction project  
9 under this chapter.

10 **SEC. 960. PROGRAM REQUIREMENTS.**

11 (a) PARTNERSHIPS.—In carrying out the program  
12 under this chapter, the Secretary shall make use of part-  
13 nerships with industry for the research, development, de-  
14 sign, construction, and operation of the demonstration  
15 plant. In establishing such partnerships, the Secretary  
16 shall give preference to companies for which the principal  
17 base of operations is located in the United States.

18 (b) INTERNATIONAL COLLABORATION.—(1) The Sec-  
19 retary shall seek international cooperation, participation,  
20 and financial contribution in this program, including as-  
21 sistance from specialists or facilities from member coun-  
22 tries of the Generation IV International Forum, the Rus-  
23 sian Federation, or other international partners where  
24 such specialists or facilities provide access to cost-effective  
25 and relevant skills or test capabilities.



1           (2) International activities shall be carried out in con-  
2 sultation with the Generation IV International Forum.

3           (3) The program may include demonstration of se-  
4 lected program objectives in a partner nation.

5           (c) PROGRAM PLAN.—Not later than one year after  
6 the date of enactment of this Act, the Secretary shall  
7 transmit to Congress a comprehensive program plan. The  
8 program plan shall—

9                   (1) describe the plan for development, selection,  
10 management, ownership, operation, and decommis-  
11 sioning of the demonstration plant;

12                   (2) identify program milestones and a timeline  
13 for achieving these milestones;

14                   (3) provide for development of risk-based cri-  
15 teria for any future commercial development of a re-  
16 actor architecture based on that of the demonstra-  
17 tion plant;

18                   (4) include a projected budget required to meet  
19 the milestones; and

20                   (5) include an explanation of any major pro-  
21 gram decisions that deviate from program advice  
22 given to the Secretary by the advisory committee es-  
23 tablished under section 959.

1 **SEC. 961. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) RESEARCH, DEVELOPMENT, AND DESIGN PRO-  
3 GRAMS.—The following sums are authorized to be appro-  
4 priated to the Secretary for the purposes of carrying out  
5 this chapter except for the demonstration plant activities  
6 described in subsection (b):

7 (1) For fiscal year 2006, \$150,000,000.

8 (2) For fiscal year 2007, \$150,000,000.

9 (3) For fiscal year 2008, \$150,000,000.

10 (4) For fiscal year 2009, \$150,000,000.

11 (5) For fiscal year 2010, \$150,000,000.

12 (b) REACTOR CONSTRUCTION.—There are authorized  
13 to be appropriated to the Secretary such sums as may be  
14 necessary for operation and construction of the dem-  
15 onstration plant under this chapter. The Secretary shall  
16 not spend more than \$500,000,000 for demonstration  
17 plant reactor construction activities under this chapter.

18 **Subtitle F—Fossil Energy**

19 **CHAPTER 1—RESEARCH PROGRAMS**

20 **SEC. 962. ENHANCED FOSSIL ENERGY RESEARCH AND DE-**  
21 **VELOPMENT PROGRAMS.**

22 (a) IN GENERAL.—The Secretary shall, in conjunc-  
23 tion with industry, conduct fossil energy research, develop-  
24 ment, demonstration, and commercial applications pro-  
25 grams, including activities under this chapter, with the  
26 goal of improving the efficiency, effectiveness, and envi-

1 ronmental performance of fossil energy production, up-  
2 grading, conversion, and consumption. Such programs  
3 shall be focused on—

4           (1) increasing the conversion efficiency of all  
5 forms of fossil energy through improved tech-  
6 nologies;

7           (2) decreasing the cost of all fossil energy pro-  
8 duction, generation, and delivery;

9           (3) promoting diversity of energy supply;

10           (4) decreasing the Nation’s dependence on for-  
11 eign energy supplies;

12           (5) improving United States energy security;

13           (6) decreasing the environmental impact of en-  
14 ergy-related activities; and

15           (7) increasing the export of fossil energy-related  
16 equipment, technology, and services from the United  
17 States.

18           (b) GOALS.—

19           (1) INITIAL GOALS.—In accordance with the  
20 performance plan and report requirements in section  
21 4 of the Government Performance Results Act of  
22 1993, the Secretary shall transmit to the Congress,  
23 along with the President’s annual budget request for  
24 fiscal year 2007, a report containing outcome meas-  
25 ures with explicitly stated cost and performance

1 baselines. The measures shall specify production or  
2 efficiency performance goals, with quantifiable 5-  
3 year cost and energy savings target levels, for fossil  
4 energy, and any other such goals the Secretary con-  
5 siders appropriate.

6 (2) SUBSEQUENT TRANSMITTALS.—The Sec-  
7 retary shall transmit to the Congress, along with the  
8 President’s annual budget request for each fiscal  
9 year after 2007, a report containing—

10 (A) a description, including quantitative  
11 analysis, of progress in achieving performance  
12 goals transmitted under paragraph (1), as com-  
13 pared to the baselines transmitted under para-  
14 graph (1); and

15 (B) any amendments to such goals.

16 (c) COVERED ACTIVITIES.—The Secretary shall en-  
17 sure that the goals stated in subsection (b) are illustrative  
18 of the outcomes necessary to promote acceptance of the  
19 programs’ efforts in the marketplace, but at a minimum  
20 shall encompass the following areas:

21 (1) Coal gasifiers.

22 (2) Turbine generators, including both natural  
23 gas and syngas fueled.

1           (3) Oxygen separation devices, hydrogen separation devices, and carbon dioxide separation technologies.

4           (4) Coal gas and post-combustion emission cleanup and disposal equipment, including carbon dioxide capture and disposal equipment.

7           (5) Average per-foot drilling costs for oil and gas, segregated by appropriate drilling regimes, including onshore versus offshore and depth categories.

11          (6) Production of liquid fuels from nontraditional feedstocks, including syngas, biomass, methane, and combinations thereof.

14          (7) Environmental discharge per barrel of oil or oil-equivalent production, including reinjected waste.

16          (8) Surface disturbance on both a per-well and per-barrel of oil or oil-equivalent production basis.

18          (d) PUBLIC INPUT.—The Secretary shall consider advice from industry, universities, and other interested parties through seeking comments in the Federal Register and other means before transmitting each report under subsection (b).

23 **SEC. 963. FOSSIL RESEARCH AND DEVELOPMENT.**

24          (a) OBJECTIVES.—The Secretary shall conduct a program of fossil research, development, demonstration, and

1 commercial application, whose objective shall be to reduce  
2 emissions from fossil fuel use by developing technologies,  
3 including precombustion technologies, by 2015 with the  
4 capability of—

5 (1) dramatically increasing electricity gener-  
6 ating efficiencies of coal and natural gas;

7 (2) improving combined heat and power ther-  
8 mal efficiencies;

9 (3) improving fuels utilization efficiency of pro-  
10 duction of liquid transportation fuels from coal;

11 (4) achieving near-zero emissions of mercury  
12 and of emissions that form fine particles, smog, and  
13 acid rain;

14 (5) reducing carbon dioxide emissions by at  
15 least 40 percent through efficiency improvements  
16 and by 100 percent with sequestration; and

17 (6) improved reliability, efficiency, reductions of  
18 air pollutant emissions, and reductions in solid waste  
19 disposal requirements.

20 (b) COAL-BASED PROJECTS.—The coal-based  
21 projects authorized under this section shall be consistent  
22 with the objective stated in subsection (a). The program  
23 shall emphasize carbon capture and sequestration tech-  
24 nologies and gasification technologies, including gasifi-  
25 cation combined cycle, gasification fuel cells, gasification

1 coproduction, hybrid gasification/combustion, or other  
2 technologies with the potential to address the capabilities  
3 described in paragraphs (4) and (5) of subsection (a).

4 **SEC. 964. OIL AND GAS RESEARCH AND DEVELOPMENT.**

5       The Secretary shall conduct a program of oil and gas  
6 research, development, demonstration, and commercial ap-  
7 plication, whose objective shall be to advance the science  
8 and technology available to domestic petroleum producers,  
9 particularly independent operators, to minimize the eco-  
10 nomic dislocation caused by the decline of domestic sup-  
11 plies of oil and natural gas resources by focusing research  
12 on—

13           (1) assisting small domestic producers of oil  
14       and gas to develop new and improved technologies to  
15       discover and extract additional supplies;

16           (2) developing technologies to extract methane  
17       hydrates in an environmentally sound manner;

18           (3) improving the ability of the domestic indus-  
19       try to extract hydrocarbons from known reservoirs  
20       and classes of reservoirs; and

21           (4) reducing the cost, and improving the effi-  
22       ciency and environmental performance, of oil and  
23       gas exploration and extraction activities, focusing es-  
24       pecially on unconventional sources such as tar sands,  
25       heavy oil, and shale oil.

1 **SEC. 965. TRANSPORTATION FUELS.**

2 The Secretary shall conduct a program of transpor-  
3 tation fuels research, development, demonstration, and  
4 commercial application, whose objective shall be to in-  
5 crease the price elasticity of oil supply and demand by fo-  
6 cusing research on—

7 (1) reducing the cost of producing transpor-  
8 tation fuels from coal and natural gas; and

9 (2) indirect liquefaction of coal and biomass.

10 **SEC. 966. FUEL CELLS.**

11 (a) PROGRAM.—The Secretary shall conduct a pro-  
12 gram of research, development, demonstration, and com-  
13 mercial application of fuel cells for low-cost, high-effi-  
14 ciency, fuel-flexible, modular power systems.

15 (b) DEMONSTRATION.—The program under this sec-  
16 tion shall include demonstration of fuel cell proton ex-  
17 change membrane technology for commercial, residential,  
18 and transportation applications, and distributed genera-  
19 tion systems, utilizing improved manufacturing production  
20 and processes.

21 **SEC. 967. CARBON DIOXIDE CAPTURE RESEARCH AND DE-**  
22 **VELOPMENT.**

23 (a) PROGRAM.—The Secretary of Energy shall sup-  
24 port a 10-year program of research and development  
25 aimed at developing carbon dioxide capture technologies



1 for pulverized coal combustion units. The program shall  
2 focus on—

3 (1) developing add-on carbon dioxide capture  
4 technologies, such as adsorption and absorption  
5 techniques and chemical processes, to remove carbon  
6 dioxide from flue gas, producing concentrated  
7 streams of carbon dioxide potentially amenable to se-  
8 questration;

9 (2) combustion technologies that would directly  
10 produce concentrated streams of carbon dioxide po-  
11 tentially amenable to sequestration; and

12 (3) increasing the efficiency of the overall com-  
13 bustion system in order to reduce the amount of car-  
14 bon dioxide emissions released from the system per  
15 megawatt generated.

16 (b) CARBON SEQUESTRATION.—In conjunction with  
17 the program under subsection (a), the Secretary shall con-  
18 tinue pursuing a robust carbon sequestration program  
19 with the private sector, through regional carbon sequestra-  
20 tion partnerships.

21 **SEC. 968. AUTHORIZATION OF APPROPRIATIONS.**

22 (a) IN GENERAL.—The following sums are author-  
23 ized to be appropriated to the Secretary for the purposes  
24 of carrying out this chapter:

25 (1) For fiscal year 2006, \$583,000,000.

1 (2) For fiscal year 2007, \$611,000,000.

2 (3) For fiscal year 2008, \$626,000,000.

3 (4) For fiscal year 2009, \$641,000,000.

4 (5) For fiscal year 2010, \$657,000,000.

5 (b) ALLOCATION.—From amounts authorized under  
6 subsection (a), there are authorized to be appropriated for  
7 carrying out the program under section 967—

8 (1) \$20,000,000 for fiscal year 2006;

9 (2) \$25,000,000 for fiscal year 2007;

10 (3) \$30,000,000 for fiscal year 2008;

11 (4) \$35,000,000 for fiscal year 2009; and

12 (5) \$40,000,000 for fiscal year 2010.

13 **CHAPTER 2—ULTRA-DEEPWATER AND UN-**  
14 **CONVENTIONAL NATURAL GAS AND**  
15 **OTHER PETROLEUM RESOURCES**

16 **SEC. 969. PROGRAM AUTHORITY.**

17 (a) IN GENERAL.—The Secretary shall carry out a  
18 program under this chapter of research, development,  
19 demonstration, and commercial application of technologies  
20 for ultra-deepwater and unconventional natural gas and  
21 other petroleum resource exploration and production, in-  
22 cluding addressing the technology challenges for small  
23 producers, safe operations, and environmental mitigation  
24 (including reduction of greenhouse gas emissions and se-  
25 questration of carbon).

1           (b) PROGRAM ELEMENTS.—The program under this  
2 chapter shall address the following areas, including im-  
3 proving safety and minimizing environmental impacts of  
4 activities within each area:

5           (1) Ultra-deepwater architecture and tech-  
6 nology, including drilling to formations in the Outer  
7 Continental Shelf to depths greater than 15,000  
8 feet.

9           (2) Unconventional natural gas and other petro-  
10 leum resource exploration and production tech-  
11 nology.

12           (3) The technology challenges of small pro-  
13 ducers.

14           (4) Complementary research performed by the  
15 National Energy Technology Laboratory for the  
16 United States Department of Energy.

17           (c) LIMITATION ON LOCATION OF FIELD ACTIVI-  
18 TIES.—Field activities under the program under this  
19 chapter shall be carried out only—

20           (1) in—

21           (A) areas in the territorial waters of the  
22 United States not under any Outer Continental  
23 Shelf moratorium as of September 30, 2002;

24           (B) areas onshore in the United States on  
25 public land administered by the Secretary of the

1 Interior available for oil and gas leasing, where  
2 consistent with applicable law and land use  
3 plans; and

4 (C) areas onshore in the United States on  
5 State or private land, subject to applicable law;  
6 and

7 (2) with the approval of the appropriate Fed-  
8 eral or State land management agency or private  
9 land owner.

10 (d) ACTIVITIES AT THE NATIONAL ENERGY TECH-  
11 NOLOGY LABORATORY.—The Secretary, through the Na-  
12 tional Energy Technology Laboratory, shall carry out a  
13 program of research and other activities complementary  
14 to and supportive of the research programs under sub-  
15 section (b).

16 (e) CONSULTATION WITH SECRETARY OF THE INTE-  
17 RIOR.—In carrying out this part, the Secretary shall con-  
18 sult regularly with the Secretary of the Interior.

19 **SEC. 970. ULTRA-DEEPWATER AND UNCONVENTIONAL ON-**  
20 **SHORE NATURAL GAS AND OTHER PETRO-**  
21 **LEUM RESEARCH AND DEVELOPMENT PRO-**  
22 **GRAM.**

23 (a) IN GENERAL.—The Secretary shall carry out the  
24 activities under section 969, to maximize the value of nat-  
25 ural gas and other petroleum resources of the United

1 States, by increasing the supply of such resources, through  
2 reducing the cost and increasing the efficiency of explo-  
3 ration for and production of such resources, while improv-  
4 ing safety and minimizing environmental impacts.

5 (b) ROLE OF THE SECRETARY.—The Secretary shall  
6 have ultimate responsibility for, and oversight of, all as-  
7 pects of the program under this section.

8 (c) ROLE OF THE PROGRAM CONSORTIUM.—

9 (1) IN GENERAL.—The Secretary shall contract  
10 with a consortium to—

11 (A) manage awards pursuant to subsection  
12 (f)(3);

13 (B) issue project solicitations upon ap-  
14 proval of the Secretary;

15 (C) make project awards upon approval of  
16 the Secretary;

17 (D) disburse funds awarded under sub-  
18 section (f) as directed by the Secretary in ac-  
19 cordance with the annual plan under subsection  
20 (e); and

21 (E) carry out other activities assigned to  
22 the program consortium by this section.

23 (2) LIMITATION.—The Secretary may not as-  
24 sign any activities to the program consortium except  
25 as specifically authorized under this section.

1 (3) CONFLICT OF INTEREST.—

2 (A) PROCEDURES.—The Secretary shall  
3 establish procedures—

4 (i) to ensure that each board member,  
5 officer, or employee of the program consor-  
6 tium who is in a decisionmaking capacity  
7 under subsection (f)(3) shall disclose to the  
8 Secretary any financial interests in, or fi-  
9 nancial relationships with, applicants for or  
10 recipients of awards under this section, in-  
11 cluding those of his or her spouse or minor  
12 child, unless such relationships or interests  
13 would be considered to be remote or incon-  
14 sequential; and

15 (ii) to require any board member, offi-  
16 cer, or employee with a financial relation-  
17 ship or interest disclosed under clause (i)  
18 to recuse himself or herself from any over-  
19 sight under subsection (f)(4) with respect  
20 to 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 1986  
15 on the date of enactment of this Act.

16 (4) SCHEDULE.—Not later than 90 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 180 days after the date of  
21 enactment of this Act. The Secretary shall select the  
22 program consortium not later than 270 days 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) ELIGIBILITY.—To be eligible to be selected  
12          as the program consortium, an applicant must be an  
13          entity whose members have collectively demonstrated  
14          capabilities and experience in planning and man-  
15          aging research, development, demonstration, and  
16          commercial application programs for ultra-deepwater  
17          and unconventional natural gas or other petroleum  
18          exploration or production.

19          (7) FOCUS AREAS FOR AWARDS.—

20                   (A) ULTRA-DEEPWATER RESOURCES.—

21          Awards from allocations under section  
22          976(d)(1) shall focus on the development and  
23          demonstration of individual exploration and  
24          production technologies as well as integrated



1 systems technologies including new architec-  
2 tures for production in ultra-deepwater.

3 (B) UNCONVENTIONAL RESOURCES.—

4 Awards from allocations under section  
5 976(d)(2) shall focus on areas including ad-  
6 vanced coalbed methane, deep drilling, natural  
7 gas production from tight sands, natural gas  
8 production from gas shales, stranded gas, inno-  
9 vative exploration and production techniques,  
10 enhanced recovery techniques, and environ-  
11 mental mitigation of unconventional natural gas  
12 and other petroleum resources exploration and  
13 production.

14 (C) SMALL PRODUCERS.—Awards from al-  
15 locations under section 976(d)(3) shall be made  
16 to consortia consisting of small producers or or-  
17 ganized primarily for the benefit of small pro-  
18 ducers, and shall focus on areas including com-  
19 plex geology involving rapid changes in the type  
20 and quality of the oil and gas reservoirs across  
21 the reservoir; low reservoir pressure; unconven-  
22 tional natural gas reservoirs in coalbeds, deep  
23 reservoirs, tight sands, or shales; and unconven-  
24 tional oil reservoirs in tar sands and oil shales.

1           (8) CRITERION.—The Secretary shall consider  
2           the amount of the fee an applicant proposes to re-  
3           ceive under subsection (g) in selecting a consortium  
4           under this section.

5           (e) ANNUAL PLAN.—

6           (1) IN GENERAL.—The program under this sec-  
7           tion shall be carried out pursuant to an annual plan  
8           prepared by the Secretary in accordance with para-  
9           graph (2).

10          (2) DEVELOPMENT.—

11           (A) SOLICITATION OF RECOMMENDA-  
12           TIONS.—Before drafting an annual plan under  
13           this subsection, the Secretary shall solicit spe-  
14           cific written recommendations from the pro-  
15           gram consortium for each element to be ad-  
16           dressed in the plan, including those described in  
17           paragraph (4). The program consortium shall  
18           submit its recommendations in the form of a  
19           draft annual plan.

20           (B) SUBMISSION OF RECOMMENDATIONS;  
21           OTHER COMMENT.—The Secretary shall submit  
22           the recommendations of the program consor-  
23           tium under subparagraph (A) to the Ultra-  
24           Deepwater Advisory Committee established  
25           under section 972(a) and to the Unconventional

1 Resources Technology Advisory Committee es-  
2 tablished under section 972(b), and such Advi-  
3 sory Committees shall provide to the Secretary  
4 written comments by a date determined by the  
5 Secretary. The Secretary may also solicit com-  
6 ments from any other experts.

7 (C) CONSULTATION.—The Secretary shall  
8 consult regularly with the program consortium  
9 throughout the preparation of the annual plan.

10 (3) PUBLICATION.—The Secretary shall trans-  
11 mit to Congress and publish in the Federal Register  
12 the annual plan, along with any written comments  
13 received under paragraph (2)(A) and (B).

14 (4) CONTENTS.—The annual plan shall describe  
15 the ongoing and prospective activities of the pro-  
16 gram under this section and shall include—

17 (A) a list of any solicitations for awards to  
18 carry out research, development, demonstration,  
19 or commercial application activities, including  
20 the topics for such work, who would be eligible  
21 to apply, selection criteria, and the duration of  
22 awards; and

23 (B) a description of the activities expected  
24 of the program consortium to carry out sub-  
25 section (f)(3).

1           (5) ESTIMATES OF INCREASED ROYALTY RE-  
2           CEIPTS.—The Secretary, in consultation with the  
3           Secretary of the Interior, shall provide an annual re-  
4           port to Congress with the President’s budget on the  
5           estimated cumulative increase in Federal royalty re-  
6           ceipts (if any) resulting from the implementation of  
7           this part. The initial report under this paragraph  
8           shall be submitted in the first President’s budget fol-  
9           lowing the completion of the first annual plan re-  
10          quired under this subsection.

11          (f) AWARDS.—

12           (1) IN GENERAL.—Upon approval of the Sec-  
13          retary the program consortium shall make awards to  
14          carry out research, development, demonstration, and  
15          commercial application activities under the program  
16          under this section. The program consortium shall  
17          not be eligible to receive such awards, but members  
18          of the program consortium may receive such awards.

19           (2) PROPOSALS.—Upon approval of the Sec-  
20          retary the program consortium shall solicit proposals  
21          for awards under this subsection in such manner  
22          and at such time as the Secretary may prescribe, in  
23          consultation with the program consortium.

24           (3) OVERSIGHT.—

1           (A) IN GENERAL.—The program consor-  
2           tium shall oversee the implementation of  
3           awards under this subsection, consistent with  
4           the annual plan under subsection (e), including  
5           disbursing funds and monitoring activities car-  
6           ried out under such awards for compliance with  
7           the terms and conditions of the awards.

8           (B) EFFECT.—Nothing in subparagraph  
9           (A) shall limit the authority or responsibility of  
10          the Secretary to oversee awards, or limit the  
11          authority of the Secretary to review or revoke  
12          awards.

13         (g) ADMINISTRATIVE COSTS.—

14           (1) IN GENERAL.—To compensate the program  
15           consortium for carrying out its activities under this  
16           section, the Secretary shall provide to the program  
17           consortium funds sufficient to administer the pro-  
18           gram. This compensation may include a manage-  
19           ment fee consistent with Department of Energy con-  
20           tracting practices and procedures.

21           (2) ADVANCE.—The Secretary shall advance  
22           funds to the program consortium upon selection of  
23           the consortium, which shall be deducted from  
24           amounts to be provided under paragraph (1).

1 (h) AUDIT.—The Secretary shall retain an inde-  
2 pendent, commercial auditor to determine the extent to  
3 which funds provided to the program consortium, and  
4 funds provided under awards made under subsection (f),  
5 have been expended in a manner consistent with the pur-  
6 poses and requirements of this part. The auditor shall  
7 transmit a report annually to the Secretary, who shall  
8 transmit the report to Congress, along with a plan to rem-  
9 edy any deficiencies cited in the report.

10 (i) ACTIVITIES BY THE UNITED STATES GEOLOGICAL  
11 SURVEY.—The Secretary of the Interior, through the  
12 United States Geological Survey, shall, where appropriate,  
13 carry out programs of long-term research to complement  
14 the programs under this section.

15 **SEC. 971. ADDITIONAL REQUIREMENTS FOR AWARDS.**

16 (a) DEMONSTRATION PROJECTS.—An application for  
17 an award under this chapter for a demonstration project  
18 shall describe with specificity the intended commercial use  
19 of the technology to be demonstrated.

20 (b) FLEXIBILITY IN LOCATING DEMONSTRATION  
21 PROJECTS.—Subject to the limitation in section 969(c),  
22 a demonstration project under this chapter relating to an  
23 ultra-deepwater technology or an ultra-deepwater architec-  
24 ture may be conducted in deepwater depths.

1           (c) INTELLECTUAL PROPERTY AGREEMENTS.—If an  
2 award under this chapter is made to a consortium (other  
3 than the program consortium), the consortium shall pro-  
4 vide to the Secretary a signed contract agreed to by all  
5 members of the consortium describing the rights of each  
6 member to intellectual property used or developed under  
7 the award.

8           (d) TECHNOLOGY TRANSFER.—2.5 percent of the  
9 amount of each award made under this chapter shall be  
10 designated for technology transfer and outreach activities  
11 under this chapter.

12          (e) COST SHARING REDUCTION FOR INDEPENDENT  
13 PRODUCERS.—In applying the cost sharing requirements  
14 under section 911 to an award under this chapter the Sec-  
15 retary may reduce or eliminate the non-Federal require-  
16 ment if the Secretary determines that the reduction is nec-  
17 essary and appropriate considering the technological risks  
18 involved in the project.

19 **SEC. 972. ADVISORY COMMITTEES.**

20          (a) ULTRA-DEEPWATER ADVISORY COMMITTEE.—

21               (1) ESTABLISHMENT.—Not later than 270 days  
22 after the date of enactment of this Act, the Sec-  
23 retary shall establish an advisory committee to be  
24 known as the Ultra-Deepwater Advisory Committee.

1           (2) MEMBERSHIP.—The advisory committee  
2 under this subsection shall be composed of members  
3 appointed by the Secretary including—

4           (A) individuals with extensive research ex-  
5 perience or operational knowledge of offshore  
6 natural gas and other petroleum exploration  
7 and production;

8           (B) individuals broadly representative of  
9 the affected interests in ultra-deepwater natural  
10 gas and other petroleum production, including  
11 interests in environmental protection and safe  
12 operations;

13           (C) no individuals who are Federal employ-  
14 ees; and

15           (D) no individuals who are board members,  
16 officers, or employees of the program Consor-  
17 tium.

18           (3) DUTIES.—The advisory committee under  
19 this subsection shall—

20           (A) advise the Secretary on the develop-  
21 ment and implementation of programs under  
22 this chapter related to ultra-deepwater natural  
23 gas and other petroleum resources; and

24           (B) carry out section 970(e)(2)(B).



1           (4) COMPENSATION.—A member of the advi-  
2           sory committee under this subsection shall serve  
3           without compensation but shall receive travel ex-  
4           penses in accordance with applicable provisions  
5           under subchapter I of chapter 57 of title 5, United  
6           States Code.

7           (b) UNCONVENTIONAL RESOURCES TECHNOLOGY  
8           ADVISORY COMMITTEE.—

9           (1) ESTABLISHMENT.—Not later than 270 days  
10          after the date of enactment of this Act, the Sec-  
11          retary shall establish an advisory committee to be  
12          known as the Unconventional Resources Technology  
13          Advisory Committee.

14          (2) MEMBERSHIP.—The advisory committee  
15          under this subsection shall be composed of members  
16          appointed by the Secretary including—

17                 (A) a majority of members who are em-  
18                 ployees or representatives of independent pro-  
19                 ducers of natural gas and other petroleum, in-  
20                 cluding small producers;

21                 (B) individuals with extensive research ex-  
22                 perience or operational knowledge of unconven-  
23                 tional natural gas and other petroleum resource  
24                 exploration and production;

1           (C) individuals broadly representative of  
2           the affected interests in unconventional natural  
3           gas and other petroleum resource exploration  
4           and production, including interests in environ-  
5           mental protection and safe operations;

6           (D) no individuals who are Federal em-  
7           ployees; and

8           (E) no individuals who are board members,  
9           officers, or employees of the program consor-  
10          tium.

11          (3) DUTIES.—The advisory committee under  
12          this subsection shall—

13               (A) advise the Secretary on the develop-  
14               ment and implementation of activities under  
15               this chapter related to unconventional natural  
16               gas and other petroleum resources; and

17               (B) carry out section 970(e)(2)(B).

18          (4) COMPENSATION.—A member of the advi-  
19          sory committee under this subsection shall serve  
20          without compensation but shall receive travel ex-  
21          penses in accordance with applicable provisions  
22          under subchapter I of chapter 57 of title 5, United  
23          States Code.

24          (c) PROHIBITION.—No advisory committee estab-  
25          lished under this section shall make recommendations on

1 funding awards to particular consortia or other entities,  
2 or for specific projects.

3 **SEC. 973. LIMITS ON PARTICIPATION.**

4 An entity shall be eligible to receive an award under  
5 this chapter only if the Secretary finds—

6 (1) that the entity's participation in the pro-  
7 gram under this chapter would be in the economic  
8 interest of the United States; and

9 (2) that either—

10 (A) the entity is a United States-owned en-  
11 tity organized under the laws of the United  
12 States; or

13 (B) the entity is organized under the laws  
14 of the United States and has a parent entity or-  
15 ganized under the laws of a country that af-  
16 fords—

17 (i) to United States-owned entities op-  
18 portunities, comparable to those afforded  
19 to any other entity, to participate in any  
20 cooperative research venture similar to  
21 those authorized under this part;

22 (ii) to United States-owned entities  
23 local investment opportunities comparable  
24 to those afforded to any other entity; and

1                   (iii) adequate and effective protection  
2                   for the intellectual property rights of  
3                   United States-owned entities.

4 **SEC. 974. SUNSET.**

5           The authority provided by this chapter shall termi-  
6 nate on September 30, 2014.

7 **SEC. 975. DEFINITIONS.**

8           In this part:

9           (1) DEEPWATER.—The term “deepwater”  
10           means a water depth that is greater than 200 but  
11           less than 1,500 meters.

12           (2) INDEPENDENT PRODUCER OF OIL OR  
13           GAS.—

14           (A) IN GENERAL.—The term “independent  
15           producer of oil or gas” means any person that  
16           produces oil or gas other than a person to  
17           whom subsection (c) of section 613A of the In-  
18           ternal Revenue Code of 1986 does not apply by  
19           reason of paragraph (2) (relating to certain re-  
20           tailers) or paragraph (4) (relating to certain re-  
21           finers) of section 613A(d) of such Code.

22           (B) RULES FOR APPLYING PARAGRAPHS (2)  
23           AND (4) OF SECTION 613A(d).—For purposes of  
24           subparagraph (A), paragraphs (2) and (4) of  
25           section 613A(d) of the Internal Revenue Code

1 of 1986 shall be applied by substituting “cal-  
2 endar year” for “taxable year” each place it ap-  
3 pears in such paragraphs.

4 (3) PROGRAM CONSORTIUM.—The term “pro-  
5 gram consortium” means the consortium selected  
6 under section 970(d).

7 (4) REMOTE OR INCONSEQUENTIAL.—The term  
8 “remote or inconsequential” has the meaning given  
9 that term in regulations issued by the Office of Gov-  
10 ernment Ethics under section 208(b)(2) of title 18,  
11 United States Code.

12 (5) SMALL PRODUCER.—The term “small pro-  
13 ducer” means an entity organized under the laws of  
14 the United States with production levels of less than  
15 1,000 barrels per day of oil equivalent.

16 (6) ULTRA-DEEPWATER.—The term “ultra-  
17 deepwater” means a water depth that is equal to or  
18 greater than 1,500 meters.

19 (7) ULTRA-DEEPWATER ARCHITECTURE.—The  
20 term “ultra-deepwater architecture” means the inte-  
21 gration of technologies for the exploration for, or  
22 production of, natural gas or other petroleum re-  
23 sources located at ultra-deepwater depths.

24 (8) ULTRA-DEEPWATER TECHNOLOGY.—The  
25 term “ultra-deepwater technology” means a discrete

1 technology that is specially suited to address 1 or  
2 more challenges associated with the exploration for,  
3 or production of, natural gas or other petroleum re-  
4 sources located at ultra-deepwater depths.

5 (9) UNCONVENTIONAL NATURAL GAS AND  
6 OTHER PETROLEUM RESOURCE.—The term “uncon-  
7 ventional natural gas and other petroleum resource”  
8 means natural gas and other petroleum resource lo-  
9 cated onshore in an economically inaccessible geo-  
10 logical formation, including resources of small pro-  
11 ducers.

12 **SEC. 976. FUNDING.**

13 (a) IN GENERAL.—

14 (1) OIL AND GAS LEASE INCOME.—For each of  
15 fiscal years 2005 through 2014, from any excess  
16 Federal royalties derived from Federal onshore and  
17 offshore oil and gas leases issued under the Outer  
18 Continental Shelf Lands Act and the Mineral Leas-  
19 ing Act which are deposited in the Treasury, and  
20 after prior distributions as described in subsection  
21 (c) have been made, all excess Federal royalties up  
22 to \$200,000,000 shall be deposited into the Ultra-  
23 Deepwater and Unconventional Natural Gas and  
24 Other Petroleum Research Fund (in this section re-  
25 ferred to as the Fund).

1           (2) DEFINITIONS.—For purposes of paragraph

2           (1)—

3                   (A) excess Federal royalty receipts are the  
4                   amount calculated on the basis of the difference  
5                   between the prevailing market prices upon  
6                   which the royalty payment was made and 110  
7                   percent of the projected market prices for that  
8                   fiscal year, as contained in the economic as-  
9                   sumptions underlying the Concurrent Resolu-  
10                  tion on the Budget, under section 301 of the  
11                  Congressional Budget and Impoundment Con-  
12                  trol Act of 1974; and

13                   (B) the term “royalties” excludes proceeds  
14                   from the sale of royalty production taken in  
15                   kind and royalty production that is transferred  
16                   under section 27(a)(3) of the Outer Continental  
17                   Shelf Lands Act (43 U.S.C. 1353(a)(3)).

18           (b) OBLIGATIONAL AUTHORITY.—Monies in the  
19 Fund shall be available to the Secretary for obligation  
20 under this chapter without fiscal year limitation, to remain  
21 available until expended.

22           (c) PRIOR DISTRIBUTIONS.—The distributions de-  
23 scribed in subsection (a) are those required by law—

1           (1) to States and to the Reclamation Fund  
2 under the Mineral Leasing Act (30 U.S.C. 191(a));  
3 and

4           (2) to other funds receiving monies from Fed-  
5 eral oil and gas leasing programs, including—

6           (A) any recipients pursuant to section 8(g)  
7 of the Outer Continental Shelf Lands Act (43  
8 U.S.C. 1337(g));

9           (B) the Land and Water Conservation  
10 Fund, pursuant to section 2(c) of the Land and  
11 Water Conservation Fund Act of 1965 (16  
12 U.S.C. 4601–5(c));

13           (C) the Historic Preservation Fund, pursu-  
14 ant to section 108 of the National Historic  
15 Preservation Act (16 U.S.C. 470h); and

16           (D) the Secure Energy Reinvestment  
17 Fund.

18       (d) ALLOCATION.—Amounts obligated from the Fund  
19 under subsection (a)(1) in each fiscal year shall be allo-  
20 cated as follows:

21           (1) 35 percent shall be for activities under sec-  
22 tion 969(b)(1).

23           (2) 32.5 percent shall be for activities under  
24 section 969(b)(2).





1 ment of Energy Organization Act (42 U.S.C. 7139) is  
2 amended to read as follows:

3 “OFFICE OF SCIENCE

4 “SEC. 209. (a) There shall be within the Department  
5 an Office of Science, to be headed by an Assistant Sec-  
6 retary of Science, who shall be appointed by the President,  
7 by and with the advice and consent of the Senate, and  
8 who shall be compensated at the rate provided for level  
9 IV of the Executive Schedule under section 5315 of title  
10 5, United States Code.

11 “(b) The Assistant Secretary of Science shall be in  
12 addition to the Assistant Secretaries provided for under  
13 section 203 of this Act.

14 “(c) It shall be the duty and responsibility of the As-  
15 sistant Secretary of Science to carry out the fundamental  
16 science and engineering research functions of the Depart-  
17 ment, including the responsibility for policy and manage-  
18 ment of such research, as well as other functions vested  
19 in the Secretary which he may assign to the Assistant Sec-  
20 retary.”.

21 (b) ADDITIONAL ASSISTANT SECRETARY POSITION  
22 TO ENABLE IMPROVED MANAGEMENT OF NUCLEAR EN-  
23 ERGY ISSUES.—(1) Section 203(a) of the Department of  
24 Energy Organization Act (42 U.S.C. 7133(a)) is amended  
25 by striking “There shall be in the Department six Assist-  
26 ant Secretaries” and inserting “Except as provided in sec-

1 tion 209, there shall be in the Department seven Assistant  
2 Secretaries”.

3 (2) It is the sense of the Congress that the leadership  
4 for departmental missions in nuclear energy should be at  
5 the Assistant Secretary level.

6 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

7 (1) Section 5315 of title 5, United States Code, is amend-  
8 ed by—

9 (A) striking “Director, Office of Science, De-  
10 partment of Energy.”; and

11 (B) striking “Assistant Secretaries of Energy  
12 (6)” and inserting “Assistant Secretaries of Energy  
13 (8)”.

14 (2) The table of contents for the Department of En-  
15 ergy Organization Act (42 U.S.C. 7101 note) is amend-  
16 ed—

17 (A) by striking “Section 209” and inserting  
18 “Sec. 209”;

19 (B) by striking “213.” and inserting “Sec.  
20 213.”;

21 (C) by striking “214.” and inserting “Sec.  
22 214.”;

23 (D) by striking “215.” and inserting “Sec.  
24 215.”; and

1 (E) by striking “216.” and inserting “Sec.  
2 216.”.

3 **TITLE X—DEPARTMENT OF**  
4 **ENERGY MANAGEMENT**

5 **SEC. 1002. OTHER TRANSACTIONS AUTHORITY.**

6 Section 646 of the Department of Energy Organiza-  
7 tion Act (42 U.S.C. 7256) is amended by adding at the  
8 end the following:

9 “(g)(1) In addition to other authorities granted to the  
10 Secretary under law, the Secretary may exercise the same  
11 authority (subject to the same restrictions and conditions)  
12 with respect to such research and projects as the Secretary  
13 of Defense may exercise under section 2371 of title 10,  
14 United States Code, except for subsections (b) and (f) of  
15 such section 2371. Such other transactions shall not be  
16 subject to the provisions of section 9 of the Federal Non-  
17 nuclear Energy Research and Development Act of 1974  
18 (42 U.S.C. 5908) or section 152 of the Atomic Energy  
19 Act of 1954 (42 U.S.C. 2182).

20 “(2)(A) The Secretary may, under the authority of  
21 paragraph (1), carry out prototype projects in accordance  
22 with the requirements and conditions provided for car-  
23 rying out prototype projects under section 845 of the Na-  
24 tional Defense Authorization Act for Fiscal Year 1994  
25 (Public Law 103–160; 10 U.S.C. 2371 note), including

1 that, to the maximum extent practicable, competitive pro-  
2 cedures shall be used when entering into agreements to  
3 carry out projects under subsection (a) of that section and  
4 that the period of authority to carry out projects under  
5 such subsection (a) terminates as provided in subsection  
6 (g) of that section.

7 “(B) In applying the requirements and conditions of  
8 section 845 of the National Defense Authorization Act for  
9 Fiscal Year 1994 under this subsection—

10 “(i) subsection (c) of that section shall apply  
11 with respect to prototype projects carried out under  
12 this paragraph; and

13 “(ii) the Director of the Office of Management  
14 and Budget shall perform the functions of the Sec-  
15 retary of Defense under subsection (d) of that sec-  
16 tion.

17 “(C) The Secretary may exercise authority under this  
18 subsection for a project only if authorized by the Director  
19 of the Office of Management and Budget to use the au-  
20 thority for such project.

21 “(D) The annual report of the head of an executive  
22 agency that is required under subsection (h) of section  
23 2371 of title 10, United States Code, as applied to the  
24 head of the executive agency by subsection (a), shall be  
25 submitted to Congress.

1       “(3) Not later than 90 days after the date of enact-  
2 ment of this subsection, the Secretary, in consultation  
3 with the Director of the Office of Management and Budg-  
4 et, shall prescribe guidelines for using other transactions  
5 authorized by paragraph (1). Such guidelines shall be pub-  
6 lished in the Federal Register for public comment under  
7 rulemaking procedures of the Department.

8       “(4) The authority of the Secretary under this sub-  
9 section may be delegated only to an officer of the Depart-  
10 ment who is appointed by the President by and with the  
11 advice and consent of the Senate and may not be delegated  
12 to any other person.

13       “(5)(A) Not later than September 31, 2006, the  
14 Comptroller General of the United States shall report to  
15 Congress on the Department’s use of the authorities  
16 granted under this section, including the ability to attract  
17 nontraditional government contractors and whether addi-  
18 tional safeguards are needed with respect to the use of  
19 such authorities.

20       “(B) In this section, the term ‘nontraditional Govern-  
21 ment contractor’ has the same meaning as the term ‘non-  
22 traditional defense contractor’ as defined in section 845(e)  
23 of the National Defense Authorization Act for Fiscal Year  
24 1994 (Public Law 103–160; 10 U.S.C. 2371 note).”.

1 **SEC. 1003. UNIVERSITY COLLABORATION.**

2 Not later than 2 years after the date of enactment  
3 of this Act, the Secretary of Energy shall transmit to the  
4 Congress a report that examines the feasibility of pro-  
5 moting collaborations between major universities and  
6 other colleges and universities in grants, contracts, and  
7 cooperative agreements made by the Secretary for energy  
8 projects. For purposes of this section, major universities  
9 are schools listed by the Carnegie Foundation as Doctoral  
10 Research Extensive Universities. The Secretary shall also  
11 consider providing incentives to increase the inclusion of  
12 small institutions of higher education, including minority-  
13 serving institutions, in energy grants, contracts, and coop-  
14 erative agreements.

15 **SEC. 1004. SENSE OF CONGRESS.**

16 It is the sense of the Congress that—

17 (1) the Secretary of Energy should develop and  
18 implement more stringent procurement and inven-  
19 tory controls, including controls on the purchase  
20 card program, to prevent waste, fraud, and abuse of  
21 taxpayer funds by employees and contractors of the  
22 Department of Energy; and

23 (2) the Department's Inspector General should  
24 continue to closely review purchase card purchases  
25 and other procurement and inventory practices at  
26 the Department.

1           **TITLE XII—ELECTRICITY**

2   **SEC. 1201. SHORT TITLE.**

3           This title may be cited as the “Electric Reliability  
4 Act of 2005”.

5           **Subtitle A—Reliability Standards**

6   **SEC. 1211. ELECTRIC RELIABILITY STANDARDS.**

7           (a) IN GENERAL.—Part II of the Federal Power Act  
8 (16 U.S.C 824 et seq.) is amended by adding at the end  
9 the following:

10   **“SEC. 215. ELECTRIC RELIABILITY.**

11           “(a) DEFINITIONS.—For purposes of this section:

12               “(1) The term ‘bulk-power system’ means—

13                       “(A) facilities and control systems nec-  
14                       essary for operating an interconnected electric  
15                       energy transmission network (or any portion  
16                       thereof); and

17                       “(B) electric energy from generation facili-  
18                       ties needed to maintain transmission system re-  
19                       liability.

20           The term does not include facilities used in the local  
21 distribution of electric energy.

22               “(2) The terms ‘Electric Reliability Organiza-  
23               tion’ and ‘ERO’ mean the organization certified by  
24               the Commission under subsection (c) the purpose of  
25               which is to establish and enforce reliability stand-



1 ards for the bulk-power system, subject to Commis-  
2 sion review.

3 “(3) The term ‘reliability standard’ means a re-  
4 quirement, approved by the Commission under this  
5 section, to provide for reliable operation of the bulk-  
6 power system. The term includes requirements for  
7 the operation of existing bulk-power system facilities,  
8 including cybersecurity protection, and the design of  
9 planned additions or modifications to such facilities  
10 to the extent necessary to provide for reliable oper-  
11 ation of the bulk-power system, but the term does  
12 not include any requirement to enlarge such facilities  
13 or to construct new transmission capacity or genera-  
14 tion capacity.

15 “(4) The term ‘reliable operation’ means oper-  
16 ating the elements of the bulk-power system within  
17 equipment and electric system thermal, voltage, and  
18 stability limits so that instability, uncontrolled sepa-  
19 ration, or cascading failures of such system will not  
20 occur as a result of a sudden disturbance, including  
21 a cybersecurity incident, or unanticipated failure of  
22 system elements.

23 “(5) The term ‘Interconnection’ means a geo-  
24 graphic area in which the operation of bulk-power  
25 system components is synchronized such that the

1 failure of 1 or more of such components may ad-  
2 versely affect the ability of the operators of other  
3 components within the system to maintain reliable  
4 operation of the facilities within their control.

5 “(6) The term ‘transmission organization’  
6 means a Regional Transmission Organization, Inde-  
7 pendent System Operator, independent transmission  
8 provider, or other transmission organization finally  
9 approved by the Commission for the operation of  
10 transmission facilities.

11 “(7) The term ‘regional entity’ means an entity  
12 having enforcement authority pursuant to subsection  
13 (e)(4).

14 “(8) The term ‘cybersecurity incident’ means a  
15 malicious act or suspicious event that disrupts, or  
16 was an attempt to disrupt, the operation of those  
17 programmable electronic devices and communication  
18 networks including hardware, software and data that  
19 are essential to the reliable operation of the bulk  
20 power system.

21 “(b) JURISDICTION AND APPLICABILITY.—(1) The  
22 Commission shall have jurisdiction, within the United  
23 States, over the ERO certified by the Commission under  
24 subsection (c), any regional entities, and all users, owners  
25 and operators of the bulk-power system, including but not

1 limited to the entities described in section 201(f), for pur-  
2 poses of approving reliability standards established under  
3 this section and enforcing compliance with this section. All  
4 users, owners and operators of the bulk-power system  
5 shall comply with reliability standards that take effect  
6 under this section.

7 “(2) The Commission shall issue a final rule to imple-  
8 ment the requirements of this section not later than 180  
9 days after the date of enactment of this section.

10 “(c) CERTIFICATION.—Following the issuance of a  
11 Commission rule under subsection (b)(2), any person may  
12 submit an application to the Commission for certification  
13 as the Electric Reliability Organization. The Commission  
14 may certify 1 such ERO if the Commission determines  
15 that such ERO—

16 “(1) has the ability to develop and enforce, sub-  
17 ject to subsection (e)(2), reliability standards that  
18 provide for an adequate level of reliability of the  
19 bulk-power system; and

20 “(2) has established rules that—

21 “(A) assure its independence of the users  
22 and owners and operators of the bulk-power  
23 system, while assuring fair stakeholder rep-  
24 resentation in the selection of its directors and

1 balanced decisionmaking in any ERO com-  
2 mittee or subordinate organizational structure;

3 “(B) allocate equitably reasonable dues,  
4 fees, and other charges among end users for all  
5 activities under this section;

6 “(C) provide fair and impartial procedures  
7 for enforcement of reliability standards through  
8 the imposition of penalties in accordance with  
9 subsection (e) (including limitations on activi-  
10 ties, functions, or operations, or other appro-  
11 priate sanctions);

12 “(D) provide for reasonable notice and op-  
13 portunity for public comment, due process,  
14 openness, and balance of interests in developing  
15 reliability standards and otherwise exercising its  
16 duties; and

17 “(E) provide for taking, after certification,  
18 appropriate steps to gain recognition in Canada  
19 and Mexico.

20 The total amount of all dues, fees, and other charges  
21 collected by the ERO in each of the fiscal years  
22 2006 through 2015 and allocated under subpara-  
23 graph (B) shall not exceed \$50,000,000.

24 “(d) RELIABILITY STANDARDS.—(1) The Electric  
25 Reliability Organization shall file each reliability standard

1 or modification to a reliability standard that it proposes  
2 to be made effective under this section with the Commis-  
3 sion.

4       “(2) The Commission may approve, by rule or order,  
5 a proposed reliability standard or modification to a reli-  
6 ability standard if it determines that the standard is just,  
7 reasonable, not unduly discriminatory or preferential, and  
8 in the public interest. The Commission shall give due  
9 weight to the technical expertise of the Electric Reliability  
10 Organization with respect to the content of a proposed  
11 standard or modification to a reliability standard and to  
12 the technical expertise of a regional entity organized on  
13 an Interconnection-wide basis with respect to a reliability  
14 standard to be applicable within that Interconnection, but  
15 shall not defer with respect to the effect of a standard  
16 on competition. A proposed standard or modification shall  
17 take effect upon approval by the Commission.

18       “(3) The Electric Reliability Organization shall  
19 rebuttably presume that a proposal from a regional entity  
20 organized on an Interconnection-wide basis for a reliability  
21 standard or modification to a reliability standard to be ap-  
22 plicable on an Interconnection-wide basis is just, reason-  
23 able, and not unduly discriminatory or preferential, and  
24 in the public interest.

1       “(4) The Commission shall remand to the Electric  
2 Reliability Organization for further consideration a pro-  
3 posed reliability standard or a modification to a reliability  
4 standard that the Commission disapproves in whole or in  
5 part.

6       “(5) The Commission, upon its own motion or upon  
7 complaint, may order the Electric Reliability Organization  
8 to submit to the Commission a proposed reliability stand-  
9 ard or a modification to a reliability standard that ad-  
10 dresses a specific matter if the Commission considers such  
11 a new or modified reliability standard appropriate to carry  
12 out this section.

13       “(6) The final rule adopted under subsection (b)(2)  
14 shall include fair processes for the identification and time-  
15 ly resolution of any conflict between a reliability standard  
16 and any function, rule, order, tariff, rate schedule, or  
17 agreement accepted, approved, or ordered by the Commis-  
18 sion applicable to a transmission organization. Such trans-  
19 mission organization shall continue to comply with such  
20 function, rule, order, tariff, rate schedule or agreement ac-  
21 cepted approved, or ordered by the Commission until—

22               “(A) the Commission finds a conflict exists be-  
23 tween a reliability standard and any such provision;

24               “(B) the Commission orders a change to such  
25 provision pursuant to section 206 of this part; and

1           “(C) the ordered change becomes effective  
2           under this part.

3 If the Commission determines that a reliability standard  
4 needs to be changed as a result of such a conflict, it shall  
5 order the ERO to develop and file with the Commission  
6 a modified reliability standard under paragraph (4) or (5)  
7 of this subsection.

8           “(e) ENFORCEMENT.—(1) The ERO may impose,  
9 subject to paragraph (2), a penalty on a user or owner  
10 or operator of the bulk-power system for a violation of a  
11 reliability standard approved by the Commission under  
12 subsection (d) if the ERO, after notice and an opportunity  
13 for a hearing—

14           “(A) finds that the user or owner or operator  
15 has violated a reliability standard approved by the  
16 Commission under subsection (d); and

17           “(B) files notice and the record of the pro-  
18 ceeding with the Commission.

19           “(2) A penalty imposed under paragraph (1) may  
20 take effect not earlier than the 31st day after the ERO  
21 files with the Commission notice of the penalty and the  
22 record of proceedings. Such penalty shall be subject to re-  
23 view by the Commission, on its own motion or upon appli-  
24 cation by the user, owner or operator that is the subject  
25 of the penalty filed within 30 days after the date such

1 notice is filed with the Commission. Application to the  
2 Commission for review, or the initiation of review by the  
3 Commission on its own motion, shall not operate as a stay  
4 of such penalty unless the Commission otherwise orders  
5 upon its own motion or upon application by the user,  
6 owner or operator that is the subject of such penalty. In  
7 any proceeding to review a penalty imposed under para-  
8 graph (1), the Commission, after notice and opportunity  
9 for hearing (which hearing may consist solely of the record  
10 before the ERO and opportunity for the presentation of  
11 supporting reasons to affirm, modify, or set aside the pen-  
12 alty), shall by order affirm, set aside, reinstate, or modify  
13 the penalty, and, if appropriate, remand to the ERO for  
14 further proceedings. The Commission shall implement ex-  
15 pedited procedures for such hearings.

16       “(3) On its own motion or upon complaint, the Com-  
17 mission may order compliance with a reliability standard  
18 and may impose a penalty against a user or owner or oper-  
19 ator of the bulk-power system if the Commission finds,  
20 after notice and opportunity for a hearing, that the user  
21 or owner or operator of the bulk-power system has en-  
22 gaged or is about to engage in any acts or practices that  
23 constitute or will constitute a violation of a reliability  
24 standard.



1           “(4) The Commission shall issue regulations author-  
2 izing the ERO to enter into an agreement to delegate au-  
3 thority to a regional entity for the purpose of proposing  
4 reliability standards to the ERO and enforcing reliability  
5 standards under paragraph (1) if—

6           “(A) the regional entity is governed by—

7                   “(i) an independent board;

8                   “(ii) a balanced stakeholder board; or

9                   “(iii) a combination independent and bal-  
10 anced stakeholder board.

11           “(B) the regional entity otherwise satisfies the  
12 provisions of subsection (c)(1) and (2); and

13           “(C) the agreement promotes effective and effi-  
14 cient administration of bulk-power system reliability.

15 The Commission may modify such delegation. The ERO  
16 and the Commission shall rebuttably presume that a pro-  
17 posal for delegation to a regional entity organized on an  
18 Interconnection-wide basis promotes effective and efficient  
19 administration of bulk-power system reliability and should  
20 be approved. Such regulation may provide that the Com-  
21 mission may assign the ERO’s authority to enforce reli-  
22 ability standards under paragraph (1) directly to a re-  
23 gional entity consistent with the requirements of this para-  
24 graph.

1           “(5) The Commission may take such action as is nec-  
2   essary or appropriate against the ERO or a regional entity  
3   to ensure compliance with a reliability standard or any  
4   Commission order affecting the ERO or a regional entity.

5           “(6) Any penalty imposed under this section shall  
6   bear a reasonable relation to the seriousness of the viola-  
7   tion and shall take into consideration the efforts of such  
8   user, owner, or operator to remedy the violation in a time-  
9   ly manner.

10          “(f) CHANGES IN ELECTRIC RELIABILITY ORGANIZA-  
11   TION RULES.—The Electric Reliability Organization shall  
12   file with the Commission for approval any proposed rule  
13   or proposed rule change, accompanied by an explanation  
14   of its basis and purpose. The Commission, upon its own  
15   motion or complaint, may propose a change to the rules  
16   of the ERO. A proposed rule or proposed rule change shall  
17   take effect upon a finding by the Commission, after notice  
18   and opportunity for comment, that the change is just, rea-  
19   sonable, not unduly discriminatory or preferential, is in  
20   the public interest, and satisfies the requirements of sub-  
21   section (c).

22          “(g) RELIABILITY REPORTS.—The ERO shall con-  
23   duct periodic assessments of the reliability and adequacy  
24   of the bulk-power system in North America.

1       “(h) COORDINATION WITH CANADA AND MEXICO.—  
2 The President is urged to negotiate international agree-  
3 ments with the governments of Canada and Mexico to pro-  
4 vide for effective compliance with reliability standards and  
5 the effectiveness of the ERO in the United States and  
6 Canada or Mexico.

7       “(i) SAVINGS PROVISIONS.—(1) The ERO shall have  
8 authority to develop and enforce compliance with reli-  
9 ability standards for only the bulk-power system.

10       “(2) This section does not authorize the ERO or the  
11 Commission to order the construction of additional gen-  
12 eration or transmission capacity or to set and enforce com-  
13 pliance with standards for adequacy or safety of electric  
14 facilities or services.

15       “(3) Nothing in this section shall be construed to pre-  
16 empt any authority of any State to take action to ensure  
17 the safety, adequacy, and reliability of electric service  
18 within that State, as long as such action is not incon-  
19 sistent with any reliability standard, except that the State  
20 of New York may establish rules that result in greater  
21 reliability within that State, as long as such action does  
22 not result in lesser reliability outside the State than that  
23 provided by the reliability standards.

24       “(4) Within 90 days of the application of the Electric  
25 Reliability Organization or other affected party, and after

1 notice and opportunity for comment, the Commission shall  
2 issue a final order determining whether a State action is  
3 inconsistent with a reliability standard, taking into consid-  
4 eration any recommendation of the ERO.

5 “(5) The Commission, after consultation with the  
6 ERO and the State taking action, may stay the effective-  
7 ness of any State action, pending the Commission’s  
8 issuance of a final order.

9 “(j) REGIONAL ADVISORY BODIES.—The Commis-  
10 sion shall establish a regional advisory body on the petition  
11 of at least  $\frac{2}{3}$  of the States within a region that have more  
12 than  $\frac{1}{2}$  of their electric load served within the region. A  
13 regional advisory body shall be composed of 1 member  
14 from each participating State in the region, appointed by  
15 the Governor of each State, and may include representa-  
16 tives of agencies, States, and provinces outside the United  
17 States. A regional advisory body may provide advice to the  
18 Electric Reliability Organization, a regional entity, or the  
19 Commission regarding the governance of an existing or  
20 proposed regional entity within the same region, whether  
21 a standard proposed to apply within the region is just,  
22 reasonable, not unduly discriminatory or preferential, and  
23 in the public interest, whether fees proposed to be assessed  
24 within the region are just, reasonable, not unduly discrimi-  
25 natory or preferential, and in the public interest and any

1 other responsibilities requested by the Commission. The  
2 Commission may give deference to the advice of any such  
3 regional advisory body if that body is organized on an  
4 Interconnection-wide basis.

5 “(k) ALASKA AND HAWAII.—The provisions of this  
6 section do not apply to Alaska or Hawaii.”.

7 (b) STATUS OF ERO.—The Electric Reliability Orga-  
8 nization certified by the Federal Energy Regulatory Com-  
9 mission under section 215(e) of the Federal Power Act  
10 and any regional entity delegated enforcement authority  
11 pursuant to section 215(e)(4) of that Act are not depart-  
12 ments, agencies, or instrumentalities of the United States  
13 Government.

14 (c) LIMITATION ON ANNUAL APPROPRIATIONS.—  
15 There is authorized to be appropriated not more than  
16 \$50,000,000 per year for fiscal years 2006 through 2015  
17 for all activities under the amendment made by subsection  
18 (a).

## 19 **Subtitle B—Transmission**

### 20 **Infrastructure Modernization**

#### 21 **SEC. 1221. SITING OF INTERSTATE ELECTRIC TRANS-**

#### 22 **MISSION FACILITIES.**

23 (a) AMENDMENT OF FEDERAL POWER ACT.—Part  
24 II of the Federal Power Act is amended by adding at the  
25 end the following:

1 **“SEC. 216. SITING OF INTERSTATE ELECTRIC TRANS-**  
2 **MISSION FACILITIES.**

3 “(a) DESIGNATION OF NATIONAL INTEREST ELEC-  
4 TRIC TRANSMISSION CORRIDORS.—

5 “(1) TRANSMISSION CONGESTION STUDY.—

6 Within 1 year after the enactment of this section,  
7 and every 3 years thereafter, the Secretary of En-  
8 ergy, in consultation with affected States, shall con-  
9 duct a study of electric transmission congestion.  
10 After considering alternatives and recommendations  
11 from interested parties, including an opportunity for  
12 comment from affected States, the Secretary shall  
13 issue a report, based on such study, which may des-  
14 ignate any geographic area experiencing electric en-  
15 ergy transmission capacity constraints or congestion  
16 that adversely affects consumers as a national inter-  
17 est electric transmission corridor. The Secretary  
18 shall conduct the study and issue the report in con-  
19 sultation with any appropriate regional entity ref-  
20 erenced in section 215 of this Act.

21 “(2) CONSIDERATIONS.—In determining wheth-  
22 er to designate a national interest electric trans-  
23 mission corridor referred to in paragraph (1) under  
24 this section, the Secretary may consider whether—

25 “(A) the economic vitality and development  
26 of the corridor, or the end markets served by

1 the corridor, may be constrained by lack of ade-  
2 quate or reasonably priced electricity;

3 “(B)(i) economic growth in the corridor, or  
4 the end markets served by the corridor, may be  
5 jeopardized by reliance on limited sources of en-  
6 ergy; and

7 “(ii) a diversification of supply is war-  
8 ranted;

9 “(C) the energy independence of the  
10 United States would be served by the designa-  
11 tion;

12 “(D) the designation would be in the inter-  
13 est of national energy policy; and

14 “(E) the designation would enhance na-  
15 tional defense and homeland security.

16 “(b) CONSTRUCTION PERMIT.—Except as provided  
17 in subsection (i), the Commission is authorized, after no-  
18 tice and an opportunity for hearing, to issue a permit or  
19 permits for the construction or modification of electric  
20 transmission facilities in a national interest electric trans-  
21 mission corridor designated by the Secretary under sub-  
22 section (a) if the Commission finds that—

23 “(1)(A) a State in which the transmission fa-  
24 cilities are to be constructed or modified is without  
25 authority to—

1           “(i) approve the siting of the facilities; or

2           “(ii) consider the interstate benefits ex-  
3           pected to be achieved by the proposed construc-  
4           tion or modification of transmission facilities in  
5           the State;

6           “(B) the applicant for a permit is a transmit-  
7           ting utility under this Act but does not qualify to  
8           apply for a permit or siting approval for the pro-  
9           posed project in a State because the applicant does  
10          not serve end-use customers in the State; or

11          “(C) a State commission or other entity that  
12          has authority to approve the siting of the facilities  
13          has—

14               “(i) withheld approval for more than 1  
15               year after the filing of an application pursuant  
16               to applicable law seeking approval or 1 year  
17               after the designation of the relevant national in-  
18               terest electric transmission corridor, whichever  
19               is later; or

20               “(ii) conditioned its approval in such a  
21               manner that the proposed construction or modi-  
22               fication will not significantly reduce trans-  
23               mission congestion in interstate commerce or is  
24               not economically feasible;



1           “(2) the facilities to be authorized by the per-  
2           mit will be used for the transmission of electric en-  
3           ergy in interstate commerce;

4           “(3) the proposed construction or modification  
5           is consistent with the public interest;

6           “(4) the proposed construction or modification  
7           will significantly reduce transmission congestion in  
8           interstate commerce and protects or benefits con-  
9           sumers; and

10          “(5) the proposed construction or modification  
11          is consistent with sound national energy policy and  
12          will enhance energy independence.

13          “(c) PERMIT APPLICATIONS.—Permit applications  
14          under subsection (b) shall be made in writing to the Com-  
15          mission. The Commission shall issue rules setting forth  
16          the form of the application, the information to be con-  
17          tained in the application, and the manner of service of no-  
18          tice of the permit application upon interested persons.

19          “(d) COMMENTS.—In any proceeding before the  
20          Commission under subsection (b), the Commission shall  
21          afford each State in which a transmission facility covered  
22          by the permit is or will be located, each affected Federal  
23          agency and Indian tribe, private property owners, and  
24          other interested persons, a reasonable opportunity to

1 present their views and recommendations with respect to  
2 the need for and impact of a facility covered by the permit.

3       “(e) RIGHTS-OF-WAY.—In the case of a permit under  
4 subsection (b) for electric transmission facilities to be lo-  
5 cated on property other than property owned by the  
6 United States or a State, if the permit holder cannot ac-  
7 quire by contract, or is unable to agree with the owner  
8 of the property to the compensation to be paid for, the  
9 necessary right-of-way to construct or modify such trans-  
10 mission facilities, the permit holder may acquire the right-  
11 of-way by the exercise of the right of eminent domain in  
12 the district court of the United States for the district in  
13 which the property concerned is located, or in the appro-  
14 priate court of the State in which the property is located.  
15 The practice and procedure in any action or proceeding  
16 for that purpose in the district court of the United States  
17 shall conform as nearly as may be with the practice and  
18 procedure in similar action or proceeding in the courts of  
19 the State where the property is situated.

20       “(f) STATE LAW.—Nothing in this section shall pre-  
21 clude any person from constructing or modifying any  
22 transmission facility pursuant to State law.

23       “(g) COMPENSATION.—Any exercise of eminent do-  
24 main authority pursuant to this section shall be considered  
25 a taking of private property for which just compensation

1 is due. Just compensation shall be an amount equal to  
2 the full fair market value of the property taken on the  
3 date of the exercise of eminent domain authority, except  
4 that the compensation shall exceed fair market value if  
5 necessary to make the landowner whole for decreases in  
6 the value of any portion of the land not subject to eminent  
7 domain. Any parcel of land acquired by eminent domain  
8 under this subsection shall be transferred back to the  
9 owner from whom it was acquired (or his heirs or assigns)  
10 if the land is not used for the construction or modification  
11 of electric transmission facilities within a reasonable pe-  
12 riod of time after the acquisition. Other than construction,  
13 modification, operation, or maintenance of electric trans-  
14 mission facilities and related facilities, property acquired  
15 under subsection (e) may not be used for any purpose (in-  
16 cluding use for any heritage area, recreational trail, or  
17 park) without the consent of the owner of the parcel from  
18 whom the property was acquired (or the owner's heirs or  
19 assigns).

20       “(h) COORDINATION OF FEDERAL AUTHORIZATIONS  
21 FOR TRANSMISSION AND DISTRIBUTION FACILITIES.—

22               “(1) LEAD AGENCY.—If an applicant, or pro-  
23 spective applicant, for a Federal authorization re-  
24 lated to an electric transmission or distribution facil-  
25 ity so requests, the Department of Energy (DOE)

1 shall act as the lead agency for purposes of coordi-  
2 nating all applicable Federal authorizations and re-  
3 lated environmental reviews of the facility. For pur-  
4 poses of this subsection, the term ‘Federal author-  
5 ization’ means any authorization required under  
6 Federal law in order to site a transmission or dis-  
7 tribution facility, including but not limited to such  
8 permits, special use authorizations, certifications,  
9 opinions, or other approvals as may be required,  
10 whether issued by a Federal or a State agency. To  
11 the maximum extent practicable under applicable  
12 Federal law, the Secretary of Energy shall coordi-  
13 nate this Federal authorization and review process  
14 with any Indian tribes, multi-State entities, and  
15 State agencies that are responsible for conducting  
16 any separate permitting and environmental reviews  
17 of the facility, to ensure timely and efficient review  
18 and permit decisions.

19 “(2) AUTHORITY TO SET DEADLINES.—As lead  
20 agency, the Department of Energy, in consultation  
21 with agencies responsible for Federal authorizations  
22 and, as appropriate, with Indian tribes, multi-State  
23 entities, and State agencies that are willing to co-  
24 ordinate their own separate permitting and environ-  
25 mental reviews with the Federal authorization and

1 environmental reviews, shall establish prompt and  
2 binding intermediate milestones and ultimate dead-  
3 lines for the review of, and Federal authorization de-  
4 cisions relating to, the proposed facility. The Sec-  
5 retary of Energy shall ensure that once an applica-  
6 tion has been submitted with such data as the Sec-  
7 retary considers necessary, all permit decisions and  
8 related environmental reviews under all applicable  
9 Federal laws shall be completed within 1 year or, if  
10 a requirement of another provision of Federal law  
11 makes this impossible, as soon thereafter as is prac-  
12 ticable. The Secretary of Energy also shall provide  
13 an expeditious pre-application mechanism for pro-  
14 spective applicants to confer with the agencies in-  
15 volved to have each such agency determine and com-  
16 municate to the prospective applicant within 60 days  
17 of when the prospective applicant submits a request  
18 for such information concerning—

19           “(A) the likelihood of approval for a poten-  
20           tial facility; and

21           “(B) key issues of concern to the agencies  
22           and public.

23           “(3) CONSOLIDATED ENVIRONMENTAL REVIEW  
24           AND RECORD OF DECISION.—As lead agency head,  
25           the Secretary of Energy, in consultation with the af-

1        fected agencies, shall prepare a single environmental  
2        review document, which shall be used as the basis  
3        for all decisions on the proposed project under Fed-  
4        eral law. The document may be an environmental as-  
5        sessment or environmental impact statement under  
6        the National Environmental Policy Act of 1969 if  
7        warranted, or such other form of analysis as may be  
8        warranted. The Secretary of Energy and the heads  
9        of other agencies shall streamline the review and  
10       permitting of transmission and distribution facilities  
11       within corridors designated under section 503 of the  
12       Federal Land Policy and Management Act (43  
13       U.S.C. 1763) by fully taking into account prior anal-  
14       yses and decisions relating to the corridors. Such  
15       document shall include consideration by the relevant  
16       agencies of any applicable criteria or other matters  
17       as required under applicable laws.

18            “(4) APPEALS.—In the event that any agency  
19       has denied a Federal authorization required for a  
20       transmission or distribution facility, or has failed to  
21       act by the deadline established by the Secretary pur-  
22       suant to this section for deciding whether to issue  
23       the authorization, the applicant or any State in  
24       which the facility would be located may file an ap-  
25       peal with the Secretary, who shall, in consultation

1 with the affected agency, review the denial or take  
2 action on the pending application. Based on the  
3 overall record and in consultation with the affected  
4 agency, the Secretary may then either issue the nec-  
5 essary authorization with any appropriate condi-  
6 tions, or deny the application. The Secretary shall  
7 issue a decision within 90 days of the filing of the  
8 appeal. In making a decision under this paragraph,  
9 the Secretary shall comply with applicable require-  
10 ments of Federal law, including any requirements of  
11 the Endangered Species Act, the Clean Water Act,  
12 the National Forest Management Act, the National  
13 Environmental Policy Act of 1969, and the Federal  
14 Land Policy and Management Act.

15 “(5) CONFORMING REGULATIONS AND MEMO-  
16 RANDA OF UNDERSTANDING.—Not later than 18  
17 months after the date of enactment of this section,  
18 the Secretary of Energy shall issue any regulations  
19 necessary to implement this subsection. Not later  
20 than 1 year after the date of enactment of this sec-  
21 tion, the Secretary and the heads of all Federal  
22 agencies with authority to issue Federal authoriza-  
23 tions shall enter into Memoranda of Understanding  
24 to ensure the timely and coordinated review and per-  
25 mitting of electricity transmission and distribution

1 facilities. The head of each Federal agency with au-  
2 thority to issue a Federal authorization shall des-  
3 ignate a senior official responsible for, and dedicate  
4 sufficient other staff and resources to ensure, full  
5 implementation of the DOE regulations and any  
6 Memoranda. Interested Indian tribes, multi-State  
7 entities, and State agencies may enter such Memo-  
8 randa of Understanding.

9 “(6) DURATION AND RENEWAL.—Each Federal  
10 land use authorization for an electricity transmission  
11 or distribution facility shall be issued—

12 “(A) for a duration, as determined by the  
13 Secretary of Energy, commensurate with the  
14 anticipated use of the facility, and

15 “(B) with appropriate authority to manage  
16 the right-of-way for reliability and environ-  
17 mental protection.

18 Upon the expiration of any such authorization (in-  
19 cluding an authorization issued prior to enactment  
20 of this section), the authorization shall be reviewed  
21 for renewal taking fully into account reliance on  
22 such electricity infrastructure, recognizing its impor-  
23 tance for public health, safety and economic welfare  
24 and as a legitimate use of Federal lands.



1           “(7) MAINTAINING AND ENHANCING THE  
2 TRANSMISSION INFRASTRUCTURE.—In exercising the  
3 responsibilities under this section, the Secretary of  
4 Energy shall consult regularly with the Federal En-  
5 ergy Regulatory Commission (FERC), FERC-ap-  
6 proved electric reliability organizations (including re-  
7 lated regional entities), and FERC-approved Re-  
8 gional Transmission Organizations and Independent  
9 System Operators.

10          “(i) INTERSTATE COMPACTS.—The consent of Con-  
11 gress is hereby given for 3 or more contiguous States to  
12 enter into an interstate compact, subject to approval by  
13 Congress, establishing regional transmission siting agen-  
14 cies to facilitate siting of future electric energy trans-  
15 mission facilities within such States and to carry out the  
16 electric energy transmission siting responsibilities of such  
17 States. The Secretary of Energy may provide technical as-  
18 sistance to regional transmission siting agencies estab-  
19 lished under this subsection. Such regional transmission  
20 siting agencies shall have the authority to review, certify,  
21 and permit siting of transmission facilities, including fa-  
22 cilities in national interest electric transmission corridors  
23 (other than facilities on property owned by the United  
24 States). The Commission shall have no authority to issue  
25 a permit for the construction or modification of electric

1 transmission facilities within a State that is a party to  
2 a compact, unless the members of a compact are in dis-  
3 agreement and the Secretary makes, after notice and an  
4 opportunity for a hearing, the finding described in sub-  
5 section (b)(1)(C).

6 “(j) SAVINGS CLAUSE.—Nothing in this section shall  
7 be construed to affect any requirement of the environ-  
8 mental laws of the United States, including, but not lim-  
9 ited to, the National Environmental Policy Act of 1969.  
10 Subsection (h)(4) of this section shall not apply to any  
11 Congressionally-designated components of the National  
12 Wilderness Preservation System, the National Wild and  
13 Scenic Rivers System, or the National Park system (in-  
14 cluding National Monuments therein).

15 “(k) ERCOT.—This section shall not apply within  
16 the area referred to in section 212(k)(2)(A).”.

17 (b) REPORTS TO CONGRESS ON CORRIDORS AND  
18 RIGHTS OF WAY ON FEDERAL LANDS.—The Secretary of  
19 the Interior, the Secretary of Energy, the Secretary of Ag-  
20 riculture, and the Chairman of the Council on Environ-  
21 mental Quality shall, within 90 days of the date of enact-  
22 ment of this subsection, submit a joint report to Congress  
23 identifying each of the following:

24 (1) All existing designated transmission and  
25 distribution corridors on Federal land and the status

1 of work related to proposed transmission and dis-  
2 tribution corridor designations under Title V of the  
3 Federal Land Policy and Management Act (43  
4 U.S.C. 1761 et seq.), the schedule for completing  
5 such work, any impediments to completing the work,  
6 and steps that Congress could take to expedite the  
7 process.

8 (2) The number of pending applications to lo-  
9 cate transmission and distribution facilities on Fed-  
10 eral lands, key information relating to each such fa-  
11 cility, how long each application has been pending,  
12 the schedule for issuing a timely decision as to each  
13 facility, and progress in incorporating existing and  
14 new such rights-of-way into relevant land use and  
15 resource management plans or their equivalent.

16 (3) The number of existing transmission and  
17 distribution rights-of-way on Federal lands that will  
18 come up for renewal within the following 5, 10, and  
19 15 year periods, and a description of how the Secre-  
20 taries plan to manage such renewals.

21 **SEC. 1222. THIRD-PARTY FINANCE.**

22 (a) EXISTING FACILITIES.—The Secretary of Energy  
23 (hereinafter in this section referred to as the “Secretary”),  
24 acting through the Administrator of the Western Area  
25 Power Administration (hereinafter in this section referred

1 to as “WAPA”), or through the Administrator of the  
2 Southwestern Power Administration (hereinafter in this  
3 section referred to as “SWPA”), or both, may design, de-  
4 velop, construct, operate, maintain, or own, or participate  
5 with other entities in designing, developing, constructing,  
6 operating, maintaining, or owning, an electric power  
7 transmission facility and related facilities (“Project”)  
8 needed to upgrade existing transmission facilities owned  
9 by SWPA or WAPA if the Secretary of Energy, in con-  
10 sultation with the applicable Administrator, determines  
11 that the proposed Project—

12           (1)(A) is located in a national interest electric  
13 transmission corridor designated under section  
14 216(a) of the Federal Power Act and will reduce  
15 congestion of electric transmission in interstate com-  
16 merce; or

17           (B) is necessary to accommodate an actual or  
18 projected increase in demand for electric trans-  
19 mission capacity;

20           (2) is consistent with—

21           (A) transmission needs identified, in a  
22 transmission expansion plan or otherwise, by  
23 the appropriate Regional Transmission Organi-  
24 zation or Independent System Operator (as de-

1            fined in the Federal Power Act), if any, or ap-  
2            proved regional reliability organization; and

3                    (B) efficient and reliable operation of the  
4            transmission grid; and

5            (3) would be operated in conformance with pru-  
6            dent utility practice.

7            (b) NEW FACILITIES.—The Secretary, acting  
8            through WAPA or SWPA, or both, may design, develop,  
9            construct, operate, maintain, or own, or participate with  
10           other entities in designing, developing, constructing, oper-  
11           ating, maintaining, or owning, a new electric power trans-  
12           mission facility and related facilities (“Project”) located  
13           within any State in which WAPA or SWPA operates if  
14           the Secretary, in consultation with the applicable Adminis-  
15           trator, determines that the proposed Project—

16                    (1)(A) is located in an area designated under  
17                    section 216(a) of the Federal Power Act and will re-  
18                    duce congestion of electric transmission in interstate  
19                    commerce; or

20                    (B) is necessary to accommodate an actual or  
21                    projected increase in demand for electric trans-  
22                    mission capacity;

23                    (2) is consistent with—

24                            (A) transmission needs identified, in a  
25                            transmission expansion plan or otherwise, by

1 the appropriate Regional Transmission Organi-  
2 zation or Independent System Operator, if any,  
3 or approved regional reliability organization;  
4 and

5 (B) efficient and reliable operation of the  
6 transmission grid;

7 (3) will be operated in conformance with pru-  
8 dent utility practice;

9 (4) will be operated by, or in conformance with  
10 the rules of, the appropriate (A) Regional Trans-  
11 mission Organization or Independent System Oper-  
12 ator, if any, or (B) if such an organization does not  
13 exist, regional reliability organization; and

14 (5) will not duplicate the functions of existing  
15 transmission facilities or proposed facilities which  
16 are the subject of ongoing or approved siting and re-  
17 lated permitting proceedings.

18 (c) OTHER FUNDS.—

19 (1) IN GENERAL.—In carrying out a Project  
20 under subsection (a) or (b), the Secretary may ac-  
21 cept and use funds contributed by another entity for  
22 the purpose of carrying out the Project.

23 (2) AVAILABILITY.—The contributed funds  
24 shall be available for expenditure for the purpose of  
25 carrying out the Project—

1 (A) without fiscal year limitation; and

2 (B) as if the funds had been appropriated  
3 specifically for that Project.

4 (3) ALLOCATION OF COSTS.—In carrying out a  
5 Project under subsection (a) or (b), any costs of the  
6 Project not paid for by contributions from another  
7 entity shall be collected through rates charged to  
8 customers using the new transmission capability pro-  
9 vided by the Project and allocated equitably among  
10 these project beneficiaries using the new trans-  
11 mission capability.

12 (d) RELATIONSHIP TO OTHER LAWS.—Nothing in  
13 this section affects any requirement of—

14 (1) any Federal environmental law, including  
15 the National Environmental Policy Act of 1969 (42  
16 U.S.C. 4321 et seq.);

17 (2) any Federal or State law relating to the  
18 siting of energy facilities; or

19 (3) any existing authorizing statutes.

20 (e) SAVINGS CLAUSE.—Nothing in this section shall  
21 constrain or restrict an Administrator in the utilization  
22 of other authority delegated to the Administrator of  
23 WAPA or SWPA.

24 (f) SECRETARIAL DETERMINATIONS.—Any deter-  
25 mination made pursuant to subsections (a) or (b) shall

1 be based on findings by the Secretary using the best avail-  
2 able data.

3 (g) **MAXIMUM FUNDING AMOUNT.**—The Secretary  
4 shall not accept and use more than \$100,000,000 under  
5 subsection (c)(1) for the period encompassing fiscal years  
6 2006 through 2015.

7 **SEC. 1223. TRANSMISSION SYSTEM MONITORING.**

8 Within 6 months after the date of enactment of this  
9 Act, the Secretary of Energy and the Federal Energy Reg-  
10 ulatory Commission shall study and report to Congress on  
11 the steps which must be taken to establish a system to  
12 make available to all transmission system owners and Re-  
13 gional Transmission Organizations (as defined in the Fed-  
14 eral Power Act) within the Eastern and Western Inter-  
15 connections real-time information on the functional status  
16 of all transmission lines within such Interconnections. In  
17 such study, the Commission shall assess technical means  
18 for implementing such transmission information system  
19 and identify the steps the Commission or Congress must  
20 take to require the implementation of such system.

21 **SEC. 1224. ADVANCED TRANSMISSION TECHNOLOGIES.**

22 (a) **AUTHORITY.**—The Federal Energy Regulatory  
23 Commission, in the exercise of its authorities under the  
24 Federal Power Act and the Public Utility Regulatory Poli-



1 cies Act of 1978, shall encourage the deployment of ad-  
2 vanced transmission technologies.

3 (b) DEFINITION.—For the purposes of this section,  
4 the term “advanced transmission technologies” means  
5 technologies that increase the capacity, efficiency, or reli-  
6 ability of existing or new transmission facilities, including,  
7 but not limited to—

8 (1) high-temperature lines (including super-  
9 conducting cables);

10 (2) underground cables;

11 (3) advanced conductor technology (including  
12 advanced composite conductors, high-temperature  
13 low-sag conductors, and fiber optic temperature  
14 sensing conductors);

15 (4) high-capacity ceramic electric wire, connec-  
16 tors, and insulators;

17 (5) optimized transmission line configurations  
18 (including multiple phased transmission lines);

19 (6) modular equipment;

20 (7) wireless power transmission;

21 (8) ultra-high voltage lines;

22 (9) high-voltage DC technology;

23 (10) flexible AC transmission systems;

1           (11) energy storage devices (including pumped  
2           hydro, compressed air, superconducting magnetic en-  
3           ergy storage, flywheels, and batteries);

4           (12) controllable load;

5           (13) distributed generation (including PV, fuel  
6           cells, microturbines);

7           (14) enhanced power device monitoring;

8           (15) direct system state sensors;

9           (16) fiber optic technologies;

10          (17) power electronics and related software (in-  
11          cluding real time monitoring and analytical soft-  
12          ware); and

13          (18) any other technologies the Commission  
14          considers appropriate.

15          (c) **OBSOLETE OR IMPRACTICABLE TECH-**  
16 **NOLOGIES.**—The Commission is authorized to cease en-  
17 couraging the deployment of any technology described in  
18 this section on a finding that such technology has been  
19 rendered obsolete or otherwise impracticable to deploy.

20 **SEC. 1225. ELECTRIC TRANSMISSION AND DISTRIBUTION**  
21 **PROGRAMS.**

22          (a) **ELECTRIC TRANSMISSION AND DISTRIBUTION**  
23 **PROGRAM.**—The Secretary of Energy (hereinafter in this  
24 section referred to as the “Secretary”) acting through the  
25 Director of the Office of Electric Transmission and Dis-

1 tribution shall establish a comprehensive research, devel-  
2 opment, demonstration and commercial application pro-  
3 gram to promote improved reliability and efficiency of  
4 electrical transmission and distribution systems. This pro-  
5 gram shall include—

6           (1) advanced energy delivery and storage tech-  
7 nologies, materials, and systems, including new  
8 transmission technologies, such as flexible alter-  
9 nating current transmission systems, composite con-  
10 ductor materials and other technologies that enhance  
11 reliability, operational flexibility, or power-carrying  
12 capability;

13           (2) advanced grid reliability and efficiency tech-  
14 nology development;

15           (3) technologies contributing to significant load  
16 reductions;

17           (4) advanced metering, load management, and  
18 control technologies;

19           (5) technologies to enhance existing grid compo-  
20 nents;

21           (6) the development and use of high-tempera-  
22 ture superconductors to—

23                   (A) enhance the reliability, operational  
24 flexibility, or power-carrying capability of elec-  
25 tric transmission or distribution systems; or

1           (B) increase the efficiency of electric en-  
2           ergy generation, transmission, distribution, or  
3           storage systems;

4           (7) integration of power systems, including sys-  
5           tems to deliver high-quality electric power, electric  
6           power reliability, and combined heat and power;

7           (8) supply of electricity to the power grid by  
8           small scale, distributed and residential-based power  
9           generators;

10          (9) the development and use of advanced grid  
11          design, operation and planning tools;

12          (10) any other infrastructure technologies, as  
13          appropriate; and

14          (11) technology transfer and education.

15          (b) PROGRAM PLAN.—Not later than 1 year after the  
16          date of the enactment of this legislation, the Secretary,  
17          in consultation with other appropriate Federal agencies,  
18          shall prepare and transmit to Congress a 5-year program  
19          plan to guide activities under this section. In preparing  
20          the program plan, the Secretary may consult with utilities,  
21          energy services providers, manufacturers, institutions of  
22          higher education, other appropriate State and local agen-  
23          cies, environmental organizations, professional and tech-  
24          nical societies, and any other persons the Secretary con-  
25          siders appropriate.

1 (c) IMPLEMENTATION.—The Secretary shall consider  
2 implementing this program using a consortium of indus-  
3 try, university and national laboratory participants.

4 (d) REPORT.—Not later than 2 years after the trans-  
5 mittal of the plan under subsection (b), the Secretary shall  
6 transmit a report to Congress describing the progress  
7 made under this section and identifying any additional re-  
8 sources needed to continue the development and commer-  
9 cial application of transmission and distribution infra-  
10 structure technologies.

11 (e) POWER DELIVERY RESEARCH INITIATIVE.—

12 (1) IN GENERAL.—The Secretary shall establish  
13 a research, development, demonstration, and com-  
14 mercial application initiative specifically focused on  
15 power delivery utilizing components incorporating  
16 high temperature superconductivity.

17 (2) GOALS.—The goals of this initiative shall be  
18 to—

19 (A) establish facilities to develop high tem-  
20 perature superconductivity power applications  
21 in partnership with manufacturers and utilities;

22 (B) provide technical leadership for estab-  
23 lishing reliability for high temperature super-  
24 conductivity power applications including suit-  
25 able modeling and analysis;

1 (C) facilitate commercial transition toward  
2 direct current power transmission, storage, and  
3 use for high power systems utilizing high tem-  
4 perature superconductivity; and

5 (D) facilitate the integration of very low  
6 impedance high temperature superconducting  
7 wires and cables in existing electric networks to  
8 improve system performance, power flow control  
9 and reliability.

10 (3) REQUIREMENTS.—The initiative shall in-  
11 clude—

12 (A) feasibility analysis, planning, research,  
13 and design to construct demonstrations of  
14 superconducting links in high power, direct cur-  
15 rent and controllable alternating current trans-  
16 mission systems;

17 (B) public-private partnerships to dem-  
18 onstrate deployment of high temperature super-  
19 conducting cable into testbeds simulating a re-  
20 alistic transmission grid and under varying  
21 transmission conditions, including actual grid  
22 insertions; and

23 (C) testbeds developed in cooperation with  
24 national laboratories, industries, and univer-  
25 sities to demonstrate these technologies, pre-

1           pare the technologies for commercial introduc-  
2           tion, and address cost or performance road-  
3           blocks to successful commercial use.

4           (4) AUTHORIZATION OF APPROPRIATIONS.—For  
5           purposes of carrying out this subsection, there are  
6           authorized to be appropriated—

7                   (A) for fiscal year 2006, \$15,000,000;

8                   (B) for fiscal year 2007, \$20,000,000;

9                   (C) for fiscal year 2008, \$30,000,000;

10                  (D) for fiscal year 2009, \$35,000,000; and

11                  (E) for fiscal year 2010, \$40,000,000.

12 **SEC. 1226. ADVANCED POWER SYSTEM TECHNOLOGY IN-**  
13 **CENTIVE PROGRAM.**

14           (a) PROGRAM.—The Secretary of Energy is author-  
15 ized to establish an Advanced Power System Technology  
16 Incentive Program to support the deployment of certain  
17 advanced power system technologies and to improve and  
18 protect certain critical governmental, industrial, and com-  
19 mercial processes. Funds provided under this section shall  
20 be used by the Secretary to make incentive payments to  
21 eligible owners or operators of advanced power system  
22 technologies to increase power generation through en-  
23 hanced operational, economic, and environmental perform-  
24 ance. Payments under this section may only be made upon

1 receipt by the Secretary of an incentive payment applica-  
2 tion establishing an applicant as either—

3           (1) a qualifying advanced power system tech-  
4 nology facility; or

5           (2) a qualifying security and assured power fa-  
6 cility.

7       (b) INCENTIVES.—Subject to availability of funds, a  
8 payment of 1.8 cents per kilowatt-hour shall be paid to  
9 the owner or operator of a qualifying advanced power sys-  
10 tem technology facility under this section for electricity  
11 generated at such facility. An additional 0.7 cents per kilo-  
12 watt-hour shall be paid to the owner or operator of a quali-  
13 fying security and assured power facility for electricity  
14 generated at such facility. Any facility qualifying under  
15 this section shall be eligible for an incentive payment for  
16 up to, but not more than, the first 10,000,000 kilowatt-  
17 hours produced in any fiscal year.

18       (c) ELIGIBILITY.—For purposes of this section:

19           (1) QUALIFYING ADVANCED POWER SYSTEM  
20 TECHNOLOGY FACILITY.—The term “qualifying ad-  
21 vanced power system technology facility” means a  
22 facility using an advanced fuel cell, turbine, or hy-  
23 brid power system or power storage system to gen-  
24 erate or store electric energy.





1 Distribution. This Office shall be headed by a Director,  
2 subject to the authority of the Secretary. The Director  
3 shall be appointed by the Secretary. The Director shall  
4 be compensated at the annual rate prescribed for level IV  
5 of the Executive Schedule under section 5315 of title 5,  
6 United States Code.

7 “(b) DIRECTOR.—The Director shall—

8 “(1) coordinate and develop a comprehensive,  
9 multi-year strategy to improve the Nation’s elec-  
10 tricity transmission and distribution;

11 “(2) implement or, where appropriate, coordi-  
12 nate the implementation of, the recommendations  
13 made in the Secretary’s May 2002 National Trans-  
14 mission Grid Study;

15 “(3) oversee research, development, and dem-  
16 onstration to support Federal energy policy related  
17 to electricity transmission and distribution;

18 “(4) grant authorizations for electricity import  
19 and export pursuant to section 202(c), (d), (e), and  
20 (f) of the Federal Power Act (16 U.S.C. 824a);

21 “(5) perform other functions, assigned by the  
22 Secretary, related to electricity transmission and dis-  
23 tribution; and

24 “(6) develop programs for workforce training in  
25 power and transmission engineering.”.

1 (b) CONFORMING AMENDMENTS.—(1) The table of  
2 contents of the Department of Energy Organization Act  
3 (42 U.S.C. 7101 note) is amended by inserting after the  
4 item relating to section 217 the following new item:

“Sec. 218. Office of Electric Transmission and Distribution.”.

5 (2) Section 5315 of title 5, United States Code, is  
6 amended by inserting after the item relating to “Inspector  
7 General, Department of Energy.” the following:

8 “Director, Office of Electric Transmission and  
9 Distribution, Department of Energy.”.

## 10 **Subtitle C—Transmission** 11 **Operation Improvements**

### 12 **SEC. 1231. OPEN NONDISCRIMINATORY ACCESS.**

13 Part II of the Federal Power Act (16 U.S.C. 824 et  
14 seq.) is amended by inserting after section 211 the fol-  
15 lowing new section:

### 16 **“SEC. 211A. OPEN ACCESS BY UNREGULATED TRANSMIT-** 17 **TING UTILITIES.**

18 “(a) TRANSMISSION SERVICES.—Subject to section  
19 212(h), the Commission may, by rule or order, require an  
20 unregulated transmitting utility to provide transmission  
21 services—

22 “(1) at rates that are comparable to those that  
23 the unregulated transmitting utility charges itself;  
24 and

1           “(2) on terms and conditions (not relating to  
2 rates) that are comparable to those under which  
3 such unregulated transmitting utility provides trans-  
4 mission services to itself and that are not unduly  
5 discriminatory or preferential.

6           “(b) EXEMPTION.—The Commission shall exempt  
7 from any rule or order under this section any unregulated  
8 transmitting utility that—

9           “(1) sells no more than 4,000,000 megawatt  
10 hours of electricity per year; or

11           “(2) does not own or operate any transmission  
12 facilities that are necessary for operating an inter-  
13 connected transmission system (or any portion  
14 thereof); or

15           “(3) meets other criteria the Commission deter-  
16 mines to be in the public interest.

17           “(c) LOCAL DISTRIBUTION FACILITIES.—The re-  
18 quirements of subsection (a) shall not apply to facilities  
19 used in local distribution.

20           “(d) EXEMPTION TERMINATION.—Whenever the  
21 Commission, after an evidentiary hearing held upon a  
22 complaint and after giving consideration to reliability  
23 standards established under section 215, finds on the  
24 basis of a preponderance of the evidence that any exemp-  
25 tion granted pursuant to subsection (b) unreasonably im-

1 pairs the continued reliability of an interconnected trans-  
2 mission system, it shall revoke the exemption granted to  
3 that transmitting utility.

4       “(e) APPLICATION TO UNREGULATED TRANSMIT-  
5 TING UTILITIES.—The rate changing procedures applica-  
6 ble to public utilities under subsections (c) and (d) of sec-  
7 tion 205 are applicable to unregulated transmitting utili-  
8 ties for purposes of this section.

9       “(f) REMAND.—In exercising its authority under  
10 paragraph (1) of subsection (a), the Commission may re-  
11 mand transmission rates to an unregulated transmitting  
12 utility for review and revision where necessary to meet the  
13 requirements of subsection (a).

14       “(g) OTHER REQUESTS.—The provision of trans-  
15 mission services under subsection (a) does not preclude a  
16 request for transmission services under section 211.

17       “(h) LIMITATION.—The Commission may not require  
18 a State or municipality to take action under this section  
19 that would violate a private activity bond rule for purposes  
20 of section 141 of the Internal Revenue Code of 1986 (26  
21 U.S.C. 141).

22       “(i) TRANSFER OF CONTROL OF TRANSMITTING FA-  
23 CILITIES.—Nothing in this section authorizes the Commis-  
24 sion to require an unregulated transmitting utility to  
25 transfer control or operational control of its transmitting

1 facilities to an RTO or any other Commission-approved  
2 independent transmission organization designated to pro-  
3 vide nondiscriminatory transmission access.

4 “(j) DEFINITION.—For purposes of this section, the  
5 term ‘unregulated transmitting utility’ means an entity  
6 that—

7 “(1) owns or operates facilities used for the  
8 transmission of electric energy in interstate com-  
9 merce; and

10 “(2) is an entity described in section 201(f).”.

11 **SEC. 1232. SENSE OF CONGRESS ON REGIONAL TRANS-**  
12 **MISSION ORGANIZATIONS.**

13 It is the sense of Congress that, in order to promote  
14 fair, open access to electric transmission service, benefit  
15 retail consumers, facilitate wholesale competition, improve  
16 efficiencies in transmission grid management, promote  
17 grid reliability, remove opportunities for unduly discrimi-  
18 natory or preferential transmission practices, and provide  
19 for the efficient development of transmission infrastruc-  
20 ture needed to meet the growing demands of competitive  
21 wholesale power markets, all transmitting utilities in inter-  
22 state commerce should voluntarily become members of Re-  
23 gional Transmission Organizations as defined in section  
24 3 of the Federal Power Act.

1 **SEC. 1233. REGIONAL TRANSMISSION ORGANIZATION AP-**  
2 **PLICATIONS PROGRESS REPORT.**

3 Not later than 120 days after the date of enactment  
4 of this section, the Federal Energy Regulatory Commis-  
5 sion shall submit to Congress a report containing each of  
6 the following:

7 (1) A list of all regional transmission organiza-  
8 tion applications filed at the Commission pursuant  
9 to subpart F of part 35 of title 18, Code of Federal  
10 Regulations (in this section referred to as “Order  
11 No. 2000”), including an identification of each pub-  
12 lic utility and other entity included within the pro-  
13 posed membership of the regional transmission orga-  
14 nization.

15 (2) A brief description of the status of each  
16 pending regional transmission organization applica-  
17 tion, including a precise explanation of how each  
18 fails to comply with the minimal requirements of  
19 Order No. 2000 and what steps need to be taken to  
20 bring each application into such compliance.

21 (3) For any application that has not been fi-  
22 nally approved by the Commission, a detailed de-  
23 scription of every aspect of the application that the  
24 Commission has determined does not conform to the  
25 requirements of Order No. 2000.

1           (4) For any application that has not been fi-  
2 nally approved by the Commission, an explanation  
3 by the Commission of why the items described pur-  
4 suant to paragraph (3) constitute material non-  
5 compliance with the requirements of the Commis-  
6 sion's Order No. 2000 sufficient to justify denial of  
7 approval by the Commission.

8           (5) For all regional transmission organization  
9 applications filed pursuant to the Commission's  
10 Order No. 2000, whether finally approved or not—

11           (A) a discussion of that regional trans-  
12 mission organization's efforts to minimize rate  
13 seams between itself and—

14           (i) other regional transmission organi-  
15 zations; and

16           (ii) entities not participating in a re-  
17 gional transmission organization;

18           (B) a discussion of the impact of such  
19 seams on consumers and wholesale competition;  
20 and

21           (C) a discussion of minimizing cost-shifting  
22 on consumers.

23 **SEC. 1234. FEDERAL UTILITY PARTICIPATION IN REGIONAL**  
24 **TRANSMISSION ORGANIZATIONS.**

25           (a) DEFINITIONS.—For purposes of this section—



1           (1) APPROPRIATE FEDERAL REGULATORY AU-  
2           THORITY.—The term “appropriate Federal regu-  
3           latory authority” means—

4                   (A) with respect to a Federal power mar-  
5                   keting agency (as defined in the Federal Power  
6                   Act), the Secretary of Energy, except that the  
7                   Secretary may designate the Administrator of a  
8                   Federal power marketing agency to act as the  
9                   appropriate Federal regulatory authority with  
10                  respect to the transmission system of that Fed-  
11                  eral power marketing agency; and

12                   (B) with respect to the Tennessee Valley  
13                   Authority, the Board of Directors of the Ten-  
14                   nessee Valley Authority.

15           (2) FEDERAL UTILITY.—The term “Federal  
16           utility” means a Federal power marketing agency or  
17           the Tennessee Valley Authority.

18           (3) TRANSMISSION SYSTEM.—The term “trans-  
19           mission system” means electric transmission facili-  
20           ties owned, leased, or contracted for by the United  
21           States and operated by a Federal utility.

22           (b) TRANSFER.—The appropriate Federal regulatory  
23           authority is authorized to enter into a contract, agreement  
24           or other arrangement transferring control and use of all  
25           or part of the Federal utility’s transmission system to an

1 RTO or ISO (as defined in the Federal Power Act), ap-  
2 proved by the Federal Energy Regulatory Commission.

3 Such contract, agreement or arrangement shall include—

4           (1) performance standards for operation and  
5           use of the transmission system that the head of the  
6           Federal utility determines necessary or appropriate,  
7           including standards that assure recovery of all the  
8           Federal utility's costs and expenses related to the  
9           transmission facilities that are the subject of the  
10          contract, agreement or other arrangement; consist-  
11          ency with existing contracts and third-party financ-  
12          ing arrangements; and consistency with said Federal  
13          utility's statutory authorities, obligations, and limi-  
14          tations;

15          (2) provisions for monitoring and oversight by  
16          the Federal utility of the RTO's or ISO's fulfillment  
17          of the terms and conditions of the contract, agree-  
18          ment or other arrangement, including a provision for  
19          the resolution of disputes through arbitration or  
20          other means with the regional transmission organi-  
21          zation or with other participants, notwithstanding  
22          the obligations and limitations of any other law re-  
23          garding arbitration; and

24          (3) a provision that allows the Federal utility to  
25          withdraw from the RTO or ISO and terminate the

1 contract, agreement or other arrangement in accord-  
2 ance with its terms.

3 Neither this section, actions taken pursuant to it, nor any  
4 other transaction of a Federal utility using an RTO or  
5 ISO shall confer upon the Federal Energy Regulatory  
6 Commission jurisdiction or authority over the Federal util-  
7 ity's electric generation assets, electric capacity or energy  
8 that the Federal utility is authorized by law to market,  
9 or the Federal utility's power sales activities.

10 (c) EXISTING STATUTORY AND OTHER OBLIGA-  
11 TIONS.—

12 (1) SYSTEM OPERATION REQUIREMENTS.—No  
13 statutory provision requiring or authorizing a Fed-  
14 eral utility to transmit electric power or to construct,  
15 operate or maintain its transmission system shall be  
16 construed to prohibit a transfer of control and use  
17 of its transmission system pursuant to, and subject  
18 to all requirements of subsection (b).

19 (2) OTHER OBLIGATIONS.—This subsection  
20 shall not be construed to—

21 (A) suspend, or exempt any Federal utility  
22 from, any provision of existing Federal law, in-  
23 cluding but not limited to any requirement or  
24 direction relating to the use of the Federal util-  
25 ity's transmission system, environmental protec-

1           tion, fish and wildlife protection, flood control,  
2           navigation, water delivery, or recreation; or

3                   (B) authorize abrogation of any contract  
4           or treaty obligation.

5           (3) REPEAL.—Section 311 of title III of Appen-  
6           dix B of the Act of October 27, 2000 (P.L. 106–  
7           377, section 1(a)(2); 114 Stat. 1441, 1441A–80; 16  
8           U.S.C. 824n) is repealed.

9   **SEC. 1235. STANDARD MARKET DESIGN.**

10          (a) REMAND.—The Commission’s proposed rule-  
11          making entitled “Remedying Undue Discrimination  
12          through Open Access Transmission Service and Standard  
13          Electricity Market Design” (Docket No. RM01–12–000)  
14          (“SMD NOPR”) is remanded to the Commission for re-  
15          consideration. No final rule mandating a standard elec-  
16          tricity market design pursuant to the proposed rule-  
17          making, including any rule or order of general applica-  
18          bility within the scope of the proposed rulemaking, may  
19          be issued before October 31, 2006, or take effect before  
20          December 31, 2006. Any final rule issued by the Commis-  
21          sion pursuant to the proposed rulemaking shall be pre-  
22          ceded by a second notice of proposed rulemaking issued  
23          after the date of enactment of this Act and an opportunity  
24          for public comment.

1 (b) SAVINGS CLAUSE.—This section shall not be con-  
2 strued to modify or diminish any authority or obligation  
3 the Commission has under this Act, the Federal Power  
4 Act, or other applicable law, including, but not limited to,  
5 any authority to—

6 (1) issue any rule or order (of general or par-  
7 ticular applicability) pursuant to any such authority  
8 or obligation; or

9 (2) act on a filing or filings by 1 or more trans-  
10 mitting utilities for the voluntary formation of a Re-  
11 gional Transmission Organization or Independent  
12 System Operator (as defined in the Federal Power  
13 Act) (and related market structures or rules) or vol-  
14 untary modification of an existing Regional Trans-  
15 mission Organization or Independent System Oper-  
16 ator (and related market structures or rules).

17 **SEC. 1236. NATIVE LOAD SERVICE OBLIGATION.**

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. 217. NATIVE LOAD SERVICE OBLIGATION.**

21 “(a) MEETING SERVICE OBLIGATIONS.—(1) Any  
22 load-serving entity that, as of the date of enactment of  
23 this section—

24 “(A) owns generation facilities, markets the  
25 output of Federal generation facilities, or holds

1 rights under 1 or more wholesale contracts to pur-  
2 chase electric energy, for the purpose of meeting a  
3 service obligation, and

4 “(B) by reason of ownership of transmission fa-  
5 cilities, or 1 or more contracts or service agreements  
6 for firm transmission service, holds firm trans-  
7 mission rights for delivery of the output of such gen-  
8 eration facilities or such purchased energy to meet  
9 such service obligation,

10 is entitled to use such firm transmission rights, or, equiva-  
11 lent tradable or financial transmission rights, in order to  
12 deliver such output or purchased energy, or the output of  
13 other generating facilities or purchased energy to the ex-  
14 tent deliverable using such rights, to the extent required  
15 to meet its service obligation.

16 “(2) To the extent that all or a portion of the service  
17 obligation covered by such firm transmission rights or  
18 equivalent tradable or financial transmission rights is  
19 transferred to another load-serving entity, the successor  
20 load-serving entity shall be entitled to use the firm trans-  
21 mission rights or equivalent tradable or financial trans-  
22 mission rights associated with the transferred service obli-  
23 gation. Subsequent transfers to another load-serving enti-  
24 ty, or back to the original load-serving entity, shall be enti-  
25 tled to the same rights.

1       “(3) The Commission shall exercise its authority  
2 under this Act in a manner that facilitates the planning  
3 and expansion of transmission facilities to meet the rea-  
4 sonable needs of load-serving entities to satisfy their serv-  
5 ice obligations, and enables load-serving entities to secure  
6 firm transmission rights (or equivalent tradable or finan-  
7 cial rights) on a long term basis for long term power sup-  
8 ply arrangements made, or planned, to meet such needs.

9       “(b) ALLOCATION OF TRANSMISSION RIGHTS.—  
10 Nothing in subsections (a)(1) and (a) (2) of this section  
11 shall affect any existing or future methodology employed  
12 by an RTO or ISO for allocating or auctioning trans-  
13 mission rights if such RTO or ISO was authorized by the  
14 Commission to allocate or auction financial transmission  
15 rights on its system as of January 1, 2005, and the Com-  
16 mission determines that any future allocation or auction  
17 is just, reasonable and not unduly discriminatory or pref-  
18 erential, provided, however, that if such an RTO or ISO  
19 never allocated financial transmission rights on its system  
20 that pertained to a period before January 1, 2005, with  
21 respect to any application by such RTO or ISO that would  
22 change its methodology the Commission shall exercise its  
23 authority in a manner consistent with the Act and the  
24 policies expressed in subsections (a)(1) and (a)(2) as ap-  
25 plied to firm transmission rights held by a load serving

1 entity as of January 1, 2005, to the extent the associated  
2 generation ownership or power purchase arrangements re-  
3 main in effect.

4 “(c) CERTAIN TRANSMISSION RIGHTS.—The Com-  
5 mission may exercise authority under this Act to make  
6 transmission rights not used to meet an obligation covered  
7 by subsection (a) available to other entities in a manner  
8 determined by the Commission to be just, reasonable, and  
9 not unduly discriminatory or preferential.

10 “(d) OBLIGATION TO BUILD.—Nothing in this Act  
11 shall relieve a load-serving entity from any obligation  
12 under State or local law to build transmission or distribu-  
13 tion facilities adequate to meet its service obligations.

14 “(e) CONTRACTS.—Nothing in this section shall pro-  
15 vide a basis for abrogating any contract or service agree-  
16 ment for firm transmission service or rights in effect as  
17 of the date of the enactment of this subsection. If an ISO  
18 in the Western Interconnection had allocated financial  
19 transmission rights prior to the date of enactment of this  
20 section but had not done so with respect to one or more  
21 load-serving entities’ firm transmission rights held under  
22 contracts to which the preceding sentence applies (or held  
23 by reason of ownership of transmission facilities), such  
24 load-serving entities may not be required, without their  
25 consent, to convert such firm transmission rights to



1 tradable or financial rights, except where the load-serving  
2 entity has voluntarily joined the ISO as a participating  
3 transmission owner (or its successor) in accordance with  
4 the ISO tariff.

5       “(f) WATER PUMPING FACILITIES.—The Commis-  
6 sion shall ensure that any entity described in section  
7 201(f) that owns transmission facilities used predomi-  
8 nately to support its own water pumping facilities shall  
9 have, with respect to such facilities, protections for trans-  
10 mission service comparable to those provided to load-serv-  
11 ing entities pursuant to this section.

12       “(g) FERC RULEMAKING ON LONG-TERM TRANS-  
13 MISSION RIGHTS IN ORGANIZED MARKETS.—Within one  
14 year after the date of enactment of this section and after  
15 notice and an opportunity for comment, the Commission  
16 shall by rule or order implement subsection (a)(3) in Com-  
17 mission-approved RTOs and ISOs with organized elec-  
18 tricity markets.

19       “(h) ERCOT.—This section shall not apply within  
20 the area referred to in section 212(k)(2)(A).

21       “(i) JURISDICTION.—This section does not authorize  
22 the Commission to take any action not otherwise within  
23 its jurisdiction.

24       “(j) EFFECT OF EXERCISING RIGHTS.—An entity  
25 that lawfully exercises rights granted under subsection (a)

1 shall not be considered by such action as engaging in  
2 undue discrimination or preference under this Act.

3 “(k) TVA AREA.—For purposes of subsection  
4 (a)(1)(B), a load-serving entity that is located within the  
5 service area of the Tennessee Valley Authority and that  
6 has a firm wholesale power supply contract with the Ten-  
7 nessee Valley Authority shall be deemed to hold firm  
8 transmission rights for the transmission of such power.

9 “(l) DEFINITIONS.—For purposes of this section:

10 “(1) The term ‘distribution utility’ means an  
11 electric utility that has a service obligation to end-  
12 users or to a State utility or electric cooperative  
13 that, directly or indirectly, through 1 or more addi-  
14 tional State utilities or electric cooperatives, provides  
15 electric service to end-users.

16 “(2) The term ‘load-serving entity’ means a dis-  
17 tribution utility or an electric utility that has a serv-  
18 ice obligation.

19 “(3) The term ‘service obligation’ means a re-  
20 quirement applicable to, or the exercise of authority  
21 granted to, an electric utility under Federal, State  
22 or local law or under long-term contracts to provide  
23 electric service to end-users or to a distribution util-  
24 ity.

1           “(4) The term ‘State utility’ means a State or  
2 any political subdivision of a State, or any agency,  
3 authority, or instrumentality of any 1 or more of the  
4 foregoing, or a corporation which is wholly owned,  
5 directly or indirectly, by any 1 or more of the fore-  
6 going, competent to carry on the business of devel-  
7 oping, transmitting, utilizing or distributing power”.

8 **SEC. 1237. STUDY ON THE BENEFITS OF ECONOMIC DIS-**  
9 **PATCH.**

10       (a) **STUDY.**—The Secretary of Energy, in coordina-  
11 tion and consultation with the States, shall conduct a  
12 study on—

13           (1) the procedures currently used by electric  
14 utilities to perform economic dispatch;

15           (2) identifying possible revisions to those proce-  
16 dures to improve the ability of nonutility generation  
17 resources to offer their output for sale for the pur-  
18 pose of inclusion in economic dispatch; and

19           (3) the potential benefits to residential, com-  
20 mercial, and industrial electricity consumers nation-  
21 ally and in each state if economic dispatch proce-  
22 dures were revised to improve the ability of non-  
23 utility generation resources to offer their output for  
24 inclusion in economic dispatch.

1 (b) DEFINITION.—The term “economic dispatch”  
2 when used in this section means the operation of genera-  
3 tion facilities to produce energy at the lowest cost to reli-  
4 ably serve consumers, recognizing any operational limits  
5 of generation and transmission facilities.

6 (c) REPORT TO CONGRESS AND THE STATES.—Not  
7 later than 90 days after the date of enactment of this Act,  
8 and on a yearly basis following, the Secretary of Energy  
9 shall submit a report to Congress and the States on the  
10 results of the study conducted under subsection (a), in-  
11 cluding recommendations to Congress and the States for  
12 any suggested legislative or regulatory changes.

## 13 **Subtitle D—Transmission Rate** 14 **Reform**

### 15 **SEC. 1241. TRANSMISSION INFRASTRUCTURE INVESTMENT.**

16 Part II of the Federal Power Act (16 U.S.C. 824 et  
17 seq.) is amended by adding at the end the following:

### 18 **“SEC. 218. TRANSMISSION INFRASTRUCTURE INVESTMENT.**

19 “(a) RULEMAKING REQUIREMENT.—Within 1 year  
20 after the enactment of this section, the Commission shall  
21 establish, by rule, incentive-based (including, but not lim-  
22 ited to performance-based) rate treatments for the trans-  
23 mission of electric energy in interstate commerce by public  
24 utilities for the purpose of benefiting consumers by ensur-

1 ing reliability and reducing the cost of delivered power by  
2 reducing transmission congestion. Such rule shall—

3 “(1) promote reliable and economically efficient  
4 transmission and generation of electricity by pro-  
5 moting capital investment in the enlargement, im-  
6 provement, maintenance and operation of facilities  
7 for the transmission of electric energy in interstate  
8 commerce;

9 “(2) provide a return on equity that attracts  
10 new investment in transmission facilities (including  
11 related transmission technologies);

12 “(3) encourage deployment of transmission  
13 technologies and other measures to increase the ca-  
14 pacity and efficiency of existing transmission facili-  
15 ties and improve the operation of such facilities; and

16 “(4) allow recovery of all prudently incurred  
17 costs necessary to comply with mandatory reliability  
18 standards issued pursuant to section 215 of this  
19 Act.

20 The Commission may, from time to time, revise such rule.

21 “(b) ADDITIONAL INCENTIVES FOR RTO PARTICIPA-  
22 TION.—In the rule issued under this section, the Commis-  
23 sion shall, to the extent within its jurisdiction, provide for  
24 incentives to each transmitting utility or electric utility  
25 that joins a Regional Transmission Organization or Inde-

1 pendent System Operator. Incentives provided by the  
2 Commission pursuant to such rule shall include—

3 “(1) recovery of all prudently incurred costs to  
4 develop and participate in any proposed or approved  
5 RTO, ISO, or independent transmission company;

6 “(2) recovery of all costs previously approved by  
7 a State commission which exercised jurisdiction over  
8 the transmission facilities prior to the utility’s par-  
9 ticipation in the RTO or ISO, including costs nec-  
10 essary to honor preexisting transmission service con-  
11 tracts, in a manner which does not reduce the reve-  
12 nues the utility receives for transmission services for  
13 a reasonable transition period after the utility joins  
14 the RTO or ISO;

15 “(3) recovery as an expense in rates of the  
16 costs prudently incurred to conduct transmission  
17 planning and reliability activities, including the costs  
18 of participating in RTO, ISO and other regional  
19 planning activities and design, study and other  
20 precertification costs involved in seeking permits and  
21 approvals for proposed transmission facilities;

22 “(4) a current return in rates for construction  
23 work in progress for transmission facilities and full  
24 recovery of prudently incurred costs for constructing  
25 transmission facilities;

1 “(5) formula transmission rates; and

2 “(6) a maximum 15 year accelerated deprecia-  
3 tion on new transmission facilities for rate treatment  
4 purposes.

5 The Commission shall ensure that any costs recoverable  
6 pursuant to this subsection may be recovered by such util-  
7 ity through the transmission rates charged by such utility  
8 or through the transmission rates charged by the RTO  
9 or ISO that provides transmission service to such utility.

10 “(c) **JUST AND REASONABLE RATES.**—All rates ap-  
11 proved under the rules adopted pursuant to this section,  
12 including any revisions to such rules, are subject to the  
13 requirement of sections 205 and 206 that all rates,  
14 charges, terms, and conditions be just and reasonable and  
15 not unduly discriminatory or preferential.”.

## 16 **Subtitle E—Amendments to PURPA**

### 17 **SEC. 1251. NET METERING AND ADDITIONAL STANDARDS.**

18 (a) **ADOPTION OF STANDARDS.**—Section 111(d) of  
19 the Public Utility Regulatory Policies Act of 1978 (16  
20 U.S.C. 2621(d)) is amended by adding at the end the fol-  
21 lowing:

22 “(11) **NET METERING.**—Each electric utility  
23 shall make available upon request net metering serv-  
24 ice to any electric consumer that the electric utility  
25 serves. For purposes of this paragraph, the term

1 ‘net metering service’ means service to an electric  
2 consumer under which electric energy generated by  
3 that electric consumer from an eligible on-site gener-  
4 ating facility and delivered to the local distribution  
5 facilities may be used to offset electric energy pro-  
6 vided by the electric utility to the electric consumer  
7 during the applicable billing period.

8 “(12) FUEL SOURCES.—Each electric utility  
9 shall develop a plan to minimize dependence on 1  
10 fuel source and to ensure that the electric energy it  
11 sells to consumers is generated using a diverse range  
12 of fuels and technologies, including renewable tech-  
13 nologies.

14 “(13) FOSSIL FUEL GENERATION EFFI-  
15 CIENCY.—Each electric utility shall develop and im-  
16 plement a 10-year plan to increase the efficiency of  
17 its fossil fuel generation.”.

18 (b) COMPLIANCE.—

19 (1) TIME LIMITATIONS.—Section 112(b) of the  
20 Public Utility Regulatory Policies Act of 1978 (16  
21 U.S.C. 2622(b)) is amended by adding at the end  
22 the following:

23 “(3)(A) Not later than 2 years after the enactment  
24 of this paragraph, each State regulatory authority (with  
25 respect to each electric utility for which it has ratemaking



1 authority) and each nonregulated electric utility shall com-  
2 mence the consideration referred to in section 111, or set  
3 a hearing date for such consideration, with respect to each  
4 standard established by paragraphs (11) through (13) of  
5 section 111(d).

6 “(B) Not later than 3 years after the date of the en-  
7 actment of this paragraph, each State regulatory authority  
8 (with respect to each electric utility for which it has rate-  
9 making authority), and each nonregulated electric utility,  
10 shall complete the consideration, and shall make the deter-  
11 mination, referred to in section 111 with respect to each  
12 standard established by paragraphs (11) through (13) of  
13 section 111(d).”.

14 (2) FAILURE TO COMPLY.—Section 112(c) of  
15 the Public Utility Regulatory Policies Act of 1978  
16 (16 U.S.C. 2622(c)) is amended by adding at the  
17 end the following:

18 “In the case of each standard established by paragraphs  
19 (11) through (13) of section 111(d), the reference con-  
20 tained in this subsection to the date of enactment of this  
21 Act shall be deemed to be a reference to the date of enact-  
22 ment of such paragraphs (11) through (13).”.

23 (3) PRIOR STATE ACTIONS.—

24 (A) IN GENERAL.—Section 112 of the  
25 Public Utility Regulatory Policies Act of 1978

1           (16 U.S.C. 2622) is amended by adding at the  
2           end the following:

3           “(d) PRIOR STATE ACTIONS.—Subsections (b) and  
4 (c) of this section shall not apply to the standards estab-  
5 lished by paragraphs (11) through (13) of section 111(d)  
6 in the case of any electric utility in a State if, before the  
7 enactment of this subsection—

8           “(1) the State has implemented for such utility  
9           the standard concerned (or a comparable standard);

10           “(2) the State regulatory authority for such  
11 State or relevant nonregulated electric utility has  
12 conducted a proceeding to consider implementation  
13 of the standard concerned (or a comparable stand-  
14 ard) for such utility; or

15           “(3) the State legislature has voted on the im-  
16 plementation of such standard (or a comparable  
17 standard) for such utility.”.

18           (B) CROSS REFERENCE.—Section 124 of  
19 such Act (16 U.S.C. 2634) is amended by add-  
20 ing the following at the end thereof: “In the  
21 case of each standard established by paragraphs  
22 (11) through (13) of section 111(d), the ref-  
23 erence contained in this subsection to the date  
24 of enactment of this Act shall be deemed to be

1 a reference to the date of enactment of such  
2 paragraphs (11) through (13).”.

3 **SEC. 1252. SMART METERING.**

4 (a) IN GENERAL.—Section 111(d) of the Public Utili-  
5 ties Regulatory Policies Act of 1978 (16 U.S.C. 2621(d))  
6 is amended by adding at the end the following:

7 “(14) TIME-BASED METERING AND COMMU-  
8 NICATIONS.—

9 “(A) Not later than 18 months after the  
10 date of enactment of this paragraph, each elec-  
11 tric utility shall offer each of its customer class-  
12 es, and provide individual customers upon cus-  
13 tomer request, a time-based rate schedule under  
14 which the rate charged by the electric utility  
15 varies during different time periods and reflects  
16 the variance, if any, in the utility’s costs of gen-  
17 erating and purchasing electricity at the whole-  
18 sale level. The time-based rate schedule shall  
19 enable the electric consumer to manage energy  
20 use and cost through advanced metering and  
21 communications technology.

22 “(B) The types of time-based rate sched-  
23 ules that may be offered under the schedule re-  
24 ferred to in subparagraph (A) include, among  
25 others—

1           “(i) time-of-use pricing whereby elec-  
2           tricity prices are set for a specific time pe-  
3           riod on an advance or forward basis, typi-  
4           cally not changing more often than twice a  
5           year, based on the utility’s cost of gener-  
6           ating and/or purchasing such electricity at  
7           the wholesale level for the benefit of the  
8           consumer. Prices paid for energy consumed  
9           during these periods shall be pre-estab-  
10          lished and known to consumers in advance  
11          of such consumption, allowing them to  
12          vary their demand and usage in response  
13          to such prices and manage their energy  
14          costs by shifting usage to a lower cost pe-  
15          riod or reducing their consumption overall;

16           “(ii) critical peak pricing whereby  
17          time-of-use prices are in effect except for  
18          certain peak days, when prices may reflect  
19          the costs of generating and/or purchasing  
20          electricity at the wholesale level and when  
21          consumers may receive additional discounts  
22          for reducing peak period energy consump-  
23          tion;

24           “(iii) real-time pricing whereby elec-  
25          tricity prices are set for a specific time pe-

1           riod on an advanced or forward basis, re-  
2           flecting the utility’s cost of generating and/  
3           or purchasing electricity at the wholesale  
4           level, and may change as often as hourly;  
5           and

6                   “(iv) credits for consumers with large  
7           loads who enter into pre-established peak  
8           load reduction agreements that reduce a  
9           utility’s planned capacity obligations.

10                   “(C) Each electric utility subject to sub-  
11           paragraph (A) shall provide each customer re-  
12           questing a time-based rate with a time-based  
13           meter capable of enabling the utility and cus-  
14           tomer to offer and receive such rate, respec-  
15           tively.

16                   “(D) For purposes of implementing this  
17           paragraph, any reference contained in this sec-  
18           tion to the date of enactment of the Public Util-  
19           ity Regulatory Policies Act of 1978 shall be  
20           deemed to be a reference to the date of enact-  
21           ment of this paragraph.

22                   “(E) In a State that permits third-party  
23           marketers to sell electric energy to retail elec-  
24           tric consumers, such consumers shall be entitled  
25           to receive the same time-based metering and

1           communications device and service as a retail  
2           electric consumer of the electric utility.

3           “(F) Notwithstanding subsections (b) and  
4           (c) of section 112, each State regulatory au-  
5           thority shall, not later than 18 months after the  
6           date of enactment of this paragraph conduct an  
7           investigation in accordance with section 115(i)  
8           and issue a decision whether it is appropriate to  
9           implement the standards set out in subpara-  
10          graphs (A) and (C).”.

11          (b) STATE INVESTIGATION OF DEMAND RESPONSE  
12          AND TIME-BASED METERING.—Section 115 of the Public  
13          Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2625)  
14          is amended as follows:

15               (1) By inserting in subsection (b) after the  
16               phrase “the standard for time-of-day rates estab-  
17               lished by section 111(d)(3)” the following: “and the  
18               standard for time-based metering and communica-  
19               tions established by section 111(d)(14)”.

20               (2) By inserting in subsection (b) after the  
21               phrase “are likely to exceed the metering” the fol-  
22               lowing: “and communications”.

23               (3) By adding the at the end the following:

24               “(i) TIME-BASED METERING AND COMMUNICA-  
25          TIONS.—In making a determination with respect to the

1 standard established by section 111(d)(14), the investiga-  
2 tion requirement of section 111(d)(14)(F) shall be as fol-  
3 lows: Each State regulatory authority shall conduct an in-  
4 vestigation and issue a decision whether or not it is appro-  
5 priate for electric utilities to provide and install time-based  
6 meters and communications devices for each of their cus-  
7 tomers which enable such customers to participate in time-  
8 based pricing rate schedules and other demand response  
9 programs.”.

10 (c) FEDERAL ASSISTANCE ON DEMAND RE-  
11 SPONSE.—Section 132(a) of the Public Utility Regulatory  
12 Policies Act of 1978 (16 U.S.C. 2642(a)) is amended by  
13 striking “and” at the end of paragraph (3), striking the  
14 period at the end of paragraph (4) and inserting “; and”,  
15 and by adding the following at the end thereof:

16 “(5) technologies, techniques, and rate-making  
17 methods related to advanced metering and commu-  
18 nications and the use of these technologies, tech-  
19 niques and methods in demand response programs.”.

20 (d) FEDERAL GUIDANCE.—Section 132 of the Public  
21 Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642)  
22 is amended by adding the following at the end thereof:

23 “(d) DEMAND RESPONSE.—The Secretary shall be  
24 responsible for—

1           “(1) educating consumers on the availability,  
2           advantages, and benefits of advanced metering and  
3           communications technologies, including the funding  
4           of demonstration or pilot projects;

5           “(2) working with States, utilities, other energy  
6           providers and advanced metering and communica-  
7           tions experts to identify and address barriers to the  
8           adoption of demand response programs; and

9           “(3) not later than 180 days after the date of  
10          enactment of the Energy Policy Act of 2005, pro-  
11          viding Congress with a report that identifies and  
12          quantifies the national benefits of demand response  
13          and makes a recommendation on achieving specific  
14          levels of such benefits by January 1, 2007.”.

15          (e) DEMAND RESPONSE AND REGIONAL COORDINA-  
16          TION.—

17                 (1) IN GENERAL.—It is the policy of the United  
18          States to encourage States to coordinate, on a re-  
19          gional basis, State energy policies to provide reliable  
20          and affordable demand response services to the pub-  
21          lic.

22                 (2) TECHNICAL ASSISTANCE.—The Secretary of  
23          Energy shall provide technical assistance to States  
24          and regional organizations formed by 2 or more  
25          States to assist them in—



1 (A) identifying the areas with the greatest  
2 demand response potential;

3 (B) identifying and resolving problems in  
4 transmission and distribution networks, includ-  
5 ing through the use of demand response;

6 (C) developing plans and programs to use  
7 demand response to respond to peak demand or  
8 emergency needs; and

9 (D) identifying specific measures con-  
10 sumers can take to participate in these demand  
11 response programs.

12 (3) REPORT.—Not later than 1 year after the  
13 date of enactment of the Energy Policy Act of 2005,  
14 the Commission shall prepare and publish an annual  
15 report, by appropriate region, that assesses demand  
16 response resources, including those available from all  
17 consumer classes, and which identifies and reviews—

18 (A) saturation and penetration rate of ad-  
19 vanced meters and communications tech-  
20 nologies, devices and systems;

21 (B) existing demand response programs  
22 and time-based rate programs;

23 (C) the annual resource contribution of de-  
24 mand resources;

1 (D) the potential for demand response as  
2 a quantifiable, reliable resource for regional  
3 planning purposes;

4 (E) steps taken to ensure that, in regional  
5 transmission planning and operations, demand  
6 resources are provided equitable treatment as a  
7 quantifiable, reliable resource relative to the re-  
8 source obligations of any load-serving entity,  
9 transmission provider, or transmitting party;  
10 and

11 (F) regulatory barriers to improved cus-  
12 tomer participation in demand response, peak  
13 reduction and critical period pricing programs.

14 (f) FEDERAL ENCOURAGEMENT OF DEMAND RE-  
15 SPONSE DEVICES.—It is the policy of the United States  
16 that time-based pricing and other forms of demand re-  
17 sponse, whereby electricity customers are provided with  
18 electricity price signals and the ability to benefit by re-  
19 sponding to them, shall be encouraged, the deployment of  
20 such technology and devices that enable electricity cus-  
21 tomers to participate in such pricing and demand response  
22 systems shall be facilitated, and unnecessary barriers to  
23 demand response participation in energy, capacity and an-  
24 cillary service markets shall be eliminated. It is further  
25 the policy of the United States that the benefits of such

1 demand response that accrue to those not deploying such  
2 technology and devices, but who are part of the same re-  
3 gional electricity entity, shall be recognized.

4 (g) TIME LIMITATIONS.—Section 112(b) of the Pub-  
5 lic Utility Regulatory Policies Act of 1978 (16 U.S.C.  
6 2622(b)) is amended by adding at the end the following:

7 “(4)(A) Not later than 1 year after the enact-  
8 ment of this paragraph, each State regulatory au-  
9 thority (with respect to each electric utility for which  
10 it has ratemaking authority) and each nonregulated  
11 electric utility shall commence the consideration re-  
12 ferred to in section 111, or set a hearing date for  
13 such consideration, with respect to the standard es-  
14 tablished by paragraph (14) of section 111(d).

15 “(B) Not later than 2 years after the date of  
16 the enactment of this paragraph, each State regu-  
17 latory authority (with respect to each electric utility  
18 for which it has ratemaking authority), and each  
19 nonregulated electric utility, shall complete the con-  
20 sideration, and shall make the determination, re-  
21 ferred to in section 111 with respect to the standard  
22 established by paragraph (14) of section 111(d).”.

23 (h) FAILURE TO COMPLY.—Section 112(c) of the  
24 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.  
25 2622(c)) is amended by adding at the end the following:

1 “In the case of the standard established by paragraph (14)  
2 of section 111(d), the reference contained in this sub-  
3 section to the date of enactment of this Act shall be  
4 deemed to be a reference to the date of enactment of such  
5 paragraph (14).”.

6 (i) PRIOR STATE ACTIONS REGARDING SMART ME-  
7 TERING STANDARDS.—

8 (1) IN GENERAL.—Section 112 of the Public  
9 Utility Regulatory Policies Act of 1978 (16 U.S.C.  
10 2622) is amended by adding at the end the fol-  
11 lowing:

12 “(e) PRIOR STATE ACTIONS.—Subsections (b) and  
13 (c) of this section shall not apply to the standard estab-  
14 lished by paragraph (14) of section 111(d) in the case of  
15 any electric utility in a State if, before the enactment of  
16 this subsection—

17 “(1) the State has implemented for such utility  
18 the standard concerned (or a comparable standard);

19 “(2) the State regulatory authority for such  
20 State or relevant nonregulated electric utility has  
21 conducted a proceeding to consider implementation  
22 of the standard concerned (or a comparable stand-  
23 ard) for such utility within the previous 3 years; or

24 “(3) the State legislature has voted on the im-  
25 plementation of such standard (or a comparable

1 standard) for such utility within the previous 3  
2 years.”.

3 (2) CROSS REFERENCE.—Section 124 of such  
4 Act (16 U.S.C. 2634) is amended by adding the fol-  
5 lowing at the end thereof: “In the case of the stand-  
6 ard established by paragraph (14) of section 111(d),  
7 the reference contained in this subsection to the date  
8 of enactment of this Act shall be deemed to be a ref-  
9 erence to the date of enactment of such paragraph  
10 (14).”.

11 **SEC. 1253. COGENERATION AND SMALL POWER PRODUC-**  
12 **TION PURCHASE AND SALE REQUIREMENTS.**

13 (a) TERMINATION OF MANDATORY PURCHASE AND  
14 SALE REQUIREMENTS.—Section 210 of the Public Utility  
15 Regulatory Policies Act of 1978 (16 U.S.C. 824a–3) is  
16 amended by adding at the end the following:

17 “(m) TERMINATION OF MANDATORY PURCHASE AND  
18 SALE REQUIREMENTS.—

19 “(1) OBLIGATION TO PURCHASE.—After the  
20 date of enactment of this subsection, no electric util-  
21 ity shall be required to enter into a new contract or  
22 obligation to purchase electric energy from a quali-  
23 fying cogeneration facility or a qualifying small  
24 power production facility under this section if the  
25 Commission finds that the qualifying cogeneration

1 facility or qualifying small power production facility  
2 has nondiscriminatory access to—

3 “(A)(i) independently administered, auc-  
4 tion-based day ahead and real time wholesale  
5 markets for the sale of electric energy; and (ii)  
6 wholesale markets for long-term sales of capac-  
7 ity and electric energy; or

8 “(B)(i) transmission and interconnection  
9 services that are provided by a Commission-ap-  
10 proved regional transmission entity and admin-  
11 istered pursuant to an open access transmission  
12 tariff that affords nondiscriminatory treatment  
13 to all customers; and (ii) competitive wholesale  
14 markets that provide a meaningful opportunity  
15 to sell capacity, including long-term and short-  
16 term sales, and electric energy, including long-  
17 term, short-term and real-time sales, to buyers  
18 other than the utility to which the qualifying fa-  
19 cility is interconnected. In determining whether  
20 a meaningful opportunity to sell exists, the  
21 Commission shall consider, among other fac-  
22 tors, evidence of transactions within the rel-  
23 evant market; or

24 “(C) wholesale markets for the sale of ca-  
25 pacity and electric energy that are, at a min-

1           imum, of comparable competitive quality as  
2           markets described in subparagraphs (A) and  
3           (B).

4           “(2) REVISED PURCHASE AND SALE OBLIGA-  
5           TION FOR NEW FACILITIES.—(A) After the date of  
6           enactment of this subsection, no electric utility shall  
7           be required pursuant to this section to enter into a  
8           new contract or obligation to purchase from or sell  
9           electric energy to a facility that is not an existing  
10          qualifying cogeneration facility unless the facility  
11          meets the criteria for qualifying cogeneration facili-  
12          ties established by the Commission pursuant to the  
13          rulemaking required by subsection (n).

14          “(B) For the purposes of this paragraph, the  
15          term ‘existing qualifying cogeneration facility’ means  
16          a facility that—

17                 “(i) was a qualifying cogeneration facility  
18                 on the date of enactment of subsection (m); or

19                 “(ii) had filed with the Commission a no-  
20                 tice of self-certification, self recertification or  
21                 an application for Commission certification  
22                 under 18 C.F.R. 292.207 prior to the date on  
23                 which the Commission issues the final rule re-  
24                 quired by subsection (n).

1           “(3) COMMISSION REVIEW.—Any electric utility  
2           may file an application with the Commission for re-  
3           lief from the mandatory purchase obligation pursu-  
4           ant to this subsection on a service territory-wide  
5           basis. Such application shall set forth the factual  
6           basis upon which relief is requested and describe  
7           why the conditions set forth in subparagraphs (A),  
8           (B) or (C) of paragraph (1) of this subsection have  
9           been met. After notice, including sufficient notice to  
10          potentially affected qualifying cogeneration facilities  
11          and qualifying small power production facilities, and  
12          an opportunity for comment, the Commission shall  
13          make a final determination within 90 days of such  
14          application regarding whether the conditions set  
15          forth in subparagraphs (A), (B) or (C) of paragraph  
16          (1) have been met.

17          “(4) REINSTATEMENT OF OBLIGATION TO PUR-  
18          CHASE.—At any time after the Commission makes a  
19          finding under paragraph (3) relieving an electric  
20          utility of its obligation to purchase electric energy,  
21          a qualifying cogeneration facility, a qualifying small  
22          power production facility, a State agency, or any  
23          other affected person may apply to the Commission  
24          for an order reinstating the electric utility’s obliga-  
25          tion to purchase electric energy under this section.



1 Such application shall set forth the factual basis  
2 upon which the application is based and describe  
3 why the conditions set forth in subparagraphs (A),  
4 (B) or (C) of paragraph (1) of this subsection are  
5 no longer met. After notice, including sufficient no-  
6 tice to potentially affected utilities, and opportunity  
7 for comment, the Commission shall issue an order  
8 within 90 days of such application reinstating the  
9 electric utility's obligation to purchase electric en-  
10 ergy under this section if the Commission finds that  
11 the conditions set forth in subparagraphs (A), (B) or  
12 (C) of paragraph (1) which relieved the obligation to  
13 purchase, are no longer met.

14 “(5) OBLIGATION TO SELL.—After the date of  
15 enactment of this subsection, no electric utility shall  
16 be required to enter into a new contract or obliga-  
17 tion to sell electric energy to a qualifying cogenera-  
18 tion facility or a qualifying small power production  
19 facility under this section if the Commission finds  
20 that—

21 “(A) competing retail electric suppliers are  
22 willing and able to sell and deliver electric en-  
23 ergy to the qualifying cogeneration facility or  
24 qualifying small power production facility; and

1           “(B) the electric utility is not required by  
2           State law to sell electric energy in its service  
3           territory.

4           “(6) NO EFFECT ON EXISTING RIGHTS AND  
5           REMEDIES.—Nothing in this subsection affects the  
6           rights or remedies of any party under any contract  
7           or obligation, in effect or pending approval before  
8           the appropriate State regulatory authority or non-  
9           regulated electric utility on the date of enactment of  
10          this subsection, to purchase electric energy or capac-  
11          ity from or to sell electric energy or capacity to a  
12          qualifying cogeneration facility or qualifying small  
13          power production facility under this Act (including  
14          the right to recover costs of purchasing electric en-  
15          ergy or capacity).

16          “(7) RECOVERY OF COSTS.—(A) The Commis-  
17          sion shall issue and enforce such regulations as are  
18          necessary to ensure that an electric utility that pur-  
19          chases electric energy or capacity from a qualifying  
20          cogeneration facility or qualifying small power pro-  
21          duction facility in accordance with any legally en-  
22          forceable obligation entered into or imposed under  
23          this section recovers all prudently incurred costs as-  
24          sociated with the purchase.

1           “(B) A regulation under subparagraph (A) shall  
2           be enforceable in accordance with the provisions of  
3           law applicable to enforcement of regulations under  
4           the Federal Power Act (16 U.S.C. 791a et seq.).

5           “(n) RULEMAKING FOR NEW QUALIFYING FACILI-  
6 TIES.—(1)(A) Not later than 180 days after the date of  
7 enactment of this section, the Commission shall issue a  
8 rule revising the criteria in 18 C.F.R. 292.205 for new  
9 qualifying cogeneration facilities seeking to sell electric en-  
10 ergy pursuant to section 210 of this Act to ensure—

11           “(i) that the thermal energy output of a new  
12           qualifying cogeneration facility is used in a produc-  
13           tive and beneficial manner;

14           “(ii) the electrical, thermal, and chemical out-  
15           put of the cogeneration facility is used fundamen-  
16           tally for industrial, commercial, or institutional pur-  
17           poses and is not intended fundamentally for sale to  
18           an electric utility, taking into account technological,  
19           efficiency, economic, and variable thermal energy re-  
20           quirements, as well as State laws applicable to sales  
21           of electric energy from a qualifying facility to its  
22           host facility; and

23           “(iii) continuing progress in the development of  
24           efficient electric energy generating technology.

1       “(B) The rule issued pursuant to paragraph (1)(A)  
2 of this subsection shall be applicable only to facilities that  
3 seek to sell electric energy pursuant to section 210 of this  
4 Act. For all other purposes, except as specifically provided  
5 in subsection (m)(2)(A), qualifying facility status shall be  
6 determined in accordance with the rules and regulations  
7 of this Act.

8       “(2) Notwithstanding rule revisions under paragraph  
9 (1), the Commission’s criteria for qualifying cogeneration  
10 facilities in effect prior to the date on which the Commis-  
11 sion issues the final rule required by paragraph (1) shall  
12 continue to apply to any cogeneration facility that—

13           “(A) was a qualifying cogeneration facility on  
14 the date of enactment of subsection (m), or

15           “(B) had filed with the Commission a notice of  
16 self-certification, self-recertification or an application  
17 for Commission certification under 18 C.F.R.  
18 292.207 prior to the date on which the Commission  
19 issues the final rule required by paragraph (1).”.

20       (b) ELIMINATION OF OWNERSHIP LIMITATIONS.—

21           (1) QUALIFYING SMALL POWER PRODUCTION  
22 FACILITY.—Section 3(17)(C) of the Federal Power  
23 Act (16 U.S.C. 796(17)(C)) is amended to read as  
24 follows:

1           “(C) ‘qualifying small power production fa-  
2           cility’ means a small power production facility  
3           that the Commission determines, by rule, meets  
4           such requirements (including requirements re-  
5           specting fuel use, fuel efficiency, and reliability)  
6           as the Commission may, by rule, prescribe;”.

7           (2) QUALIFYING COGENERATION FACILITY.—  
8           Section 3(18)(B) of the Federal Power Act (16  
9           U.S.C. 796(18)(B)) is amended to read as follows:

10           “(B) ‘qualifying cogeneration facility’  
11           means a cogeneration facility that the Commis-  
12           sion determines, by rule, meets such require-  
13           ments (including requirements respecting min-  
14           imum size, fuel use, and fuel efficiency) as the  
15           Commission may, by rule, prescribe;”.

16 **SEC. 1254. INTERCONNECTION.**

17           (a) ADOPTION OF STANDARDS.—Section 111(d) of  
18           the Public Utility Regulatory Policies Act of 1978 (16  
19           U.S.C. 2621 (d) ) is amended by adding at the end the  
20           following:

21           “(16) INTERCONNECTION.—Each electric utility  
22           shall make available, upon request, interconnection  
23           service to any electric consumer that the electric  
24           utility serves. For purposes of this paragraph, the  
25           term ‘interconnection service’ means service to an

1 electric consumer under which an on-site generating  
2 facility on the consumer's premises shall be con-  
3 nected to the local distribution facilities. Inter-  
4 connection services shall be offered based upon the  
5 standards developed by the Institute of Electrical  
6 and Electronics Engineers: IEEE Standard 1547 for  
7 Interconnecting Distributed Resources with Electric  
8 Power Systems, as they may be amended from time  
9 to time. In addition, agreements and procedures  
10 shall be established whereby the services are offered  
11 shall promote current best practices of interconnec-  
12 tion for distributed generation, including but not  
13 limited to practices stipulated in model codes adopt-  
14 ed by associations of state regulatory agencies. All  
15 such agreements and procedures shall be just and  
16 reasonable, and not unduly discriminatory or pref-  
17 erential.”.

18 (b) COMPLIANCE.—

19 (1) TIME LIMITATIONS.—Section 112 (b) of the  
20 Public Utility Regulatory Policies Act of 1978 (16  
21 U.S.C. 2622(b)) is amended by adding at the end  
22 the following:

23 “(3)(A) Not later than one year after the enact-  
24 ment of this paragraph, each State regulatory au-  
25 thority (with respect to each electric utility for which

1 it has ratemaking authority) and each nonregulated  
2 utility shall commence the consideration referred to  
3 in section 111, or set a hearing date for consider-  
4 ation, with respect to the standard established by  
5 paragraph (16) of section 111(d).

6 “(B) Not later than two years after the date of  
7 the enactment of the this paragraph, each State reg-  
8 ulatory authority (with respect to each electric utility  
9 for which it has ratemaking authority), and each  
10 nonregulated electric utility, shall complete the con-  
11 sideration, and shall make the determination, re-  
12 ferred to in section 111 with respect to each stand-  
13 ard established by paragraph (16) of section  
14 111(d).”.

15 (2) FAILURE TO COMPLY.—Section 112 (d) f  
16 the Public Utility Regulatory Policies Act of 1978  
17 (16 U.S.C. 2622 (c)) is amended by adding at the  
18 end the following: “In the case of the standard es-  
19 tablished by paragraph (16), the reference contained  
20 in this subsection to the date of enactment of this  
21 Act shall be deemed to be a reference to the date of  
22 enactment of paragraph (16).”.

23 (3) PRIOR STATE ACTIONS.—

24 (A) IN GENERAL.—Section 112 of the  
25 Public Utility Regulatory Policies Act of 1978

1           (16 U.S.C. 2622) is amended by adding at the  
2           end the following:

3           “(d) PRIOR STATE ACTIONS.—Subsections (b) and  
4 (c) of this section shall not apply to the standards estab-  
5 lished by paragraphs (16) of section 111(d) in the case  
6 of any electric utility in a State if, before the enactment  
7 of this subsection—

8           “(1) the State has implemented for such utility  
9           the standard concerned (or a comparable standard);

10           “(2) the State regulatory authority for such  
11 State or relevant nonregulated electric utility has  
12 conducted a proceeding to consider implementation  
13 of the standard concerned (or a comparable stand-  
14 ard) for such utility; or

15           “(3) the State legislature has voted on the im-  
16 plementation of such standard (or a comparable  
17 standard) for such utility.”.

18           (B) CROSS REFERENCE.—Section 124 of  
19 such Act (16 U.S.C. 2634) is amended by add-  
20 ing the following at the end thereof: “In the  
21 case of each standard established by paragraph  
22 (16) of section 111(d), the reference contained  
23 in this subsection to the date of enactment of  
24 the Act shall be deemed to be a reference to the  
25 date of enactment of paragraph (16).”.



## 1       **Subtitle F—Repeal of PUHCA**

### 2   **SEC. 1261. SHORT TITLE.**

3       This subtitle may be cited as the “Public Utility  
4 Holding Company Act of 2005”.

### 5   **SEC. 1262. DEFINITIONS.**

6       For purposes of this subtitle:

7           (1) **AFFILIATE.**—The term “affiliate” of a com-  
8       pany means any company, 5 percent or more of the  
9       outstanding voting securities of which are owned,  
10      controlled, or held with power to vote, directly or in-  
11      directly, by such company.

12          (2) **ASSOCIATE COMPANY.**—The term “associate  
13      company” of a company means any company in the  
14      same holding company system with such company.

15          (3) **COMMISSION.**—The term “Commission”  
16      means the Federal Energy Regulatory Commission.

17          (4) **COMPANY.**—The term “company” means a  
18      corporation, partnership, association, joint stock  
19      company, business trust, or any organized group of  
20      persons, whether incorporated or not, or a receiver,  
21      trustee, or other liquidating agent of any of the fore-  
22      going.

23          (5) **ELECTRIC UTILITY COMPANY.**—The term  
24      “electric utility company” means any company that  
25      owns or operates facilities used for the generation,

1 transmission, or distribution of electric energy for  
2 sale.

3 (6) EXEMPT WHOLESALE GENERATOR AND  
4 FOREIGN UTILITY COMPANY.—The terms “exempt  
5 wholesale generator” and “foreign utility company”  
6 have the same meanings as in sections 32 and 33,  
7 respectively, of the Public Utility Holding Company  
8 Act of 1935 (15 U.S.C. 79z–5a, 79z–5b), as those  
9 sections existed on the day before the effective date  
10 of this subtitle.

11 (7) GAS UTILITY COMPANY.—The term “gas  
12 utility company” means any company that owns or  
13 operates facilities used for distribution at retail  
14 (other than the distribution only in enclosed portable  
15 containers or distribution to tenants or employees of  
16 the company operating such facilities for their own  
17 use and not for resale) of natural or manufactured  
18 gas for heat, light, or power.

19 (8) HOLDING COMPANY.—The term “holding  
20 company” means—

21 (A) any company that directly or indirectly  
22 owns, controls, or holds, with power to vote, 10  
23 percent or more of the outstanding voting secu-  
24 rities of a public-utility company or of a holding  
25 company of any public-utility company; and

1           (B) any person, determined by the Com-  
2           mission, after notice and opportunity for hear-  
3           ing, to exercise directly or indirectly (either  
4           alone or pursuant to an arrangement or under-  
5           standing with 1 or more persons) such a con-  
6           trolling influence over the management or poli-  
7           cies of any public-utility company or holding  
8           company as to make it necessary or appropriate  
9           for the rate protection of utility customers with  
10          respect to rates that such person be subject to  
11          the obligations, duties, and liabilities imposed  
12          by this subtitle upon holding companies.

13          (9) HOLDING COMPANY SYSTEM.—The term  
14          “holding company system” means a holding com-  
15          pany, together with its subsidiary companies.

16          (10) JURISDICTIONAL RATES.—The term “ju-  
17          risdictional rates” means rates accepted or estab-  
18          lished by the Commission for the transmission of  
19          electric energy in interstate commerce, the sale of  
20          electric energy at wholesale in interstate commerce,  
21          the transportation of natural gas in interstate com-  
22          merce, and the sale in interstate commerce of nat-  
23          ural gas for resale for ultimate public consumption  
24          for domestic, commercial, industrial, or any other  
25          use.

1           (11) NATURAL GAS COMPANY.—The term “nat-  
2           ural gas company” means a person engaged in the  
3           transportation of natural gas in interstate commerce  
4           or the sale of such gas in interstate commerce for  
5           resale.

6           (12) PERSON.—The term “person” means an  
7           individual or company.

8           (13) PUBLIC UTILITY.—The term “public util-  
9           ity” means any person who owns or operates facili-  
10          ties used for transmission of electric energy in inter-  
11          state commerce or sales of electric energy at whole-  
12          sale in interstate commerce.

13          (14) PUBLIC-UTILITY COMPANY.—The term  
14          “public-utility company” means an electric utility  
15          company or a gas utility company.

16          (15) STATE COMMISSION.—The term “State  
17          commission” means any commission, board, agency,  
18          or officer, by whatever name designated, of a State,  
19          municipality, or other political subdivision of a State  
20          that, under the laws of such State, has jurisdiction  
21          to regulate public utility companies.

22          (16) SUBSIDIARY COMPANY.—The term “sub-  
23          sidiary company” of a holding company means—

24                 (A) any company, 10 percent or more of  
25                 the outstanding voting securities of which are

1 directly or indirectly owned, controlled, or held  
2 with power to vote, by such holding company;  
3 and

4 (B) any person, the management or poli-  
5 cies of which the Commission, after notice and  
6 opportunity for hearing, determines to be sub-  
7 ject to a controlling influence, directly or indi-  
8 rectly, by such holding company (either alone or  
9 pursuant to an arrangement or understanding  
10 with 1 or more other persons) so as to make it  
11 necessary for the rate protection of utility cus-  
12 tomers with respect to rates that such person  
13 be subject to the obligations, duties, and liabil-  
14 ities imposed by this subtitle upon subsidiary  
15 companies of holding companies.

16 (17) VOTING SECURITY.—The term “voting se-  
17 curity” means any security presently entitling the  
18 owner or holder thereof to vote in the direction or  
19 management of the affairs of a company.

20 **SEC. 1263. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**  
21 **PANY ACT OF 1935.**

22 The Public Utility Holding Company Act of 1935 (15  
23 U.S.C. 79 et seq.) is repealed.

1 **SEC. 1264. FEDERAL ACCESS TO BOOKS AND RECORDS.**

2 (a) IN GENERAL.—Each holding company and each  
3 associate company thereof shall maintain, and shall make  
4 available to the Commission, such books, accounts, memo-  
5 randa, and other records as the Commission determines  
6 are relevant to costs incurred by a public utility or natural  
7 gas company that is an associate company of such holding  
8 company and necessary or appropriate for the protection  
9 of utility customers with respect to jurisdictional rates.

10 (b) AFFILIATE COMPANIES.—Each affiliate of a hold-  
11 ing company or of any subsidiary company of a holding  
12 company shall maintain, and shall make available to the  
13 Commission, such books, accounts, memoranda, and other  
14 records with respect to any transaction with another affil-  
15 iate, as the Commission determines are relevant to costs  
16 incurred by a public utility or natural gas company that  
17 is an associate company of such holding company and nec-  
18 essary or appropriate for the protection of utility cus-  
19 tomers with respect to jurisdictional rates.

20 (c) HOLDING COMPANY SYSTEMS.—The Commission  
21 may examine the books, accounts, memoranda, and other  
22 records of any company in a holding company system, or  
23 any affiliate thereof, as the Commission determines are  
24 relevant to costs incurred by a public utility or natural  
25 gas company within such holding company system and

1 necessary or appropriate for the protection of utility cus-  
2 tomers with respect to jurisdictional rates.

3 (d) CONFIDENTIALITY.—No member, officer, or em-  
4 ployee of the Commission shall divulge any fact or infor-  
5 mation that may come to his or her knowledge during the  
6 course of examination of books, accounts, memoranda, or  
7 other records as provided in this section, except as may  
8 be directed by the Commission or by a court of competent  
9 jurisdiction.

10 **SEC. 1265. STATE ACCESS TO BOOKS AND RECORDS.**

11 (a) IN GENERAL.—Upon the written request of a  
12 State commission having jurisdiction to regulate a public-  
13 utility company in a holding company system, the holding  
14 company or any associate company or affiliate thereof,  
15 other than such public-utility company, wherever located,  
16 shall produce for inspection books, accounts, memoranda,  
17 and other records that—

18 (1) have been identified in reasonable detail in  
19 a proceeding before the State commission;

20 (2) the State commission determines are rel-  
21 evant to costs incurred by such public-utility com-  
22 pany; and

23 (3) are necessary for the effective discharge of  
24 the responsibilities of the State commission with re-  
25 spect to such proceeding.

1           (b) LIMITATION.—Subsection (a) does not apply to  
2 any person that is a holding company solely by reason of  
3 ownership of 1 or more qualifying facilities under the Pub-  
4 lic Utility Regulatory Policies Act of 1978 (16 U.S.C.  
5 2601 et seq.).

6           (c) CONFIDENTIALITY OF INFORMATION.—The pro-  
7 duction of books, accounts, memoranda, and other records  
8 under subsection (a) shall be subject to such terms and  
9 conditions as may be necessary and appropriate to safe-  
10 guard against unwarranted disclosure to the public of any  
11 trade secrets or sensitive commercial information.

12          (d) EFFECT ON STATE LAW.—Nothing in this sec-  
13 tion shall preempt applicable State law concerning the pro-  
14 vision of books, accounts, memoranda, and other records,  
15 or in any way limit the rights of any State to obtain books,  
16 accounts, memoranda, and other records under any other  
17 Federal law, contract, or otherwise.

18          (e) COURT JURISDICTION.—Any United States dis-  
19 trict court located in the State in which the State commis-  
20 sion referred to in subsection (a) is located shall have ju-  
21 risdiction to enforce compliance with this section.

22 **SEC. 1266. EXEMPTION AUTHORITY.**

23          (a) RULEMAKING.—Not later than 90 days after the  
24 effective date of this subtitle, the Commission shall issue  
25 a final rule to exempt from the requirements of section



1 1264 (relating to Federal access to books and records) any  
2 person that is a holding company, solely with respect to  
3 1 or more—

4 (1) qualifying facilities under the Public Utility  
5 Regulatory Policies Act of 1978 (16 U.S.C. 2601 et  
6 seq.);

7 (2) exempt wholesale generators; or

8 (3) foreign utility companies.

9 (b) OTHER AUTHORITY.—The Commission shall ex-  
10 empt a person or transaction from the requirements of  
11 section 1264 (relating to Federal access to books and  
12 records) if, upon application or upon the motion of the  
13 Commission—

14 (1) the Commission finds that the books, ac-  
15 counts, memoranda, and other records of any person  
16 are not relevant to the jurisdictional rates of a pub-  
17 lic utility or natural gas company; or

18 (2) the Commission finds that any class of  
19 transactions is not relevant to the jurisdictional  
20 rates of a public utility or natural gas company.

21 **SEC. 1267. AFFILIATE TRANSACTIONS.**

22 (a) COMMISSION AUTHORITY UNAFFECTED.—Noth-  
23 ing in this subtitle shall limit the authority of the Commis-  
24 sion under the Federal Power Act (16 U.S.C. 791a et seq.)  
25 to require that jurisdictional rates are just and reasonable,

1 including the ability to deny or approve the pass through  
2 of costs, the prevention of cross-subsidization, and the  
3 issuance of such rules and regulations as are necessary  
4 or appropriate for the protection of utility consumers.

5 (b) RECOVERY OF COSTS.—Nothing in this subtitle  
6 shall preclude the Commission or a State commission from  
7 exercising its jurisdiction under otherwise applicable law  
8 to determine whether a public-utility company, public util-  
9 ity, or natural gas company may recover in rates any costs  
10 of an activity performed by an associate company, or any  
11 costs of goods or services acquired by such public-utility  
12 company from an associate company.

13 **SEC. 1268. APPLICABILITY.**

14 Except as otherwise specifically provided in this sub-  
15 title, no provision of this subtitle shall apply to, or be  
16 deemed to include—

17 (1) the United States;

18 (2) a State or any political subdivision of a  
19 State;

20 (3) any foreign governmental authority not op-  
21 erating in the United States;

22 (4) any agency, authority, or instrumentality of  
23 any entity referred to in paragraph (1), (2), or (3);

24 or

1           (5) any officer, agent, or employee of any entity  
2           referred to in paragraph (1), (2), (3), or (4) acting  
3           as such in the course of his or her official duty.

4 **SEC. 1269. EFFECT ON OTHER REGULATIONS.**

5           Nothing in this subtitle precludes the Commission or  
6           a State commission from exercising its jurisdiction under  
7           otherwise applicable law to protect utility customers.

8 **SEC. 1270. ENFORCEMENT.**

9           The Commission shall have the same powers as set  
10          forth in sections 306 through 317 of the Federal Power  
11          Act (16 U.S.C. 825e–825p) to enforce the provisions of  
12          this subtitle.

13 **SEC. 1271. SAVINGS PROVISIONS.**

14          (a) **IN GENERAL.**—Nothing in this subtitle, or other-  
15          wise in the Public Utility Holding Company Act of 1935,  
16          or rules, regulations, or orders thereunder, prohibits a per-  
17          son from engaging in or continuing to engage in activities  
18          or transactions in which it is legally engaged or authorized  
19          to engage on the date of enactment of this Act, if that  
20          person continues to comply with the terms (other than an  
21          expiration date or termination date) of any such author-  
22          ization, whether by rule or by order.

23          (b) **EFFECT ON OTHER COMMISSION AUTHORITY.**—  
24          Nothing in this subtitle limits the authority of the Com-

1 mission under the Federal Power Act (16 U.S.C. 791a et  
2 seq.) or the Natural Gas Act (15 U.S.C. 717 et seq.).

3 **SEC. 1272. IMPLEMENTATION.**

4 Not later than 12 months after the date of enactment  
5 of this subtitle, the Commission shall—

6 (1) issue such regulations as may be necessary  
7 or appropriate to implement this subtitle (other than  
8 section 1265, relating to State access to books and  
9 records); and

10 (2) submit to Congress detailed recommenda-  
11 tions on technical and conforming amendments to  
12 Federal law necessary to carry out this subtitle and  
13 the amendments made by this subtitle.

14 **SEC. 1273. TRANSFER OF RESOURCES.**

15 All books and records that relate primarily to the  
16 functions transferred to the Commission under this sub-  
17 title shall be transferred from the Securities and Exchange  
18 Commission to the Commission.

19 **SEC. 1274. EFFECTIVE DATE.**

20 (a) IN GENERAL.—Except for section 1272 (relating  
21 to implementation), this subtitle shall take effect 12  
22 months after the date of enactment of this subtitle.

23 (b) COMPLIANCE WITH CERTAIN RULES.—If the  
24 Commission approves and makes effective any final rule-  
25 making modifying the standards of conduct governing en-

1 tities that own, operate, or control facilities for trans-  
2 mission of electricity in interstate commerce or transpor-  
3 tation of natural gas in interstate commerce prior to the  
4 effective date of this subtitle, any action taken by a public-  
5 utility company or utility holding company to comply with  
6 the requirements of such rulemaking shall not subject  
7 such public-utility company or utility holding company to  
8 any regulatory requirement applicable to a holding com-  
9 pany under the Public Utility Holding Company Act of  
10 1935 (15 U.S.C. 79 et seq.).

11 **SEC. 1275. SERVICE ALLOCATION.**

12 (a) FERC REVIEW.—In the case of non-power goods  
13 or administrative or management services provided by an  
14 associate company organized specifically for the purpose  
15 of providing such goods or services to any public utility  
16 in the same holding company system, at the election of  
17 the system or a State commission having jurisdiction over  
18 the public utility, the Commission, after the effective date  
19 of this subtitle, shall review and authorize the allocation  
20 of the costs for such goods or services to the extent rel-  
21 evant to that associate company in order to assure that  
22 each allocation is appropriate for the protection of inves-  
23 tors and consumers of such public utility.

24 (b) COST ALLOCATION.—Nothing in this section shall  
25 preclude the Commission or a State commission from exer-

1 cising its jurisdiction under other applicable law with re-  
2 spect to the review or authorization of any costs allocated  
3 to a public utility in a holding company system located  
4 in the affected State as a result of the acquisition of non-  
5 power goods or administrative and management services  
6 by such public utility from an associate company orga-  
7 nized specifically for that purpose.

8 (c) RULES.—Not later than 6 months after the date  
9 of enactment of this Act, the Commission shall issue rules  
10 (which rules shall be effective no earlier than the effective  
11 date of this subtitle) to exempt from the requirements of  
12 this section any company in a holding company system  
13 whose public utility operations are confined substantially  
14 to a single State and any other class of transactions that  
15 the Commission finds is not relevant to the jurisdictional  
16 rates of a public utility.

17 (d) PUBLIC UTILITY.—As used in this section, the  
18 term “public utility” has the meaning given that term in  
19 section 201(e) of the Federal Power Act.

20 **SEC. 1276. AUTHORIZATION OF APPROPRIATIONS.**

21 There are authorized to be appropriated such funds  
22 as may be necessary to carry out this subtitle.

1 **SEC. 1277. CONFORMING AMENDMENTS TO THE FEDERAL**  
2 **POWER ACT.**

3 (a) CONFLICT OF JURISDICTION.—Section 318 of the  
4 Federal Power Act (16 U.S.C. 825q) is repealed.

5 (b) DEFINITIONS.—(1) Section 201(g)(5) of the Fed-  
6 eral Power Act (16 U.S.C. 824(g)(5)) is amended by strik-  
7 ing “1935” and inserting “2005”.

8 (2) Section 214 of the Federal Power Act (16 U.S.C.  
9 824m) is amended by striking “1935” and inserting  
10 “2005”.

11 **Subtitle G—Market Transparency,**  
12 **Enforcement, and Consumer**  
13 **Protection**

14 **SEC. 1281. MARKET TRANSPARENCY RULES.**

15 Part II of the Federal Power Act (16 U.S.C. 824 et  
16 seq.) is amended by adding at the end the following:

17 **“SEC. 220. MARKET TRANSPARENCY RULES.**

18 “(a) IN GENERAL.—Not later than 180 days after  
19 the date of enactment of this section, the Commission  
20 shall issue rules establishing an electronic information sys-  
21 tem to provide the Commission and the public with access  
22 to such information as is necessary or appropriate to fa-  
23 cilitate price transparency and participation in markets  
24 subject to the Commission’s jurisdiction under this Act.  
25 Such systems shall provide information about the avail-  
26 ability and market price of wholesale electric energy and

1 transmission services to the Commission, State commis-  
2 sions, buyers and sellers of wholesale electric energy, users  
3 of transmission services, and the public on a timely basis.  
4 The Commission shall have authority to obtain such infor-  
5 mation from any electric utility or transmitting utility, in-  
6 cluding any entity described in section 201(f).

7       “(b) EXEMPTIONS.—The Commission shall exempt  
8 from disclosure information it determines would, if dis-  
9 closed, be detrimental to the operation of an effective mar-  
10 ket or jeopardize system security. This section shall not  
11 apply to transactions for the purchase or sale of wholesale  
12 electric energy or transmission services within the area de-  
13 scribed in section 212(k)(2)(A). In determining the infor-  
14 mation to be made available under this section and time  
15 to make such information available, the Commission shall  
16 seek to ensure that consumers and competitive markets  
17 are protected from the adverse effects of potential collu-  
18 sion or other anti-competitive behaviors that can be facili-  
19 tated by untimely public disclosure of transaction-specific  
20 information.

21       “(c) COMMODITY FUTURES TRADING COMMIS-  
22 SION.—This section shall not affect the exclusive jurisdic-  
23 tion of the Commodity Futures Trading Commission with  
24 respect to accounts, agreements, contracts, or transactions



1 in commodities under the Commodity Exchange Act (7  
2 U.S.C. 1 et seq.).

3 “(d) SAVINGS PROVISION.—In exercising its author-  
4 ity under this section, the Commission shall not—

5 “(1) compete with, or displace from the market  
6 place, any price publisher; or

7 “(2) regulate price publishers or impose any re-  
8 quirements on the publication of information.”.

9 **SEC. 1282. MARKET MANIPULATION.**

10 Part II of the Federal Power Act (16 U.S.C. 824 et  
11 seq.) is amended by adding at the end the following:

12 **“SEC. 221. PROHIBITION ON FILING FALSE INFORMATION.**

13 “No person or other entity (including an entity de-  
14 scribed in section 201(f)) shall willfully and knowingly re-  
15 port any information relating to the price of electricity  
16 sold at wholesale or availability of transmission capacity,  
17 which information the person or any other entity knew to  
18 be false at the time of the reporting, to a Federal agency  
19 with intent to fraudulently affect the data being compiled  
20 by such Federal agency.

21 **“SEC. 222. PROHIBITION ON ROUND TRIP TRADING.**

22 “(a) PROHIBITION.—No person or other entity (in-  
23 cluding an entity described in section 201(f)) shall willfully  
24 and knowingly enter into any contract or other arrange-

1 ment to execute a ‘round trip trade’ for the purchase or  
2 sale of electric energy at wholesale.

3 “(b) DEFINITION.—For the purposes of this section,  
4 the term ‘round trip trade’ means a transaction, or com-  
5 bination of transactions, in which a person or any other  
6 entity—

7 “(1) enters into a contract or other arrange-  
8 ment to purchase from, or sell to, any other person  
9 or other entity electric energy at wholesale;

10 “(2) simultaneously with entering into the con-  
11 tract or arrangement described in paragraph (1), ar-  
12 ranges a financially offsetting trade with such other  
13 person or entity for the same such electric energy,  
14 at the same location, price, quantity and terms so  
15 that, collectively, the purchase and sale transactions  
16 in themselves result in no financial gain or loss; and

17 “(3) enters into the contract or arrangement  
18 with a specific intent to fraudulently affect reported  
19 revenues, trading volumes, or prices.”.

20 **SEC. 1283. ENFORCEMENT.**

21 (a) COMPLAINTS.—Section 306 of the Federal Power  
22 Act (16 U.S.C. 825e) is amended as follows:

23 (1) By inserting “electric utility,” after “Any  
24 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 XIII—ENERGY TAX**  
2                           **INCENTIVES**

3 **SEC. 1300. SHORT TITLE; ETC.**

4           (a) **SHORT TITLE.**—This title may be cited as the  
5 “Enhanced Energy Infrastructure and Technology Tax  
6 Act of 2005”.

7           (b) **AMENDMENT OF 1986 CODE.**—Except as other-  
8 wise expressly provided, whenever in this title an amend-  
9 ment or repeal is expressed in terms of an amendment  
10 to, or repeal of, a section or other provision, the reference  
11 shall be considered to be made to a section or other provi-  
12 sion of the Internal Revenue Code of 1986.

13           **Subtitle A—Energy Infrastructure**  
14                           **Tax Incentives**

15 **SEC. 1301. NATURAL GAS GATHERING LINES TREATED AS 7-**  
16                           **YEAR PROPERTY.**

17           (a) **IN GENERAL.**—Subparagraph (C) of section  
18 168(e)(3) (relating to classification of certain property) is  
19 amended by striking “and” at the end of clause (iii), by  
20 redesignating clause (iv) as clause (v), and by inserting  
21 after clause (iii) the following new clause:

22                           “(iv) any natural gas gathering line,  
23                           and”.

1 (b) NATURAL GAS GATHERING LINE.—Subsection (i)  
2 of section 168 is amended by inserting after paragraph  
3 (16) the following new paragraph:

4 “(17) NATURAL GAS GATHERING LINE.—The  
5 term ‘natural gas gathering line’ means—

6 “(A) the pipe, equipment, and appur-  
7 tenances determined to be a gathering line by  
8 the Federal Energy Regulatory Commission,  
9 and

10 “(B) the pipe, equipment, and appur-  
11 tenances used to deliver natural gas from the  
12 wellhead or a commonpoint to the point at  
13 which such gas first reaches—

14 “(i) a gas processing plant,

15 “(ii) an interconnection with a trans-  
16 mission pipeline for which a certificate as  
17 an interstate transmission pipeline has  
18 been issued by the Federal Energy Regu-  
19 latory Commission,

20 “(iii) an interconnection with an  
21 intrastate transmission pipeline, or

22 “(iv) a direct interconnection with a  
23 local distribution company, a gas storage  
24 facility, or an industrial consumer.”.

1 (c) ALTERNATIVE SYSTEM.—The table contained in  
 2 section 168(g)(3)(B) is amended by inserting after the  
 3 item relating to subparagraph (C)(iii) the following:

“(C) (iv) ..... 14”.

4 (d) ALTERNATIVE MINIMUM TAX EXCEPTION.—Sub-  
 5 paragraph (B) of section 56(a)(1) is amended by inserting  
 6 before the period the following: “, or in section  
 7 168(e)(3)(C)(iv)”.

8 (e) EFFECTIVE DATE.—The amendments made by  
 9 this section shall apply to property placed in service after  
 10 April 11, 2005.

11 **SEC. 1302. NATURAL GAS DISTRIBUTION LINES TREATED**  
 12 **AS 15-YEAR PROPERTY.**

13 (a) IN GENERAL.—Subparagraph (E) of section  
 14 168(e)(3) (relating to classification of certain property) is  
 15 amended by striking “and” at the end of clause (v), by  
 16 striking the period at the end of clause (vi) and inserting  
 17 “, and”, and by adding at the end the following new  
 18 clause:

19 “(vii) any natural gas distribution  
 20 line.”.

21 (b) ALTERNATIVE SYSTEM.—The table contained in  
 22 section 168(g)(3)(B) is amended by inserting after the  
 23 item relating to subparagraph (E)(vi) the following:

“(E) (vii) ..... 35”.

1 (c) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to property placed in service after  
 3 April 11, 2005.

4 **SEC. 1303. ELECTRIC TRANSMISSION PROPERTY TREATED**  
 5 **AS 15-YEAR PROPERTY.**

6 (a) IN GENERAL.—Subparagraph (E) of section  
 7 168(e)(3) (relating to classification of certain property),  
 8 as amended by section 1302 of this title, is amended by  
 9 striking “and” at the end of clause (vi), by striking the  
 10 period at the end of clause (vii) and inserting “, and”,  
 11 and by adding at the end the following new clause:

12 “(viii) any section 1245 property (as  
 13 defined in section 1245(a)(3)) used in the  
 14 transmission at 69 or more kilovolts of  
 15 electricity for sale and the original use of  
 16 which commences with the taxpayer after  
 17 April 11, 2005.”.

18 (b) ALTERNATIVE SYSTEM.—The table contained in  
 19 section 168(g)(3)(B) is amended by inserting after the  
 20 item relating to subparagraph (E)(vii) the following:

“(E) (viii) ..... 30”.

21 (c) EFFECTIVE DATE.—The amendments made by  
 22 this section shall apply to property placed in service after  
 23 April 11, 2005.

1 **SEC. 1304. EXPANSION OF AMORTIZATION FOR CERTAIN**  
2 **ATMOSPHERIC POLLUTION CONTROL FACILI-**  
3 **TIES IN CONNECTION WITH PLANTS FIRST**  
4 **PLACED IN SERVICE AFTER 1975.**

5 (a) **ELIGIBILITY OF POST-1975 POLLUTION CON-**  
6 **TROL FACILITIES.**—Subsection (d) of section 169 (relat-  
7 ing to definitions) is amended by adding at the end the  
8 following:

9 “(5) **SPECIAL RULE RELATING TO CERTAIN AT-**  
10 **MOSPHERIC POLLUTION CONTROL FACILITIES.**—In  
11 the case of any atmospheric pollution control facility  
12 which is placed in service after April 11, 2005, and  
13 used in connection with an electric generation plant  
14 or other property which is primarily coal fired, para-  
15 graph (1) shall be applied without regard to the  
16 phrase ‘in operation before January 1, 1976’.”

17 (b) **TREATMENT AS NEW IDENTIFIABLE TREATMENT**  
18 **FACILITY.**—Subparagraph (B) of section 169(d)(4) is  
19 amended to read as follows:

20 “(B) **CERTAIN FACILITIES PLACED IN OP-**  
21 **ERATION AFTER APRIL 11, 2005.**—In the case of  
22 any facility described in paragraph (1) solely by  
23 reason of paragraph (5), subparagraph (A)  
24 shall be applied by substituting ‘April 11, 2005’  
25 for ‘December 31, 1968’ each place it appears  
26 therein.”

1 (c) TECHNICAL AMENDMENT.—Section 169(d)(3) is  
2 amended by striking “Health, Education, and Welfare”  
3 and inserting “Health and Human Services”.

4 (d) EFFECTIVE DATE.—The amendments made by  
5 this section shall apply to facilities placed in service after  
6 April 11, 2005.

7 **SEC. 1305. MODIFICATION OF CREDIT FOR PRODUCING**  
8 **FUEL FROM A NONCONVENTIONAL SOURCE.**

9 (a) TREATMENT AS BUSINESS CREDIT.—

10 (1) CREDIT MOVED TO SUBPART RELATING TO  
11 BUSINESS RELATED CREDITS.—The Internal Rev-  
12 enue Code of 1986 is amended by redesignating sec-  
13 tion 29 as section 45J and by moving section 45J  
14 (as so redesignated) from subpart B of part IV of  
15 subchapter A of chapter 1 to the end of subpart D  
16 of part IV of subchapter A of chapter 1.

17 (2) CREDIT TREATED AS BUSINESS CREDIT.—  
18 Section 38(b) is amended by striking “plus” at the  
19 end of paragraph (18), by striking the period at the  
20 end of paragraph (19) and inserting “, plus”, and  
21 by adding at the end the following:

22 “(20) the nonconventional source production  
23 credit determined under section 45J(a).”.

24 (3) CONFORMING AMENDMENTS.—



1 (A) Section 30(b)(3)(A) is amended by  
2 striking “sections 27 and 29” and inserting  
3 “section 27”.

4 (B) Sections 43(b)(2), 45I(b)(2)(C)(i), and  
5 613A(e)(6)(C) are each amended by striking  
6 “section 29(d)(2)(C)” and inserting “section  
7 45J(d)(2)(C)”.

8 (C) Section 45(e)(9) is amended—

9 (i) by striking “section 29” and in-  
10 sserting “section 45J”, and

11 (ii) by inserting “(or under section 29,  
12 as in effect on the day before the date of  
13 enactment of the Enhanced Energy Infra-  
14 structure and Technology Tax Act of  
15 2005, for any prior taxable year)” before  
16 the period at the end thereof.

17 (D) Section 45I is amended—

18 (i) in subsection (c)(2)(A) by striking  
19 “section 29(d)(5))” and inserting “section  
20 45J(d)(5))”, and

21 (ii) in subsection (d)(3) by striking  
22 “section 29” both places it appears and in-  
23 sserting “section 45J”.

24 (E) Section 45J(a), as redesignated by  
25 paragraph (1), is amended by striking “There

1 shall be allowed as a credit against the tax im-  
2 posed by this chapter for the taxable year” and  
3 inserting “For purposes of section 38, if the  
4 taxpayer elects to have this section apply, the  
5 nonconventional source production credit deter-  
6 mined under this section for the taxable year  
7 is”.

8 (F) Section 45J(b), as so redesignated, is  
9 amended by striking paragraph (6).

10 (G) Section 53(d)(1)(B)(iii) is amended by  
11 striking “under section 29” and all that follows  
12 through “or not allowed”.

13 (H) Section 55(c)(3) is amended by strik-  
14 ing “29(b)(6),”.

15 (I) Subsection (a) of section 772 is amend-  
16 ed by inserting “and” at the end of paragraph  
17 (9), by striking paragraph (10), and by redesign-  
18 ating paragraph (11) as paragraph (10).

19 (J) Paragraph (5) of section 772(d) is  
20 amended by striking “the foreign tax credit,  
21 and the credit allowable under section 29” and  
22 inserting “and the foreign tax credit”.

23 (K) The table of sections for subpart B of  
24 part IV of subchapter A of chapter 1 is amend-  
25 ed by striking the item relating to section 29.

1           (L) The table of sections for subpart D of  
 2           part IV of subchapter A of chapter 1 is amend-  
 3           ed by inserting after the item relating to section  
 4           45I the following new item:

“Sec. 45J. Credit for producing fuel from a nonconventional source.”.

5           (b) AMENDMENTS CONFORMING TO THE REPEAL OF  
 6 THE NATURAL GAS POLICY ACT OF 1978.—

7           (1) IN GENERAL.—Section 29(c)(2)(A) (before  
 8           redesignation under subsection (a)) is amended—

9                   (A) by inserting “(as in effect before the  
 10                   repeal of such section)” after “1978”, and

11                   (B) by striking subsection (e) and redesign-  
 12                   ating subsections (f) and (g) as subsections (e)  
 13                   and (f), respectively.

14           (2) CONFORMING AMENDMENTS.—Section  
 15           29(g)(1)(before redesignation under subsection (a)  
 16           and paragraph (1) of this subsection) is amended—

17                   (A) in subparagraph (A) by striking “sub-  
 18                   section (f)(1)(B)” and inserting “subsection  
 19                   (e)(1)(B)”, and

20                   (B) in subparagraph (B) by striking “sub-  
 21                   section (f)” and inserting “subsection (e)”.

22           (c) EFFECTIVE DATES.—

23           (1) IN GENERAL.—Except as provided in para-  
 24           graph (2), the amendments made by this section  
 25           shall apply to credits determined under the Internal

1 Revenue Code of 1986 for taxable years ending after  
2 December 31, 2005.

3 (2) SUBSECTION (b).—The amendments made  
4 by subsection (b) shall take effect on the date of the  
5 enactment of this Act.

6 **SEC. 1306. MODIFICATIONS TO SPECIAL RULES FOR NU-**  
7 **CLEAR DECOMMISSIONING COSTS.**

8 (a) REPEAL OF LIMITATION ON DEPOSITS INTO  
9 FUND BASED ON COST OF SERVICE; CONTRIBUTIONS  
10 AFTER FUNDING PERIOD.—Subsection (b) of section  
11 468A (relating to special rules for nuclear decommis-  
12 sioning costs) is amended to read as follows:

13 “(b) LIMITATION ON AMOUNTS PAID INTO FUND.—  
14 The amount which a taxpayer may pay into the Fund for  
15 any taxable year shall not exceed the ruling amount appli-  
16 cable to such taxable year.”.

17 (b) TREATMENT OF CERTAIN DECOMMISSIONING  
18 COSTS.—

19 (1) IN GENERAL.—Section 468A is amended by  
20 redesignating subsections (f) and (g) as subsections  
21 (g) and (h), respectively, and by inserting after sub-  
22 section (e) the following new subsection:

23 “(f) TRANSFERS INTO QUALIFIED FUNDS.—

24 “(1) IN GENERAL.—Notwithstanding subsection  
25 (b), any taxpayer maintaining a Fund to which this

1 section applies with respect to a nuclear power plant  
2 may transfer into such Fund not more than an  
3 amount equal to the present value of the portion of  
4 the total nuclear decommissioning costs with respect  
5 to such nuclear power plant previously excluded for  
6 such nuclear power plant under subsection (d)(2)(A)  
7 as in effect immediately before the date of the enact-  
8 ment of the Enhanced Energy Infrastructure and  
9 Technology Tax Act of 2005.

10 “(2) DEDUCTION FOR AMOUNTS TRANS-  
11 FERRED.—

12 “(A) IN GENERAL.—Except as provided in  
13 subparagraph (C), the deduction allowed by  
14 subsection (a) for any transfer permitted by  
15 this subsection shall be allowed ratably over the  
16 remaining estimated useful life (within the  
17 meaning of subsection (d)(2)(A)) of the nuclear  
18 power plant beginning with the taxable year  
19 during which the transfer is made.

20 “(B) DENIAL OF DEDUCTION FOR PRE-  
21 VIOUSLY DEDUCTED AMOUNTS.—No deduction  
22 shall be allowed for any transfer under this sub-  
23 section of an amount for which a deduction was  
24 previously allowed to the taxpayer (or a prede-  
25 cessor) or a corresponding amount was not in-

1           cluded in gross income of the taxpayer (or a  
2           predecessor). For purposes of the preceding  
3           sentence, a ratable portion of each transfer  
4           shall be treated as being from previously de-  
5           ducted or excluded amounts to the extent there-  
6           of.

7           “(C) TRANSFERS OF QUALIFIED FUNDS.—

8           If—

9                   “(i) any transfer permitted by this  
10                   subsection is made to any Fund to which  
11                   this section applies, and

12                   “(ii) such Fund is transferred there-  
13                   after,

14           any deduction under this subsection for taxable  
15           years ending after the date that such Fund is  
16           transferred shall be allowed to the transferor  
17           for the taxable year which includes such date.

18           “(D) SPECIAL RULES.—

19                   “(i) GAIN OR LOSS NOT RECOGNIZED  
20                   ON TRANSFERS TO FUND.—No gain or loss  
21                   shall be recognized on any transfer de-  
22                   scribed in paragraph (1).

23                   “(ii) TRANSFERS OF APPRECIATED  
24                   PROPERTY TO FUND.—If appreciated prop-  
25                   erty is transferred in a transfer described

1           in paragraph (1), the amount of the deduc-  
2           tion shall not exceed the adjusted basis of  
3           such property.

4           “(3) NEW RULING AMOUNT REQUIRED.—Para-  
5           graph (1) shall not apply to any transfer unless the  
6           taxpayer requests from the Secretary a new schedule  
7           of ruling amounts in connection with such transfer.

8           “(4) NO BASIS IN QUALIFIED FUNDS.—Not-  
9           withstanding any other provision of law, the tax-  
10          payer’s basis in any Fund to which this section ap-  
11          plies shall not be increased by reason of any transfer  
12          permitted by this subsection.”.

13          (2) NEW RULING AMOUNT TO TAKE INTO AC-  
14          COUNT TOTAL COSTS.—Subparagraph (A) of section  
15          468A(d)(2) (defining ruling amount) is amended to  
16          read as follows:

17                 “(A) fund the total nuclear decommis-  
18                 sioning costs with respect to such power plant  
19                 over the estimated useful life of such power  
20                 plant, and”.

21          (c) TECHNICAL AMENDMENTS.—Section 468A(e)(2)  
22          (relating to taxation of Fund) is amended—

23                 (1) by striking “rate set forth in subparagraph  
24                 (B)” in subparagraph (A) and inserting “rate of 20  
25                 percent”,

1           (2) by striking subparagraph (B), and  
2           (3) by redesignating subparagraphs (C) and  
3           (D) as subparagraphs (B) and (C), respectively.

4           (d) EFFECTIVE DATE.—The amendments made by  
5 this section shall apply to taxable years beginning after  
6 December 31, 2005.

7 **SEC. 1307. ARBITRAGE RULES NOT TO APPLY TO PREPAY-**  
8 **MENTS FOR NATURAL GAS.**

9           (a) IN GENERAL.—Subsection (b) of section 148 (re-  
10 lating to higher yielding investments) is amended by add-  
11 ing at the end the following new paragraph:

12           “(4) SAFE HARBOR FOR PREPAID NATURAL  
13 GAS.—

14           “(A) IN GENERAL.—The term ‘investment-  
15 type property’ does not include a prepayment  
16 under a qualified natural gas supply contract.

17           “(B) QUALIFIED NATURAL GAS SUPPLY  
18 CONTRACT.—For purposes of this paragraph,  
19 the term ‘qualified natural gas supply contract’  
20 means any contract to acquire natural gas for  
21 resale by a utility owned by a governmental  
22 unit if the amount of gas permitted to be ac-  
23 quired under the contract by the utility during  
24 any year does not exceed the sum of—



1           “(i) the annual average amount dur-  
2           ing the testing period of natural gas pur-  
3           chased (other than for resale) by cus-  
4           tomers of such utility who are located  
5           within the service area of such utility, and

6           “(ii) the amount of natural gas to be  
7           used to transport the prepaid natural gas  
8           to the utility during such year.

9           “(C) NATURAL GAS USED TO GENERATE  
10          ELECTRICITY.—Natural gas used to generate  
11          electricity shall be taken into account in deter-  
12          mining the average under subparagraph  
13          (B)(i)—

14               “(i) only if the electricity is generated  
15               by a utility owned by a governmental unit,  
16               and

17               “(ii) only to the extent that the elec-  
18               tricity is sold (other than for resale) to  
19               customers of such utility who are located  
20               within the service area of such utility.

21          “(D) ADJUSTMENTS FOR CHANGES IN  
22          CUSTOMER BASE.—

23               “(i) NEW BUSINESS CUSTOMERS.—  
24               If—

1           “(I) after the close of the testing  
2           period and before the date of issuance  
3           of the issue, the utility owned by a  
4           governmental unit enters into a con-  
5           tract to supply natural gas (other  
6           than for resale) for a business use at  
7           a property within the service area of  
8           such utility, and

9           “(II) the utility did not supply  
10          natural gas to such property during  
11          the testing period or the ratable  
12          amount of natural gas to be supplied  
13          under the contract is significantly  
14          greater than the ratable amount of  
15          gas supplied to such property during  
16          the testing period,

17          then a contract shall not fail to be treated  
18          as a qualified natural gas supply contract  
19          by reason of supplying the additional nat-  
20          ural gas under the contract referred to in  
21          subclause (I).

22          “(ii) LOST CUSTOMERS.—The average  
23          under subparagraph (B)(i) shall not exceed  
24          the annual amount of natural gas reason-  
25          ably expected to be purchased (other than

1           for resale) by persons who are located  
2           within the service area of such utility and  
3           who, as of the date of issuance of the  
4           issue, are customers of such utility.

5           “(E) RULING REQUESTS.—The Secretary  
6           may increase the average under subparagraph  
7           (B)(i) for any period if the utility owned by the  
8           governmental unit establishes to the satisfaction  
9           of the Secretary that, based on objective evi-  
10          dence of growth in natural gas consumption or  
11          population, such average would otherwise be in-  
12          sufficient for such period.

13          “(F) ADJUSTMENT FOR NATURAL GAS  
14          OTHERWISE ON HAND.—

15                 “(i) IN GENERAL.—The amount oth-  
16                 erwise permitted to be acquired under the  
17                 contract for any period shall be reduced  
18                 by—

19                         “(I) the applicable share of nat-  
20                         ural gas held by the utility on the  
21                         date of issuance of the issue, and

22                         “(II) the natural gas (not taken  
23                         into account under subclause (I))  
24                         which the utility has a right to ac-  
25                         quire during such period (determined

1 as of the date of issuance of the  
2 issue).

3 “(ii) APPLICABLE SHARE.—For pur-  
4 poses of the clause (i), the term ‘applicable  
5 share’ means, with respect to any period,  
6 the natural gas allocable to such period if  
7 the gas were allocated ratably over the pe-  
8 riod to which the prepayment relates.

9 “(G) INTENTIONAL ACTS.—Subparagraph  
10 (A) shall cease to apply to any issue if the util-  
11 ity owned by the governmental unit engages in  
12 any intentional act to render the volume of nat-  
13 ural gas acquired by such prepayment to be in  
14 excess of the sum of—

15 “(i) the amount of natural gas needed  
16 (other than for resale) by customers of  
17 such utility who are located within the  
18 service area of such utility, and

19 “(ii) the amount of natural gas used  
20 to transport such natural gas to the utility.

21 “(H) TESTING PERIOD.—For purposes of  
22 this paragraph, the term ‘testing period’ means,  
23 with respect to an issue, the most recent 5 cal-  
24 endar years ending before the date of issuance  
25 of the issue.

1           “(I) SERVICE AREA.—For purposes of this  
2 paragraph, the service area of a utility owned  
3 by a governmental unit shall be comprised of—

4                   “(i) any area throughout which such  
5 utility provided at all times during the  
6 testing period—

7                           “(I) in the case of a natural gas  
8 utility, natural gas transmission or  
9 distribution services, and

10                           “(II) in the case of an electric  
11 utility, electricity distribution services,

12                           “(ii) any area within a county contig-  
13 uous to the area described in clause (i) in  
14 which retail customers of such utility are  
15 located if such area is not also served by  
16 another utility providing natural gas or  
17 electricity services, as the case may be, and

18                           “(iii) any area recognized as the serv-  
19 ice area of such utility under State or Fed-  
20 eral law.”.

21           (b) PRIVATE LOAN FINANCING TEST NOT TO APPLY  
22 TO PREPAYMENTS FOR NATURAL GAS.—Paragraph (2) of  
23 section 141(c) (providing exceptions to the private loan fi-  
24 nancing test) is amended by striking “or” at the end of  
25 subparagraph (A), by striking the period at the end of

1 subparagraph (B) and inserting “, or”, and by adding at  
 2 the end the following new subparagraph:

3 “(C) is a qualified natural gas supply con-  
 4 tract (as defined in section 148(b)(4)).”.

5 (c) EXCEPTION FOR QUALIFIED ELECTRIC AND NAT-  
 6 URAL GAS SUPPLY CONTRACTS.—Section 141(d) is  
 7 amended by adding at the end the following new para-  
 8 graph:

9 “(7) EXCEPTION FOR QUALIFIED ELECTRIC  
 10 AND NATURAL GAS SUPPLY CONTRACTS.—The term  
 11 ‘nongovernmental output property’ shall not include  
 12 any contract for the prepayment of electricity or nat-  
 13 ural gas which is not investment property under sec-  
 14 tion 148(b)(2).”.

15 (d) EFFECTIVE DATE.—The amendments made by  
 16 this section shall apply to obligations issued after the date  
 17 of the enactment of this Act.

18 **SEC. 1308. DETERMINATION OF SMALL REFINER EXCEP-**  
 19 **TION TO OIL DEPLETION DEDUCTION.**

20 (a) IN GENERAL.—Paragraph (4) of section 613A(d)  
 21 (relating to limitations on application of subsection (c))  
 22 is amended to read as follows:

23 “(4) CERTAIN REFINERS EXCLUDED.—If the  
 24 taxpayer or 1 or more related persons engages in the  
 25 refining of crude oil, subsection (c) shall not apply

1 to the taxpayer for a taxable year if the average  
2 daily refinery runs of the taxpayer and such persons  
3 for the taxable year exceed 75,000 barrels. For pur-  
4 poses of this paragraph, the average daily refinery  
5 runs for any taxable year shall be determined by di-  
6 viding the aggregate refinery runs for the taxable  
7 year by the number of days in the taxable year.”.

8 (b) EFFECTIVE DATE.—The amendment made by  
9 this section shall apply to taxable years ending after the  
10 date of the enactment of this Act.

## 11 **Subtitle B—Miscellaneous Energy** 12 **Tax Incentives**

### 13 **SEC. 1311. CREDIT FOR RESIDENTIAL ENERGY EFFICIENT** 14 **PROPERTY.**

15 (a) IN GENERAL.—Subpart A of part IV of sub-  
16 chapter A of chapter 1 (relating to nonrefundable personal  
17 credits) is amended by inserting after section 25B the fol-  
18 lowing new section:

#### 19 **“SEC. 25C. RESIDENTIAL ENERGY EFFICIENT PROPERTY.**

20 “(a) ALLOWANCE OF CREDIT.—In the case of an in-  
21 dividual, there shall be allowed as a credit against the tax  
22 imposed by this chapter for the taxable year an amount  
23 equal to the sum of—

1           “(1) 15 percent of the qualified solar water  
2 heating property expenditures made by the taxpayer  
3 during such year,

4           “(2) 15 percent of the qualified photovoltaic  
5 property expenditures made by the taxpayer during  
6 such year, and

7           “(3) 15 percent of the qualified fuel cell prop-  
8 erty expenditures made by the taxpayer during such  
9 year.

10          “(b) LIMITATIONS.—

11           “(1) MAXIMUM CREDIT.—

12           “(A) IN GENERAL.—The credit allowed  
13 under subsection (a) shall not exceed—

14           “(i) \$2,000 for solar water heating  
15 property described in subsection (c)(1),

16           “(ii) \$2,000 for photovoltaic property  
17 described in subsection (c)(2), and

18           “(iii) \$500 for each 0.5 kilowatt of ca-  
19 pacity of property described in subsection  
20 (c)(3).

21           “(B) PRIOR EXPENDITURES BY TAXPAYER  
22 ON SAME RESIDENCE TAKEN INTO ACCOUNT.—

23 In determining the amount of the credit allowed  
24 to a taxpayer with respect to any dwelling unit  
25 under this section, the dollar amounts under



1 clauses (i) and (ii) of subparagraph (A) with re-  
2 spect to each type of property described in such  
3 clauses shall be reduced by the credit allowed to  
4 the taxpayer under this section with respect to  
5 such type of property for all preceding taxable  
6 years with respect to such dwelling unit.

7 “(2) PROPERTY STANDARDS.—No credit shall  
8 be allowed under this section for an item of property  
9 unless—

10 “(A) the original use of such property com-  
11 mences with the taxpayer,

12 “(B) such property can be reasonably ex-  
13 pected to remain in use for at least 5 years,

14 “(C) such property is installed on or in  
15 connection with a dwelling unit located in the  
16 United States and used as a residence by the  
17 taxpayer,

18 “(D) in the case of solar water heating  
19 property, such property is certified for perform-  
20 ance by the non-profit Solar Rating and Certifi-  
21 cation Corporation or a comparable entity en-  
22 dorsed by the government of the State in which  
23 such property is installed, and

24 “(E) in the case of fuel cell property, such  
25 property meets the performance and quality

1 standards (if any) which have been prescribed  
2 by the Secretary by regulations (after consulta-  
3 tion with the Secretary of Energy).

4 “(c) DEFINITIONS.—For purposes of this section—

5 “(1) QUALIFIED SOLAR WATER HEATING PROP-  
6 ERTY EXPENDITURE.—The term ‘qualified solar  
7 water heating property expenditure’ means an ex-  
8 penditure for property which uses solar energy to  
9 heat water for use in a dwelling unit.

10 “(2) QUALIFIED PHOTOVOLTAIC PROPERTY EX-  
11 PENDITURE.—The term ‘qualified photovoltaic prop-  
12 erty expenditure’ means an expenditure for property  
13 which uses solar energy to generate electricity for  
14 use in a dwelling unit and which is not described in  
15 paragraph (1).

16 “(3) QUALIFIED FUEL CELL PROPERTY EX-  
17 PENDITURE.—The term ‘qualified fuel cell property  
18 expenditure’ means an expenditure for any qualified  
19 fuel cell property (as defined in section 48(b)(1)).

20 “(d) SPECIAL RULES.—For purposes of this sec-  
21 tion—

22 “(1) SOLAR PANELS.—No expenditure relating  
23 to a solar panel or other property installed as a roof  
24 (or portion thereof) shall fail to be treated as prop-  
25 erty described in paragraph (1) or (2) of subsection

1 (c) solely because it constitutes a structural compo-  
2 nent of the structure on which it is installed.

3 “(2) SWIMMING POOLS, ETC., USED AS STOR-  
4 AGE MEDIUM.—Expenditures which are properly al-  
5 locable to a swimming pool, hot tub, or any other  
6 energy storage medium which has a function other  
7 than the function of such storage shall not be taken  
8 into account for purposes of this section.

9 “(3) DOLLAR AMOUNTS IN CASE OF JOINT OC-  
10 CUPANCY.—In the case of any dwelling unit which is  
11 jointly occupied and used during any calendar year  
12 as a residence by 2 or more individuals, the fol-  
13 lowing rules shall apply:

14 “(A) The amount of the credit allowable  
15 under subsection (a) by reason of expenditures  
16 made during such calendar year by any of such  
17 individuals with respect to such dwelling unit  
18 shall be determined by treating all of such indi-  
19 viduals as 1 taxpayer whose taxable year is  
20 such calendar year.

21 “(B) There shall be allowable, with respect  
22 to such expenditures to each of such individ-  
23 uals, a credit under subsection (a) for the tax-  
24 able year in which such calendar year ends in  
25 an amount which bears the same ratio to the

1 amount determined under subparagraph (A) as  
2 the amount of such expenditures made by such  
3 individual during such calendar year bears to  
4 the aggregate of such expenditures made by all  
5 of such individuals during such calendar year.

6 “(C) Subparagraphs (A) and (B) shall be  
7 applied separately with respect to expenditures  
8 described in paragraphs (1), (2), and (3) of  
9 subsection (c).

10 “(4) TENANT-STOCKHOLDER IN COOPERATIVE  
11 HOUSING CORPORATION.—In the case of an indi-  
12 vidual who is a tenant-stockholder (as defined in sec-  
13 tion 216) in a cooperative housing corporation (as  
14 defined in such section), such individual shall be  
15 treated as having made the individual’s tenant-stock-  
16 holder’s proportionate share (as defined in section  
17 216(b)(3)) of any expenditures of such corporation.

18 “(5) CONDOMINIUMS.—

19 “(A) IN GENERAL.—In the case of an indi-  
20 vidual who is a member of a condominium man-  
21 agement association with respect to a condo-  
22 minium which the individual owns, such indi-  
23 vidual shall be treated as having made the indi-  
24 vidual’s proportionate share of any expenditures  
25 of such association.

1           “(B) CONDOMINIUM MANAGEMENT ASSO-  
2           CIATION.—For purposes of this paragraph, the  
3           term ‘condominium management association’  
4           means an organization which meets the require-  
5           ments of paragraph (1) of section 528(c) (other  
6           than subparagraph (E) thereof) with respect to  
7           a condominium project substantially all of the  
8           units of which are used as residences.

9           “(6) ALLOCATION IN CERTAIN CASES.—If less  
10          than 80 percent of the use of an item is for nonbusi-  
11          ness purposes, only that portion of the expenditures  
12          for such item which is properly allocable to use for  
13          nonbusiness purposes shall be taken into account.

14          “(7) WHEN EXPENDITURE MADE; AMOUNT OF  
15          EXPENDITURE.—

16                 “(A) IN GENERAL.—Except as provided in  
17                 subparagraph (B), an expenditure with respect  
18                 to an item shall be treated as made when the  
19                 original installation of the item is completed.

20                 “(B) EXPENDITURES PART OF BUILDING  
21                 CONSTRUCTION.—In the case of an expenditure  
22                 in connection with the construction or recon-  
23                 struction of a structure, such expenditure shall  
24                 be treated as made when the original use of the

1           constructed or reconstructed structure by the  
2           taxpayer begins.

3           “(C) AMOUNT.—The amount of any ex-  
4           penditure shall be the cost thereof.

5           “(8) PROPERTY FINANCED BY SUBSIDIZED EN-  
6           ERGY FINANCING.—For purposes of determining the  
7           amount of expenditures made by any individual with  
8           respect to any dwelling unit, there shall not be taken  
9           into account expenditures which are made from sub-  
10          sidized energy financing (as defined in section  
11          48(a)(4)(C)).

12          “(e) BASIS ADJUSTMENTS.—For purposes of this  
13          subtitle, if a credit is allowed under this section for any  
14          expenditure with respect to any property, the increase in  
15          the basis of such property which would (but for this sub-  
16          section) result from such expenditure shall be reduced by  
17          the amount of the credit so allowed.

18          “(f) TERMINATION.—The credit allowed under this  
19          section shall not apply to taxable years beginning after  
20          December 31, 2007.”.

21          (b) CONFORMING AMENDMENTS.—

22                 (1) Section 1016(a) is amended by striking  
23                 “and” at the end of paragraph (30), by striking the  
24                 period at the end of paragraph (31) and inserting “,

1 and”, and by adding at the end the following new  
2 paragraph:

3 “(32) to the extent provided in section 25C(e),  
4 in the case of amounts with respect to which a credit  
5 has been allowed under section 25C.”.

6 (2) The table of sections for subpart A of part  
7 IV of subchapter A of chapter 1 is amended by in-  
8 sserting after the item relating to section 25B the fol-  
9 lowing new item:

“Sec. 25C. Residential energy efficient property.”.

10 (c) EFFECTIVE DATE.—The amendments made by  
11 this section shall apply to expenditures made after the  
12 date of the enactment of this Act.

13 **SEC. 1312. CREDIT FOR BUSINESS INSTALLATION OF**  
14 **QUALIFIED FUEL CELLS.**

15 (a) IN GENERAL.—Section 48(a)(3)(A) (defining en-  
16 ergy property) is amended by striking “or” at the end of  
17 clause (i), by adding “or” at the end of clause (ii), and  
18 by inserting after clause (ii) the following new clause:

19 “(iii) qualified fuel cell property,”.

20 (b) ENERGY PERCENTAGE.—Subparagraph (A) of  
21 section 48(a)(2) (relating to energy percentage) is amend-  
22 ed to read as follows:

23 “(A) IN GENERAL.—The energy percent-  
24 age is—

1                   “(i) in the case of qualified fuel cell  
2                   property, 15 percent, and

3                   “(ii) in the case of any other energy  
4                   property, 10 percent.”.

5           (c) QUALIFIED FUEL CELL PROPERTY.—Section 48  
6 (relating to energy credit) is amended—

7           (1) by redesignating subsection (b) as para-  
8           graph (5) of subsection (a),

9           (2) by striking “subsection (a)” in paragraph  
10          (5) of subsection (a), as redesignated by paragraph  
11          (1), and inserting “this subsection”, and

12          (3) by adding at the end the following new sub-  
13          section:

14          “(b) QUALIFIED FUEL CELL PROPERTY.—For pur-  
15          poses of subsection (a)(3)(A)(iii)—

16               “(1) IN GENERAL.—The term ‘qualified fuel  
17               cell property’ means a fuel cell power plant which—

18                       “(A) generates at least 0.5 kilowatt of elec-  
19                       tricity using an electrochemical process, and

20                       “(B) has an electricity-only generation effi-  
21                       ciency greater than 30 percent.

22               “(2) LIMITATION.—The energy credit with re-  
23               spect to any qualified fuel cell property shall not ex-  
24               ceed an amount equal to \$500 for each 0.5 kilowatt  
25               of capacity of such property.



1           “(3) FUEL CELL POWER PLANT.—The term  
2           ‘fuel cell power plant’ means an integrated system,  
3           comprised of a fuel cell stack assembly and associ-  
4           ated balance of plant components, which converts a  
5           fuel into electricity using electrochemical means.

6           “(4) TERMINATION.—The term ‘qualified fuel  
7           cell property’ shall not include any property placed  
8           in service after December 31, 2007.”.

9           (d) CONFORMING AMENDMENT.—Section 48(a)(1) is  
10          amended by inserting “except as provided in subsection  
11          (b)(2),” before “the energy” the first place it appears.

12          (e) EFFECTIVE DATE.—The amendments made by  
13          this section shall apply to property placed in service after  
14          April 11, 2005, under rules similar to the rules of section  
15          48(m) of the Internal Revenue Code of 1986 (as in effect  
16          on the day before the date of the enactment of the Rev-  
17          enue Reconciliation Act of 1990).

18          **SEC. 1313. REDUCED MOTOR FUEL EXCISE TAX ON CER-**  
19    **TAIN MIXTURES OF DIESEL FUEL.**

20          (a) IN GENERAL.—Paragraph (2) of section 4081(a)  
21          is amended by adding at the end the following:

22    “(D) DIESEL-WATER FUEL EMULSION.—In  
23    the case of diesel-water fuel emulsion at least  
24    16.9 percent of which is water and with respect  
25    to which the emulsion additive is registered by

1 a United States manufacturer with the Envi-  
2 ronmental Protection Agency pursuant to sec-  
3 tion 211 of the Clean Air Act (as in effect on  
4 March 31, 2003), subparagraph (A)(iii) shall be  
5 applied by substituting ‘19.7 cents’ for ‘24.3  
6 cents’.”.

7 (b) SPECIAL RULES FOR DIESEL-WATER FUEL  
8 EMULSIONS.—

9 (1) REFUNDS FOR TAX-PAID PURCHASES.—Sec-  
10 tion 6427 is amended by redesignating subsections  
11 (m) through (p) as subsections (n) through (q), re-  
12 spectively, and by inserting after subsection (l) the  
13 following new subsection:

14 “(m) DIESEL FUEL USED TO PRODUCE EMUL-  
15 SION.—

16 “(1) IN GENERAL.—Except as provided in sub-  
17 section (k), if any diesel fuel on which tax was im-  
18 posed by section 4081 at the regular tax rate is used  
19 by any person in producing an emulsion described in  
20 section 4081(a)(2)(D) which is sold or used in such  
21 person’s trade or business, the Secretary shall pay  
22 (without interest) to such person an amount equal to  
23 the excess of the regular tax rate over the incentive  
24 tax rate with respect to such fuel.

1           “(2) DEFINITIONS.—For purposes of paragraph  
2           (1)—

3                   “(A) REGULAR TAX RATE.—The term ‘reg-  
4                   ular tax rate’ means the aggregate rate of tax  
5                   imposed by section 4081 determined without re-  
6                   gard to section 4081(a)(2)(D).

7                   “(B) INCENTIVE TAX RATE.—The term  
8                   ‘incentive tax rate’ means the aggregate rate of  
9                   tax imposed by section 4081 determined with  
10                  regard to section 4081(a)(2)(D).”.

11                  (2) LATER SEPARATION OF FUEL.—Section  
12                  4081 (relating to imposition of tax) is amended by  
13                  inserting after subsection (b) the following new sub-  
14                  section:

15                  “(c) LATER SEPARATION OF FUEL FROM DIESEL-  
16                  WATER FUEL EMULSION.—If any person separates the  
17                  taxable fuel from a diesel-water fuel emulsion on which  
18                  tax was imposed under subsection (a) at a rate determined  
19                  under subsection (a)(2)(D) (or with respect to which a  
20                  credit or payment was allowed or made by reason of sec-  
21                  tion 6427), such person shall be treated as the refiner of  
22                  such taxable fuel. The amount of tax imposed on any re-  
23                  moval of such fuel by such person shall be reduced by the  
24                  amount of tax imposed (and not credited or refunded) on  
25                  any prior removal or entry of such fuel.”.

1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall take effect on January 1, 2006.

3 **SEC. 1314. AMORTIZATION OF DELAY RENTAL PAYMENTS.**

4 (a) IN GENERAL.—Section 167 (relating to deprecia-  
5 tion) is amended by redesignating subsection (h) as sub-  
6 section (i) and by inserting after subsection (g) the fol-  
7 lowing new subsection:

8 “(h) AMORTIZATION OF DELAY RENTAL PAYMENTS  
9 FOR DOMESTIC OIL AND GAS WELLS.—

10 “(1) IN GENERAL.—Any delay rental payment  
11 paid or incurred in connection with the development  
12 of oil or gas wells within the United States (as de-  
13 fined in section 638) shall be allowed as a deduction  
14 ratably over the 24-month period beginning on the  
15 date that such payment was paid or incurred.

16 “(2) HALF-YEAR CONVENTION.—For purposes  
17 of paragraph (1), any payment paid or incurred dur-  
18 ing the taxable year shall be treated as paid or in-  
19 curred on the mid-point of such taxable year.

20 “(3) EXCLUSIVE METHOD.—Except as provided  
21 in this subsection, no depreciation or amortization  
22 deduction shall be allowed with respect to such pay-  
23 ments.

24 “(4) TREATMENT UPON ABANDONMENT.—If  
25 any property to which a delay rental payment relates

1 is retired or abandoned during the 24-month period  
2 described in paragraph (1), no deduction shall be al-  
3 lowed on account of such retirement or abandon-  
4 ment and the amortization deduction under this sub-  
5 section shall continue with respect to such payment.

6 “(5) DELAY RENTAL PAYMENTS.—For purposes  
7 of this subsection, the term ‘delay rental payment’  
8 means an amount paid for the privilege of deferring  
9 development of an oil or gas well under an oil or gas  
10 lease.”.

11 (b) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to amounts paid or incurred in tax-  
13 able years beginning after the date of the enactment of  
14 this Act.

15 **SEC. 1315. AMORTIZATION OF GEOLOGICAL AND GEO-**  
16 **PHYSICAL EXPENDITURES.**

17 (a) IN GENERAL.—Section 167 (relating to deprecia-  
18 tion), as amended by section 1314 of this title, is amended  
19 by redesignating subsection (i) as subsection (j) and by  
20 inserting after subsection (h) the following new subsection:

21 “(i) AMORTIZATION OF GEOLOGICAL AND GEO-  
22 PHYSICAL EXPENDITURES.—

23 “(1) IN GENERAL.—Any geological and geo-  
24 physical expenses paid or incurred in connection  
25 with the exploration for, or development of, oil or

1 gas within the United States (as defined in section  
2 638) shall be allowed as a deduction ratably over the  
3 24-month period beginning on the date that such ex-  
4 pense was paid or incurred.

5 “(2) SPECIAL RULES.—For purposes of this  
6 subsection, rules similar to the rules of paragraphs  
7 (2), (3), and (4) of subsection (h) shall apply.”.

8 (b) CONFORMING AMENDMENT.—Section 263A(e)(3)  
9 is amended by inserting “167(h), 167(i),” after “under  
10 section”.

11 (c) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to amounts paid or incurred in tax-  
13 able years beginning after the date of the enactment of  
14 this Act.

15 **SEC. 1316. ADVANCED LEAN BURN TECHNOLOGY MOTOR**  
16 **VEHICLE CREDIT.**

17 (a) IN GENERAL.—Subpart B of part IV of sub-  
18 chapter A of chapter 1 (relating to other credits) is  
19 amended by adding at the end the following:

20 **“SEC. 30B. ADVANCED LEAN BURN TECHNOLOGY MOTOR**  
21 **VEHICLE CREDIT.**

22 “(a) ALLOWANCE OF CREDIT.—There shall be al-  
23 lowed as a credit against the tax imposed by this chapter  
24 for the taxable year an amount equal to the sum of the  
25 credit amounts determined under subsection (b) with re-

1 spect to each qualified advanced lean burn technology  
2 motor vehicle placed in service by the taxpayer during the  
3 taxable year.

4 “(b) CREDIT AMOUNT.—For purposes of subsection  
5 (a)—

6 “(1) FUEL EFFICIENCY.—The credit amount  
7 with respect to any vehicle shall be—

8 “(A) \$500, if the city fuel economy of such  
9 vehicle is at least 125 percent but less than 150  
10 percent of the 2000 model year city fuel econ-  
11 omy for a vehicle in the same inertia weight  
12 class,

13 “(B) \$1,000, if the city fuel economy of  
14 such vehicle is at least 150 percent but less  
15 than 175 percent of the 2000 model year city  
16 fuel economy for a vehicle in the same inertia  
17 weight class,

18 “(C) \$1,500, if the city fuel economy of  
19 such vehicle is at least 175 percent but less  
20 than 200 percent of the 2000 model year city  
21 fuel economy for a vehicle in the same inertia  
22 weight class,

23 “(D) \$2,000, if the city fuel economy of  
24 such vehicle is at least 200 percent but less  
25 than 225 percent of the 2000 model year city

1 fuel economy for a vehicle in the same inertia  
2 weight class,

3 “(E) \$2,500, if the city fuel economy of  
4 such vehicle is at least 225 percent but less  
5 than 250 percent of the 2000 model year city  
6 fuel economy for a vehicle in the same inertia  
7 weight class, and

8 “(F) \$3,000, if the city fuel economy of  
9 such vehicle is at least 250 percent of the 2000  
10 model year city fuel economy for a vehicle in  
11 the same inertia weight class.

12 “(2) CONSERVATION.—The credit amount de-  
13 termined under paragraph (1) with respect to any  
14 vehicle shall be increased by—

15 “(A) \$250, if the lifetime fuel savings of  
16 such vehicle is at least 1,500 gallons of motor  
17 fuel but less than 2,500 gallons of motor fuel,  
18 and

19 “(B) \$500, if the lifetime fuel savings of  
20 such vehicle is at least 2,500 gallons of motor  
21 fuel.

22 “(c) LIMITATION BASED ON AMOUNT OF TAX.—The  
23 credit allowed under subsection (a) for the taxable year  
24 shall not exceed the excess of—



1           “(1) the sum of the regular tax liability (as de-  
2           fined in section 26(b)) plus the tax imposed by sec-  
3           tion 55, over

4           “(2) the sum of the credits allowable under sub-  
5           part A and sections 27 and 30A for the taxable  
6           year.

7           “(d) DEFINITIONS.—For purposes of this section—

8           “(1) QUALIFIED ADVANCED LEAN BURN TECH-  
9           NOLOGY MOTOR VEHICLE.—The term ‘qualified ad-  
10          vanced lean burn technology motor vehicle’ means a  
11          motor vehicle—

12                   “(A) the original use of which commences  
13                   with the taxpayer,

14                   “(B) powered by an internal combustion  
15                   engine that—

16                           “(i) is designed to operate primarily  
17                           using more air than is necessary for com-  
18                           plete combustion of the fuel, and

19                           “(ii) incorporates direct injection,

20                   “(C) that only uses diesel fuel (as defined  
21                   in section 4083(a)(3)),

22                   “(D) the city fuel economy of which is at  
23                   least 125 percent of the 2000 model year city  
24                   fuel economy for a vehicle in the same inertia  
25                   weight class, and

1           “(E) that has received a certificate that  
2           such vehicle meets or exceeds the Bin 8 Tier II  
3           emission level established in regulations pre-  
4           scribed by the Administrator of the Environ-  
5           mental Protection Agency under section 202(i)  
6           of the Clean Air Act.

7           “(2) LIFETIME FUEL SAVINGS.—The term ‘life-  
8           time fuel savings’ means, with respect to a qualified  
9           advanced lean burn technology motor vehicle, an  
10          amount equal to the excess (if any) of—

11           “(A) 120,000 divided by the 2000 model  
12          year city fuel economy for the vehicle inertia  
13          weight class, over

14           “(B) 120,000 divided by the city fuel econ-  
15          omy for such vehicle.

16           “(3) 2000 MODEL YEAR CITY FUEL ECON-  
17          OMY.—The 2000 model year city fuel economy with  
18          respect to a vehicle shall be determined in accord-  
19          ance with the following tables:

20           “(A) In the case of a passenger auto-  
21          mobile:

<b>If vehicle inertia weight</b>	<b>The 2000 model year city fuel economy is:</b>
1,500 or 1,750 lbs .....	43.7 mpg
2,000 lbs .....	38.3 mpg
2,250 lbs .....	34.1 mpg
2,500 lbs .....	30.7 mpg
2,750 lbs .....	27.9 mpg
3,000 lbs .....	25.6 mpg
3,500 lbs .....	22.0 mpg
4,000 lbs .....	19.3 mpg

<b>“If vehicle inertia weight class is:</b>	<b>The 2000 model year city fuel economy is:</b>
4,500 lbs .....	17.2 mpg
5,000 lbs .....	15.5 mpg
5,500 lbs .....	14.1 mpg
6,000 lbs .....	12.9 mpg
6,500 lbs .....	11.9 mpg
7,000 or 8,500 lbs .....	11.1 mpg.

1                                   “(B) In the case of a light truck:

<b>“If vehicle inertia weight class is:</b>	<b>The 2000 model year city fuel economy is:</b>
1,500 or 1,750 lbs .....	37.6 mpg
2,000 lbs .....	33.7 mpg
2,250 lbs .....	30.6 mpg
2,500 lbs .....	28.0 mpg
2,750 lbs .....	25.9 mpg
3,000 lbs .....	24.1 mpg
3,500 lbs .....	21.3 mpg
4,000 lbs .....	19.0 mpg
4,500 lbs .....	17.3 mpg
5,000 lbs .....	15.8 mpg
5,500 lbs .....	14.6 mpg
6,000 lbs .....	13.6 mpg
6,500 lbs .....	12.8 mpg
7,000 or 8,500 lbs .....	12.0 mpg.

2                                   “(4) MOTOR VEHICLE.—The term ‘motor vehi-

3                                   cle’ has the meaning given such term by section

4                                   30(c)(2).

5                                   “(5) CITY FUEL ECONOMY.—City fuel economy

6                                   with respect to any vehicle shall be measured in ac-

7                                   cordance with testing and calculation procedures es-

8                                   tablished by the Administrator of the Environmental

9                                   Protection Agency by regulations in effect on April

10                                  11, 2005.

11                                  “(6) OTHER TERMS.—The terms ‘passenger

12                                  automobile’, ‘light truck’, and ‘manufacturer’ shall

13                                  have the meanings given such terms in regulations

14                                  prescribed by the Administrator of the Environ-

1 mental Protection Agency for purposes of the admin-  
2 istration of title II of the Clean Air Act (42 U.S.C.  
3 7521 et seq.).

4 “(e) CARRYFORWARD ALLOWED.—

5 “(1) IN GENERAL.—If the credit amount allow-  
6 able under subsection (a) for a taxable year exceeds  
7 the amount of the limitation under subsection (c) for  
8 such taxable year (referred to as the ‘unused credit  
9 year’ in this paragraph), such excess shall be allowed  
10 as a credit carryforward for each of the 20 taxable  
11 years following the unused credit year.

12 “(2) RULES.—Rules similar to the rules of sec-  
13 tion 39 shall apply with respect to the credit  
14 carryforward under paragraph (1).

15 “(f) SPECIAL RULES.—For purposes of this sec-  
16 tion—

17 “(1) REDUCTION IN BASIS.—The basis of any  
18 property for which a credit is allowable under sub-  
19 section (a) shall be reduced by the amount of such  
20 credit (determined without regard to subsection (c)).

21 “(2) NO DOUBLE BENEFIT.—The amount of  
22 any deduction or credit allowable under this chapter  
23 (other than the credit allowable under subsection  
24 (a)), with respect to any vehicle shall be reduced by  
25 the amount of credit allowed under subsection (a)

1 (determined without regard to subsection (c)) for  
2 such vehicle for the taxable year.

3 “(3) PROPERTY USED BY TAX-EXEMPT ENTI-  
4 TY.—In the case of a vehicle whose use is described  
5 in paragraph (3) or (4) of section 50(b) and which  
6 is not subject to a lease, the person who sold such  
7 vehicle to the person or entity using such vehicle  
8 shall be treated as the taxpayer that placed such ve-  
9 hicle in service, but only if such person clearly dis-  
10 closes to such person or entity in a document the  
11 amount of any credit allowable under subsection (a)  
12 with respect to such vehicle (determined without re-  
13 gard to subsection (c)).

14 “(4) PROPERTY USED OUTSIDE UNITED  
15 STATES, ETC., NOT QUALIFIED.—No credit shall be  
16 allowable under subsection (a) with respect to any  
17 property referred to in section 50(b)(1) or with re-  
18 spect to the portion of the cost of any property  
19 taken into account under section 179.

20 “(5) ELECTION NOT TO TAKE CREDIT.—No  
21 credit shall be allowed under subsection (a) for any  
22 vehicle if the taxpayer elects not to have this section  
23 apply to such vehicle.

24 “(6) INTERACTION WITH AIR QUALITY AND  
25 MOTOR VEHICLE SAFETY STANDARDS.—Unless oth-

1 erwise provided in this section, a motor vehicle shall  
2 not be considered eligible for a credit under this sec-  
3 tion unless such vehicle is in compliance with—

4 “(A) the applicable provisions of the Clean  
5 Air Act for the applicable make and model year  
6 of the vehicle (or applicable air quality provi-  
7 sions of State law in the case of a State which  
8 has adopted such provision under a waiver  
9 under section 209(b) of the Clean Air Act), and

10 “(B) the motor vehicle safety provisions of  
11 sections 30101 through 30169 of title 49,  
12 United States Code.

13 “(g) REGULATIONS.—

14 “(1) IN GENERAL.—The Secretary shall pro-  
15 mulgate such regulations as necessary to carry out  
16 this section, including regulations to prevent the  
17 avoidance of the purposes of this section through  
18 disposal of any motor vehicle or leasing of any motor  
19 vehicle for a lease period of less than the economic  
20 life of such vehicle.

21 “(2) DETERMINATION OF MOTOR VEHICLE ELI-  
22 GIBILITY.—The Secretary, in coordination with the  
23 Secretary of Transportation and the Administrator  
24 of the Environmental Protection Agency, shall pre-  
25 scribe such regulations as necessary to determine

1       whether a motor vehicle meets the requirements to  
2       be eligible for a credit under this section.

3       “(h) TERMINATION.—This section shall not apply to  
4 any property placed in service after December 31, 2007.”.

5       (b) CONFORMING AMENDMENTS.—

6           (1) Section 1016(a), as amended by section  
7       1311 of this title, is amended by striking “and” at  
8       the end of paragraph (31), by striking the period at  
9       the end of paragraph (32) and inserting “, and”,  
10      and by adding at the end the following:

11           “(33) to the extent provided in section  
12      30B(f)(1).”.

13           (2) Section 6501(m) is amended by inserting  
14      “30B(f)(6),” after “30(d)(4),”.

15           (3) The table of sections for subpart B of part  
16      IV of subchapter A of chapter 1 is amended by in-  
17      serting after the item relating to section 30A the fol-  
18      lowing:

“Sec. 30B. Advanced lean burn technology motor vehicle credit.”.

19       (c) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to property placed in service after  
21 the date of the enactment of this Act in taxable years end-  
22 ing after such date.

1 **SEC. 1317. CREDIT FOR ENERGY EFFICIENCY IMPROVE-**  
2 **MENTS TO EXISTING HOMES.**

3 (a) IN GENERAL.—Subpart A of part IV of sub-  
4 chapter A of chapter 1 (relating to nonrefundable personal  
5 credits), as amended by section 1311, is amended by in-  
6 serting after section 25C the following new section:

7 **“SEC. 25D. ENERGY EFFICIENCY IMPROVEMENTS TO EXIST-**  
8 **ING HOMES.**

9 “(a) ALLOWANCE OF CREDIT.—In the case of an in-  
10 dividual, there shall be allowed as a credit against the tax  
11 imposed by this chapter for the taxable year an amount  
12 equal to 20 percent of the amount paid or incurred by  
13 the taxpayer for qualified energy efficiency improvements  
14 installed during such taxable year.

15 “(b) LIMITATIONS.—

16 “(1) MAXIMUM CREDIT.—The credit allowed by  
17 this section with respect to a dwelling unit shall not  
18 exceed \$2,000.

19 “(2) PRIOR CREDIT AMOUNTS FOR TAXPAYER  
20 ON SAME DWELLING TAKEN INTO ACCOUNT.—If a  
21 credit was allowed to the taxpayer under subsection  
22 (a) with respect to a dwelling unit in 1 or more prior  
23 taxable years, the amount of the credit otherwise al-  
24 lowable for the taxable year with respect to that  
25 dwelling unit shall be reduced by the sum of the  
26 credits allowed under subsection (a) to the taxpayer



1 with respect to the dwelling unit for all prior taxable  
2 years.

3 “(c) QUALIFIED ENERGY EFFICIENCY IMPROVE-  
4 MENTS.—For purposes of this section, the term ‘qualified  
5 energy efficiency improvements’ means any energy effi-  
6 cient building envelope component which meets the pre-  
7 scriptive criteria for such component established by the  
8 2000 International Energy Conservation Code, as such  
9 Code (including supplements) is in effect on the date of  
10 the enactment of the Enhanced Energy Infrastructure and  
11 Technology Tax Act of 2005 (or, in the case of a metal  
12 roof with appropriate pigmented coatings which meet the  
13 Energy Star program requirements), if—

14 “(1) such component is installed in or on a  
15 dwelling unit located in the United States and  
16 owned and used by the taxpayer as the taxpayer’s  
17 principal residence (within the meaning of section  
18 121),

19 “(2) the original use of such component com-  
20 mences with the taxpayer, and

21 “(3) such component reasonably can be ex-  
22 pected to remain in use for at least 5 years.

23 If the aggregate cost of such components with respect to  
24 any dwelling unit exceeds \$1,000, such components shall  
25 be treated as qualified energy efficiency improvements

1 only if such components are also certified in accordance  
2 with subsection (d) as meeting such prescriptive criteria.

3 “(d) CERTIFICATION.—The certification described in  
4 subsection (c) shall be—

5 “(1) determined on the basis of the technical  
6 specifications or applicable ratings (including prod-  
7 uct labeling requirements) for the measurement of  
8 energy efficiency (based upon energy use or building  
9 envelope component performance) for the energy ef-  
10 ficient building envelope component,

11 “(2) provided by a local building regulatory au-  
12 thority, a utility, a manufactured home production  
13 inspection primary inspection agency (IPIA), or an  
14 accredited home energy rating system provider who  
15 is accredited by or otherwise authorized to use ap-  
16 proved energy performance measurement methods by  
17 the Residential Energy Services Network  
18 (RESNET), and

19 “(3) made in writing in a manner which speci-  
20 fies in readily verifiable fashion the energy efficient  
21 building envelope components installed and their re-  
22 spective energy efficiency levels.

23 “(e) DEFINITIONS AND SPECIAL RULES.—For pur-  
24 poses of this section—

1           “(1) BUILDING ENVELOPE COMPONENT.—The  
2 term ‘building envelope component’ means—

3           “(A) any insulation material or system  
4 which is specifically and primarily designed to  
5 reduce the heat loss or gain of a dwelling unit  
6 when installed in or on such dwelling unit,

7           “(B) exterior windows (including sky-  
8 lights),

9           “(C) exterior doors, and

10           “(D) any metal roof installed on a dwelling  
11 unit, but only if such roof has appropriate pig-  
12 mented coatings which are specifically and pri-  
13 marily designed to reduce the heat gain of such  
14 dwelling unit.

15           “(2) MANUFACTURED HOMES INCLUDED.—The  
16 term ‘dwelling unit’ includes a manufactured home  
17 which conforms to Federal Manufactured Home  
18 Construction and Safety Standards (section 3280 of  
19 title 24, Code of Federal Regulations).

20           “(3) APPLICATION OF RULES.—Rules similar to  
21 the rules under paragraphs (3), (4), and (5) of sec-  
22 tion 25C(d) shall apply.

23           “(f) BASIS ADJUSTMENT.—For purposes of this sub-  
24 title, if a credit is allowed under this section for any ex-  
25 penditure with respect to any property, the increase in the

1 basis of such property which would (but for this sub-  
2 section) result from such expenditure shall be reduced by  
3 the amount of the credit so allowed.

4 “(g) APPLICATION OF SECTION.—This section shall  
5 apply to qualified energy efficiency improvements installed  
6 after the date of the enactment of the Enhanced Energy  
7 Infrastructure and Technology Tax Act of 2005, and be-  
8 fore January 1, 2008.”.

9 (b) CONFORMING AMENDMENTS.—

10 (1) Subsection (a) of section 1016, as amended  
11 by section 1316 of this title, is amended by striking  
12 “and” at the end of paragraph (32), by striking the  
13 period at the end of paragraph (33) and inserting “,  
14 and”, and by adding at the end the following new  
15 paragraph:

16 “(34) to the extent provided in section 25D(f),  
17 in the case of amounts with respect to which a credit  
18 has been allowed under section 25D.”.

19 (2) The table of sections for subpart A of part  
20 IV of subchapter A of chapter 1, as amended by sec-  
21 tion 1311, is amended by inserting after the item re-  
22 lating to section 25C the following new item:

“Sec. 25D. Energy efficiency improvements to existing homes.”.

23 (c) EFFECTIVE DATE.—The amendments made by  
24 this section shall apply to improvements installed after the

1 date of the enactment of this Act in taxable years ending  
2 after such date.

3 **Subtitle C—Alternative Minimum**  
4 **Tax Relief**

5 **SEC. 1321. NEW NONREFUNDABLE PERSONAL CREDITS AL-**  
6 **LOWED AGAINST REGULAR AND MINIMUM**  
7 **TAXES.**

8 (a) IN GENERAL.—

9 (1) SECTION 25C.—Section 25C(b), as added by  
10 section 1311 of this title, is amended by adding at  
11 the end the following new paragraph:

12 “(3) LIMITATION BASED ON AMOUNT OF  
13 TAX.—The credit allowed under subsection (a) for  
14 the taxable year shall not exceed the excess of—

15 “(A) the sum of the regular tax liability  
16 (as defined in section 26(b)) plus the tax im-  
17 posed by section 55, over

18 “(B) the sum of the credits allowable  
19 under this subpart (other than this section) and  
20 section 27 for the taxable year.”.

21 (2) SECTION 25D.—Section 25D(b), as added  
22 by section 1317 of this title, is amended by adding  
23 at the end the following new paragraph:

1           “(3) LIMITATION BASED ON AMOUNT OF  
2 TAX.—The credit allowed under subsection (a) for  
3 the taxable year shall not exceed the excess of—

4           “(A) the sum of the regular tax liability  
5           (as defined in section 26(b)) plus the tax im-  
6           posed by section 55, over

7           “(B) the sum of the credits allowable  
8           under this subpart (other than this section) and  
9           section 27 for the taxable year.”.

10 (b) CONFORMING AMENDMENTS.—

11           (1) Section 23(b)(4)(B) is amended by inserting  
12 “and sections 25C and 25D” after “this section”.

13           (2) Section 24(b)(3)(B) is amended by striking  
14 “and 25B” and inserting “, 25B, 25C, and 25D”.

15           (3) Section 25(e)(1)(C) is amended by inserting  
16 “25C, and 25D” after “25B,”.

17           (4) Section 25B(g)(2) is amended by striking  
18 “section 23” and inserting “sections 23, 25C, and  
19 25D”.

20           (5) Section 26(a)(1) is amended by striking  
21 “and 25B” and inserting “25B, 25C, and 25D”.

22           (6) Section 904(i) is amended by striking “and  
23 25B” and inserting “25B, 25C, and 25D”.

24           (7) Section 1400C(d) is amended by striking  
25 “and 25B” and inserting “25B, 25C, and 25D”.

1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years beginning after  
3 December 31, 2005.

4 **SEC. 1322. CERTAIN BUSINESS ENERGY CREDITS ALLOWED**  
5 **AGAINST REGULAR AND MINIMUM TAXES.**

6 (a) IN GENERAL.—Subparagraph (B) of section  
7 38(c)(4) (relating to specified credits) is amended by re-  
8 designating clause (ii) as clause (iv) and by striking clause  
9 (i) and inserting the following new clauses:

10 “(i) the credits determined under sec-  
11 tions 40, 45H, and 45I,

12 “(ii) so much of the credit determined  
13 under section 46 as is attributable to sec-  
14 tion 48(a)(3)(A)(iii),

15 “(iii) for taxable years beginning after  
16 December 31, 2005, and before January 1,  
17 2008, the credit determined under section  
18 43, and”.

19 (b) EFFECTIVE DATES.—

20 (1) IN GENERAL.—Except as provided by para-  
21 graph (2), the amendment made by subsection (a)  
22 shall apply to credits determined under the Internal  
23 Revenue Code of 1986 for taxable years beginning  
24 after December 31, 2005.

1           (2) FUEL CELLS.—Clause (ii) of section  
2           38(c)(4)(B) of the Internal Revenue Code of 1986,  
3           as amended by subsection (a) of this section, shall  
4           apply to credits determined under the Internal Rev-  
5           enue Code of 1986 for taxable years ending after  
6           April 11, 2005.

## 7           **TITLE XIV—MISCELLANEOUS**

### 8           **Subtitle C—Other Provisions**

#### 9           **SEC. 1441. CONTINUATION OF TRANSMISSION SECURITY** 10           **ORDER.**

11           Department of Energy Order No. 202–03–2, issued  
12           by the Secretary of Energy on August 28, 2003, shall re-  
13           main in effect unless rescinded by Federal statute.

#### 14           **SEC. 1442. REVIEW OF AGENCY DETERMINATIONS.**

15           Section 7 of the Natural Gas Act (15 U.S.C. 717f)  
16           is amended by adding at the end the following:

17           “(i)(1) The United States Court of Appeals for the  
18           District of Columbia Circuit shall have original and exclu-  
19           sive jurisdiction over any civil action—

20           “(A) for review of any order or action of any  
21           Federal or State administrative agency or officer to  
22           issue, condition, or deny any permit, license, concur-  
23           rence, or approval issued under authority of any  
24           Federal law, other than the Coastal Zone Manage-  
25           ment Act of 1972 (16 U.S.C. 1451 et seq.), required



1 for the construction of a natural gas pipeline for  
2 which a certificate of public convenience and neces-  
3 sity is issued by the Commission under this section;

4 “(B) alleging unreasonable delay by any Fed-  
5 eral or State administrative agency or officer in en-  
6 tering an order or taking other action described in  
7 subparagraph (A); or

8 “(C) challenging any decision made or action  
9 taken under this subsection.

10 “(2)(A) If the Court finds that the order, action, or  
11 failure to act is not consistent with the public convenience  
12 and necessity (as determined by the Commission under  
13 this section), or would prevent the construction and oper-  
14 ation of natural gas facilities authorized by the certificate  
15 of public convenience and necessity, the permit, license,  
16 concurrence, or approval that is the subject of the order,  
17 action, or failure to act shall be deemed to have been  
18 issued subject to any conditions set forth in the reviewed  
19 order or action that the Court finds to be consistent with  
20 the public convenience and necessity.

21 “(B) For purposes of paragraph (1)(B), the failure  
22 of an agency or officer to issue any such permit, license,  
23 concurrence, or approval within the later of 1 year after  
24 the date of filing of an application for the permit, license,  
25 concurrence, or approval or 60 days after the date of

1 issuance of the certificate of public convenience and neces-  
2 sity under this section, shall be considered to be unreason-  
3 able delay unless the Court, for good cause shown, deter-  
4 mines otherwise.

5 “(C) The Court shall set any action brought under  
6 paragraph (1) for expedited consideration.”.

7 **SEC. 1443. ATTAINMENT DATES FOR DOWNWIND OZONE**  
8 **NONATTAINMENT AREAS.**

9 Section 181 of the Clean Air Act (42 U.S.C.7511)  
10 is amended by adding the following new subsection at the  
11 end thereof:

12 “(d) **EXTENDED ATTAINMENT DATE FOR CERTAIN**  
13 **DOWNWIND AREAS.—**

14 “(1) **DEFINITIONS.—**(A) The term ‘upwind  
15 area’ means an area that—

16 “(i) significantly contributes to nonattain-  
17 ment in another area, hereinafter referred to as  
18 a ‘downwind area’; and

19 “(ii) is either—

20 “(I) a nonattainment area with a later  
21 attainment date than the downwind area,  
22 or

23 “(II) an area in another State that  
24 the Administrator has found to be signifi-  
25 cantly contributing to nonattainment in

1 the downwind area in violation of section  
2 110(a)(2)(D) and for which the Adminis-  
3 trator has established requirements  
4 through notice and comment rulemaking to  
5 eliminate the emissions causing such sig-  
6 nificant contribution.

7 “(B) The term ‘current classification’ means  
8 the classification of a downwind area under this sec-  
9 tion at the time of the determination under para-  
10 graph (2).

11 “(2) EXTENSION.—If the Administrator—

12 “(A) determines that any area is a down-  
13 wind area with respect to a particular national  
14 ambient air quality standard for ozone; and

15 “(B) approves a plan revision for such  
16 area as provided in paragraph (3) prior to a re-  
17 classification under subsection (b)(2)(A),

18 the Administrator, in lieu of such reclassification,  
19 shall extend the attainment date for such downwind  
20 area for such standard in accordance with paragraph  
21 (5).

22 “(3) REQUIRED APPROVAL.—In order to extend  
23 the attainment date for a downwind area under this  
24 subsection, the Administrator must approve a revi-

1 sion of the applicable implementation plan for the  
2 downwind area for such standard that—

3 “(A) complies with all requirements of this  
4 Act applicable under the current classification  
5 of the downwind area, including any require-  
6 ments applicable to the area under section  
7 172(c) for such standard; and

8 “(B) includes any additional measures  
9 needed to demonstrate attainment by the ex-  
10 tended attainment date provided under this  
11 subsection.

12 “(4) PRIOR RECLASSIFICATION DETERMINA-  
13 TION.—If, no more than 18 months prior to the date  
14 of enactment of this subsection, the Administrator  
15 made a reclassification determination under sub-  
16 section (b)(2)(A) for any downwind area, and the  
17 Administrator approves the plan revision referred to  
18 in paragraph (3) for such area within 12 months  
19 after the date of enactment of this subsection, the  
20 reclassification shall be withdrawn and the attain-  
21 ment date extended in accordance with paragraph  
22 (5) upon such approval. The Administrator shall  
23 also withdraw a reclassification determination under  
24 subsection (b)(2)(A) made after the date of enact-  
25 ment of this subsection and extend the attainment

1 date in accordance with paragraph (5) if the Admin-  
2 istrator approves the plan revision referred to in  
3 paragraph (3) within 12 months of the date the re-  
4 classification determination under subsection  
5 (b)(2)(A) is issued. In such instances the ‘current  
6 classification’ used for evaluating the revision of the  
7 applicable implementation plan under paragraph (3)  
8 shall be the classification of the downwind area  
9 under this section immediately prior to such reclassi-  
10 fication.

11 “(5) EXTENDED DATE.—The attainment date  
12 extended under this subsection shall provide for at-  
13 tainment of such national ambient air quality stand-  
14 ard for ozone in the downwind area as expeditiously  
15 as practicable but no later than the date on which  
16 the last reductions in pollution transport necessary  
17 for attainment in the downwind area are required to  
18 be achieved by the upwind area or areas.”.

19 **SEC. 1444. ENERGY PRODUCTION INCENTIVES.**

20 (a) IN GENERAL.—A State may provide to any enti-  
21 ty—

22 (1) a credit against any tax or fee owed to the  
23 State under a State law, or

24 (2) any other tax incentive,

1 determined by the State to be appropriate, in the amount  
2 calculated under and in accordance with a formula deter-  
3 mined by the State, for production described in subsection  
4 (b) in the State by the entity that receives such credit or  
5 such incentive.

6 (b) ELIGIBLE ENTITIES.—Subsection (a) shall apply  
7 with respect to the production in the State of—

8 (1) electricity from coal mined in the State and  
9 used in a facility, if such production meets all appli-  
10 cable Federal and State laws and if such facility  
11 uses scrubbers or other forms of clean coal tech-  
12 nology,

13 (2) electricity from a renewable source such as  
14 wind, solar, or biomass, or

15 (3) ethanol.

16 (c) EFFECT ON INTERSTATE COMMERCE.—Any ac-  
17 tion taken by a State in accordance with this section with  
18 respect to a tax or fee payable, or incentive applicable,  
19 for any period beginning after the date of the enactment  
20 of this Act shall—

21 (1) be considered to be a reasonable regulation  
22 of commerce; and

23 (2) not be considered to impose an undue bur-  
24 den on interstate commerce or to otherwise impair,

1       restrain, or discriminate, against interstate com-  
2       merce.

3       **SEC. 1446. REGULATION OF CERTAIN OIL USED IN TRANS-**  
4                               **FORMERS.**

5       Notwithstanding any other provision of law, or rule  
6       promulgated by the Environmental Protection Agency,  
7       vegetable oil made from soybeans and used in electric  
8       transformers as thermal insulation shall not be regulated  
9       as an oil as defined under section 2(a)(1)(A) of the Edible  
10      Oil Regulatory Reform Act (33 U.S.C. 2720(a)(1)(A)).

11      **SEC. 1447. RISK ASSESSMENTS.**

12      Subtitle B of title XXX of the Energy Policy Act of  
13      1992 is amended by adding at the end the following new  
14      section:

15      **“SEC. 3022. RISK ASSESSMENT.**

16      “Federal agencies conducting assessments of risks to  
17      human health and the environment from energy tech-  
18      nology, production, transport, transmission, distribution,  
19      storage, use, or conservation activities shall use sound and  
20      objective scientific practices in assessing such risks, shall  
21      consider the best available science (including peer reviewed  
22      studies), and shall include a description of the weight of  
23      the scientific evidence concerning such risks.”.

1 **SEC. 1448. OXYGEN-FUEL.**

2 (a) PROGRAM.—The Secretary of Energy shall estab-  
3 lish a program on oxygen-fuel systems. If feasible, the pro-  
4 gram shall include renovation of at least one existing large  
5 unit and one existing small unit, and construction of one  
6 new large unit and one new small unit. Cost sharing shall  
7 not be required.

8 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
9 are authorized to be appropriated to the Secretary for car-  
10 rying out this section—

11 (1) \$100,000,000 for fiscal year 2006;

12 (2) \$100,000,000 for fiscal year 2007; and

13 (3) \$100,000,000 for fiscal year 2008.

14 (c) DEFINITIONS.—For purposes of this section—

15 (1) the term “large unit” means a unit with a  
16 generating capacity of 100 megawatts or more;

17 (2) the term “oxygen-fuel systems” means sys-  
18 tems that utilize fuel efficiency benefits of oil, gas,  
19 coal, and biomass combustion using substantially  
20 pure oxygen, with high flame temperatures and the  
21 exclusion of air from the boiler, in industrial or elec-  
22 tric utility steam generating units; and

23 (3) the term “small unit” means a unit with a  
24 generating capacity in the 10–50 megawatt range.



1 **SEC. 1449. PETROCHEMICAL AND OIL REFINERY FACILITY**  
2 **HEALTH ASSESSMENT.**

3 (a) **ESTABLISHMENT.**—The Secretary of Energy  
4 shall conduct a study of direct and significant health im-  
5 pacts to persons resulting from living in proximity to pe-  
6 trochemical and oil refinery facilities. The Secretary shall  
7 consult with the Director of the National Cancer Institute  
8 and other Federal Government bodies with expertise in the  
9 field it deems appropriate in the design of such study. The  
10 study shall be conducted according to sound and objective  
11 scientific practices and present the weight of the scientific  
12 evidence. The Secretary shall obtain scientific peer review  
13 of the draft study.

14 (b) **REPORT TO CONGRESS.**—The Secretary shall  
15 transmit the results of the study to Congress within 6  
16 months of the enactment of this section.

17 (c) **AUTHORIZATION OF APPROPRIATIONS.**—There  
18 are authorized to be appropriated to the Secretary for ac-  
19 tivities under this section such sums as are necessary for  
20 the completion of the study.

21 **SEC. 1450. UNITED STATES-ISRAEL COOPERATION.**

22 (a) **FINDINGS.**—The Congress finds that—

23 (1) on February 1, 1996, United States Sec-  
24 retary of Energy Hazel R. O’Leary and Israeli Min-  
25 ister of Energy and Infrastructure Gonen Segev  
26 signed the Agreement between the Department of

1 Energy of the United States of America and the  
2 Ministry of Energy and Infrastructure of Israel Con-  
3 cerning Energy Cooperation, to establish a frame-  
4 work for collaboration between the United States  
5 and Israel in energy research and development ac-  
6 tivities;

7 (2) the Agreement entered into force in Feb-  
8 ruary 2000;

9 (3) in February 2005, the Agreement was auto-  
10 matically renewed for one additional 5-year period  
11 pursuant to Article X of the Agreement; and

12 (4) under the Agreement, the United States  
13 and Israel may cooperate in energy research and de-  
14 velopment in a variety of alternative and advanced  
15 energy sectors.

16 (b) REPORT TO CONGRESS.—(1) The Secretary of  
17 Energy shall report to the Committee on Energy and  
18 Commerce of the House of Representatives and the Com-  
19 mittee on Energy and Natural Resources of the Senate  
20 on—

21 (A) how the United States and Israel have co-  
22 operated on energy research and development activi-  
23 ties under the Agreement;

24 (B) projects initiated pursuant to the Agree-  
25 ment; and

1           (C) plans for future cooperation and joint  
2 projects under the Agreement.

3           (2) The report shall be submitted no later than three  
4 months after the date of enactment of this Act.

5           (c) SENSE OF CONGRESS.—It is the sense of the Con-  
6 gress that energy cooperation between the Governments  
7 of the United States and Israel is mutually beneficial in  
8 the development of energy technology.

9 **SEC. 1451. CARBON-BASED FUEL CELL DEVELOPMENT.**

10          (a) GRANT AUTHORITY.—The Secretary of Energy is  
11 authorized to make a single grant to a qualified institution  
12 to design and fabricate a 5-kilowatt prototype coal-based  
13 fuel cell with the following performance objectives:

14           (1) A current density of 600 milliamps per  
15 square centimeter at a cell voltage of 0.8 volts.

16           (2) An operating temperature range not to ex-  
17 ceed 900 degrees celsius.

18          (b) QUALIFIED INSTITUTION.—For the purposes of  
19 subsection (a), a qualified institution is a research-inten-  
20 sive institution of higher education with demonstrated ex-  
21 pertise in the development of carbon-based fuel cells allow-  
22 ing the direct use of high sulfur content coal as fuel, and  
23 which has produced a laboratory-scale carbon-based fuel  
24 cell with a proven current density of 100 milliamps per  
25 square centimeter at a voltage of 0.6 volts.

1 (c) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated to the Secretary of En-  
3 ergy for carrying out this section \$850,000 for fiscal year  
4 2006.

5 **TITLE XV—ETHANOL AND**  
6 **MOTOR FUELS**

7 **Subtitle A—General Provisions**

8 **SEC. 1501. RENEWABLE CONTENT OF MOTOR VEHICLE**  
9 **FUEL.**

10 (a) IN GENERAL.—Section 211 of the Clean Air Act  
11 (42 U.S.C. 7545) is amended—

12 (1) by redesignating subsection (o) as sub-  
13 section (q); and

14 (2) by inserting after subsection (n) the fol-  
15 lowing:

16 “(o) RENEWABLE FUEL PROGRAM.—

17 “(1) DEFINITIONS.—In this section:

18 “(A) ETHANOL.—(i) The term ‘cellulosic  
19 biomass ethanol’ means ethanol derived from  
20 any lignocellulosic or hemicellulosic matter that  
21 is available on a renewable or recurring basis,  
22 including—

23 “(I) dedicated energy crops and trees;

24 “(II) wood and wood residues;

25 “(III) plants;

1 “(IV) grasses;

2 “(V) agricultural residues; and

3 “(VI) fibers.

4 “(ii) The term ‘waste derived ethanol’  
5 means ethanol derived from—

6 “(I) animal wastes, including poultry  
7 fats and poultry wastes, and other waste  
8 materials; or

9 “(II) municipal solid waste.

10 “(B) RENEWABLE FUEL.—

11 “(i) IN GENERAL.—The term ‘renew-  
12 able fuel’ means motor vehicle fuel that—

13 “(I)(aa) is produced from grain,  
14 starch, oilseeds, or other biomass; or

15 “(bb) is natural gas produced  
16 from a biogas source, including a  
17 landfill, sewage waste treatment plant,  
18 feedlot, or other place where decaying  
19 organic material is found; and

20 “(II) is used to replace or reduce  
21 the quantity of fossil fuel present in a  
22 fuel mixture used to operate a motor  
23 vehicle.

24 “(ii) INCLUSION.—The term ‘renew-  
25 able fuel’ includes cellulosic biomass eth-

1           anol, waste derived ethanol, and biodiesel  
2           (as defined in section 312(f) of the Energy  
3           Policy Act of 1992 (42 U.S.C. 13220(f))  
4           and any blending components derived from  
5           renewable fuel (provided that only the re-  
6           newable fuel portion of any such blending  
7           component shall be considered part of the  
8           applicable volume under the renewable fuel  
9           program established by this subsection).

10           “(C) SMALL REFINERY.—The term ‘small  
11           refinery’ means a refinery for which average ag-  
12           gregate daily crude oil throughput for the cal-  
13           endar year (as determined by dividing the ag-  
14           gregate throughput for the calendar year by the  
15           number of days in the calendar year) does not  
16           exceed 75,000 barrels.

17           “(2) RENEWABLE FUEL PROGRAM.—

18           “(A) IN GENERAL.—Not later than 1 year  
19           after the enactment of this subsection, the Ad-  
20           ministrators shall promulgate regulations ensur-  
21           ing that motor vehicle fuel sold or dispensed to  
22           consumers in the contiguous United States, on  
23           an annual average basis, contains the applicable  
24           volume of renewable fuel as specified in sub-  
25           paragraph (B). Regardless of the date of pro-

1 mulgation, such regulations shall contain com-  
 2 pliance provisions for refiners, blenders, and  
 3 importers, as appropriate, to ensure that the re-  
 4 quirements of this section are met, but shall not  
 5 restrict where renewable fuel can be used, or  
 6 impose any per-gallon obligation for the use of  
 7 renewable fuel. If the Administrator does not  
 8 promulgate such regulations, the applicable per-  
 9 centage referred to in paragraph (4), on a vol-  
 10 ume percentage of gasoline basis, shall be 2.2  
 11 in 2005.

12 “(B) APPLICABLE VOLUME.—

13 “(i) CALENDAR YEARS 2005 THROUGH  
 14 2012.—For the purpose of subparagraph  
 15 (A), the applicable volume for any of cal-  
 16 endar years 2005 through 2012 shall be  
 17 determined in accordance with the fol-  
 18 lowing table:

<b>“Calendar year</b>	<b>Applicable volume of renewable fuel (in billions of gallons)</b>
2005 .....	3.1
2006 .....	3.3
2007 .....	3.5
2008 .....	3.8
2009 .....	4.1
2010 .....	4.4
2011 .....	4.7
2012 .....	5.0

19 “(ii) CALENDAR YEAR 2013 AND  
 20 THEREAFTER.—For the purpose of sub-

1 paragraph (A), the applicable volume for  
2 calendar year 2013 and each calendar year  
3 thereafter shall be equal to the product ob-  
4 tained by multiplying—

5 “(I) the number of gallons of  
6 gasoline that the Administrator esti-  
7 mates will be sold or introduced into  
8 commerce in the calendar year; and

9 “(II) the ratio that—

10 “(aa) 5.0 billion gallons of  
11 renewable fuels; bears to

12 “(bb) the number of gallons  
13 of gasoline sold or introduced  
14 into commerce in calendar year  
15 2012.

16 “(3) NON-CONTIGUOUS STATE OPT-IN.—Upon  
17 the petition of a non-contiguous State, the Adminis-  
18 trator may allow the renewable fuel program estab-  
19 lished by subtitle A of title XV of the Energy Policy  
20 Act of 2005 to apply in such non-contiguous State  
21 at the same time or any time after the Adminis-  
22 trator promulgates regulations under paragraph (2).  
23 The Administrator may promulgate or revise regula-  
24 tions under paragraph (2), establish applicable per-  
25 centages under paragraph (4), provide for the gen-



1       eration of credits under paragraph (6), and take  
2       such other actions as may be necessary to allow for  
3       the application of the renewable fuels program in a  
4       non-contiguous State.

5               “(4) APPLICABLE PERCENTAGES.—

6               “(A) PROVISION OF ESTIMATE OF VOL-  
7       UMES OF GASOLINE SALES.—Not later than Oc-  
8       tober 31 of each of calendar years 2005  
9       through 2011, the Administrator of the Energy  
10       Information Administration shall provide to the  
11       Administrator of the Environmental Protection  
12       Agency an estimate of the volumes of gasoline  
13       that will be sold or introduced into commerce in  
14       the United States during the following calendar  
15       year.

16               “(B) DETERMINATION OF APPLICABLE  
17       PERCENTAGES.—

18               “(i) IN GENERAL.—Not later than  
19       November 30 of each of the calendar years  
20       2005 through 2011, based on the estimate  
21       provided under subparagraph (A), the Ad-  
22       ministrator shall determine and publish in  
23       the Federal Register, with respect to the  
24       following calendar year, the renewable fuel

1 obligation that ensures that the require-  
2 ments of paragraph (2) are met.

3 “(ii) REQUIRED ELEMENTS.—The re-  
4 newable fuel obligation determined for a  
5 calendar year under clause (i) shall—

6 “(I) be applicable to refiners,  
7 blenders, and importers, as appro-  
8 priate;

9 “(II) be expressed in terms of a  
10 volume percentage of gasoline sold or  
11 introduced into commerce; and

12 “(III) subject to subparagraph  
13 (C)(i), consist of a single applicable  
14 percentage that applies to all cat-  
15 egories of persons specified in sub-  
16 clause (I).

17 “(C) ADJUSTMENTS.—In determining the  
18 applicable percentage for a calendar year, the  
19 Administrator shall make adjustments—

20 “(i) to prevent the imposition of re-  
21 dundant obligations to any person specified  
22 in subparagraph (B)(ii)(I); and

23 “(ii) to account for the use of renew-  
24 able fuel during the previous calendar year

1           by small refineries that are exempt under  
2           paragraph (11).

3           “(5) EQUIVALENCY.—For the purpose of para-  
4           graph (2), 1 gallon of either cellulosic biomass eth-  
5           anol or waste derived ethanol—

6           “(A) shall be considered to be the equiva-  
7           lent of 1.5 gallon of renewable fuel; or

8           “(B) if the cellulosic biomass ethanol or  
9           waste derived ethanol is derived from agricul-  
10          tural residue or wood residue or is an agricul-  
11          tural byproduct (as that term is used in section  
12          919 of the Energy Policy Act of 2005), shall be  
13          considered to be the equivalent of 2.5 gallons of  
14          renewable fuel.

15          “(6) CREDIT PROGRAM.—

16          “(A) IN GENERAL.—The regulations pro-  
17          mulgated to carry out this subsection shall pro-  
18          vide for the generation of an appropriate  
19          amount of credits by any person that refines,  
20          blends, or imports gasoline that contains a  
21          quantity of renewable fuel that is greater than  
22          the quantity required under paragraph (2).  
23          Such regulations shall provide for the genera-  
24          tion of an appropriate amount of credits for  
25          biodiesel fuel. If a small refinery notifies the

1 Administrator that it waives the exemption pro-  
2 vided paragraph (11), the regulations shall pro-  
3 vide for the generation of credits by the small  
4 refinery beginning in the year following such  
5 notification.

6 “(B) USE OF CREDITS.—A person that  
7 generates credits under subparagraph (A) may  
8 use the credits, or transfer all or a portion of  
9 the credits to another person, for the purpose  
10 of complying with paragraph (2).

11 “(C) LIFE OF CREDITS.—A credit gen-  
12 erated under this paragraph shall be valid to  
13 show compliance—

14 “(i) in the calendar year in which the  
15 credit was generated or the next calendar  
16 year; or

17 “(ii) in the calendar year in which the  
18 credit was generated or next two consecu-  
19 tive calendar years if the Administrator  
20 promulgates regulations under paragraph  
21 (7).

22 “(D) INABILITY TO PURCHASE SUFFICIENT  
23 CREDITS.—The regulations promulgated to  
24 carry out this subsection shall include provi-  
25 sions allowing any person that is unable to gen-

1           erate or purchase sufficient credits to meet the  
2           requirements under paragraph (2) to carry for-  
3           ward a renewable fuel deficit provided that, in  
4           the calendar year following the year in which  
5           the renewable fuel deficit is created, such per-  
6           son shall achieve compliance with the renewable  
7           fuel requirement under paragraph (2), and shall  
8           generate or purchase additional renewable fuel  
9           credits to offset the renewable fuel deficit of the  
10          previous year.

11          “(7) SEASONAL VARIATIONS IN RENEWABLE  
12          FUEL USE.—

13                 “(A) STUDY.—For each of the calendar  
14                 years 2005 through 2012, the Administrator of  
15                 the Energy Information Administration shall  
16                 conduct a study of renewable fuels blending to  
17                 determine whether there are excessive seasonal  
18                 variations in the use of renewable fuels.

19                 “(B) REGULATION OF EXCESSIVE SEA-  
20                 SONAL VARIATIONS.—If, for any calendar year,  
21                 the Administrator of the Energy Information  
22                 Administration, based on the study under sub-  
23                 paragraph (A), makes the determinations speci-  
24                 fied in subparagraph (C), the Administrator  
25                 shall promulgate regulations to ensure that 35

1 percent or more of the quantity of renewable  
2 fuels necessary to meet the requirement of  
3 paragraph (2) is used during each of the peri-  
4 ods specified in subparagraph (D) of each sub-  
5 sequent calendar year.

6 “(C) DETERMINATIONS.—The determina-  
7 tions referred to in subparagraph (B) are  
8 that—

9 “(i) less than 35 percent of the quan-  
10 tity of renewable fuels necessary to meet  
11 the requirement of paragraph (2) has been  
12 used during one of the periods specified in  
13 subparagraph (D) of the calendar year;

14 “(ii) a pattern of excessive seasonal  
15 variation described in clause (i) will con-  
16 tinue in subsequent calendar years; and

17 “(iii) promulgating regulations or  
18 other requirements to impose a 35 percent  
19 or more seasonal use of renewable fuels  
20 will not prevent or interfere with the at-  
21 tainment of national ambient air quality  
22 standards or significantly increase the  
23 price of motor fuels to the consumer.

24 “(D) PERIODS.—The two periods referred  
25 to in this paragraph are—

1 “(i) April through September; and

2 “(ii) January through March and Oc-  
3 tober through December.

4 “(E) EXCLUSIONS.—Renewable fuels  
5 blended or consumed in 2005 in a State which  
6 has received a waiver under section 209(b) shall  
7 not be included in the study in subparagraph  
8 (A).

9 “(8) WAIVERS.—

10 “(A) IN GENERAL.—The Administrator, in  
11 consultation with the Secretary of Agriculture  
12 and the Secretary of Energy, may waive the re-  
13 quirement of paragraph (2) in whole or in part  
14 on petition by one or more States by reducing  
15 the national quantity of renewable fuel required  
16 under this subsection—

17 “(i) based on a determination by the  
18 Administrator, after public notice and op-  
19 portunity for comment, that implementa-  
20 tion of the requirement would severely  
21 harm the economy or environment of a  
22 State, a region, or the United States; or

23 “(ii) based on a determination by the  
24 Administrator, after public notice and op-  
25 portunity for comment, that there is an in-

1           adequate domestic supply or distribution  
2           capacity to meet the requirement.

3           “(B) PETITIONS FOR WAIVERS.—The Ad-  
4           ministrators, in consultation with the Secretary  
5           of Agriculture and the Secretary of Energy,  
6           shall approve or disapprove a State petition for  
7           a waiver of the requirement of paragraph (2)  
8           within 90 days after the date on which the peti-  
9           tion is received by the Administrator.

10           “(C) TERMINATION OF WAIVERS.—A waiv-  
11           er granted under subparagraph (A) shall termi-  
12           nate after 1 year, but may be renewed by the  
13           Administrator after consultation with the Sec-  
14           retary of Agriculture and the Secretary of En-  
15           ergy.

16           “(9) STUDY AND WAIVER FOR INITIAL YEAR OF  
17           PROGRAM.—Not later than 180 days after the enact-  
18           ment of this subsection, the Secretary of Energy  
19           shall complete for the Administrator a study assess-  
20           ing whether the renewable fuels requirement under  
21           paragraph (2) will likely result in significant adverse  
22           consumer impacts in 2005, on a national, regional,  
23           or State basis. Such study shall evaluate renewable  
24           fuel supplies and prices, blendstock supplies, and  
25           supply and distribution system capabilities. Based



1 on such study, the Secretary shall make specific rec-  
2 ommendations to the Administrator regarding waiv-  
3 er of the requirements of paragraph (2), in whole or  
4 in part, to avoid any such adverse impacts. Within  
5 270 days after the enactment of this subsection, the  
6 Administrator shall, consistent with the rec-  
7 ommendations of the Secretary, waive, in whole or in  
8 part, the renewable fuels requirement under para-  
9 graph (2) by reducing the national quantity of re-  
10 newable fuel required under this subsection in 2005.  
11 This paragraph shall not be interpreted as limiting  
12 the Administrator's authority to waive the require-  
13 ments of paragraph (2) in whole, or in part, under  
14 paragraph (8) or paragraph (10), pertaining to  
15 waivers.

16 “(10) ASSESSMENT AND WAIVER.—The Admin-  
17 istrator, in consultation with the Secretary of En-  
18 ergy and the Secretary of Agriculture, shall evaluate  
19 the requirement of paragraph (2) and determine,  
20 prior to January 1, 2007, and prior to January 1  
21 of any subsequent year in which the applicable vol-  
22 ume of renewable fuel is increased under paragraph  
23 (2)(B), whether the requirement of paragraph (2),  
24 including the applicable volume of renewable fuel  
25 contained in paragraph (2)(B) should remain in ef-

1       fect, in whole or in part, during 2007 or any year  
2       or years subsequent to 2007. In evaluating the re-  
3       quirement of paragraph (2) and in making any de-  
4       termination under this section, the Administrator  
5       shall consider the best available information and  
6       data collected by accepted methods or best available  
7       means regarding—

8               “(A) the capacity of renewable fuel pro-  
9               ducers to supply an adequate amount of renew-  
10              able fuel at competitive prices to fulfill the re-  
11              quirement of paragraph (2);

12             “(B) the potential of the requirement of  
13             paragraph (2) to significantly raise the price of  
14             gasoline, food (excluding the net price impact  
15             on the requirement in paragraph (2) on com-  
16             modities used in the production of ethanol), or  
17             heating oil for consumers in any significant  
18             area or region of the country above the price  
19             that would otherwise apply to such commodities  
20             in the absence of such requirement;

21             “(C) the potential of the requirement of  
22             paragraph (2) to interfere with the supply of  
23             fuel in any significant gasoline market or region  
24             of the country, including interference with the  
25             efficient operation of refiners, blenders, import-

1           ers, wholesale suppliers, and retail vendors of  
2           gasoline, and other motor fuels; and

3                   “(D) the potential of the requirement of  
4           paragraph (2) to cause or promote exceedances  
5           of Federal, State, or local air quality standards.

6           If the Administrator determines, by clear and con-  
7           vincing information, after public notice and the op-  
8           portunity for comment, that the requirement of  
9           paragraph (2) would have significant and meaning-  
10          ful adverse impact on the supply of fuel and related  
11          infrastructure or on the economy, public health, or  
12          environment of any significant area or region of the  
13          country, the Administrator may waive, in whole or  
14          in part, the requirement of paragraph (2) in any one  
15          year for which the determination is made for that  
16          area or region of the country, except that any such  
17          waiver shall not have the effect of reducing the ap-  
18          plicable volume of renewable fuel specified in para-  
19          graph (2)(B) with respect to any year for which the  
20          determination is made. In determining economic im-  
21          pact under this paragraph, the Administrator shall  
22          not consider the reduced revenues available from the  
23          Highway Trust Fund (section 9503 of the Internal  
24          Revenue Code of 1986) as a result of the use of eth-  
25          anol.

1           “(11) SMALL REFINERIES.—

2                   “(A) IN GENERAL.—The requirement of  
3 paragraph (2) shall not apply to small refineries  
4 until the first calendar year beginning more  
5 than 5 years after the first year set forth in the  
6 table in paragraph (2)(B)(i). Not later than De-  
7 cember 31, 2007, the Secretary of Energy shall  
8 complete for the Administrator a study to de-  
9 termine whether the requirement of paragraph  
10 (2) would impose a disproportionate economic  
11 hardship on small refineries. For any small re-  
12 finery that the Secretary of Energy determines  
13 would experience a disproportionate economic  
14 hardship, the Administrator shall extend the  
15 small refinery exemption for such small refinery  
16 for no less than two additional years.

17                   “(B) ECONOMIC HARDSHIP.—

18                           “(i) EXTENSION OF EXEMPTION.—A  
19 small refinery may at any time petition the  
20 Administrator for an extension of the ex-  
21 emption from the requirement of para-  
22 graph (2) for the reason of dispropor-  
23 tionate economic hardship. In evaluating a  
24 hardship petition, the Administrator, in  
25 consultation with the Secretary of Energy,

1 shall consider the findings of the study in  
2 addition to other economic factors.

3 “(ii) DEADLINE FOR ACTION ON PETI-  
4 TIONS.—The Administrator shall act on  
5 any petition submitted by a small refinery  
6 for a hardship exemption not later than 90  
7 days after the receipt of the petition.

8 “(C) CREDIT PROGRAM.—If a small refin-  
9 ery notifies the Administrator that it waives the  
10 exemption provided by this Act, the regulations  
11 shall provide for the generation of credits by  
12 the small refinery beginning in the year fol-  
13 lowing such notification.

14 “(D) OPT-IN FOR SMALL REFINERS.—A  
15 small refinery shall be subject to the require-  
16 ments of this section if it notifies the Adminis-  
17 trator that it waives the exemption under sub-  
18 paragraph (A).

19 “(12) ETHANOL MARKET CONCENTRATION  
20 ANALYSIS.—

21 “(A) ANALYSIS.—

22 “(i) IN GENERAL.—Not later than  
23 180 days after the date of enactment of  
24 this subsection, and annually thereafter,  
25 the Federal Trade Commission shall per-

1 form a market concentration analysis of  
2 the ethanol production industry using the  
3 Herfindahl-Hirschman Index to determine  
4 whether there is sufficient competition  
5 among industry participants to avoid price  
6 setting and other anticompetitive behavior.

7 “(ii) SCORING.—For the purpose of  
8 scoring under clause (i) using the  
9 Herfindahl-Hirschman Index, all mar-  
10 keting arrangements among industry par-  
11 ticipants shall be considered.

12 “(B) REPORT.—Not later than December  
13 1, 2005, and annually thereafter, the Federal  
14 Trade Commission shall submit to Congress  
15 and the Administrator a report on the results  
16 of the market concentration analysis performed  
17 under subparagraph (A)(i).”

18 (b) PENALTIES AND ENFORCEMENT.—Section  
19 211(d) of the Clean Air Act (42 U.S.C. 7545(d)) is  
20 amended as follows:

21 (1) In paragraph (1)—

22 (A) in the first sentence, by striking “or  
23 (n)” each place it appears and inserting “(n),  
24 or (o)”; and

1 (B) in the second sentence, by striking “or  
2 (m)” and inserting “(m), or (o)”.

3 (2) In the first sentence of paragraph (2), by  
4 striking “and (n)” each place it appears and insert-  
5 ing “(n), and (o)”.

6 (c) SURVEY OF RENEWABLE FUEL MARKET.—

7 (1) SURVEY AND REPORT.—Not later than De-  
8 cember 1, 2006, and annually thereafter, the Admin-  
9 istrator of the Environmental Protection Agency (in  
10 consultation with the Secretary of Energy acting  
11 through the Administrator of the Energy Informa-  
12 tion Administration) shall—

13 (A) conduct, with respect to each conven-  
14 tional gasoline use area and each reformulated  
15 gasoline use area in each State, a survey to de-  
16 termine the market shares of—

17 (i) conventional gasoline containing  
18 ethanol;

19 (ii) reformulated gasoline containing  
20 ethanol;

21 (iii) conventional gasoline containing  
22 renewable fuel; and

23 (iv) reformulated gasoline containing  
24 renewable fuel; and

1 (B) submit to Congress, and make publicly  
2 available, a report on the results of the survey  
3 under subparagraph (A).

4 (2) RECORDKEEPING AND REPORTING RE-  
5 QUIREMENTS.—The Administrator of the Environ-  
6 mental Protection Agency (hereinafter in this sub-  
7 section referred to as the “Administrator”) may re-  
8 quire any refiner, blender, or importer to keep such  
9 records and make such reports as are necessary to  
10 ensure that the survey conducted under paragraph  
11 (1) is accurate. The Administrator, to avoid duplica-  
12 tive requirements, shall rely, to the extent prac-  
13 ticable, on existing reporting and recordkeeping re-  
14 quirements and other information available to the  
15 Administrator including gasoline distribution pat-  
16 terns that include multistate use areas.

17 (3) APPLICABLE LAW.—Activities carried out  
18 under this subsection shall be conducted in a man-  
19 ner designed to protect confidentiality of individual  
20 responses.

21 **SEC. 1502. FUELS SAFE HARBOR.**

22 (a) IN GENERAL.—Notwithstanding any other provi-  
23 sion of Federal or State law, no renewable fuel, as defined  
24 by section 211(o)(1) of the Clean Air Act, or methyl ter-  
25 tiary butyl ether (hereafter in this section referred to as



1 “MTBE”), used or intended to be used as a motor vehicle  
2 fuel, nor any motor vehicle fuel containing such renewable  
3 fuel or MTBE, shall be deemed a defective product by vir-  
4 tue of the fact that it is, or contains, such a renewable  
5 fuel or MTBE, if it does not violate a control or prohibi-  
6 tion imposed by the Administrator of the Environmental  
7 Protection Agency (hereinafter in this section referred to  
8 as the “Administrator”) under section 211 of such Act,  
9 and the manufacturer is in compliance with all requests  
10 for information under subsection (b) of such section 211  
11 of such Act. If the safe harbor provided by this section  
12 does not apply, the existence of a claim of defective prod-  
13 uct shall be determined under otherwise applicable law.  
14 Nothing in this subsection shall be construed to affect the  
15 liability of any person for environmental remediation costs,  
16 drinking water contamination, negligence for spills or  
17 other reasonably foreseeable events, public or private nui-  
18 sance, trespass, breach of warranty, breach of contract,  
19 or any other liability other than liability based upon a  
20 claim of defective product.

21 (b) EFFECTIVE DATE.—This section shall be effec-  
22 tive as of September 5, 2003, and shall apply with respect  
23 to all claims filed on or after that date.

24 **SEC. 1503. FINDINGS AND MTBE TRANSITION ASSISTANCE.**

25 (a) FINDINGS.—Congress finds that—

1           (1) since 1979, methyl tertiary butyl ether  
2           (hereinafter in this section referred to as “MTBE”)  
3           has been used nationwide at low levels in gasoline to  
4           replace lead as an octane booster or anti-knocking  
5           agent;

6           (2) Public Law 101–549 (commonly known as  
7           the “Clean Air Act Amendments of 1990”) (42  
8           U.S.C. 7401 et seq.) established a fuel oxygenate  
9           standard under which reformulated gasoline must  
10          contain at least 2 percent oxygen by weight;

11          (3) at the time of the adoption of the fuel oxy-  
12          gen standard, Congress was aware that significant  
13          use of MTBE would result from the adoption of that  
14          standard, and that the use of MTBE would likely be  
15          important to the cost-effective implementation of  
16          that program;

17          (4) Congress was aware that gasoline and its  
18          component additives can and do leak from storage  
19          tanks;

20          (5) the fuel industry responded to the fuel oxy-  
21          genate standard established by Public Law 101–549  
22          by making substantial investments in—

23                  (A) MTBE production capacity; and

24                  (B) systems to deliver MTBE-containing  
25          gasoline to the marketplace;

1           (6) having previously required oxygenates like  
2 MTBE for air quality purposes, Congress has—

3           (A) reconsidered the relative value of  
4 MTBE in gasoline;

5           (B) decided to establish a date certain for  
6 action by the Environmental Protection Agency  
7 to prohibit the use of MTBE in gasoline; and

8           (C) decided to provide for the elimination  
9 of the oxygenate requirement for reformulated  
10 gasoline and to provide for a renewable fuels  
11 content requirement for motor fuel; and

12          (7) it is appropriate for Congress to provide  
13 some limited transition assistance—

14           (A) to merchant producers of MTBE who  
15 produced MTBE in response to a market cre-  
16 ated by the oxygenate requirement contained in  
17 the Clean Air Act; and

18           (B) for the purpose of mitigating any fuel  
19 supply problems that may result from the elimi-  
20 nation of the oxygenate requirement for refor-  
21 mulated gasoline and from the decision to es-  
22 tablish a date certain for action by the Environ-  
23 mental Protection Agency to prohibit the use of  
24 MTBE in gasoline.

1           (b) PURPOSES.—The purpose of this section is to  
2 provide assistance to merchant producers of MTBE in  
3 making the transition from producing MTBE to producing  
4 other fuel additives.

5           (c) MTBE MERCHANT PRODUCER CONVERSION AS-  
6 SISTANCE.—Section 211(c) of the Clean Air Act (42  
7 U.S.C. 7545(c)) is amended by adding at the end the fol-  
8 lowing:

9                   “(5) MTBE MERCHANT PRODUCER CONVER-  
10 SION ASSISTANCE.—

11                           “(A) IN GENERAL.—

12                                   “(i) GRANTS.—The Secretary of En-  
13 ergy, in consultation with the Adminis-  
14 trator, may make grants to merchant pro-  
15 ducers of methyl tertiary butyl ether (here-  
16 inafter in this subsection referred to as  
17 ‘MTBE’) in the United States to assist the  
18 producers in the conversion of eligible pro-  
19 duction facilities described in subpara-  
20 graph (C) to the production of iso-octane,  
21 iso-octene, alkylates, or renewable fuels.

22                                   “(ii) DETERMINATION.—The Admin-  
23 istrator, in consultation with the Secretary  
24 of Energy, may determine that transition  
25 assistance for the production of iso-octane,

1           iso-octene, alkylates, or renewable fuels is  
2           inconsistent with the provisions of sub-  
3           paragraph (B) and, on that basis, may  
4           deny applications for grants authorized by  
5           this paragraph.

6           “(B) FURTHER GRANTS.—The Secretary  
7           of Energy, in consultation with the Adminis-  
8           trator, may also further make grants to mer-  
9           chant producers of MTBE in the United States  
10          to assist the producers in the conversion of eli-  
11          gible production facilities described in subpara-  
12          graph (C) to the production of such other fuel  
13          additives (unless the Administrator determines  
14          that such fuel additives may reasonably be an-  
15          ticipated to endanger public health or the envi-  
16          ronment) that, consistent with this subsection—

17                 “(i) have been registered and have  
18                 been tested or are being tested in accord-  
19                 ance with the requirements of this section;  
20                 and

21                 “(ii) will contribute to replacing gaso-  
22                 line volumes lost as a result of amend-  
23                 ments made to subsection (k) of this sec-  
24                 tion by section 1504(a) and 1506 of the  
25                 Energy Policy Act of 2005.

1           “(C) ELIGIBLE PRODUCTION FACILI-  
2 TIES.—A production facility shall be eligible to  
3 receive a grant under this paragraph if the pro-  
4 duction facility—

5           “(i) is located in the United States;  
6 and

7           “(ii) produced MTBE for consump-  
8 tion before April 1, 2003 and ceased pro-  
9 duction at any time after the date of en-  
10 actment of this paragraph.

11           “(D) AUTHORIZATION OF APPROPRIA-  
12 TIONS.—There are authorized to be appro-  
13 priated to carry out this paragraph  
14 \$250,000,000 for each of fiscal years 2005  
15 through 2012, to remain available until ex-  
16 pended.”.

17 **SEC. 1504. USE OF MTBE.**

18           (a) IN GENERAL.—Subject to subsections (e) and (f),  
19 not later than December 31, 2014, the use of methyl ter-  
20 tiary butyl ether (hereinafter in this section referred to  
21 as “MTBE”) in motor vehicle fuel in any State other than  
22 a State described in subsection (c) is prohibited.

23           (b) REGULATIONS.—The Administrator of the Envi-  
24 ronmental Protection Agency (hereafter referred to in this

1 section as the “Administrator”) shall promulgate regula-  
2 tions to effect the prohibition in subsection (a).

3 (c) STATES THAT AUTHORIZE USE.—A State de-  
4 scribed in this subsection is a State in which the Governor  
5 of the State submits a notification to the Administrator  
6 authorizing the use of MTBE in motor vehicle fuel sold  
7 or used in the State.

8 (d) PUBLICATION OF NOTICE.—The Administrator  
9 shall publish in the Federal Register each notice submitted  
10 by a State under subsection (c).

11 (e) TRACE QUANTITIES.—In carrying out subsection  
12 (a), the Administrator may allow trace quantities of  
13 MTBE, not to exceed 0.5 percent by volume, to be present  
14 in motor vehicle fuel in cases that the Administrator deter-  
15 mines to be appropriate.

16 (f) LIMITATION.—The Administrator, under author-  
17 ity of subsection (a), shall not prohibit or control the pro-  
18 duction of MTBE for export from the United States or  
19 for any other use other than for use in motor vehicle fuel.

20 (g) EFFECT ON STATE LAW.—The amendments  
21 made by this title have no effect regarding any available  
22 authority of States to limit the use of methyl tertiary butyl  
23 ether in motor vehicle fuel.

1 **SEC. 1505. NATIONAL ACADEMY OF SCIENCES REVIEW AND**  
2 **PRESIDENTIAL DETERMINATION.**

3 (a) NAS REVIEW.—Not later than May 31, 2013, the  
4 Secretary shall enter into an arrangement with the Na-  
5 tional Academy of Sciences to review the use of methyl  
6 tertiary butyl ether (hereafter referred to in this section  
7 as “MTBE”) in fuel and fuel additives. The review shall  
8 only use the best available scientific information and data  
9 collected by accepted methods or the best available means.  
10 The review shall examine the use of MTBE in fuel and  
11 fuel additives, significant beneficial and detrimental ef-  
12 fects of this use on environmental quality or public health  
13 or welfare including the costs and benefits of such effects,  
14 likely effects of controls or prohibitions on MTBE regard-  
15 ing fuel availability and price, and other appropriate and  
16 reasonable actions that are available to protect the envi-  
17 ronment or public health or welfare from any detrimental  
18 effects of the use of MTBE in fuel or fuel additives. The  
19 review shall be peer-reviewed prior to publication and all  
20 supporting data and analytical models shall be available  
21 to the public. The review shall be completed no later than  
22 May 31, 2014.

23 (b) PRESIDENTIAL DETERMINATION.—No later than  
24 June 30, 2014, the President may make a determination  
25 that restrictions on the use of MTBE to be implemented  
26 pursuant to section 1504 shall not take place and that



1 the legal authority contained in section 1504 to prohibit  
2 the use of MTBE in motor vehicle fuel shall become null  
3 and void.

4 **SEC. 1506. ELIMINATION OF OXYGEN CONTENT REQUIRE-**  
5 **MENT FOR REFORMULATED GASOLINE.**

6 (a) ELIMINATION.—

7 (1) IN GENERAL.—Section 211(k) of the Clean  
8 Air Act (42 U.S.C. 7545(k)) is amended as follows:

9 (A) In paragraph (2)—

10 (i) in the second sentence of subpara-  
11 graph (A), by striking “(including the oxy-  
12 gen content requirement contained in sub-  
13 paragraph (B))”;

14 (ii) by striking subparagraph (B); and

15 (iii) by redesignating subparagraphs  
16 (C) and (D) as subparagraphs (B) and  
17 (C), respectively.

18 (B) In paragraph (3)(A), by striking  
19 clause (v).

20 (C) In paragraph (7)—

21 (i) in subparagraph (A)—

22 (I) by striking clause (i); and

23 (II) by redesignating clauses (ii)  
24 and (iii) as clauses (i) and (ii), respec-  
25 tively; and

- 1 (ii) in subparagraph (C)—  
2 (I) by striking clause (ii).  
3 (II) by redesignating clause (iii)  
4 as clause (ii).

5 (2) EFFECTIVE DATE.—The amendments made  
6 by paragraph (1) take effect 270 days after the date  
7 of enactment of this Act, except that such amend-  
8 ments shall take effect upon such date of enactment  
9 in any State that has received a waiver under sec-  
10 tion 209(b) of the Clean Air Act.

11 (b) MAINTENANCE OF TOXIC AIR POLLUTANT EMIS-  
12 SION REDUCTIONS.—Section 211(k)(1) of the Clean Air  
13 Act (42 U.S.C. 7545(k)(1)) is amended as follows:

14 (1) By striking “Within 1 year after the enact-  
15 ment of the Clean Air Act Amendments of 1990,”  
16 and inserting the following:

17 “(A) IN GENERAL.—Not later than No-  
18 vember 15, 1991,”.

19 (2) By adding at the end the following:

20 “(B) MAINTENANCE OF TOXIC AIR POL-  
21 LUTANT EMISSIONS REDUCTIONS FROM REFOR-  
22 MULATED GASOLINE.—

23 “(i) DEFINITIONS.—In this subpara-  
24 graph the term ‘PADD’ means a Petro-  
25 leum Administration for Defense District.

1           “(ii) REGULATIONS REGARDING EMIS-  
2           SIONS OF TOXIC AIR POLLUTANTS.—Not  
3           later than 270 days after the date of en-  
4           actment of this subparagraph the Adminis-  
5           trator shall establish, for each refinery or  
6           importer, standards for toxic air pollutants  
7           from use of the reformulated gasoline pro-  
8           duced or distributed by the refinery or im-  
9           porter that maintain the reduction of the  
10          average annual aggregate emissions of  
11          toxic air pollutants for reformulated gaso-  
12          line produced or distributed by the refinery  
13          or importer during calendar years 1999  
14          and 2000, determined on the basis of data  
15          collected by the Administrator with respect  
16          to the refinery or importer.

17          “(iii) STANDARDS APPLICABLE TO  
18          SPECIFIC REFINERIES OR IMPORTERS.—

19                 “(I) APPLICABILITY OF STAND-  
20                 ARDS.—For any calendar year, the  
21                 standards applicable to a refinery or  
22                 importer under clause (ii) shall apply  
23                 to the quantity of gasoline produced  
24                 or distributed by the refinery or im-  
25                 porter in the calendar year only to the

1 extent that the quantity is less than  
2 or equal to the average annual quan-  
3 tity of reformulated gasoline produced  
4 or distributed by the refinery or im-  
5 porter during calendar years 1999  
6 and 2000.

7 “(II) APPLICABILITY OF OTHER  
8 STANDARDS.—For any calendar year,  
9 the quantity of gasoline produced or  
10 distributed by a refinery or importer  
11 that is in excess of the quantity sub-  
12 ject to subelause (I) shall be subject  
13 to standards for toxic air pollutants  
14 promulgated under subparagraph (A)  
15 and paragraph (3)(B).

16 “(iv) CREDIT PROGRAM.—The Admin-  
17 istrator shall provide for the granting and  
18 use of credits for emissions of toxic air pol-  
19 lutants in the same manner as provided in  
20 paragraph (7).

21 “(v) REGIONAL PROTECTION OF  
22 TOXICS REDUCTION BASELINES.—

23 “(I) IN GENERAL.—Not later  
24 than 60 days after the date of enact-  
25 ment of this subparagraph, and not

1 later than April 1 of each calendar  
2 year that begins after that date of en-  
3 actment, the Administrator shall pub-  
4 lish in the Federal Register a report  
5 that specifies, with respect to the pre-  
6 vious calendar year—

7 “(aa) the quantity of refor-  
8 mulated gasoline produced that is  
9 in excess of the average annual  
10 quantity of reformulated gasoline  
11 produced in 1999 and 2000; and

12 “(bb) the reduction of the  
13 average annual aggregate emis-  
14 sions of toxic air pollutants in  
15 each PADD, based on retail sur-  
16 vey data or data from other ap-  
17 propriate sources.

18 “(II) EFFECT OF FAILURE TO  
19 MAINTAIN AGGREGATE TOXICS RE-  
20 Ductions.—If, in any calendar year,  
21 the reduction of the average annual  
22 aggregate emissions of toxic air pol-  
23 lutants in a PADD fails to meet or  
24 exceed the reduction of the average  
25 annual aggregate emissions of toxic

1 air pollutants in the PADD in cal-  
2 endar years 1999 and 2000, the Ad-  
3 ministrator, not later than 90 days  
4 after the date of publication of the re-  
5 port for the calendar year under sub-  
6 clause (I), shall—

7 “(aa) identify, to the max-  
8 imum extent practicable, the rea-  
9 sons for the failure, including the  
10 sources, volumes, and character-  
11 istics of reformulated gasoline  
12 that contributed to the failure;  
13 and

14 “(bb) promulgate revisions  
15 to the regulations promulgated  
16 under clause (ii), to take effect  
17 not earlier than 180 days but not  
18 later than 270 days after the  
19 date of promulgation, to provide  
20 that, notwithstanding clause  
21 (iii)(II), all reformulated gasoline  
22 produced or distributed at each  
23 refinery or importer shall meet  
24 the standards applicable under  
25 clause (ii) not later than April 1

1 of the year following the report  
2 in subclause (II) and for subse-  
3 quent years.

4 “(vi) REGULATIONS TO CONTROL  
5 HAZARDOUS AIR POLLUTANTS FROM  
6 MOTOR VEHICLES AND MOTOR VEHICLE  
7 FUELS.—Not later than July 1, 2005, the  
8 Administrator shall promulgate final regu-  
9 lations to control hazardous air pollutants  
10 from motor vehicles and motor vehicle  
11 fuels, as provided for in section 80.1045 of  
12 title 40, Code of Federal Regulations (as  
13 in effect on the date of enactment of this  
14 subparagraph).”.

15 (c) CONSOLIDATION IN REFORMULATED GASOLINE  
16 REGULATIONS.—Not later than 180 days after the date  
17 of enactment of this Act, the Administrator of the Envi-  
18 ronmental Protection Agency shall revise the reformulated  
19 gasoline regulations under subpart D of part 80 of title  
20 40, Code of Federal Regulations, to consolidate the regula-  
21 tions applicable to VOC-Control Regions 1 and 2 under  
22 section 80.41 of that title by eliminating the less stringent  
23 requirements applicable to gasoline designated for VOC-  
24 Control Region 2 and instead applying the more stringent

1 requirements applicable to gasoline designated for VOC-  
2 Control Region 1.

3 (d) SAVINGS CLAUSE.—Nothing in this section is in-  
4 tended to affect or prejudice either any legal claims or ac-  
5 tions with respect to regulations promulgated by the Ad-  
6 ministrator of the Environmental Protection Agency  
7 (hereinafter in this subsection referred to as the “Admin-  
8 istrator”) prior to the date of enactment of this Act re-  
9 garding emissions of toxic air pollutants from motor vehi-  
10 cles or the adjustment of standards applicable to a specific  
11 refinery or importer made under such prior regulations  
12 and the Administrator may apply such adjustments to the  
13 standards applicable to such refinery or importer under  
14 clause (iii)(I) of section 211(k)(1)(B) of the Clean Air Act,  
15 except that—

16 (1) the Administrator shall revise such adjust-  
17 ments to be based only on calendar years 1999–  
18 2000; and

19 (2) for adjustments based on toxic air pollutant  
20 emissions from reformulated gasoline significantly  
21 below the national annual average emissions of toxic  
22 air pollutants from all reformulated gasoline, the  
23 Administrator may revise such adjustments to take  
24 account of the scope of Federal or State prohibitions  
25 on the use of methyl tertiary butyl ether imposed



1 after the date of the enactment of this paragraph,  
2 except that any such adjustment shall require such  
3 refiner or importer, to the greatest extent prac-  
4 ticable, to maintain the reduction achieved during  
5 calendar years 1999–2000 in the average annual ag-  
6 gregate emissions of toxic air pollutants from refor-  
7 mulated gasoline produced or distributed by the re-  
8 finery or importer; *Provided*, that any such adjust-  
9 ment shall not be made at a level below the average  
10 percentage of reductions of emissions of toxic air  
11 pollutants for reformulated gasoline supplied to  
12 PADD I during calendar years 1999–2000.

13 **SEC. 1507. ANALYSES OF MOTOR VEHICLE FUEL CHANGES.**

14 Section 211 of the Clean Air Act (42 U.S.C. 7545)  
15 is amended by inserting after subsection (o) the following:

16 “(p) ANALYSES OF MOTOR VEHICLE FUEL CHANGES  
17 AND EMISSIONS MODEL.—

18 “(1) ANTI-BACKSLIDING ANALYSIS.—

19 “(A) DRAFT ANALYSIS.—Not later than 4  
20 years after the date of enactment of this sub-  
21 section, the Administrator shall publish for pub-  
22 lic comment a draft analysis of the changes in  
23 emissions of air pollutants and air quality due  
24 to the use of motor vehicle fuel and fuel addi-  
25 tives resulting from implementation of the

1 amendments made by subtitle A of title XV of  
2 the Energy Policy Act of 2005.

3 “(B) FINAL ANALYSIS.—After providing a  
4 reasonable opportunity for comment but not  
5 later than 5 years after the date of enactment  
6 of this paragraph, the Administrator shall pub-  
7 lish the analysis in final form.

8 “(2) EMISSIONS MODEL.—For the purposes of  
9 this subsection, as soon as the necessary data are  
10 available, the Administrator shall develop and final-  
11 ize an emissions model that reasonably reflects the  
12 effects of gasoline characteristics or components on  
13 emissions from vehicles in the motor vehicle fleet  
14 during calendar year 2005.”.

15 **SEC. 1508. DATA COLLECTION.**

16 Section 205 of the Department of Energy Organiza-  
17 tion Act (42 U.S.C. 7135) is amended by adding at the  
18 end the following:

19 “(m) RENEWABLE FUELS SURVEY.—(1) In order to  
20 improve the ability to evaluate the effectiveness of the Na-  
21 tion’s renewable fuels mandate, the Administrator shall  
22 conduct and publish the results of a survey of renewable  
23 fuels demand in the motor vehicle fuels market in the  
24 United States monthly, and in a manner designed to pro-  
25 tect the confidentiality of individual responses. In con-

1 ducting the survey, the Administrator shall collect infor-  
2 mation both on a national and regional basis, including  
3 each of the following:

4           “(A) The quantity of renewable fuels produced.

5           “(B) The quantity of renewable fuels blended.

6           “(C) The quantity of renewable fuels imported.

7           “(D) The quantity of renewable fuels de-  
8 manded.

9           “(E) Market price data.

10           “(F) Such other analyses or evaluations as the  
11 Administrator finds is necessary to achieve the pur-  
12 poses of this section.

13           “(2) The Administrator shall also collect or estimate  
14 information both on a national and regional basis, pursu-  
15 ant to subparagraphs (A) through (F) of paragraph (1),  
16 for the 5 years prior to implementation of this subsection.

17           “(3) This subsection does not affect the authority of  
18 the Administrator to collect data under section 52 of the  
19 Federal Energy Administration Act of 1974 (15 U.S.C.  
20 790a).”.

21 **SEC. 1509. REDUCING THE PROLIFERATION OF STATE FUEL**  
22 **CONTROLS.**

23           (a) EPA APPROVAL OF STATE PLANS WITH FUEL  
24 CONTROLS.—Section 211(c)(4)(C) of the Clean Air Act  
25 (42 U.S.C. 7545(c)(4)(C)) is amended by adding at the

1 end the following: “The Administrator shall not approve  
2 a control or prohibition respecting the use of a fuel or fuel  
3 additive under this subparagraph unless the Adminis-  
4 trator, after consultation with the Secretary of Energy,  
5 publishes in the Federal Register a finding that, in the  
6 Administrator’s judgment, such control or prohibition will  
7 not cause fuel supply or distribution interruptions or have  
8 a significant adverse impact on fuel producibility in the  
9 affected area or contiguous areas.”.

10 (b) STUDY.—The Administrator of the Environ-  
11 mental Protection Agency (hereinafter in this subsection  
12 referred to as the “Administrator”), in cooperation with  
13 the Secretary of Energy, shall undertake a study of the  
14 projected effects on air quality, the proliferation of fuel  
15 blends, fuel availability, and fuel costs of providing a pref-  
16 erence for each of the following:

17 (A) Reformulated gasoline referred to in sub-  
18 section (k) of section 211 of the Clean Air Act.

19 (B) A low RVP gasoline blend that has been  
20 certified by the Administrator as having a Reid  
21 Vapor Pressure of 7.0 pounds per square inch (psi).

22 (C) A low RVP gasoline blend that has been  
23 certified by the Administrator as having a Reid  
24 Vapor Pressure of 7.8 pounds per square inch (psi).

1 In carrying out such study, the Administrator shall obtain  
2 comments from affected parties. The Administrator shall  
3 submit the results of such study to the Congress not later  
4 than 18 months after the date of enactment of this Act,  
5 together with any recommended legislative changes.

6 **SEC. 1510. FUEL SYSTEM REQUIREMENTS HARMONIZATION**  
7 **STUDY.**

8 (a) STUDY.—

9 (1) IN GENERAL.—The Administrator of the  
10 Environmental Protection Agency (hereinafter in  
11 this section referred to as the “Administrator”) and  
12 the Secretary of Energy shall jointly conduct a study  
13 of Federal, State, and local requirements concerning  
14 motor vehicle fuels, including—

15 (A) requirements relating to reformulated  
16 gasoline, volatility (measured in Reid vapor  
17 pressure), oxygenated fuel, and diesel fuel; and

18 (B) other requirements that vary from  
19 State to State, region to region, or locality to  
20 locality.

21 (2) REQUIRED ELEMENTS.—The study shall as-  
22 sess—

23 (A) the effect of the variety of require-  
24 ments described in paragraph (1) on the supply,  
25 quality, and price of motor vehicle fuels avail-

1           able to consumers in various States and local-  
2           ities;

3           (B) the effect of the requirements de-  
4           scribed in paragraph (1) on achievement of—

5                   (i) national, regional, and local air  
6                   quality standards and goals; and

7                   (ii) related environmental and public  
8                   health protection standards and goals;

9           (C) the effect of Federal, State, and local  
10          motor vehicle fuel regulations, including mul-  
11          tiple motor vehicle fuel requirements, on—

12                   (i) domestic refineries;

13                   (ii) the fuel distribution system; and

14                   (iii) industry investment in new capaci-  
15          ty;

16          (D) the effect of the requirements de-  
17          scribed in paragraph (1) on emissions from ve-  
18          hicles, refineries, and fuel handling facilities;

19          (E) the feasibility of developing national or  
20          regional motor vehicle fuel slates for the 48  
21          contiguous States that, while improving air  
22          quality at the national, regional and local levels  
23          consistent with the attainment of national am-  
24          bient air quality standards, could—

- 1 (i) enhance flexibility in the fuel dis-  
2 tribution infrastructure and improve fuel  
3 fungibility;
- 4 (ii) reduce price volatility and costs to  
5 consumers and producers;
- 6 (iii) provide increased liquidity to the  
7 gasoline market; and
- 8 (iv) enhance fuel quality, consistency,  
9 and supply;
- 10 (F) the feasibility of providing incentives  
11 to promote cleaner burning motor vehicle fuel;  
12 and
- 13 (G) the extent to which improvements in  
14 air quality and any increases or decreases in  
15 the price of motor fuel can be projected to re-  
16 sult from the Environmental Protection Agen-  
17 cy's Tier II requirements for conventional gaso-  
18 line and vehicle emission systems, the reformu-  
19 lated gasoline program, the renewable content  
20 requirements established by this subtitle, State  
21 programs regarding gasoline volatility, and any  
22 other requirements imposed by States or local-  
23 ities affecting the composition of motor fuel.
- 24 (b) REPORT.—

1           (1) IN GENERAL.—Not later than December 31,  
2           2007, the Administrator and the Secretary of En-  
3           ergy shall submit to Congress a report on the results  
4           of the study conducted under subsection (a).

5           (2) RECOMMENDATIONS.—

6           (A) IN GENERAL.—The report under this  
7           subsection shall contain recommendations for  
8           legislative and administrative actions that may  
9           be taken—

10                   (i) to improve air quality;

11                   (ii) to reduce costs to consumers and  
12                   producers; and

13                   (iii) to increase supply liquidity.

14           (B) REQUIRED CONSIDERATIONS.—The  
15           recommendations under subparagraph (A) shall  
16           take into account the need to provide advance  
17           notice of required modifications to refinery and  
18           fuel distribution systems in order to ensure an  
19           adequate supply of motor vehicle fuel in all  
20           States.

21           (3) CONSULTATION.—In developing the report  
22           under this subsection, the Administrator and the  
23           Secretary of Energy shall consult with—

24                   (A) the Governors of the States;

25                   (B) automobile manufacturers;



1 (C) motor vehicle fuel producers and dis-  
2 tributors; and

3 (D) the public.

4 **SEC. 1511. COMMERCIAL BYPRODUCTS FROM MUNICIPAL**  
5 **SOLID WASTE AND CELLULOSIC BIOMASS**  
6 **LOAN GUARANTEE PROGRAM.**

7 (a) DEFINITION OF MUNICIPAL SOLID WASTE.—In  
8 this section, the term “municipal solid waste” has the  
9 meaning given the term “solid waste” in section 1004 of  
10 the Solid Waste Disposal Act (42 U.S.C. 6903).

11 (b) ESTABLISHMENT OF PROGRAM.—The Secretary  
12 of Energy (hereinafter in this section referred to as the  
13 “Secretary”) shall establish a program to provide guaran-  
14 tees of loans by private institutions for the construction  
15 of facilities for the processing and conversion of municipal  
16 solid waste and cellulosic biomass into fuel ethanol and  
17 other commercial byproducts.

18 (c) REQUIREMENTS.—The Secretary may provide a  
19 loan guarantee under subsection (b) to an applicant if—

20 (1) without a loan guarantee, credit is not  
21 available to the applicant under reasonable terms or  
22 conditions sufficient to finance the construction of a  
23 facility described in subsection (b);

24 (2) the prospective earning power of the appli-  
25 cant and the character and value of the security

1 pledged provide a reasonable assurance of repayment  
2 of the loan to be guaranteed in accordance with the  
3 terms of the loan; and

4 (3) the loan bears interest at a rate determined  
5 by the Secretary to be reasonable, taking into ac-  
6 count the current average yield on outstanding obli-  
7 gations of the United States with remaining periods  
8 of maturity comparable to the maturity of the loan.

9 (d) CRITERIA.—In selecting recipients of loan guar-  
10 antees from among applicants, the Secretary shall give  
11 preference to proposals that—

12 (1) meet all applicable Federal and State per-  
13 mitting requirements;

14 (2) are most likely to be successful; and

15 (3) are located in local markets that have the  
16 greatest need for the facility because of—

17 (A) the limited availability of land for  
18 waste disposal;

19 (B) the availability of sufficient quantities  
20 of cellulosic biomass; or

21 (C) a high level of demand for fuel ethanol  
22 or other commercial byproducts of the facility.

23 (e) MATURITY.—A loan guaranteed under subsection  
24 (b) shall have a maturity of not more than 20 years.

1 (f) TERMS AND CONDITIONS.—The loan agreement  
2 for a loan guaranteed under subsection (b) shall provide  
3 that no provision of the loan agreement may be amended  
4 or waived without the consent of the Secretary.

5 (g) ASSURANCE OF REPAYMENT.—The Secretary  
6 shall require that an applicant for a loan guarantee under  
7 subsection (b) provide an assurance of repayment in the  
8 form of a performance bond, insurance, collateral, or other  
9 means acceptable to the Secretary in an amount equal to  
10 not less than 20 percent of the amount of the loan.

11 (h) GUARANTEE FEE.—The recipient of a loan guar-  
12 antee under subsection (b) shall pay the Secretary an  
13 amount determined by the Secretary to be sufficient to  
14 cover the administrative costs of the Secretary relating to  
15 the loan guarantee.

16 (i) FULL FAITH AND CREDIT.—The full faith and  
17 credit of the United States is pledged to the payment of  
18 all guarantees made under this section. Any such guar-  
19 antee made by the Secretary shall be conclusive evidence  
20 of the eligibility of the loan for the guarantee with respect  
21 to principal and interest. The validity of the guarantee  
22 shall be incontestable in the hands of a holder of the guar-  
23 anteed loan.

24 (j) REPORTS.—Until each guaranteed loan under this  
25 section has been repaid in full, the Secretary shall annu-

1 ally submit to Congress a report on the activities of the  
2 Secretary under this section.

3 (k) AUTHORIZATION OF APPROPRIATIONS.—There  
4 are authorized to be appropriated such sums as are nec-  
5 essary to carry out this section.

6 (l) TERMINATION OF AUTHORITY.—The authority of  
7 the Secretary to issue a loan guarantee under subsection  
8 (b) terminates on the date that is 10 years after the date  
9 of enactment of this Act.

10 **SEC. 1512. CELLULOSIC BIOMASS AND WASTE-DERIVED**  
11 **ETHANOL CONVERSION ASSISTANCE.**

12 Section 211 of the Clean Air Act (42 U.S.C. 7545)  
13 is amended by adding at the end the following:

14 “(r) CELLULOSIC BIOMASS AND WASTE-DERIVED  
15 ETHANOL CONVERSION ASSISTANCE.—

16 “(1) IN GENERAL.—The Secretary of Energy  
17 may provide grants to merchant producers of cel-  
18 lulosic biomass ethanol and waste-derived ethanol in  
19 the United States to assist the producers in building  
20 eligible production facilities described in paragraph  
21 (2) for the production of ethanol.

22 “(2) ELIGIBLE PRODUCTION FACILITIES.—A  
23 production facility shall be eligible to receive a grant  
24 under this subsection if the production facility—

25 “(A) is located in the United States; and

1           “(B) uses cellulosic biomass or waste-de-  
2           rived feedstocks derived from agricultural resi-  
3           dues, wood residues, municipal solid waste, or  
4           agricultural byproducts as that term is used in  
5           section 919 of the Energy Policy Act of 2005.

6           “(3) AUTHORIZATION OF APPROPRIATIONS.—  
7           There are authorized to be appropriated the fol-  
8           lowing amounts to carry out this subsection:

9                   “(A) \$100,000,000 for fiscal year 2005.

10                   “(B) \$250,000,000 for fiscal year 2006.

11                   “(C) \$400,000,000 for fiscal year 2007.”.

12 **SEC. 1513. BLENDING OF COMPLIANT REFORMULATED GAS-**  
13 **OLINES.**

14           Section 211 of the Clean Air Act (42 U.S.C. 7545)  
15 is amended by adding at the end the following:

16           “(s) BLENDING OF COMPLIANT REFORMULATED  
17 GASOLINES.—

18                   “(1) IN GENERAL.—Notwithstanding sub-  
19           sections (h) and (k) and subject to the limitations in  
20           paragraph (2) of this subsection, it shall not be a  
21           violation of this subtitle for a gasoline retailer, dur-  
22           ing any month of the year, to blend at a retail loca-  
23           tion batches of ethanol-blended and non-ethanol-  
24           blended reformulated gasoline, provided that—

1           “(A) each batch of gasoline to be blended  
2           has been individually certified as in compliance  
3           with subsections (h) and (k) prior to being  
4           blended;

5           “(B) the retailer notifies the Administrator  
6           prior to such blending, and identifies the exact  
7           location of the retail station and the specific  
8           tank in which such blending will take place;

9           “(C) the retailer retains and, as requested  
10          by the Administrator or the Administrator’s  
11          designee, makes available for inspection such  
12          certifications accounting for all gasoline at the  
13          retail outlet; and

14          “(D) the retailer does not, between June 1  
15          and September 15 of each year, blend a batch  
16          of VOC-controlled, or ‘summer’, gasoline with a  
17          batch of non-VOC-controlled, or ‘winter’, gaso-  
18          line (as these terms are defined under sub-  
19          sections (h) and (k)).

20          “(2) LIMITATIONS.—

21                 “(A) FREQUENCY LIMITATION.—A retailer shall  
22                 only be permitted to blend batches of compliant re-  
23                 formulated gasoline under this subsection a max-  
24                 imum of two blending periods between May 1 and  
25                 September 15 of each calendar year.

1           “(B) DURATION OF BLENDING PERIOD.—Each  
2           blending period authorized under subparagraph (A)  
3           shall extend for a period of no more than 10 con-  
4           secutive calendar days.

5           “(3) SURVEYS.—A sample of gasoline taken  
6           from a retail location that has blended gasoline with-  
7           in the past 30 days and is in compliance with sub-  
8           paragraphs (A), (B), (C), and (D) of paragraph (1)  
9           shall not be used in a VOC survey mandated by 40  
10          C.F.R. Part 80.

11          “(4) STATE IMPLEMENTATION PLANS.—A State  
12          shall be held harmless and shall not be required to  
13          revise its State implementation plan under section  
14          110 to account for the emissions from blended gaso-  
15          line authorized under paragraph (1).

16          “(5) PRESERVATION OF STATE LAW.—Nothing  
17          in this subsection shall—

18                 “(A) preempt existing State laws or regu-  
19                 lations regulating the blending of compliant  
20                 gasolines; or

21                 “(B) prohibit a State from adopting such  
22                 restrictions in the future.

23          “(6) REGULATIONS.—The Administrator shall  
24          promulgate, after notice and comment, regulations

1 implementing this subsection within one year after  
2 the date of enactment of this subsection.

3 “(7) EFFECTIVE DATE.—This subsection shall  
4 become effective 15 months after the date of its en-  
5 actment and shall apply to blended batches of refor-  
6 mulated gasoline on or after that date, regardless of  
7 whether the implementing regulations required by  
8 paragraph (6) have been promulgated by the Admin-  
9 istrator by that date.

10 “(8) LIABILITY.—No person other than the  
11 person responsible for blending under this subsection  
12 shall be subject to an enforcement action or pen-  
13 alties under subsection (d) solely arising from the  
14 blending of compliant reformulated gasolines by the  
15 retailers.

16 “(9) FORMULATION OF GASOLINE.—This sub-  
17 section does not grant authority to the Adminis-  
18 trator or any State (or any subdivision thereof) to  
19 require reformulation of gasoline at the refinery to  
20 adjust for potential or actual emissions increases due  
21 to the blending authorized by this subsection.”.



1     **Subtitle B—Underground Storage**  
2                     **Tank Compliance**

3     **SEC. 1521. SHORT TITLE.**

4             This subtitle may be cited as the “Underground Stor-  
5 age Tank Compliance Act of 2005”.

6     **SEC. 1522. LEAKING UNDERGROUND STORAGE TANKS.**

7             (a) IN GENERAL.—Section 9004 of the Solid Waste  
8 Disposal Act (42 U.S.C. 6991e) is amended by adding at  
9 the end the following:

10             “(f) TRUST FUND DISTRIBUTION.—

11                     “(1) IN GENERAL.—

12                             “(A) AMOUNT AND PERMITTED USES OF  
13 DISTRIBUTION.—The Administrator shall dis-  
14 tribute to States not less than 80 percent of the  
15 funds from the Trust Fund that are made  
16 available to the Administrator under section  
17 9014(2)(A) for each fiscal year for use in pay-  
18 ing the reasonable costs, incurred under a coop-  
19 erative agreement with any State for—

20                                     “(i) corrective actions taken by the  
21 State under section 9003(h)(7)(A);

22                                     “(ii) necessary administrative ex-  
23 penses, as determined by the Adminis-  
24 trator, that are directly related to State

1 fund or State assurance programs under  
2 subsection (c)(1); or

3 “(iii) enforcement, by a State or a  
4 local government, of State or local regula-  
5 tions pertaining to underground storage  
6 tanks regulated under this subtitle.

7 “(B) USE OF FUNDS FOR ENFORCE-  
8 MENT.—In addition to the uses of funds au-  
9 thorized under subparagraph (A), the Adminis-  
10 trator may use funds from the Trust Fund that  
11 are not distributed to States under subpara-  
12 graph (A) for enforcement of any regulation  
13 promulgated by the Administrator under this  
14 subtitle.

15 “(C) PROHIBITED USES.—Funds provided  
16 to a State by the Administrator under subpara-  
17 graph (A) shall not be used by the State to pro-  
18 vide financial assistance to an owner or oper-  
19 ator to meet any requirement relating to under-  
20 ground storage tanks under subparts B, C, D,  
21 H, and G of part 280 of title 40, Code of Fed-  
22 eral Regulations (as in effect on the date of en-  
23 actment of this subsection).

24 “(2) ALLOCATION.—

1           “(A) PROCESS.—Subject to subparagraphs  
2           (B) and (C), in the case of a State with which  
3           the Administrator has entered into a coopera-  
4           tive agreement under section 9003(h)(7)(A),  
5           the Administrator shall distribute funds from  
6           the Trust Fund to the State using an allocation  
7           process developed by the Administrator.

8           “(B) DIVERSION OF STATE FUNDS.—The  
9           Administrator shall not distribute funds under  
10          subparagraph (A)(iii) of subsection (f)(1) to  
11          any State that has diverted funds from a State  
12          fund or State assurance program for purposes  
13          other than those related to the regulation of un-  
14          derground storage tanks covered by this sub-  
15          title, with the exception of those transfers that  
16          had been completed earlier than the date of en-  
17          actment of this subsection.

18          “(C) REVISIONS TO PROCESS.—The Ad-  
19          ministrator may revise the allocation process re-  
20          ferred to in subparagraph (A) after—

21                 “(i) consulting with State agencies re-  
22                 sponsible for overseeing corrective action  
23                 for releases from underground storage  
24                 tanks; and

1           “(ii) taking into consideration, at a  
2           minimum, each of the following:

3                   “(I) The number of confirmed re-  
4                   leases from federally regulated leaking  
5                   underground storage tanks in the  
6                   States.

7                   “(II) The number of federally  
8                   regulated underground storage tanks  
9                   in the States.

10                  “(III) The performance of the  
11                  States in implementing and enforcing  
12                  the program.

13                  “(IV) The financial needs of the  
14                  States.

15                  “(V) The ability of the States to  
16                  use the funds referred to in subpara-  
17                  graph (A) in any year.

18                  “(3) DISTRIBUTIONS TO STATE AGENCIES.—  
19                  Distributions from the Trust Fund under this sub-  
20                  section shall be made directly to a State agency  
21                  that—

22                          “(A) enters into a cooperative agreement  
23                          referred to in paragraph (2)(A); or

24                          “(B) is enforcing a State program ap-  
25                          proved under this section.”.

1 (b) WITHDRAWAL OF APPROVAL OF STATE  
2 FUNDS.—Section 9004(c) of the Solid Waste Disposal Act  
3 (42 U.S.C. 6991c(c)) is amended by inserting the fol-  
4 lowing new paragraph at the end thereof:

5 “(6) WITHDRAWAL OF APPROVAL.—After an  
6 opportunity for good faith, collaborative efforts to  
7 correct financial deficiencies with a State fund, the  
8 Administrator may withdraw approval of any State  
9 fund or State assurance program to be used as a fi-  
10 nancial responsibility mechanism without with-  
11 drawing approval of a State underground storage  
12 tank program under section 9004(a).”.

13 (c) ABILITY TO PAY.—Section 9003(h)(6) of the  
14 Solid Waste Disposal Act (42 U.S.C. 6591a(h)(6)) is  
15 amended by adding the following new subparagraph at the  
16 end thereof:

17 “(E) INABILITY OR LIMITED ABILITY TO  
18 PAY.—

19 “(i) IN GENERAL.—In determining  
20 the level of recovery effort, or amount that  
21 should be recovered, the Administrator (or  
22 the State pursuant to paragraph (7)) shall  
23 consider the owner or operator’s ability to  
24 pay. An inability or limited ability to pay  
25 corrective action costs must be dem-

1           onstrated to the Administrator (or the  
2           State pursuant to paragraph (7)) by the  
3           owner or operator.

4           “(ii) CONSIDERATIONS.—In deter-  
5           mining whether or not a demonstration is  
6           made under clause (i), the Administrator  
7           (or the State pursuant to paragraph (7))  
8           shall take into consideration the ability of  
9           the owner or operator to pay corrective ac-  
10          tion costs and still maintain its basic busi-  
11          ness operations, including consideration of  
12          the overall financial condition of the owner  
13          or operator and demonstrable constraints  
14          on the ability of the owner or operator to  
15          raise revenues.

16          “(iii) INFORMATION.—An owner or  
17          operator requesting consideration under  
18          this subparagraph shall promptly provide  
19          the Administrator (or the State pursuant  
20          to paragraph (7)) with all relevant infor-  
21          mation needed to determine the ability of  
22          the owner or operator to pay corrective ac-  
23          tion costs.

24          “(iv) ALTERNATIVE PAYMENT METH-  
25          ODS.—The Administrator (or the State

1           pursuant to paragraph (7)) shall consider  
2           alternative payment methods as may be  
3           necessary or appropriate if the Adminis-  
4           trator (or the State pursuant to paragraph  
5           (7)) determines that an owner or operator  
6           cannot pay all or a portion of the costs in  
7           a lump sum payment.

8           “(iii) MISREPRESENTATION.—If an  
9           owner or operator provides false informa-  
10          tion or otherwise misrepresents their finan-  
11          cial situation under clause (ii), the Admin-  
12          istrator (or the State pursuant to para-  
13          graph (7)) shall seek full recovery of the  
14          costs of all such actions pursuant to the  
15          provisions of subparagraph (A) without  
16          consideration of the factors in subpara-  
17          graph (B).”.

18 **SEC. 1523. INSPECTION OF UNDERGROUND STORAGE**  
19 **TANKS.**

20          (a) INSPECTION REQUIREMENTS.—Section 9005 of  
21 the Solid Waste Disposal Act (42 U.S.C. 6991d) is amend-  
22 ed by inserting the following new subsection at the end  
23 thereof:

24          “(c) INSPECTION REQUIREMENTS.—

1           “(1) UNINSPECTED TANKS.—In the case of un-  
2           derground storage tanks regulated under this sub-  
3           title that have not undergone an inspection since De-  
4           cember 22, 1998, not later than 2 years after the  
5           date of enactment of this subsection, the Adminis-  
6           trator or a State that receives funding under this  
7           subtitle, as appropriate, shall conduct on-site inspec-  
8           tions of all such tanks to determine compliance with  
9           this subtitle and the regulations under this subtitle  
10          (40 C.F.R. 280) or a requirement or standard of a  
11          State program developed under section 9004.

12          “(2) PERIODIC INSPECTIONS.—After completion  
13          of all inspections required under paragraph (1), the  
14          Administrator or a State that receives funding under  
15          this subtitle, as appropriate, shall conduct on-site in-  
16          spections of each underground storage tank regu-  
17          lated under this subtitle at least once every 3 years  
18          to determine compliance with this subtitle and the  
19          regulations under this subtitle (40 C.F.R. 280) or a  
20          requirement or standard of a State program devel-  
21          oped under section 9004. The Administrator may ex-  
22          tend for up to one additional year the first 3-year  
23          inspection interval under this paragraph if the State  
24          demonstrates that it has insufficient resources to



1 complete all such inspections within the first 3-year  
2 period.

3 “(3) INSPECTION AUTHORITY.—Nothing in this  
4 section shall be construed to diminish the Adminis-  
5 trator’s or a State’s authorities under section  
6 9005(a).”.

7 (b) STUDY OF ALTERNATIVE INSPECTION PRO-  
8 GRAMS.—The Administrator of the Environmental Protec-  
9 tion Agency, in coordination with a State, shall gather in-  
10 formation on compliance assurance programs that could  
11 serve as an alternative to the inspection programs under  
12 section 9005(c) of the Solid Waste Disposal Act (42  
13 U.S.C. 6991d(c)) and shall, within 4 years after the date  
14 of enactment of this Act, submit a report to the Congress  
15 containing the results of such study.

16 **SEC. 1524. OPERATOR TRAINING.**

17 (a) IN GENERAL.—Section 9010 of the Solid Waste  
18 Disposal Act (42 U.S.C. 6991i) is amended to read as fol-  
19 lows:

20 **“SEC. 9010. OPERATOR TRAINING.**

21 “(a) GUIDELINES.—

22 “(1) IN GENERAL.—Not later than 2 years  
23 after the date of enactment of the Underground  
24 Storage Tank Compliance Act of 2005, in consulta-  
25 tion and cooperation with States and after public no-

1 tice and opportunity for comment, the Administrator  
2 shall publish guidelines that specify training require-  
3 ments for—

4 “(A) persons having primary responsibility  
5 for on-site operation and maintenance of under-  
6 ground storage tank systems;

7 “(B) persons having daily on-site responsi-  
8 bility for the operation and maintenance of un-  
9 derground storage tanks systems; and

10 “(C) daily, on-site employees having pri-  
11 mary responsibility for addressing emergencies  
12 presented by a spill or release from an under-  
13 ground storage tank system.

14 “(2) CONSIDERATIONS.—The guidelines de-  
15 scribed in paragraph (1) shall take into account—

16 “(A) State training programs in existence  
17 as of the date of publication of the guidelines;

18 “(B) training programs that are being em-  
19 ployed by tank owners and tank operators as of  
20 the date of enactment of the Underground Stor-  
21 age Tank Compliance Act of 2005;

22 “(C) the high turnover rate of tank opera-  
23 tors and other personnel;

24 “(D) the frequency of improvement in un-  
25 derground storage tank equipment technology;

1           “(E) the nature of the businesses in which  
2 the tank operators are engaged;

3           “(F) the substantial differences in the  
4 scope and length of training needed for the dif-  
5 ferent classes of persons described in subpara-  
6 graphs (A), (B), and (C) of paragraph (1); and

7           “(G) such other factors as the Adminis-  
8 trator determines to be necessary to carry out  
9 this section.

10       “(b) STATE PROGRAMS.—

11           “(1) IN GENERAL.—Not later than 2 years  
12 after the date on which the Administrator publishes  
13 the guidelines under subsection (a)(1), each State  
14 that receives funding under this subtitle shall de-  
15 velop State-specific training requirements that are  
16 consistent with the guidelines developed under sub-  
17 section (a)(1).

18           “(2) REQUIREMENTS.—State requirements de-  
19 scribed in paragraph (1) shall—

20           “(A) be consistent with subsection (a);

21           “(B) be developed in cooperation with tank  
22 owners and tank operators;

23           “(C) take into consideration training pro-  
24 grams implemented by tank owners and tank

1 operators as of the date of enactment of this  
2 section; and

3 “(D) be appropriately communicated to  
4 tank owners and operators.

5 “(3) FINANCIAL INCENTIVE.—The Adminis-  
6 trator may award to a State that develops and im-  
7 plements requirements described in paragraph (1),  
8 in addition to any funds that the State is entitled to  
9 receive under this subtitle, not more than \$200,000,  
10 to be used to carry out the requirements.

11 “(c) TRAINING.—All persons that are subject to the  
12 operator training requirements of subsection (a) shall—

13 “(1) meet the training requirements developed  
14 under subsection (b); and

15 “(2) repeat the applicable requirements devel-  
16 oped under subsection (b), if the tank for which they  
17 have primary daily on-site management responsibil-  
18 ities is determined to be out of compliance with—

19 “(A) a requirement or standard promul-  
20 gated by the Administrator under section 9003;  
21 or

22 “(B) a requirement or standard of a State  
23 program approved under section 9004.”.

24 (b) STATE PROGRAM REQUIREMENT.—Section  
25 9004(a) of the Solid Waste Disposal Act (42 U.S.C.

1 6991c(a)) is amended by striking “and” at the end of  
2 paragraph (7), by striking the period at the end of para-  
3 graph (8) and inserting “; and”, and by adding the fol-  
4 lowing new paragraph at the end thereof:

5 “(9) State-specific training requirements as re-  
6 quired by section 9010.”.

7 (c) ENFORCEMENT.—Section 9006(d)(2) of such Act  
8 (42 U.S.C. 6991e) is amended as follows:

9 (1) By striking “or” at the end of subpara-  
10 graph (B).

11 (2) By adding the following new subparagraph  
12 after subparagraph (C):

13 “(D) the training requirements established by  
14 States pursuant to section 9010 (relating to oper-  
15 ator training); or”.

16 (d) TABLE OF CONTENTS.—The item relating to sec-  
17 tion 9010 in table of contents for the Solid Waste Disposal  
18 Act is amended to read as follows:

“Sec. 9010. Operator training.”.

19 **SEC. 1525. REMEDIATION FROM OXYGENATED FUEL ADDI-**  
20 **TIVES.**

21 Section 9003(h) of the Solid Waste Disposal Act (42  
22 U.S.C. 6991b(h)) is amended as follows:

23 (1) In paragraph (7)(A)—

1 (A) by striking “paragraphs (1) and (2) of  
2 this subsection” and inserting “paragraphs (1),  
3 (2), and (12)” ; and

4 (B) by striking “and including the authori-  
5 ties of paragraphs (4), (6), and (8) of this sub-  
6 section” and inserting “and the authority under  
7 sections 9011 and 9012 and paragraphs (4),  
8 (6), and (8),”.

9 (2) By adding at the end the following:

10 “(12) REMEDIATION OF OXYGENATED FUEL  
11 CONTAMINATION.—

12 “(A) IN GENERAL.—The Administrator  
13 and the States may use funds made available  
14 under section 9014(2)(B) to carry out correc-  
15 tive actions with respect to a release of a fuel  
16 containing an oxygenated fuel additive that pre-  
17 sents a threat to human health or welfare or  
18 the environment.

19 “(B) APPLICABLE AUTHORITY.—The Ad-  
20 ministrator or a State shall carry out subpara-  
21 graph (A) in accordance with paragraph (2),  
22 and in the case of a State, in accordance with  
23 a cooperative agreement entered into by the Ad-  
24 ministrator and the State under paragraph  
25 (7).”.

1 **SEC. 1526. RELEASE PREVENTION, COMPLIANCE, AND EN-**  
2 **FORCEMENT.**

3 (a) RELEASE PREVENTION AND COMPLIANCE.—Sub-  
4 title I of the Solid Waste Disposal Act (42 U.S.C. 6991  
5 et seq.) is amended by adding at the end the following:

6 **“SEC. 9011. USE OF FUNDS FOR RELEASE PREVENTION AND**  
7 **COMPLIANCE.**

8 “Funds made available under section 9014(2)(D)  
9 from the Trust Fund may be used to conduct inspections,  
10 issue orders, or bring actions under this subtitle—

11 “(1) by a State, in accordance with a grant or  
12 cooperative agreement with the Administrator, of  
13 State regulations pertaining to underground storage  
14 tanks regulated under this subtitle; and

15 “(2) by the Administrator, for tanks regulated  
16 under this subtitle (including under a State program  
17 approved under section 9004).”.

18 (b) GOVERNMENT-OWNED TANKS.—Section 9003 of  
19 the Solid Waste Disposal Act (42 U.S.C. 6991b) is amend-  
20 ed by adding at the end the following:

21 “(i) GOVERNMENT-OWNED TANKS.—

22 “(1) STATE COMPLIANCE REPORT.—(A) Not  
23 later than 2 years after the date of enactment of  
24 this subsection, each State that receives funding  
25 under this subtitle shall submit to the Administrator  
26 a State compliance report that—

1           “(i) lists the location and owner of each  
2           underground storage tank described in subpara-  
3           graph (B) in the State that, as of the date of  
4           submission of the report, is not in compliance  
5           with section 9003; and

6           “(ii) specifies the date of the last inspec-  
7           tion and describes the actions that have been  
8           and will be taken to ensure compliance of the  
9           underground storage tank listed under clause  
10          (i) with this subtitle.

11          “(B) An underground storage tank described in  
12          this subparagraph is an underground storage tank  
13          that is—

14                  “(i) regulated under this subtitle; and

15                  “(ii) owned or operated by the Federal,  
16                  State, or local government.

17          “(C) The Administrator shall make each report,  
18          received under subparagraph (A), available to the  
19          public through an appropriate media.

20          “(2) FINANCIAL INCENTIVE.—The Adminis-  
21          trator may award to a State that develops a report  
22          described in paragraph (1), in addition to any other  
23          funds that the State is entitled to receive under this  
24          subtitle, not more than \$50,000, to be used to carry  
25          out the report.



1           “(3) NOT A SAFE HARBOR.—This subsection  
2           does not relieve any person from any obligation or  
3           requirement under this subtitle.”.

4           (c) PUBLIC RECORD.—Section 9002 of the Solid  
5           Waste Disposal Act (42 U.S.C. 6991a) is amended by add-  
6           ing at the end the following:

7           “(d) PUBLIC RECORD.—

8           “(1) IN GENERAL.—The Administrator shall re-  
9           quire each State that receives Federal funds to carry  
10          out this subtitle to maintain, update at least annu-  
11          ally, and make available to the public, in such man-  
12          ner and form as the Administrator shall prescribe  
13          (after consultation with States), a record of under-  
14          ground storage tanks regulated under this subtitle.

15          “(2) CONSIDERATIONS.—To the maximum ex-  
16          tent practicable, the public record of a State, respec-  
17          tively, shall include, for each year—

18                  “(A) the number, sources, and causes of  
19                  underground storage tank releases in the State;

20                  “(B) the record of compliance by under-  
21                  ground storage tanks in the State with—

22                          “(i) this subtitle; or

23                          “(ii) an applicable State program ap-  
24                          proved under section 9004; and

1           “(C) data on the number of underground  
2           storage tank equipment failures in the State.”.

3           (d) INCENTIVE FOR PERFORMANCE.—Section 9006  
4 of the Solid Waste Disposal Act (42 U.S.C. 6991e) is  
5 amended by adding at the end the following:

6           “(e) INCENTIVE FOR PERFORMANCE.—Both of the  
7 following may be taken into account in determining the  
8 terms of a civil penalty under subsection (d):

9           “(1) The compliance history of an owner or op-  
10 erator in accordance with this subtitle or a program  
11 approved under section 9004.

12           “(2) Any other factor the Administrator con-  
13 siders appropriate.”.

14           (e) TABLE OF CONTENTS.—The table of contents for  
15 such subtitle I is amended by adding the following new  
16 item at the end thereof:

“Sec. 9011. Use of funds for release prevention and compliance.”.

17 **SEC. 1527. DELIVERY PROHIBITION.**

18           (a) IN GENERAL.—Subtitle I of the Solid Waste Dis-  
19 posal Act (42 U.S.C. 6991 et seq.) is amended by adding  
20 at the end the following:

21 **“SEC. 9012. DELIVERY PROHIBITION.**

22           “(a) REQUIREMENTS.—

23           “(1) PROHIBITION OF DELIVERY OR DE-  
24 POSIT.—Beginning 2 years after the date of enact-  
25 ment of this section, it shall be unlawful to deliver

1 to, deposit into, or accept a regulated substance into  
2 an underground storage tank at a facility which has  
3 been identified by the Administrator or a State im-  
4 plementing agency to be ineligible for fuel delivery or  
5 deposit.

6 “(2) GUIDANCE.—Within 1 year after the date  
7 of enactment of this section, the Administrator and  
8 States that receive funding under this subtitle shall,  
9 in consultation with the underground storage tank  
10 owner and product delivery industries, for territory  
11 for which they are the primary implementing agen-  
12 cies, publish guidelines detailing the specific proc-  
13 esses and procedures they will use to implement the  
14 provisions of this section. The processes and proce-  
15 dures include, at a minimum—

16 “(A) the criteria for determining which un-  
17 derground storage tank facilities are ineligible  
18 for delivery or deposit;

19 “(B) the mechanisms for identifying which  
20 facilities are ineligible for delivery or deposit to  
21 the underground storage tank owning and fuel  
22 delivery industries;

23 “(C) the process for reclassifying ineligible  
24 facilities as eligible for delivery or deposit; and

1           “(D) a delineation of, or a process for de-  
2           termining, the specified geographic areas sub-  
3           ject to paragraph (4).

4           “(3) DELIVERY PROHIBITION NOTICE.—

5           “(A) ROSTER.—The Administrator and  
6           each State implementing agency that receives  
7           funding under this subtitle shall establish with-  
8           in 24 months after the date of enactment of  
9           this section a Delivery Prohibition Roster list-  
10          ing underground storage tanks under the Ad-  
11          ministrator’s or the State’s jurisdiction that are  
12          determined to be ineligible for delivery or de-  
13          posit pursuant to paragraph (2).

14          “(B) NOTIFICATION.—The Administrator  
15          and each State, as appropriate, shall make  
16          readily known, to underground storage tank  
17          owners and operators and to product delivery  
18          industries, the underground storage tanks listed  
19          on a Delivery Prohibition Roster by:

20                 “(i) posting such Rosters, including  
21                 the physical location and street address of  
22                 each listed underground storage tank, on  
23                 official web sites and, if the Administrator  
24                 or the State so chooses, other electronic  
25                 means;

1           “(ii) updating these Rosters periodically;  
2           and

3           “(iii) installing a tamper-proof tag,  
4           seal, or other device blocking the fill pipes  
5           of such underground storage tanks to prevent  
6           the delivery of product into such underground  
7           storage tanks.

8           “(C) ROSTER UPDATES.—The Administrator  
9           and the State shall update the Delivery  
10          Prohibition Rosters as appropriate, but not less  
11          than once a month on the first day of the  
12          month.

13          “(D) TAMPERING WITH DEVICE.—

14                 “(i) PROHIBITION.—It shall be unlawful  
15                 for any person, other than an authorized  
16                 representative of the Administrator or  
17                 a State, as appropriate, to remove, tamper  
18                 with, destroy, or damage a device installed  
19                 by the Administrator or a State, as appropriate,  
20                 under subparagraph (B)(iii) of this  
21                 subsection.

22                 “(ii) CIVIL PENALTIES.—Any person  
23                 violating clause (i) of this subparagraph  
24                 shall be subject to a civil penalty not to exceed  
25                 \$10,000 for each violation.

1           “(4) LIMITATION.—

2                   “(A) RURAL AND REMOTE AREAS.—Sub-  
3           ject to subparagraph (B), the Administrator or  
4           a State shall not include an underground stor-  
5           age tank on a Delivery Prohibition Roster  
6           under paragraph (3) if an urgent threat to pub-  
7           lic health, as determined by the Administrator,  
8           does not exist and if such a delivery prohibition  
9           would jeopardize the availability of, or access  
10          to, fuel in any rural and remote areas.

11                   “(B) APPLICABILITY OF LIMITATION.—  
12          The limitation under subparagraph (A) shall  
13          apply only during the 180-day period following  
14          the date of a determination by the Adminis-  
15          trator or the appropriate State that exercising  
16          the authority of paragraph (3) is limited by  
17          subparagraph (A).

18           “(b) EFFECT ON STATE AUTHORITY.—Nothing in  
19          this section shall affect the authority of a State to prohibit  
20          the delivery of a regulated substance to an underground  
21          storage tank.

22           “(c) DEFENSE TO VIOLATION.—A person shall not  
23          be in violation of subsection (a)(1) if the underground  
24          storage tank into which a regulated substance is delivered  
25          is not listed on the Administrator’s or the appropriate

1 State’s Prohibited Delivery Roster 7 calendar days prior  
2 to the delivery being made.”.

3 (b) ENFORCEMENT.—Section 9006(d)(2) of such Act  
4 (42 U.S.C. 6991e(d)(2)) is amended as follows:

5 (1) By adding the following new subparagraph  
6 after subparagraph (D):

7 “(E) the delivery prohibition requirement estab-  
8 lished by section 9012,”.

9 (2) By adding the following new sentence at the  
10 end thereof: “Any person making or accepting a de-  
11 livery or deposit of a regulated substance to an un-  
12 derground storage tank at an ineligible facility in  
13 violation of section 9012 shall also be subject to the  
14 same civil penalty for each day of such violation.”.

15 (c) TABLE OF CONTENTS.—The table of contents for  
16 such subtitle I is amended by adding the following new  
17 item at the end thereof:

“Sec. 9012. Delivery prohibition.”.

18 **SEC. 1528. FEDERAL FACILITIES.**

19 Section 9007 of the Solid Waste Disposal Act (42  
20 U.S.C. 6991f) is amended to read as follows:

21 **“SEC. 9007. FEDERAL FACILITIES.**

22 “(a) IN GENERAL.—Each department, agency, and  
23 instrumentality of the executive, legislative, and judicial  
24 branches of the Federal Government (1) having jurisdic-  
25 tion over any underground storage tank or underground

1 storage tank system, or (2) engaged in any activity result-  
2 ing, or which may result, in the installation, operation,  
3 management, or closure of any underground storage tank,  
4 release response activities related thereto, or in the deliv-  
5 ery, acceptance, or deposit of any regulated substance to  
6 an underground storage tank or underground storage tank  
7 system shall be subject to, and comply with, all Federal,  
8 State, interstate, and local requirements, both substantive  
9 and procedural (including any requirement for permits or  
10 reporting or any provisions for injunctive relief and such  
11 sanctions as may be imposed by a court to enforce such  
12 relief), respecting underground storage tanks in the same  
13 manner, and to the same extent, as any person is subject  
14 to such requirements, including the payment of reasonable  
15 service charges. The Federal, State, interstate, and local  
16 substantive and procedural requirements referred to in  
17 this subsection include, but are not limited to, all adminis-  
18 trative orders and all civil and administrative penalties  
19 and fines, regardless of whether such penalties or fines  
20 are punitive or coercive in nature or are imposed for iso-  
21 lated, intermittent, or continuing violations. The United  
22 States hereby expressly waives any immunity otherwise  
23 applicable to the United States with respect to any such  
24 substantive or procedural requirement (including, but not  
25 limited to, any injunctive relief, administrative order or



1 civil or administrative penalty or fine referred to in the  
2 preceding sentence, or reasonable service charge). The rea-  
3 sonable service charges referred to in this subsection in-  
4 clude, but are not limited to, fees or charges assessed in  
5 connection with the processing and issuance of permits,  
6 renewal of permits, amendments to permits, review of  
7 plans, studies, and other documents, and inspection and  
8 monitoring of facilities, as well as any other nondiscrim-  
9 inatory charges that are assessed in connection with a  
10 Federal, State, interstate, or local underground storage  
11 tank regulatory program. Neither the United States, nor  
12 any agent, employee, or officer thereof, shall be immune  
13 or exempt from any process or sanction of any State or  
14 Federal Court with respect to the enforcement of any such  
15 injunctive relief. No agent, employee, or officer of the  
16 United States shall be personally liable for any civil pen-  
17 alty under any Federal, State, interstate, or local law con-  
18 cerning underground storage tanks with respect to any act  
19 or omission within the scope of the official duties of the  
20 agent, employee, or officer. An agent, employee, or officer  
21 of the United States shall be subject to any criminal sanc-  
22 tion (including, but not limited to, any fine or imprison-  
23 ment) under any Federal or State law concerning under-  
24 ground storage tanks, but no department, agency, or in-  
25 strumentality of the executive, legislative, or judicial

1 branch of the Federal Government shall be subject to any  
2 such sanction. The President may exempt any under-  
3 ground storage tank of any department, agency, or instru-  
4 mentality in the executive branch from compliance with  
5 such a requirement if he determines it to be in the para-  
6 mount interest of the United States to do so. No such  
7 exemption shall be granted due to lack of appropriation  
8 unless the President shall have specifically requested such  
9 appropriation as a part of the budgetary process and the  
10 Congress shall have failed to make available such re-  
11 quested appropriation. Any exemption shall be for a period  
12 not in excess of one year, but additional exemptions may  
13 be granted for periods not to exceed one year upon the  
14 President's making a new determination. The President  
15 shall report each January to the Congress all exemptions  
16 from the requirements of this section granted during the  
17 preceding calendar year, together with his reason for  
18 granting each such exemption.

19       “(b) REVIEW OF AND REPORT ON FEDERAL UNDER-  
20 GROUND STORAGE TANKS.—

21               “(1) REVIEW.—Not later than 12 months after  
22       the date of enactment of the Underground Storage  
23       Tank Compliance Act of 2005, each Federal agency  
24       that owns or operates 1 or more underground stor-  
25       age tanks, or that manages land on which 1 or more

1 underground storage tanks are located, shall submit  
2 to the Administrator, the Committee on Energy and  
3 Commerce of the United States House of Represent-  
4 atives, and the Committee on the Environment and  
5 Public Works of the United States Senate a compli-  
6 ance strategy report that—

7 “(A) lists the location and owner of each  
8 underground storage tank described in this  
9 paragraph;

10 “(B) lists all tanks that are not in compli-  
11 ance with this subtitle that are owned or oper-  
12 ated by the Federal agency;

13 “(C) specifies the date of the last inspec-  
14 tion by a State or Federal inspector of each un-  
15 derground storage tank owned or operated by  
16 the agency;

17 “(D) lists each violation of this subtitle re-  
18 specting any underground storage tank owned  
19 or operated by the agency;

20 “(E) describes the operator training that  
21 has been provided to the operator and other  
22 persons having primary daily on-site manage-  
23 ment responsibility for the operation and main-  
24 tenance of underground storage tanks owned or  
25 operated by the agency; and

1           “(F) describes the actions that have been  
2           and will be taken to ensure compliance for each  
3           underground storage tank identified under sub-  
4           paragraph (B).

5           “(2) NOT A SAFE HARBOR.—This subsection  
6           does not relieve any person from any obligation or  
7           requirement under this subtitle.”.

8   **SEC. 1529. TANKS ON TRIBAL LANDS.**

9           (a) IN GENERAL.—Subtitle I of the Solid Waste Dis-  
10          posal Act (42 U.S.C. 6991 et seq.) is amended by adding  
11          the following at the end thereof:

12   **“SEC. 9013. TANKS ON TRIBAL LANDS.**

13          “(a) STRATEGY.—The Administrator, in coordination  
14          with Indian tribes, shall, not later than 1 year after the  
15          date of enactment of this section, develop and implement  
16          a strategy—

17                 “(1) giving priority to releases that present the  
18                 greatest threat to human health or the environment,  
19                 to take necessary corrective action in response to re-  
20                 leases from leaking underground storage tanks lo-  
21                 cated wholly within the boundaries of—

22                         “(A) an Indian reservation; or

23                         “(B) any other area under the jurisdiction  
24                         of an Indian tribe; and

1           “(2) to implement and enforce requirements  
2           concerning underground storage tanks located wholly  
3           within the boundaries of—

4                   “(A) an Indian reservation; or

5                   “(B) any other area under the jurisdiction  
6           of an Indian tribe.

7           “(b) REPORT.—Not later than 2 years after the date  
8           of enactment of this section, the Administrator shall sub-  
9           mit to Congress a report that summarizes the status of  
10          implementation and enforcement of this subtitle in areas  
11          located wholly within—

12                   “(1) the boundaries of Indian reservations; and

13                   “(2) any other areas under the jurisdiction of  
14          an Indian tribe.

15          The Administrator shall make the report under this sub-  
16          section available to the public.

17          “(c) NOT A SAFE HARBOR.—This section does not  
18          relieve any person from any obligation or requirement  
19          under this subtitle.

20          “(d) STATE AUTHORITY.—Nothing in this section  
21          applies to any underground storage tank that is located  
22          in an area under the jurisdiction of a State, or that is  
23          subject to regulation by a State, as of the date of enact-  
24          ment of this section.”.

1 (b) 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. 9013. Tanks on Tribal lands.”.

4 **SEC. 1530. ADDITIONAL MEASURES TO PROTECT GROUND-**  
5 **WATER.**

6 (a) IN GENERAL.—Section 9003 of the Solid Waste  
7 Disposal Act (42 U.S.C. 6991b) is amended by adding the  
8 following new subsection at the end:

9 “(i) ADDITIONAL MEASURES TO PROTECT GROUND-  
10 WATER FROM CONTAMINATION.—The Administrator shall  
11 require each State that receives funding under this sub-  
12 title to require one of the following:

13 “(1) TANK AND PIPING SECONDARY CONTAIN-  
14 MENT.—(A) Each new underground storage tank, or  
15 piping connected to any such new tank, installed  
16 after the effective date of this subsection, or any ex-  
17 isting underground storage tank, or existing piping  
18 connected to such existing tank, that is replaced  
19 after the effective date of this subsection, shall be  
20 secondarily contained and monitored for leaks if the  
21 new or replaced underground storage tank or piping  
22 is within 1,000 feet of any existing community water  
23 system or any existing potable drinking water well.

24 “(B) In the case of a new underground storage  
25 tank system consisting of one or more underground

1 storage tanks and connected by piping, subpara-  
2 graph (A) shall apply to all underground storage  
3 tanks and connected pipes comprising such system.

4 “(C) In the case of a replacement of an existing  
5 underground storage tank or existing piping con-  
6 nected to the underground storage tank, subpara-  
7 graph (A) shall apply only to the specific under-  
8 ground storage tank or piping being replaced, not to  
9 other underground storage tanks and connected  
10 pipes comprising such system.

11 “(D) Each installation of a new motor fuel dis-  
12 penser system, after the effective date of this sub-  
13 section, shall include under-dispenser spill contain-  
14 ment if the new dispenser is within 1,000 feet of any  
15 existing community water system or any existing po-  
16 table drinking water well.

17 “(E) This paragraph shall not apply to repairs  
18 to an underground storage tank, piping, or dispenser  
19 that are meant to restore a tank, pipe, or dispenser  
20 to operating condition

21 “(F) As used in this subsection:

22 “(i) The term ‘secondarily contained’  
23 means a release detection and prevention sys-  
24 tem that meets the requirements of 40 CFR

1           280.43(g), but shall not include under-dispenser  
2           spill containment or control systems.

3           “(ii) The term ‘underground storage tank’  
4           has the meaning given to it in section 9001, ex-  
5           cept that such term does not include tank com-  
6           binations or more than a single underground  
7           pipe connected to a tank.

8           “(iii) The term ‘installation of a new motor  
9           fuel dispenser system’ means the installation of  
10          a new motor fuel dispenser and the equipment  
11          necessary to connect the dispenser to the under-  
12          ground storage tank system, but does not mean  
13          the installation of a motor fuel dispenser in-  
14          stalled separately from the equipment need to  
15          connect the dispenser to the underground stor-  
16          age tank system.

17          “(G) The Administrator may issue regulations  
18          or guidelines implementing the requirements of this  
19          subsection.

20          “(2) EVIDENCE OF FINANCIAL RESPONSIBILITY  
21          AND CERTIFICATION.—

22          “(A) MANUFACTURER AND INSTALLER FI-  
23          NANCIAL RESPONSIBILITY.—A person that  
24          manufactures an underground storage tank or  
25          piping for an underground storage tank system



1 or that installs an underground storage tank  
2 system is required to maintain evidence of fi-  
3 nancial responsibility under section 9003(d) in  
4 order to provide for the costs of corrective ac-  
5 tions directly related to releases caused by im-  
6 proper manufacture or installation unless the  
7 person can demonstrate themselves to be al-  
8 ready covered as an owner or operator of an  
9 underground storage tank under section 9003.

10 “(B) INSTALLER CERTIFICATION.—The  
11 Administrator and each State that receives  
12 funding under this subtitle, as appropriate,  
13 shall require that a person that installs an un-  
14 derground storage tank system is—

15 “(i) certified or licensed by the tank  
16 and piping manufacturer;

17 “(ii) certified or licensed by the Ad-  
18 ministrator or a State, as appropriate;

19 “(iii) has their underground storage  
20 tank system installation certified by a reg-  
21 istered professional engineer with edu-  
22 cation and experience in underground stor-  
23 age tank system installation;

24 “(iv) has had their installation of the  
25 underground storage tank inspected and

1 approved by the Administrator or the  
2 State, as appropriate;

3 “(v) compliant with a code of practice  
4 developed by a nationally recognized asso-  
5 ciation or independent testing laboratory  
6 and in accordance with the manufacturers  
7 instructions; or

8 “(vi) compliant with another method  
9 that is determined by the Administrator or  
10 a State, as appropriate, to be no less pro-  
11 tective of human health and the environ-  
12 ment.”.

13 (b) EFFECTIVE DATE.—This subsection shall take  
14 effect 18 months after the date of enactment of this sub-  
15 section

16 (c) PROMULGATION OF REGULATIONS OR GUIDE-  
17 LINES.—The Administrator shall issue regulations or  
18 guidelines implementing the requirements of this sub-  
19 section, including guidance to differentiate between the  
20 terms “repair” and “replace” for the purposes of section  
21 9003(i)(1) of the Solid Waste Disposal Act.

22 (d) PENALTIES.—Section 9006(d)(2) of such Act (42  
23 U.S.C. 6991e(d)(2)) is amended as follows:

24 (1) By striking “or” at the end of subpara-  
25 graph (B).

1           (2) By inserting “; or” at the end of subpara-  
2 graph (C).

3           (3) By adding the following new subparagraph  
4 after subparagraph (C):

5                   “(D) the requirements established in sec-  
6 tion 9003(i),”.

7 **SEC. 1531. AUTHORIZATION OF APPROPRIATIONS.**

8           (a) IN GENERAL.—Subtitle I of the Solid Waste Dis-  
9 posal Act (42 U.S.C. 6991 et seq.) is amended by adding  
10 at the end the following:

11 **“SEC. 9014. AUTHORIZATION OF APPROPRIATIONS.**

12           “There are authorized to be appropriated to the Ad-  
13 ministrator the following amounts:

14                   “(1) To carry out subtitle I (except sections  
15 9003(h), 9005(e), 9011 and 9012) \$50,000,000 for  
16 each of fiscal years 2005 through 2009.

17                   “(2) From the Trust Fund, notwithstanding  
18 section 9508(c)(1) of the Internal Revenue Code of  
19 1986:

20                           “(A) to carry out section 9003(h) (except  
21 section 9003(h)(12)) \$200,000,000 for each of  
22 fiscal years 2005 through 2009;

23                           “(B) to carry out section 9003(h)(12),  
24 \$200,000,000 for each of fiscal years 2005  
25 through 2009;

1           “(C) to carry out sections 9004(f) and  
2           9005(c) \$100,000,000 for each of fiscal years  
3           2005 through 2009; and

4           “(D) to carry out sections 9011 and 9012  
5           \$55,000,000 for each of fiscal years 2005  
6           through 2009.”.

7           (b) TABLE OF CONTENTS.—The table of contents for  
8 such subtitle I is amended by adding the following new  
9 item at the end thereof:

“Sec. 9014. Authorization of appropriations.”.

10 **SEC. 1532. CONFORMING AMENDMENTS.**

11           (a) IN GENERAL.—Section 9001 of the Solid Waste  
12 Disposal Act (42 U.S.C. 6991) is amended as follows:

13           (1) By striking “For the purposes of this sub-  
14           title—” and inserting “In this subtitle.”.

15           (2) By redesignating paragraphs (1), (2), (3),  
16           (4), (5), (6), (7), and (8) as paragraphs (10), (7),  
17           (4), (3), (8), (5), (2), and (6), respectively.

18           (3) By inserting before paragraph (2) (as reded-  
19           ignated by paragraph (2) of this subsection) the fol-  
20           lowing:

21           “(1) INDIAN TRIBE.—

22           “(A) IN GENERAL.—The term ‘Indian  
23           tribe’ means any Indian tribe, band, nation, or  
24           other organized group or community that is rec-  
25           ognized as being eligible for special programs

1 and services provided by the United States to  
2 Indians because of their status as Indians.

3 “(B) INCLUSIONS.—The term ‘Indian  
4 tribe’ includes an Alaska Native village, as de-  
5 fined in or established under the Alaska Native  
6 Claims Settlement Act (43 U.S.C. 1601 et  
7 seq.); and”.

8 (4) By inserting after paragraph (8) (as redese-  
9 ignated by paragraph (2) of this subsection) the fol-  
10 lowing:

11 “(9) TRUST FUND.—The term ‘Trust Fund’  
12 means the Leaking Underground Storage Tank  
13 Trust Fund established by section 9508 of the Inter-  
14 nal Revenue Code of 1986.”.

15 (b) CONFORMING AMENDMENTS.—The Solid Waste  
16 Disposal Act (42 U.S.C. 6901 and following) is amended  
17 as follows:

18 (1) Section 9003(f) (42 U.S.C. 6991b(f)) is  
19 amended—

20 (A) in paragraph (1), by striking  
21 “9001(2)(B)” and inserting “9001(7)(B)”; and

22 (B) in paragraphs (2) and (3), by striking  
23 “9001(2)(A)” each place it appears and insert-  
24 ing “9001(7)(A)”.

1           (2) Section 9003(h) (42 U.S.C. 6991b(h)) is  
2           amended in paragraphs (1), (2)(C), (7)(A), and (11)  
3           by striking “Leaking Underground Storage Tank  
4           Trust Fund” each place it appears and inserting  
5           “Trust Fund”.

6           (3) Section 9009 (42 U.S.C. 6991h) is amend-  
7           ed—

8                   (A) in subsection (a), by striking  
9                   “9001(2)(B)” and inserting “9001(7)(B)”; and

10                   (B) in subsection (d), by striking “section  
11                   9001(1) (A) and (B)” and inserting “subpara-  
12                   graphs (A) and (B) of section 9001(10)”.

13 **SEC. 1533. TECHNICAL AMENDMENTS.**

14           The Solid Waste Disposal Act is amended as follows:

15           (1) Section 9001(4)(A) (42 U.S.C. 6991(4)(A))  
16           is amended by striking “sustances” and inserting  
17           “substances”.

18           (2) Section 9003(f)(1) (42 U.S.C. 6991b(f)(1))  
19           is amended by striking “subsection (e) and (d) of  
20           this section” and inserting “subsections (c) and  
21           (d)”.

22           (3) Section 9004(a) (42 U.S.C. 6991c(a)) is  
23           amended by striking “in 9001(2) (A) or (B) or  
24           both” and inserting “in subparagraph (A) or (B) of  
25           section 9001(7)”.

1 (4) Section 9005 (42 U.S.C. 6991d) is amend-  
2 ed—

3 (A) in subsection (a), by striking “study  
4 taking” and inserting “study, taking”;

5 (B) in subsection (b)(1), by striking  
6 “relevent” and inserting “relevant”; and

7 (C) in subsection (b)(4), by striking  
8 “Evironmental” and inserting “Environ-  
9 mental”.

## 10 **Subtitle C—Boutique Fuels**

### 11 **SEC. 1541. REDUCING THE PROLIFERATION OF BOUTIQUE** 12 **FUELS.**

13 (a) TEMPORARY WAIVERS DURING SUPPLY EMER-  
14 GENCIES.—Section 211(c)(4)(C) of the Clean Air Act (42  
15 U.S.C. 7545(c)(4)(C)) is amended by inserting “(i)” after  
16 “(C)” and by adding the following new clauses at the end  
17 thereof:

18 “(ii) The Administrator may temporarily waive a con-  
19 trol or prohibition respecting the use of a fuel or fuel addi-  
20 tive required or regulated by the Administrator pursuant  
21 to subsection (c), (h), (i), (k), or (m) of this section or  
22 prescribed in an applicable implementation plan under sec-  
23 tion 110 approved by the Administrator under clause (i)  
24 of this subparagraph if, after consultation with, and con-

1 currence by, the Secretary of Energy, the Administrator  
2 determines that—

3           “(I) extreme and unusual fuel or fuel additive  
4 supply circumstances exist in a State or region of  
5 the Nation which prevent the distribution of an ade-  
6 quate supply of the fuel or fuel additive to con-  
7 sumers;

8           “(II) such extreme and unusual fuel and fuel  
9 additive supply circumstances are the result of a  
10 natural disaster, an Act of God, a pipeline or refin-  
11 ery equipment failure, or another event that could  
12 not reasonably have been foreseen or prevented and  
13 not the lack of prudent planning on the part of the  
14 suppliers of the fuel or fuel additive to such State  
15 or region; and

16           “(III) it is in the public interest to grant the  
17 waiver (for example, when a waiver is necessary to  
18 meet projected temporary shortfalls in the supply of  
19 the fuel or fuel additive in a State or region of the  
20 Nation which cannot otherwise be compensated for).

21           “(iii) If the Administrator makes the determinations  
22 required under clause (ii), such a temporary extreme and  
23 unusual fuel and fuel additive supply circumstances waiver  
24 shall be permitted only if—



1           “(I) the waiver applies to the smallest geo-  
2           graphic area necessary to address the extreme and  
3           unusual fuel and fuel additive supply circumstances;

4           “(II) the waiver is effective for a period of 20  
5           calendar days or, if the Administrator determines  
6           that a shorter waiver period is adequate, for the  
7           shortest practicable time period necessary to permit  
8           the correction of the extreme and unusual fuel and  
9           fuel additive supply circumstances and to mitigate  
10          impact on air quality;

11          “(III) the waiver permits a transitional period,  
12          the exact duration of which shall be determined by  
13          the Administrator, after the termination of the tem-  
14          porary waiver to permit wholesalers and retailers to  
15          blend down their wholesale and retail inventory;

16          “(IV) the waiver applies to all persons in the  
17          motor fuel distribution system; and

18          “(V) the Administrator has given public notice  
19          to all parties in the motor fuel distribution system,  
20          and local and State regulators, in the State or re-  
21          gion to be covered by the waiver.

22          The term ‘motor fuel distribution system’ as used in this  
23          clause shall be defined by the Administrator through rule-  
24          making.

1       “(iv) Within 180 days of the date of enactment of  
2 this clause, the Administrator shall promulgate regula-  
3 tions to implement clauses (ii) and (iii).

4       “(v) Nothing in this subparagraph shall—

5           “(I) limit or otherwise affect the application of  
6 any other waiver authority of the Administrator pur-  
7 suant to this section or pursuant to a regulation  
8 promulgated pursuant to this section; and

9           “(II) subject any State or person to an enforce-  
10 ment action, penalties, or liability solely arising from  
11 actions taken pursuant to the issuance of a waiver  
12 under this subparagraph.”.

13       (b) LIMIT ON NUMBER OF BOUTIQUE FUELS.—Sec-  
14 tion 211(c)(4)(C) of the Clean Air Act (42 U.S.C.  
15 7545(c)(4)), as amended by subsection (a), is further  
16 amended by adding at the end the following:

17       “(v)(I) The Administrator shall have no authority,  
18 when considering a State implementation plan or a State  
19 implementation plan revision, to approve under this para-  
20 graph any fuel included in such plan or revision if the ef-  
21 fect of such approval increases the total number of fuels  
22 approved under this paragraph as of September 1, 2004,  
23 in all State implementation plans.

24       “(II) The Administrator, in consultation with the  
25 Secretary of Energy, shall determine the total number of

1 fuels approved under this paragraph as of September 1,  
2 2004, in all State implementation plans and shall publish  
3 a list of such fuels, including the states and Petroleum  
4 Administration for Defense District in which they are  
5 used, in the Federal Register for public review and com-  
6 ment no later than 90 days after enactment.

7       “(III) The Administrator shall remove a fuel from the  
8 list published under subclause (II) if a fuel ceases to be  
9 included in a State implementation plan or if a fuel in  
10 a State implementation plan is identical to a Federal fuel  
11 formulation implemented by the Administrator, but the  
12 Administrator shall not reduce the total number of fuels  
13 authorized under the list published under subclause (II).

14       “(IV) Subclause (I) shall not limit the Administra-  
15 tor’s authority to approve a control or prohibition respect-  
16 ing any new fuel under this paragraph in a State imple-  
17 mentation plan or revision to a State implementation plan  
18 if such new fuel:

19               “(aa) completely replaces a fuel on the list pub-  
20 lished under subclause (II); or

21               “(bb) does not increase the total number of  
22 fuels on the list published under subclause (II) as of  
23 September 1, 2004.

24 In the event that the total number of fuels on the list pub-  
25 lished under subclause (II) at the time of the Administra-

1 tor's consideration of a control or prohibition respecting  
2 a new fuel is lower than the total number of fuels on such  
3 list as of September 1, 2004, the Administrator may ap-  
4 prove a control or prohibition respecting a new fuel under  
5 this subclause if the Administrator, after consultation with  
6 the Secretary of Energy, publishes in the Federal Register  
7 after notice and comment a finding that, in the Adminis-  
8 trator's judgment, such control or prohibition respecting  
9 a new fuel will not cause fuel supply or distribution inter-  
10 ruptions or have a significant adverse impact on fuel  
11 producibility in the affected area or contiguous areas.

12       “(V) The Administrator shall have no authority  
13 under this paragraph, when considering any particular  
14 State's implementation plan or a revision to that State's  
15 implementation plan, to approve any fuel unless that fuel  
16 was, as of the date of such consideration, approved in at  
17 least one State implementation plan in the applicable Pe-  
18 troleum Administration for Defense District. However, the  
19 Administrator may approve as part of a State implementa-  
20 tion plan or State implementation plan revision a fuel with  
21 a summertime Reid Vapor Pressure of 7.0 psi. In no event  
22 shall such approval by the Administrator cause an increase  
23 in the total number of fuels on the list published under  
24 subclause (II).

1       “(VI) Nothing in this clause shall be construed to  
2 have any effect regarding any available authority of States  
3 to require the use of any fuel additive registered in accord-  
4 ance with subsection (b), including any fuel additive reg-  
5 istered in accordance with subsection (b) after the enact-  
6 ment of this subclause.”.

7       (c) STUDY AND REPORT TO CONGRESS ON BOU-  
8 TIQUE FUELS.—

9           (1) JOINT STUDY.—The Administrator of the  
10       Environmental Protection Agency and the Secretary  
11       of Energy shall undertake a study of the effects on  
12       air quality, on the number of fuel blends, on fuel  
13       availability, on fuel fungibility, and on fuel costs of  
14       the State plan provisions adopted pursuant to sec-  
15       tion 211(c)(4)(C) of the Clean Air Act (42 U.S.C.  
16       7545(c)(4)(C)).

17           (2) FOCUS OF STUDY.—The primary focus of  
18       the study required under paragraph (1) shall be to  
19       determine how to develop a Federal fuels system  
20       that maximizes motor fuel fungibility and supply,  
21       preserves air quality standards, and reduces motor  
22       fuel price volatility that results from the prolifera-  
23       tion of boutique fuels, and to recommend to Con-  
24       gress such legislative changes as are necessary to  
25       implement such a system. The study should include

1 the impacts on overall energy supply, distribution,  
2 and use as a result of the legislative changes rec-  
3 ommended.

4 (3) RESPONSIBILITY OF ADMINISTRATOR.—In  
5 carrying out the study required by this section, the  
6 Administrator shall coordinate obtaining comments  
7 from affected parties interested in the air quality  
8 impact assessment portion of the study. The Admin-  
9 istrator shall use sound and objective science prac-  
10 tices, shall consider the best available science, and  
11 shall consider and include a description of the  
12 weight of the scientific evidence.

13 (4) RESPONSIBILITY OF SECRETARY.—In car-  
14 rying out the study required by this section, the Sec-  
15 retary shall coordinate obtaining comments from af-  
16 fected parties interested in the fuel availability,  
17 number of fuel blends, fuel fungibility and fuel costs  
18 portion of the study.

19 (5) REPORT TO CONGRESS.—The Administrator  
20 and the Secretary jointly shall submit the results of  
21 the study required by this section in a report to the  
22 Congress not later than 12 months after the date of  
23 the enactment of this Act, together with any rec-  
24 ommended regulatory and legislative changes. Such  
25 report shall be submitted to the Committee on En-

1       ergy and Commerce of the House of Representatives  
2       and the Committee on Environment and Public  
3       Works of the Senate.

4               (6) AUTHORIZATION OF APPROPRIATIONS.—

5       There is authorized to be appropriated jointly to the  
6       Administrator and the Secretary \$500,000 for the  
7       completion of the study required under this sub-  
8       section.

9       (d) DEFINITIONS.—In this section:

10              (1) The term “Administrator” means the Ad-  
11       ministrator of the Environmental Protection Agency.

12              (2) The term “Secretary” means the Secretary  
13       of Energy.

14              (3) The term “fuel” means gasoline, diesel fuel,  
15       and any other liquid petroleum product commercially  
16       known as gasoline and diesel fuel for use in highway  
17       and nonroad motor vehicles.

18              (4) The term “a control or prohibition respect-  
19       ing a new fuel” means a control or prohibition on  
20       the formulation, composition, or emissions character-  
21       istics of a fuel that would require the increase or de-  
22       crease of a constituent in gasoline or diesel fuel.

## TITLE XVI—STUDIES

### 1                   **SEC. 1601. STUDY ON INVENTORY OF PETROLEUM AND** 2                   **NATURAL GAS STORAGE.**

3                   (a) DEFINITION.—For purposes of this section “petroleum” means crude oil, motor gasoline, jet fuel, distillates, and propane.

4                   (b) STUDY.—The Secretary of Energy shall conduct  
5 a study on petroleum and natural gas storage capacity and  
6 operational inventory levels, nationwide and by major geographical regions.

7                   (c) CONTENTS.—The study shall address—

8                   (1) historical normal ranges for petroleum and  
9 natural gas inventory levels;

10                  (2) historical and projected storage capacity  
11 trends;

12                  (3) estimated operation inventory levels below  
13 which outages, delivery slowdown, rationing, interruptions in service, or other indicators of shortage  
14 begin to appear;

15                  (4) explanations for inventory levels dropping  
16 below normal ranges; and

17                  (5) the ability of industry to meet United  
18 States demand for petroleum and natural gas without shortages or price spikes, when inventory levels  
19 are below normal ranges.



1 (d) REPORT TO CONGRESS.—Not later than 1 year  
2 after the date of enactment of this Act, the Secretary of  
3 Energy shall submit a report to Congress on the results  
4 of the study, including findings and any recommendations  
5 for preventing future supply shortages.

6 **SEC. 1605. STUDY OF ENERGY EFFICIENCY STANDARDS.**

7 The Secretary of Energy shall contract with the Na-  
8 tional Academy of Sciences for a study, to be completed  
9 within 1 year after the date of enactment of this Act, to  
10 examine whether the goals of energy efficiency standards  
11 are best served by measurement of energy consumed, and  
12 efficiency improvements, at the actual site of energy con-  
13 sumption, or through the full fuel cycle, beginning at the  
14 source of energy production. The Secretary shall submit  
15 the report to Congress.

16 **SEC. 1606. TELECOMMUTING STUDY.**

17 (a) STUDY REQUIRED.—The Secretary, in consulta-  
18 tion with the Commission, the Director of the Office of  
19 Personnel Management, the Administrator of General  
20 Services, and the Administrator of NTIA, shall conduct  
21 a study of the energy conservation implications of the  
22 widespread adoption of telecommuting by Federal employ-  
23 ees in the United States.

24 (b) REQUIRED SUBJECTS OF STUDY.—The study re-  
25 quired by subsection (a) shall analyze the following sub-

1 jects in relation to the energy saving potential of telecom-  
2 muting by Federal employees:

3           (1) Reductions of energy use and energy costs  
4           in commuting and regular office heating, cooling,  
5           and other operations.

6           (2) Other energy reductions accomplished by  
7           telecommuting.

8           (3) Existing regulatory barriers that hamper  
9           telecommuting, including barriers to broadband tele-  
10          communications services deployment.

11          (4) Collateral benefits to the environment, fam-  
12          ily life, and other values.

13          (c) REPORT REQUIRED.—The Secretary shall submit  
14 to the President and Congress a report on the study re-  
15 quired by this section not later than 6 months after the  
16 date of enactment of this Act. Such report shall include  
17 a description of the results of the analysis of each of the  
18 subject described in subsection (b).

19          (d) DEFINITIONS.—As used in this section:

20           (1) SECRETARY.—The term “Secretary” means  
21           the Secretary of Energy.

22           (2) COMMISSION.—The term “Commission”  
23           means the Federal Communications Commission.

1           (3) NTIA.—The term “NTIA” means the Na-  
2           tional Telecommunications and Information Admin-  
3           istration of the Department of Commerce.

4           (4) TELECOMMUTING.—The term “telecom-  
5           muting” means the performance of work functions  
6           using communications technologies, thereby elimi-  
7           nating or substantially reducing the need to com-  
8           mute to and from traditional worksites.

9           (5) FEDERAL EMPLOYEE.—The term “Federal  
10          employee” has the meaning provided the term “em-  
11          ployee” by section 2105 of title 5, United States  
12          Code.

13 **SEC. 1607. LIHEAP REPORT.**

14          Not later than 1 year after the date of enactment  
15          of this Act, the Secretary of Health and Human Services  
16          shall transmit to Congress a report on how the Low-In-  
17          come Home Energy Assistance Program could be used  
18          more effectively to prevent loss of life from extreme tem-  
19          peratures. In preparing such report, the Secretary shall  
20          consult with appropriate officials in all 50 States and the  
21          District of Columbia.

22 **SEC. 1608. OIL BYPASS FILTRATION TECHNOLOGY.**

23          The Secretary of Energy and the Administrator of  
24          the Environmental Protection Agency shall—

1           (1) conduct a joint study of the benefits of oil  
2           bypass filtration technology in reducing demand for  
3           oil and protecting the environment;

4           (2) examine the feasibility of using oil bypass  
5           filtration technology in Federal motor vehicle fleets;  
6           and

7           (3) include in such study, prior to any deter-  
8           mination of the feasibility of using oil bypass filtra-  
9           tion technology, the evaluation of products and var-  
10          ious manufacturers.

11 **SEC. 1609. TOTAL INTEGRATED THERMAL SYSTEMS.**

12          The Secretary of Energy shall—

13           (1) conduct a study of the benefits of total inte-  
14           grated thermal systems in reducing demand for oil  
15           and protecting the environment; and

16           (2) examine the feasibility of using total inte-  
17           grated thermal systems in Department of Defense  
18           and other Federal motor vehicle fleets.

19 **SEC. 1610. UNIVERSITY COLLABORATION.**

20          Not later than 2 years after the date of enactment  
21 of this Act, the Secretary of Energy shall transmit to Con-  
22 gress a report that examines the feasibility of promoting  
23 collaborations between large institutions of higher edu-  
24 cation and small institutions of higher education through  
25 grants, contracts, and cooperative agreements made by the

1 Secretary for energy projects. The Secretary shall also  
2 consider providing incentives for the inclusion of small in-  
3 stitutions of higher education, including minority-serving  
4 institutions, in energy research grants, contracts, and co-  
5 operative agreements.

6 **SEC. 1611. RELIABILITY AND CONSUMER PROTECTION AS-**  
7 **SESSMENT.**

8 Not later than 5 years after the date of enactment  
9 of this Act, and each 5 years thereafter, the Federal En-  
10 ergy Regulatory Commission shall assess the effects of the  
11 exemption of electric cooperatives and government-owned  
12 utilities from Commission regulation under section 201(f)  
13 of the Federal Power Act. The assessment shall include  
14 any effects on—

15 (1) reliability of interstate electric transmission  
16 networks;

17 (2) benefit to consumers, and efficiency, of  
18 competitive wholesale electricity markets;

19 (3) just and reasonable rates for electricity con-  
20 sumers; and

21 (4) the ability of the Commission to protect  
22 electricity consumers.

23 If the Commission finds that the 201(f) exemption results  
24 in adverse effects on consumers or electric reliability, the  
25 Commission shall make appropriate recommendations to

1 Congress pursuant to section 311 of the Federal Power  
2 Act.

3 **SEC. 1612. REPORT ON ENERGY INTEGRATION WITH LATIN**  
4 **AMERICA.**

5 The Secretary of Energy shall submit an annual re-  
6 port to the Committee on Energy and Commerce of the  
7 United States House of Representatives and to the Com-  
8 mittee on Energy and Natural Resources of the United  
9 States Senate concerning the status of energy export de-  
10 velopment in Latin America and efforts by the Secretary  
11 and other departments and agencies of the United States  
12 to promote energy integration with Latin America. The  
13 report shall contain a detailed analysis of the status of  
14 energy export development in Mexico and a description of  
15 all significant efforts by the Secretary and other depart-  
16 ments and agencies to promote a constructive relationship  
17 with Mexico regarding the development of that nation's  
18 energy capacity. In particular this report shall outline ef-  
19 forts the Secretary and other departments and agencies  
20 have made to ensure that regulatory approval and over-  
21 sight of United States/Mexico border projects that result  
22 in the expansion of Mexican energy capacity are effectively  
23 coordinated across departments and with the Mexican gov-  
24 ernment.

1 **SEC. 1613. LOW-VOLUME GAS RESERVOIR STUDY.**

2 (a) STUDY.—The Secretary of Energy shall make a  
3 grant to an organization of oil and gas producing States,  
4 specifically those containing significant numbers of mar-  
5 ginal oil and natural gas wells, for conducting an annual  
6 study of low-volume natural gas reservoirs. Such organiza-  
7 tion shall work with the State geologist of each State being  
8 studied.

9 (b) CONTENTS.—The studies under this section  
10 shall—

11 (1) determine the status and location of mar-  
12 ginal wells and gas reservoirs;

13 (2) gather the production information of these  
14 marginal wells and reservoirs;

15 (3) estimate the remaining producible reserves  
16 based on variable pipeline pressures;

17 (4) locate low-pressure gathering facilities and  
18 pipelines;

19 (5) recommend incentives which will enable the  
20 continued production of these resources;

21 (6) produce maps and literature to disseminate  
22 to States to promote conservation of natural gas re-  
23 serves; and

24 (7) evaluate the amount of natural gas that is  
25 being wasted through the practice of venting or flar-

1 ing of natural gas produced in association with  
2 crude oil well production.

3 (c) DATA ANALYSIS.—Data development and anal-  
4 ysis under this section shall be performed by an institution  
5 of higher education with GIS capabilities. If the organiza-  
6 tion receiving the grant under subsection (a) does not have  
7 GIS capabilities, such organization shall contract with one  
8 or more entities with—

9 (1) technological capabilities and resources to  
10 perform advanced image processing, GIS program-  
11 ming, and data analysis; and

12 (2) the ability to—

13 (A) process remotely sensed imagery with  
14 high spatial resolution;

15 (B) deploy global positioning systems;

16 (C) process and synthesize existing, vari-  
17 able-format gas well, pipeline, gathering facility,  
18 and reservoir data;

19 (D) create and query GIS databases with  
20 infrastructure location and attribute informa-  
21 tion;

22 (E) write computer programs to customize  
23 relevant GIS software;



1 (F) generate maps, charts, and graphs  
 2 which summarize findings from data research  
 3 for presentation to different audiences; and

4 (G) deliver data in a variety of formats, in-  
 5 cluding Internet Map Server for query and dis-  
 6 play, desktop computer display, and access  
 7 through handheld personal digital assistants.

8 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
 9 are authorized to be appropriated to the Secretary of En-  
 10 ergy for carrying out this section—

11 (1) \$1,500,000 for fiscal year 2006; and

12 (2) \$450,000 for each of the fiscal years 2007  
 13 through 2010.

14 (e) DEFINITIONS.—For purposes of this section, the  
 15 term “GIS” means geographic information systems tech-  
 16 nology that facilitates the organization and management  
 17 of data with a geographic component.

## 18 **TITLE XVII—RENEWABLE**

## 19 **ENERGY**

20 **SEC. 1701. GRANTS TO IMPROVE THE COMMERCIAL VALUE**

21 **OF FOREST BIOMASS FOR ELECTRIC ENERGY,**

22 **USEFUL HEAT, TRANSPORTATION FUELS, PE-**

23 **TROLEUM-BASED PRODUCT SUBSTITUTES,**

24 **AND OTHER COMMERCIAL PURPOSES.**

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

1           (1) Thousands of communities in the United  
2 States, many located near Federal lands, are at risk  
3 to wildfire. Approximately 190,000,000 acres of land  
4 managed by the Secretary of Agriculture and the  
5 Secretary of the Interior are at risk of catastrophic  
6 fire in the near future. The accumulation of heavy  
7 forest fuel loads continues to increase as a result of  
8 disease, insect infestations, and drought, further  
9 raising the risk of fire each year.

10           (2) In addition, more than 70,000,000 acres  
11 across all land ownerships are at risk to higher than  
12 normal mortality over the next 15 years from insect  
13 infestation and disease. High levels of tree mortality  
14 from insects and disease result in increased fire risk,  
15 loss of old growth, degraded watershed conditions,  
16 and changes in species diversity and productivity, as  
17 well as diminished fish and wildlife habitat and de-  
18 creased timber values.

19           (3) Preventive treatments such as removing fuel  
20 loading, ladder fuels, and hazard trees, planting  
21 proper species mix and restoring and protecting  
22 early successional habitat, and other specific restora-  
23 tion treatments designed to reduce the susceptibility  
24 of forest land, woodland, and rangeland to insect  
25 outbreaks, disease, and catastrophic fire present the

1 greatest opportunity for long-term forest health by  
2 creating a mosaic of species-mix and age distribu-  
3 tion. Such prevention treatments are widely acknowl-  
4 edged to be more successful and cost effective than  
5 suppression treatments in the case of insects, dis-  
6 ease, and fire.

7 (4) The byproducts of preventive treatment  
8 (wood, brush, thinnings, chips, slash, and other haz-  
9 ardous fuels) removed from forest lands, woodlands  
10 and rangelands represent an abundant supply of bio-  
11 mass for biomass-to-energy facilities and raw mate-  
12 rial for business. There are currently few markets  
13 for the extraordinary volumes of byproducts being  
14 generated as a result of the necessary large-scale  
15 preventive treatment activities.

16 (5) The United States should—

17 (A) promote economic and entrepreneurial  
18 opportunities in using byproducts removed  
19 through preventive treatment activities related  
20 to hazardous fuels reduction, disease, and insect  
21 infestation; and

22 (B) develop and expand markets for tradi-  
23 tionally underused wood and biomass as an out-  
24 let for byproducts of preventive treatment ac-  
25 tivities.

1 (b) DEFINITIONS.—In this section:

2 (1) BIOMASS.—The term “biomass” means  
3 trees and woody plants, including limbs, tops, needles,  
4 and other woody parts, and byproducts of preventive  
5 treatment, such as wood, brush, thinnings,  
6 chips, and slash, that are removed—

7 (A) to reduce hazardous fuels; or

8 (B) to reduce the risk of or to contain disease  
9 or insect infestation.

10 (2) INDIAN TRIBE.—The term “Indian tribe”  
11 has the meaning given the term in section 4(e) of  
12 the Indian Self-Determination and Education Assistance  
13 Act (25 U.S.C. 450b(e)).

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

15 (A) an individual;

16 (B) a community (as determined by the  
17 Secretary concerned);

18 (C) an Indian tribe;

19 (D) a small business, micro-business, or a  
20 corporation that is incorporated in the United  
21 States; and

22 (E) a nonprofit organization.

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

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

4 (i) has a population of not more than  
5 50,000 individuals; and

6 (ii) the Secretary concerned, in the  
7 sole discretion of the Secretary concerned,  
8 determines contains or is located near  
9 land, the condition of which is at signifi-  
10 cant risk of catastrophic wildfire, disease,  
11 or insect infestation or which suffers from  
12 disease or insect infestation; or

13 (B) any county that—

14 (i) is not contained within a metro-  
15 politan statistical area; and

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

23 (5) SECRETARY CONCERNED.—The term “Sec-  
24 retary concerned” means the Secretary of Agri-  
25 culture or the Secretary of the Interior.

1 (c) BIOMASS COMMERCIAL USE GRANT PROGRAM.—

2 (1) IN GENERAL.—The Secretary concerned  
3 may make grants to any person that owns or oper-  
4 ates a facility that uses biomass as a raw material  
5 to produce electric energy, sensible heat, transpor-  
6 tation fuels, or substitutes for petroleum-based prod-  
7 ucts to offset the costs incurred to purchase biomass  
8 for use by such facility.

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

12 (3) MONITORING OF GRANT RECIPIENT ACTIVI-  
13 TIES.—As a condition of a grant under this sub-  
14 section, the grant recipient shall keep such records  
15 as the Secretary concerned may require to fully and  
16 correctly disclose the use of the grant funds and all  
17 transactions involved in the purchase of biomass.  
18 Upon notice by a representative of the Secretary  
19 concerned, the grant recipient shall afford the rep-  
20 resentative reasonable access to the facility that pur-  
21 chases or uses biomass and an opportunity to exam-  
22 ine the inventory and records of the facility.

23 (d) IMPROVED BIOMASS USE GRANT PROGRAM.—

24 (1) IN GENERAL.—The Secretary concerned  
25 may make grants to persons to offset the cost of

1 projects to develop or research opportunities to im-  
2 prove the use of, or add value to, biomass. In mak-  
3 ing such grants, the Secretary concerned shall give  
4 preference to persons in preferred communities.

5 (2) SELECTION.—The Secretary concerned shall  
6 select a grant recipient under paragraph (1) after  
7 giving consideration to the anticipated public bene-  
8 fits of the project, including the potential to develop  
9 thermal or electric energy resources or affordable en-  
10 ergy, opportunities for the creation or expansion of  
11 small businesses and micro-businesses, and the po-  
12 tential for new job creation.

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

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

19 (f) REPORT.—Not later than October 1, 2010, the  
20 Secretary of Agriculture, in consultation with the Sec-  
21 retary of the Interior, shall submit to the Committee on  
22 Energy and Natural Resources and the Committee on Ag-  
23 riculture, Nutrition, and Forestry of the Senate and the  
24 Committee on Resources, the Committee on Energy and  
25 Commerce, and the Committee on Agriculture of the

1 House of Representatives a report describing the results  
2 of the grant programs authorized by this section. The re-  
3 port shall include the following:

4           (1) An identification of the size, type, and the  
5 use of biomass by persons that receive grants under  
6 this section.

7           (2) The distance between the land from which  
8 the biomass was removed and the facility that used  
9 the biomass.

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

13 **SEC. 1702. ENVIRONMENTAL REVIEW FOR RENEWABLE EN-**  
14 **ERGY PROJECTS.**

15           (a) COMPLIANCE WITH NEPA FOR RENEWABLE EN-  
16 ERGY PROJECTS.—Notwithstanding any other law, in pre-  
17 paring an environmental assessment or environmental im-  
18 pact statement required under section 102 of the National  
19 Environmental Policy Act of 1969 (42 U.S.C. 4332) with  
20 respect to any action authorizing a renewable energy  
21 project under the jurisdiction of a Federal agency—

22           (1) no Federal agency is required to identify al-  
23 ternative project locations or actions other than the  
24 proposed action and the no action alternative; and



1           (2) no Federal agency is required to analyze the  
2           environmental effects of alternative locations or ac-  
3           tions other than those submitted by the project pro-  
4           ponent.

5           (b) CONSIDERATION OF ALTERNATIVES.—In any en-  
6           vironmental assessment or environmental impact state-  
7           ment referred to in subsection (a), the Federal agency  
8           shall only identify and analyze the environmental effects  
9           and potential mitigation measures of—

10           (1) the proposed action; and

11           (2) the no action alternative.

12           (c) PUBLIC COMMENT.—In preparing an environ-  
13           mental assessment or environmental impact statement re-  
14           ferred to in subsection (a), the Federal agency shall only  
15           consider public comments that specifically address the pre-  
16           ferred action and that are filed within 20 days after publi-  
17           cation of a draft environmental assessment or draft envi-  
18           ronmental impact statement. Notwithstanding any other  
19           law, compliance with this subsection is deemed to satisfy  
20           section 102(2) of the National Environmental Policy Act  
21           of 1969 (42 U.S.C. 4332(2)) and the applicable regula-  
22           tions and administrative guidelines with respect to pro-  
23           posed renewable energy projects.

1 (d) RENEWABLE ENERGY PROJECT DEFINED.—For  
2 purposes of this section, the term “renewable energy  
3 project”—

4 (1) means any proposal to utilize an energy  
5 source other than nuclear power, coal, oil, or natural  
6 gas; and

7 (2) includes the use of wind, solar, geothermal,  
8 biomass, or tidal forces to generate energy.

9 **SEC. 1703. SENSE OF CONGRESS REGARDING GENERATION**  
10 **CAPACITY OF ELECTRICITY FROM RENEW-**  
11 **ABLE ENERGY RESOURCES ON PUBLIC**  
12 **LANDS.**

13 It is the sense of the Congress that the Secretary of  
14 the Interior should, before the end of the 10-year period  
15 beginning on the date of enactment of this Act, seek to  
16 have approved non-hydropower renewable energy projects  
17 located on the public lands with a generation capacity of  
18 at least 10,000 megawatts of electricity.

19 **TITLE XVIII—GEOTHERMAL**  
20 **ENERGY**

21 **SEC. 1801. SHORT TITLE.**

22 This title may be cited as the “John Rishel Geo-  
23 thermal Steam Act Amendments of 2005”.

1 **SEC. 1802. COMPETITIVE LEASE SALE REQUIREMENTS.**

2 Section 4 of the Geothermal Steam Act of 1970 (30  
3 U.S.C. 1003) is amended to read as follows:

4 **“SEC. 4. LEASING PROCEDURES.**

5 “(a) **NOMINATIONS.**—The Secretary shall accept  
6 nominations of lands available for leasing at any time from  
7 qualified companies and individuals under this Act.

8 “(b) **COMPETITIVE LEASE SALE REQUIRED.**—The  
9 Secretary shall hold a competitive lease sale at least once  
10 every 2 years for lands in a State which has nominations  
11 pending under subsection (a) if such lands are otherwise  
12 available for leasing. Lands that are subject to a mining  
13 claim for which a plan of operations has been approved  
14 by the relevant Federal land management agency are not  
15 available for competitive leasing.

16 “(c) **NONCOMPETITIVE LEASING.**—

17 “(1) **REQUIREMENT.**—The Secretary shall  
18 make available for a period of 2 years for non-  
19 competitive leasing any tract for which a competitive  
20 lease sale is held, but for which the Secretary does  
21 not receive any bids in a competitive lease sale.

22 “(2) **STATES WITHOUT NOMINATIONS.**—In any  
23 State for which there are no nominations received  
24 under subsection (a) and having a total acreage  
25 under lease or the subject of an application for lease  
26 of less than 10,000 acres, the Secretary may des-

1       ignite lands available for 2 years for noncompetitive  
2       leasing.

3       “(d) LEASES SOLD AS A BLOCK.—If information is  
4       available to the Secretary indicating a geothermal resource  
5       that could be produced as 1 unit can reasonably be ex-  
6       pected to underlie more than 1 parcel to be offered in a  
7       competitive lease sale, the parcels for such a resource may  
8       be offered for bidding as a block in the competitive lease  
9       sale.

10       “(e) AREA SUBJECT TO LEASE FOR GEOTHERMAL  
11       RESOURCES.—A geothermal lease for the use of geo-  
12       thermal resources shall embrace not more than the  
13       amount of acreage determined by the Secretary to be ap-  
14       propriate.”.

15       **SEC. 1803. DIRECT USE.**

16       (a) FEES FOR DIRECT USE.—Section 5 of the Geo-  
17       thermal Steam Act of 1970 (30 U.S.C. 1004) is amend-  
18       ed—

19               (1) in paragraph (c) by redesignating subpara-  
20               graphs (1) and (2) as subparagraphs (A) and (B);

21               (2) by redesignating paragraphs (a) through (d)  
22               in order as paragraphs (1) through (4);

23               (3) by inserting “(a) IN GENERAL.—” after  
24               “SEC. 5.”; and

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

1 “(b) FEES FOR DIRECT USE.—

2 “(1) IN GENERAL.—Notwithstanding subsection  
3 (a)(1), with respect to the direct use of geothermal  
4 resources for purposes other than the commercial  
5 generation of electricity, the Secretary of the Inte-  
6 rior shall establish a schedule of fees and collect fees  
7 pursuant to such a schedule in lieu of royalties. Not-  
8 withstanding section 102(a)(9) of the Federal Land  
9 Policy and Management Act of 1976 (43 U.S.C.  
10 1701(a)(9)), the schedule of fees shall be based upon  
11 comparable non-Federal fees charged for direct use  
12 of geothermal resources within the State concerned.  
13 For direct use by a State or local government for  
14 public purposes, the fee charged shall be nominal.  
15 Leases in existence on the date of enactment of this  
16 subsection shall be modified in order to reflect the  
17 provisions of this subsection.

18 “(2) FINAL REGULATION.—In issuing any final  
19 regulation establishing a schedule of fees under this  
20 subsection, the Secretary shall seek—

21 “(A) to provide lessees with a simplified  
22 administrative system;

23 “(B) to encourage development of this un-  
24 derutilized energy resource on the Federal es-  
25 tate; and

1                   “(C) to contribute to sustainable economic  
2                   development opportunities for host commu-  
3                   nities.”.

4           (b) LEASING FOR DIRECT USE.—Section 4 of the  
5 Geothermal Steam Act of 1970 (30 U.S.C. 1003) is fur-  
6 ther amended by adding at the end the following:

7           “(f) LEASING FOR DIRECT USE OF GEOTHERMAL  
8 RESOURCES.—Lands leased under this Act exclusively for  
9 direct use of geothermal resources shall be leased to any  
10 qualified applicant who first applies for such a lease under  
11 regulations issued by the Secretary, if—

12                   “(1) the Secretary publishes a notice of the  
13                   lands proposed for leasing 60 days before the date  
14                   of the issuance of the lease; and

15                   “(2) the Secretary does not receive in the 60-  
16                   day period beginning on the date of such publication  
17                   any nomination to include the lands concerned in the  
18                   next competitive lease sale.

19           “(g) AREA SUBJECT TO LEASE FOR DIRECT USE.—  
20 A geothermal lease for the direct use of geothermal re-  
21 sources shall embrace not more than the amount of acre-  
22 age determined by the Secretary to be reasonably nec-  
23 essary for such proposed utilization.”.

24           (c) EXISTING LEASES WITH A DIRECT USE FACIL-  
25 ITY.—

1           (1) APPLICATION TO CONVERT.—Any lessee  
2           under a lease under the Geothermal Steam Act of  
3           1970 that was issued before the date of enactment  
4           of this Act may apply to the Secretary of the Inte-  
5           rior, by not later than 18 months after the date of  
6           enactment of this Act, to convert such lease to a  
7           lease for direct utilization of geothermal resources in  
8           accordance with the amendments made by this sec-  
9           tion.

10           (2) CONVERSION.—The Secretary shall approve  
11           such an application and convert such a lease to a  
12           lease in accordance with the amendments by not  
13           later than 180 days after receipt of such application,  
14           unless the Secretary determines that the applicant is  
15           not a qualified applicant with respect to the lease.

16           (3) APPLICATION OF NEW LEASE TERMS.—The  
17           schedule of fees established under the amendment  
18           made by subsection (a)(4) shall apply with respect to  
19           payments under a lease converted under this sub-  
20           section that are due and owing to the United States  
21           on or after July 16, 2003.

22 **SEC. 1804. ROYALTIES AND NEAR-TERM PRODUCTION IN-**  
23 **CENTIVES.**

24           (a) ROYALTY.—Section 5 of the Geothermal Steam  
25 Act of 1970 (30 U.S.C. 1004) is further amended—

1           (1) in subsection (a) by striking paragraph (1)  
2           and inserting the following:

3           “(1) a royalty on electricity produced using geo-  
4           thermal resources, other than direct use of geo-  
5           thermal resources, that shall be—

6                   “(A) not less than 1 percent and not more  
7                   than 2.5 percent of the gross proceeds from the  
8                   sale of electricity produced from such resources  
9                   during the first 10 years of production under  
10                  the lease; and

11                   “(B) not less than 2 and not more than 5  
12                   percent of the gross proceeds from the sale of  
13                   electricity produced from such resources during  
14                   each year after such 10-year period;” and

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

16           “(c) FINAL REGULATION ESTABLISHING ROYALTY  
17           RATES.—In issuing any final regulation establishing roy-  
18           alty rates under this section, the Secretary shall seek—

19                   “(1) to provide lessees a simplified administra-  
20                   tive system;

21                   “(2) to encourage new development;

22                   “(3) to achieve the same long-term level of roy-  
23                   alty revenues to States and counties as the regula-  
24                   tion in effect on the date of enactment of this sub-  
25                   section; and



1           “(4) to reflect any change in profitability of op-  
2           erations for which royalties will be paid due to the  
3           requirements imposed by Federal agencies, including  
4           delays.

5           “(d) CREDITS FOR IN-KIND PAYMENTS OF ELEC-  
6           TRICITY.—The Secretary may provide to a lessee a credit  
7           against royalties owed under this Act, in an amount equal  
8           to the value of electricity provided under contract to a  
9           State or county government that is entitled to a portion  
10          of such royalties under section 20 of this Act, section 35  
11          of the Mineral Leasing Act (30 U.S.C. 191), or section  
12          6 of the Mineral Leasing Act for Acquired Lands (30  
13          U.S.C. 355), if—

14                 “(1) the Secretary has approved in advance the  
15                 contract between the lessee and the State or county  
16                 government for such in-kind payments;

17                 “(2) the contract establishes a specific method-  
18                 ology to determine the value of such credits; and

19                 “(3) the maximum credit will be equal to the  
20                 royalty value owed to the State or county that is a  
21                 party to the contract and the electricity received will  
22                 serve as the royalty payment from the Federal Gov-  
23                 ernment to that entity.”.

24           (b) DISPOSAL OF MONEYS FROM SALES, BONUSES,  
25           ROYALTIES, AND RENTS.—Section 20 of the Geothermal

1 Steam Act of 1970 (30 U.S.C. 1019) is amended to read  
2 as follows:

3 **“SEC. 20. DISPOSAL OF MONEYS FROM SALES, BONUSES,**  
4 **RENTALS, AND ROYALTIES.**

5 “(a) IN GENERAL.—Except with respect to lands in  
6 the State of Alaska, all monies received by the United  
7 States from sales, bonuses, rentals, and royalties under  
8 this Act shall be paid into the Treasury of the United  
9 States. Of amounts deposited under this subsection, sub-  
10 ject to the provisions of section 35 of the Mineral Leasing  
11 Act (30 U.S.C. 191(b)) and section 5(a)(2) of this Act—

12 “(1) 50 percent shall be paid to the State with-  
13 in the boundaries of which the leased lands or geo-  
14 thermal resources are or were located; and

15 “(2) 25 percent shall be paid to the County  
16 within the boundaries of which the leased lands or  
17 geothermal resources are or were located.

18 “(b) USE OF PAYMENTS.—Amounts paid to a State  
19 or county under subsection (a) shall be used consistent  
20 with the terms of section 35 of the Mineral Leasing Act  
21 (30 U.S.C. 191).”.

22 (c) NEAR-TERM PRODUCTION INCENTIVE FOR EX-  
23 ISTING LEASES.—

24 (1) IN GENERAL.—Notwithstanding section  
25 5(a) of the Geothermal Steam Act of 1970, the roy-

1 alty required to be paid shall be 50 percent of the  
2 amount of the royalty otherwise required, on any  
3 lease issued before the date of enactment of this Act  
4 that does not convert to new royalty terms under  
5 subsection (e)—

6 (A) with respect to commercial production  
7 of energy from a facility that begins such pro-  
8 duction in the 6-year period beginning on the  
9 date of enactment of this Act; or

10 (B) on qualified expansion geothermal en-  
11 ergy.

12 (2) 4-YEAR APPLICATION.—Paragraph (1) ap-  
13 plies only to new commercial production of energy  
14 from a facility in the first 4 years of such produc-  
15 tion.

16 (d) DEFINITION OF QUALIFIED EXPANSION GEO-  
17 THERMAL ENERGY.—In this section, the term “qualified  
18 expansion geothermal energy” means geothermal energy  
19 produced from a generation facility for which—

20 (1) the production is increased by more than 10  
21 percent as a result of expansion of the facility car-  
22 ried out in the 6-year period beginning on the date  
23 of enactment of this Act; and

24 (2) such production increase is greater than 10  
25 percent of the average production by the facility dur-

1       ing the 5-year period preceding the expansion of the  
2       facility (as such average is adjusted to reflect any  
3       trend, in changes in production during that period).

4       (e) ROYALTY UNDER EXISTING LEASES.—

5           (1) IN GENERAL.—Any lessee under a lease  
6       issued under the Geothermal Steam Act of 1970 be-  
7       fore the date of enactment of this Act may modify  
8       the terms of the lease relating to payment of royal-  
9       ties to comply with the amendment made by sub-  
10      section (a), by applying to the Secretary of the Inte-  
11      rior by not later than 18 months after the date of  
12      enactment of this Act.

13          (2) APPLICATION OF MODIFICATION.—Such  
14      modification shall apply to any use of geothermal re-  
15      sources to which the amendment applies that occurs  
16      after the date of that application.

17          (3) CONSULTATION.—The Secretary—

18           (A) shall consult with the State and local  
19      governments affected by any proposed changes  
20      in lease royalty terms under this subsection;  
21      and

22           (B) may establish royalty based on a gross  
23      proceeds percentage within the range specified  
24      in the amendment made by subsection (a)(1)

1           and with the concurrence of the lessee and the  
2           State.

3 **SEC. 1805. EXPEDITING ADMINISTRATIVE ACTION FOR GEO-**  
4 **THERMAL LEASING.**

5           (a) TREATMENT OF GEOTHERMAL LEASING WITH  
6 RESPECT TO FEDERAL LAND MANAGEMENT PLAN RE-  
7 QUIREMENTS.—Section 15 of the Geothermal Steam Act  
8 of 1970 (30 U.S.C. 1014) is amended by adding at the  
9 end the following:

10           “(d) TREATMENT OF GEOTHERMAL LEASING UNDER  
11 FEDERAL LAND MANAGEMENT PLANS.—Geothermal  
12 leasing and development of Federal lands in accordance  
13 with this Act is deemed to be consistent with the manage-  
14 ment of National Forest System lands under section 6 of  
15 the Forest and Rangeland Renewable Resources Planning  
16 Act of 1974 (16 U.S.C. 1604) and public lands under sec-  
17 tion 202 of the Federal Land Policy and Management Act  
18 of 1976 (43 U.S.C. 1712). Land and resource manage-  
19 ment plans and land use plans in effect under such sec-  
20 tions on the date of the enactment of this subsection are  
21 deemed to be adequate to proceed with the issuance of  
22 leases under this Act.”.

23           (b) LEASE APPLICATIONS PENDING ON JANUARY 1,  
24 2005.—

1           (1) PRIORITY.—It shall be a priority for the  
2           Secretary of the Interior, and for the Secretary of  
3           Agriculture with respect to National Forest Systems  
4           lands, to ensure timely completion of administrative  
5           actions necessary to process applications for geo-  
6           thermal leasing pending on January 1, 2005.

7           (2) APPLICABLE LAW.—An application referred  
8           to in paragraph (1), and any lease issued pursuant  
9           to such an application—

10                   (A) except as provided in subparagraph  
11                   (B), shall be subject to this section as in effect  
12                   on January 1, 2005; or

13                   (B) at the election of the applicant, shall  
14                   be subject to this section as in effect on the ef-  
15                   fective date of this paragraph.

16 **SEC. 1806. COORDINATION OF GEOTHERMAL LEASING AND**  
17 **PERMITTING ON FEDERAL LANDS.**

18           (a) IN GENERAL.—Not later than 180 days after the  
19           date of enactment of this section, the Secretary of the In-  
20           terior and the Secretary of Agriculture shall enter into and  
21           submit to Congress a memorandum of understanding in  
22           accordance with this section, the Geothermal Steam Act  
23           of 1970 (as amended by this Act), and other applicable  
24           laws, regarding coordination of leasing and permitting for

1 geothermal development of public lands and National For-  
2 est System lands under their respective jurisdictions.

3 (b) LEASE AND PERMIT APPLICATIONS.—The memo-  
4 randum of understanding shall—

5 (1) establish an administrative procedure for  
6 processing geothermal lease applications, including  
7 lines of authority, steps in application processing,  
8 and time limits for application procession;

9 (2) establish a 5-year program for geothermal  
10 leasing of lands in the National Forest System, and  
11 a process for updating that program every 5 years;  
12 and

13 (3) establish a program for reducing the back-  
14 log of geothermal lease application pending on Janu-  
15 ary 1, 2005, by 90 percent within the 5-year period  
16 beginning on the date of enactment of this Act, in-  
17 cluding, as necessary, by—

18 (A) issuing leases, rejecting lease applica-  
19 tions for failure to comply with the provisions  
20 of the regulations under which they were filed,  
21 or determining that an original applicant (or  
22 the applicant's assigns, heirs, or estate) is no  
23 longer interested in pursuing the lease applica-  
24 tion;

1           (B) making diligent efforts to directly con-  
2           tact the lease applicants (including their heirs,  
3           assigns, or estates); and

4           (C) ensuring that no lease application is  
5           rejected except in compliance with all require-  
6           ments regarding diligent direct contact.

7           (c) DATA RETRIEVAL SYSTEM.—The memorandum  
8           of understanding shall establish a joint data retrieval sys-  
9           tem that is capable of tracking lease and permit applica-  
10          tions and providing to the applicant information as to  
11          their status within the Departments of the Interior and  
12          Agriculture, including an estimate of the time required for  
13          administrative action.

14       **SEC. 1807. REVIEW AND REPORT TO CONGRESS.**

15          The Secretary of the Interior shall promptly review  
16          and report to Congress not later than 3 years after the  
17          date of enactment of this Act regarding the status of all  
18          withdrawals from leasing under the Geothermal Steam Act  
19          of 1970 (30 U.S.C. 1001 et seq.) of Federal lands, speci-  
20          fying for each such area whether the basis for such with-  
21          drawal still applies.



1 **SEC. 1808. REIMBURSEMENT FOR COSTS OF NEPA ANAL-**  
2 **YSES, DOCUMENTATION, AND STUDIES.**

3 (a) IN GENERAL.—The Geothermal Steam Act of  
4 1970 (30 U.S.C. 1001 et seq.) is amended by adding at  
5 the end the following:

6 **“SEC. 30. REIMBURSEMENT FOR COSTS OF CERTAIN ANAL-**  
7 **YSES, DOCUMENTATION, AND STUDIES.**

8 “(a) IN GENERAL.—The Secretary of the Interior  
9 shall issue regulations under which the Secretary shall re-  
10 imburse a person that is a lessee, operator, operating  
11 rights owner, or applicant for any lease under this Act  
12 for reasonable amounts paid by the person for preparation  
13 for the Secretary by a contractor or other person selected  
14 by the Secretary of any project-level analysis, documenta-  
15 tion, or related study required pursuant to the National  
16 Environmental Policy Act of 1969 (42 U.S.C. 4321 et  
17 seq.) with respect to the lease.

18 “(b) CONDITIONS.—The Secretary may provide reim-  
19 bursement under subsection (a) only if—

20 “(1) adequate funding to enable the Secretary  
21 to timely prepare the analysis, documentation, or re-  
22 lated study is not appropriated;

23 “(2) the person paid the costs voluntarily;

24 “(3) the person maintains records of its costs  
25 in accordance with regulations issued by the Sec-  
26 retary;

1           “(4) the reimbursement is in the form of a re-  
2           duction in the Federal share of the royalty required  
3           to be paid for the lease for which the analysis, docu-  
4           mentation, or related study is conducted, and is  
5           agreed to by the Secretary and the person reim-  
6           bursed prior to commencing the analysis, docu-  
7           mentation, or related study; and

8           “(5) the agreement required under paragraph  
9           (4) contains provisions—

10                   “(A) reducing royalties owed on lease pro-  
11                   duction based on market prices;

12                   “(B) stipulating an automatic termination  
13                   of the royalty reduction upon recovery of docu-  
14                   mented costs; and

15                   “(C) providing a process by which the les-  
16                   see may seek reimbursement for circumstances  
17                   in which production from the specified lease is  
18                   not possible.”.

19           (b) APPLICATION.—The amendment made by this  
20           section shall apply with respect to an analysis, documenta-  
21           tion, or a related study conducted on or after the date  
22           of enactment of this Act for any lease entered into before,  
23           on, or after the date of enactment of this Act.

24           (c) DEADLINE FOR REGULATIONS.—The Secretary  
25           shall issue regulations implementing the amendment made

1 by this section by not later than 1 year after the date  
2 of enactment of this Act.

3 **SEC. 1809. ASSESSMENT OF GEOTHERMAL ENERGY POTEN-**  
4 **TIAL.**

5 The Secretary of Interior, acting through the Direc-  
6 tor of the United States Geological Survey and in coopera-  
7 tion with the States, shall update the 1978 Assessment  
8 of Geothermal Resources, and submit that updated assess-  
9 ment to Congress—

10 (1) not later than 3 years after the date of en-  
11 actment of this Act; and

12 (2) thereafter as the availability of data and de-  
13 velopments in technology warrant.

14 **SEC. 1810. COOPERATIVE OR UNIT PLANS.**

15 Section 18 of the Geothermal Steam Act of 1970 (30  
16 U.S.C. 1017) is amended to read as follows:

17 **“SEC. 18. UNIT AND COMMUNITIZATION AGREEMENTS.**

18 **“(a) ADOPTION OF UNITS BY LESSEES.—**

19 **“(1) IN GENERAL.—**For the purpose of more  
20 properly conserving the natural resources of any  
21 geothermal reservoir, field, or like area, or any part  
22 thereof (whether or not any part of the geothermal  
23 field, or like area, is then subject to any Unit Agree-  
24 ment (cooperative plan of development or oper-  
25 ation)), lessees thereof and their representatives may

1 unite with each other, or jointly or separately with  
2 others, in collectively adopting and operating under  
3 a Unit Agreement for such field, or like area, or any  
4 part thereof including direct use resources, if deter-  
5 mined and certified by the Secretary to be necessary  
6 or advisable in the public interest. A majority inter-  
7 est of lessees under any single lease shall have the  
8 authority to commit that lease to a Unit Agreement.  
9 The Secretary of the Interior may also initiate the  
10 formation of a Unit Agreement, if such action is in  
11 the public interest.

12 “(2) MODIFICATION OF LEASE REQUIREMENTS  
13 BY SECRETARY.—The Secretary may, in the discre-  
14 tion of the Secretary, and with the consent of the  
15 holders of leases involved, establish, alter, change, or  
16 revoke rates of operations (including drilling, oper-  
17 ations, production, and other requirements) of such  
18 leases and make conditions with reference to such  
19 leases, with the consent of the lessees, in connection  
20 with the creation and operation of any such Unit  
21 Agreement as the Secretary may deem necessary or  
22 proper to secure the proper protection of the public  
23 interest. Leases with unlike lease terms or royalty  
24 rates do not need to be modified to be in the same  
25 unit.

1       “(b) REQUIREMENT OF PLANS UNDER NEW  
2 LEASES.—The Secretary—

3           “(1) may provide that geothermal leases issued  
4 under this Act shall contain a provision requiring  
5 the lessee to operate under such a reasonable Unit  
6 Agreement; and

7           “(2) may prescribe such an Agreement under  
8 which such lessee shall operate, which shall ade-  
9 quately protect the rights of all parties in interest,  
10 including the United States.

11       “(c) MODIFICATION OF RATE OF PROSPECTING, DE-  
12 VELOPMENT, AND PRODUCTION.—The Secretary may re-  
13 quire that any Agreement authorized by this section that  
14 applies to lands owned by the United States contain a pro-  
15 vision under which authority is vested in the Secretary,  
16 or any person, committee, or State or Federal officer or  
17 agency as may be designated in the Agreement to alter  
18 or modify from time to time the rate of prospecting and  
19 development and the quantity and rate of production  
20 under such an Agreement.

21       “(d) EXCLUSION FROM DETERMINATION OF HOLD-  
22 ING OR CONTROL.—Any lands that are subject to any  
23 Agreement approved or prescribed by the Secretary under  
24 this section shall not be considered in determining hold-  
25 ings or control under any provision of this Act.

1       “(e) POOLING OF CERTAIN LANDS.—If separate  
2 tracts of lands cannot be independently developed and op-  
3 erated to use geothermal resources pursuant to any sec-  
4 tion of this Act—

5           “(1) such lands, or a portion thereof, may be  
6 pooled with other lands, whether or not owned by  
7 the United States, for purposes of development and  
8 operation under a Communitization Agreement pro-  
9 viding for an apportionment of production or royalti-  
10 ties among the separate tracts of land comprising  
11 the production unit, if such pooling is determined by  
12 the Secretary to be in the public interest; and

13           “(2) operation or production pursuant to such  
14 an Agreement shall be treated as operation or pro-  
15 duction with respect to each tract of land that is  
16 subject to the agreement.

17       “(f) UNIT AGREEMENT REVIEW.—No more than 5  
18 years after approval of any cooperative or Unit Agreement  
19 and at least every 5 years thereafter, the Secretary shall  
20 review each such Agreement and, after notice and oppor-  
21 tunity for comment, eliminate from inclusion in such  
22 Agreement any lands that the Secretary determines are  
23 not reasonably necessary for Unit operations under the  
24 Agreement. Such elimination shall be based on scientific  
25 evidence, and shall occur only if it is determined by the

1 Secretary to be for the purpose of conserving and properly  
2 managing the geothermal resource. Any land so eliminated  
3 shall be eligible for an extension under subsection (g) of  
4 section 6 if it meets the requirements for such an exten-  
5 sion.

6       “(g) DRILLING OR DEVELOPMENT CONTRACTS.—  
7 The Secretary may, on such conditions as the Secretary  
8 may prescribe, approve drilling or development contracts  
9 made by 1 or more lessees of geothermal leases, with 1  
10 or more persons, associations, or corporations if, in the  
11 discretion of the Secretary, the conservation of natural re-  
12 sources or the public convenience or necessity may require  
13 or the interests of the United States may be best served  
14 thereby. All leases operated under such approved drilling  
15 or development contracts, and interests thereunder, shall  
16 be excepted in determining holdings or control under sec-  
17 tion 7.

18       “(h) COORDINATION WITH STATE GOVERNMENTS.—  
19 The Secretary shall coordinate unitization and pooling ac-  
20 tivities with the appropriate State agencies and shall en-  
21 sure that State leases included in any unitization or pool-  
22 ing arrangement are treated equally with Federal leases.”.

1 **SEC. 1811. ROYALTY ON BYPRODUCTS.**

2 Section 5 of the Geothermal Steam Act of 1970 (30  
3 U.S.C. 1004) is further amended in subsection (a) by  
4 striking paragraph (2) and inserting the following:

5 “(2) a royalty on any byproduct that is a min-  
6 eral named in the first section of the Mineral Leas-  
7 ing Act (30 U.S.C. 181), and that is derived from  
8 production under the lease, at the rate of the royalty  
9 that applies under that Act to production of such  
10 mineral under a lease under that Act;”.

11 **SEC. 1812. REPEAL OF AUTHORITIES OF SECRETARY TO RE-**  
12 **ADJUST TERMS, CONDITIONS, RENTALS, AND**  
13 **ROYALTIES.**

14 Section 8 of the Geothermal Steam Act of 1970 (30  
15 U.S.C. 1007) is amended by repealing subsection (b), and  
16 by redesignating subsection (c) as subsection (b).

17 **SEC. 1813. CREDITING OF RENTAL TOWARD ROYALTY.**

18 Section 5 of the Geothermal Steam Act of 1970 (30  
19 U.S.C. 1004) is further amended—

20 (1) in subsection (a)(2) by inserting “and”  
21 after the semicolon at the end;

22 (2) in subsection (a)(3) by striking “; and” and  
23 inserting a period;

24 (3) by striking paragraph (4) of subsection (a);  
25 and

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



1       “(e) CREDITING OF RENTAL TOWARD ROYALTY.—  
 2 Any annual rental under this section that is paid with re-  
 3 spect to a lease before the first day of the year for which  
 4 the annual rental is owed shall be credited to the amount  
 5 of royalty that is required to be paid under the lease for  
 6 that year.”.

7 **SEC. 1814. LEASE DURATION AND WORK COMMITMENT RE-**  
 8 **QUIREMENTS.**

9       Section 6 of the Geothermal Steam Act of 1970 (30  
 10 U.S.C. 1005) is amended—

11           (1) by striking so much as precedes subsection  
 12       (e), and striking subsections (e), (g), (h), (i), and  
 13       (j);

14           (2) by redesignating subsections (c), (d), and  
 15       (f) in order as subsections (g), (h), and (i); and

16           (3) by inserting before subsection (g), as so re-  
 17       designated, the following:

18 **“SEC. 6. LEASE TERM AND WORK COMMITMENT REQUIRE-**  
 19 **MENTS.**

20       “(a) IN GENERAL.—

21           “(1) PRIMARY TERM.—A geothermal lease shall  
 22       be for a primary term of 10 years.

23           “(2) INITIAL EXTENSION.—The Secretary shall  
 24       extend the primary term of a geothermal lease for

1       5 years if, for each year after the fifth year of the  
2       lease—

3               “(A) the Secretary determined under sub-  
4               section (c) that the lessee satisfied the work  
5               commitment requirements that applied to the  
6               lease for that year; or

7               “(B) the lessee paid in accordance with  
8               subsection (d) the value of any work that was  
9               not completed in accordance with those require-  
10              ments.

11             “(3) ADDITIONAL EXTENSION.—The Secretary  
12             shall extend the primary term of a geothermal lease  
13             (after an initial extension under paragraph (2)) for  
14             an additional 5 years if, for each year of the initial  
15             extension under paragraph (2), the Secretary deter-  
16             mined under subsection (c) that the lessee satisfied  
17             the work commitment requirements that applied to  
18             the lease for that year.

19             “(b) REQUIREMENT TO SATISFY ANNUAL WORK  
20             COMMITMENT REQUIREMENT.—

21             “(1) IN GENERAL.—The lessee for a geothermal  
22             lease shall, for each year after the fifth year of the  
23             lease, satisfy work commitment requirements pre-  
24             scribed by the Secretary that apply to the lease for  
25             that year.

1           “(2) PRESCRIPTION OF WORK COMMITMENT RE-  
2           QUIREMENTS.—The Secretary shall issue regulations  
3           prescribing minimum equivalent dollar value work  
4           commitment requirements for geothermal leases,  
5           that—

6                   “(A) require that a lessee, in each year  
7                   after the fifth year of the primary term of a  
8                   geothermal lease, diligently work to achieve  
9                   commercial utilization of geothermal resources  
10                  under the lease;

11                  “(B) describe work that qualifies to meet  
12                  these requirements and factors, such as force  
13                  majeure events, that suspend or modify the  
14                  work commitment obligation;

15                  “(C) carry forward and apply to work com-  
16                  mitment requirements for a year, work com-  
17                  pleted in any year in the preceding 3-year pe-  
18                  riod that was in excess of the work required to  
19                  be performed in that preceding year;

20                  “(D) establish transition rules for leases  
21                  issued before the date of the enactment of this  
22                  subsection, including terms under which a lease  
23                  that is near the end of its term on the date of  
24                  enactment of this subsection may be extended  
25                  for up to 2 years—

1                   “(i) to allow achievement of produc-  
2                   tion under the lease; or

3                   “(ii) to allow the lease to be included  
4                   in a producing unit; and

5                   “(E) establish an annual payment that, at  
6                   the option of the lessee, may be exercised in lieu  
7                   of meeting any work requirement for a limited  
8                   number of years that the Secretary determines  
9                   will not impair achieving diligent development  
10                  of the geothermal resource.

11                  “(3) GEOTHERMAL LEASE OVERLYING MINING  
12                  CLAIM.—

13                   “(A) EXEMPTION.—The lessee for a geo-  
14                   thermal lease of an area overlying an area sub-  
15                   ject to a mining claim for which a plan of oper-  
16                   ations has been approved by the relevant Fed-  
17                   eral land management agency is exempt from  
18                   annual work requirements established under  
19                   this Act, if development of the geothermal re-  
20                   source subject to the lease would interfere with  
21                   the mining operations under such claim.

22                   “(B) TERMINATION OF EXEMPTION.—An  
23                   exemption under this paragraph expires upon  
24                   the termination of the mining operations.

1           “(4) TERMINATION OF APPLICATION OF RE-  
2           QUIREMENTS.—Work commitment requirements pre-  
3           scribed under this subsection shall not apply to a  
4           geothermal lease after the date on which the geo-  
5           thermal resource is utilized under the lease in com-  
6           mercial quantities.

7           “(c) DETERMINATION OF WHETHER REQUIREMENTS  
8           SATISFIED.—The Secretary shall, by not later than 90  
9           days after the end of each year for which work commit-  
10          ment requirements under subsection (b) apply to a geo-  
11          thermal lease—

12           “(1) determine whether the lessee has satisfied  
13          the requirements that apply for that year;

14           “(2) notify the lessee of that determination; and

15           “(3) in the case of a notification that the lessee  
16          did not satisfy work commitment requirements for  
17          the year, include in the notification—

18           “(A) a description of the specific work that  
19          was not completed by the lessee in accordance  
20          with the requirements; and

21           “(B) the amount of the dollar value of  
22          such work that was not completed, reduced by  
23          the amount of expenditures made for work com-  
24          pleted in a prior year that is carried forward  
25          pursuant to subsection (b)(2)(D).

1       “(d) PAYMENT OF VALUE OF UNCOMPLETED  
2 WORK.—

3           “(1) IN GENERAL.—If the Secretary notifies a  
4 lessee that the lessee failed to satisfy work commit-  
5 ment requirements under subsection (b), the lessee  
6 shall pay to the Secretary, by not later than the end  
7 of the 60-day period beginning on the date of the  
8 notification, the dollar value of work that was not  
9 completed by the lessee, in the amount stated in the  
10 notification (as reduced under subsection (c)(3)(B)).

11           “(2) FAILURE TO PAY VALUE OF  
12 UNCOMPLETED WORK.—If a lessee fails to pay such  
13 amount to the Secretary before the end of that pe-  
14 riod, the lease shall terminate upon the expiration of  
15 the period.

16       “(e) CONTINUATION DURING COMMERCIAL UTILIZA-  
17 TION.—

18           “(1) IN GENERAL.—If a geothermal resource  
19 that is subject to a geothermal lease is utilized in  
20 commercial quantities within the primary term of  
21 the lease under subsection (a) (including any exten-  
22 sion of the lease under subsection (a)), such lease  
23 shall continue until the date on which the geo-  
24 thermal resource is no longer utilized in commercial  
25 quantities.

1           “(2) CONTINUATION OF ASSOCIATED LEASES.—

2           If a geothermal lease is for an area in which there  
3           is injected fluid or steam from a nearby geothermal  
4           resource for the purpose of maintaining commercial  
5           utilization of a geothermal resource, such lease shall  
6           continue until such commercial utilization is termi-  
7           nated.

8           “(f) CONVERSION OF GEOTHERMAL LEASE TO MIN-  
9           ERAL LEASE.—A lessee under a lease for a geothermal  
10          resource that has been utilized for commercial production  
11          of electricity, has been determined by the Secretary to be  
12          incapable of any further commercial utilization, and is  
13          producing any valuable byproduct in payable quantities  
14          may, within 6 months after such determination—

15                 “(1) convert the lease to a mineral lease under  
16                 the Mineral Leasing Act (30 U.S.C. 181 et seq.) or  
17                 under the Mineral Leasing Act for Acquired Lands  
18                 (30 U.S.C. 351 et seq.), if the lands that are subject  
19                 to the lease can be leased under that Act for the  
20                 production of such byproduct; or

21                 “(2) convert the lease to a mining claim under  
22                 the general mining laws, if the byproduct is a  
23                 locatable mineral.”.

1 **SEC. 1815. ADVANCED ROYALTIES REQUIRED FOR SUSPEN-**  
2 **SION OF PRODUCTION.**

3 Section 5 of the Geothermal Steam Act of 1970 (30  
4 U.S.C. 1004) is further amended by adding at the end  
5 the following:

6 “(f) **ADVANCED ROYALTIES REQUIRED FOR SUSPEN-**  
7 **SION OF PRODUCTION.—**

8 “(1) **CONTINUATION OF LEASE FOLLOWING**  
9 **CESSATION OF PRODUCTION.—**If, at any time after  
10 commercial production under a geothermal lease is  
11 achieved, production ceases for any cause the lease  
12 shall remain in full force and effect—

13 “(A) during the 1-year period beginning on  
14 the date production ceases; and

15 “(B) after such period if, and so long as,  
16 the lessee commences and continues diligently  
17 and in good faith until such production is re-  
18 sumed the steps, operations, or procedures nec-  
19 essary to cause a resumption of such produc-  
20 tion.

21 “(2) **ADVANCE ROYALTIES FOLLOWING SUSPEN-**  
22 **SION OF PRODUCTION.—**If production of heat or en-  
23 ergy under a geothermal lease is suspended after the  
24 date of any such production for which royalty is re-  
25 quired under subsection (a) and the terms of para-  
26 graph (1) are not met, the Secretary shall require



1 the lessee, until the end of such suspension, to pay  
2 royalty in advance at the monthly pro rata rate of  
3 the average annual rate at which such royalty was  
4 paid each year in the 5-year-period preceding the  
5 date of suspension.

6 “(3) LIMITATION ON APPLICATION.—Paragraph  
7 (2) shall not apply if the suspension is required or  
8 otherwise caused by the Secretary, the Secretary of  
9 a military department, a State or local government,  
10 or a force majeure.”.

11 **SEC. 1816. ANNUAL RENTAL.**

12 (a) ANNUAL RENTAL RATE.—Section 5 of the Geo-  
13 thermal Steam Act of 1970 (30 U.S.C. 1004) is further  
14 amended in subsection (a) in paragraph (3) by striking  
15 “\$1 per acre or fraction thereof for each year of the lease”  
16 and all that follows through the end of the paragraph and  
17 inserting “\$1 per acre or fraction thereof for each year  
18 of the lease through the tenth year in the case of a lease  
19 awarded in a noncompetitive lease sale; or \$2 per acre or  
20 fraction thereof for the first year, \$3 per acre or fraction  
21 thereof for each of the second through tenth years, in the  
22 case of a lease awarded in a competitive lease sale; and  
23 \$5 per acre or fraction thereof for each year after the 10th  
24 year thereof for all leases.”.

1 (b) TERMINATION OF LEASE FOR FAILURE TO PAY  
2 RENTAL.—Section 5 of the Geothermal Steam Act of  
3 1970 (30 U.S.C. 1004) is further amended by adding at  
4 the end the following:

5 “(g) TERMINATION OF LEASE FOR FAILURE TO PAY  
6 RENTAL.—

7 “(1) IN GENERAL.—The Secretary shall termi-  
8 nate any geothermal lease with respect to which  
9 rental is not paid in accordance with this Act and  
10 the terms of the lease under which the rental is re-  
11 quired, upon the expiration of the 45-day period be-  
12 ginning on the date of the failure to pay such rental.

13 “(2) NOTIFICATION.—The Secretary shall  
14 promptly notify a lessee that has not paid rental re-  
15 quired under the lease that the lease will be termi-  
16 nated at the end of the period referred to in para-  
17 graph (1).

18 “(3) REINSTATEMENT.—A geothermal lease  
19 that would otherwise terminate under paragraph (1)  
20 shall not terminate under that paragraph if the les-  
21 see pays to the Secretary, before the end of the pe-  
22 riod referred to in paragraph (1), the amount of  
23 rental due plus a late fee equal to 10 percent of such  
24 amount.”.

1 **SEC. 1817. DEPOSIT AND USE OF GEOTHERMAL LEASE REV-**  
2 **ENUES FOR 5 FISCAL YEARS.**

3 (a) DEPOSIT OF GEOTHERMAL RESOURCES  
4 LEASES.—Notwithstanding any other provision of law,  
5 amounts received by the United States in the first 5 fiscal  
6 years beginning after the date of enactment of this Act  
7 as rentals, royalties, and other payments required under  
8 leases under the Geothermal Steam Act of 1970, excluding  
9 funds required to be paid to State and county govern-  
10 ments, shall be deposited into a separate account in the  
11 Treasury.

12 (b) USE OF DEPOSITS.—Subject to appropriations,  
13 the Secretary may use amounts deposited under sub-  
14 section (a) to implement the Geothermal Steam Act of  
15 1970 and this Act.

16 **SEC. 1818. REPEAL OF ACREAGE LIMITATIONS.**

17 Section 7 of the Geothermal Steam Act of 1970 (30  
18 U.S.C. 1006) is repealed.

19 **SEC. 1819. TECHNICAL AMENDMENTS.**

20 The Geothermal Steam Act of 1970 (30 U.S.C. 1001  
21 et seq.) is further amended as follows:

22 (1) By striking “geothermal steam and associ-  
23 ated geothermal resources” each place it appears  
24 and inserting “geothermal resources”.

25 (2) Section 2(e) (30 U.S.C. 1001(e)) is amend-  
26 ed to read as follows:

1           “(e) ‘direct use’ means utilization of geothermal  
2 resources for commercial, residential, agricultural,  
3 public facilities, off-grid generation of electricity, or  
4 other energy needs other than the commercial pro-  
5 duction of electricity; and”.

6           (3) Section 21 (30 U.S.C. 1020) is amended by  
7 striking “(a) Within one hundred” and all that fol-  
8 lows through “(b) Geothermal” and inserting “Geo-  
9 thermal”.

10           (4) The first section (30 U.S.C. 1001 note) is  
11 amended by striking “That this” and inserting the  
12 following:

13 **“SEC. 1. SHORT TITLE.**

14           “‘This’”.

15           (5) Section 2 (30 U.S.C. 1001) is amended by  
16 striking “SEC. 2. As” and inserting the following:

17 **“SEC. 2. DEFINITIONS.**

18           “‘As’”.

19           (6) Section 3 (30 U.S.C. 1002) is amended by  
20 striking “SEC. 3. Subject” and inserting the fol-  
21 lowing:

22 **“SEC. 3. LANDS SUBJECT TO GEOTHERMAL LEASING.**

23           “‘Subject’”.

24           (7) Section 5 (30 U.S.C. 1004) is further  
25 amended by striking “SEC. 5.”, and by inserting im-

1       mediately before and above subsection (a) the fol-  
2       lowing:

3       **“SEC. 5. RENTS AND ROYALTIES.”**

4               (8) Section 8 (30 U.S.C. 1007) is amended by  
5       striking “SEC. 8. (a) The” and inserting the fol-  
6       lowing:

7       **“SEC. 8. READJUSTMENT OF LEASE TERMS AND CONDI-  
8                               TIONS.**

9       “(a) The”.

10              (9) Section 9 (30 U.S.C. 1008) is amended by  
11       striking “SEC. 9. If” and inserting the following:

12       **“SEC. 9. BYPRODUCTS.**

13       “If”.

14              (10) Section 10 (30 U.S.C. 1009) is amended  
15       by striking “SEC. 10. The” and inserting the fol-  
16       lowing:

17       **“SEC. 10. RELINQUISHMENT OF GEOTHERMAL RIGHTS.**

18       “The”.

19              (11) Section 11 (30 U.S.C. 1010) is amended  
20       by striking “SEC. 11. The” and inserting the fol-  
21       lowing:

22       **“SEC. 11. SUSPENSION OF OPERATIONS AND PRODUCTION.**

23       “The”.

1           (12) Section 12 (30 U.S.C. 1011) is amended  
2           by striking “SEC. 12. Leases” and inserting the fol-  
3           lowing:

4           **“SEC. 12. TERMINATION OF LEASES.**

5           “Leases”.

6           (13) Section 13 (30 U.S.C. 1012) is amended  
7           by striking “SEC. 13. The” and inserting the fol-  
8           lowing:

9           **“SEC. 13. WAIVER, SUSPENSION, OR REDUCTION OF RENT-**  
10                                   **AL OR ROYALTY.**

11          “The”.

12          (14) Section 14 (30 U.S.C. 1013) is amended  
13          by striking “SEC. 14. Subject” and inserting the fol-  
14          lowing:

15          **“SEC. 14. SURFACE LAND USE.**

16          “Subject”.

17          (15) Section 15 (30 U.S.C. 1014) is amended  
18          by striking “SEC. 15. (a) Geothermal” and inserting  
19          the following:

20          **“SEC. 15. LANDS SUBJECT TO GEOTHERMAL LEASING.**

21          “(a) Geothermal”.

22          (16) Section 16 (30 U.S.C. 1015) is amended  
23          by striking “SEC. 16. Leases” and inserting the fol-  
24          lowing:

1 **“SEC. 16. REQUIREMENT FOR LESSEES.**

2 “Leases”.

3 (17) Section 17 (30 U.S.C. 1016) is amended  
4 by striking “SEC. 17. Administration” and inserting  
5 the following:

6 **“SEC. 17. ADMINISTRATION.**

7 “Administration”.

8 (18) Section 19 (30 U.S.C. 1018) is amended  
9 by striking “SEC. 19. Upon” and inserting the fol-  
10 lowing:

11 **“SEC. 19. DATA FROM FEDERAL AGENCIES.**

12 “Upon”.

13 (19) Section 21 (30 U.S.C. 1020) is further  
14 amended by striking “SEC. 21.”, and by inserting  
15 immediately before and above the remainder of that  
16 section the following:

17 **“SEC. 21. PUBLICATION IN FEDERAL REGISTER; RESERVA-**  
18 **TION OF MINERAL RIGHTS.”.**

19 (20) Section 22 (30 U.S.C. 1021) is amended  
20 by striking “SEC. 22. Nothing” and inserting the  
21 following:

22 **“SEC. 22. FEDERAL EXEMPTION FROM STATE WATER LAWS.**

23 “Nothing”.

24 (21) Section 23 (30 U.S.C. 1022) is amended  
25 by striking “SEC. 23. (a) All” and inserting the fol-  
26 lowing:

1 **“SEC. 23. PREVENTION OF WASTE; EXCLUSIVITY.**

2 “(a) All”.

3 (22) Section 24 (30 U.S.C. 1023) is amended  
4 by striking “SEC. 24. The” and inserting the fol-  
5 lowing:

6 **“SEC. 24. RULES AND REGULATIONS.**

7 “The”.

8 (23) Section 25 (30 U.S.C. 1024) is amended  
9 by striking “SEC. 25. As” and inserting the fol-  
10 lowing:

11 **“SEC. 25. INCLUSION OF GEOTHERMAL LEASING UNDER**  
12 **CERTAIN OTHER LAWS.**

13 “As”.

14 (24) Section 26 is amended by striking “SEC.  
15 26. The” and inserting the following:

16 **“SEC. 26. AMENDMENT.**

17 “The”.

18 (25) Section 27 (30 U.S.C. 1025) is amended  
19 by striking “SEC. 27. The” and inserting the fol-  
20 lowing:

21 **“SEC. 27. FEDERAL RESERVATION OF CERTAIN MINERAL**  
22 **RIGHTS.**

23 “The”.

24 (26) Section 28 (30 U.S.C. 1026) is amended  
25 by striking “SEC. 28. (a)(1) The” and inserting the  
26 following:



1 **“SEC. 28. SIGNIFICANT THERMAL FEATURES.**

2 “(a)(1) The”.

3 (27) Section 29 (30 U.S.C. 1027) is amended  
4 by striking “SEC. 29. The” and inserting the fol-  
5 lowing:

6 **“SEC. 29. LAND SUBJECT TO PROHIBITION ON LEASING.**

7 “The”.

8 **SEC. 1820. INTERMOUNTAIN WEST GEOTHERMAL CONSOR-**  
9 **TIUM.**

10 (a) PARTICIPATION AUTHORIZED.—The Secretary of  
11 Energy, acting through the Idaho National Laboratory,  
12 may participate in a consortium described in subsection  
13 (b) to address science and science policy issues sur-  
14 rounding the expanded discovery and use of geothermal  
15 energy, including from geothermal resources on public  
16 lands.

17 (b) MEMBERS.—The consortium referred to in sub-  
18 section (a) shall—

19 (1) be known as the “Intermountain West Geo-  
20 thermal Consortium”;

21 (2) be a regional consortium of institutions and  
22 government agencies that focuses on building col-  
23 laborative efforts among the universities in the State  
24 of Idaho, other regional universities, State agencies,  
25 and the Idaho National Laboratory;

1           (3) include Boise State University, the Univer-  
2           sity of Idaho (including the Idaho Water Resources  
3           Research Institute), the Oregon Institute of Tech-  
4           nology, the Desert Research Institute with the Uni-  
5           versity and Community College System of Nevada,  
6           and the Energy and Geoscience Institute at the Uni-  
7           versity of Utah;

8           (4) be hosted and managed by Boise State Uni-  
9           versity; and

10          (5) have a director appointed by Boise State  
11          University, and associate directors appointed by each  
12          participating institution.

13          (c) FINANCIAL ASSISTANCE.—The Secretary of En-  
14          ergy, acting through the Idaho National Laboratory and  
15          subject to the availability of appropriations, will provide  
16          financial assistance to Boise State University for expendi-  
17          ture under contracts with members of the consortium to  
18          carry out the activities of the consortium.

## 19           **TITLE XIX—HYDROPOWER**

### 20          **SEC. 1901. INCREASED HYDROELECTRIC GENERATION AT** 21                           **EXISTING FEDERAL FACILITIES.**

22          (a) IN GENERAL.—The Secretary of the Interior, the  
23          Secretary of Energy, and the Secretary of the Army shall  
24          jointly conduct a study of the potential for increasing elec-

1 tric power production capability at federally owned or op-  
2 erated water regulation, storage, and conveyance facilities.

3 (b) CONTENT.—The study under this section shall in-  
4 clude identification and description in detail of each facil-  
5 ity that is capable, with or without modification, of pro-  
6 ducing additional hydroelectric power, including esti-  
7 mation of the existing potential for the facility to generate  
8 hydroelectric power.

9 (c) REPORT.—The Secretaries shall submit to the  
10 Committees on Energy and Commerce, Resources, and  
11 Transportation and Infrastructure of the House of Rep-  
12 resentatives and the Committee on Energy and Natural  
13 Resources of the Senate a report on the findings, conclu-  
14 sions, and recommendations of the study under this sec-  
15 tion by not later than 18 months after the date of the  
16 enactment of this Act. The report shall include each of  
17 the following:

18 (1) The identifications, descriptions, and esti-  
19 mations referred to in subsection (b).

20 (2) A description of activities currently con-  
21 ducted or considered, or that could be considered, to  
22 produce additional hydroelectric power from each  
23 identified facility.

1           (3) A summary of prior actions taken by the  
2 Secretaries to produce additional hydroelectric power  
3 from each identified facility.

4           (4) The costs to install, upgrade, or modify  
5 equipment or take other actions to produce addi-  
6 tional hydroelectric power from each identified facil-  
7 ity and the level of Federal power customer involve-  
8 ment in the determination of such costs.

9           (5) The benefits that would be achieved by such  
10 installation, upgrade, modification, or other action,  
11 including quantified estimates of any additional en-  
12 ergy or capacity from each facility identified under  
13 subsection (b).

14           (6) A description of actions that are planned,  
15 underway, or might reasonably be considered to in-  
16 crease hydroelectric power production by replacing  
17 turbine runners, by performing generator upgrades  
18 or rewinds, or construction of pumped storage facili-  
19 ties.

20           (7) The impact of increased hydroelectric power  
21 production on irrigation, water supply, fish, wildlife,  
22 Indian tribes, river health, water quality, navigation,  
23 recreation, fishing, and flood control.

24           (8) Any additional recommendations to increase  
25 hydroelectric power production from, and reduce

1 costs and improve efficiency at, federally owned or  
2 operated water regulation, storage, and conveyance  
3 facilities.

4 **SEC. 1902. SHIFT OF PROJECT LOADS TO OFF-PEAK PERI-**  
5 **ODS.**

6 (a) IN GENERAL.—The Secretary of the Interior  
7 shall—

8 (1) review electric power consumption by Bu-  
9 reau of Reclamation facilities for water pumping  
10 purposes; and

11 (2) make such adjustments in such pumping as  
12 possible to minimize the amount of electric power  
13 consumed for such pumping during periods of peak  
14 electric power consumption, including by performing  
15 as much of such pumping as possible during off-  
16 peak hours at night.

17 (b) CONSENT OF AFFECTED IRRIGATION CUSTOMERS  
18 REQUIRED.—The Secretary may not under this section  
19 make any adjustment in pumping at a facility without the  
20 consent of each person that has contracted with the  
21 United States for delivery of water from the facility for  
22 use for irrigation and that would be affected by such ad-  
23 justment.

24 (c) EXISTING OBLIGATIONS NOT AFFECTED.—This  
25 section shall not be construed to affect any existing obliga-

1 tion of the Secretary to provide electric power, water, or  
2 other benefits from Bureau of Reclamation facilities, in-  
3 cluding recreational releases.

4 **SEC. 1903. REPORT IDENTIFYING AND DESCRIBING THE**  
5 **STATUS OF POTENTIAL HYDROPOWER FA-**  
6 **CILITIES.**

7 (a) REPORT REQUIREMENT.—Not later than 90 days  
8 after the date of enactment of this Act, the Secretary of  
9 the Interior, acting through the Bureau of Reclamation,  
10 shall submit to the Committee on Resources of the House  
11 of Representatives and the Committee on Energy and  
12 Natural Resources of the Senate a report identifying and  
13 describing the status of potential hydropower facilities in-  
14 cluded in water surface storage studies undertaken by the  
15 Secretary for projects that have not been completed or au-  
16 thorized for construction.

17 (b) REPORT CONTENTS.—The report shall include  
18 the following:

19 (1) Identification of all surface storage studies  
20 authorized by Congress since the enactment of the  
21 Reclamation Project Act of 1939 (43 U.S.C. 485 et  
22 seq.).

23 (2) The purposes of each project included with-  
24 in each study identified under paragraph (1).

1           (3) The status of each study identified under  
2 paragraph (1), including for each study—

3           (A) whether the study is completed or, if  
4 not completed, still authorized;

5           (B) the level of analyses conducted at the  
6 feasibility and reconnaissance levels of review;

7           (C) identifiable environmental impacts of  
8 each project included in the study, including to  
9 fish and wildlife, water quality, and recreation;

10          (D) projected water yield from each such  
11 project;

12          (E) beneficiaries of each such project;

13          (F) the amount authorized and expended;

14          (G) projected funding needs and timelines  
15 for completing the study (if applicable);

16          (H) anticipated costs of each such project;

17          and

18          (I) other factors that might interfere with  
19 construction of any such project.

20          (4) An identification of potential hydroelectric  
21 facilities that might be developed pursuant to each  
22 study identified under paragraph (1).

23          (5) Applicable costs and benefits associated  
24 with potential hydroelectric production pursuant to  
25 each study.

1           **TITLE XX—OIL AND GAS—**  
2                           **RESOURCES**  
3       **Subtitle A—Production Incentives**

4       **SEC. 2001. DEFINITION OF SECRETARY.**

5           In this subtitle, the term “Secretary” means the Sec-  
6       retary of the Interior.

7       **SEC. 2002. PROGRAM ON OIL AND GAS ROYALTIES IN-KIND.**

8           (a) **APPLICABILITY OF SECTION.**—Notwithstanding  
9       any other provision of law, this section applies to all roy-  
10      alty in-kind accepted by the Secretary on or after the date  
11      of enactment of this Act under any Federal oil or gas lease  
12      or permit under section 36 of the Mineral Leasing Act  
13      (30 U.S.C. 192), section 27 of the Outer Continental Shelf  
14      Lands Act (43 U.S.C. 1353), or any other Federal law  
15      governing leasing of Federal land for oil and gas develop-  
16      ment.

17          (b) **TERMS AND CONDITIONS.**—All royalty accruing  
18      to the United States shall, on the demand of the Sec-  
19      retary, be paid in oil or gas. If the Secretary makes such  
20      a demand, the following provisions apply to such payment:

21              (1) **SATISFACTION OF ROYALTY OBLIGATION.**—  
22          Delivery by, or on behalf of, the lessee of the royalty  
23          amount and quality due under the lease satisfies the  
24          lessee’s royalty obligation for the amount delivered,  
25          except that transportation and processing reimburse-



1       ments paid to, or deductions claimed by, the lessee  
2       shall be subject to review and audit.

3           (2) MARKETABLE CONDITION.—

4           (A) IN GENERAL.—Royalty production  
5       shall be placed in marketable condition by the  
6       lessee at no cost to the United States.

7           (B) DEFINITION OF MARKETABLE CONDI-  
8       TION.—In this paragraph, the term “in market-  
9       able condition” means sufficiently free from im-  
10      purities and otherwise in a condition that the  
11      royalty production will be accepted by a pur-  
12      chaser under a sales contract typical of the field  
13      or area in which the royalty production was  
14      produced.

15          (3) DISPOSITION BY THE SECRETARY.—The  
16      Secretary may—

17          (A) sell or otherwise dispose of any royalty  
18      production taken in-kind (other than oil or gas  
19      transferred under section 27(a)(3) of the Outer  
20      Continental Shelf Lands Act (43 U.S.C.  
21      1353(a)(3))) for not less than the market price;  
22      and

23          (B) transport or process (or both) any roy-  
24      alty production taken in-kind.

1           (4) RETENTION BY THE SECRETARY.—The Sec-  
2           retary may, notwithstanding section 3302 of title 31,  
3           United States Code, retain and use a portion of the  
4           revenues from the sale of oil and gas taken in-kind  
5           that otherwise would be deposited to miscellaneous  
6           receipts, without regard to fiscal year limitation, or  
7           may use oil or gas received as royalty taken in-kind  
8           (in this paragraph referred to as “royalty produc-  
9           tion”) to pay the cost of—

10                   (A) transporting the royalty production;

11                   (B) processing the royalty production;

12                   (C) disposing of the royalty production; or

13                   (D) any combination of transporting, proc-  
14           essing, and disposing of the royalty production.

15           (5) LIMITATION.—

16                   (A) IN GENERAL.—Except as provided in  
17           subparagraph (B), the Secretary may not use  
18           revenues from the sale of oil and gas taken in-  
19           kind to pay for personnel, travel, or other ad-  
20           ministrative costs of the Federal Government.

21                   (B) EXCEPTION.—Notwithstanding sub-  
22           paragraph (A), the Secretary may use a portion  
23           of the revenues from the sale of oil taken in-  
24           kind, without fiscal year limitation, to pay sala-

1           ries and other administrative costs directly re-  
2           lated to the royalty-in-kind program.

3           (c) REIMBURSEMENT OF COST.—If the lessee, pursu-  
4           ant to an agreement with the United States or as provided  
5           in the lease, processes the royalty gas or delivers the roy-  
6           alty oil or gas at a point not on or adjacent to the lease  
7           area, the Secretary shall—

8           (1) reimburse the lessee for the reasonable costs  
9           of transportation (not including gathering) from the  
10          lease to the point of delivery or for processing costs;  
11          or

12          (2) allow the lessee to deduct the transportation  
13          or processing costs in reporting and paying royalties  
14          in-value for other Federal oil and gas leases.

15          (d) BENEFIT TO THE UNITED STATES REQUIRED.—  
16          The Secretary may receive oil or gas royalties in-kind only  
17          if the Secretary determines that receiving royalties in-kind  
18          provides benefits to the United States that are greater  
19          than or equal to the benefits that are likely to have been  
20          received had royalties been taken in-value.

21          (e) REPORTS.—

22                (1) IN GENERAL.—Not later than September  
23                30, 2005, the Secretary shall submit to Congress a  
24                report that addresses—

1           (A) actions taken to develop businesses  
2 processes and automated systems to fully sup-  
3 port the royalty-in-kind capability to be used in  
4 tandem with the royalty-in-value approach in  
5 managing Federal oil and gas revenue; and

6           (B) future royalty-in-kind businesses oper-  
7 ation plans and objectives.

8           (2) REPORTS ON OIL OR GAS ROYALTIES TAKEN  
9 IN-KIND.—For each of fiscal years 2005 through  
10 2014 in which the United States takes oil or gas  
11 royalties in-kind from production in any State or  
12 from the outer Continental Shelf, excluding royalties  
13 taken in-kind and sold to refineries under subsection  
14 (h), the Secretary shall submit to Congress a report  
15 that describes—

16           (A) the methodology or methodologies used  
17 by the Secretary to determine compliance with  
18 subsection (d), including the performance  
19 standard for comparing amounts received by  
20 the United States derived from royalties in-kind  
21 to amounts likely to have been received had roy-  
22 alties been taken in-value;

23           (B) an explanation of the evaluation that  
24 led the Secretary to take royalties in-kind from

1 a lease or group of leases, including the ex-  
2 pected revenue effect of taking royalties in-kind;

3 (C) actual amounts received by the United  
4 States derived from taking royalties in-kind and  
5 costs and savings incurred by the United States  
6 associated with taking royalties in-kind, includ-  
7 ing, but not limited to, administrative savings  
8 and any new or increased administrative costs;  
9 and

10 (D) an evaluation of other relevant public  
11 benefits or detriments associated with taking  
12 royalties in-kind.

13 (f) DEDUCTION OF EXPENSES.—

14 (1) IN GENERAL.—Before making payments  
15 under section 35 of the Mineral Leasing Act (30  
16 U.S.C. 191) or section 8(g) of the Outer Continental  
17 Shelf Lands Act (43 U.S.C. 1337(g)) of revenues  
18 derived from the sale of royalty production taken in-  
19 kind from a lease, the Secretary shall deduct  
20 amounts paid or deducted under subsections (b)(4)  
21 and (c) and deposit the amount of the deductions in  
22 the miscellaneous receipts of the United States  
23 Treasury.

24 (2) ACCOUNTING FOR DEDUCTIONS.—When the  
25 Secretary allows the lessee to deduct transportation

1 or processing costs under subsection (c), the Sec-  
2 retary may not reduce any payments to recipients of  
3 revenues derived from any other Federal oil and gas  
4 lease as a consequence of that deduction.

5 (g) CONSULTATION WITH STATES.—The Sec-  
6 retary—

7 (1) shall consult with a State before conducting  
8 a royalty in-kind program under this subtitle within  
9 the State, and may delegate management of any  
10 portion of the Federal royalty in-kind program to  
11 the State except as otherwise prohibited by Federal  
12 law; and

13 (2) shall consult annually with any State from  
14 which Federal oil or gas royalty is being taken in-  
15 kind to ensure, to the maximum extent practicable,  
16 that the royalty in-kind program provides revenues  
17 to the State greater than or equal to those likely to  
18 have been received had royalties been taken in-value.

19 (h) SMALL REFINERIES.—

20 (1) PREFERENCE.—If the Secretary finds that  
21 sufficient supplies of crude oil are not available in  
22 the open market to refineries that do not have their  
23 own source of supply for crude oil, the Secretary  
24 may grant preference to such refineries in the sale  
25 of any royalty oil accruing or reserved to the United

1 States under Federal oil and gas leases issued under  
2 any mineral leasing law, for processing or use in  
3 such refineries at private sale at not less than the  
4 market price.

5 (2) PRORATION AMONG REFINERIES IN PRO-  
6 Duction AREA.—In disposing of oil under this sub-  
7 section, the Secretary of Energy may, at the discre-  
8 tion of the Secretary, prorate the oil among refin-  
9 eries described in paragraph (1) in the area in which  
10 the oil is produced.

11 (i) DISPOSITION TO FEDERAL AGENCIES.—

12 (1) ONSHORE ROYALTY.—Any royalty oil or gas  
13 taken by the Secretary in-kind from onshore oil and  
14 gas leases may be sold at not less than the market  
15 price to any Federal agency.

16 (2) OFFSHORE ROYALTY.—Any royalty oil or  
17 gas taken in-kind from a Federal oil or gas lease on  
18 the outer Continental Shelf may be disposed of only  
19 under section 27 of the Outer Continental Shelf  
20 Lands Act (43 U.S.C. 1353).

21 (j) FEDERAL LOW-INCOME ENERGY ASSISTANCE  
22 PROGRAMS.—

23 (1) PREFERENCE.—In disposing of royalty oil  
24 or gas taken in-kind under this section, the Sec-  
25 retary may grant a preference to any person, includ-

1       ing any Federal or State agency, for the purpose of  
2       providing additional resources to any Federal low-in-  
3       come energy assistance program.

4           (2) REPORT.—Not later than 3 years after the  
5       date of enactment of this Act, the Secretary shall  
6       transmit a report to Congress, assessing the effec-  
7       tiveness of granting preferences specified in para-  
8       graph (1) and providing a specific recommendation  
9       on the continuation of authority to grant pref-  
10      erences.

11 **SEC. 2003. MARGINAL PROPERTY PRODUCTION INCEN-**  
12                                   **TIVES.**

13       (a) DEFINITION OF MARGINAL PROPERTY.—Until  
14      such time as the Secretary issues regulations under sub-  
15      section (e) that prescribe a different definition, in this sec-  
16      tion the term “marginal property” means an onshore unit,  
17      communitization agreement, or lease not within a unit or  
18      communitization agreement, that produces on average the  
19      combined equivalent of less than 15 barrels of oil per well  
20      per day or 90 million British thermal units of gas per well  
21      per day calculated based on the average over the 3 most  
22      recent production months, including only wells that  
23      produce on more than half of the days during those 3 pro-  
24      duction months.



1 (b) CONDITIONS FOR REDUCTION OF ROYALTY  
2 RATE.—Until such time as the Secretary issues regula-  
3 tions under subsection (e) that prescribe different thresh-  
4 olds or standards, the Secretary shall reduce the royalty  
5 rate on—

6 (1) oil production from marginal properties as  
7 prescribed in subsection (e) when the spot price of  
8 West Texas Intermediate crude oil at Cushing, Okla-  
9 homa, is, on average, less than \$15 per barrel for 90  
10 consecutive trading days; and

11 (2) gas production from marginal properties as  
12 prescribed in subsection (e) when the spot price of  
13 natural gas delivered at Henry Hub, Louisiana, is,  
14 on average, less than \$2.00 per million British ther-  
15 mal units for 90 consecutive trading days.

16 (c) REDUCED ROYALTY RATE.—

17 (1) IN GENERAL.—When a marginal property  
18 meets the conditions specified in subsection (b), the  
19 royalty rate shall be the lesser of—

20 (A) 5 percent; or

21 (B) the applicable rate under any other  
22 statutory or regulatory royalty relief provision  
23 that applies to the affected production.

24 (2) PERIOD OF EFFECTIVENESS.—The reduced  
25 royalty rate under this subsection shall be effective

1 beginning on the first day of the production month  
2 following the date on which the applicable condition  
3 specified in subsection (b) is met.

4 (d) TERMINATION OF REDUCED ROYALTY RATE.—  
5 A royalty rate prescribed in subsection (d)(1)(A) shall ter-  
6minate—

7 (1) with respect to oil production from a mar-  
8ginal property, on the first day of the production  
9month following the date on which—

10 (A) the spot price of West Texas Inter-  
11mediate crude oil at Cushing, Oklahoma, on av-  
12erage, exceeds \$15 per barrel for 90 consecutive  
13trading days; or

14 (B) the property no longer qualifies as a  
15marginal property; and

16 (2) with respect to gas production from a mar-  
17ginal property, on the first day of the production  
18month following the date on which—

19 (A) the spot price of natural gas delivered  
20at Henry Hub, Louisiana, on average, exceeds  
21\$2.00 per million British thermal units for 90  
22consecutive trading days; or

23 (B) the property no longer qualifies as a  
24marginal property.

1 (e) REGULATIONS PRESCRIBING DIFFERENT RE-  
2 LIEF.—

3 (1) DISCRETIONARY REGULATIONS.—The Sec-  
4 retary may by regulation prescribe different param-  
5 eters, standards, and requirements for, and a dif-  
6 ferent degree or extent of, royalty relief for marginal  
7 properties in lieu of those prescribed in subsections  
8 (a) through (d).

9 (2) MANDATORY REGULATIONS.—Not later  
10 than 18 months after the date of enactment of this  
11 Act, the Secretary shall by regulation—

12 (A) prescribe standards and requirements  
13 for, and the extent of royalty relief for, mar-  
14 ginal properties for oil and gas leases on the  
15 outer Continental Shelf; and

16 (B) define what constitutes a marginal  
17 property on the outer Continental Shelf for pur-  
18 poses of this section.

19 (3) CONSIDERATIONS.—In promulgating regu-  
20 lations under this subsection, the Secretary may con-  
21 sider—

22 (A) oil and gas prices and market trends;

23 (B) production costs;

24 (C) abandonment costs;

1 (D) Federal and State tax provisions and  
2 the effects of those provisions on production ec-  
3 onomics;

4 (E) other royalty relief programs;

5 (F) regional differences in average well-  
6 head prices;

7 (G) national energy security issues; and

8 (H) other relevant matters.

9 (f) SAVINGS PROVISION.—Nothing in this section  
10 prevents a lessee from receiving royalty relief or a royalty  
11 reduction pursuant to any other law (including a regula-  
12 tion) that provides more relief than the amounts provided  
13 by this section.

14 **SEC. 2004. INCENTIVES FOR NATURAL GAS PRODUCTION**  
15 **FROM DEEP WELLS IN THE SHALLOW WA-**  
16 **TERS OF THE GULF OF MEXICO.**

17 (a) ROYALTY INCENTIVE REGULATIONS FOR ULTRA  
18 DEEP GAS WELLS.—

19 (1) IN GENERAL.—Not later than 180 days  
20 after the date of enactment of this Act, in addition  
21 to any other regulations that may provide royalty in-  
22 centives for natural gas produced from deep wells on  
23 oil and gas leases issued pursuant to the Outer Con-  
24 tinental Shelf Lands Act (43 U.S.C. 1331 et seq.),  
25 the Secretary shall issue regulations granting royalty

1 relief suspension volumes of not less than  
2 35,000,000,000 cubic feet with respect to the pro-  
3 duction of natural gas from ultra deep wells on  
4 leases issued in shallow waters less than 400 meters  
5 deep located in the Gulf of Mexico wholly west of 87  
6 degrees, 30 minutes west longitude. Regulations  
7 issued under this subsection shall be retroactive to  
8 the date that the notice of proposed rulemaking is  
9 published in the Federal Register.

10 (2) DEFINITION OF ULTRA DEEP WELL.—In  
11 this subsection, the term “ultra deep well” means a  
12 well drilled with a perforated interval, the top of  
13 which is at least 20,000 feet true vertical depth  
14 below the datum at mean sea level.

15 (b) ROYALTY INCENTIVE REGULATIONS FOR DEEP  
16 GAS WELLS.—Not later than 180 days after the date of  
17 enactment of this Act, in addition to any other regulations  
18 that may provide royalty incentives for natural gas pro-  
19 duced from deep wells on oil and gas leases issued pursu-  
20 ant to the Outer Continental Shelf Lands Act (43 U.S.C.  
21 1331 et seq.), the Secretary shall issue regulations grant-  
22 ing royalty relief suspension volumes with respect to the  
23 production of natural gas from deep wells on leases issued  
24 in waters more than 200 meters but less than 400 meters  
25 deep located in the Gulf of Mexico wholly west of 87 de-

1 grees, 30 minutes west longitude. The suspension volumes  
2 for deep wells within 200 to 400 meters of water depth  
3 shall be calculated using the same methodology used to  
4 calculate the suspension volumes for deep wells in the  
5 shallower waters of the Gulf of Mexico, and in no case  
6 shall the suspension volumes for deep wells within 200 to  
7 400 meters of water depth be lower than those for deep  
8 wells in shallower waters. Regulations issued under this  
9 subsection shall be retroactive to the date that the notice  
10 of proposed rulemaking is published in the Federal Reg-  
11 ister.

12 (c) LIMITATION.—The Secretary may place limita-  
13 tions on the suspension of royalty relief granted based on  
14 market price.

15 **SEC. 2005. ROYALTY RELIEF FOR DEEP WATER PRODUC-**  
16 **TION.**

17 (a) IN GENERAL.—For all tracts located in water  
18 depths of greater than 400 meters in the Western and  
19 Central Planning Area of the Gulf of Mexico, including  
20 the portion of the Eastern Planning Area of the Gulf of  
21 Mexico encompassing whole lease blocks lying west of 87  
22 degrees, 30 minutes West longitude, any oil or gas lease  
23 sale under the Outer Continental Shelf Lands Act (43  
24 U.S.C. 1331 et seq.) occurring within 5 years after the  
25 date of enactment of this Act shall use the bidding system

1 authorized in section 8(a)(1)(H) of the Outer Continental  
2 Shelf Lands Act (43 U.S.C. 1337(a)(1)(H)), except that  
3 the suspension of royalties shall be set at a volume of not  
4 less than—

5 (1) 5,000,000 barrels of oil equivalent for each  
6 lease in water depths of 400 to 800 meters;

7 (2) 9,000,000 barrels of oil equivalent for each  
8 lease in water depths of 800 to 1,600 meters;

9 (3) 12,000,000 barrels of oil equivalent for each  
10 lease in water depths of 1,600 to 2,000 meters; and

11 (4) 16,000,000 barrels of oil equivalent for each  
12 lease in water depths greater than 2,000 meters.

13 (b) LIMITATION.—The Secretary may place limita-  
14 tions on the suspension of royalty relief granted based on  
15 market price.

16 **SEC. 2006. ALASKA OFFSHORE ROYALTY SUSPENSION.**

17 Section 8(a)(3)(B) of the Outer Continental Shelf  
18 Lands Act (43 U.S.C. 1337(a)(3)(B)) is amended by in-  
19 serting “and in the Planning Areas offshore Alaska” after  
20 “West longitude”.

21 **SEC. 2007. OIL AND GAS LEASING IN THE NATIONAL PETRO-**  
22 **LEUM RESERVE IN ALASKA.**

23 (a) TRANSFER OF AUTHORITY.—

24 (1) REDESIGNATION.—The Naval Petroleum  
25 Reserves Production Act of 1976 (42 U.S.C. 6501

1 et seq.) is amended by redesignating section 107 (42  
2 U.S.C. 6507) as section 108.

3 (2) TRANSFER.—The matter under the heading  
4 “EXPLORATION OF NATIONAL PETROLEUM RESERVE  
5 IN ALASKA” under the heading “ENERGY AND  
6 MINERALS” of title I of Public Law 96–514 (42  
7 U.S.C. 6508) is—

8 (A) transferred to the Naval Petroleum  
9 Reserves Production Act of 1976 (42 U.S.C.  
10 6501 et seq.);

11 (B) designated as section 107 of that Act;

12 and

13 (C) moved so as to appear after section  
14 106 of that Act (42 U.S.C. 6506).

15 (b) COMPETITIVE LEASING.—Section 107 of the  
16 Naval Petroleum Reserves Production Act of 1976 (as  
17 amended by subsection (a) of this section) is amended—

18 (1) by striking the heading and all that follows  
19 through “*Provided*, That (1) activities” and insert-  
20 ing the following:

21 **“SEC. 107. COMPETITIVE LEASING OF OIL AND GAS.**

22 “(a) IN GENERAL.—Notwithstanding any other pro-  
23 vision of law and pursuant to regulations issued by the  
24 Secretary, the Secretary shall conduct an expeditious pro-  
25 gram of competitive leasing of oil and gas in the National



1 Petroleum Reserve in Alaska (referred to in this section  
2 as the ‘Reserve’).

3 “(b) MITIGATION OF ADVERSE EFFECTS.—Activi-  
4 ties”;

5 (2) by striking “Alaska (the Reserve); (2) the”  
6 and inserting  
7 “Alaska.

8 “(c) LAND USE PLANNING; BLM WILDERNESS  
9 STUDY.—The”;

10 (3) by striking “Reserve; (3) the” and inserting  
11 “Reserve.

12 “(d) FIRST LEASE SALE.—The”;

13 (4) by striking “4332); (4) the” and inserting  
14 “4321 et seq.).

15 “(e) WITHDRAWALS.—The”;

16 (5) by striking “herein; (5) bidding” and insert-  
17 ing

18 “under this section.

19 “(f) BIDDING SYSTEMS.—Bidding”;

20 (6) by striking “629); (6) lease” and inserting  
21 “629).

22 “(g) GEOLOGICAL STRUCTURES.—Lease”;

23 (7) by striking “structures; (7) the” and insert-  
24 ing

25 “structures.

1 “(h) SIZE OF LEASE TRACTS.—The”;

2 (8) by striking “Secretary; (8)” and all that fol-  
3 lows through “Drilling, production,” and inserting  
4 “Secretary.

5 “(i) TERMS.—

6 “(1) IN GENERAL.—Each lease shall be—

7 “(A) issued for an initial period of not  
8 more than 10 years; and

9 “(B) renewed for successive 10-year terms  
10 if—

11 “(i) oil or gas is produced from the  
12 lease in paying quantities;

13 “(ii) oil or gas is capable of being pro-  
14 duced in paying quantities; or

15 “(iii) drilling or reworking operations,  
16 as approved by the Secretary, are con-  
17 ducted on the leased land.

18 “(2) RENEWAL OF NONPRODUCING LEASES.—

19 The Secretary shall renew for an additional 10-year  
20 term a lease that does not meet the requirements of  
21 paragraph (1)(B) if the lessee submits to the Sec-  
22 retary an application for renewal not later than 60  
23 days before the expiration of the primary lease  
24 and—

1           “(A) the lessee certifies, and the Secretary  
2 agrees, that hydrocarbon resources were discov-  
3 ered on 1 or more wells drilled on the leased  
4 land in such quantities that a prudent operator  
5 would hold the lease for potential future devel-  
6 opment;

7           “(B) the lessee—

8               “(i) pays the Secretary a renewal fee  
9 of \$100 per acre of leased land; and

10              “(ii) provides evidence, and the Sec-  
11 retary agrees that, the lessee has diligently  
12 pursued exploration that warrants continu-  
13 ation with the intent of continued explo-  
14 ration or future development of the leased  
15 land; or

16           “(C) all or part of the lease—

17               “(i) is part of a unit agreement cov-  
18 ering a lease described in subparagraph  
19 (A) or (B); and

20               “(ii) has not been previously con-  
21 tracted out of the unit.

22           “(3) APPLICABILITY.—This subsection applies  
23 to a lease that—

1           “(A) is entered into before, on, or after the  
2           date of enactment of the Energy Policy Act of  
3           2005; and

4           “(B) is effective on or after the date of en-  
5           actment of that Act.

6           “(j) UNIT AGREEMENTS.—

7           “(1) IN GENERAL.—For the purpose of con-  
8           servation of the natural resources of all or part of  
9           any oil or gas pool, field, reservoir, or like area, les-  
10          sees (including representatives) of the pool, field,  
11          reservoir, or like area may unite with each other, or  
12          jointly or separately with others, in collectively  
13          adopting and operating under a unit agreement for  
14          all or part of the pool, field, reservoir, or like area  
15          (whether or not any other part of the oil or gas pool,  
16          field, reservoir, or like area is already subject to any  
17          cooperative or unit plan of development or oper-  
18          ation), if the Secretary determines the action to be  
19          necessary or advisable in the public interest.

20          “(2) PARTICIPATION BY STATE OF ALASKA.—

21          The Secretary shall ensure that the State of Alaska  
22          is provided the opportunity for active participation  
23          concerning creation and management of units  
24          formed or expanded under this subsection that in-

1       clude acreage in which the State of Alaska has an  
2       interest in the mineral estate.

3               “(3) PARTICIPATION BY REGIONAL CORPORA-  
4       TIONS.—The Secretary shall ensure that any Re-  
5       gional Corporation (as defined in section 3 of the  
6       Alaska Native Claims Settlement Act (43 U.S.C.  
7       1602)) is provided the opportunity for active partici-  
8       pation concerning creation and management of units  
9       that include acreage in which the Regional Corpora-  
10      tion has an interest in the mineral estate.

11              “(4) PRODUCTION ALLOCATION METHODO-  
12      LOGY.—The Secretary may use a production alloca-  
13      tion methodology for each participating area within  
14      a unit created for land in the Reserve, State of Alas-  
15      ka land, or Regional Corporation land shall, when  
16      appropriate, be based on the characteristics of each  
17      specific oil or gas pool, field, reservoir, or like area  
18      to take into account reservoir heterogeneity and a  
19      real variation in reservoir producibility across diverse  
20      leasehold interests.

21              “(5) BENEFIT OF OPERATIONS.—Drilling, pro-  
22      duction,”;

23              (9) by striking “When separate” and inserting  
24      the following:

25              “(6) POOLING.—If separate”;

1           (10) by inserting “(in consultation with the  
2 owners of the other land)” after “determined by the  
3 Secretary of the Interior”;

4           (11) by striking “thereto; (10) to” and all that  
5 follows through “the terms provided therein.” and  
6 inserting

7 “to the agreement.

8           “(k) EXPLORATION INCENTIVES.—

9           “(1) IN GENERAL.—

10           “(A) WAIVER, SUSPENSION, OR REDUC-  
11 TION.—To encourage the greatest ultimate re-  
12 covery of oil or gas or in the interest of con-  
13 servation, the Secretary may waive, suspend, or  
14 reduce the rental fees or minimum royalty, or  
15 reduce the royalty on an entire leasehold (in-  
16 cluding on any lease operated pursuant to a  
17 unit agreement), if (after consultation with the  
18 State of Alaska and the North Slope Borough  
19 of Alaska and the concurrence of any Regional  
20 Corporation for leases that include lands avail-  
21 able for acquisition by the Regional Corporation  
22 under the provisions of section 1431(o) of the  
23 Alaska National Interest Lands Conservation  
24 Act (16 U.S.C. 3101 et seq.)) the Secretary de-

1           termines that the waiver, suspension, or reduc-  
2           tion is in the public interest.

3           “(B) APPLICABILITY.—This paragraph ap-  
4           plies to a lease that—

5                   “(i) is entered into before, on, or after  
6                   the date of enactment of the Energy Policy  
7                   Act of 2005; and

8                   “(ii) is effective on or after the date  
9                   of enactment of that Act.”;

10           (12) by striking “The Secretary is authorized  
11           to” and inserting the following:

12                   “(2) SUSPENSION OF OPERATIONS AND PRO-  
13                   DUCTION.—The Secretary may”;

14           (13) by striking “In the event” and inserting  
15           the following:

16                   “(3) SUSPENSION OF PAYMENTS.—If”;

17           (14) by striking “thereto; and (11) all” and in-  
18           serting

19           “to the lease.

20                   “(1) RECEIPTS.—All”;

21           (15) by redesignating clauses (A), (B), and (C)  
22           as clauses (1), (2), and (3), respectively;

23           (16) by striking “Any agency” and inserting  
24           the following:

25                   “(m) EXPLORATIONS.—Any agency”;

1           (17) by striking “Any action” and inserting the  
2 following:

3           “(n) ENVIRONMENTAL IMPACT STATEMENTS.—

4           “(1) JUDICIAL REVIEW.—Any action”;

5           (18) by striking “The detailed” and inserting  
6 the following:

7           “(2) INITIAL LEASE SALES.—The detailed”;

8           (19) by striking “of the Naval Petroleum Re-  
9 serves Production Act of 1976 (90 Stat. 304; 42  
10 U.S.C. 6504)”;

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

12           “(o) WAIVER OF ADMINISTRATION FOR CONVEYED  
13 LANDS.—Notwithstanding section 14(g) of the Alaska  
14 Native Claims Settlement Act (43 U.S.C. 1613(g)) or any  
15 other provision of law—

16           “(1) the Secretary of the Interior shall waive  
17 administration of any oil and gas lease insofar as  
18 such lease covers any land in the National Petro-  
19 leum Reserve in Alaska in which the subsurface es-  
20 tate is conveyed to the Arctic Slope Regional Cor-  
21 poration; and

22           “(2) if any such conveyance of such subsurface  
23 estate does not cover all the land embraced within  
24 any such oil and gas lease—



1           “(A) the person who owns the subsurface  
2 estate in any particular portion of the land cov-  
3 ered by such lease shall be entitled to all of the  
4 revenues reserved under such lease as to such  
5 portion, including, without limitation, all the  
6 royalty payable with respect to oil or gas pro-  
7 duced from or allocated to such particular por-  
8 tion of the land covered by such lease; and

9           “(B) the Secretary of the Interior shall  
10 segregate such lease into 2 leases, 1 of which  
11 shall cover only the subsurface estate conveyed  
12 to the Arctic Slope Regional Corporation, and  
13 operations, production, or other circumstances  
14 (other than payment of rentals or royalties)  
15 that satisfy obligations of the lessee under, or  
16 maintain, either of the segregated leases shall  
17 likewise satisfy obligations of the lessee under,  
18 or maintain, the other segregated lease to the  
19 same extent as if such segregated leases re-  
20 mained a part of the original unsegregated  
21 lease.”.

22 **SEC. 2008. ORPHANED, ABANDONED, OR IDLED WELLS ON**  
23 **FEDERAL LAND.**

24           (a) IN GENERAL.—The Secretary, in cooperation  
25 with the Secretary of Agriculture, shall establish a pro-

1 gram not later than 1 year after the date of enactment  
2 of this Act to remediate, reclaim, and close orphaned,  
3 abandoned, or idled oil and gas wells located on land ad-  
4 ministered by the land management agencies within the  
5 Department of the Interior and the Department of Agri-  
6 culture.

7 (b) ACTIVITIES.—The program under subsection (a)  
8 shall—

9 (1) include a means of ranking orphaned, aban-  
10 doned, or idled wells sites for priority in remedi-  
11 ation, reclamation, and closure, based on public  
12 health and safety, potential environmental harm,  
13 and other land use priorities;

14 (2) provide for identification and recovery of  
15 the costs of remediation, reclamation, and closure  
16 from persons or other entities currently providing a  
17 bond or other financial assurance required under  
18 State or Federal law for an oil or gas well that is  
19 orphaned, abandoned, or idled; and

20 (3) provide for recovery from the persons or en-  
21 tities identified under paragraph (2), or their sure-  
22 ties or guarantors, of the costs of remediation, rec-  
23 lamation, and closure of such wells.

1 (c) COOPERATION AND CONSULTATIONS.—In car-  
2 rying out the program under subsection (a), the Secretary  
3 shall—

4 (1) work cooperatively with the Secretary of Ag-  
5 riculture and the States within which Federal land  
6 is located; and

7 (2) consult with the Secretary of Energy and  
8 the Interstate Oil and Gas Compact Commission.

9 (d) PLAN.—Not later than 1 year after the date of  
10 enactment of this Act, the Secretary, in cooperation with  
11 the Secretary of Agriculture, shall submit to Congress a  
12 plan for carrying out the program under subsection (a).

13 (e) IDLED WELL.—For the purposes of this section,  
14 a well is idled if—

15 (1) the well has been nonoperational for at least  
16 7 years; and

17 (2) there is no anticipated beneficial use for the  
18 well.

19 (f) TECHNICAL ASSISTANCE PROGRAM FOR NON-  
20 FEDERAL LAND.—

21 (1) IN GENERAL.—The Secretary of Energy  
22 shall establish a program to provide technical and fi-  
23 nancial assistance to oil and gas producing States to  
24 facilitate State efforts over a 10-year period to en-  
25 sure a practical and economical remedy for environ-

1       mental problems caused by orphaned or abandoned  
2       oil and gas exploration or production well sites on  
3       State or private land.

4           (2) ASSISTANCE.—The Secretary of Energy  
5       shall work with the States, through the Interstate  
6       Oil and Gas Compact Commission, to assist the  
7       States in quantifying and mitigating environmental  
8       risks of onshore orphaned or abandoned oil or gas  
9       wells on State and private land.

10          (3) ACTIVITIES.—The program under para-  
11       graph (1) shall include—

12           (A) mechanisms to facilitate identification,  
13       if feasible, of the persons currently providing a  
14       bond or other form of financial assurance re-  
15       quired under State or Federal law for an oil or  
16       gas well that is orphaned or abandoned;

17           (B) criteria for ranking orphaned or aban-  
18       doned well sites based on factors such as public  
19       health and safety, potential environmental  
20       harm, and other land use priorities;

21           (C) information and training programs on  
22       best practices for remediation of different types  
23       of sites; and

24           (D) funding of State mitigation efforts on  
25       a cost-shared basis.

1 (g) FEDERAL REIMBURSEMENT FOR ORPHANED  
2 WELL RECLAMATION PILOT PROGRAM.—

3 (1) REIMBURSEMENT FOR REMEDIATING, RE-  
4 CLAIMING, AND CLOSING WELLS ON LAND SUBJECT  
5 TO A NEW LEASE.—The Secretary shall carry out a  
6 pilot program under which, in issuing a new oil and  
7 gas lease on federally owned land on which 1 or  
8 more orphaned wells are located, the Secretary—

9 (A) may require, but not as a condition of  
10 the lease, that the lessee remediate, reclaim,  
11 and close in accordance with standards estab-  
12 lished by the Secretary, all orphaned wells on  
13 the land leased; and

14 (B) shall develop a program to reimburse  
15 a lessee, through a royalty credit against the  
16 Federal share of royalties owed or other means,  
17 for the reasonable actual costs of remediating,  
18 reclaiming, and closing the orphaned well pur-  
19 suant to that requirement.

20 (2) REIMBURSEMENT FOR RECLAIMING OR-  
21 PHANED WELLS ON OTHER LAND.—In carrying out  
22 this subsection, the Secretary—

23 (A) may authorize any lessee under an oil  
24 and gas lease on federally owned land to re-

1 claim in accordance with the Secretary's stand-  
2 ards—

3 (i) an orphaned well on unleased fed-  
4 erally owned land; or

5 (ii) an orphaned well located on an ex-  
6 isting lease on federally owned land for the  
7 reclamation of which the lessee is not le-  
8 gally responsible; and

9 (B) shall develop a program to provide re-  
10 imbursement of 115 percent of the reasonable  
11 actual costs of remediating, reclaiming, and  
12 closing the orphaned well, through credits  
13 against the Federal share of royalties or other  
14 means.

15 (3) EFFECT OF REMEDIATION, RECLAMATION,  
16 OR CLOSURE OF WELL PURSUANT TO AN APPROVED  
17 REMEDIATION PLAN.—

18 (A) DEFINITION OF REMEDIATING  
19 PARTY.—In this paragraph the term “remedi-  
20 ating party” means a person who remediates,  
21 reclaims, or closes an abandoned, orphaned, or  
22 idled well pursuant to this subsection.

23 (B) GENERAL RULE.—A remediating party  
24 who remediates, reclaims, or closes an aban-  
25 doned, orphaned, or idled well in accordance

1 with a detailed written remediation plan ap-  
2 proved by the Secretary under this subsection,  
3 shall be immune from civil liability under Fed-  
4 eral environmental laws, for—

5 (i) pre-existing environmental condi-  
6 tions at or associated with the well, unless  
7 the remediating party owns or operates, in  
8 the past owned or operated, or is related to  
9 a person that owns or operates or in the  
10 past owned or operated, the well or the  
11 land on which the well is located; or

12 (ii) any remaining releases of pollut-  
13 ants from the well during or after comple-  
14 tion of the remediation, reclamation, or  
15 closure of the well, unless the remediating  
16 party causes increased pollution as a result  
17 of activities that are not in accordance  
18 with the approved remediation plan.

19 (C) LIMITATIONS.—Nothing in this section  
20 shall limit in any way the liability of a remedi-  
21 ating party for injury, damage, or pollution re-  
22 sulting from the remediating party's acts or  
23 omissions that are not in accordance with the  
24 approved remediation plan, are reckless or will-

1           ful, constitute gross negligence or wanton mis-  
2           conduct, or are unlawful.

3           (4) REGULATIONS.—The Secretary may issue  
4           such regulations as are appropriate to carry out this  
5           subsection.

6           (h) AUTHORIZATION OF APPROPRIATIONS.—

7           (1) IN GENERAL.—There are authorized to be  
8           appropriated to carry out this section \$25,000,000  
9           for each of fiscal years 2006 through 2010.

10          (2) USE.—Of the amounts authorized under  
11          paragraph (1), \$5,000,000 are authorized for each  
12          fiscal year for activities under subsection (f).

13 **SEC. 2009. COMBINED HYDROCARBON LEASING.**

14          (a) SPECIAL PROVISIONS REGARDING LEASING.—  
15          Section 17(b)(2) of the Mineral Leasing Act (30 U.S.C.  
16          226(b)(2)) is amended—

17                 (1) by inserting “(A)” after “(2)”; and

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

19                 “(B) For any area that contains any combination of  
20          tar sand and oil or gas (or both), the Secretary may issue  
21          under this Act, separately—

22                         “(i) a lease for exploration for and extraction of  
23          tar sand; and

24                         “(ii) a lease for exploration for and development  
25          of oil and gas.



1       “(C) A lease issued for tar sand shall be issued using  
2 the same bidding process, annual rental, and posting pe-  
3 riod as a lease issued for oil and gas, except that the min-  
4 imum acceptable bid required for a lease issued for tar  
5 sand shall be \$2 per acre.

6       “(D) The Secretary may waive, suspend, or alter any  
7 requirement under section 26 that a permittee under a  
8 permit authorizing prospecting for tar sand must exercise  
9 due diligence, to promote any resource covered by a com-  
10 bined hydrocarbon lease.”.

11       (b)       CONFORMING        AMENDMENT.—Section  
12 17(b)(1)(B) of the Mineral Leasing Act (30 U.S.C.  
13 226(b)(1)(B)) is amended in the second sentence by in-  
14 serting “, subject to paragraph (2)(B),” after “Sec-  
15 retary”.

16       (c) REGULATIONS.—Not later than 45 days after the  
17 date of enactment of this Act, the Secretary shall issue  
18 final regulations to implement this section.

19 **SEC. 2010. ALTERNATE ENERGY-RELATED USES ON THE**  
20 **OUTER CONTINENTAL SHELF.**

21       (a) AMENDMENT TO OUTER CONTINENTAL SHELF  
22 LANDS ACT.—Section 8 of the Outer Continental Shelf  
23 Lands Act (43 U.S.C. 1337) is amended by adding at the  
24 end the following:

1       “(p) LEASES, EASEMENTS, OR RIGHTS-OF-WAY FOR  
2 ENERGY AND RELATED PURPOSES.—

3           “(1) IN GENERAL.—The Secretary, in consulta-  
4 tion with the Secretary of the Department in which  
5 the Coast Guard is operating and other relevant de-  
6 partments and agencies of the Federal Government,  
7 may grant a lease, easement, or right-of-way on the  
8 outer Continental Shelf for activities not otherwise  
9 authorized in this Act, the Deepwater Port Act of  
10 1974 (33 U.S.C. 1501 et seq.), the Ocean Thermal  
11 Energy Conversion Act of 1980 (42 U.S.C. 9101 et  
12 seq.), or other applicable law, if those activities—

13           “(A) support exploration, development,  
14 production, transportation, or storage of oil,  
15 natural gas, or other minerals;

16           “(B) produce or support production, trans-  
17 portation, or transmission of energy from  
18 sources other than oil and gas; or

19           “(C) use, for energy-related or marine-re-  
20 lated purposes, facilities currently or previously  
21 used for activities authorized under this Act.

22           “(2) PAYMENTS.—The Secretary shall establish  
23 reasonable forms of payments for any easement or  
24 right-of-way granted under this subsection. Such  
25 payments shall not be assessed on the basis of

1 throughput or production. The Secretary may estab-  
2 lish fees, rentals, bonus, or other payments by rule  
3 or by agreement with the party to which the lease,  
4 easement, or right-of-way is granted. If a lease,  
5 easement, right-of-way, license, or permit under this  
6 subsection covers a specific tract of, or regards a fa-  
7 cility located on, the outer Continental Shelf and is  
8 not an easement or right-of-way for transmission or  
9 transportation of energy, minerals, or other natural  
10 resources, the Secretary shall pay 50 percent of any  
11 amount received from the holder of the lease, ease-  
12 ment, right-of-way, license, or permit to the State  
13 off the shore of which the geographic center of the  
14 area covered by the lease, easement, right-of-way, li-  
15 cense, permit, or facility is located, in accordance  
16 with Federal law determining the seaward lateral  
17 boundaries of the coastal States.

18 “(3) CONSULTATION.—Before exercising au-  
19 thority under this subsection, the Secretary shall  
20 consult with the Secretary of Defense and other ap-  
21 propriate agencies concerning issues related to na-  
22 tional security and navigational obstruction.

23 “(4) COMPETITIVE OR NONCOMPETITIVE  
24 BASIS.—

1           “(A) IN GENERAL.—The Secretary may  
2           issue a lease, easement, or right-of-way for en-  
3           ergy and related purposes as described in para-  
4           graph (1) on a competitive or noncompetitive  
5           basis.

6           “(B) CONSIDERATIONS.—In determining  
7           whether a lease, easement, or right-of-way shall  
8           be granted competitively or noncompetitively,  
9           the Secretary shall consider such factors as—

10                   “(i) prevention of waste and conserva-  
11                   tion of natural resources;

12                   “(ii) the economic viability of an en-  
13                   ergy project;

14                   “(iii) protection of the environment;

15                   “(iv) the national interest and na-  
16                   tional security;

17                   “(v) human safety;

18                   “(vi) protection of correlative rights;

19                   and

20                   “(vii) potential return for the lease,  
21                   easement, or right-of-way.

22           “(5) REGULATIONS.—Not later than 270 days  
23           after the date of enactment of the Energy Policy Act  
24           of 2005, the Secretary, in consultation with the Sec-  
25           retary of the Department in which the Coast Guard

1 is operating and other relevant agencies of the Fed-  
2 eral Government and affected States, shall issue any  
3 necessary regulations to ensure safety, protection of  
4 the environment, prevention of waste, and conserva-  
5 tion of the natural resources of the outer Conti-  
6 nental Shelf, protection of national security inter-  
7 ests, and protection of correlative rights in the outer  
8 Continental Shelf.

9 “(6) SECURITY.—The Secretary shall require  
10 the holder of a lease, easement, or right-of-way  
11 granted under this subsection to furnish a surety  
12 bond or other form of security, as prescribed by the  
13 Secretary, and to comply with such other require-  
14 ments as the Secretary considers necessary to pro-  
15 tect the interests of the United States.

16 “(7) EFFECT OF SUBSECTION.—Nothing in this  
17 subsection displaces, supersedes, limits, or modifies  
18 the jurisdiction, responsibility, or authority of any  
19 Federal or State agency under any other Federal  
20 law.

21 “(8) APPLICABILITY.—This subsection does not  
22 apply to any area on the outer Continental Shelf  
23 designated as a National Marine Sanctuary.”.

24 (b) CONFORMING AMENDMENT.—Section 8 of the  
25 Outer Continental Shelf Lands Act (43 U.S.C. 1337) is

1 amended by striking the section heading and inserting the  
2 following: “LEASES, EASEMENTS, AND RIGHTS-OF-WAY  
3 ON THE OUTER CONTINENTAL SHELF.—”.

4 (c) SAVINGS PROVISION.—Nothing in the amendment  
5 made by subsection (a) requires, with respect to any  
6 project—

7 (1) for which offshore test facilities have been  
8 constructed before the date of enactment of this Act;  
9 or

10 (2) for which a request for proposals has been  
11 issued by a public authority,

12 any resubmittal of documents previously submitted or any  
13 reauthorization of actions previously authorized.

14 **SEC. 2011. PRESERVATION OF GEOLOGICAL AND GEO-**  
15 **PHYSICAL DATA.**

16 (a) SHORT TITLE.—This section may be cited as the  
17 “National Geological and Geophysical Data Preservation  
18 Program Act of 2005”.

19 (b) PROGRAM.—The Secretary shall carry out a Na-  
20 tional Geological and Geophysical Data Preservation Pro-  
21 gram in accordance with this section—

22 (1) to archive geologic, geophysical, and engi-  
23 neering data, maps, well logs, and samples;

24 (2) to provide a national catalog of such archi-  
25 val material; and

1           (3) to provide technical and financial assistance  
2           related to the archival material.

3           (c) PLAN.—Not later than 1 year after the date of  
4           enactment of this Act, the Secretary shall submit to Con-  
5           gress a plan for the implementation of the Program.

6           (d) DATA ARCHIVE SYSTEM.—

7           (1) ESTABLISHMENT.—The Secretary shall es-  
8           tablish, as a component of the Program, a data ar-  
9           chive system to provide for the storage, preservation,  
10          and archiving of subsurface, surface, geological, geo-  
11          physical, and engineering data and samples. The  
12          Secretary, in consultation with the Advisory Com-  
13          mittee, shall develop guidelines relating to the data  
14          archive system, including the types of data and sam-  
15          ples to be preserved.

16          (2) SYSTEM COMPONENTS.—The system shall  
17          be comprised of State agencies that elect to be part  
18          of the system and agencies within the Department  
19          of the Interior that maintain geological and geo-  
20          physical data and samples that are designated by  
21          the Secretary in accordance with this subsection.  
22          The Program shall provide for the storage of data  
23          and samples through data repositories operated by  
24          such agencies.

1           (3) LIMITATION OF DESIGNATION.—The Sec-  
2           retary may not designate a State agency as a com-  
3           ponent of the data archive system unless that agency  
4           is the agency that acts as the geological survey in  
5           the State.

6           (4) DATA FROM FEDERAL LAND.—The data ar-  
7           chive system shall provide for the archiving of rel-  
8           evant subsurface data and samples obtained from  
9           Federal land—

10                   (A) in the most appropriate repository des-  
11                   ignated under paragraph (2), with preference  
12                   being given to archiving data in the State in  
13                   which the data were collected; and

14                   (B) consistent with all applicable law and  
15                   requirements relating to confidentiality and pro-  
16                   prietary data.

17           (e) NATIONAL CATALOG.—

18           (1) IN GENERAL.—As soon as practicable after  
19           the date of enactment of this Act, the Secretary  
20           shall develop and maintain, as a component of the  
21           Program, a national catalog that identifies—

22                   (A) data and samples available in the data  
23                   archive system established under subsection (d);

24                   (B) the repository for particular material  
25                   in the system; and



1 (C) the means of accessing the material.

2 (2) AVAILABILITY.—The Secretary shall make  
3 the national catalog accessible to the public on the  
4 site of the Survey on the Internet, consistent with all  
5 applicable requirements related to confidentiality  
6 and proprietary data.

7 (f) ADVISORY COMMITTEE.—

8 (1) IN GENERAL.—The Advisory Committee  
9 shall advise the Secretary on planning and imple-  
10 mentation of the Program.

11 (2) NEW DUTIES.—In addition to its duties  
12 under the National Geologic Mapping Act of 1992  
13 (43 U.S.C. 31a et seq.), the Advisory Committee  
14 shall perform the following duties:

15 (A) Advise the Secretary on developing  
16 guidelines and procedures for providing assist-  
17 ance for facilities under subsection (g)(1).

18 (B) Review and critique the draft imple-  
19 mentation plan prepared by the Secretary under  
20 subsection (c).

21 (C) Identify useful studies of data archived  
22 under the Program that will advance under-  
23 standing of the Nation's energy and mineral re-  
24 sources, geologic hazards, and engineering geol-  
25 ogy.

1           (D) Review the progress of the Program in  
2           archiving significant data and preventing the  
3           loss of such data, and the scientific progress of  
4           the studies funded under the Program.

5           (E) Include in the annual report to the  
6           Secretary required under section 5(b)(3) of the  
7           National Geologic Mapping Act of 1992 (43  
8           U.S.C. 31d(b)(3)) an evaluation of the progress  
9           of the Program toward fulfilling the purposes of  
10          the Program under subsection (b).

11         (g) FINANCIAL ASSISTANCE.—

12           (1) ARCHIVE FACILITIES.—Subject to the avail-  
13           ability of appropriations, the Secretary shall provide  
14           financial assistance to a State agency that is des-  
15           ignated under subsection (d)(2) for providing facili-  
16           ties to archive energy material.

17           (2) STUDIES.—Subject to the availability of ap-  
18           propriations, the Secretary shall provide financial as-  
19           sistance to any State agency designated under sub-  
20           section (d)(2) for studies and technical assistance  
21           activities that enhance understanding, interpreta-  
22           tion, and use of materials archived in the data ar-  
23           chive system established under subsection (d).

24           (3) FEDERAL SHARE.—The Federal share of  
25           the cost of an activity carried out with assistance

1 under this subsection shall be not more than 50 per-  
2 cent of the total cost of the activity.

3 (4) PRIVATE CONTRIBUTIONS.—The Secretary  
4 shall apply to the non-Federal share of the cost of  
5 an activity carried out with assistance under this  
6 subsection the value of private contributions of prop-  
7 erty and services used for that activity.

8 (h) REPORT.—The Secretary shall include in each re-  
9 port under section 8 of the National Geologic Mapping Act  
10 of 1992 (43 U.S.C. 31g)—

11 (1) a description of the status of the Program;

12 (2) an evaluation of the progress achieved in  
13 developing the Program during the period covered by  
14 the report; and

15 (3) any recommendations for legislative or other  
16 action the Secretary considers necessary and appro-  
17 priate to fulfill the purposes of the Program under  
18 subsection (b).

19 (i) MAINTENANCE OF STATE EFFORT.—It is the in-  
20 tent of Congress that the States not use this section as  
21 an opportunity to reduce State resources applied to the  
22 activities that are the subject of the Program.

23 (j) DEFINITIONS.—In this section:

24 (1) ADVISORY COMMITTEE.—The term “Advi-  
25 sory Committee” means the advisory committee es-

1        established under section 5 of the National Geologic  
2        Mapping Act of 1992 (43 U.S.C. 31d).

3            (2) PROGRAM.—The term “Program” means  
4        the National Geological and Geophysical Data Pres-  
5        ervation Program carried out under this section.

6            (3) SECRETARY.—The term “Secretary” means  
7        the Secretary of the Interior, acting through the Di-  
8        rector of the United States Geological Survey.

9            (4) SURVEY.—The term “Survey” means the  
10       United States Geological Survey.

11        (k) AUTHORIZATION OF APPROPRIATIONS.—There  
12       are authorized to be appropriated to carry out this section  
13       \$30,000,000 for each of fiscal years 2006 through 2010.

14       **SEC. 2012. OIL AND GAS LEASE ACREAGE LIMITATIONS.**

15        Section 27(d)(1) of the Mineral Leasing Act (30  
16       U.S.C. 184(d)(1)) is amended by inserting after “acreage  
17       held in special tar sand areas” the following: “, and acre-  
18       age under any lease any portion of which has been com-  
19       mitted to a federally approved unit or cooperative plan or  
20       communitization agreement or for which royalty (includ-  
21       ing compensatory royalty or royalty in-kind) was paid in  
22       the preceding calendar year,”.

1 **SEC. 2013. DEADLINE FOR DECISION ON APPEALS OF CON-**  
2 **SISTENCY DETERMINATION UNDER THE**  
3 **COASTAL ZONE MANAGEMENT ACT OF 1972.**

4 (a) IN GENERAL.—Section 319 of the Coastal Zone  
5 Management Act of 1972 (16 U.S.C. 1465) is amended  
6 to read as follows:

7 “APPEALS TO THE SECRETARY

8 “SEC. 319. (a) NOTICE.—The Secretary shall publish  
9 an initial notice in the Federal Register not later than 30  
10 days after the date of the filing of any appeal to the Sec-  
11 retary of a consistency determination under section 307.

12 “(b) CLOSURE OF RECORD.—

13 “(1) IN GENERAL.—Not later than the end of  
14 the 120-day period beginning on the date of publica-  
15 tion of an initial notice under subsection (a), the  
16 Secretary shall receive no more filings on the appeal  
17 and the administrative record regarding the appeal  
18 shall be closed.

19 “(2) NOTICE.—Upon the closure of the admin-  
20 istrative record, the Secretary shall immediately  
21 publish a notice that the administrative record has  
22 been closed.

23 “(c) DEADLINE FOR DECISION.—The Secretary shall  
24 issue a decision in any appeal filed under section 307 not  
25 later than 120 days after the closure of the administrative  
26 record.

1       “(d) APPLICATION.—This section applies to appeals  
2 initiated by the Secretary and appeals filed by an appli-  
3 cant.”.

4       (b) APPLICATION.—

5           (1) IN GENERAL.—Except as provided in para-  
6 graph (2), the amendment made by subsection (a)  
7 shall apply with respect to any appeal initiated or  
8 filed before, on, or after the date of enactment of  
9 this Act.

10          (2) LIMITATION.—Subsection (a) of section 319  
11 of the Coastal Zone Management Act of 1972 (as  
12 amended by subsection (a)) shall not apply with re-  
13 spect to an appeal initiated or filed before the date  
14 of enactment of this Act.

15       (c) CLOSURE OF RECORD FOR APPEAL FILED BE-  
16 FORE DATE OF ENACTMENT.—Notwithstanding section  
17 319(b)(1) of the Coastal Zone Management Act of 1972  
18 (as amended by this section), in the case of an appeal of  
19 a consistency determination under section 307 of that Act  
20 initiated or filed before the date of enactment of this Act,  
21 the Secretary of Commerce shall receive no more filings  
22 on the appeal and the administrative record regarding the  
23 appeal shall be closed not later than 120 days after the  
24 date of enactment of this Act.

1 **SEC. 2014. REIMBURSEMENT FOR COSTS OF NEPA ANAL-**  
2 **YSES, DOCUMENTATION, AND STUDIES.**

3 (a) IN GENERAL.—The Mineral Leasing Act is  
4 amended by inserting after section 37 (30 U.S.C. 193)  
5 the following:

6 “REIMBURSEMENT FOR COSTS OF CERTAIN ANALYSES,  
7 DOCUMENTATION, AND STUDIES

8 “SEC. 38. (a) IN GENERAL.—The Secretary of the  
9 Interior shall issue regulations under which the Secretary  
10 shall reimburse a person that is a lessee, operator, oper-  
11 ating rights owner, or applicant for any lease under this  
12 Act for reasonable amounts paid by the person for prepa-  
13 ration for the Secretary by a contractor or other person  
14 selected by the Secretary of any project-level analysis, doc-  
15 umentation, or related study required pursuant to the Na-  
16 tional Environmental Policy Act of 1969 (42 U.S.C. 4321  
17 et seq.) with respect to the lease.

18 “(b) CONDITIONS.—The Secretary may provide reim-  
19 bursement under subsection (a) only if—

20 “(1) adequate funding to enable the Secretary  
21 to timely prepare the analysis, documentation, or re-  
22 lated study is not appropriated;

23 “(2) the person paid the costs voluntarily;

24 “(3) the person maintains records of its costs  
25 in accordance with regulations issued by the Sec-  
26 retary;

1           “(4) the reimbursement is in the form of a re-  
2           duction in the Federal share of the royalty required  
3           to be paid for the lease for which the analysis, docu-  
4           mentation, or related study is conducted, and is  
5           agreed to by the Secretary and the person reim-  
6           bursed prior to commencing the analysis, docu-  
7           mentation, or related study; and

8           “(5) the agreement required under paragraph  
9           (4) contains provisions—

10                   “(A) reducing royalties owed on lease pro-  
11                   duction based on market prices;

12                   “(B) stipulating an automatic termination  
13                   of the royalty reduction upon recovery of docu-  
14                   mented costs; and

15                   “(C) providing a process by which the les-  
16                   see may seek reimbursement for circumstances  
17                   in which production from the specified lease is  
18                   not possible.”.

19           (b) APPLICATION.—The amendment made by this  
20           section shall apply with respect to an analysis, documenta-  
21           tion, or a related study conducted on or after the date  
22           of enactment of this Act for any lease entered into before,  
23           on, or after the date of enactment of this Act.

24           (c) DEADLINE FOR REGULATIONS.—The Secretary  
25           shall issue regulations implementing the amendment made



1 by this section by not later than 1 year after the date  
2 of enactment of this Act.

3 **SEC. 2015. GAS HYDRATE PRODUCTION INCENTIVE.**

4 (a) PURPOSE.—The purpose of this section is to pro-  
5 mote natural gas production from the abundant natural  
6 gas hydrate resources on the outer Continental Shelf and  
7 Federal lands in Alaska by providing royalty incentives.

8 (b) SUSPENSION OF ROYALTIES.—

9 (1) IN GENERAL.—The Secretary of the Inte-  
10 rior shall grant royalty relief in accordance with this  
11 section for natural gas produced from gas hydrate  
12 resources under any lease that is an eligible lease  
13 under paragraph (2).

14 (2) ELIGIBLE LEASES.—A lease shall be an eli-  
15 gible lease for purposes of this section if—

16 (A) it is issued under the Outer Conti-  
17 nental Shelf Lands Act (43 U.S.C. 1331 et  
18 seq.), or is an oil and gas lease issued for on-  
19 shore Federal lands in Alaska;

20 (B) it is issued prior to January 1, 2016;  
21 and

22 (C) production under the lease of natural  
23 gas from the gas hydrate resources commences  
24 prior to January 1, 2018.

1           (3) AMOUNT OF RELIEF.—The Secretary shall  
2           grant royalty relief under this section as a suspen-  
3           sion volume of at least 50 billion cubic feet of nat-  
4           ural gas produced from gas hydrate resources per 9  
5           square mile leased tract. Such relief shall be in addi-  
6           tion to any other royalty relief under any other pro-  
7           vision applicable to the lease that does not specifi-  
8           cally grant a gas hydrate production incentive. The  
9           minimum suspension volume under this section for  
10          leased tracts that are smaller or larger than nine  
11          square miles shall be adjusted on a proportional  
12          basis.

13           (4) LIMITATION.—The Secretary may place lim-  
14          itations on the suspension of royalty relief granted  
15          based on market price.

16          (c) APPLICATION.—This section shall apply to any el-  
17          igible lease issued before, on, or after the date of enact-  
18          ment of this Act.

19          (d) RULEMAKINGS.—The Secretary shall complete  
20          any rulemakings implementing this section within 1 year  
21          after the date of enactment of this Act.

22          (e) GAS HYDRATE RESOURCES DEFINED.—In this  
23          section, the term “gas hydrate resources” includes both  
24          the natural gas content of gas hydrates within the hydrate

1 stability zone and free natural gas trapped by and beneath  
2 the hydrate stability zone.

3 **SEC. 2016. ONSHORE DEEP GAS PRODUCTION INCENTIVE.**

4 (a) PURPOSE.—The purpose of this section is to pro-  
5 mote natural gas production from the abundant onshore  
6 deep gas resources on Federal lands by providing royalty  
7 incentives.

8 (b) SUSPENSION OF ROYALTIES.—

9 (1) IN GENERAL.—The Secretary shall grant  
10 royalty relief in accordance with this section for nat-  
11 ural gas produced from deep wells spudded after the  
12 date of enactment of this Act under any onshore  
13 Federal oil and gas lease.

14 (2) AMOUNT OF RELIEF.—The Secretary shall  
15 grant royalty relief under this section as a suspen-  
16 sion volume determined by the Secretary in an  
17 amount necessary to maximize production of natural  
18 gas volumes. The maximum suspension volume shall  
19 be 50 billion cubic feet of natural gas per lease.  
20 Such royalty suspension volume shall be applied be-  
21 ginning with the first dollar of royalty obligation for  
22 production on or after the date of enactment of this  
23 Act.

1           (3) LIMITATION.—The Secretary may place lim-  
2           itations on the suspension of royalty relief granted  
3           based on market price.

4           (c) APPLICATION.—This section shall apply to any  
5           onshore Federal oil and gas lease issued before, on, or  
6           after the date of enactment of this Act.

7           (d) RULEMAKINGS.—

8           (1) REQUIREMENT.—The Secretary shall com-  
9           plete any rulemakings implementing this section  
10          within 1 year after the date of enactment of this  
11          Act.

12          (2) DEFINITION OF DEEP WELL.—Such regula-  
13          tions shall include a definition of the term “deep  
14          well” for purposes of this section.

15   **SEC. 2017. ENHANCED OIL AND NATURAL GAS PRODUCTION**  
16                           **INCENTIVE.**

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

18           (1) Approximately two-thirds of the original oil  
19           in place in the United States remains unproduced.

20           (2) Enhanced oil and natural gas production  
21           from the sequestering of carbon dioxide and other  
22           appropriate gases has the potential to increase oil  
23           and natural gas production in the United States by  
24           2 million barrels of oil equivalent per day, or more.

1           (3) Collection of carbon dioxide and other ap-  
2           propriate gases from industrial facilities could pro-  
3           vide a significant source of these gases that could be  
4           permanently sequestered into oil and natural gas  
5           fields.

6           (4) Such collection could be made economic by  
7           providing production incentives to oil and natural  
8           gas lessees.

9           (5) Providing production incentives for en-  
10          hanced oil and natural gas production would pro-  
11          mote significant advances in emissions control and  
12          capture technology.

13          (6) Capturing and productively using industrial  
14          emissions of carbon dioxide would help reduce the  
15          carbon intensity of the economy.

16          (7) Enhanced production of oil and natural gas  
17          lessens the potential for environmental impacts when  
18          compared with development of new oil and natural  
19          gas fields because the infrastructure, such as wells,  
20          pipelines, and platforms, is generally already in  
21          place.

22          (b) PURPOSE.—The purpose of this section is—

23               (1) to promote the capturing, transportation,  
24               and injection of produced carbon dioxide, natural

1 carbon dioxide, and other appropriate gases for se-  
2 questration into oil and gas fields; and

3 (2) to promote oil and natural gas production  
4 from the abundant resources on the outer Conti-  
5 nental Shelf and onshore Federal lands by enhanc-  
6 ing recovery of oil or natural gas (or both).

7 (c) SUSPENSION OF ROYALTIES.—

8 (1) IN GENERAL.—The Secretary of the Inte-  
9 rior shall grant a royalty relief in accordance with  
10 this section for production of oil or natural gas (or  
11 both) from lands subject to an eligible lease into  
12 which the lessee injects carbon dioxide, or other ap-  
13 propriate gas or other matter approved by the Sec-  
14 retary, for the purpose of enhancing recovery of oil  
15 or natural gas (or both) from the eligible lease.

16 (2) ELIGIBLE LEASES.—A lease shall be an eli-  
17 gible lease for purposes of this section if it is a lease  
18 for production of oil or gas (or both) from Federal  
19 outer Continental Shelf or onshore lands that the  
20 Secretary determines may contain a volume of oil or  
21 natural gas that would not likely be produced with-  
22 out royalty relief under this subsection.

23 (3) AMOUNT OF RELIEF.—The Secretary shall  
24 grant royalty relief under this section as a suspen-  
25 sion volume determined by the Secretary in an

1 amount necessary to maximize production of oil and  
2 natural gas volumes. The maximum suspension vol-  
3 ume shall be 50 billion cubic feet of natural gas, or  
4 equivalent oil volume on a Btu basis, or a combina-  
5 tion thereof, per eligible lease.

6 (4) LIMITATION.—The Secretary may place lim-  
7 itations on the suspension of royalty relief granted  
8 based on market price.

9 (d) APPLICATION.—This section shall apply to any  
10 eligible lease issued before, on, or after the date of enact-  
11 ment of this Act.

12 (e) RULEMAKINGS.—The Secretary shall complete  
13 any rulemakings implementing this provision within 1 year  
14 after the date of enactment of this Act.

15 **SEC. 2018. OIL SHALE.**

16 (a) FINDING.—Congress finds that oil shale re-  
17 sources located within the United States—

18 (1) total almost 2 trillion barrels of oil in place;

19 and

20 (2) are a strategically important domestic re-  
21 source that should be developed on an accelerated  
22 basis to reduce our growing reliance on politically  
23 and economically unstable sources of foreign oil im-  
24 ports.

1           (b) REQUIREMENT TO DEVELOP OIL SHALE LEAS-  
2     ING PROGRAM.—The Secretary of the Interior shall de-  
3     velop a Federal commercial oil shale leasing program as  
4     soon as practicable and publish a final regulation imple-  
5     menting such program by not later than December 31,  
6     2006.

7           (c) COMMENCEMENT OF LEASE SALES.—The Sec-  
8     retary shall hold the first oil shale lease sale under such  
9     program within 180 days after publishing the final regula-  
10    tion.

11          (d) REPORT.—Within 90 days after the date of en-  
12    actment of this Act, the Secretary shall report to the Com-  
13    mittee on Resources of the House of Representatives and  
14    the Committee on Energy and Natural Resources of the  
15    Senate on-

- 16           (1) the interim actions necessary to—  
17                (A) develop the program under subsection  
18                (b);  
19                (B) promulgate the final regulation under  
20                subsection (b); and  
21                (C) conduct the first lease sale under the  
22                program under subsection (b); and  
23           (2) a schedule for completing such actions.

24          (e) OIL SHALE LAND EXCHANGES.—



1           (1) REQUIREMENT.—The Secretary shall iden-  
2           tify and pursue to completion oil shale land ex-  
3           changes, on a value-for-value basis, that will allow  
4           qualified oil shale developers to have early access to  
5           currently owned Federal oil shale lands and to com-  
6           mence commercial oil shale development.

7           (2) APPLICABLE LAW.—The Secretary shall  
8           conduct land exchanges under this subsection in ac-  
9           cordance with the Federal Land Policy Management  
10          Act of 1976 (43 U.S.C. 1701 et seq.) and the Fed-  
11          eral Land Exchange Facilitation Act of 1988 (43  
12          U.S.C. 1701 note).

13 **SEC. 2019. USE OF INFORMATION ABOUT OIL AND GAS PUB-**  
14 **LIC CHALLENGES.**

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

16               (1) The Government Accountability Office (in  
17               this section referred to as the “GAO”), in report  
18               GAO–05–124, found that the Bureau of Land Man-  
19               agement does not systematically gather and use na-  
20               tionwide information on public challenges to manage  
21               its oil and gas program.

22               (2) The GAO found that this failure prevents  
23               the Director of the Bureau from assessing the im-  
24               pact of public challenges on the workload of the Bu-  
25               reau of Land Management State offices and elimi-

1 nates the ability of the Director to make appropriate  
2 staffing and funding resource allocation decisions.

3 (b) REQUIREMENT.—The Secretary of the Interior  
4 and the Secretary of Agriculture shall systematically col-  
5 lect and use nationwide information on public challenges  
6 to manage the oil and gas programs of the bureaus within  
7 their departments. The Secretaries shall gather such infor-  
8 mation at the planning, leasing, exploration, and develop-  
9 ment stages, and shall maintain such information elec-  
10 tronically with current data.

## 11 **Subtitle B—Access to Federal Land**

### 12 **SEC. 2021. OFFICE OF FEDERAL ENERGY PROJECT COORDI-** 13 **NATION.**

14 (a) ESTABLISHMENT.—The President shall establish  
15 the Office of Federal Energy Project Coordination (re-  
16 ferred to in this section as the “Office”) within the Execu-  
17 tive Office of the President in the same manner and with  
18 the same mission as the White House Energy Projects  
19 Task Force established by Executive Order No. 13212 (42  
20 U.S.C. 13201 note).

21 (b) STAFFING.—The Office shall be staffed by func-  
22 tional experts from relevant Federal agencies on a non-  
23 reimbursable basis to carry out the mission of the Office.

24 (c) REPORT.—The Office shall transmit an annual  
25 report to Congress that describes the activities put in place

1 to coordinate and expedite Federal decisions on energy  
2 projects. The report shall list accomplishments in improv-  
3 ing the Federal decisionmaking process and shall include  
4 any additional recommendations or systemic changes  
5 needed to establish a more effective and efficient Federal  
6 permitting process.

7 **SEC. 2022. FEDERAL ONSHORE OIL AND GAS LEASING AND**  
8 **PERMITTING PRACTICES.**

9 (a) REVIEW OF ONSHORE OIL AND GAS LEASING  
10 PRACTICES.—

11 (1) IN GENERAL.—The Secretary of the Inte-  
12 rior, in consultation with the Secretary of Agri-  
13 culture with respect to National Forest System lands  
14 under the jurisdiction of the Department of Agri-  
15 culture, shall perform an internal review of current  
16 Federal onshore oil and gas leasing and permitting  
17 practices.

18 (2) INCLUSIONS.—The review shall include the  
19 process for—

20 (A) accepting or rejecting offers to lease;

21 (B) administrative appeals of decisions or  
22 orders of officers or employees of the Bureau of  
23 Land Management with respect to a Federal oil  
24 or gas lease;

1 (C) considering surface use plans of oper-  
2 ation, including the timeframes in which the  
3 plans are considered, and any recommendations  
4 for improving and expediting the process; and

5 (D) identifying stipulations to address site-  
6 specific concerns and conditions, including those  
7 stipulations relating to the environment and re-  
8 source use conflicts.

9 (b) REPORT.—Not later than 180 days after the date  
10 of enactment of this Act, the Secretary of the Interior and  
11 the Secretary of Agriculture shall transmit a report to  
12 Congress that describes—

13 (1) actions taken under section 3 of Executive  
14 Order No. 13212 (42 U.S.C. 13201 note); and

15 (2) actions taken or any plans to improve the  
16 Federal onshore oil and gas leasing program.

17 **SEC. 2023. MANAGEMENT OF FEDERAL OIL AND GAS LEAS-**  
18 **ING PROGRAMS.**

19 (a) TIMELY ACTION ON LEASES AND PERMITS.—To  
20 ensure timely action on oil and gas leases and applications  
21 for permits to drill on land otherwise available for leasing,  
22 the Secretary of the Interior (in this section referred to  
23 as the “Secretary”) shall—

1           (1) ensure expeditious compliance with section  
2           102(2)(C) of the National Environmental Policy Act  
3           of 1969 (42 U.S.C. 4332(2)(C));

4           (2) improve consultation and coordination with  
5           the States and the public; and

6           (3) improve the collection, storage, and retrieval  
7           of information relating to the leasing activities.

8           (b) BEST MANAGEMENT PRACTICES.—

9           (1) IN GENERAL.—Not later than 18 months  
10          after the date of enactment of this Act, the Sec-  
11          retary shall develop and implement best manage-  
12          ment practices to—

13                (A) improve the administration of the on-  
14                shore oil and gas leasing program under the  
15                Mineral Leasing Act (30 U.S.C. 181 et seq.);  
16                and

17                (B) ensure timely action on oil and gas  
18                leases and applications for permits to drill on  
19                lands otherwise available for leasing.

20          (2) CONSIDERATIONS.—In developing the best  
21          management practices under paragraph (1), the Sec-  
22          retary shall consider any recommendations from the  
23          review under section 2022.

24          (3) REGULATIONS.—Not later than 180 days  
25          after the development of best management practices

1 under paragraph (1), the Secretary shall publish, for  
2 public comment, proposed regulations that set forth  
3 specific timeframes for processing leases and appli-  
4 cations in accordance with the practices, including  
5 deadlines for—

6 (A) approving or disapproving resource  
7 management plans and related documents, lease  
8 applications, and surface use plans; and

9 (B) related administrative appeals.

10 (c) IMPROVED ENFORCEMENT.—The Secretary shall  
11 improve inspection and enforcement of oil and gas activi-  
12 ties, including enforcement of terms and conditions in per-  
13 mits to drill.

14 (d) AUTHORIZATION OF APPROPRIATIONS.—In addi-  
15 tion to amounts authorized to be appropriated to carry  
16 out section 17 of the Mineral Leasing Act (30 U.S.C.  
17 226), there are authorized to be appropriated to the Sec-  
18 retary for each of fiscal years 2006 through 2009—

19 (1) \$40,000,000 to carry out subsections (a)  
20 and (b); and

21 (2) \$20,000,000 to carry out subsection (c).

22 **SEC. 2024. CONSULTATION REGARDING OIL AND GAS LEAS-**  
23 **ING ON PUBLIC LAND.**

24 (a) IN GENERAL.—Not later than 180 days after the  
25 date of enactment of this Act, the Secretary of the Interior

1 and the Secretary of Agriculture shall enter into a memo-  
2 randum of understanding regarding oil and gas leasing  
3 on—

4 (1) public lands under the jurisdiction of the  
5 Secretary of the Interior; and

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

8 (b) CONTENTS.—The memorandum of understanding  
9 shall include provisions that—

10 (1) establish administrative procedures and  
11 lines of authority that ensure timely processing of oil  
12 and gas lease applications, surface use plans of oper-  
13 ation, and applications for permits to drill, including  
14 steps for processing surface use plans and applica-  
15 tions for permits to drill consistent with the  
16 timelines established by the amendment made by  
17 section 2028;

18 (2) eliminate duplication of effort by providing  
19 for coordination of planning and environmental com-  
20 pliance efforts; and

21 (3) ensure that lease stipulations are—

22 (A) applied consistently;

23 (B) coordinated between agencies; and

1           (C) only as restrictive as necessary to pro-  
2           tect the resource for which the stipulations are  
3           applied.

4           (c) DATA RETRIEVAL SYSTEM.—

5           (1) IN GENERAL.—Not later than 1 year after  
6           the date of enactment of this Act, the Secretary of  
7           the Interior and the Secretary of Agriculture shall  
8           establish a joint data retrieval system that is capable  
9           of—

10           (A) tracking applications and formal re-  
11           quests made in accordance with procedures of  
12           the Federal onshore oil and gas leasing pro-  
13           gram; and

14           (B) providing information regarding the  
15           status of the applications and requests within  
16           the Department of the Interior and the Depart-  
17           ment of Agriculture.

18           (2) RESOURCE MAPPING.—Not later than 2  
19           years after the date of enactment of this Act, the  
20           Secretary of the Interior and the Secretary of Agri-  
21           culture shall establish a joint Geographic Informa-  
22           tion System mapping system for use in—

23           (A) tracking surface resource values to aid  
24           in resource management; and



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

3 **SEC. 2025. ESTIMATES OF OIL AND GAS RESOURCES UN-**  
4 **DERLYING ONSHORE FEDERAL LAND.**

5 (a) ASSESSMENT.—Section 604 of the Energy Act of  
6 2000 (42 U.S.C. 6217) is amended—

7 (1) in subsection (a)—

8 (A) in paragraph (1)—

9 (i) by striking “reserve”; and

10 (ii) by striking “and” after the semi-  
11 colon; and

12 (B) by striking paragraph (2) and insert-  
13 ing the following:

14 “(2) the extent and nature of any restrictions  
15 or impediments to the development of the resources,  
16 including—

17 “(A) impediments to the timely granting of  
18 leases;

19 “(B) post-lease restrictions, impediments,  
20 or delays on development for conditions of ap-  
21 proval, applications for permits to drill, or proc-  
22 essing of environmental permits; and

23 “(C) permits or restrictions associated with  
24 transporting the resources for entry into com-  
25 merce; and

1           “(3) the quantity of resources not produced or  
2 introduced into commerce because of the restric-  
3 tions.”;

4           (2) in subsection (b)—

5                 (A) by striking “reserve” and inserting  
6 “resource”; and

7                 (B) by striking “publically” and inserting  
8 “publicly”; and

9           (3) by striking subsection (d) and inserting the  
10 following:

11           “(d) ASSESSMENTS.—Using the inventory, the Sec-  
12 retary of Energy shall make periodic assessments of eco-  
13 nomically recoverable resources accounting for a range of  
14 parameters such as current costs, commodity prices, tech-  
15 nology, and regulations.”.

16           (b) METHODOLOGY.—The Secretary of the Interior  
17 shall use the same assessment methodology across all geo-  
18 logical provinces, areas, and regions in preparing and  
19 issuing national geological assessments to ensure accurate  
20 comparisons of geological resources.

1 **SEC. 2026. COMPLIANCE WITH EXECUTIVE ORDER 13211;**  
2 **ACTIONS CONCERNING REGULATIONS THAT**  
3 **SIGNIFICANTLY AFFECT ENERGY SUPPLY,**  
4 **DISTRIBUTION, OR USE.**

5 (a) **REQUIREMENT.**—The head of each Federal agen-  
6 cy shall require that before the Federal agency takes any  
7 action that could have a significant adverse effect on the  
8 supply of domestic energy resources from Federal public  
9 land, the Federal agency taking the action shall comply  
10 with Executive Order No. 13211 (42 U.S.C. 13201 note).

11 (b) **GUIDANCE.**—Not later than 180 days after the  
12 date of enactment of this Act, the Secretary of Energy  
13 shall publish guidance for purposes of this section describ-  
14 ing what constitutes a significant adverse effect on the  
15 supply of domestic energy resources under Executive  
16 Order No. 13211 (42 U.S.C. 13201 note).

17 (c) **MEMORANDUM OF UNDERSTANDING.**—The Sec-  
18 retary of the Interior and the Secretary of Agriculture  
19 shall include in the memorandum of understanding under  
20 section 2024 provisions for implementing subsection (a)  
21 of this section.

22 **SEC. 2027. PILOT PROJECT TO IMPROVE FEDERAL PERMIT**  
23 **COORDINATION.**

24 (a) **ESTABLISHMENT.**—The Secretary of the Interior  
25 (in this section referred to as the “Secretary”) shall estab-

1 lish a Federal Permit Streamlining Pilot Project (in this  
2 section referred to as the “Pilot Project”).

3 (b) MEMORANDUM OF UNDERSTANDING.—

4 (1) IN GENERAL.—Not later than 90 days after  
5 the date of enactment of this Act, the Secretary  
6 shall enter into a memorandum of understanding  
7 with the Secretary of Agriculture, the Administrator  
8 of the Environmental Protection Agency, and the  
9 Chief of Engineers of the Army Corps of Engineers  
10 for purposes of this section.

11 (2) STATE PARTICIPATION.—The Secretary  
12 may request that the Governors of Wyoming, Mon-  
13 tana, Colorado, Utah, and New Mexico be signato-  
14 ries to the memorandum of understanding.

15 (c) DESIGNATION OF QUALIFIED STAFF.—

16 (1) IN GENERAL.—Not later than 30 days after  
17 the date of the signing of the memorandum of un-  
18 derstanding under subsection (b), all Federal signa-  
19 tory parties shall assign to each of the field offices  
20 identified in subsection (d), on a nonreimbursable  
21 basis, an employee who has expertise in the regu-  
22 latory issues relating to the office in which the em-  
23 ployee is employed, including, as applicable, par-  
24 ticular expertise in—

1 (A) the consultations and the preparation  
2 of biological opinions under section 7 of the En-  
3 dangered Species Act of 1973 (16 U.S.C.  
4 1536);

5 (B) permits under section 404 of Federal  
6 Water Pollution Control Act (33 U.S.C. 1344);

7 (C) regulatory matters under the Clean Air  
8 Act (42 U.S.C. 7401 et seq.);

9 (D) planning under the National Forest  
10 Management Act of 1976 (16 U.S.C. 472a et  
11 seq.); and

12 (E) the preparation of analyses under the  
13 National Environmental Policy Act of 1969 (42  
14 U.S.C. 4321 et seq.).

15 (2) DUTIES.—Each employee assigned under  
16 paragraph (1) shall—

17 (A) not later than 90 days after the date  
18 of assignment, report to the Bureau of Land  
19 Management Field Managers in the office to  
20 which the employee is assigned;

21 (B) be responsible for all issues relating to  
22 the jurisdiction of the home office or agency of  
23 the employee; and

1 (C) participate as part of the team of per-  
2 sonnel working on proposed energy projects,  
3 planning, and environmental analyses.

4 (d) FIELD OFFICES.—The following Bureau of Land  
5 Management Field Offices shall serve as the Pilot Project  
6 offices:

7 (1) Rawlins, Wyoming.

8 (2) Buffalo, Wyoming.

9 (3) Miles City, Montana

10 (4) Farmington, New Mexico.

11 (5) Carlsbad, New Mexico.

12 (6) Glenwood Springs, Colorado.

13 (7) Vernal, Utah.

14 (e) REPORTS.—Not later than 3 years after the date  
15 of enactment of this Act, the Secretary shall transmit to  
16 Congress a report that—

17 (1) outlines the results of the Pilot Project to  
18 date; and

19 (2) makes a recommendation to the President  
20 regarding whether the Pilot Project should be imple-  
21 mented throughout the United States.

22 (f) ADDITIONAL PERSONNEL.—The Secretary shall  
23 assign to each field office identified in subsection (d) any  
24 additional personnel that are necessary to ensure the ef-  
25 fective implementation of—

1 (1) the Pilot Project; and

2 (2) other programs administered by the field of-  
3 fices, including inspection and enforcement relating  
4 to energy development on Federal land, in accord-  
5 ance with the multiple use mandate of the Federal  
6 Land Policy and Management Act of 1976 (43  
7 U.S.C. 1701 et seq).

8 (g) SAVINGS PROVISION.—Nothing in this section af-  
9 fects—

10 (1) the operation of any Federal or State law;

11 or

12 (2) any delegation of authority made by the  
13 head of a Federal agency whose employees are par-  
14 ticipating in the Pilot Project.

15 **SEC. 2028. DEADLINE FOR CONSIDERATION OF APPLICA-**  
16 **TIONS FOR PERMITS.**

17 Section 17 of the Mineral Leasing Act (30 U.S.C.  
18 226) is amended by adding at the end the following:

19 “(p) DEADLINES FOR CONSIDERATION OF APPLICA-  
20 TIONS FOR PERMITS.—

21 “(1) IN GENERAL.—Not later than 10 days  
22 after the date on which the Secretary receives an ap-  
23 plication for any permit to drill, the Secretary  
24 shall—

1           “(A) notify the applicant that the applica-  
2           tion is complete; or

3           “(B) notify the applicant that information  
4           is missing and specify any information that is  
5           required to be submitted for the application to  
6           be complete.

7           “(2) ISSUANCE OR DEFERRAL.—Not later than  
8           30 days after the applicant for a permit has sub-  
9           mitted a complete application, the Secretary shall—

10           “(A) issue the permit; or

11           “(B)(i) defer decision on the permit; and

12           “(ii) provide to the applicant a notice that  
13           specifies any steps that the applicant could take  
14           for the permit to be issued.

15           “(3) REQUIREMENTS FOR DEFERRED APPLICA-  
16           TIONS.—

17           “(A) IN GENERAL.—If the Secretary pro-  
18           vides notice under paragraph (2)(B)(ii), the ap-  
19           plicant shall have a period of 2 years from the  
20           date of receipt of the notice in which to com-  
21           plete all requirements specified by the Sec-  
22           retary, including providing information needed  
23           for compliance with the National Environmental  
24           Policy Act of 1969 (42 U.S.C. 4321 et seq.).



1           “(B) ISSUANCE OF DECISION ON PER-  
2           MIT.—If the applicant completes the require-  
3           ments within the period specified in subpara-  
4           graph (A), the Secretary shall issue a decision  
5           on the permit not later than 10 days after the  
6           date of completion of the requirements de-  
7           scribed in subparagraph (A).

8           “(C) DENIAL OF PERMIT.—If the appli-  
9           cant does not complete the requirements within  
10          the period specified in subparagraph (A), the  
11          Secretary shall deny the permit.

12          “(q) REPORT.—On a quarterly basis, each field office  
13          of the Bureau of Land Management and the Forest Serv-  
14          ice shall transmit to the Secretary of the Interior or the  
15          Secretary of Agriculture, respectively, a report that—

16               “(1) specifies the number of applications for  
17               permits to drill received by the field office in the pe-  
18               riod covered by the report; and

19               “(2) describes how each of the applications was  
20               disposed of by the field office in accordance with  
21               subsection (p).”.

1 **SEC. 2029. CLARIFICATION OF FAIR MARKET RENTAL**  
2 **VALUE DETERMINATIONS FOR PUBLIC LAND**  
3 **AND FOREST SERVICE RIGHTS-OF-WAY.**

4 (a) LINEAR RIGHTS-OF-WAY UNDER FEDERAL  
5 LAND POLICY AND MANAGEMENT ACT OF 1976.—Section  
6 504 of the Federal Land Policy and Management Act of  
7 1976 (43 U.S.C. 1764) is amended by adding at the end  
8 the following:

9 “(k) DETERMINATION OF FAIR MARKET VALUE OF  
10 LINEAR RIGHTS-OF-WAY.—

11 “(1) IN GENERAL.—Effective beginning on the  
12 date of the issuance of the rules required by para-  
13 graph (2), for purposes of subsection (g), the Sec-  
14 retary concerned shall determine the fair market  
15 value for the use of land encumbered by a linear  
16 right-of-way granted, issued, or renewed under this  
17 title using the valuation method described in para-  
18 graphs (2), (3), and (4).

19 “(2) REVISIONS.—Not later than 1 year after  
20 the date of enactment of this subsection—

21 “(A) the Secretary of the Interior shall  
22 amend section 2803.1–2 of title 43, Code of  
23 Federal Regulations, as in effect on the date of  
24 enactment of this subsection, to revise the per  
25 acre rental fee zone value schedule by State,

1 county, and type of linear right-of-way use to  
2 reflect current values of land in each zone; and

3 “(B) the Secretary of Agriculture shall  
4 make the same revision for linear rights-of-way  
5 granted, issued, or renewed under this title on  
6 National Forest System land.

7 “(3) UPDATES.—The Secretary concerned shall  
8 annually update the schedule revised under para-  
9 graph (2) by multiplying the current year’s rental  
10 per acre by the annual change, second quarter to  
11 second quarter (June 30 to June 30) in the Gross  
12 National Product Implicit Price Deflator Index pub-  
13 lished in the Survey of Current Business of the De-  
14 partment of Commerce, Bureau of Economic Anal-  
15 ysis.

16 “(4) REVIEW.—If the cumulative change in the  
17 index referred to in paragraph (3) exceeds 30 per-  
18 cent, or the change in the 3-year average of the 1-  
19 year Treasury interest rate used to determine per  
20 acre rental fee zone values exceeds plus or minus 50  
21 percent, the Secretary concerned shall conduct a re-  
22 view of the zones and rental per acre figures to de-  
23 termine whether the value of Federal land has dif-  
24 fered sufficiently from the index referred to in para-  
25 graph (3) to warrant a revision in the base zones

1 and rental per acre figures. If, as a result of the re-  
2 view, the Secretary concerned determines that such  
3 a revision is warranted, the Secretary concerned  
4 shall revise the base zones and rental per acre fig-  
5 ures accordingly. Any revision of base zones and  
6 rental per acre figure shall only affect lease rental  
7 rates at inception or renewal.”.

8 (b) RIGHTS-OF-WAY UNDER MINERAL LEASING  
9 ACT.—Section 28(*l*) of the Mineral Leasing Act (30  
10 U.S.C. 185(*l*)) is amended by inserting before the period  
11 at the end the following: “using the valuation method de-  
12 scribed in section 2803.1–2 of title 43, Code of Federal  
13 Regulations, as revised in accordance with section 504(k)  
14 of the Federal Land Policy and Management Act of 1976  
15 (43 U.S.C. 1764(k))”.

16 **SEC. 2030. ENERGY FACILITY RIGHTS-OF-WAY AND COR-**  
17 **RIDORS ON FEDERAL LAND.**

18 (a) REPORT TO CONGRESS.—

19 (1) IN GENERAL.—Not later than 1 year after  
20 the date of enactment of this Act, the Secretary of  
21 Agriculture and the Secretary of the Interior, in con-  
22 sultation with the Secretary of Commerce, the Sec-  
23 retary of Defense, the Secretary of Energy, and the  
24 Federal Energy Regulatory Commission, shall sub-  
25 mit to Congress a joint report—

1 (A) that addresses—

2 (i) the location of existing rights-of-  
3 way and designated and de facto corridors  
4 for oil, gas, and hydrogen pipelines and  
5 electric transmission and distribution fa-  
6 cilities on Federal land; and

7 (ii) opportunities for additional oil,  
8 gas, and hydrogen pipeline and electric  
9 transmission capacity within those rights-  
10 of-way and corridors; and

11 (B) that includes a plan for making avail-  
12 able, on request, to the appropriate Federal,  
13 State, and local agencies, tribal governments,  
14 and other persons involved in the siting of oil,  
15 gas, and hydrogen pipelines and electricity  
16 transmission facilities Geographic Information  
17 System-based information regarding the loca-  
18 tion of the existing rights-of-way and corridors  
19 and any planned rights-of-way and corridors.

20 (2) CONSULTATIONS AND CONSIDERATIONS.—

21 In preparing the report, the Secretary of the Interior  
22 and the Secretary of Agriculture shall consult  
23 with—

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

1 (B) persons involved in the siting of oil,  
2 gas, and hydrogen pipelines and electric trans-  
3 mission facilities; and

4 (C) other interested members of the public.

5 (3) LIMITATION.—The Secretary of the Interior  
6 and the Secretary of Agriculture shall limit the dis-  
7 tribution of the report and Geographic Information  
8 System-based information referred to in paragraph  
9 (1) as necessary for national and infrastructure se-  
10 curity reasons, if either Secretary determines that  
11 the information may be withheld from public disclo-  
12 sure under a national security or other exception  
13 under section 552(b) of title 5, United States Code.

14 (b) CORRIDOR DESIGNATIONS.—

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

23 (A) designate, under title V of the Federal  
24 Land Policy and Management Act of 1976 (43  
25 U.S.C. 1761 et seq.) and other applicable Fed-

1 eral laws, corridors for oil, gas, and hydrogen  
2 pipelines and electricity transmission and facili-  
3 ties on Federal land in the eleven contiguous  
4 Western States (as defined in section 103 of  
5 the Federal Land Policy and Management Act  
6 of 1976 (43 U.S.C. 1702));

7 (B) perform any environmental reviews  
8 that may be required to complete the designa-  
9 tions of corridors for the facilities on Federal  
10 land in the eleven contiguous Western States;  
11 and

12 (C) incorporate the designated corridors  
13 into—

14 (i) the relevant departmental and  
15 agency land use and resource management  
16 plans; or

17 (ii) equivalent plans.

18 (2) OTHER STATES.—Not later than 4 years  
19 after the date of enactment of this Act, the Sec-  
20 retary of Agriculture, the Secretary of Commerce,  
21 the Secretary of Defense, the Secretary of Energy,  
22 and the Secretary of the Interior, in consultation  
23 with the Federal Energy Regulatory Commission  
24 and the affected utility industries, shall jointly—

1 (A) identify corridors for oil, gas, and hy-  
2 drogen pipelines and electricity transmission  
3 and distribution facilities on Federal land in the  
4 States other than those described in paragraph  
5 (1); and

6 (B) schedule prompt action to identify,  
7 designate, and incorporate the corridors into  
8 the land use plan.

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

17 (A) ensure that additional corridors for oil,  
18 gas, and hydrogen pipelines and electricity  
19 transmission and distribution facilities on Fed-  
20 eral land are promptly identified and des-  
21 ignated; and

22 (B) expedite applications to construct or  
23 modify oil, gas, and hydrogen pipelines and  
24 electricity transmission and distribution facili-  
25 ties within the corridors, taking into account



1           prior analyses and environmental reviews un-  
2           dertaken during the designation of corridors.

3           (c) CONSIDERATIONS.—In carrying out this section,  
4 the Secretaries shall take into account the need for up-  
5 graded and new electricity transmission and distribution  
6 facilities to—

7           (1) improve reliability;

8           (2) relieve congestion; and

9           (3) enhance the capability of the national grid  
10 to deliver electricity.

11          (d) DEFINITION OF CORRIDOR.—

12           (1) IN GENERAL.—In this section and title V of  
13 the Federal Land Policy and Management Act of  
14 1976 (43 U.S.C. 1761 et seq.), the term “corridor”  
15 means—

16           (A) a linear strip of land—

17                   (i) with a width determined with con-  
18 sideration given to technological, environ-  
19 mental, and topographical factors; and

20                   (ii) that contains, or may in the fu-  
21 ture contain, 1 or more utility, communica-  
22 tion, or transportation facilities;

23           (B) a land use designation that is estab-  
24 lished—

25                   (i) by law;

- 1 (ii) by Secretarial Order;
- 2 (iii) through the land use planning
- 3 process; or
- 4 (iv) by other management decision;
- 5 and
- 6 (C) a designation made for the purpose of
- 7 establishing the preferred location of compatible
- 8 linear facilities and land uses.

9 (2) SPECIFICATIONS OF CORRIDOR.—On des-

10 igation of a corridor under this section, the center-

11 line, width, and compatible uses of a corridor shall

12 be specified.

13 **SEC. 2031. CONSULTATION REGARDING ENERGY RIGHTS-**

14 **OF-WAY ON PUBLIC LAND.**

15 (a) MEMORANDUM OF UNDERSTANDING.—

16 (1) IN GENERAL.—Not later than 6 months

17 after the date of enactment of this Act, the Sec-

18 retary of Energy, in consultation with the Secretary

19 of the Interior, the Secretary of Agriculture, and the

20 Secretary of Defense with respect to lands under

21 their respective jurisdictions, shall enter into a

22 memorandum of understanding to coordinate all ap-

23 plicable Federal authorizations and environmental

24 reviews relating to a proposed or existing utility fa-

25 cility. To the maximum extent practicable under ap-

1 plicable law, the Secretary of Energy shall, to ensure  
2 timely review and permit decisions, coordinate such  
3 authorizations and reviews with any Indian tribes,  
4 multi-State entities, and State agencies that are re-  
5 sponsible for conducting any separate permitting  
6 and environmental reviews of the affected utility fa-  
7 cility.

8 (2) CONTENTS.—The memorandum of under-  
9 standing shall include provisions that—

10 (A) establish—

11 (i) a unified right-of-way application  
12 form; and

13 (ii) an administrative procedure for  
14 processing right-of-way applications, in-  
15 cluding lines of authority, steps in applica-  
16 tion processing, and timeframes for appli-  
17 cation processing;

18 (B) provide for coordination of planning  
19 relating to the granting of the rights-of-way;

20 (C) provide for an agreement among the  
21 affected Federal agencies to prepare a single  
22 environmental review document to be used as  
23 the basis for all Federal authorization decisions;  
24 and

1 (D) provide for coordination of use of  
2 right-of-way stipulations to achieve consistency.

3 (b) NATURAL GAS PIPELINES.—

4 (1) IN GENERAL.—With respect to permitting  
5 activities for interstate natural gas pipelines, the  
6 May 2002 document entitled “Interagency Agree-  
7 ment On Early Coordination Of Required Environ-  
8 mental And Historic Preservation Reviews Con-  
9 ducted In Conjunction With The Issuance Of Au-  
10 thorizations To Construct And Operate Interstate  
11 Natural Gas Pipelines Certificated By The Federal  
12 Energy Regulatory Commission” shall constitute  
13 compliance with subsection (a).

14 (2) REPORT.—

15 (A) IN GENERAL.—Not later than 1 year  
16 after the date of enactment of this Act, and  
17 every 2 years thereafter, agencies that are sig-  
18 natories to the document referred to in para-  
19 graph (1) shall transmit to Congress a report  
20 on how the agencies under the jurisdiction of  
21 the Secretaries are incorporating and imple-  
22 menting the provisions of the document referred  
23 to in paragraph (1).

24 (B) CONTENTS.—The report shall ad-  
25 dress—

1 (i) efforts to implement the provisions  
2 of the document referred to in paragraph  
3 (1);

4 (ii) whether the efforts have had a  
5 streamlining effect;

6 (iii) further improvements to the per-  
7 mitting process of the agency; and

8 (iv) recommendations for inclusion of  
9 State and tribal governments in a coordi-  
10 nated permitting process.

11 (c) DEFINITION OF UTILITY FACILITY.—In this sec-  
12 tion, the term “utility facility” means any privately, pub-  
13 licly, or cooperatively owned line, facility, or system—

14 (1) for the transportation of—

15 (A) oil, natural gas, synthetic liquid fuel,  
16 or gaseous fuel;

17 (B) any refined product produced from oil,  
18 natural gas, synthetic liquid fuel, or gaseous  
19 fuel; or

20 (C) products in support of the production  
21 of material referred to in subparagraph (A) or  
22 (B);

23 (2) for storage and terminal facilities in connec-  
24 tion with the production of material referred to in  
25 paragraph (1); or

1           (3) for the generation, transmission, and dis-  
2           tribution of electric energy.

3 **SEC. 2032. ELECTRICITY TRANSMISSION LINE RIGHT-OF-**  
4           **WAY, CLEVELAND NATIONAL FOREST AND**  
5           **ADJACENT PUBLIC LAND, CALIFORNIA.**

6           (a) ISSUANCE.—

7           (1) IN GENERAL.—Not later than 60 days after  
8           the completion of the environmental reviews under  
9           subsection (c), the Secretary of the Interior and the  
10          Secretary of Agriculture shall issue all necessary  
11          grants, easements, permits, plan amendments, and  
12          other approvals to allow for the siting and construc-  
13          tion of a high-voltage electricity transmission line  
14          right-of-way running approximately north to south  
15          through the Trabuco Ranger District of the Cleve-  
16          land National Forest in the State of California and  
17          adjacent lands under the jurisdiction of the Bureau  
18          of Land Management and the Forest Service.

19          (2) INCLUSIONS.—The right-of-way approvals  
20          under paragraph (1) shall provide all necessary Fed-  
21          eral authorization from the Secretary of the Interior  
22          and the Secretary of Agriculture for the routing,  
23          construction, operation, and maintenance of a 500-  
24          kilovolt transmission line capable of meeting the  
25          long-term electricity transmission needs of the region

1 between the existing Valley-Serrano transmission  
2 line to the north and the Telega-Escondido trans-  
3 mission line to the south, and for connecting to fu-  
4 ture generating capacity that may be developed in  
5 the region.

6 (b) PROTECTION OF WILDERNESS AREAS.—The Sec-  
7 retary of the Interior and the Secretary of Agriculture  
8 shall not allow any portion of a transmission line right-  
9 of-way corridor identified in subsection (a) to enter any  
10 identified wilderness area in existence as of the date of  
11 enactment of this Act.

12 (c) ENVIRONMENTAL AND ADMINISTRATIVE RE-  
13 VIEWS.—

14 (1) DEPARTMENT OF INTERIOR OR LOCAL  
15 AGENCY.—The Secretary of the Interior, acting  
16 through the Director of the Bureau of Land Man-  
17 agement, shall be the lead Federal agency with over-  
18 all responsibility to ensure completion of required  
19 environmental and other reviews of the approvals to  
20 be issued under subsection (a).

21 (2) NATIONAL FOREST SYSTEM LAND.—For the  
22 portions of the corridor on National Forest System  
23 lands, the Secretary of Agriculture shall complete all  
24 required environmental reviews and administrative

1 actions in coordination with the Secretary of the In-  
2 terior.

3 (3) EXPEDITIOUS COMPLETION.—The reviews  
4 required for issuance of the approvals under sub-  
5 section (a) shall be completed not later than 1 year  
6 after the date of enactment of this Act.

7 (d) OTHER TERMS AND CONDITIONS.—The trans-  
8 mission line right-of-way shall be subject to such terms  
9 and conditions as the Secretary of the Interior and the  
10 Secretary of Agriculture consider necessary, based on the  
11 environmental reviews under subsection (c), to protect the  
12 value of historic, cultural, and natural resources under the  
13 jurisdiction of the Secretary of the Interior or the Sec-  
14 retary of Agriculture.

15 (e) PREFERENCE AMONG PROPOSALS.—The Sec-  
16 retary of the Interior and the Secretary of Agriculture  
17 shall give a preference to any application or preapplication  
18 proposal for a transmission line right-of-way referred to  
19 in subsection (a) that was submitted before December 31,  
20 2002, over all other applications and proposals for the  
21 same or a similar right-of-way submitted on or after that  
22 date.



1 **SEC. 2033. SENSE OF CONGRESS REGARDING DEVELOP-**  
2 **MENT OF MINERALS UNDER PADRE ISLAND**  
3 **NATIONAL SEASHORE.**

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

5 (1) Pursuant to Public Law 87–712 (16 U.S.C.  
6 459d et seq.; popularly known as the “Federal Ena-  
7 bling Act”) and various deeds and actions under  
8 that Act, the United States is the owner of only the  
9 surface estate of certain lands constituting the  
10 Padre Island National Seashore.

11 (2) Ownership of the oil, gas, and other min-  
12 erals in the subsurface estate of the lands consti-  
13 tuting the Padre Island National Seashore was never  
14 acquired by the United States, and ownership of  
15 those interests is held by the State of Texas and pri-  
16 vate parties.

17 (3) Public Law 87–712 (16 U.S.C. 459d et  
18 seq.)—

19 (A) expressly contemplated that the United  
20 States would recognize the ownership and fu-  
21 ture development of the oil, gas, and other min-  
22 erals in the subsurface estate of the lands con-  
23 stituting the Padre Island National Seashore by  
24 the owners and their mineral lessees; and

1 (B) recognized that approval of the State  
 2 of Texas was required to create Padre Island  
 3 National Seashore.

4 (4) Approval was given for the creation of  
 5 Padre Island National Seashore by the State of  
 6 Texas through Tex. Rev. Civ. Stat. Ann. Art.  
 7 6077(t) (Vernon 1970), which expressly recognized  
 8 that development of the oil, gas, and other minerals  
 9 in the subsurface of the lands constituting Padre Is-  
 10 land National Seashore would be conducted with full  
 11 rights of ingress and egress under the laws of the  
 12 State of Texas.

13 (b) SENSE OF CONGRESS.—It is the sense of Con-  
 14 gress that with regard to Federal law, any regulation of  
 15 the development of oil, gas, or other minerals in the sub-  
 16 surface of the lands constituting Padre Island National  
 17 Seashore should be made as if those lands retained the  
 18 status that the lands had on September 27, 1962.

19 **SEC. 2034. LIVINGSTON PARISH MINERAL RIGHTS TRANS-**  
 20 **FER.**

21 (a) AMENDMENTS.—Section 102 of Public Law 102–  
 22 562 (106 Stat. 4234) is amended—

23 (1) by striking “(a) IN GENERAL.—”;

24 (2) by striking “and subject to the reservation  
 25 in subsection (b),”; and

1 (3) by striking subsection (b).

2 (b) IMPLEMENTATION OF AMENDMENT.—The Sec-  
3 retary of the Interior shall execute the legal instruments  
4 necessary to effectuate the amendment made by sub-  
5 section (a)(3).

6 **Subtitle C—Naval Petroleum**  
7 **Reserves**

8 **SEC. 2041. TRANSFER OF ADMINISTRATIVE JURISDICTION**  
9 **AND ENVIRONMENTAL REMEDIATION, NAVAL**  
10 **PETROLEUM RESERVE NUMBERED 2, KERN**  
11 **COUNTY, CALIFORNIA.**

12 (a) ADMINISTRATION JURISDICTION TRANSFER TO  
13 SECRETARY OF THE INTERIOR.—Effective on the date of  
14 the enactment of this Act, administrative jurisdiction and  
15 control over all public domain lands included within Naval  
16 Petroleum Reserve Numbered 2 located in Kern County,  
17 California, (other than the lands specified in subsection  
18 (b)) are transferred from the Secretary of Energy to the  
19 Secretary of the Interior for management, subject to sub-  
20 section (c), in accordance with the general land laws.

21 (b) EXCLUSION OF CERTAIN RESERVE LANDS.—The  
22 transfer of administrative jurisdiction made by subsection  
23 (a) does not include the following lands:

24 (1) That portion of Naval Petroleum Reserve  
25 Numbered 2 authorized for disposal under section

1 3403(a) of the Strom Thurmond National Defense  
2 Authorization Act for Fiscal Year 1999 (Public Law  
3 105–261; 10 U.S.C. 7420 note).

4 (2) That portion of the surface estate of Naval  
5 Petroleum Reserve Numbered 2 conveyed to the City  
6 of Taft, California, by section 2042 of this Act.

7 (c) PURPOSE OF TRANSFER.—Notwithstanding any  
8 other provision of law, the principle purpose of the lands  
9 subject to transfer under subsection (a) is the production  
10 of hydrocarbon resources, and the Secretary of the Inte-  
11 rior shall manage the lands in a fashion consistent with  
12 this purpose. In managing the lands, the Secretary of the  
13 Interior shall regulate operations only to prevent unneces-  
14 sary degradation and to provide for ultimate economic re-  
15 covery of the resources.

16 (d) CONFORMING AMENDMENT.—Section 3403 of the  
17 Strom Thurmond National Defense Authorization Act for  
18 Fiscal Year 1999 (Public Law 105–261; 10 U.S.C. 7420  
19 note) is amended by striking subsection (b).

20 **SEC. 2042. LAND CONVEYANCE, PORTION OF NAVAL PETRO-**  
21 **LEUM RESERVE NUMBERED 2, TO CITY OF**  
22 **TAFT, CALIFORNIA.**

23 (a) CONVEYANCE.—Effective on the date of the en-  
24 actment of this Act, there is conveyed to the City of Taft,  
25 California (in this section referred to as the “City”), all

1 surface right, title, and interest of the United States in  
2 and to a parcel of real property consisting of approxi-  
3 mately 167 acres located in the N½ of section 18, town-  
4 ship 32 south, range 24 east, Mount Diablo meridian,  
5 more fully described as Parcels 1 and 2 according to the  
6 Record of Survey filed on July 1, 1974, in Book 11 of  
7 Record Surveys at page 68, County of Kern, State of Cali-  
8 fornia.

9 (b) CONSIDERATION.—The conveyance under sub-  
10 section (a) is made without the payment of consideration  
11 by the City.

12 (c) TREATMENT OF EXISTING RIGHTS.—The convey-  
13 ance under subsection (a) is subject to valid existing  
14 rights, including Federal oil and gas lease SAC—019577.

15 (d) TREATMENT OF MINERALS.—All coal, oil, gas,  
16 and other minerals within the lands conveyed under sub-  
17 section (a) are reserved to the United States, except that  
18 the United States and its lessees, licensees, permittees, or  
19 assignees shall have no right of surface use or occupancy  
20 of the lands. Nothing in this subsection shall be construed  
21 to require the United States or its lessees, licensees, per-  
22 mittees, or assignees to support the surface of the con-  
23 veyed lands.

24 (e) INDEMNIFY AND HOLD HARMLESS.—The City  
25 shall indemnify, defend, and hold harmless the United

1 States for, from, and against, and the City shall assume  
2 all responsibility for, any and all liability of any kind or  
3 nature, including all loss, cost, expense, or damage, arising  
4 from the City's use or occupancy of, or operations on, the  
5 land conveyed under subsection (a), whether such use or  
6 occupancy of, or operations on, occurred before or occur  
7 after the date of the enactment of this Act.

8 (f) INSTRUMENT OF CONVEYANCE.—Not later than  
9 one year after the date of the enactment of this Act, the  
10 Secretary of Energy shall execute, file, and cause to be  
11 recorded in the appropriate office a deed or other appro-  
12 priate instrument documenting the conveyance made by  
13 this section.

14 **SEC. 2043. REVOCATION OF LAND WITHDRAWAL.**

15 Effective on the date of the enactment of this Act,  
16 the Executive Order of December 13, 1912, which created  
17 Naval Petroleum Reserve Numbered 2, is revoked in its  
18 entirety.

19 **SEC. 2044. EFFECT OF TRANSFER AND CONVEYANCE.**

20 Nothing in this Act shall be construed——

21 (1) to impose on the Secretary of Energy any  
22 new liability or responsibility that the Secretary of  
23 Energy did not bear before the date of the enact-  
24 ment of this Act; or

1           (2) to increase the level of responsibility of the  
2           Secretary of Energy with respect to any responsi-  
3           bility borne by the Secretary of Energy before that  
4           date.

## 5           **Subtitle D—Miscellaneous** 6           **Provisions**

### 7   **SEC. 2051. SPLIT-ESTATE FEDERAL OIL AND GAS LEASING** 8           **AND DEVELOPMENT PRACTICES.**

9           (a) REVIEW.—In consultation with affected private  
10          surface owners, oil and gas industry, and other interested  
11          parties, the Secretary of the Interior shall undertake a re-  
12          view of the current policies and practices with respect to  
13          management of Federal subsurface oil and gas develop-  
14          ment activities and their effects on the privately owned  
15          surface. This review shall include—

16               (1) a comparison of the rights and responsibil-  
17               ities under existing mineral and land law for the  
18               owner of a Federal mineral lease, the private surface  
19               owners and the Department;

20               (2) a comparison of the surface owner consent  
21               provisions in section 714 of the Surface Mining Con-  
22               trol and Reclamation Act of 1977 (30 U.S.C. 1304)  
23               concerning surface mining of Federal coal deposits  
24               and the surface owner consent provisions for oil and

1 gas development, including coalbed methane produc-  
2 tion; and

3 (3) recommendations for administrative or leg-  
4 islative action necessary to facilitate reasonable ac-  
5 cess for Federal oil and gas activities while address-  
6 ing surface owner concerns and minimizing impacts  
7 to private surface.

8 (b) REPORT.—The Secretary of the Interior shall re-  
9 port the results of such review to Congress not later than  
10 180 days after the date of enactment of this Act.

11 **SEC. 2052. ROYALTY PAYMENTS UNDER LEASES UNDER**  
12 **THE OUTER CONTINENTAL SHELF LANDS**  
13 **ACT.**

14 (a) ROYALTY RELIEF.—

15 (1) IN GENERAL.—For purposes of providing  
16 compensation for lessees and a State for which  
17 amounts are authorized by section 6004(c) of the Oil  
18 Pollution Act of 1990 (Public Law 101–380), a les-  
19 see may withhold from payment any royalty due and  
20 owing to the United States under any leases under  
21 the Outer Continental Shelf Lands Act (43 U.S.C.  
22 1301 et seq.) for offshore oil or gas production from  
23 a covered lease tract if, on or before the date that  
24 the payment is due and payable to the United



1 States, the lessee makes a payment to the State of  
2 44 cents for every \$1 of royalty withheld.

3 (2) TREATMENT OF AMOUNTS.—Any royalty  
4 withheld by a lessee in accordance with this section  
5 (including any portion thereof that is paid to the  
6 State under paragraph (1)) shall be treated as paid  
7 for purposes of satisfaction of the royalty obligations  
8 of the lessee to the United States.

9 (3) CERTIFICATION OF WITHHELD AMOUNTS.—  
10 The Secretary of the Treasury shall—

11 (A) determine the amount of royalty with-  
12 held by a lessee under this section; and

13 (B) promptly publish a certification when  
14 the total amount of royalty withheld by the les-  
15 see under this section is equal to—

16 (i) the dollar amount stated at page  
17 47 of Senate Report number 101-534,  
18 which is designated therein as the total  
19 drainage claim for the West Delta field;  
20 plus

21 (ii) interest as described at page 47 of  
22 that Report.

23 (b) PERIOD OF ROYALTY RELIEF.—Subsection (a)  
24 shall apply to royalty amounts that are due and payable  
25 in the period beginning on January 1, 2006, and ending

1 on the date on which the Secretary of the Treasury pub-  
2 lishes a certification under subsection (a)(4)(B).

3 (c) DEFINITIONS.—As used in this section:

4 (1) COVERED LEASE TRACT.—The term “cov-  
5 ered lease tract” means a leased tract (or portion of  
6 a leased tract)—

7 (A) lying seaward of the zone defined and  
8 governed by section 8(g) of the Outer Conti-  
9 nental Shelf Lands Act (43 U.S.C. 1337(g)); or

10 (B) lying within such zone but to which  
11 such section does not apply.

12 (2) LESSEE.—The term “lessee”—

13 (A) means a person or entity that, on the  
14 date of the enactment of the Oil Pollution Act  
15 of 1990, was a lessee referred to in section  
16 6004(c) of that Act (as in effect on that date  
17 of the enactment), but did not hold lease rights  
18 in Federal offshore lease OCS–G–5669; and

19 (B) includes successors and affiliates of a  
20 person or entity described in subparagraph (A).

21 **SEC. 2053. DOMESTIC OFFSHORE ENERGY REINVESTMENT.**

22 The Outer Continental Shelf Lands Act (43 U.S.C.  
23 1331 et seq.) is amended by adding at the end the fol-  
24 lowing:

1 **“SEC. 32. DOMESTIC OFFSHORE ENERGY REINVESTMENT**  
2 **PROGRAM.**

3 “(a) DEFINITIONS.—In this section:

4 “(1) COASTAL ENERGY STATE.—The term  
5 ‘Coastal Energy State’ means a Coastal State off  
6 the coastline of which, within the seaward lateral  
7 boundary as determined under section 4, outer Con-  
8 tinental Shelf bonus bids or royalties are generated.

9 “(2) COASTAL POLITICAL SUBDIVISION.—The  
10 term ‘coastal political subdivision’ means a county,  
11 parish, or other equivalent subdivision of a Coastal  
12 Energy State, all or part of which lies within the  
13 boundaries of the coastal zone of the State, as iden-  
14 tified in the State’s approved coastal zone manage-  
15 ment program under the Coastal Zone Management  
16 Act of 1972 (16 U.S.C. 1451 et seq.) on the date  
17 of the enactment of this section.

18 “(3) COASTAL POPULATION.—The term ‘coastal  
19 population’ means the population of a coastal polit-  
20 ical subdivision, as determined by the most recent  
21 official data of the Census Bureau.

22 “(4) COASTLINE.—The term ‘coastline’ has the  
23 same meaning as the term ‘coast line’ in subsection  
24 2(c) of the Submerged Lands Act (43 U.S.C.  
25 1301(e)).

1           “(5) FUND.—The term ‘Fund’ means the Se-  
2           cure Energy Reinvestment Fund established by this  
3           section.

4           “(6) LEASED TRACT.—The term ‘leased tract’  
5           means a tract maintained under section 6 or leased  
6           under section 8 for the purpose of drilling for, devel-  
7           oping, and producing oil and natural gas resources.

8           “(7) QUALIFIED OUTER CONTINENTAL SHELF  
9           REVENUES.—The term ‘qualified outer Continental  
10          Shelf revenues’ means all amounts received by the  
11          United States on or after October 1, 2005, from  
12          each leased tract or portion of a leased tract lying  
13          seaward of the zone defined and governed by section  
14          8(g), or lying within such zone but to which section  
15          8(g) does not apply, including bonus bids, rents, roy-  
16          alties (including payments for royalties taken in kind  
17          and sold), net profit share payments, and related in-  
18          terest.

19          “(8) SECRETARY.—The term ‘Secretary’ means  
20          the Secretary of the Interior.

21          “(b) SECURE ENERGY REINVESTMENT FUND.—

22                 “(1) ESTABLISHMENT.—There is established in  
23          the Treasury of the United States a separate ac-  
24          count which shall be known as the ‘Secure Energy

1 Reinvestment Fund'. The Fund shall consist of  
2 amounts deposited under paragraph (2).

3 “(2) DEPOSITS.—For each of fiscal years 2006  
4 through 2015, the Secretary of the Treasury shall  
5 deposit into the Fund, subject to appropriations, the  
6 following:

7 “(A) Notwithstanding section 9, all quali-  
8 fied outer Continental Shelf revenues attrib-  
9 utable to royalties received by the United States  
10 in the fiscal year that are in excess of the fol-  
11 lowing amount:

12 “(i) \$7,000,000,000 in the case of  
13 royalties received in fiscal year 2006.

14 “(ii) \$7,100,000,000 in the case of  
15 royalties received in fiscal year 2007.

16 “(iii) \$7,300,000,000 in the case of  
17 royalties received in fiscal year 2008.

18 “(iv) \$6,900,000,000 in the case of  
19 royalties received in fiscal year 2009.

20 “(v) \$7,200,000,000 in the case of  
21 royalties received in fiscal year 2010.

22 “(vi) \$7,250,000,000 in the case of  
23 royalties received in fiscal year 2011.

24 “(vii) \$8,125,000,000 in the case of  
25 royalties received in fiscal year 2012.

1           “(viii) \$8,100,000,000 in the case of  
2 royalties received in fiscal year 2013.

3           “(ix) \$9,000,000,000 in the case of  
4 royalties received in fiscal year 2014.

5           “(x) \$7,500,000,000 in the case of  
6 royalties received in fiscal year 2015.

7           “(B) Notwithstanding section 9, all quali-  
8 fied outer Continental shelf revenues attrib-  
9 utable to bonus bids received by the United  
10 States in each of the fiscal years 2006 through  
11 2015 that are in excess of \$880,000,000.

12           “(C) Notwithstanding section 9, in addi-  
13 tion to amounts deposited under subparagraphs  
14 (A) and (B), \$35,000,000 of amounts received  
15 by the United States each fiscal year as royalti-  
16 ties for oil or gas production on the outer Con-  
17 tinental Shelf.

18           “(D) All interest earned under paragraph  
19 (4).

20 In no event shall deposits under subparagraphs (A)  
21 through (C) total more than \$50,000,000 per fiscal  
22 year.

23           “(3) DEPOSITS AFTER FISCAL YEAR 2015.—For  
24 each fiscal year after fiscal year 2015, the Secretary

1 of the Treasury shall deposit into the Fund the fol-  
2 lowing:

3 “(A) 25 percent of qualified outer Conti-  
4 nental Shelf revenues received by the United  
5 States in the preceding fiscal year.

6 “(B) All interest earned under paragraph  
7 (4).

8 “(4) INVESTMENT.—The Secretary of the  
9 Treasury shall invest moneys in the Fund (including  
10 interest) in public debt securities with maturities  
11 suitable to the needs of the Fund, as determined by  
12 the Secretary of the Treasury, and bearing interest  
13 at rates determined by the Secretary of the Treas-  
14 ury, taking into consideration current market yields  
15 on outstanding marketable obligations of the United  
16 States of comparable maturity. Such invested mon-  
17 eys shall remain invested until needed to meet re-  
18 quirements for disbursement under this section.

19 “(c) USE OF SECURE ENERGY REINVESTMENT  
20 FUND.—

21 “(1) IN GENERAL.—(A) The Secretary shall use  
22 amounts in the Fund remaining after the application  
23 of subsection (d) to pay to each Coastal Energy  
24 State, and to coastal political subdivisions of such  
25 State, the amount allocated to the State or coastal

1 political subdivision, respectively, under this sub-  
2 section.

3 “(B) The Secretary shall make payments under  
4 this paragraph in December of 2006, and of each  
5 year thereafter, from revenues received by the  
6 United States in the preceding fiscal year.

7 “(2) ALLOCATION.—The Secretary shall allo-  
8 cate amounts deposited into the Fund in a fiscal  
9 year, and other amounts determined by the Sec-  
10 retary to be available, among Coastal Energy States,  
11 and to coastal political subdivisions of such States,  
12 as follows:

13 “(A)(i) The allocation for each Coastal En-  
14 ergy State shall be calculated based on the ratio  
15 of qualified outer Continental Shelf revenues  
16 generated off the coastline of the Coastal En-  
17 ergy State to the qualified outer Continental  
18 Shelf revenues generated off the coastlines of  
19 all Coastal Energy States for the preceding fis-  
20 cal year.

21 “(ii) For purposes of this subparagraph,  
22 qualified outer Continental Shelf revenues shall  
23 be considered to be generated off the coastline  
24 of a Coastal Energy State if the geographic  
25 center of the lease tract from which the reve-



1           nues are generated is located within the area  
2           formed by the extension of the State’s seaward  
3           lateral boundaries.

4           “(B) 35 percent of each Coastal Energy  
5           State’s allocable share as determined under  
6           subparagraph (A) shall be allocated among and  
7           paid directly to the coastal political subdivisions  
8           of the State by the Secretary based on the fol-  
9           lowing formula:

10                   “(i) 25 percent shall be allocated  
11                   based on the ratio of each coastal political  
12                   subdivision’s coastal population to the  
13                   coastal population of all coastal political  
14                   subdivisions of the Coastal Energy State.

15                   “(ii) 25 percent shall be allocated  
16                   based on the ratio of each coastal political  
17                   subdivision’s coastline miles to the coast-  
18                   line miles of all coastal political subdivi-  
19                   sions of the State. In the case of a coastal  
20                   political subdivision without a coastline,  
21                   the coastline of the political subdivision for  
22                   purposes of this clause shall be one-third  
23                   the average length of the coastline of the  
24                   other coastal political subdivisions of the  
25                   State.

1                   “(iii) 50 percent shall be allocated  
2                   based on a formula that allocates 75 per-  
3                   cent of the funds based on such coastal po-  
4                   litical subdivision’s relative distance from  
5                   any leased tract used to calculate that  
6                   State’s allocation and 25 percent of the  
7                   funds based on the relative level of outer  
8                   Continental Shelf oil and gas activities in  
9                   a coastal political subdivision to the level of  
10                  outer Continental Shelf oil and gas activi-  
11                  ties in all coastal political subdivisions in  
12                  such State, as determined by the Sec-  
13                  retary.

14                  “(d) ADMINISTRATIVE EXPENSES.—Of amounts in  
15                  the Fund each fiscal year, the Secretary may use up to  
16                  one-half of one percent for the administrative costs of im-  
17                  plementing this section.

18                  “(e) DISPOSITION OF FUNDS.—A Coastal Energy  
19                  State or coastal political subdivision may use funds pro-  
20                  vided to such entity under this section for any payment  
21                  that is eligible to be made with funds provided to States  
22                  under section 35 of the Mineral Leasing Act (30 U.S.C.  
23                  191).”.

1 **SEC. 2054. REPURCHASE OF LEASES THAT ARE NOT AL-**  
2 **LOWED TO BE EXPLORED OR DEVELOPED.**

3 (a) **AUTHORITY TO REPURCHASE AND CANCEL CER-**  
4 **TAIN LEASES.**—Notwithstanding any other provisions of  
5 law, any Federal oil and gas, geothermal, coal, oil shale,  
6 or tar sands lease, whether onshore or offshore, issued by  
7 the Secretary, or units of such leases if unitized, that by  
8 operation of law, including but not limited to denial of a  
9 permit request, (1) is not allowed to be explored in the  
10 lawful manner requested by the lessee, or (2) if explored  
11 resulting in a commercial discovery is not allowed to be  
12 developed or produced in the lawful manner requested by  
13 the lessee, shall, upon the written request of the lessee  
14 and a finding by the Secretary that such lease qualifies,  
15 be authorized for repurchase and cancelled by the Sec-  
16 retary. If a permit, approval, or appeal has been expressly  
17 denied and the proposal of the lessee is found by the Sec-  
18 retary not to have been in compliance with law, the lessee  
19 shall not be entitled to have the lease repurchased and  
20 cancelled. However, if the lessee alleges that the Govern-  
21 ment has failed to act on a proposal of the lessee within  
22 the applicable period of time, the Secretary shall make no  
23 inquiry or determination as to whether the contents of the  
24 request complied with the law, and the Secretary shall re-  
25 strict the Secretary's findings to whether or not the Gov-  
26 ernment failed to act within the applicable period of time.

1 The Secretary shall make all decisions under this section  
2 within 180 days of request. The area covered by any re-  
3 purchased and cancelled lease shall remain available for  
4 future leasing unless otherwise prohibited by law. For pur-  
5 poses of this section, failure to act within a regulatory or  
6 statutory time-frame, whether advisory or mandatory, or  
7 if none, within a reasonable period of time not to exceed  
8 180 days, on a permit request, administrative appeal, or  
9 other request for approval, shall be considered to meet the  
10 operation of law requirements of this section. Further,  
11 conditions of approval attached to permit approvals shall  
12 meet the operation of law requirement of this section if  
13 such conditions are not mandated by statute or regulation  
14 and not agreed to by the lessee. A lessee shall not be re-  
15 quired to exhaust administrative remedies regarding a per-  
16 mit request, administrative appeal, or other required re-  
17 quest for approval for the purposes of this section.

18 (b) DETERMINATION OF A COMMERCIAL DIS-  
19 COVERY.—The Secretary shall make any required deter-  
20 mination of the existence of a commercial resource dis-  
21 covery. For oil and gas, a commercial discovery is a dis-  
22 covery in paying quantities. The Secretary shall be guided  
23 in such a determination by precedent, and by written ad-  
24 vice, including input from the lessee.

1           (c) COMPENSATION.—Upon authorization by the Sec-  
2 retary of the repurchase of a lease under this section, a  
3 lessee shall be compensated in the amount of the total of  
4 lease acquisition costs, rentals, seismic acquisition costs,  
5 archeological and environmental studies, drilling costs,  
6 and other reasonable expenses on the lease, including ex-  
7 penses incurred in the repurchase process, to the extent  
8 that the lessee has not previously been compensated by  
9 the United States for such expenses. The lessee shall not  
10 be compensated for general overhead expenses, employee  
11 salaries, or interest. If the lessee is an assignee, the lessee  
12 may not claim the expenses of his assignor. Compensation  
13 shall be in the form of a check or electronic transfer from  
14 the Department of the Treasury from funds deposited into  
15 miscellaneous receipts under the authority of the same Act  
16 that authorized the issuance of the lease being repur-  
17 chased. If the Secretary fails to make the repurchase au-  
18 thorization decision under subsection (a) within the re-  
19 quired 180 days and the lease is ultimately repurchased,  
20 the compensation due to the lessee shall increase by 25  
21 percent, plus 1 percent for every seven days that the deci-  
22 sion is delayed beyond the required 180 days.

23           (d) DELEGATION OF AUTHORITY AND FINALITY OF  
24 DECISIONS.—The Secretary may delegate authority grant-  
25 ed by this section only to individuals who have been ap-

1 pointed by the President, by and with the advice and con-  
 2 sent of the Senate. A decision under this section by the  
 3 Secretary, or delegated official, shall be considered the  
 4 final agency decision.

5 (e) REGULATIONS.—The Secretary shall issue rea-  
 6 sonable regulations implementing this section not later  
 7 than 1 year after date of enactment of this Act.

8 (f) SECRETARY.—For purposes of this section, the  
 9 term “Secretary” means the Secretary of the Interior.

10 (g) NO PREJUDICE.—This section shall not be inter-  
 11 preted to prejudice any other rights that the lessee would  
 12 have in the absence of this section.

## 13 **TITLE XXI—COAL**

### 14 **SEC. 2101. SHORT TITLE.**

15 This title may be cited as the “Coal Leasing Amend-  
 16 ments Act of 2005”.

### 17 **SEC. 2102. LEASE MODIFICATIONS FOR CONTIGUOUS COAL** 18 **LANDS OR COAL DEPOSITS.**

19 Section 3 of the Mineral Leasing Act (30 U.S.C. 203)  
 20 is amended in the first sentence by striking “such lease,”  
 21 and all that follows through the end of the sentence and  
 22 inserting “such lease.”.

### 23 **SEC. 2103. APPROVAL OF LOGICAL MINING UNITS.**

24 Section 2(d)(2) of the Mineral Leasing Act (30  
 25 U.S.C. 202a(2)) is amended—

1 (1) by inserting “(A)” after “(2)”; and

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

3 “(B) The Secretary may establish a period of more  
4 than 40 years if the Secretary determines that the longer  
5 period—

6 “(i) will ensure the maximum economic recovery  
7 of a coal deposit; or

8 “(ii) the longer period is in the interest of the  
9 orderly, efficient, or economic development of a coal  
10 resource.”.

11 **SEC. 2104. PAYMENT OF ADVANCE ROYALTIES UNDER COAL**  
12 **LEASES.**

13 (a) IN GENERAL.—Section 7(b) of the Mineral Leas-  
14 ing Act (30 U.S.C. 207(b)) is amended to read as follows:

15 “(b)(1) Each lease shall be subjected to the condition  
16 of diligent development and continued operation of the  
17 mine or mines, except where operations under the lease  
18 are interrupted by strikes, the elements, or casualties not  
19 attributable to the lessee.

20 “(2)(A) The Secretary of the Interior, upon deter-  
21 mining that the public interest will be served thereby, may  
22 suspend the condition of continued operation upon the  
23 payment of advance royalties.

24 “(B) Such advance royalties shall be computed—

25 “(i) based on—

1           “(I) the average price in the spot market  
2           for sales of comparable coal from the same re-  
3           gion during the last month of each applicable  
4           continued operation year; or

5           “(II) in the absence of a spot market for  
6           comparable coal from the same region, by using  
7           a comparable method established by the Sec-  
8           retary of the Interior to capture the commercial  
9           value of coal; and

10          “(ii) based on commercial quantities, as defined  
11          by regulation by the Secretary of the Interior.

12          “(C) The aggregate number of years during the ini-  
13          tial and any extended term of any lease for which advance  
14          royalties may be accepted in lieu of the condition of contin-  
15          ued operation shall not exceed 20.

16          “(3) The amount of any production royalty paid for  
17          any year shall be reduced (but not below zero) by the  
18          amount of any advance royalties paid under such lease to  
19          the extent that such advance royalties have not been used  
20          to reduce production royalties for a prior year.

21          “(4) This subsection shall be applicable to any lease  
22          or logical mining unit in existence on the date of the enact-  
23          ment of this paragraph or issued or approved after such  
24          date.



1       “(5) Nothing in this subsection shall be construed to  
2 affect the requirement contained in the second sentence  
3 of subsection (a) relating to commencement of production  
4 at the end of 10 years.”.

5       (b) **AUTHORITY TO WAIVE, SUSPEND, OR REDUCE**  
6 **ADVANCE ROYALTIES.**—Section 39 of the Mineral Leas-  
7 ing Act (30 U.S.C. 209) is amended by striking the last  
8 sentence.

9 **SEC. 2105. ELIMINATION OF DEADLINE FOR SUBMISSION**  
10 **OF COAL LEASE OPERATION AND RECLAMA-**  
11 **TION PLAN.**

12       Section 7(c) of the Mineral Leasing Act (30 U.S.C.  
13 207(c)) is amended by striking “and not later than three  
14 years after a lease is issued,”.

15 **SEC. 2106. AMENDMENT RELATING TO FINANCIAL ASSUR-**  
16 **ANCES WITH RESPECT TO BONUS BIDS.**

17       Section 2(a) of the Mineral Leasing Act (30 U.S.C.  
18 201(a)) is amended by adding at the end the following:

19       “(4)(A) The Secretary shall not require a surety bond  
20 or any other financial assurance to guarantee payment of  
21 deferred bonus bid installments with respect to any coal  
22 lease issued on a cash bonus bid to a lessee or successor  
23 in interest having a history of a timely payment of noncon-  
24 tested coal royalties and advanced coal royalties in lieu

1 of production (where applicable) and bonus bid installment  
2 payments.

3 “(B) The Secretary may waive any requirement that  
4 a lessee provide a surety bond or other financial assurance  
5 for a coal lease issued before the date of the enactment  
6 of the Energy Policy Act of 2005 only if the Secretary  
7 determines that the lessee has a history of making timely  
8 payments referred to in subparagraph (A).

9 “(5) Notwithstanding any other provision of law, if  
10 the lessee under a coal lease fails to pay any installment  
11 of a deferred cash bonus bid within 10 days after the Sec-  
12 retary provides written notice that payment of the install-  
13 ment is past due—

14 “(A) the lease shall automatically terminate;  
15 and

16 “(B) any bonus payments already made to the  
17 United States with respect to the lease shall not be  
18 returned to the lessee or credited in any future lease  
19 sale.”.

20 **SEC. 2107. INVENTORY REQUIREMENT.**

21 (a) REVIEW OF ASSESSMENTS.—

22 (1) IN GENERAL.—The Secretary of the Inte-  
23 rior, in consultation with the Secretary of Agri-  
24 culture and the Secretary of Energy, shall review

1 coal assessments and other available data to iden-  
2 tify—

3 (A) public lands with coal resources;

4 (B) the extent and nature of any restric-  
5 tions or impediments to the development of coal  
6 resources on public lands identified under para-  
7 graph (1); and

8 (C) with respect to areas of such lands for  
9 which sufficient data exists, resources of com-  
10 pliant coal and supercompliant coal.

11 (2) DEFINITIONS.—For purposes of this sub-  
12 section—

13 (A) the term “compliant coal” means coal  
14 that contains not less than 1.0 and not more  
15 than 1.2 pounds of sulfur dioxide per million  
16 Btu; and

17 (B) the term “supercompliant coal” means  
18 coal that contains less than 1.0 pounds of sul-  
19 fur dioxide per million Btu.

20 (b) COMPLETION AND UPDATING OF THE INVEN-  
21 TORY.—The Secretary—

22 (1) shall complete the inventory under sub-  
23 section (a) by not later than 2 years after the date  
24 of enactment of this Act; and

1           (2) shall update the inventory as the availability  
2           of data and developments in technology warrant.

3           (c) REPORT.—The Secretary shall submit to the  
4           Committee on Resources of the House of Representatives  
5           and to the Committee on Energy and Natural Resources  
6           of the Senate and make publicly available—

7           (1) a report containing the inventory under this  
8           section, by not later than 2 years after the effective  
9           date of this section; and

10          (2) each update of such inventory.

11 **SEC. 2108. APPLICATION OF AMENDMENTS.**

12          The amendments made by this title apply with re-  
13          spect to any coal lease issued before, on, or after the date  
14          of the enactment of this Act.

15 **SEC. 2109. RESOLUTION OF FEDERAL RESOURCE DEVELOP-**  
16                                   **MENT CONFLICTS IN THE POWDER RIVER**  
17                                   **BASIN.**

18          The Secretary of the Interior shall—

19          (1) undertake a review of existing authorities to  
20          resolve conflicts between the development of Federal  
21          coal and the development of Federal and non-Fed-  
22          eral coalbed methane in the Powder River Basin in  
23          Wyoming and Montana; and

24          (2) not later than 6 months after the date of  
25          enactment of this Act, report to Congress on alter-

1 natives to resolve these conflicts and an identifica-  
2 tion of a preferred alternative with specific legisla-  
3 tive language, if any, required to implement the pre-  
4 ferred alternative.

5 **TITLE XXII—ARCTIC COASTAL**  
6 **PLAIN DOMESTIC ENERGY**

7 **SEC. 2201. SHORT TITLE.**

8 This title may be cited as the “Arctic Coastal Plain  
9 Domestic Energy Security Act of 2005”.

10 **SEC. 2202. DEFINITIONS.**

11 In this title:

12 (1) **COASTAL PLAIN.**—The term “Coastal  
13 Plain” means that area identified as such in the  
14 map entitled “Arctic National Wildlife Refuge”,  
15 dated August 1980, as referenced in section 1002(b)  
16 of the Alaska National Interest Lands Conservation  
17 Act (16 U.S.C. 3142(b)(1)), comprising approxi-  
18 mately 1,549,000 acres, and as described in appen-  
19 dix I to part 37 of title 50, Code of Federal Regula-  
20 tions.

21 (2) **SECRETARY.**—The term “Secretary”, except  
22 as otherwise provided, means the Secretary of the  
23 Interior or the Secretary’s designee.

1 **SEC. 2203. LEASING PROGRAM FOR LANDS WITHIN THE**  
2 **COASTAL PLAIN.**

3 (a) IN GENERAL.—The Secretary shall take such ac-  
4 tions as are necessary—

5 (1) to establish and implement, in accordance  
6 with this Act and acting through the Director of the  
7 Bureau of Land Management in consultation with  
8 the Director of the United States Fish and Wildlife  
9 Service, a competitive oil and gas leasing program  
10 under the Mineral Leasing Act (30 U.S.C. 181 et  
11 seq.) that will result in an environmentally sound  
12 program for the exploration, development, and pro-  
13 duction of the oil and gas resources of the Coastal  
14 Plain; and

15 (2) to administer the provisions of this title  
16 through regulations, lease terms, conditions, restric-  
17 tions, prohibitions, stipulations, and other provisions  
18 that ensure the oil and gas exploration, development,  
19 and production activities on the Coastal Plain will  
20 result in no significant adverse effect on fish and  
21 wildlife, their habitat, subsistence resources, and the  
22 environment, and including, in furtherance of this  
23 goal, by requiring the application of the best com-  
24 mercially available technology for oil and gas explo-  
25 ration, development, and production to all explo-  
26 ration, development, and production operations

1 under this title in a manner that ensures the receipt  
2 of fair market value by the public for the mineral re-  
3 sources to be leased.

4 (b) REPEAL.—

5 (1) REPEAL.—Section 1003 of the Alaska Na-  
6 tional Interest Lands Conservation Act (16 U.S.C.  
7 3143) is repealed.

8 (2) CLERICAL AMENDMENT.—The table of con-  
9 tents in section 1 of such Act is amended by striking  
10 the item relating to section 1003.

11 (c) COMPLIANCE WITH REQUIREMENTS UNDER CER-  
12 TAIN OTHER LAWS.—

13 (1) COMPATIBILITY.—For purposes of the Na-  
14 tional Wildlife Refuge System Administration Act of  
15 1966, the oil and gas leasing program and activities  
16 authorized by this section in the Coastal Plain are  
17 deemed to be compatible with the purposes for which  
18 the Arctic National Wildlife Refuge was established,  
19 and that no further findings or decisions are re-  
20 quired to implement this determination.

21 (2) ADEQUACY OF THE DEPARTMENT OF THE  
22 INTERIOR'S LEGISLATIVE ENVIRONMENTAL IMPACT  
23 STATEMENT.—The “Final Legislative Environ-  
24 mental Impact Statement” (April 1987) on the  
25 Coastal Plain prepared pursuant to section 1002 of

1 the Alaska National Interest Lands Conservation  
2 Act (16 U.S.C. 3142) and section 102(2)(C) of the  
3 National Environmental Policy Act of 1969 (42  
4 U.S.C. 4332(2)(C)) is deemed to satisfy the require-  
5 ments under the National Environmental Policy Act  
6 of 1969 that apply with respect to prelease activities,  
7 including actions authorized to be taken by the Sec-  
8 retary to develop and promulgate the regulations for  
9 the establishment of a leasing program authorized  
10 by this title before the conduct of the first lease sale.

11 (3) COMPLIANCE WITH NEPA FOR OTHER AC-  
12 TIONS.—Before conducting the first lease sale under  
13 this title, the Secretary shall prepare an environ-  
14 mental impact statement under the National Envi-  
15 ronmental Policy Act of 1969 with respect to the ac-  
16 tions authorized by this title that are not referred to  
17 in paragraph (2). Notwithstanding any other law,  
18 the Secretary is not required to identify nonleasing  
19 alternative courses of action or to analyze the envi-  
20 ronmental effects of such courses of action. The Sec-  
21 retary shall only identify a preferred action for such  
22 leasing and a single leasing alternative, and analyze  
23 the environmental effects and potential mitigation  
24 measures for those two alternatives. The identifica-  
25 tion of the preferred action and related analysis for



1 the first lease sale under this title shall be completed  
2 within 18 months after the date of enactment of this  
3 Act. The Secretary shall only consider public com-  
4 ments that specifically address the Secretary's pre-  
5 ferred action and that are filed within 20 days after  
6 publication of an environmental analysis. Notwith-  
7 standing any other law, compliance with this para-  
8 graph is deemed to satisfy all requirements for the  
9 analysis and consideration of the environmental ef-  
10 fects of proposed leasing under this title.

11 (d) RELATIONSHIP TO STATE AND LOCAL AUTHOR-  
12 ITY.—Nothing in this title shall be considered to expand  
13 or limit State and local regulatory authority.

14 (e) SPECIAL AREAS.—

15 (1) IN GENERAL.—The Secretary, after con-  
16 sultation with the State of Alaska, the city of  
17 Kaktovik, and the North Slope Borough, may des-  
18 ignate up to a total of 45,000 acres of the Coastal  
19 Plain as a Special Area if the Secretary determines  
20 that the Special Area is of such unique character  
21 and interest so as to require special management  
22 and regulatory protection. The Secretary shall des-  
23 ignate as such a Special Area the Sadlerochit Spring  
24 area, comprising approximately 4,000 acres as de-  
25 picted on the map referred to in section 2202(1).

1           (2) MANAGEMENT.—Each such Special Area  
2 shall be managed so as to protect and preserve the  
3 area's unique and diverse character including its  
4 fish, wildlife, and subsistence resource values.

5           (3) EXCLUSION FROM LEASING OR SURFACE  
6 OCCUPANCY.—The Secretary may exclude any Spe-  
7 cial Area from leasing. If the Secretary leases a Spe-  
8 cial Area, or any part thereof, for purposes of oil  
9 and gas exploration, development, production, and  
10 related activities, there shall be no surface occu-  
11 pancy of the lands comprising the Special Area.

12           (4) DIRECTIONAL DRILLING.—Notwithstanding  
13 the other provisions of this subsection, the Secretary  
14 may lease all or a portion of a Special Area under  
15 terms that permit the use of horizontal drilling tech-  
16 nology from sites on leases located outside the area.

17           (f) LIMITATION ON CLOSED AREAS.—The Sec-  
18 retary's sole authority to close lands within the Coastal  
19 Plain to oil and gas leasing and to exploration, develop-  
20 ment, and production is that set forth in this title.

21           (g) REGULATIONS.—

22           (1) IN GENERAL.—The Secretary shall pre-  
23 scribe such regulations as may be necessary to carry  
24 out this title, including rules and regulations relating  
25 to protection of the fish and wildlife, their habitat,

1 subsistence resources, and environment of the Coast-  
2 al Plain, by no later than 15 months after the date  
3 of enactment of this Act.

4 (2) REVISION OF REGULATIONS.—The Sec-  
5 retary shall periodically review and, if appropriate,  
6 revise the rules and regulations issued under sub-  
7 section (a) to reflect any significant biological, envi-  
8 ronmental, or engineering data that come to the Sec-  
9 retary's attention.

10 **SEC. 2204. LEASE SALES.**

11 (a) IN GENERAL.—Lands may be leased pursuant to  
12 this title to any person qualified to obtain a lease for de-  
13 posits of oil and gas under the Mineral Leasing Act (30  
14 U.S.C. 181 et seq.).

15 (b) PROCEDURES.—The Secretary shall, by regula-  
16 tion, establish procedures for—

17 (1) receipt and consideration of sealed nomina-  
18 tions for any area in the Coastal Plain for inclusion  
19 in, or exclusion (as provided in subsection (c)) from,  
20 a lease sale;

21 (2) the holding of lease sales after such nomina-  
22 tion process; and

23 (3) public notice of and comment on designa-  
24 tion of areas to be included in, or excluded from, a  
25 lease sale.

1 (c) LEASE SALE BIDS.—Bidding for leases under  
2 this title shall be by sealed competitive cash bonus bids.

3 (d) ACREAGE MINIMUM IN FIRST SALE.—In the first  
4 lease sale under this title, the Secretary shall offer for  
5 lease those tracts the Secretary considers to have the  
6 greatest potential for the discovery of hydrocarbons, tak-  
7 ing into consideration nominations received pursuant to  
8 subsection (b)(1), but in no case less than 200,000 acres.

9 (e) TIMING OF LEASE SALES.—The Secretary  
10 shall—

11 (1) conduct the first lease sale under this title  
12 within 22 months after the date of the enactment of  
13 this Act; and

14 (2) conduct additional sales so long as sufficient  
15 interest in development exists to warrant, in the Sec-  
16 retary's judgment, the conduct of such sales.

17 **SEC. 2205. GRANT OF LEASES BY THE SECRETARY.**

18 (a) IN GENERAL.—The Secretary may grant to the  
19 highest responsible qualified bidder in a lease sale con-  
20 ducted pursuant to section 2204 any lands to be leased  
21 on the Coastal Plain upon payment by the lessee of such  
22 bonus as may be accepted by the Secretary.

23 (b) SUBSEQUENT TRANSFERS.—No lease issued  
24 under this title may be sold, exchanged, assigned, sublet,  
25 or otherwise transferred except with the approval of the

1 Secretary. Prior to any such approval the Secretary shall  
2 consult with, and give due consideration to the views of,  
3 the Attorney General.

4 **SEC. 2206. LEASE TERMS AND CONDITIONS.**

5 (a) IN GENERAL.—An oil or gas lease issued pursu-  
6 ant to this title shall—

7 (1) provide for the payment of a royalty of not  
8 less than 12½ percent in amount or value of the  
9 production removed or sold from the lease, as deter-  
10 mined by the Secretary under the regulations appli-  
11 cable to other Federal oil and gas leases;

12 (2) provide that the Secretary may close, on a  
13 seasonal basis, portions of the Coastal Plain to ex-  
14 ploratory drilling activities as necessary to protect  
15 caribou calving areas and other species of fish and  
16 wildlife;

17 (3) require that the lessee of lands within the  
18 Coastal Plain shall be fully responsible and liable for  
19 the reclamation of lands within the Coastal Plain  
20 and any other Federal lands that are adversely af-  
21 fected in connection with exploration, development,  
22 production, or transportation activities conducted  
23 under the lease and within the Coastal Plain by the  
24 lessee or by any of the subcontractors or agents of  
25 the lessee;

1           (4) provide that the lessee may not delegate or  
2 convey, by contract or otherwise, the reclamation re-  
3 sponsibility and liability to another person without  
4 the express written approval of the Secretary;

5           (5) provide that the standard of reclamation for  
6 lands required to be reclaimed under this title shall  
7 be, as nearly as practicable, a condition capable of  
8 supporting the uses which the lands were capable of  
9 supporting prior to any exploration, development, or  
10 production activities, or upon application by the les-  
11 see, to a higher or better use as approved by the  
12 Secretary;

13           (6) contain terms and conditions relating to  
14 protection of fish and wildlife, their habitat, and the  
15 environment as required pursuant to section  
16 2203(a)(2);

17           (7) provide that the lessee, its agents, and its  
18 contractors use best efforts to provide a fair share,  
19 as determined by the level of obligation previously  
20 agreed to in the 1974 agreement implementing sec-  
21 tion 29 of the Federal Agreement and Grant of  
22 Right of Way for the Operation of the Trans-Alaska  
23 Pipeline, of employment and contracting for Alaska  
24 Natives and Alaska Native Corporations from  
25 throughout the State;

1           (8) prohibit the export of oil produced under  
2           the lease; and

3           (9) contain such other provisions as the Sec-  
4           retary determines necessary to ensure compliance  
5           with the provisions of this title and the regulations  
6           issued under this title.

7           (b) **PROJECT LABOR AGREEMENTS.**—The Secretary,  
8           as a term and condition of each lease under this title and  
9           in recognizing the Government’s proprietary interest in  
10          labor stability and in the ability of construction labor and  
11          management to meet the particular needs and conditions  
12          of projects to be developed under the leases issued pursu-  
13          ant to this title and the special concerns of the parties  
14          to such leases, shall require that the lessee and its agents  
15          and contractors negotiate to obtain a project labor agree-  
16          ment for the employment of laborers and mechanics on  
17          production, maintenance, and construction under the  
18          lease.

19          **SEC. 2207. COASTAL PLAIN ENVIRONMENTAL PROTECTION.**

20          (a) **NO SIGNIFICANT ADVERSE EFFECT STANDARD**  
21          **TO GOVERN AUTHORIZED COASTAL PLAIN ACTIVITIES.**—  
22          The Secretary shall, consistent with the requirements of  
23          section 2203, administer the provisions of this title  
24          through regulations, lease terms, conditions, restrictions,  
25          prohibitions, stipulations, and other provisions that—

1           (1) ensure the oil and gas exploration, develop-  
2           ment, and production activities on the Coastal Plain  
3           will result in no significant adverse effect on fish  
4           and wildlife, their habitat, and the environment;

5           (2) require the application of the best commer-  
6           cially available technology for oil and gas explo-  
7           ration, development, and production on all new ex-  
8           ploration, development, and production operations;  
9           and

10          (3) ensure that the maximum amount of sur-  
11          face acreage covered by production and support fa-  
12          cilities, including airstrips and any areas covered by  
13          gravel berms or piers for support of pipelines, does  
14          not exceed 2,000 acres on the Coastal Plain.

15          (b) SITE-SPECIFIC ASSESSMENT AND MITIGATION.—

16          The Secretary shall also require, with respect to any pro-  
17          posed drilling and related activities, that—

18               (1) a site-specific analysis be made of the prob-  
19               able effects, if any, that the drilling or related activi-  
20               ties will have on fish and wildlife, their habitat, and  
21               the environment;

22               (2) a plan be implemented to avoid, minimize,  
23               and mitigate (in that order and to the extent prac-  
24               ticable) any significant adverse effect identified  
25               under paragraph (1); and



1           (3) the development of the plan shall occur  
2           after consultation with the agency or agencies hav-  
3           ing jurisdiction over matters mitigated by the plan.

4           (c) REGULATIONS TO PROTECT COASTAL PLAIN  
5 FISH AND WILDLIFE RESOURCES, SUBSISTENCE USERS,  
6 AND THE ENVIRONMENT.—Before implementing the leas-  
7 ing program authorized by this title, the Secretary shall  
8 prepare and promulgate regulations, lease terms, condi-  
9 tions, restrictions, prohibitions, stipulations, and other  
10 measures designed to ensure that the activities undertaken  
11 on the Coastal Plain under this title are conducted in a  
12 manner consistent with the purposes and environmental  
13 requirements of this title.

14           (d) COMPLIANCE WITH FEDERAL AND STATE ENVI-  
15 RONMENTAL LAWS AND OTHER REQUIREMENTS.—The  
16 proposed regulations, lease terms, conditions, restrictions,  
17 prohibitions, and stipulations for the leasing program  
18 under this title shall require compliance with all applicable  
19 provisions of Federal and State environmental law and  
20 shall also require the following:

21           (1) Standards at least as effective as the safety  
22           and environmental mitigation measures set forth in  
23           items 1 through 29 at pages 167 through 169 of the  
24           “Final Legislative Environmental Impact State-  
25           ment” (April 1987) on the Coastal Plain.

1           (2) Seasonal limitations on exploration, develop-  
2           ment, and related activities, where necessary, to  
3           avoid significant adverse effects during periods of  
4           concentrated fish and wildlife breeding, denning,  
5           nesting, spawning, and migration.

6           (3) That exploration activities, except for sur-  
7           face geological studies, be limited to the period be-  
8           tween approximately November 1 and May 1 each  
9           year and that exploration activities shall be sup-  
10          ported, if necessary, by ice roads, winter trails with  
11          adequate snow cover, ice pads, ice airstrips, and air  
12          transport methods, except that such exploration ac-  
13          tivities may occur at other times, if the Secretary  
14          finds that such exploration will have no significant  
15          adverse effect on the fish and wildlife, their habitat,  
16          and the environment of the Coastal Plain.

17          (4) Design safety and construction standards  
18          for all pipelines and any access and service roads,  
19          that—

20                 (A) minimize, to the maximum extent pos-  
21                 sible, adverse effects upon the passage of mi-  
22                 gratory species such as caribou; and

23                 (B) minimize adverse effects upon the flow  
24                 of surface water by requiring the use of cul-  
25                 verts, bridges, and other structural devices.

1           (5) Prohibitions on general public access and  
2 use on all pipeline access and service roads.

3           (6) Stringent reclamation and rehabilitation re-  
4 quirements, consistent with the standards set forth  
5 in this title, requiring the removal from the Coastal  
6 Plain of all oil and gas development and production  
7 facilities, structures, and equipment upon completion  
8 of oil and gas production operations, except that the  
9 Secretary may exempt from the requirements of this  
10 paragraph those facilities, structures, or equipment  
11 that the Secretary determines would assist in the  
12 management of the Arctic National Wildlife Refuge  
13 and that are donated to the United States for that  
14 purpose.

15           (7) Appropriate prohibitions or restrictions on  
16 access by all modes of transportation.

17           (8) Appropriate prohibitions or restrictions on  
18 sand and gravel extraction.

19           (9) Consolidation of facility siting.

20           (10) Appropriate prohibitions or restrictions on  
21 use of explosives.

22           (11) Avoidance, to the extent practicable, of  
23 springs, streams, and river system; the protection of  
24 natural surface drainage patterns, wetlands, and ri-  
25 parian habitats; and the regulation of methods or

1 techniques for developing or transporting adequate  
2 supplies of water for exploratory drilling.

3 (12) Avoidance or reduction of air traffic-re-  
4 lated disturbance to fish and wildlife.

5 (13) Treatment and disposal of hazardous and  
6 toxic wastes, solid wastes, reserve pit fluids, drilling  
7 muds and cuttings, and domestic wastewater, includ-  
8 ing an annual waste management report, a haz-  
9 ardous materials tracking system, and a prohibition  
10 on chlorinated solvents, in accordance with applica-  
11 ble Federal and State environmental law.

12 (14) Fuel storage and oil spill contingency plan-  
13 ning.

14 (15) Research, monitoring, and reporting re-  
15 quirements.

16 (16) Field crew environmental briefings.

17 (17) Avoidance of significant adverse effects  
18 upon subsistence hunting, fishing, and trapping by  
19 subsistence users.

20 (18) Compliance with applicable air and water  
21 quality standards.

22 (19) Appropriate seasonal and safety zone des-  
23 ignations around well sites, within which subsistence  
24 hunting and trapping shall be limited.

1           (20) Reasonable stipulations for protection of  
2           cultural and archeological resources.

3           (21) All other protective environmental stipula-  
4           tions, restrictions, terms, and conditions deemed  
5           necessary by the Secretary.

6           (e) CONSIDERATIONS.—In preparing and promul-  
7           gating regulations, lease terms, conditions, restrictions,  
8           prohibitions, and stipulations under this section, the Sec-  
9           retary shall consider the following:

10           (1) The stipulations and conditions that govern  
11           the National Petroleum Reserve-Alaska leasing pro-  
12           gram, as set forth in the 1999 Northeast National  
13           Petroleum Reserve-Alaska Final Integrated Activity  
14           Plan/Environmental Impact Statement.

15           (2) The environmental protection standards  
16           that governed the initial Coastal Plain seismic explo-  
17           ration program under parts 37.31 to 37.33 of title  
18           50, Code of Federal Regulations.

19           (3) The land use stipulations for exploratory  
20           drilling on the KIC-ASRC private lands that are set  
21           forth in Appendix 2 of the August 9, 1983, agree-  
22           ment between Arctic Slope Regional Corporation and  
23           the United States.

24           (f) FACILITY CONSOLIDATION PLANNING.—

1           (1) IN GENERAL.—The Secretary shall, after  
2 providing for public notice and comment, prepare  
3 and update periodically a plan to govern, guide, and  
4 direct the siting and construction of facilities for the  
5 exploration, development, production, and transpor-  
6 tation of Coastal Plain oil and gas resources.

7           (2) OBJECTIVES.—The plan shall have the fol-  
8 lowing objectives:

9                   (A) Avoiding unnecessary duplication of fa-  
10 cilities and activities.

11                   (B) Encouraging consolidation of common  
12 facilities and activities.

13                   (C) Locating or confining facilities and ac-  
14 tivities to areas that will minimize impact on  
15 fish and wildlife, their habitat, and the environ-  
16 ment.

17                   (D) Utilizing existing facilities wherever  
18 practicable.

19                   (E) Enhancing compatibility between wild-  
20 life values and development activities.

21           (g) ACCESS TO PUBLIC LANDS.—The Secretary  
22 shall—

23                   (1) manage public lands in the Coastal Plain  
24 subject to subsections (a) and (b) of section 811 of

1 the Alaska National Interest Lands Conservation  
2 Act (16 U.S.C. 3121); and

3 (2) ensure that local residents shall have rea-  
4 sonable access to public lands in the Coastal Plain  
5 for traditional uses.

6 **SEC. 2208. EXPEDITED JUDICIAL REVIEW.**

7 (a) FILING OF COMPLAINT.—

8 (1) DEADLINE.—Subject to paragraph (2), any  
9 complaint seeking judicial review of any provision of  
10 this title or any action of the Secretary under this  
11 title shall be filed in any appropriate district court  
12 of the United States—

13 (A) except as provided in subparagraph  
14 (B), within the 90-day period beginning on the  
15 date of the action being challenged; or

16 (B) in the case of a complaint based solely  
17 on grounds arising after such period, within 90  
18 days after the complainant knew or reasonably  
19 should have known of the grounds for the com-  
20 plaint.

21 (2) VENUE.—Any complaint seeking judicial re-  
22 view of an action of the Secretary under this title  
23 may be filed only in the United States Court of Ap-  
24 peals for the District of Columbia.





1           (2) except as provided in section 2212(d) the  
2           balance shall be deposited into the Treasury as mis-  
3           cellaneous receipts.

4           (b) PAYMENTS TO ALASKA.—Payments to the State  
5           of Alaska under this section shall be made semiannually.

6           (c) USE OF BONUS PAYMENTS FOR LOW-INCOME  
7           HOME ENERGY ASSISTANCE.—Amounts that are received  
8           by the United States as bonuses for leases under this title  
9           and deposited into the Treasury under subsection (a)(2)  
10          may be appropriated to the Secretary of the Health and  
11          Human Services, in addition to amounts otherwise avail-  
12          able, to provide assistance under the Low-Income Home  
13          Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.).

14          **SEC. 2210. RIGHTS-OF-WAY ACROSS THE COASTAL PLAIN.**

15          (a) EXEMPTION.—Title XI of the Alaska National In-  
16          terest Lands Conservation Act (16 U.S.C. 3161 et seq.)  
17          shall not apply to the issuance by the Secretary under sec-  
18          tion 28 of the Mineral Leasing Act (30 U.S.C. 185) of  
19          rights-of-way and easements across the Coastal Plain for  
20          the transportation of oil and gas.

21          (b) TERMS AND CONDITIONS.—The Secretary shall  
22          include in any right-of-way or easement referred to in sub-  
23          section (a) such terms and conditions as may be necessary  
24          to ensure that transportation of oil and gas does not result  
25          in a significant adverse effect on the fish and wildlife, sub-

1 sistence resources, their habitat, and the environment of  
2 the Coastal Plain, including requirements that facilities be  
3 sited or designed so as to avoid unnecessary duplication  
4 of roads and pipelines.

5 (c) REGULATIONS.—The Secretary shall include in  
6 regulations under section 2203(g) provisions granting  
7 rights-of-way and easements described in subsection (a)  
8 of this section.

9 **SEC. 2211. CONVEYANCE.**

10 In order to maximize Federal revenues by removing  
11 clouds on title to lands and clarifying land ownership pat-  
12 terns within the Coastal Plain, the Secretary, notwith-  
13 standing the provisions of section 1302(h)(2) of the Alas-  
14 ka National Interest Lands Conservation Act (16 U.S.C.  
15 3192(h)(2)), shall convey—

16 (1) to the Kaktovik Inupiat Corporation the  
17 surface estate of the lands described in paragraph 1  
18 of Public Land Order 6959, to the extent necessary  
19 to fulfill the Corporation's entitlement under section  
20 12 of the Alaska Native Claims Settlement Act (43  
21 U.S.C. 1611) in accordance with the terms and con-  
22 ditions of the Agreement between the Department of  
23 the Interior, the United States Fish and Wildlife  
24 Service, the Bureau of Land Management, and the

1 Kaktovik Inupiat Corporation effective January 22,  
2 1993; and

3 (2) to the Arctic Slope Regional Corporation  
4 the remaining subsurface estate to which it is enti-  
5 tled pursuant to the August 9, 1983, agreement be-  
6 tween the Arctic Slope Regional Corporation and the  
7 United States of America.

8 **SEC. 2212. LOCAL GOVERNMENT IMPACT AID AND COMMU-**  
9 **NITY SERVICE ASSISTANCE.**

10 (a) FINANCIAL ASSISTANCE AUTHORIZED.—

11 (1) IN GENERAL.—The Secretary may use  
12 amounts available from the Coastal Plain Local Gov-  
13 ernment Impact Aid Assistance Fund established by  
14 subsection (d) to provide timely financial assistance  
15 to entities that are eligible under paragraph (2) and  
16 that are directly impacted by the exploration for or  
17 production of oil and gas on the Coastal Plain under  
18 this title.

19 (2) ELIGIBLE ENTITIES.—The North Slope  
20 Borough, Kaktovik, and other boroughs, municipal  
21 subdivisions, villages, and any other community or-  
22 ganized under Alaska State law shall be eligible for  
23 financial assistance under this section.

24 (b) USE OF ASSISTANCE.—Financial assistance  
25 under this section may be used only for—

1           (1) planning for mitigation of the potential ef-  
2           fects of oil and gas exploration and development on  
3           environmental, social, cultural, recreational and sub-  
4           sistence values;

5           (2) implementing mitigation plans and main-  
6           taining mitigation projects;

7           (3) developing, carrying out, and maintaining  
8           projects and programs that provide new or expanded  
9           public facilities and services to address needs and  
10          problems associated with such effects, including fire-  
11          fighting, police, water, waste treatment, medivac,  
12          and medical services; and

13          (4) establishment of a coordination office, by  
14          the North Slope Borough, in the City of Kaktovik,  
15          which shall—

16                (A) coordinate with and advise developers  
17                on local conditions, impact, and history of the  
18                areas utilized for development; and

19                (B) provide to the Committee on Resources  
20                of the Senate and the Committee on Energy  
21                and Resources of the Senate an annual report  
22                on the status of coordination between devel-  
23                opers and the communities affected by develop-  
24                ment.

25          (c) APPLICATION.—

1           (1) IN GENERAL.—Any community that is eligi-  
2           ble for assistance under this section may submit an  
3           application for such assistance to the Secretary, in  
4           such form and under such procedures as the Sec-  
5           retary may prescribe by regulation.

6           (2) NORTH SLOPE BOROUGH COMMUNITIES.—A  
7           community located in the North Slope Borough may  
8           apply for assistance under this section either directly  
9           to the Secretary or through the North Slope Bor-  
10          ough.

11          (3) APPLICATION ASSISTANCE.—The Secretary  
12          shall work closely with and assist the North Slope  
13          Borough and other communities eligible for assist-  
14          ance under this section in developing and submitting  
15          applications for assistance under this section.

16          (d) ESTABLISHMENT OF FUND.—

17           (1) IN GENERAL.—There is established in the  
18           Treasury the Coastal Plain Local Government Im-  
19           pact Aid Assistance Fund.

20           (2) USE.—Amounts in the fund may be used  
21           only for providing financial assistance under this  
22           section.

23           (3) DEPOSITS.—Subject to paragraph (4), there  
24           shall be deposited into the fund amounts received by  
25           the United States as revenues derived from rents,

1 bonuses, and royalties under on leases and lease  
2 sales authorized under this title.

3 (4) LIMITATION ON DEPOSITS.—The total  
4 amount in the fund may not exceed \$11,000,000.

5 (5) INVESTMENT OF BALANCES.—The Sec-  
6 retary of the Treasury shall invest amounts in the  
7 fund in interest bearing government securities.

8 (e) AUTHORIZATION OF APPROPRIATIONS.—To pro-  
9 vide financial assistance under this section there is author-  
10 ized to be appropriated to the Secretary from the Coastal  
11 Plain Local Government Impact Aid Assistance Fund  
12 \$5,000,000 for each fiscal year.

13 **TITLE XXIII—SET AMERICA FREE**  
14 **(SAFE)**

15 **SEC. 2301. SHORT TITLE.**

16 This title may be cited as the “Set America Free Act  
17 of 2005” or the “SAFE Act”.

18 **SEC. 2302. FINDINGS.**

19 Congress finds the following:

20 (1) The three contiguous North American coun-  
21 tries of Canada, Mexico, and the United States  
22 share many economic, environmental, and security  
23 interests, including being among each others’ largest  
24 trading partners, similar interests in clean air and  
25 clean water, concern about infiltration of terrorists

1 from nations that host terrorist organizations, and  
2 interdependent economic systems.

3 (2) North American energy self-sufficiency is  
4 consistent with the shared interests of the three con-  
5 tiguous North American countries and should be  
6 achieved through methods that recognize and respect  
7 the sovereignty of each of the three contiguous  
8 North American countries.

9 (3) The Energy Information Administration  
10 (EIA), in its April 2004 International Energy Out-  
11 look, projects that world energy consumption will in-  
12 crease by 54 percent from 2001 to 2025 and that  
13 world oil consumption will rise from 77 million bar-  
14 rels per day (Mmbbl/d) in 2001 to 121 Mmbbl/d in  
15 2025.

16 (4) In the same report, EIA projects that, with-  
17 out a change in governmental policy, the United  
18 States oil consumption will rise by 44.4 percent from  
19 19.6 Mmbbl/d (7.15 billion barrels per year (Bbbl/  
20 y)) in 2001 to 28.3 Mmbbl/d (10.33 Bbbl/y) in  
21 2025, and that the oil consumption of the three con-  
22 tiguous North American countries of Canada, Mex-  
23 ico, and the United States (in this title referred to  
24 as the “three contiguous North American coun-  
25 tries”) will rise by 47.2 percent from 23.5 Mmbbl/

1 d (8.58 Bbbl/y) in 2001 (30.5 percent of world con-  
2 sumption) to 34.6 Mmbbl/d (12.6 Bbbl/y) in 2025  
3 (28.6 percent of world consumption).

4 (5) EIA projects that, without a change in gov-  
5 ernmental policy, oil production in the three contig-  
6 uous North American countries will rise by 18.8 per-  
7 cent from 15.4 Mmbbl/d (5.6 Bbbl/y) in 2001 (19.4  
8 percent of world production) to 18.3 Mmbbl/d (6.7  
9 Bbbl/y) in 2025 (14.5 percent of world production).

10 (6) EIA projects that, without a change in gov-  
11 ernmental policy, the three contiguous North Amer-  
12 ican countries contain 492.7 Bbbls of oil resources  
13 (16.8 percent of total world oil resources) (not in-  
14 cluding unconventional oil resources such as United  
15 States oil shale or the overwhelming majority of Ca-  
16 nadian oil sands) at the base case oil price, which  
17 represents sufficient oil to fully supply the needs of  
18 the three contiguous North American countries for  
19 57.4 years based on 2001 oil consumption and 39.1  
20 years based on projected 2025 oil consumption, re-  
21 sulting in an average of approximately 48 years of  
22 full supply.

23 (7) In the same report, EIA projects that, with-  
24 out a change in governmental policy, the United  
25 States natural gas consumption will rise by 38.9



1 percent from 22.6 trillion cubic feet per year (Tcf/  
2 y) in 2001 to 31.4 Tcf/y in 2025, and that the nat-  
3 ural gas consumption of the three contiguous North  
4 American countries will rise by 48.0 percent from  
5 26.9 Tcf/y in 2001 (29.3 percent of world consump-  
6 tion) to 39.8 Tcf/y in 2025 (26.3 percent of world  
7 consumption).

8 (8) EIA projects that, without a change in gov-  
9 ernmental policy, natural gas production in the three  
10 contiguous North American countries will rise by  
11 21.7 percent from 27.6 Tcf/y in 2001 (30.3 percent  
12 of world production) to 33.6 Tcf/y in 2025 (22.3  
13 percent of world production), not including Alaskan  
14 gas through the natural gas pipeline, gas from gas  
15 hydrates, nor expanded coal gasification. The United  
16 States Geological Survey estimates that natural gas  
17 hydrate resources in-place total 169,000 Tcf in Alas-  
18 ka and its surrounding waters, and approximately  
19 150,000 Tcf off the lower-48 Atlantic, Pacific, and  
20 Gulf of Mexico coastlines.

21 (9) The terrorist attacks in the United States  
22 on September 11, 2001, and the subsequent expan-  
23 sion of terrorist organizations in regions outside of  
24 North America in areas that are major suppliers of  
25 oil, and potential suppliers of liquified natural gas,

1 to the United States have significantly increased the  
2 national security and homeland security risks to the  
3 United States of relying upon oil and natural gas  
4 supply sources located outside of the three contig-  
5 uous North American countries. The United States  
6 imports 60 percent of our oil supplies—the highest in  
7 history. After Canada and Mexico, the largest oil  
8 suppliers to the United States are Saudi Arabia,  
9 Venezuela, Nigeria, Iraq, and Algeria all of which  
10 suffer from significant instability.

11 (10) According to published scientific, technical,  
12 and economic reports, the three contiguous North  
13 American countries have the resource base and tech-  
14 nical ability to increase production of oil by at least  
15 15 Mmbbl/d by 2025 and 20 Mmbbl/d by 2030 even  
16 before increases in coal liquifaction, biofuels, gas-to-  
17 liquids, and other methods of creating liquid sub-  
18 stitutes for crude oil and crude oil products.

19 (11) This increase in North American oil pro-  
20 duction would be derived from a variety of resources  
21 including, among others—

22 (A) the United States oil shale resource  
23 base (2 trillion barrels of oil in place out of 2.6  
24 trillion in the world) believed to be capable of

1 eventually producing 10 Mmbbl/d for more than  
2 100 years;

3 (B) the Canadian Alberta oil sands re-  
4 source base (1.7 trillion barrels of oil in place),  
5 also believed to be capable of eventually pro-  
6 ducing 10 Mmbbl/d for more than 100 years;

7 (C) the United States heavy oil resource  
8 base (80 billion barrels of oil in place);

9 (D) the remaining 400 billion barrels of  
10 conventional oil in place in the United States of  
11 which 60 billion barrels are potentially produc-  
12 ible with advanced CO<sub>2</sub> enhanced oil recovery  
13 technology;

14 (E) the United States oil sands resource  
15 base of 54 billion barrels of oil in place;

16 (F) the Arctic National Wildlife Refuge  
17 Coastal Plain area (ANWR) with a mean tech-  
18 nically recoverable resource of more than 10 bil-  
19 lion barrels of oil;

20 (G) the National Petroleum Reserve-Alas-  
21 ka (NPR-A) with a mean technically recover-  
22 able resource of 9.3 billion barrels of oil;

23 (H) the 12–18 billion barrels of oil likely  
24 to be producible in the Canadian Atlantic off-  
25 shore;

1 (I) the extensive resources of the Canadian  
2 Arctic onshore and offshore;

3 (J) the extensive resources in the Alaskan  
4 Arctic offshore and the outer Continental Shelf  
5 offshore the lower-48 United States;

6 (K) other extensive oil resources in Canada  
7 and the United States; and

8 (L) the extensive oil resources of Mexico.

9 (12) In addition to being the “Saudi Arabia” of  
10 oil shale with at least 75 percent of the world’s oil  
11 shale resource base, the United States is also the  
12 “Saudi Arabia” of coal. The EIA estimates that  
13 total economically recoverable reserves of coal  
14 around the world are 1,083 billion short tons—  
15 enough to last approximately 210 years at current  
16 consumption levels. EIA estimates that the economi-  
17 cally recoverable coal reserves of the United States,  
18 at 25 percent of total world reserves, are the largest  
19 in the world. Total United States coal resources are  
20 vastly larger than the 270 billion short tons of eco-  
21 nomically recoverable reserves, and with new tech-  
22 nology much more could economically be made avail-  
23 able to supply our energy needs. World consumption  
24 of coal in 2001 was 5.26 billion short tons and is  
25 projected to grow to 7.57 billion short tons in 2025.

1 70 percent of the increased world consumption is  
2 projected to be attributable to China and India.  
3 United States consumption of coal in 2001 was 1.06  
4 billion short tons and is projected to grow to 1.57  
5 billion short tons in 2025.

6 (13) Growth in world oil consumption has been  
7 outstripping growth in world production of conven-  
8 tional oil resources for several primary reasons, in-  
9 cluding that conventional oil production in most oil  
10 producing countries has peaked and is now declin-  
11 ing, and developing nations such as China and India  
12 are greatly accelerating their consumption of crude  
13 oil.

14 (14) The recent increases in world oil prices are  
15 caused by the faster growth in demand over supply  
16 and this trend is likely to continue because the re-  
17 maining conventional oil is more difficult and expen-  
18 sive to find and produce, and frequently not reason-  
19 ably available.

20 (15) The National Intelligence Council, an advi-  
21 sor to the Central Intelligence Agency, found in its  
22 report, "Mapping the Global Future," NIC 2004-  
23 13, December 2004, that "Continued limited access  
24 of the international oil companies to major fields  
25 could restrain this investment necessary for supply

1 to meet demand, however, and many of the areas—  
2 the Caspian Sea, Venezuela, West Africa, and South  
3 China Sea—that are being counted on to provide in-  
4 creased output involve substantial political or eco-  
5 nomic risk. Traditional suppliers in the Middle East  
6 are also increasingly unstable. Thus sharper de-  
7 mand-driven competition for resources, perhaps ac-  
8 companied by a major disruption of oil supplies, is  
9 among the key uncertainties. China and India, which  
10 lack adequate domestic energy resources, will have  
11 to ensure continued access to outside suppliers; thus,  
12 the need for energy will be a major factor in shaping  
13 their foreign and defense policies, including expand-  
14 ing naval power”.

15 (16) Because the price of crude oil is set on a  
16 world market basis, the excess of world demand over  
17 supply will continue to drive up oil prices to levels  
18 potentially several times those of today unless all na-  
19 tions capable of producing significant quantities of  
20 incremental oil respond by ensuring such production  
21 is developed and available for consumption on an ex-  
22 pedited basis.

23 (17) The eventual, long-term solution is to  
24 drastically reduce the world’s reliance on oil as the  
25 primary fuel for transportation (40 percent of the

1 United States consumption of oil is to power light  
2 motor vehicles).

3 (18) North America, while maximizing the pro-  
4 duction of oil, must use the next 40 years as a tran-  
5 sition period to a more sustainable energy model.

6 (19) The United States also has large renew-  
7 able energy resource potential including wind, geo-  
8 thermal, solar, biomass, ocean thermal, waves and  
9 currents, and hydroelectric. The EIA's July 2004 re-  
10 port, "Renewable Energy Trends 2003", found that  
11 renewable energy provided 6 percent of the Nation's  
12 energy supply in 2003. The largest renewable energy  
13 source was biomass with 47 percent of the renew-  
14 ables total energy output, followed closely by hydro-  
15 electric with 45 percent, then geothermal with 5 per-  
16 cent, wind with 2 percent, and solar with 1 percent.  
17 Technology is rapidly advancing, positioning renew-  
18 able energy to provide an increasing share of our en-  
19 ergy supply in the residential, commercial, indus-  
20 trial, transportation, and electric power sectors. The  
21 United States public lands and waters comprise 2.25  
22 billion acres, large portions of which may be avail-  
23 able to rapidly expand this clean and renewable al-  
24 ternative to fossil energy resources. These lands

1 should be reviewed for their potential contribution to  
2 our Nation's domestic energy security.

3 (20) The United States has the strongest envi-  
4 ronmental safeguards in the world, and our stand-  
5 ards, science, and technology have proven that the  
6 United States can produce energy in an environ-  
7 mentally benign manner, particularly when com-  
8 pared with the lesser environmental standards in  
9 most foreign oil producing countries.

10 (21) The 1999 Clinton Administration report,  
11 "Environmental Benefits of Advanced Oil and Gas  
12 Exploration and Production Technology," highlights  
13 the technological achievements of the United States  
14 oil and gas industry. The report noted, "public  
15 awareness of the significant and impressive environ-  
16 mental benefits from new exploration and production  
17 (E&P) technology advances remains limited . . . .  
18 We believe it is important to tell this remarkable  
19 story of environmental progress in E&P technology.  
20 Greater awareness of the industry's achievements in  
21 environmental protection will provide the context for  
22 effective policy, and for informed decision making by  
23 both the private and public sectors."

24 (22) Many Americans believe the myth that  
25 spills from oil and natural gas exploration and pro-



1       duction are the leading cause of oil pollution in the  
2       oceans and the Nation's rivers and streams. The re-  
3       ality is that, to the contrary, in 2002 the National  
4       Academy of Sciences found that offshore oil and nat-  
5       ural gas exploration and production account for a  
6       total of only 2 percent of the oil in the North Amer-  
7       ican marine environment; natural sources such as oil  
8       seeps account for 63 percent of such oil; industrial  
9       and municipal discharges, including urban runoff,  
10      account for 22 percent of such oil; atmospheric pol-  
11      lution accounts for 8 percent of such oil; marine  
12      transportation accounts for 3 percent of such oil;  
13      and recreational vessels account for 2 percent of  
14      such oil.

15           (23) Various national security organizations  
16      and experts have warned the United States of the  
17      escalating risks to our national security of relying on  
18      transoceanic oil imports from unstable regions of the  
19      world for a significant part of our oil supplies, and  
20      they have urged the Nation to reduce its dependence  
21      on oil.

22           (24) Polls consistently have found that a major-  
23      ity of individuals in the United States strongly sup-  
24      port reducing our reliance on foreign energy sources.

1           (25) A recent report on “Energy and National  
2 Security” issued by Sandia National Laboratories,  
3 SAND2003–3287, September 2003, found that our  
4 national security is threatened by our continued reli-  
5 ance on vast quantities of oil from unstable foreign  
6 sources. The report found that supply disruptions,  
7 caused by terrorists or otherwise, could immediately  
8 remove many millions of barrels of oil per day from  
9 the world supply, and noted that the EIA has esti-  
10 mated that for every one million bbl/d of oil supply  
11 disrupted, world oil prices might increase \$3–\$5 per  
12 barrel. Sandia found six solution options, includ-  
13 ing—

14                   (A) maintenance of strategic reserves;

15                   (B) support of foreign government regimes  
16 likely to maintain production;

17                   (C) military deterrence, protection, or  
18 intervention to secure production sources and  
19 facilities;

20                   (D) diversification of production sources;

21                   (E) reduction of oil intensity through con-  
22 servation or through more efficient energy use;  
23 and

24                   (F) development and deployment of alter-  
25 natives to oil (or gas).

1 Sandia noted “that none of these measures seems  
2 likely to emerge from business-as-usual market proc-  
3 esses. Thus implementation of these measures will  
4 usually require public policy decisions. In the case of  
5 the first three, they would be foreign and military  
6 policy decisions; in the case of the latter three, they  
7 would be legal, regulatory, or governmental subsidy  
8 decisions.” Sandia mentioned oil shale and tar sands  
9 as potential diversified sources of oil supplies, and  
10 hydrogen, coal, renewables, nuclear fission, and  
11 methane hydrates as alternatives to oil.

12 (26) President Clinton concluded, on February  
13 16, 1995, under section 232 of the Trade Expansion  
14 Act of 1962, that “. . . the nation’s growing reli-  
15 ance on imports of crude oil and refined petroleum  
16 products threaten the nation’s security because they  
17 increase U.S. vulnerability to oil supply interrup-  
18 tions.”. In 1994 crude oil imports were 7.051 million  
19 barrels per day. On March 24, 2000, President Clin-  
20 ton, upon further review under section 232, found,  
21 “I have reviewed and approved the findings of your  
22 investigative report . . . that imports of crude oil  
23 threaten to impair the national security.”. Between  
24 the two statements by President Clinton, United

1 States crude oil imports increased 21.6 percent to  
2 8.581 million barrels per day in 1999.

3 (27) Economists have found that while OPEC  
4 is an important source of oil price increases, the  
5 United States government is also partly to blame be-  
6 cause overly burdensome government regulations on  
7 domestic energy exploration, production, and sales  
8 have supported OPEC's monopoly power and re-  
9 stricted competition from American energy compa-  
10 nies, in addition to making expansive highly prospec-  
11 tive areas off-limits to leasing and production.

12 (28) In addition to jeopardizing our national  
13 and energy security, importing the majority of our  
14 oil also injures our economic security. The United  
15 States imported approximately 4.7 billion barrels of  
16 oil in 2004, of which 1.4 billion barrels were from  
17 Canada and Mexico. Imported energy creates very  
18 few jobs in the United States and makes only a very  
19 minor contribution to our Gross Domestic Product  
20 (GDP). If we substitute North American production  
21 for the remaining 3.3 billion barrels of imports per  
22 year, at \$40 per barrel the new production would  
23 sell for \$132 billion. A widely used commercial eco-  
24 nomics model projects that GDP would increase by  
25 \$336 billion, creating 1,667,160 jobs, each with an

1 average total annual compensation of \$50,356. Fur-  
2 ther, such activity is projected to generate approxi-  
3 mately \$22 billion in indirect business taxes, includ-  
4 ing sales, excise, and severance taxes. At a one-  
5 eighth royalty, total royalty payments to mineral  
6 rights owners would approximate \$16.5 billion per  
7 year. Further, our imported energy represents more  
8 than 25 percent of our international trade deficit.  
9 American production could eliminate two-thirds of  
10 the 25 percent, strengthening our economy.

11 **SEC. 2303. PURPOSE.**

12 The purpose of this title is to establish a United  
13 States commission to make recommendations for a coordi-  
14 nated and comprehensive North American energy policy  
15 that will achieve energy self-sufficiency by 2025 within the  
16 three contiguous North American nation area of Canada,  
17 Mexico, and the United States.

18 **SEC. 2304. UNITED STATES COMMISSION ON NORTH AMER-**

19 **ICAN ENERGY FREEDOM.**

20 (a) ESTABLISHMENT.—There is hereby established  
21 the United States Commission on North American Energy  
22 Freedom (in this title referred to as the “Commission”).  
23 The Federal Advisory Committee Act (5 U.S.C. App.), ex-  
24 cept sections 3, 7, and 12, does not apply to the Commis-  
25 sion.

1 (b) MEMBERSHIP.—

2 (1) APPOINTMENT.—The Commission shall be  
3 composed of 16 members appointed by the President  
4 from among individuals described in paragraph (2)  
5 who are knowledgeable on energy issues, including  
6 oil and gas exploration and production, crude oil re-  
7 fining, oil and gas pipelines, electricity production  
8 and transmission, coal, unconventional hydrocarbon  
9 resources, fuel cells, motor vehicle power systems,  
10 nuclear energy, renewable energy, biofuels, energy  
11 efficiency, and energy conservation. The membership  
12 of the Commission shall be balanced by area of ex-  
13 pertise to the extent consistent with maintaining the  
14 highest level of expertise on the Commission. Mem-  
15 bers of the Commission may be citizens of Canada,  
16 Mexico, or the United States, and the President  
17 shall ensure that citizens of all three nations are ap-  
18 pointed to the Commission.

19 (2) NOMINATIONS.—The President shall ap-  
20 point the members of the Commission within 60  
21 days after the effective date of this Act, including in-  
22 dividuals nominated as follows:

23 (A) 4 members shall be appointed from  
24 amongst individuals independently determined

1 by the President to be qualified for appoint-  
2 ment.

3 (B) 4 members shall be appointed from a  
4 list of 8 individuals who shall be nominated by  
5 the majority leader of the Senate in consulta-  
6 tion with the chairman of the Committee on  
7 Energy and Natural Resources of the Senate.

8 (C) 4 members shall be appointed from a  
9 list of 8 individuals who shall be nominated by  
10 the Speaker of the House of Representatives in  
11 consultation with the chairmen of the Commit-  
12 tees on Energy and Commerce and Resources  
13 of the House of Representatives.

14 (D) 2 members shall be appointed from a  
15 list of 4 individuals who shall be nominated by  
16 the minority leader of the Senate in consulta-  
17 tion with the ranking Member of the Committee  
18 on Energy and Natural Resources of the Sen-  
19 ate.

20 (E) 2 members shall be appointed from a  
21 list of 4 individuals who shall be nominated by  
22 the minority leader of the House in consultation  
23 with the ranking Members of the Committees  
24 on Energy and Commerce and Resources of the  
25 House of Representatives.

1           (3) CHAIRMAN.—The chairman of the Commis-  
2           sion shall be selected by the President. The chair-  
3           man of the Commission shall be responsible for—

4                   (A) the assignment of duties and respon-  
5                   sibilities among staff personnel and their con-  
6                   tinuing supervision; and

7                   (B) the use and expenditure of funds avail-  
8                   able to the Commission.

9           (4) VACANCIES.—Any vacancy on the Commis-  
10           sion shall be filled in the same manner as the origi-  
11           nal incumbent was appointed.

12           (c) RESOURCES.—In carrying out its functions under  
13           this section, the Commission—

14                   (1) is authorized to secure directly from any  
15                   Federal agency or department any information it  
16                   deems necessary to carry out its functions under this  
17                   Act, and each such agency or department is author-  
18                   ized to cooperate with the Commission and, to the  
19                   extent permitted by law, to furnish such information  
20                   (other than information described in section  
21                   552(b)(1)(A) of title 5, United States Code) to the  
22                   Commission, upon the request of the Commission;

23                   (2) may enter into contracts, subject to the  
24                   availability of appropriations for contracting, and  
25                   employ such staff experts and consultants as may be



1 necessary to carry out the duties of the Commission,  
2 as provided by section 3109 of title 5, United States  
3 Code; and

4 (3) shall establish a multidisciplinary science  
5 and technical advisory panel of experts in the field  
6 of energy to assist the Commission in preparing its  
7 report, including ensuring that the scientific and  
8 technical information considered by the Commission  
9 is based on the best scientific and technical informa-  
10 tion available.

11 (d) STAFFING.—The chairman of the Commission  
12 may, without regard to the civil service laws and regula-  
13 tions, appoint and terminate an executive director and  
14 such other additional personnel as may be necessary for  
15 the Commission to perform its duties. The executive direc-  
16 tor shall be compensated at a rate not to exceed the rate  
17 payable for Level IV of the Executive Schedule under  
18 chapter 5136 of title 5, United States Code. The chairman  
19 shall select staff from among qualified citizens of Canada,  
20 Mexico, and the United States of America.

21 (e) MEETINGS.—

22 (1) ADMINISTRATION.—All meetings of the  
23 Commission shall be open to the public, except that  
24 a meeting or any portion of it may be closed to the  
25 public if it concerns matters or information de-

1 scribed in section 552b(c) of title 5, United States  
2 Code. Interested persons shall be permitted to ap-  
3 pear at open meetings and present oral or written  
4 statements on the subject matter of the meeting.  
5 The Commission may administer oaths or affirma-  
6 tions to any person appearing before it.

7 (2) NOTICE; MINUTES; PUBLIC AVAILABILITY  
8 OF DOCUMENTS.—

9 (A) NOTICE.—All open meetings of the  
10 Commission shall be preceded by timely public  
11 notice in the Federal Register of the time,  
12 place, and subject of the meeting.

13 (B) MINUTES.—Minutes of each meeting  
14 shall be kept and shall contain a record of the  
15 people present, a description of the discussion  
16 that occurred, and copies of all statements filed.  
17 Subject to section 552 of title 5, United States  
18 Code, the minutes and records of all meetings  
19 and other documents that were made available  
20 to or prepared for the Commission shall be  
21 available for public inspection and copying at a  
22 single location in the offices of the Commission.

23 (3) INITIAL MEETING.—The Commission shall  
24 hold its first meeting within 30 days after all 16  
25 members have been appointed.

1 (f) REPORT.—Within 12 months after the effective  
2 date of this Act, the Commission shall submit to Congress  
3 and the President a final report of its findings and rec-  
4 ommendations regarding North American energy freedom.

5 (g) ADMINISTRATIVE PROCEDURE FOR REPORT AND  
6 REVIEW.—Chapter 5 and chapter 7 of title 5, United  
7 States Code, do not apply to the preparation, review, or  
8 submission of the report required by subsection (f).

9 (h) TERMINATION.—The Commission shall cease to  
10 exist 90 days after the date on which it submits its final  
11 report.

12 (i) AUTHORIZATION OF APPROPRIATIONS.—There is  
13 authorized to be appropriated to carry out this chapter  
14 a total of \$10,000,000 for the 2 fiscal-year period begin-  
15 ning with fiscal year 2005, such sums to remain available  
16 until expended.

17 **SEC. 2305. NORTH AMERICAN ENERGY FREEDOM POLICY.**

18 Within 90 days after receiving and considering the  
19 report and recommendations of the Commission under sec-  
20 tion 2304, the President shall submit to Congress a state-  
21 ment of proposals to implement or respond to the Commis-  
22 sion's recommendations for a coordinated, comprehensive,  
23 and long-range national policy to achieve North American  
24 energy freedom by 2025.

1 **TITLE XXV—GRAND CANYON HY-**  
2 **DROGEN-POWERED TRANSPORTATION**  
3 **DEMONSTRATION**

4 **SEC. 2501. SHORT TITLE.**

5 This title may be cited as the “Grand Canyon Hydro-  
6 gen-Powered Transportation Demonstration Act of 2005”.

7 **SEC. 2502. DEFINITIONS.**

8 For purposes of this title, the term—

9 (1) “Departments” means the Department of  
10 Energy jointly with the Department of the Interior;  
11 and

12 (2) “Secretaries” means the Secretary of En-  
13 ergy jointly with the Secretary of the Interior.

14 **SEC. 2503. FINDINGS.**

15 The Congress finds that—

16 (1) there is a need for a research and develop-  
17 ment program to support and foster the develop-  
18 ment, demonstration, and deployment of emerging  
19 hydrogen-based transportation technologies suitable  
20 for use in sensitive resource areas;

21 (2) partnerships between the Department of  
22 Energy, the Department of the Interior, Native  
23 American Tribes, and United States industry to de-  
24 velop hydrogen-based energy technologies can pro-  
25 vide significant benefits to our Nation, including en-

1 hancing our environmental stewardship, reducing  
2 our dependence on foreign oil, increasing our energy  
3 security, as well as creating jobs for United States  
4 workers and improving the competitive position of  
5 the United States in the global economy; and

6 (3) when technologically and economically fea-  
7 sible, the implementation of clean, silent or nearly  
8 silent, hydrogen-based transportation technologies  
9 would further resource stewardship and experiential  
10 goals in sensitive resource areas including units of  
11 the National Park System, such as Grand Canyon  
12 National Park.

13 **SEC. 2504. RESEARCH, DEVELOPMENT, AND DEMONSTRA-**  
14 **TION PROGRAM.**

15 (a) IN GENERAL.—The Secretaries shall jointly es-  
16 tablish and carry out a research and development pro-  
17 gram, in partnership with the private sector, relating to  
18 hydrogen-based transportation technologies suitable for  
19 operations in sensitive resource areas such as national  
20 parks. The Secretaries, in partnership with the private  
21 sector, shall conduct a demonstration of hydrogen-based  
22 public transportation technology at Grand Canyon Na-  
23 tional Park within three years after the date of enactment  
24 of this Act. At his discretion, the Secretary of Energy may  
25 choose to extend existing Department of Energy hydrogen-

1 related vehicle research and development programs in  
2 order to meet the objectives and requirements of this title.  
3 The Secretaries shall provide preference to tribal entities  
4 in the establishment of the research and development pro-  
5 gram.

6 (b) OBJECTIVE.—The objective of the program shall  
7 be to research, develop, and demonstrate, in cooperation  
8 with affected and related industries, a hydrogen-based al-  
9 ternative public transportation system suitable for oper-  
10 ations within Grand Canyon National Park, that meets  
11 the following standards:

12 (1) Silent or near-silent operation.

13 (2) Low, ultra low, or zero emission of pollut-  
14 ants.

15 (3) Reliability.

16 (4) Safe conveyance of passengers and operator.

17 (c) PARTNERSHIP.—In order to accomplish the objec-  
18 tive set forth in subsection (b), the Secretaries shall estab-  
19 lish a partnership among the Departments, manufactur-  
20 ers, other affected or related industries, Native American  
21 Tribes, and the National Park Service shuttle operators  
22 and tour operators authorized to provide services in Grand  
23 Canyon National Park.

1 **SEC. 2505. REPORTS TO CONGRESS.**

2 One year after the date of enactment of this Act, and  
3 annually thereafter for the duration of the program, the  
4 Secretaries shall submit a report to the Committees on  
5 Appropriations, Resources, and Energy and Commerce of  
6 the House of Representatives and the Committees on Ap-  
7 propriations and Energy and Natural Resources of the  
8 Senate describing the ongoing activities of the Secretaries  
9 and the Departments relating to the program authorized  
10 under this title and, to the extent practicable, the activities  
11 planned for the coming fiscal year.

12 **SEC. 2506. AUTHORIZATION OF APPROPRIATIONS.**

13 There are authorized to be appropriated to the Secre-  
14 taries to carry out this title, in addition to any amounts  
15 made available for these or related purposes under other  
16 Acts, \$400,000 per year for three consecutive fiscal years  
17 beginning with the full fiscal year following the date of  
18 enactment of this Act.

19 **TITLE XXVI—ADDITIONAL**  
20 **PROVISIONS**

21 **SEC. 2601. LIMITATION ON REQUIRED REVIEW UNDER**  
22 **NEPA.**

23 (a) **LIMITATION ON REVIEW.**—Action by the Sec-  
24 retary of the Interior in managing the public lands with  
25 respect to any of the activities described in subsection (b)  
26 shall not be subject to review under section 102(2)(C) the

1 National Environmental Policy Act of 1969 (42 U.S.C.  
2 4332(2)(C)), if the activity is conducted for the purpose  
3 of exploration or development of a domestic Federal en-  
4 ergy source.

5 (b) ACTIVITIES DESCRIBED.—The activities referred  
6 to in subsection (a) are the following:

7 (1) Geophysical exploration that does not re-  
8 quire road building.

9 (2) Individual surface disturbances of less than  
10 5 acres.

11 (3) Drilling an oil or gas well at a location or  
12 well pad site at which drilling has occurred pre-  
13 viously.

14 (4) Drilling an oil or gas well within a devel-  
15 oped field for which an approved land use plan or  
16 any environmental document prepared pursuant to  
17 the National Environmental Policy Act of 1969 ana-  
18 lyzed such drilling as a reasonably foreseeable activ-  
19 ity.

20 (5) Disposal of water produced from an oil or  
21 gas well, if the disposal is in compliance with a per-  
22 mit issued under the Federal Water Pollution Con-  
23 trol Act.

24 (6) Placement of a pipeline in an approved  
25 right-of-way corridor.



1           (7) Maintenance of a minor activity, other than  
2           any construction or major renovation of a building  
3           or facility.

4 **SEC. 2602. ENHANCING ENERGY EFFICIENCY IN MANAGE-**  
5 **MENT OF FEDERAL LANDS.**

6           (a) SENSE OF THE CONGRESS.—It is the sense of the  
7 Congress that Federal agencies should enhance the use of  
8 energy efficient technologies in the management of natural  
9 resources.

10          (b) ENERGY EFFICIENT BUILDINGS.—To the extent  
11 practicable, the Secretary of the Interior, the Secretary  
12 of Commerce, and the Secretary of Agriculture shall seek  
13 to incorporate energy efficient technologies in public and  
14 administrative buildings associated with management of  
15 the National Park System, National Wildlife Refuge Sys-  
16 tem, National Forest System, National Marine Sanc-  
17 tuaries System, and other public lands and resources man-  
18 aged by the Secretaries.

19          (c) ENERGY EFFICIENT VEHICLES.—To the extent  
20 practicable, the Secretary of the Interior, the Secretary  
21 of Commerce, and the Secretary of Agriculture shall seek  
22 to use energy efficient motor vehicles, including vehicles  
23 equipped with biodiesel or hybrid engine technologies, in  
24 the management of the National Park System, National  
25 Wildlife Refuge System, National Forest System, National

- 1 Marine Sanctuaries System, and other public lands and
- 2 resources managed by the Secretaries.

