109TH CONGRESS
1ST SESSION

H. R. 6

AN ACT

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

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AN ACT

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,*

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

2 (a) SHORT TITLE.—This Act may be cited as the
3 "Energy Policy Act of 2005".

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

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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

1 energy performance requirements for Federal build-
2 ings established under section 543(a)(1); and
3 "(2) shall submit the plan to Congress, not
4 later than 180 days after the date of enactment of
5 this section.
6 "(b) PLAN REQUIREMENTS.—The plan shall
7 include—
8 "(1) a description of the life cycle cost analysis
9 used to determine the cost-effectiveness of proposed
10 energy efficiency projects;
11 "(2) a schedule of energy surveys to ensure
12 complete surveys of all congressional buildings every
13 5 years to determine the cost and payback period of
14 energy and water conservation measures;
15 "(3) a strategy for installation of life cycle cost-
16 effective energy and water conservation measures;
17 "(4) the results of a study of the costs and ben-
18 efits of installation of submetering in congressional
19 buildings; and
20 "(5) information packages and 'how-to' guides
21 for each Member and employing authority of Con-
22 gress that detail simple, cost-effective methods to
23 save energy and taxpayer dollars in the workplace.
24 "(c) ANNUAL REPORT.—The Architect of the Capitol
25 shall submit to Congress annually a report on congres-

1 sional energy management and conservation programs re-
2 quired under this section that describes in detail—

3 ''(1) energy expenditures and savings estimates
4 for each facility;

5 ''(2) energy management and conservation
6 projects; and

7 ''(3) future priorities to ensure compliance with
8 this section.''.

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

''Sec. 552. Energy and water savings measures in congressional buildings.''.

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14 Appropriations Act, 1999 (2 U.S.C. 1815), is repealed.

15 (d) ENERGY INFRASTRUCTURE.—The Architect of
16 the Capitol, building on the Master Plan Study completed
17 in July 2000, shall commission a study to evaluate the
18 energy infrastructure of the Capital Complex to determine
19 how the infrastructure could be augmented to become
20 more energy efficient, using unconventional and renewable
21 energy resources, in a way that would enable the Complex
22 to have reliable utility service in the event of power fluc-
23 tuations, shortages, or outages.

24 (e) AUTHORIZATION OF APPROPRIATIONS.—There
25 are authorized to be appropriated to the Architect of the

1 Capitol to carry out subsection (d), $2,000,000 for each
2 of fiscal years 2006 through 2010.

3 **SEC. 102. ENERGY MANAGEMENT REQUIREMENTS.**

4 (a) ENERGY REDUCTION GOALS.—
5 (1) AMENDMENT.—Section 543(a)(1) of the
6 National Energy Conservation Policy Act (42 U.S.C.
7 8253(a)(1)) is amended by striking ''its Federal
8 buildings so that'' and all that follows through the
9 end and inserting ''the Federal buildings of the
10 agency (including each industrial or laboratory facil-
11 ity) so that the energy consumption per gross square
12 foot of the Federal buildings of the agency in fiscal
13 years 2006 through 2015 is reduced, as compared
14 with the energy consumption per gross square foot
15 of the Federal buildings of the agency in fiscal year
16 2003, by the percentage specified in the following
17 table:

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

18 (2) REPORTING BASELINE.—The energy reduc-
19 tion goals and baseline established in paragraph (1)
20 of section 543(a) of the National Energy Conserva-

1 tion Policy Act (42 U.S.C. 8253(a)(1)), as amended
2 by this subsection, supersede all previous goals and
3 baselines under such paragraph, and related report-
4 ing requirements.

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

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

15 (c) EXCLUSIONS.—Section 543(c)(1) of the National
16 Energy Conservation Policy Act (42 U.S.C. 8253(c)(1))
17 is amended by striking ''An agency may exclude'' and all
18 that follows through the end and inserting ''(A) An agency
19 may exclude, from the energy performance requirement
20 for a fiscal year established under subsection (a) and the
21 energy management requirement established under sub-
22 section (b), any Federal building or collection of Federal
23 buildings, if the head of the agency finds that—

24 ''(i) compliance with those requirements would
25 be impracticable;

1 "(ii) the agency has completed and submitted
2 all federally required energy management reports;
3 "(iii) the agency has achieved compliance with
4 the energy efficiency requirements of this Act, the
5 Energy Policy Act of 1992, Executive orders, and
6 other Federal law; and
7 "(iv) the agency has implemented all prac-
8 ticable, life cycle cost-effective projects with respect
9 to the Federal building or collection of Federal
10 buildings to be excluded.
11 "(B) A finding of impracticability under subpara-
12 graph (A)(i) shall be based on—
13 "(i) the energy intensiveness of activities car-
14 ried out in the Federal building or collection of Fed-
15 eral buildings; or
16 "(ii) the fact that the Federal building or col-
17 lection of Federal buildings is used in the perform-
18 ance of a national security function.".
19 (d) REVIEW BY SECRETARY.—Section 543(c)(2) of
20 the National Energy Conservation Policy Act (42 U.S.C.
21 8253(c)(2)) is amended—
22 (1) by striking "impracticability standards" and
23 inserting "standards for exclusion";
24 (2) by striking "a finding of impracticability"
25 and inserting "the exclusion"; and

1 (3) by striking ''energy consumption require-
2 ments'' and inserting ''requirements of subsections
3 (a) and (b)(1)''.
4 (e) CRITERIA.—Section 543(c) of the National En-
5 ergy Conservation Policy Act (42 U.S.C. 8253(c)) is fur-
6 ther amended by adding at the end the following:
7 ''(3) Not later than 180 days after the date of enact-
8 ment of this paragraph, the Secretary shall issue guide-
9 lines that establish criteria for exclusions under paragraph
10 (1).''.
11 (f) RETENTION OF ENERGY AND WATER SAVINGS.—
12 Section 546 of the National Energy Conservation Policy
13 Act (42 U.S.C. 8256) is amended by adding at the end
14 the following new subsection:
15 ''(e) RETENTION OF ENERGY AND WATER SAV-
16 INGS.—An agency may retain any funds appropriated to
17 that agency for energy expenditures, water expenditures,
18 or wastewater treatment expenditures, at buildings subject
19 to the requirements of section 543(a) and (b), that are
20 not made because of energy savings or water savings. Ex-
21 cept as otherwise provided by law, such funds may be used
22 only for energy efficiency, water conservation, or uncon-
23 ventional and renewable energy resources projects.''.

1 (g) REPORTS.—Section 548(b) of the National En-
2 ergy Conservation Policy Act (42 U.S.C. 8258(b)) is
3 amended—
4 (1) in the subsection heading, by inserting
5 "THE PRESIDENT AND" before "CONGRESS"; and
6 (2) by inserting "President and" before "Con-
7 gress".
8 (h) CONFORMING AMENDMENT.—Section 550(d) of
9 the National Energy Conservation Policy Act (42 U.S.C.
10 8258b(d)) is amended in the second sentence by striking
11 "the 20 percent reduction goal established under section
12 543(a) of the National Energy Conservation Policy Act
13 (42 U.S.C. 8253(a))." and inserting "each of the energy
14 reduction goals established under section 543(a).".

15 **SEC. 103. ENERGY USE MEASUREMENT AND ACCOUNT-**
16 **ABILITY.**

17 Section 543 of the National Energy Conservation
18 Policy Act (42 U.S.C. 8253) is further amended by adding
19 at the end the following:
20 "(e) METERING OF ENERGY USE.—
21 "(1) DEADLINE.—By October 1, 2012, in ac-
22 cordance with guidelines established by the Sec-
23 retary under paragraph (2), all Federal buildings
24 shall, for the purposes of efficient use of energy and
25 reduction in the cost of electricity used in such

1 buildings, be metered or submetered. Each agency
2 shall use, to the maximum extent practicable, ad-
3 vanced meters or advanced metering devices that
4 provide data at least daily and that measure at least
5 hourly consumption of electricity in the Federal
6 buildings of the agency. Such data shall be incor-
7 porated into existing Federal energy tracking sys-
8 tems and made available to Federal facility energy
9 managers.

10 ''(2) GUIDELINES.—

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

22 ''(B) REQUIREMENTS FOR GUIDELINES.—
23 The guidelines shall—

24 ''(i) take into consideration—

1 "(I) the cost of metering and
2 submetering and the reduced cost of
3 operation and maintenance expected
4 to result from metering and sub-
5 metering;
6 "(II) the extent to which meter-
7 ing and submetering are expected to
8 result in increased potential for en-
9 ergy management, increased potential
10 for energy savings and energy effi-
11 ciency improvement, and cost and en-
12 ergy savings due to utility contract
13 aggregation; and
14 "(III) the measurement and
15 verification protocols of the Depart-
16 ment of Energy;
17 "(ii) include recommendations con-
18 cerning the amount of funds and the num-
19 ber of trained personnel necessary to gath-
20 er and use the metering information to
21 track and reduce energy use;
22 "(iii) establish priorities for types and
23 locations of buildings to be metered and
24 submetered based on cost-effectiveness and
25 a schedule of 1 or more dates, not later

1 than 1 year after the date of issuance of
2 the guidelines, on which the requirements
3 specified in paragraph (1) shall take effect;
4 and

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

10 "(3) PLAN.—Not later than 6 months after the
11 date guidelines are established under paragraph (2),
12 in a report submitted by the agency under section
13 548(a), each agency shall submit to the Secretary a
14 plan describing how the agency will implement the
15 requirements of paragraph (1), including (A) how
16 the agency will designate personnel primarily respon-
17 sible for achieving the requirements and (B) dem-
18 onstration by the agency, complete with documenta-
19 tion, of any finding that advanced meters or ad-
20 vanced metering devices, as defined in paragraph
21 (1), are not practicable.".

22 **SEC. 104. PROCUREMENT OF ENERGY EFFICIENT PROD-**
23 **UCTS.**

24 (a) REQUIREMENTS.—Part 3 of title V of the Na-
25 tional Energy Conservation Policy Act (42 U.S.C. 8251

1 et seq.), as amended by section 101, is amended by adding
2 at the end the following:

3 **"SEC. 553. FEDERAL PROCUREMENT OF ENERGY EFFI-**
4 **CIENT PRODUCTS.**

5 "(a) DEFINITIONS.—In this section:
6 "(1) AGENCY.—The term 'agency' has the
7 meaning given that term in section 7902(a) of title
8 5, United States Code.
9 "(2) ENERGY STAR PRODUCT.—The term 'En-
10 ergy Star product' means a product that is rated for
11 energy efficiency under an Energy Star program.
12 "(3) ENERGY STAR PROGRAM.—The term 'En-
13 ergy Star program' means the program established
14 by section 324A of the Energy Policy and Conserva-
15 tion Act.
16 "(4) FEMP DESIGNATED PRODUCT.—The term
17 'FEMP designated product' means a product that is
18 designated under the Federal Energy Management
19 Program of the Department of Energy as being
20 among the highest 25 percent of equivalent products
21 for energy efficiency.
22 "(b) PROCUREMENT OF ENERGY EFFICIENT PROD-
23 UCTS.—
24 "(1) REQUIREMENT.—To meet the require-
25 ments of an agency for an energy consuming prod-

1 uct, the head of the agency shall, except as provided
2 in paragraph (2), procure—
3 ''(A) an Energy Star product; or
4 ''(B) a FEMP designated product.
5 ''(2) EXCEPTIONS.—The head of an agency is
6 not required to procure an Energy Star product or
7 FEMP designated product under paragraph (1) if
8 the head of the agency finds in writing that—
9 ''(A) an Energy Star product or FEMP
10 designated product is not cost-effective over the
11 life of the product taking energy cost savings
12 into account; or
13 ''(B) no Energy Star product or FEMP
14 designated product is reasonably available that
15 meets the functional requirements of the agen-
16 cy.
17 ''(3) PROCUREMENT PLANNING.—The head of
18 an agency shall incorporate into the specifications
19 for all procurements involving energy consuming
20 products and systems, including guide specifications,
21 project specifications, and construction, renovation,
22 and services contracts that include provision of en-
23 ergy consuming products and systems, and into the
24 factors for the evaluation of offers received for the
25 procurement, criteria for energy efficiency that are

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

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

21 "(d) SPECIFIC PRODUCTS.—(1) In the case of elec-
22 tric motors of 1 to 500 horsepower, agencies shall select
23 only premium efficient motors that meet a standard des-
24 ignated by the Secretary. The Secretary shall designate
25 such a standard not later than 120 days after the date

1 of the enactment of this section, after considering the rec-
2 ommendations of associated electric motor manufacturers
3 and energy efficiency groups.

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

11 ''(A) determined by the Secretary to be effective
12 in increasing the efficiency of air conditioning and
13 refrigeration equipment without having an adverse
14 impact on air conditioning performance (including
15 cooling capacity) or equipment useful life;

16 ''(B) determined by the Administrator of the
17 Environmental Protection Agency to be environ-
18 mentally safe; and

19 ''(C) shown to increase seasonal energy effi-
20 ciency ratio (SEER) or energy efficiency ratio
21 (EER) when tested by the National Institute of
22 Standards and Technology according to Department
23 of Energy test procedures without causing any ad-
24 verse impact on the system, system components, the

1 refrigerant or lubricant, or other materials in the
2 system.
3 Results of testing described in subparagraph (C) shall be
4 published in the Federal Register for public review and
5 comment. For purposes of this section, a hardware device
6 or primary refrigerant shall not be considered an additive.
7 ''(e) REGULATIONS.—Not later than 180 days after
8 the date of the enactment of this section, the Secretary
9 shall issue guidelines to carry out this section.''.
10 (b) CONFORMING AMENDMENT.—The table of con-
11 tents of the National Energy Conservation Policy Act is
12 further amended by inserting after the item relating to
13 section 552 the following new item:

''Sec. 553. Federal procurement of energy efficient products.''.

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

15 (a) LIMITATIONS.—
16 (1) IN GENERAL.—Section 801(a)(2) of the Na-
17 tional Energy Conservation Policy Act (42 U.S.C.
18 8287(a)(2)) is amended by adding at the end the
19 following subparagraph:
20 ''(E) All Federal agencies combined may not, after
21 the date of enactment of the Energy Policy Act of 2005,
22 enter into more than a total of 100 contracts under this
23 title. Payments made by the Federal Government under
24 all contracts permitted by this subparagraph combined
25 shall not exceed a total of $500,000,000. Each Federal

1 agency shall appoint a coordinator for Energy Savings
2 Performance Contracts with the responsibility to monitor
3 the number of such contracts for that Federal agency and
4 the investment value of each contract. The coordinators
5 for each Federal agency shall meet monthly and report
6 to the Office of Management and Budget to ensure that
7 the limits specified in this subparagraph on the number
8 of contracts and the payments made for the contracts are
9 not exceeded. No Federal agency shall enter into a con-
10 tract under this title unless the Office of Management and
11 Budget has approved such contract.''.

12 (2) DEFINITION.—Section 804(1) of the Na-
13 tional Energy Conservation Policy Act (42 U.S.C.
14 8287c(1)) is amended to read as follows:

15 ''(1) The term 'Federal agency' means the De-
16 partment of Defense, the Department of Veterans
17 Affairs, and the Department of Energy.''.

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

1 (b) PERMANENT EXTENSION.—Effective October 1,
2 2006, section 801(c) of the National Energy Conservation
3 Policy Act (42 U.S.C. 8287(c)) is repealed.
4 (c) EXTENSION OF AUTHORITY.—Any energy savings
5 performance contract entered into under section 801 of
6 the National Energy Conservation Policy Act (42 U.S.C.
7 8287) after October 1, 2006, and before the date of enact-
8 ment of this Act, shall be deemed to have been entered
9 into pursuant to such section 801 as amended by sub-
10 section (a) of this section.

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

13 (a) VOLUNTARY AGREEMENTS.—The Secretary of
14 Energy is authorized to enter into voluntary agreements
15 with 1 or more persons in industrial sectors that consume
16 significant amounts of primary energy per unit of physical
17 output to reduce the energy intensity of their production
18 activities by a significant amount relative to improvements
19 in each sector in recent years.
20 (b) RECOGNITION.—The Secretary of Energy, in co-
21 operation with the Administrator of the Environmental
22 Protection Agency and other appropriate Federal agen-
23 cies, shall recognize and publicize the achievements of par-
24 ticipants in voluntary agreements under this section.

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

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

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

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

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

5 (c) AUTHORIZATION OF APPROPRIATIONS.—There
6 are authorized to be appropriated to the Secretary of En-
7 ergy to carry out this section $6,000,000 for each of the
8 fiscal years 2006 through 2008, to remain available until
9 expended. For any fiscal year in which funds are expended
10 under this section, the Secretary shall provide ⅓ of the
11 total amount to the lead university described in subsection
12 (b), and provide the remaining ⅔ to the other participants
13 referred to in subsection (b) on an equal basis.

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

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

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

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

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

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

1 Federal building energy efficiency performance
2 standards that require that—
3 ‘‘(i) if life-cycle cost-effective, for new Fed-
4 eral buildings—
5 ‘‘(I) such buildings be designed so as
6 to achieve energy consumption levels at
7 least 30 percent below those of the version
8 current as of the date of enactment of this
9 paragraph of the ASHRAE Standard or
10 the International Energy Conservation
11 Code, as appropriate; and
12 ‘‘(II) sustainable design principles are
13 applied to the siting, design, and construc-
14 tion of all new and replacement buildings;
15 and
16 ‘‘(ii) where water is used to achieve energy
17 efficiency, water conservation technologies shall
18 be applied to the extent they are life-cycle cost
19 effective.
20 ‘‘(B) ADDITIONAL REVISIONS.—Not later than
21 1 year after the date of approval of each subsequent
22 revision of the ASHRAE Standard or the Inter-
23 national Energy Conservation Code, as appropriate,
24 the Secretary of Energy shall determine, based on
25 the cost-effectiveness of the requirements under the

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

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

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

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

17 **SEC. 111. DAYLIGHT SAVINGS.**

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

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

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

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

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

3 **SEC. 112. ENHANCING ENERGY EFFICIENCY IN MANAGE-**
4 **MENT OF FEDERAL LANDS.**

5 (a) SENSE OF THE CONGRESS.—It is the sense of the
6 Congress that Federal agencies should enhance the use of
7 energy efficient technologies in the management of natural
8 resources.

9 (b) ENERGY EFFICIENT BUILDINGS.—To the extent
10 practicable, the Secretary of the Interior, the Secretary
11 of Commerce, and the Secretary of Agriculture shall seek
12 to incorporate energy efficient technologies in public and
13 administrative buildings associated with management of
14 the National Park System, National Wildlife Refuge Sys-
15 tem, National Forest System, National Marine Sanc-
16 tuaries System, and other public lands and resources man-
17 aged by the Secretaries.

18 (c) ENERGY EFFICIENT VEHICLES.—To the extent
19 practicable, the Secretary of the Interior, the Secretary
20 of Commerce, and the Secretary of Agriculture shall seek
21 to use energy efficient motor vehicles, including vehicles
22 equipped with biodiesel or hybrid engine technologies, in
23 the management of the National Park System, National
24 Wildlife Refuge System, National Forest System, National

1 Marine Sanctuaries System, and other public lands and
2 resources managed by the Secretaries.

3 Subtitle B—Energy Assistance and 4 State Programs

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

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

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

16 ''RENEWABLE FUELS

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

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

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

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

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

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

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

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

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

4 ''STATE ENERGY EFFICIENCY GOALS

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

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

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

21 (a) DEFINITIONS.—In this section:
22 (1) ELIGIBLE STATE.—The term ''eligible
23 State'' means a State that meets the requirements
24 of subsection (b).
25 (2) ENERGY STAR PROGRAM.—The term ''En-
26 ergy Star program'' means the program established

1 by section 324A of the Energy Policy and Conserva-
2 tion Act.
3 (3) RESIDENTIAL ENERGY STAR PRODUCT.—
4 The term ''residential Energy Star product'' means
5 a product for a residence that is rated for energy ef-
6 ficiency under the Energy Star program.
7 (4) SECRETARY.—The term ''Secretary'' means
8 the Secretary of Energy.
9 (5) STATE ENERGY OFFICE.—The term ''State
10 energy office'' means the State agency responsible
11 for developing State energy conservation plans under
12 section 362 of the Energy Policy and Conservation
13 Act (42 U.S.C. 6322).
14 (6) STATE PROGRAM.—The term ''State pro-
15 gram'' means a State energy efficient appliance re-
16 bate program described in subsection (b)(1).
17 (b) ELIGIBLE STATES.—A State shall be eligible to
18 receive an allocation under subsection (c) if the State—
19 (1) establishes (or has established) a State en-
20 ergy efficient appliance rebate program to provide
21 rebates to residential consumers for the purchase of
22 residential Energy Star products to replace used ap-
23 pliances of the same type;

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

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

8 (c) AMOUNT OF ALLOCATIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (2) energy efficiency projects and energy con-
2 servation programs;
3 (3) studies and other activities that improve en-
4 ergy efficiency in low income rural and urban com-
5 munities;
6 (4) planning and development assistance for in-
7 creasing the energy efficiency of buildings and facili-
8 ties; and
9 (5) technical and financial assistance to local
10 government and private entities on developing new
11 renewable and distributed sources of power or com-
12 bined heat and power generation.
13 (c) DEFINITION.—For purposes of this section, the
14 term ''Indian tribe'' means any Indian tribe, band, nation,
15 or other organized group or community, including any
16 Alaskan Native village or regional or village corporation
17 as defined in or established pursuant to the Alaska Native
18 Claims Settlement Act (43 U.S.C. 1601 et seq.), that is
19 recognized as eligible for the special programs and services
20 provided by the United States to Indians because of their
21 status as Indians.
22 (d) AUTHORIZATION OF APPROPRIATIONS.—For the
23 purposes of this section there are authorized to be appro-
24 priated to the Secretary of Energy $20,000,000 for each
25 of fiscal years 2006 through 2008.

1 # Subtitle C—Energy Efficient
2 # Products

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

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

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

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

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

1 “(2) work to enhance public awareness of the
2 Energy Star label, including special outreach to
3 small businesses;
4 “(3) preserve the integrity of the Energy Star
5 label;
6 “(4) solicit comments from interested parties
7 prior to establishing or revising an Energy Star
8 product category, specification, or criterion (or effec-
9 tive dates for any of the foregoing);
10 “(5) upon adoption of a new or revised product
11 category, specification, or criterion, provide reason-
12 able notice to interested parties of any changes (in-
13 cluding effective dates) in product categories, speci-
14 fications, or criteria along with an explanation of
15 such changes and, where appropriate, responses to
16 comments submitted by interested parties; and
17 “(6) provide appropriate lead time (which shall
18 be 9 months, unless the Agency or Department de-
19 termines otherwise) prior to the effective date for a
20 new or a significant revision to a product category,
21 specification, or criterion, taking into account the
22 timing requirements of the manufacturing, product
23 marketing, and distribution process for the specific
24 product addressed.”.

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

"Sec. 324A. Energy Star program.".

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

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

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

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

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

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

16 (a) DEFINITIONS.—Section 321 of the Energy Policy
17 and Conservation Act (42 U.S.C. 6291) is amended—
18 (1) in paragraph (30)(S), by striking the period
19 and adding at the end the following: ''but does not
20 include any lamp specifically designed to be used for
21 special purpose applications and that is unlikely to
22 be used in general purpose applications such as
23 those described in subparagraph (D), and also does
24 not include any lamp not described in subparagraph
25 (D) that is excluded by the Secretary, by rule, be-

1 cause the lamp is designed for special applications
2 and is unlikely to be used in general purpose appli-
3 cations.''; and
4 (2) by adding at the end the following:
5 ''(32) The term 'battery charger' means a de-
6 vice that charges batteries for consumer products
7 and includes battery chargers embedded in other
8 consumer products.
9 ''(33) The term 'commercial refrigerators,
10 freezers, and refrigerator-freezers' means refrig-
11 erators, freezers, or refrigerator-freezers that—
12 ''(A) are not consumer products regulated
13 under this Act; and
14 ''(B) incorporate most components involved
15 in the vapor-compression cycle and the refrig-
16 erated compartment in a single package.
17 ''(34) The term 'external power supply' means
18 an external power supply circuit that is used to con-
19 vert household electric current into either DC cur-
20 rent or lower-voltage AC current to operate a con-
21 sumer product.
22 ''(35) The term 'illuminated exit sign' means a
23 sign that—
24 ''(A) is designed to be permanently fixed in
25 place to identify an exit; and

1 ‘‘(B) consists of an electrically powered in-
2 tegral light source that illuminates the legend
3 ‘EXIT’ and any directional indicators and pro-
4 vides contrast between the legend, any direc-
5 tional indicators, and the background.
6 ‘‘(36)(A) Except as provided in subparagraph
7 (B), the term ‘distribution transformer’ means a
8 transformer that—
9 ‘‘(i) has an input voltage of 34.5 kilovolts
10 or less;
11 ‘‘(ii) has an output voltage of 600 volts or
12 less; and
13 ‘‘(iii) is rated for operation at a frequency
14 of 60 Hertz.
15 ‘‘(B) The term ‘distribution transformer’ does
16 not include—
17 ‘‘(i) transformers with multiple voltage
18 taps, with the highest voltage tap equaling at
19 least 20 percent more than the lowest voltage
20 tap;
21 ‘‘(ii) transformers, such as those commonly
22 known as drive transformers, rectifier trans-
23 formers, auto-transformers, Uninterruptible
24 Power System transformers, impedance trans-
25 formers, regulating transformers, sealed and

1 nonventilating transformers, machine tool
2 transformers, welding transformers, grounding
3 transformers, or testing transformers, that are
4 designed to be used in a special purpose appli-
5 cation and are unlikely to be used in general
6 purpose applications; or
7 ''(iii) any transformer not listed in clause
8 (ii) that is excluded by the Secretary by rule
9 because—
10 ''(I) the transformer is designed for a
11 special application;
12 ''(II) the transformer is unlikely to be
13 used in general purpose applications; and
14 ''(III) the application of standards to
15 the transformer would not result in signifi-
16 cant energy savings.
17 ''(37) The term 'low-voltage dry-type distribu-
18 tion transformer' means a distribution transformer
19 that—
20 ''(A) has an input voltage of 600 volts or
21 less;
22 ''(B) is air-cooled; and
23 ''(C) does not use oil as a coolant.
24 ''(38) The term 'standby mode' means the low-
25 est power consumption mode that—

1 "(A) cannot be switched off or influenced
2 by the user; and
3 "(B) may persist for an indefinite time
4 when an appliance is connected to the main
5 electricity supply and used in accordance with
6 the manufacturer's instructions,
7 as defined on an individual product basis by the Sec-
8 retary.
9 "(39) The term 'torchiere' means a portable
10 electric lamp with a reflector bowl that directs light
11 upward so as to give indirect illumination.
12 "(40) The term 'traffic signal module' means a
13 standard 8-inch (200mm) or 12-inch (300mm) traf-
14 fic signal indication, consisting of a light source, a
15 lens, and all other parts necessary for operation,
16 that communicates movement messages to drivers
17 through red, amber, and green colors.
18 "(41) The term 'transformer' means a device
19 consisting of 2 or more coils of insulated wire that
20 transfers alternating current by electromagnetic in-
21 duction from 1 coil to another to change the original
22 voltage or current value.
23 "(42) The term 'unit heater' means a self-con-
24 tained fan-type heater designed to be installed with-

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

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

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

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

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

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

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

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

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

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

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

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

1 ered products shall meet all test requirements for regu-
2 lated parameters in section 325(bb). However, covered
3 products may be marketed prior to completion of lamp life
4 and lumen maintenance at 40 percent of rated life testing
5 provided manufacturers document engineering predictions
6 and analysis that support expected attainment of lumen
7 maintenance at 40 percent rated life and lamp life time.
8 ''(13) The Secretary shall, not later than 18 months
9 after the date of enactment of this paragraph, prescribe
10 testing requirements for ceiling fans and ceiling fan light
11 kits.''; and
12 (2) by adding at the end the following:
13 ''(f) ADDITIONAL CONSUMER AND COMMERCIAL
14 PRODUCTS.—The Secretary shall, not later than 24
15 months after the date of enactment of this subsection, pre-
16 scribe testing requirements for refrigerated bottled or
17 canned beverage vending machines, and commercial refrig-
18 erators, freezers, and refrigerator-freezers. Such testing
19 requirements shall be based on existing test procedures
20 used in industry to the extent practical and reasonable.''.
21 (c) NEW STANDARDS.—Section 325 of the Energy
22 Policy and Conservation Act (42 U.S.C. 6295) is amended
23 by adding at the end the following:
24 ''(u) BATTERY CHARGER AND EXTERNAL POWER
25 SUPPLY ELECTRIC ENERGY CONSUMPTION.—

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

20 "(B) The Secretary shall, within 3 years after
21 the date of enactment of this subsection, issue a
22 final rule that determines whether energy conserva-
23 tion standards shall be issued for battery chargers
24 and external power supplies or classes thereof. For

1 each product class, any such standards shall be set
2 at the lowest level of energy use that—
3 ‘‘(i) meets the criteria and procedures of
4 subsections (o), (p), (q), (r), (s), and (t); and
5 ‘‘(ii) will result in significant overall an-
6 nual energy savings, considering both standby
7 mode and other operating modes.
8 ‘‘(2) REVIEW OF STANDBY ENERGY USE IN
9 COVERED PRODUCTS.—In determining pursuant to
10 section 323 whether test procedures and energy con-
11 servation standards pursuant to this section should
12 be revised, the Secretary shall consider, for covered
13 products that are major sources of standby mode en-
14 ergy consumption, whether to incorporate standby
15 mode into such test procedures and energy conserva-
16 tion standards, taking into account, among other
17 relevant factors, standby mode power consumption
18 compared to overall product energy consumption.
19 ‘‘(3) RULEMAKING.—The Secretary shall not
20 propose a standard under this section unless the
21 Secretary has issued applicable test procedures for
22 each product pursuant to section 323.
23 ‘‘(4) EFFECTIVE DATE.—Any standard issued
24 under this subsection shall be applicable to products

1 manufactured or imported 3 years after the date of
2 issuance.

3 "(5) VOLUNTARY PROGRAMS.—The Secretary
4 and the Administrator shall collaborate and develop
5 programs, including programs pursuant to section
6 324A (relating to Energy Star Programs) and other
7 voluntary industry agreements or codes of conduct,
8 that are designed to reduce standby mode energy
9 use.

10 "(v) VENDING MACHINES, AND COMMERCIAL RE-
11 FRIGERATORS, FREEZERS, AND REFRIGERATOR-FREEZ-
12 ERS.—The Secretary shall not later than 36 months after
13 the date on which testing requirements are prescribed by
14 the Secretary pursuant to section 323(f), prescribe, by
15 rule, energy conservation standards for refrigerated bot-
16 tled or canned beverage vending machines and commercial
17 refrigerators, freezers, and refrigerator-freezers. In estab-
18 lishing standards under this subsection, the Secretary
19 shall use the criteria and procedures contained in sub-
20 sections (o) and (p). Any standard prescribed under this
21 subsection shall apply to products manufactured 3 years
22 after the date of publication of a final rule establishing
23 such standard.

24 "(w) ILLUMINATED EXIT SIGNS.—Illuminated exit
25 signs manufactured on or after January 1, 2006, shall

1 meet the Version 2.0 Energy Star Program performance
2 requirements for illuminated exit signs prescribed by the
3 Environmental Protection Agency.

4 "(x) TORCHIERES.—Torchieres manufactured on or
5 after January 1, 2006—

6 "(1) shall consume not more than 190 watts of
7 power; and

8 "(2) shall not be capable of operating with
9 lamps that total more than 190 watts.

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

18 "(z) TRAFFIC SIGNAL MODULES.—Traffic signal
19 modules manufactured on or after January 1, 2006, shall
20 meet the performance requirements used under the En-
21 ergy Star program of the Environmental Protection Agen-
22 cy for traffic signals, as in effect on the date of enactment
23 of this subsection, and shall be installed with compatible,
24 electrically connected signal control interface devices and
25 conflict monitoring systems.

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

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

1 "(cc) EFFECTIVE DATE.—Section 327 shall apply—
2 "(1) to products for which standards are to be
3 established under subsections (u) and (v) on the
4 date on which a final rule is issued by the Depart-
5 ment of Energy, except that any State or local
6 standards prescribed or enacted for any such prod-
7 uct prior to the date on which such final rule is
8 issued shall not be preempted until the standard es-
9 tablished under subsection (u) or (v) for that prod-
10 uct takes effect; and
11 "(2) to products for which standards are estab-
12 lished under subsections (w) through (bb) on the
13 date of enactment of those subsections, except that
14 any State or local standards prescribed or enacted
15 prior to the date of enactment of those subsections
16 shall not be preempted until the standards estab-
17 lished under subsections (w) through (bb) take ef-
18 fect.
19 "(dd) CEILING FANS.—
20 "(1) FEATURES.—All ceiling fans manufactured
21 on or after January 1, 2006, shall have the following
22 features:
23 "(A) Lighting controls operate independ-
24 ently from fan speed controls.

1 "(B) Adjustable speed controls (either
2 more than 1 speed or variable speed).
3 "(C) The capability of reversible fan ac-
4 tion, except for fans sold for industrial applica-
5 tions, outdoor applications, and where safety
6 standards would be violated by the use of the
7 reversible mode. The Secretary may promulgate
8 regulations to define in greater detail the excep-
9 tions provided under this subparagraph but
10 may not substantively expand the exceptions.
11 "(2) REVISED STANDARDS.—
12 "(A) IN GENERAL.—Notwithstanding any
13 provision of this Act, if the requirements of
14 subsections (o) and (p) are met, the Secretary
15 may consider and prescribe energy efficiency or
16 energy use standards for electricity used by ceil-
17 ing fans to circulate air in a room.
18 "(B) SPECIAL CONSIDERATION.—If the
19 Secretary sets such standards, the Secretary
20 shall consider—
21 "(i) exempting or setting different
22 standards for certain product classes for
23 which the primary standards are not tech-
24 nically feasible or economically justified;
25 and

1 "(ii) establishing separate exempted
2 product classes for highly decorative fans
3 for which air movement performance is a
4 secondary design feature.

5 "(C) APPLICATION.—Any air movement
6 standard prescribed under this subsection shall
7 apply to products manufactured on or after the
8 date that is 3 years after the date of publica-
9 tion of a final rule establishing the standard.".

10 (d) RESIDENTIAL FURNACE FANS.—Section
11 325(f)(3) of the Energy Policy and Conservation Act (42
12 U.S.C. 6295(f)(3)) is amended by adding the following
13 new subparagraph at the end:

14 "(D) Notwithstanding any provision of this Act, the
15 Secretary may consider, and prescribe, if the requirements
16 of subsection (o) of this section are met, energy efficiency
17 or energy use standards for electricity used for purposes
18 of circulating air through duct work.".

19 **SEC. 134. ENERGY LABELING.**

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

24 "(F) Not later than 3 months after the date of enact-
25 ment of this subparagraph, the Commission shall initiate

1 a rulemaking to consider the effectiveness of the current
2 consumer products labeling program in assisting con-
3 sumers in making purchasing decisions and improving en-
4 ergy efficiency and to consider changes to the labeling
5 rules that would improve the effectiveness of consumer
6 product labels. Such rulemaking shall be completed not
7 later than 2 years after the date of enactment of this sub-
8 paragraph.

9 ''(G)(i) Not later than 18 months after date of enact-
10 ment of this subparagraph, the Commission shall prescribe
11 by rule, pursuant to this section, labeling requirements for
12 the electricity used by ceiling fans to circulate air in a
13 room.

14 ''(ii) The rule prescribed under clause (i) shall apply
15 to products manufactured after the later of—

16 ''(I) January 1, 2009; or

17 ''(II) the date that is 60 days after the final
18 rule is prescribed.''.

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

23 ''(5) The Secretary or the Commission, as appro-
24 priate, may, for covered products referred to in sub-
25 sections (u) through (aa) of section 325, prescribe, by rule,

1 pursuant to this section, labeling requirements for such
2 products after a test procedure has been set pursuant to
3 section 323. In the case of products to which TP–1 stand-
4 ards under section 325(y) apply, labeling requirements
5 shall be based on the 'Standard for the Labeling of Dis-
6 tribution Transformer Efficiency' prescribed by the Na-
7 tional Electrical Manufacturers Association (NEMA TP–
8 3) as in effect upon the date of enactment of this para-
9 graph.''.

10 **SEC. 135. PREEMPTION.**

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

14 ''(h) CEILING FANS.—Effective on January 1, 2006,
15 this section shall apply to and supersede all State and local
16 standards prescribed or enacted for ceiling fans and ceil-
17 ing fan light kits.''.

18 **SEC. 136. STATE CONSUMER PRODUCT ENERGY EFFI-**
19 **CIENCY STANDARDS.**

20 Effective 3 years after the date of enactment of this
21 Act, section 327 of the Energy Policy and Conservation
22 Act (42 U.S.C. 6297) is amended by adding at the end
23 the following new subsection:

24 ''(i) LIMITATION ON PREEMPTION.—Subsections (a)
25 and (b) shall not apply with respect to State regulation

1 of energy consumption or water use of any covered prod-
2 uct during any period of time—
3 "(1) after the date which is 3 years after a
4 Federal standard is required by law to be estab-
5 lished, but has not been established; and
6 "(2) before the date on which such Federal
7 standard is established or revised.".

8 **SEC. 137. INTERMITTENT ESCALATORS.**

9 Section 543 of the National Energy Conservation
10 Policy Act (42 U.S.C. 8253) is amended by adding at the
11 end the following new subsection:
12 "(e) INTERMITTENT ESCALATORS.—
13 "(1) REQUIREMENT.—Except as provided in
14 paragraph (2), any escalator acquired for installa-
15 tion in a Federal building shall be an intermittent
16 escalator.
17 "(2) EXCEPTION.—Paragraph (1) shall not
18 apply at a location outside the United States where
19 the Federal agency determines that to acquire an
20 intermittent escalator would require substantially
21 greater cost to the Government over the life of the
22 escalator.
23 "(3) ADDITIONAL ENERGY CONSERVATION
24 MEASURES.—In addition to complying with para-
25 graph (1), Federal agencies shall incorporate other

1 escalator energy conservation measures, as appro-
2 priate.

3 "(4) DEFINITION.—For purposes of this sub-
4 section, the term 'intermittent escalator' means an
5 escalator that remains in a stationary position until
6 it automatically operates at the approach of a pas-
7 senger, returning to a stationary position after the
8 passenger completes passage.".

9 Subtitle D—Public Housing

10 SEC. 141. CAPACITY BUILDING FOR ENERGY-EFFICIENT, AF-
11 FORDABLE HOUSING.

12 Section 4(b) of the HUD Demonstration Act of 1993
13 (42 U.S.C. 9816 note) is amended—

14 (1) in paragraph (1), by inserting before the
15 semicolon at the end the following: ", including ca-
16 pabilities regarding the provision of energy efficient,
17 affordable housing and residential energy conserva-
18 tion measures"; and

19 (2) in paragraph (2), by inserting before the
20 semicolon the following: ", including such activities
21 relating to the provision of energy efficient, afford-
22 able housing and residential energy conservation
23 measures that benefit low-income families".

1 **SEC. 142. INCREASE OF CDBG PUBLIC SERVICES CAP FOR**
2 **ENERGY CONSERVATION AND EFFICIENCY**
3 **ACTIVITIES.**

4 Section 105(a)(8) of the Housing and Community
5 Development Act of 1974 (42 U.S.C. 5305(a)(8)) is
6 amended—

7 (1) by inserting ''or efficiency'' after ''energy
8 conservation'';

9 (2) by striking '', and except that'' and insert-
10 ing ''; except that''; and

11 (3) by inserting before the semicolon at the end
12 the following: ''; and except that each percentage
13 limitation under this paragraph on the amount of
14 assistance provided under this title that may be used
15 for the provision of public services is hereby in-
16 creased by 10 percent, but such percentage increase
17 may be used only for the provision of public services
18 concerning energy conservation or efficiency''.

19 **SEC. 143. FHA MORTGAGE INSURANCE INCENTIVES FOR**
20 **ENERGY EFFICIENT HOUSING.**

21 (a) SINGLE FAMILY HOUSING MORTGAGE INSUR-
22 ANCE.—Section 203(b)(2) of the National Housing Act
23 (12 U.S.C. 1709(b)(2)) is amended, in the first undesig-
24 nated paragraph beginning after subparagraph (B)(ii)(IV)
25 (relating to solar energy systems), by striking ''20 per-
26 cent'' and inserting ''30 percent''.

1 (b) MULTIFAMILY HOUSING MORTGAGE INSUR-
2 ANCE.—Section 207(c) of the National Housing Act (12
3 U.S.C. 1713(c)) is amended, in the last undesignated
4 paragraph beginning after paragraph (3) (relating to solar
5 energy systems and residential energy conservation meas-
6 ures), by striking ''20 percent'' and inserting ''30 per-
7 cent''.

8 (c) COOPERATIVE HOUSING MORTGAGE INSUR-
9 ANCE.—Section 213(p) of the National Housing Act (12
10 U.S.C. 1715e(p)) is amended by striking ''20 per centum''
11 and inserting ''30 percent''.

12 (d) REHABILITATION AND NEIGHBORHOOD CON-
13 SERVATION HOUSING MORTGAGE INSURANCE.—Section
14 220(d)(3)(B)(iii)(IV) of the National Housing Act (12
15 U.S.C. 1715k(d)(3)(B)(iii)(IV)) is amended—

16 (1) by striking ''with respect to rehabilitation
17 projects involving not more than five family units,'';
18 and

19 (2) by striking ''20 per centum'' and inserting
20 ''30 percent''.

21 (e) LOW-INCOME MULTIFAMILY HOUSING MORT-
22 GAGE INSURANCE.—Section 221(k) of the National Hous-
23 ing Act (12 U.S.C. 1715l(k)) is amended by striking ''20
24 per centum'' and inserting ''30 percent''.

1 (f) ELDERLY HOUSING MORTGAGE INSURANCE.—
2 Section 231(c)(2)(C) of the National Housing Act (12
3 U.S.C. 1715v(c)(2)(C)) is amended by striking "20 per
4 centum" and inserting "30 percent".
5 (g) CONDOMINIUM HOUSING MORTGAGE INSUR-
6 ANCE.—Section 234(j) of the National Housing Act (12
7 U.S.C. 1715y(j)) is amended by striking "20 per centum"
8 and inserting "30 percent".

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

10 Section 9 of the United States Housing Act of 1937
11 (42 U.S.C. 1437g) is amended—
12 (1) in subsection (d)(1)—
13 (A) in subparagraph (I), by striking "and"
14 at the end;
15 (B) in subparagraph (J), by striking the
16 period at the end and inserting a semicolon;
17 and
18 (C) by adding at the end the following new
19 subparagraphs:
20 "(K) improvement of energy and water-use
21 efficiency by installing fixtures and fittings that
22 conform to the American Society of Mechanical
23 Engineers/American National Standards Insti-
24 tute standards A112.19.2–1998 and
25 A112.18.1–2000, or any revision thereto, appli-

1 cable at the time of installation, and by increas-
2 ing energy efficiency and water conservation by
3 such other means as the Secretary determines
4 are appropriate; and
5 ''(L) integrated utility management and
6 capital planning to maximize energy conserva-
7 tion and efficiency measures.''; and
8 (2) in subsection (e)(2)(C)—
9 (A) by striking ''The'' and inserting the
10 following:
11 ''(i) IN GENERAL.—The''; and
12 (B) by adding at the end the following:
13 ''(ii) THIRD PARTY CONTRACTS.—
14 Contracts described in clause (i) may in-
15 clude contracts for equipment conversions
16 to less costly utility sources, projects with
17 resident-paid utilities, and adjustments to
18 frozen base year consumption, including
19 systems repaired to meet applicable build-
20 ing and safety codes and adjustments for
21 occupancy rates increased by rehabilita-
22 tion.
23 ''(iii) TERM OF CONTRACT.—The total
24 term of a contract described in clause (i)
25 shall not exceed 20 years to allow longer

1 payback periods for retrofits, including
2 windows, heating system replacements,
3 wall insulation, site-based generation, ad-
4 vanced energy savings technologies, includ-
5 ing renewable energy generation, and other
6 such retrofits.''.

7 **SEC. 145. GRANTS FOR ENERGY-CONSERVING IMPROVE-**
8 **MENTS FOR ASSISTED HOUSING.**

9 Section 251(b)(1) of the National Energy Conserva-
10 tion Policy Act (42 U.S.C. 8231(1)) is amended—
11 (1) by striking ''financed with loans'' and in-
12 serting ''assisted'';
13 (2) by inserting after ''1959,'' the following:
14 ''which are eligible multifamily housing projects (as
15 such term is defined in section 512 of the Multi-
16 family Assisted Housing Reform and Affordability
17 Act of 1997 (42 U.S.C. 1437f note)) and are subject
18 to mortgage restructuring and rental assistance suf-
19 ficiency plans under such Act,''; and
20 (3) by inserting after the period at the end of
21 the first sentence the following new sentence: ''Such
22 improvements may also include the installation of
23 energy and water conserving fixtures and fittings
24 that conform to the American Society of Mechanical
25 Engineers/American National Standards Institute

1 standards A112.19.2–1998 and A112.18.1–2000, or
2 any revision thereto, applicable at the time of instal-
3 lation.''.

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

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

12 **SEC. 148. ENERGY EFFICIENCY STANDARDS.**

13 Section 109 of the Cranston-Gonzalez National Af-
14 fordable Housing Act (42 U.S.C. 12709) is amended—
15 (1) in subsection (a)—
16 (A) in paragraph (1)—
17 (i) by striking ''1 year after the date
18 of the enactment of the Energy Policy Act
19 of 1992'' and inserting ''September 30,
20 2006'';
21 (ii) in subparagraph (A), by striking
22 ''and'' at the end;
23 (iii) in subparagraph (B), by striking
24 the period at the end and inserting '';
25 and''; and

1 (iv) by adding at the end the fol-
2 lowing:
3 ''(C) rehabilitation and new construction of
4 public and assisted housing funded by HOPE
5 VI revitalization grants under section 24 of the
6 United States Housing Act of 1937 (42 U.S.C.
7 1437v), where such standards are determined
8 to be cost effective by the Secretary of Housing
9 and Urban Development.''; and
10 (B) in paragraph (2), by inserting '', and,
11 with respect to rehabilitation and new construc-
12 tion of public and assisted housing funded by
13 HOPE VI revitalization grants under section
14 24 of the United States Housing Act of 1937
15 (42 U.S.C. 1437v), the 2003 International En-
16 ergy Conservation Code'' after ''90.1–1989')'';
17 (2) in subsection (b)—
18 (A) by striking ''within 1 year after the
19 date of the enactment of the Energy Policy Act
20 of 1992'' and inserting ''by September 30,
21 2006''; and
22 (B) by inserting '', and, with respect to re-
23 habilitation and new construction of public and
24 assisted housing funded by HOPE VI revital-
25 ization grants under section 24 of the United

1 States Housing Act of 1937 (42 U.S.C. 1437v),
2 the 2003 International Energy Conservation
3 Code'' before the period at the end; and
4 (3) in subsection (c)—
5 (A) in the heading, by inserting ''AND THE
6 INTERNATIONAL ENERGY CONSERVATION
7 CODE'' after ''MODEL ENERGY CODE''; and
8 (B) by inserting '', or, with respect to re-
9 habilitation and new construction of public and
10 assisted housing funded by HOPE VI revital-
11 ization grants under section 24 of the United
12 States Housing Act of 1937 (42 U.S.C. 1437v),
13 the 2003 International Energy Conservation
14 Code'' after ''1989''.

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

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

partment of Housing and Urban Development to monitor the energy usage of public housing agencies and shall submit an update every 2 years thereafter on progress in implementing the strategy.

TITLE II—RENEWABLE ENERGY

Subtitle A—General Provisions

SEC. 201. ASSESSMENT OF RENEWABLE ENERGY RESOURCES.

(a) RESOURCE ASSESSMENT.—Not later than 6 months after the date of enactment of this Act, and each year thereafter, the Secretary of Energy shall review the available assessments of renewable energy resources within the United States, including solar, wind, biomass, ocean (tidal, wave, current, and thermal), geothermal, and hydroelectric energy resources, and undertake new assessments as necessary, taking into account changes in market conditions, available technologies, and other relevant factors.

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

1 (1) a detailed inventory describing the available
2 amount and characteristics of the renewable energy
3 resources; and

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

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

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

23 (a) INCENTIVE PAYMENTS.—Section 1212(a) of the
24 Energy Policy Act of 1992 (42 U.S.C. 13317(a)) is
25 amended by striking ''and which satisfies'' and all that

1 follows through ''Secretary shall establish.'' and inserting
2 ''. If there are insufficient appropriations to make full pay-
3 ments for electric production from all qualified renewable
4 energy facilities in any given year, the Secretary shall as-
5 sign 60 percent of appropriated funds for that year to fa-
6 cilities that use solar, wind, geothermal, or closed-loop
7 (dedicated energy crops) biomass technologies to generate
8 electricity, and assign the remaining 40 percent to other
9 projects. The Secretary may, after transmitting to Con-
10 gress an explanation of the reasons therefor, alter the per-
11 centage requirements of the preceding sentence.''.

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

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

1 (2) by inserting ''landfill gas, livestock methane,
2 ocean (tidal, wave, current, and thermal),'' after
3 ''wind, biomass,''.

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

10 (d) AMOUNT OF PAYMENT.—Section 1212(e)(1) of
11 the Energy Policy Act of 1992 (42 U.S.C. 13317(e)(1))
12 is amended by inserting ''landfill gas, livestock methane,
13 ocean (tidal, wave, current, and thermal),'' after ''wind,
14 biomass,''.

15 (e) SUNSET.—Section 1212(f) of the Energy Policy
16 Act of 1992 (42 U.S.C. 13317(f)) is amended by striking
17 ''the expiration of'' and all that follows through ''of this
18 section'' and inserting ''September 30, 2025''.

19 (f) AUTHORIZATION OF APPROPRIATIONS.—Section
20 1212(g) of the Energy Policy Act of 1992 (42 U.S.C.
21 13317(g)) is amended to read as follows:

22 ''(g) AUTHORIZATION OF APPROPRIATIONS.—

23 ''(1) IN GENERAL.—Subject to paragraph (2),
24 there are authorized to be appropriated such sums

1 as may be necessary to carry out this section for fis-
2 cal years 2005 through 2025.

3 "(2) AVAILABILITY OF FUNDS.—Funds made
4 available under paragraph (1) shall remain available
5 until expended.".

6 **SEC. 203. FEDERAL PURCHASE REQUIREMENT.**

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

13 (1) Not less than 3 percent in fiscal years 2007
14 through 2009.

15 (2) Not less than 5 percent in fiscal years 2010
16 through 2012.

17 (3) Not less than 7.5 percent in fiscal year
18 2013 and each fiscal year thereafter.

19 (b) DEFINITIONS.—In this section:

20 (1) BIOMASS.—The term "biomass" means any
21 solid, nonhazardous, cellulosic material that is de-
22 rived from—

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

1 (B) solid wood waste materials, including
2 waste pallets, crates, dunnage, manufacturing
3 and construction wood wastes (other than pres-
4 sure-treated, chemically-treated, or painted
5 wood wastes), and landscape or right-of-way
6 tree trimmings, but not including municipal
7 solid waste (garbage), gas derived from the bio-
8 degradation of solid waste, or paper that is
9 commonly recycled;
10 (C) agriculture wastes, including orchard
11 tree crops, vineyard, grain, legumes, sugar, and
12 other crop by-products or residues, and live-
13 stock waste nutrients; or
14 (D) a plant that is grown exclusively as a
15 fuel for the production of electricity.
16 (2) RENEWABLE ENERGY.—The term ''renew-
17 able energy'' means electric energy generated from
18 solar, wind, biomass, landfill gas, ocean (tidal, wave,
19 current, and thermal), geothermal, municipal solid
20 waste, or new hydroelectric generation capacity
21 achieved from increased efficiency or additions of
22 new capacity at an existing hydroelectric project.
23 (c) CALCULATION.—For purposes of determining
24 compliance with the requirement of this section, the
25 amount of renewable energy shall be doubled if—

1 (1) the renewable energy is produced and used
2 on-site at a Federal facility;
3 (2) the renewable energy is produced on Fed-
4 eral lands and used at a Federal facility; or
5 (3) the renewable energy is produced on Indian
6 land as defined in title XXVI of the Energy Policy
7 Act of 1992 (25 U.S.C. 3501 et seq.) and used at
8 a Federal facility.
9 (d) REPORT.—Not later than April 15, 2007, and
10 every 2 years thereafter, the Secretary of Energy shall
11 provide a report to Congress on the progress of the Fed-
12 eral Government in meeting the goals established by this
13 section.

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

15 Section 604 of the Act entitled ''An Act to authorize
16 appropriations for certain insular areas of the United
17 States, and for other purposes'', approved December 24,
18 1980 (48 U.S.C. 1492), is amended—
19 (1) in subsection (a)(4) by striking the period
20 and inserting a semicolon;
21 (2) by adding at the end of subsection (a) the
22 following new paragraphs:
23 ''(5) electric power transmission and distribu-
24 tion lines in insular areas are inadequate to with-
25 stand damage caused by the hurricanes and ty-

1 phoons which frequently occur in insular areas and
2 such damage often costs millions of dollars to repair;
3 and

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

12 (3) by amending subsection (e) to read as fol-
13 lows:

14 "(e)(1) The Secretary of the Interior, in consultation
15 with the Secretary of Energy and the head of government
16 of each insular area, shall update the plans required under
17 subsection (c) by—

18 "(A) updating the contents required by sub-
19 section (c);

20 "(B) drafting long-term energy plans for such
21 insular areas with the objective of reducing, to the
22 extent feasible, their reliance on energy imports by
23 the year 2012, increasing energy conservation and
24 energy efficiency, and maximizing, to the extent fea-
25 sible, use of indigenous energy sources; and

1 "(C) drafting long-term energy transmission
2 line plans for such insular areas with the objective
3 that the maximum percentage feasible of electric
4 power transmission and distribution lines in each in-
5 sular area be protected from damage caused by hur-
6 ricanes and typhoons.
7 "(2) Not later than December 31, 2006, the Sec-
8 retary of the Interior shall submit to Congress the updated
9 plans for each insular area required by this subsection.";
10 and
11 (4) by amending subsection (g)(4) to read as
12 follows:
13 "(4) POWER LINE GRANTS FOR INSULAR
14 AREAS.—
15 "(A) IN GENERAL.—The Secretary of the
16 Interior is authorized to make grants to govern-
17 ments of insular areas of the United States to
18 carry out eligible projects to protect electric
19 power transmission and distribution lines in
20 such insular areas from damage caused by hur-
21 ricanes and typhoons.
22 "(B) ELIGIBLE PROJECTS.—The Secretary
23 may award grants under subparagraph (A) only
24 to governments of insular areas of the United
25 States that submit written project plans to the

1 Secretary for projects that meet the following
2 criteria:
3 “(i) The project is designed to protect
4 electric power transmission and distribu-
5 tion lines located in 1 or more of the insu-
6 lar areas of the United States from dam-
7 age caused by hurricanes and typhoons.
8 “(ii) The project is likely to substan-
9 tially reduce the risk of future damage,
10 hardship, loss, or suffering.
11 “(iii) The project addresses 1 or more
12 problems that have been repetitive or that
13 pose a significant risk to public health and
14 safety.
15 “(iv) The project is not likely to cost
16 more than the value of the reduction in di-
17 rect damage and other negative impacts
18 that the project is designed to prevent or
19 mitigate. The cost benefit analysis required
20 by this criterion shall be computed on a
21 net present value basis.
22 “(v) The project design has taken into
23 consideration long-term changes to the
24 areas and persons it is designed to protect

1 and has manageable future maintenance
2 and modification requirements.
3 "(vi) The project plan includes an
4 analysis of a range of options to address
5 the problem it is designed to prevent or
6 mitigate and a justification for the selec-
7 tion of the project in light of that analysis.
8 "(vii) The applicant has demonstrated
9 to the Secretary that the matching funds
10 required by subparagraph (D) are avail-
11 able.
12 "(C) PRIORITY.—When making grants
13 under this paragraph, the Secretary shall give
14 priority to grants for projects which are likely
15 to—
16 "(i) have the greatest impact on re-
17 ducing future disaster losses; and
18 "(ii) best conform with plans that
19 have been approved by the Federal Govern-
20 ment or the government of the insular area
21 where the project is to be carried out for
22 development or hazard mitigation for that
23 insular area.
24 "(D) MATCHING REQUIREMENT.—The
25 Federal share of the cost for a project for which

a grant is provided under this paragraph shall not exceed 75 percent of the total cost of that project. The non-Federal share of the cost may be provided in the form of cash or services.

"(E) TREATMENT OF FUNDS FOR CERTAIN PURPOSES.—Grants provided under this paragraph shall not be considered as income, a resource, or a duplicative program when determining eligibility or benefit levels for Federal major disaster and emergency assistance.

"(F) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this paragraph $5,000,000 for each fiscal year beginning after the date of the enactment of this paragraph.".

SEC. 205. USE OF PHOTOVOLTAIC ENERGY IN PUBLIC BUILDINGS.

(a) IN GENERAL.—Subchapter VI of chapter 31 of title 40, United States Code, is amended by adding at the end the following:

"§ 3177. Use of photovoltaic energy in public buildings

"(a) PHOTOVOLTAIC ENERGY COMMERCIALIZATION PROGRAM.—

1 "(1) IN GENERAL.—The Administrator of General Services may establish a photovoltaic energy commercialization program for the procurement and installation of photovoltaic solar electric systems for electric production in new and existing public buildings.

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

"(A) To accelerate the growth of a commercially viable photovoltaic industry to make this energy system available to the general public as an option which can reduce the national consumption of fossil fuel.

"(B) To reduce the fossil fuel consumption and costs of the Federal Government.

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

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

"(E) To develop program performance data to support policy decisions on future incentive programs with respect to energy.

1 "(3) ACQUISITION OF PHOTOVOLTAIC SOLAR
2 ELECTRIC SYSTEMS.—
3 "(A) IN GENERAL.—The program shall
4 provide for the acquisition of photovoltaic solar
5 electric systems and associated storage capa-
6 bility for use in public buildings.
7 "(B) ACQUISITION LEVELS.—The acquisi-
8 tion of photovoltaic electric systems shall be at
9 a level substantial enough to allow use of low-
10 cost production techniques with at least 150
11 megawatts (peak) cumulative acquired during
12 the 5 years of the program.
13 "(4) ADMINISTRATION.—The Administrator
14 shall administer the program and shall—
15 "(A) issue such rules and regulations as
16 may be appropriate to monitor and assess the
17 performance and operation of photovoltaic solar
18 electric systems installed pursuant to this sub-
19 section;
20 "(B) develop innovative procurement strat-
21 egies for the acquisition of such systems; and
22 "(C) transmit to Congress an annual re-
23 port on the results of the program.
24 "(b) PHOTOVOLTAIC SYSTEMS EVALUATION PRO-
25 GRAM.—

1 "(1) IN GENERAL.—Not later than 60 days
2 after the date of enactment of this section, the Ad-
3 ministrator shall establish a photovoltaic solar en-
4 ergy systems evaluation program to evaluate such
5 photovoltaic solar energy systems as are required in
6 public buildings.

7 "(2) PROGRAM REQUIREMENT.—In evaluating
8 photovoltaic solar energy systems under the pro-
9 gram, the Administrator shall ensure that such sys-
10 tems reflect the most advanced technology.

11 "(c) AUTHORIZATION OF APPROPRIATIONS.—

12 "(1) PHOTOVOLTAIC ENERGY COMMERCIALIZA-
13 TION PROGRAM.—There are authorized to be appro-
14 priated to carry out subsection (a) $50,000,000 for
15 each of fiscal years 2006 through 2010. Such sums
16 shall remain available until expended.

17 "(2) PHOTOVOLTAIC SYSTEMS EVALUATION
18 PROGRAM.—There are authorized to be appropriated
19 to carry out subsection (b) $10,000,000 for each of
20 fiscal years 2006 through 2010. Such sums shall re-
21 main available until expended.".

22 (b) CONFORMING AMENDMENT.—The table of sec-
23 tions for the National Energy Conservation Policy Act is
24 amended by inserting after the item relating to section
25 569 the following:

"Sec. 570. Use of photovoltaic energy in public buildings.".

1 **SEC. 206. BIOBASED PRODUCTS.**

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

7 **SEC. 207. RENEWABLE ENERGY SECURITY.**

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

11 (1) in paragraph (1), by striking ''in paragraph
12 (3)'' and inserting ''in paragraphs (3) and (4)'';

13 (2) in paragraph (3), by striking ''$2,500 per
14 dwelling unit average provided in paragraph (1)''
15 and inserting ''dwelling unit averages provided in
16 paragraphs (1) and (4)''; and

17 (3) by adding at the end the following new
18 paragraphs:

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

23 ''(5)(A) The Secretary shall by regulations—

24 ''(i) establish the criteria which are to be used
25 in prescribing performance and quality standards
26 under paragraph (6)(A)(ii) or in specifying any form

1 of renewable energy under paragraph (6)(A)(i)(I);
2 and
3 ‘‘(ii) establish a procedure under which a manu-
4 facturer of an item may request the Secretary to
5 certify that the item will be treated, for purposes of
6 this paragraph, as a renewable energy system.
7 ‘‘(B) The Secretary shall make a final determination
8 with respect to any request filed under subparagraph
9 (A)(ii) within 1 year after the filing of the request, to-
10 gether with any information required to be filed with such
11 request under subparagraph (A)(ii).
12 ‘‘(C) Each month the Secretary shall publish a report
13 of any request under subparagraph (A)(ii) which has been
14 denied during the preceding month and the reasons for
15 the denial.
16 ‘‘(D) The Secretary shall not specify any form of re-
17 newable energy under paragraph (6)(A)(i)(I) unless the
18 Secretary determines that—
19 ‘‘(i) there will be a reduction in oil or natural
20 gas consumption as a result of such specification;
21 ‘‘(ii) such specification will not result in an in-
22 creased use of any item which is known to be, or
23 reasonably suspected to be, environmentally haz-
24 ardous or a threat to public health or safety; and

1 "(iii) available Federal subsidies do not make
2 such specification unnecessary or inappropriate (in
3 the light of the most advantageous allocation of eco-
4 nomic resources).
5 "(6) In this subsection—
6 "(A) the term 'renewable energy system' means
7 a system which—
8 "(i) when installed in connection with a
9 dwelling, transmits or uses—
10 "(I) solar energy, energy derived from
11 the geothermal deposits, energy derived
12 from biomass, or any other form of renew-
13 able energy which the Secretary specifies
14 by regulations, for the purpose of heating
15 or cooling such dwelling or providing hot
16 water or electricity for use within such
17 dwelling; or
18 "(II) wind energy for nonbusiness res-
19 idential purposes;
20 "(ii) meets the performance and quality
21 standards (if any) which have been prescribed
22 by the Secretary by regulations;
23 "(iii) in the case of a combustion rated
24 system, has a thermal efficiency rating of at
25 least 75 percent; and

1 "(iv) in the case of a solar system, has a
2 thermal efficiency rating of at least 15 percent;
3 and

4 "(B) the term 'biomass' means any organic
5 matter that is available on a renewable or recurring
6 basis, including agricultural crops and trees, wood
7 and wood wastes and residues, plants (including
8 aquatic plants), grasses, residues, fibers, and animal
9 wastes, municipal wastes, and other waste mate-
10 rials.".

11 (b) DISTRICT HEATING AND COOLING PROGRAMS.—
12 Section 172 of the Energy Policy Act of 1992 (42 U.S.C.
13 13451 note) is amended—

14 (1) in subsection (a)—

15 (A) by striking "and" at the end of para-
16 graph (3);

17 (B) by striking the period at the end of
18 paragraph (4) and inserting "; and"; and

19 (C) by adding at the end the following new
20 paragraph:

21 "(5) evaluate the use of renewable energy sys-
22 tems (as such term is defined in section 415(c) of
23 the Energy Conservation and Production Act (42
24 U.S.C. 6865(c))) in residential buildings."; and

1 (2) in subsection (b), by striking "this Act" and
2 inserting "the Energy Policy Act of 2005".
3 (c) DEFINITION OF BIOMASS.—Section 203(2) of the
4 Biomass Energy and Alcohol Fuels Act of 1980 (42
5 U.S.C. 8802(2)) is amended to read as follows:
6 "(2) The term 'biomass' means any organic
7 matter that is available on a renewable or recurring
8 basis, including agricultural crops and trees, wood
9 and wood wastes and residues, plants (including
10 aquatic plants), grasses, residues, fibers, and animal
11 wastes, municipal wastes, and other waste mate-
12 rials.".
13 (d) REBATE PROGRAM.—
14 (1) ESTABLISHMENT.—The Secretary of En-
15 ergy shall establish a program providing rebates for
16 consumers for expenditures made for the installation
17 of a renewable energy system in connection with a
18 dwelling unit or small business.
19 (2) AMOUNT OF REBATE.—Rebates provided
20 under the program established under paragraph (1)
21 shall be in an amount not to exceed the lesser of—
22 (A) 25 percent of the expenditures de-
23 scribed in paragraph (1) made by the con-
24 sumer; or
25 (B) $3,000.

1 (3) DEFINITION.—For purposes of this sub-
2 section, the term ''renewable energy system'' has the
3 meaning given that term in section 415(c)(6)(A) of
4 the Energy Conservation and Production Act (42
5 U.S.C. 6865(c)(6)(A)), as added by subsection
6 (a)(3) of this section.
7 (4) AUTHORIZATION OF APPROPRIATIONS.—
8 There are authorized to be appropriated to the Sec-
9 retary of Energy for carrying out this subsection, to
10 remain available until expended—
11 (A) $150,000,000 for fiscal year 2006;
12 (B) $150,000,000 for fiscal year 2007;
13 (C) $200,000,000 for fiscal year 2008;
14 (D) $250,000,000 for fiscal year 2009;
15 and
16 (E) $250,000,000 for fiscal year 2010.
17 (e) RENEWABLE FUEL INVENTORY.—Not later than
18 180 days after the date of enactment of this Act, the Sec-
19 retary of Energy shall transmit to Congress a report
20 containing—
21 (1) an inventory of renewable fuels available for
22 consumers; and
23 (2) a projection of future inventories of renew-
24 able fuels based on the incentives provided in this
25 section

1 **SEC. 208. INSTALLATION OF PHOTOVOLTAIC SYSTEM.**

2 There is authorized to be appropriated to the General
3 Services Administration to install a photovoltaic system,
4 as set forth in the Sun Wall Design Project, for the head-
5 quarters building of the Department of Energy located at
6 1000 Independence Avenue Southwest in the District of
7 Columbia, commonly know as the Forrestal Building,
8 $20,000,000 for fiscal year 2006. Such sums shall remain
9 available until expended.

10 **SEC. 209. SUGAR CANE ETHANOL PILOT PROGRAM.**

11 (a) DEFINITIONS.—In this section:

12 (1) PROGRAM.—The term ''program'' means
13 the Sugar Cane Ethanol Pilot Program established
14 by subsection (b).

15 (2) SECRETARY.—The term ''Secretary'' means
16 the Secretary of Energy.

17 (b) ESTABLISHMENT.—There is established within
18 the Department of Energy a program to be known as the
19 ''Sugar Cane Ethanol Pilot Program''.

20 (c) PROJECT.—

21 (1) IN GENERAL.—In carrying out the program,
22 the Secretary shall establish a pilot project that is—

23 (A) located in the State of Hawaii; and

24 (B) designed to study the creation of eth-
25 anol from cane sugar.

1 (2) REQUIREMENTS.—A pilot project described
2 in paragraph (1) shall—
3 (A) be limited to the production of ethanol
4 in Hawaii in a way similar to the existing pro-
5 gram for the processing of corn for ethanol to
6 show that the process can be applicable to cane
7 sugar;
8 (B) include information on how the scale
9 of projection can be replicated once the sugar
10 cane industry has site located and constructed
11 ethanol production facilities; and
12 (C) not last more than 3 years.
13 (d) AUTHORIZATION OF APPROPRIATIONS.—There
14 are authorized to be appropriated to carry out this section
15 $8,000,000, to remain available until expended.

16 Subtitle C—Hydroelectric

17 PART I—ALTERNATIVE CONDITIONS

18 SEC. 231. ALTERNATIVE CONDITIONS AND FISHWAYS.

19 (a) FEDERAL RESERVATIONS.—Section 4(e) of the
20 Federal Power Act (16 U.S.C. 797(e)) is amended by in-
21 serting after ''adequate protection and utilization of such
22 reservation.'' at the end of the first proviso the following:
23 ''The license applicant shall be entitled to a determination
24 on the record, after opportunity for an expedited agency
25 trial-type hearing of any disputed issues of material fact,

1 with respect to such conditions. Such hearing may be con-
2 ducted in accordance with procedures established by agen-
3 cy regulation in consultation with the Federal Energy
4 Regulatory Commission.''.

5 (b) FISHWAYS.—Section 18 of the Federal Power Act
6 (16 U.S.C. 811) is amended by inserting after ''and such
7 fishways as may be prescribed by the Secretary of Com-
8 merce.'' the following: ''The license applicant shall be enti-
9 tled to a determination on the record, after opportunity
10 for an expedited agency trial-type hearing of any disputed
11 issues of material fact, with respect to such fishways. Such
12 hearing may be conducted in accordance with procedures
13 established by agency regulation in consultation with the
14 Federal Energy Regulatory Commission.''.

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

19 **''SEC. 33. ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.**

20 ''(a) ALTERNATIVE CONDITIONS.—(1) Whenever any
21 person applies for a license for any project works within
22 any reservation of the United States, and the Secretary
23 of the department under whose supervision such reserva-
24 tion falls (referred to in this subsection as 'the Secretary')
25 deems a condition to such license to be necessary under

1 the first proviso of section 4(e), the license applicant may
2 propose an alternative condition.

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

10 ''(A) provides for the adequate protection and
11 utilization of the reservation; and

12 ''(B) will either—

13 ''(i) cost less to implement; or

14 ''(ii) result in improved operation of the
15 project works for electricity production,

16 as compared to the condition initially deemed nec-
17 essary by the Secretary.

18 ''(3) The Secretary shall submit into the public
19 record of the Commission proceeding with any condition
20 under section 4(e) or alternative condition it accepts under
21 this section, a written statement explaining the basis for
22 such condition, and reason for not accepting any alter-
23 native condition under this section. The written statement
24 must demonstrate that the Secretary gave equal consider-
25 ation to the effects of the condition adopted and alter-

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

11 "(4) Nothing in this section shall prohibit other inter-
12 ested parties from proposing alternative conditions.

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

1 and the Secretary's final written determination into the
2 record of the Commission's proceeding.

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

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

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

18 ''(B) will either—

19 ''(i) cost less to implement; or

20 ''(ii) result in improved operation of the
21 project works for electricity production,

22 as compared to the fishway initially deemed nec-
23 essary by the Secretary.

24 ''(3) The Secretary concerned shall submit into the
25 public record of the Commission proceeding with any pre-

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

17 ''(4) Nothing in this section shall prohibit other inter-
18 ested parties from proposing alternative prescriptions.

19 ''(5) If the Secretary concerned does not accept an
20 applicant's alternative prescription under this section, and
21 the Commission finds that the Secretary's prescription
22 would be inconsistent with the purposes of this part, or
23 other applicable law, the Commission may refer the dis-
24 pute to the Commission's Dispute Resolution Service. The
25 Dispute Resolution Service shall consult with the Sec-

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

9 **PART II—ADDITIONAL HYDROPOWER**

10 **SEC. 241. HYDROELECTRIC PRODUCTION INCENTIVES.**

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

1 (b) DEFINITIONS.—For purposes of this section:
2 (1) QUALIFIED HYDROELECTRIC FACILITY.—
3 The term ''qualified hydroelectric facility'' means a
4 turbine or other generating device owned or solely
5 operated by a non-Federal entity which generates
6 hydroelectric energy for sale and which is added to
7 an existing dam or conduit.
8 (2) EXISTING DAM OR CONDUIT.—The term
9 ''existing dam or conduit'' means any dam or con-
10 duit the construction of which was completed before
11 the date of the enactment of this section and which
12 does not require any construction or enlargement of
13 impoundment or diversion structures (other than re-
14 pair or reconstruction) in connection with the instal-
15 lation of a turbine or other generating device.
16 (3) CONDUIT.—The term ''conduit'' has the
17 same meaning as when used in section 30(a)(2) of
18 the Federal Power Act (16 U.S.C. 823a(a)(2)).
19 The terms defined in this subsection shall apply without
20 regard to the hydroelectric kilowatt capacity of the facility
21 concerned, without regard to whether the facility uses a
22 dam owned by a governmental or nongovernmental entity,
23 and without regard to whether the facility begins oper-
24 ation on or after the date of the enactment of this section.

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

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

13 (e) AMOUNT OF PAYMENT.—

14 (1) IN GENERAL.—Payments made by the Sec-
15 retary under this section to the owner or operator of
16 a qualified hydroelectric facility shall be based on
17 the number of kilowatt hours of hydroelectric energy
18 generated by the facility during the incentive period.
19 For any such facility, the amount of such payment
20 shall be 1.8 cents per kilowatt hour (adjusted as
21 provided in paragraph (2)), subject to the avail-
22 ability of appropriations under subsection (g), except
23 that no facility may receive more than $750,000 in
24 1 calendar year.

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

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

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

22 **SEC. 242. HYDROELECTRIC EFFICIENCY IMPROVEMENT.**

23 (a) INCENTIVE PAYMENTS.—The Secretary of En-
24 ergy shall make incentive payments to the owners or oper-
25 ators of hydroelectric facilities at existing dams to be used

1 to make capital improvements in the facilities that are di-
2 rectly related to improving the efficiency of such facilities
3 by at least 3 percent.

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

10 (c) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated to carry out this section
12 not more than $10,000,000 for each of the fiscal years
13 2006 through 2015.

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

15 Section 408(a)(6) of the Public Utility Regulatory
16 Policies Act of 1978 (16 U.S.C. 2708(a)(6)) is amended
17 by striking ‘‘April 20, 1977’’ and inserting ‘‘March 4,
18 2003’’.

TITLE III—OIL AND GAS—COMMERCE

Subtitle A—Petroleum Reserve and Home Heating Oil

SEC. 301. PERMANENT AUTHORITY TO OPERATE THE STRATEGIC PETROLEUM RESERVE AND OTHER ENERGY PROGRAMS.

(a) AMENDMENT TO TITLE I OF THE ENERGY POLICY AND CONSERVATION ACT.—Title I of the Energy Policy and Conservation Act (42 U.S.C. 6211 et seq.) is amended—

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

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 166. There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this part and part D, to remain available until expended.";

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

(3) by striking part E (42 U.S.C. 6251; relating to the expiration of title I of the Act).

(b) AMENDMENT TO TITLE II OF THE ENERGY POLICY AND CONSERVATION ACT.—Title II of the Energy

1 Policy and Conservation Act (42 U.S.C. 6271 et seq.) is
2 amended—
3 (1) by inserting before section 273 (42 U.S.C.
4 6283) the following:
5 **"PART C—SUMMER FILL AND FUEL BUDGETING**
6 **PROGRAMS";**
7 (2) by striking section 273(e) (42 U.S.C.
8 6283(e); relating to the expiration of summer fill
9 and fuel budgeting programs); and
10 (3) by striking part D (42 U.S.C. 6285; relat-
11 ing to the expiration of title II of the Act).
12 (c) TECHNICAL AMENDMENTS.—The table of con-
13 tents for the Energy Policy and Conservation Act is
14 amended—
15 (1) by inserting after the items relating to part
16 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.";

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

"PART C—SUMMER FILL AND FUEL BUDGETING PROGRAMS

"Sec. 273. Summer fill and fuel budgeting programs.";

19 and

1 (3) by striking the items relating to part D of
2 title II.
3 (d) AMENDMENT TO THE ENERGY POLICY AND CON-
4 SERVATION ACT.—Section 183(b)(1) of the Energy Policy
5 and Conservation Act (42 U.S.C. 6250(b)(1)) is amended
6 by striking all after ''increases'' through to ''mid-October
7 through March'' and inserting ''by more than 60 percent
8 over its 5-year rolling average for the months of mid-Octo-
9 ber through March (considered as a heating season aver-
10 age)''.
11 (e) FILL STRATEGIC PETROLEUM RESERVE TO CA-
12 PACITY.—The Secretary of Energy shall, as expeditiously
13 as practicable, acquire petroleum in amounts sufficient to
14 fill the Strategic Petroleum Reserve to the 1,000,000,000
15 barrel capacity authorized under section 154(a) of the En-
16 ergy Policy and Conservation Act (42 U.S.C. 6234(a)),
17 consistent with the provisions of sections 159 and 160 of
18 such Act (42 U.S.C. 6239, 6240).
19 **SEC. 302. NATIONAL OILHEAT RESEARCH ALLIANCE.**
20 Section 713 of the Energy Act of 2000 (42 U.S.C.
21 6201 note) is amended by striking ''4'' and inserting ''9''.
22 **SEC. 303. SITE SELECTION.**
23 Not later than 1 year after the date of enactment
24 of this Act, the Secretary of Energy shall complete a pro-
25 ceeding to select, from sites that the Secretary has pre-

viously studied, sites necessary to enable acquisition by the Secretary of the full authorized volume of the Strategic Petroleum Reserve.

SEC. 304. SUSPENSION OF STRATEGIC PETROLEUM RESERVE DELIVERIES.

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

Subtitle B—Production Incentives

SEC. 320. LIQUEFACTION OR GASIFICATION NATURAL GAS TERMINALS.

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

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

''(11) 'Liquefaction or gasification natural gas terminal' includes all facilities located onshore or in State waters that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural

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

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

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

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

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

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

22 ''(1) COMMISSION AUTHORIZATION RE-
23 QUIRED.—No person shall construct, expand, or op-
24 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 that 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
18 applicant—
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-

minal's rates, charges, terms, or conditions of service.

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

"(iii) EXPANSION OF REGULATED TERMINAL.—An order issued under this paragraph that relates to an expansion of an existing liquefaction or gasification natural gas terminal, where any portion of the existing terminal continues to be subject to Commission regulation of rates, charges, terms, or conditions of service, may not result in—

"(I) subsidization of the expansion by regulated terminal users;

"(II) degradation of service to the regulated terminal users; or

"(III) undue discrimination 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. 332. NATURAL GAS MARKET REFORM.**

19 (a) CLARIFICATION OF EXISTING CFTC AUTHOR-
20 ITY.—

21 (1) FALSE REPORTING.—Section 9(a)(2) of the
22 Commodity Exchange Act (7 U.S.C. 13(a)(2)) is
23 amended by striking ''false or misleading or know-
24 ingly inaccurate reports'' and inserting ''knowingly

1 false or knowingly misleading or knowingly inac-
2 curate reports''.
3 (2) COMMISSION ADMINISTRATIVE AND CIVIL
4 AUTHORITY.—Section 9 of the Commodity Exchange
5 Act (7 U.S.C. 13) is amended by redesignating sub-
6 section (f) as subsection (e), and adding:
7 ''(f) COMMISSION ADMINISTRATIVE AND CIVIL AU-
8 THORITY.—The Commission may bring administrative or
9 civil actions as provided in this Act against any person
10 for a violation of any provision of this section including,
11 but not limited to, false reporting under subsection
12 (a)(2).''.
13 (3) EFFECT OF AMENDMENTS.—The amend-
14 ments made by paragraphs (1) and (2) restate, with-
15 out substantive change, existing burden of proof pro-
16 visions and existing Commission civil enforcement
17 authority, respectively. These clarifying changes do
18 not alter any existing burden of proof or grant any
19 new statutory authority. The provisions of this sec-
20 tion, as restated herein, continue to apply to any ac-
21 tion pending on or commenced after the date of en-
22 actment of this Act for any act, omission, or viola-
23 tion occurring before, on, or after, such date of en-
24 actment.

1 (b) FRAUD AUTHORITY.—Section 4b of the Com-
2 modity Exchange Act (7 U.S.C. 6b) is amended—
3 (1) by redesignating subsections (b) and (c) as
4 subsections (c) and (d), respectively; and
5 (2) by striking subsection (a) and inserting the
6 following:
7 ''(a) It shall be unlawful—
8 ''(1) for any person, in or in connection with
9 any order to make, or the making of, any contract
10 of sale of any commodity for future delivery or in
11 interstate commerce, that is made, or to be made, on
12 or subject to the rules of a designated contract mar-
13 ket, for or on behalf of any other person; or
14 ''(2) for any person, in or in connection with
15 any order to make, or the making of, any contract
16 of sale of any commodity for future delivery, or
17 other agreement, contract, or transaction subject to
18 section 5a(g) (1) and (2) of this Act, that is made,
19 or to be made, for or on behalf of, or with, any other
20 person, other than on or subject to the rules of a
21 designated contract market—
22 ''(A) to cheat or defraud or attempt to
23 cheat or defraud such other person;
24 ''(B) willfully to make or cause to be made
25 to such other person any false report or state-

1 ment or willfully to enter or cause to be entered
2 for such other person any false record;
3 ‘‘(C) willfully to deceive or attempt to de-
4 ceive such other person by any means whatso-
5 ever in regard to any order or contract or the
6 disposition or execution of any order or con-
7 tract, or in regard to any act of agency per-
8 formed, with respect to any order or contract
9 for or, in the case of subsection (a)(2), with
10 such other person; or
11 ‘‘(D)(i) to bucket an order if such order is
12 either represented by such person as an order
13 to be executed, or required to be executed, on
14 or subject to the rules of a designated contract
15 market; or
16 ‘‘(ii) to fill an order by offset against the
17 order or orders of any other person, or willfully
18 and knowingly and without the prior consent of
19 such other person to become the buyer in re-
20 spect to any selling order of such other person,
21 or become the seller in respect to any buying
22 order of such other person, if such order is ei-
23 ther represented by such person as an order to
24 be executed, or required to be executed, on or

subject to the rules of a designated contract market.

"(b) Subsection (a)(2) shall not obligate any person, in connection with a transaction in a contract of sale of a commodity for future delivery, or other agreement, contract or transaction subject to section 5a(g) (1) and (2) of this Act, with another person, to disclose to such other person nonpublic information that may be material to the market price of such commodity or transaction, except as necessary to make any statement made to such other person in connection with such transaction, not misleading in any material respect.".

(c) JURISDICTION OF THE CFTC.—The Natural Gas Act (15 U.S.C. 717 et seq.) is amended by adding at the end:

"SEC. 26. JURISDICTION.

"This Act shall not affect the exclusive jurisdiction of the Commodity Futures Trading Commission with respect to accounts, agreements, contracts, or transactions in commodities under the Commodity Exchange Act (7 U.S.C. 1 et seq.). Any request for information by the Commission to a designated contract market, registered derivatives transaction execution facility, board of trade, exchange, or market involving accounts, agreements, contracts, or transactions in commodities (including natural

1 gas, electricity, and other energy commodities) within the
2 exclusive jurisdiction of the Commodity Futures Trading
3 Commission shall be directed to the Commodity Futures
4 Trading Commission, which shall cooperate in responding
5 to any information request by the Commission.''.

6 (d) INCREASED PENALTIES.—Section 21 of the Nat-
7 ural Gas Act (15 U.S.C. 717t) is amended—

8 (1) in subsection (a)—

9 (A) by striking ''$5,000'' and inserting
10 ''$1,000,000''; and

11 (B) by striking ''two years'' and inserting
12 ''5 years''; and

13 (2) in subsection (b), by striking ''$500'' and
14 inserting ''$50,000''.

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

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

18 (1) by redesignating section 24 as section 25;
19 and

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

21 **''SEC. 24. NATURAL GAS MARKET TRANSPARENCY.**

22 ''(a) AUTHORIZATION.—(1) Not later than 180 days
23 after the date of enactment of the Energy Policy Act of
24 2005, the Federal Energy Regulatory Commission shall
25 issue rules directing all entities subject to the Commis-

1 sion's jurisdiction as provided under this Act to timely re-
2 port information about the availability and prices of nat-
3 ural gas sold at wholesale in interstate commerce to the
4 Commission and price publishers.

5 "(2) The Commission shall evaluate the data for ade-
6 quate price transparency and accuracy.

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

12 "(4) In exercising its authority under this section, the
13 Commission shall not—

14 "(A) compete with, or displace from the market
15 place, any price publisher; or

16 "(B) regulate price publishers or impose any re-
17 quirements on the publication of information.

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

23 "(c) LIMITATION ON COMMISSION AUTHORITY.—(1)
24 The Commission shall not condition access to interstate

1 pipeline transportation upon the reporting requirements
2 authorized under this section.

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

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

11 **SEC. 334. OIL, GAS, AND MINERAL INDUSTRY WORKERS.**

12 Congress recognizes that a critical component in
13 meeting expanded domestic oil and gas supplies is the
14 availability of adequate numbers of trained and skilled
15 workers who can undertake the difficult, complex, and
16 often hazardous tasks to bring new supplies into produc-
17 tion. Years of volatility in oil and gas prices, and uncer-
18 tainty over Federal policy on access to resources, has cre-
19 ated a severe shortage of skilled workers for the oil and
20 gas industry. To address this shortage, the Secretary of
21 Energy, in consultation with the Secretary of Labor, shall
22 evaluate both the short term and longer term availability
23 of skilled workers to meet the energy security require-
24 ments of the United States, addressing the availability
25 of skilled labor at both entry level and at more senior lev-

els in the oil, gas, and mineral industries. Within twelve months of the date of enactment of this Act, the Secretary of Energy, the Secretary of Labor, and the Secretary of the Interior shall submit to Congress a report with recommendations as appropriate to meet the future labor requirements for the domestic extraction industries.

Subtitle C—Access to Federal Land

SEC. 344. CONSULTATION REGARDING OIL AND GAS LEASING ON PUBLIC LAND.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of the Interior and the Secretary of Agriculture shall enter into a memorandum of understanding regarding oil and gas leasing on—

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

(2) National Forest System lands under the jurisdiction of the Secretary of Agriculture.

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

(1) establish administrative procedures and lines of authority that ensure timely processing of oil and gas lease applications, surface use plans of operation, and applications for permits to drill, including steps for processing surface use plans and applica-

1 tions for permits to drill consistent with the
2 timelines established by the amendment made by
3 section 348;
4 (2) eliminate duplication of effort by providing
5 for coordination of planning and environmental com-
6 pliance efforts; and
7 (3) ensure that lease stipulations are—
8 (A) applied consistently;
9 (B) coordinated between agencies; and
10 (C) only as restrictive as necessary to pro-
11 tect the resource for which the stipulations are
12 applied.
13 (c) DATA RETRIEVAL SYSTEM.—
14 (1) IN GENERAL.—Not later than 1 year after
15 the date of enactment of this Act, the Secretary of
16 the Interior and the Secretary of Agriculture shall
17 establish a joint data retrieval system that is capable
18 of—
19 (A) tracking applications and formal re-
20 quests made in accordance with procedures of
21 the Federal onshore oil and gas leasing pro-
22 gram; and
23 (B) providing information regarding the
24 status of the applications and requests within

the Department of the Interior and the Department of Agriculture.

(2) RESOURCE MAPPING.—Not later than 2 years after the date of enactment of this Act, the Secretary of the Interior and the Secretary of Agriculture shall establish a joint Geographic Information System mapping system for use in—

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

(B) processing surface use plans of operation and applications for permits to drill.

SEC. 346. COMPLIANCE WITH EXECUTIVE ORDER NO. 13211; ACTIONS CONCERNING REGULATIONS THAT SIGNIFICANTLY AFFECT ENERGY SUPPLY, DISTRIBUTION, OR USE.

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

(b) GUIDANCE.—Not later than 180 days after the date of enactment of this Act, the Secretary of Energy shall publish guidance for purposes of this section describing what constitutes a significant adverse effect on the

1 supply of domestic energy resources under Executive
2 Order No. 13211 (42 U.S.C. 13201 note).

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

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

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

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

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

22 # Subtitle D—Refining Revitalization

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

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

1 **SEC. 372. FINDINGS.**

2 Congress finds the following:

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

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

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

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

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

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

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

1 But refining capacity has begun to lag behind peak
2 summer demand.
3 (7) Heavy industry and manufacturing jobs
4 have closed or relocated due to barriers to invest-
5 ment, burdensome regulation, and high costs of op-
6 eration, among other reasons.
7 (8) Because the production and disruption in
8 supply of refined petroleum products has a signifi-
9 cant impact on interstate commerce, it serves the
10 national interest to increase the domestic refining
11 operating capacity.
12 (10) More regulatory certainty for refinery own-
13 ers is needed to stimulate investment in increased
14 refinery capacity and required procedures for Fed-
15 eral, State, and local regulatory approvals need to be
16 streamlined to ensure that increased refinery capac-
17 ity can be developed and operated in a safe, timely,
18 and cost-effective manner.
19 (11) The proposed Yuma Arizona Refinery, a
20 grassroots refinery facility, which only recently re-
21 ceived its Federal air quality permit after 5 years
22 under the current regulatory process, and is just
23 now beginning its environmental impact statement
24 and local permitting process, serves as an example

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

SEC. 373. PURPOSE.

The purpose of this subtitle is to encourage the expansion of the United States refining capacity by providing an accelerated review and approval process of all regulatory approvals for certain idle refineries and lending corresponding legal and technical assistance to States with resources that may be inadequate to meet such permit review demands.

SEC. 374. DESIGNATION OF REFINERY REVITALIZATION ZONES.

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

(1) that—

(A) has experienced mass layoffs at manufacturing facilities, as determined by the Secretary of Labor; or

(B) contains an idle refinery; and

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

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

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

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

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

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

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

1 (2) the Administrator shall designate, to pro-
2 vide legal and technical assistance for that Revital-
3 ization Program Qualifying State, one or more em-
4 ployees of the Environmental Protection Agency
5 with expertise on regulatory issues, relating to the
6 siting and operation of refineries, with respect to
7 each of—
8 (A) the Clean Air Act (42 U.S.C. 7401 et
9 seq.);
10 (B) the Federal Water Pollution Control
11 Act (33 U.S.C. 1251 et seq.);
12 (C) the Safe Drinking Water Act (42
13 U.S.C. 300f et seq.);
14 (D) the Comprehensive Environmental Re-
15 sponse, Compensation, and Liability Act of
16 1980 (42 U.S.C. 9601 et seq.);
17 (E) the Solid Waste Disposal Act (42
18 U.S.C. 6901 et seq.);
19 (F) the Toxic Substances Control Act (15
20 U.S.C. 2601 et seq.);
21 (G) the National Historic Preservation Act
22 (16 U.S.C. 470 et seq.); and
23 (H) the National Environmental Policy Act
24 of 1969 (42 U.S.C. 4321 et seq.).

1 **SEC. 377. COORDINATION AND EXPEDITIOUS REVIEW OF**
2 **PERMITTING PROCESS.**

3 (a) DEPARTMENT OF ENERGY AS LEAD AGENCY.—
4 Upon written request of a prospective applicant for Fed-
5 eral authorization for a refinery facility in a Refinery Revi-
6 talization Zone, the Department shall act as the lead Fed-
7 eral agency for the purposes of coordinating all applicable
8 Federal authorizations and environmental reviews of the
9 refining facility. To the maximum extent practicable under
10 applicable Federal law, the Secretary shall coordinate this
11 Federal authorization and review process with any Indian
12 Tribes and State and local agencies responsible for con-
13 ducting any separate permitting and environmental re-
14 views of the refining facility.

15 (b) SCHEDULE.—

16 (1) IN GENERAL.—The Secretary, in coordina-
17 tion with the agencies with authority over Federal
18 authorizations and, as appropriate, with Indian
19 Tribes and State and local agencies that are willing
20 to coordinate their separate permitting and environ-
21 mental reviews with the Federal authorizations and
22 environmental reviews, shall establish a schedule
23 with prompt and binding intermediate and ultimate
24 deadlines for the review of, and Federal authoriza-
25 tion decisions relating to, refinery facility siting and
26 operation.

1 (2) PREAPPLICATION PROCESS.—Prior to estab-
2 lishing the schedule, the Secretary shall provide an
3 expeditious preapplication mechanism for applicants
4 to confer with the agencies involved and to have
5 each agency communicate to the prospective appli-
6 cant within 60 days concerning—
7 (A) the likelihood of approval for a poten-
8 tial refinery facility; and
9 (B) key issues of concern to the agencies
10 and local community.
11 (3) SCHEDULE.—The Secretary shall consider
12 the preapplication findings under paragraph (2) in
13 setting the schedule and shall ensure that once an
14 application has been submitted with such informa-
15 tion as the Secretary considers necessary, all permit
16 decisions and related environmental reviews under
17 all applicable Federal laws shall be completed within
18 6 months or, where circumstances require otherwise,
19 as soon as thereafter practicable.
20 (c) CONSOLIDATED ENVIRONMENTAL REVIEW.—
21 (1) LEAD AGENCY.—In carrying out its role as
22 the lead Federal agency for environmental review,
23 the Department shall coordinate all applicable Fed-
24 eral actions for complying with the National Envi-
25 ronmental Policy Act of 1969 (42 U.S.C. 4321 et

1 seq.) and shall be responsible for preparing any envi-
2 ronmental impact statement required by section
3 102(2)(C) of that Act (42 U.S.C. 4332(2)(C)) or
4 such other form of environmental review as is re-
5 quired.

6 (2) CONSOLIDATION OF STATEMENTS.—In car-
7 rying out paragraph (1), if the Department deter-
8 mines an environmental impact statement is re-
9 quired, the Department shall prepare a single envi-
10 ronmental impact statement, which shall consolidate
11 the environmental reviews of all Federal agencies
12 considering any aspect of the project covered by the
13 environmental impact statement.

14 (d) OTHER AGENCIES.—Each Federal agency consid-
15 ering an aspect of the siting or operation of a refinery
16 facility in a Refinery Revitalization Zone shall cooperate
17 with the Department and comply with the deadlines estab-
18 lished by the Department in the preparation of any envi-
19 ronmental impact statement or such other form of review
20 as is required.

21 (e) EXCLUSIVE RECORD.—The Department shall,
22 with the cooperation of Federal and State administrative
23 agencies and officials, maintain a complete consolidated
24 record of all decisions made or actions taken by the De-
25 partment or by a Federal administrative agency or officer

1 (or State administrative agency or officer acting under
2 delegated Federal authority) with respect to the siting or
3 operation of a refinery facility in a Refinery Revitalization
4 Zone. Such record shall be the exclusive record for any
5 Federal administrative proceeding that is an appeal or re-
6 view of any such decision made or action taken.

7 (f) APPEALS.—In the event any agency has denied
8 a Federal authorization required for a refinery facility in
9 a Refinery Revitalization Zone, or has failed to act by a
10 deadline established by the Secretary pursuant to sub-
11 section (b) for deciding whether to issue the Federal au-
12 thorization, the applicant or any State in which the refin-
13 ery facility would be located may file an appeal with the
14 Secretary. Based on the record maintained under sub-
15 section (e), and in consultation with the affected agency,
16 the Secretary may then either issue the necessary Federal
17 authorization with appropriate conditions, or deny the ap-
18 peal. The Secretary shall issue a decision within 60 days
19 after the filing of the appeal. In making a decision under
20 this subsection, the Secretary shall comply with applicable
21 requirements of Federal law, including each of the laws
22 referred to in section 376(2)(A) through (H). Any judicial
23 appeal of the Secretary's decision shall be to the United
24 States Court of Appeals for the District of Columbia.

1 (g) CONFORMING REGULATIONS.—Not later than 6
2 months after the date of enactment of this Act, the Sec-
3 retary shall issue any regulations necessary to implement
4 this subtitle.

5 **SEC. 378. COMPLIANCE WITH ALL ENVIRONMENTAL REGU-**
6 **LATIONS REQUIRED.**

7 Nothing in this subtitle shall be construed to waive
8 the applicability of environmental laws and regulations to
9 any refinery facility.

10 **SEC. 379. DEFINITIONS.**

11 For the purposes of this subtitle, the term—
12 (1) ''Administrator'' means the Administrator
13 of the Environmental Protection Agency;
14 (2) ''Department'' means the Department of
15 Energy;
16 (3) ''Federal authorization'' means any author-
17 ization required under Federal law (including the
18 Clean Air Act, the Federal Water Pollution Control
19 Act, the Safe Drinking Water Act, the Comprehen-
20 sive Environmental Response, Compensation, and
21 Liability Act of 1980, the Solid Waste Disposal Act,
22 the Toxic Substances Control Act, the National His-
23 toric Preservation Act, and the National Environ-
24 mental Policy Act of 1969) in order to site, con-
25 struct, upgrade, or operate a refinery facility within

1 a Refinery Revitalization Zone, including such per-
2 mits, special use authorizations, certifications, opin-
3 ions, or other approvals as may be required, whether
4 issued by a Federal, State, or local agency;
5 (4) ''idle refinery'' means any real property site
6 that has been used at any time for a refinery facility
7 since December 31, 1979, that has not been in oper-
8 ation after April 1, 2005;
9 (5) ''refinery facility'' means any facility de-
10 signed and operated to receive, unload, store, proc-
11 ess and refine raw crude oil by any chemical or
12 physical process, including distillation, fluid catalytic
13 cracking, hydrocracking, coking, alkylation,
14 etherification, polymerization, catalytic reforming,
15 isomerization, hydrotreating, blending, and any com-
16 bination thereof;
17 (6) ''Revitalization Program Qualifying State''
18 means a State or Indian Tribe that—
19 (A) has entered into the memorandum of
20 understanding pursuant to section 375(b); and
21 (B) has established a refining infrastruc-
22 ture coordination office that the Secretary finds
23 will facilitate Federal-State cooperation for the
24 purposes of this subtitle; and
25 (7) ''Secretary'' means the Secretary of Energy.

1 # TITLE IV—COAL

2 ## Subtitle A—Clean Coal Power
3 ## Initiative

4 **SEC. 401. AUTHORIZATION OF APPROPRIATIONS.**

5 (a) CLEAN COAL POWER INITIATIVE.—There are au-
6 thorized to be appropriated to the Secretary of Energy (re-
7 ferred to in this title as the ''Secretary'') to carry out the
8 activities authorized by this subtitle $200,000,000 for
9 each of fiscal years 2006 through 2014, to remain avail-
10 able until expended.

11 (b) REPORT.—The Secretary shall submit to Con-
12 gress the report required by this subsection not later than
13 March 31, 2007. The report shall include, with respect
14 to subsection (a), a 10-year plan containing—

15 (1) a detailed assessment of whether the aggre-
16 gate funding levels provided under subsection (a) are
17 the appropriate funding levels for that program;

18 (2) a detailed description of how proposals will
19 be solicited and evaluated, including a list of all ac-
20 tivities expected to be undertaken;

21 (3) a detailed list of technical milestones for
22 each coal and related technology that will be pur-
23 sued; and

24 (4) a detailed description of how the program
25 will avoid problems enumerated in General Account-

1 ing Office reports on the Clean Coal Technology
2 Program, including problems that have resulted in
3 unspent funds and projects that failed either finan-
4 cially or scientifically.

5 **SEC. 402. PROJECT CRITERIA.**

6 (a) IN GENERAL.—The Secretary shall not provide
7 funding under this subtitle for any project that does not
8 advance efficiency, environmental performance, and cost
9 competitiveness well beyond the level of technologies that
10 are in commercial service or have been demonstrated on
11 a scale that the Secretary determines is sufficient to dem-
12 onstrate that commercial service is viable as of the date
13 of enactment of this Act.

14 (b) TECHNICAL CRITERIA FOR CLEAN COAL POWER
15 INITIATIVE.—

16 (1) GASIFICATION PROJECTS.—

17 (A) IN GENERAL.—In allocating the funds
18 made available under section 401(a), the Sec-
19 retary shall ensure that at least 60 percent of
20 the funds are used only for projects on coal-
21 based gasification technologies, including gasifi-
22 cation combined cycle, gasification fuel cells,
23 gasification coproduction, and hybrid gasifi-
24 cation/combustion.

1 (B) TECHNICAL MILESTONES.—The Sec-
2 retary shall periodically set technical milestones
3 specifying the emission and thermal efficiency
4 levels that coal gasification projects under this
5 subtitle shall be designed, and reasonably ex-
6 pected, to achieve. The technical milestones
7 shall become more restrictive during the life of
8 the program. The Secretary shall set the peri-
9 odic milestones so as to achieve by 2020 coal
10 gasification projects able—

11 (i) to remove 99 percent of sulfur di-
12 oxide;

13 (ii) to emit not more than .05 lbs of
14 NO_x per million Btu;

15 (iii) to achieve substantial reductions
16 in mercury emissions; and

17 (iv) to achieve a thermal efficiency
18 of—

19 (I) 60 percent for coal of more
20 than 9,000 Btu;

21 (II) 59 percent for coal of 7,000
22 to 9,000 Btu; and

23 (III) 50 percent for coal of less
24 than 7,000 Btu.

1 (2) OTHER PROJECTS.—The Secretary shall pe-
2 riodically set technical milestones and ensure that up
3 to 40 percent of the funds appropriated pursuant to
4 section 401(a) are used for projects not described in
5 paragraph (1). The milestones shall specify the
6 emission and thermal efficiency levels that projects
7 funded under this paragraph shall be designed to
8 and reasonably expected to achieve. The technical
9 milestones shall become more restrictive during the
10 life of the program. The Secretary shall set the peri-
11 odic milestones so as to achieve by 2010 projects
12 able—
13 (A) to remove 97 percent of sulfur dioxide;
14 (B) to emit no more than .08 lbs of NO_x
15 per million Btu;
16 (C) to achieve substantial reductions in
17 mercury emissions; and
18 (D) to achieve a thermal efficiency of—
19 (i) 45 percent for coal of more than
20 9,000 Btu;
21 (ii) 44 percent for coal of 7,000 to
22 9,000 Btu; and
23 (iii) 40 percent for coal of less than
24 7,000 Btu.

1 (3) CONSULTATION.—Before setting the tech-
2 nical milestones under paragraphs (1)(B) and (2),
3 the Secretary shall consult with the Administrator of
4 the Environmental Protection Agency and interested
5 entities, including coal producers, industries using
6 coal, organizations to promote coal or advanced coal
7 technologies, environmental organizations, and orga-
8 nizations representing workers.
9 (4) EXISTING UNITS.—In the case of projects
10 at units in existence on the date of enactment of this
11 Act, in lieu of the thermal efficiency requirements
12 set forth in paragraph (1)(B)(iv) and (2)(D), the
13 milestones shall be designed to achieve an overall
14 thermal design efficiency improvement, compared to
15 the efficiency of the unit as operated, of not less
16 than—
17 (A) 7 percent for coal of more than 9,000
18 Btu;
19 (B) 6 percent for coal of 7,000 to 9,000
20 Btu; or
21 (C) 4 percent for coal of less than 7,000
22 Btu.
23 (5) PERMITTED USES.—In carrying out this
24 subtitle, the Secretary may fund projects that in-
25 clude, as part of the project, the separation and cap-

1 ture of carbon dioxide. The thermal efficiency goals
2 of paragraphs (1), (2), and (4) shall not apply for
3 projects that separate and capture at least 50 per-
4 cent of the facility's potential emissions of carbon di-
5 oxide.

6 (c) FINANCIAL CRITERIA.—The Secretary shall not
7 provide a funding award under this subtitle unless the re-
8 cipient documents to the satisfaction of the Secretary
9 that—

10 (1) the award recipient is financially viable
11 without the receipt of additional Federal funding;

12 (2) the recipient will provide sufficient informa-
13 tion to the Secretary to enable the Secretary to en-
14 sure that the award funds are spent efficiently and
15 effectively; and

16 (3) a market exists for the technology being
17 demonstrated or applied, as evidenced by statements
18 of interest in writing from potential purchasers of
19 the technology.

20 (d) FINANCIAL ASSISTANCE.—The Secretary shall
21 provide financial assistance to projects that meet the re-
22 quirements of subsections (a), (b), and (c) and are likely
23 to—

24 (1) achieve overall cost reductions in the utiliza-
25 tion of coal to generate useful forms of energy;

1 (2) improve the competitiveness of coal among
2 various forms of energy in order to maintain a diver-
3 sity of fuel choices in the United States to meet elec-
4 tricity generation requirements; and
5 (3) demonstrate methods and equipment that
6 are applicable to 25 percent of the electricity gener-
7 ating facilities, using various types of coal, that use
8 coal as the primary feedstock as of the date of en-
9 actment of this Act.
10 (e) FEDERAL SHARE.—The Federal share of the cost
11 of a coal or related technology project funded by the Sec-
12 retary under this subtitle shall not exceed 50 percent.
13 (f) APPLICABILITY.—No technology, or level of emis-
14 sion reduction, shall be treated as adequately dem-
15 onstrated for purposes of section 111 of the Clean Air Act
16 (42 U.S.C. 7411), achievable for purposes of section 169
17 of that Act (42 U.S.C. 7479), or achievable in practice
18 for purposes of section 171 of that Act (42 U.S.C. 7501)
19 solely by reason of the use of such technology, or the
20 achievement of such emission reduction, by 1 or more fa-
21 cilities receiving assistance under this subtitle.
22 **SEC. 403. REPORT.**
23 Not later than 1 year after the date of enactment
24 of this Act, and once every 2 years thereafter through
25 2014, the Secretary, in consultation with other appro-

priate Federal agencies, shall submit to Congress a report describing—

(1) the technical milestones set forth in section 402 and how those milestones ensure progress toward meeting the requirements of subsections (b)(1)(B) and (b)(2) of section 402; and

(2) the status of projects funded under this subtitle.

SEC. 404. CLEAN COAL CENTERS OF EXCELLENCE.

As part of the program authorized in section 401, the Secretary shall award competitive, merit-based grants to universities for the establishment of Centers of Excellence for Energy Systems of the Future. The Secretary shall provide grants to universities that show the greatest potential for advancing new clean coal technologies.

Subtitle B—Clean Power Projects

SEC. 411. COAL TECHNOLOGY LOAN.

There are authorized to be appropriated to the Secretary $125,000,000 to provide a loan to the owner of the experimental plant constructed under United States Department of Energy cooperative agreement number DE-FC-22–91PC90544 on such terms and conditions as the Secretary determines, including interest rates and upfront payments.

1 **SEC. 412. COAL GASIFICATION.**

2 The Secretary is authorized to provide loan guaran-
3 tees for a project to produce energy from a plant using
4 integrated gasification combined cycle technology of at
5 least 400 megawatts in capacity that produces power at
6 competitive rates in deregulated energy generation mar-
7 kets and that does not receive any subsidy (direct or indi-
8 rect) from ratepayers.

9 **SEC. 414. PETROLEUM COKE GASIFICATION.**

10 The Secretary is authorized to provide loan guaran-
11 tees for at least 5 petroleum coke gasification projects.

12 **SEC. 416. ELECTRON SCRUBBING DEMONSTRATION.**

13 The Secretary shall use $5,000,000 from amounts
14 appropriated to initiate, through the Chicago Operations
15 Office, a project to demonstrate the viability of high-en-
16 ergy electron scrubbing technology on commercial-scale
17 electrical generation using high-sulfur coal.

18 Subtitle D—Coal and Related 19 Programs

20 **SEC. 441. CLEAN AIR COAL PROGRAM.**

21 (a) AMENDMENT.—The Energy Policy Act of 1992
22 is amended by adding the following new title at the end
23 thereof:

1 # “TITLE XXXI—CLEAN AIR COAL
2 # PROGRAM

3 **“SEC. 3101. FINDINGS; PURPOSES; DEFINITIONS.**

4 ‘‘(a) FINDINGS.—The Congress finds that—
5 ‘‘(1) new environmental regulations present ad-
6 ditional challenges for coal-fired electrical generation
7 in the private marketplace; and
8 ‘‘(2) the Department of Energy, in cooperation
9 with industry, has already fully developed and com-
10 mercialized several new clean-coal technologies that
11 will allow the clean use of coal.
12 ‘‘(b) PURPOSES.—The purposes of this title are to—
13 ‘‘(1) promote national energy policy and energy
14 security, diversity, and economic competitiveness
15 benefits that result from the increased use of coal;
16 ‘‘(2) mitigate financial risks, reduce the cost,
17 and increase the marketplace acceptance of the new
18 clean coal technologies; and
19 ‘‘(3) advance the deployment of pollution con-
20 trol equipment to meet the current and future obli-
21 gations of coal-fired generation units regulated
22 under the Clean Air Act (42 U.S.C. 7402 and fol-
23 lowing).

1 **“SEC. 3102. AUTHORIZATION OF PROGRAM.**

2 ‘‘The Secretary shall carry out a program to facilitate
3 production and generation of coal-based power and the in-
4 stallation of pollution control equipment.

5 **“SEC. 3103. AUTHORIZATION OF APPROPRIATIONS.**

6 ‘‘(a) POLLUTION CONTROL PROJECTS.—There are
7 authorized to be appropriated to the Secretary
8 $300,000,000 for fiscal year 2006, $100,000,000 for fis-
9 cal year 2007, $40,000,000 for fiscal year 2008,
10 $30,000,000 for fiscal year 2009, and $30,000,000 for fis-
11 cal year 2010, to remain available until expended, for car-
12 rying out the program for pollution control projects, which
13 may include—

14 ‘‘(1) pollution control equipment and processes
15 for the control of mercury air emissions;

16 ‘‘(2) pollution control equipment and processes
17 for the control of nitrogen dioxide air emissions or
18 sulfur dioxide emissions;

19 ‘‘(3) pollution control equipment and processes
20 for the mitigation or collection of more than one pol-
21 lutant;

22 ‘‘(4) advanced combustion technology for the
23 control of at least two pollutants, including mercury,
24 particulate matter, nitrogen oxides, and sulfur diox-
25 ide, which may also be designed to improve the en-
26 ergy efficiency of the unit; and

1 "(5) advanced pollution control equipment and
2 processes designed to allow use of the waste byprod-
3 ucts or other byproducts of the equipment or an
4 electrical generation unit designed to allow the use
5 of byproducts.

6 Funds appropriated under this subsection which are not
7 awarded before fiscal year 2012 may be applied to projects
8 under subsection (b), in addition to amounts authorized
9 under subsection (b).

10 "(b) GENERATION PROJECTS.—There are authorized
11 to be appropriated to the Secretary $250,000,000 for fis-
12 cal year 2007, $350,000,000 for fiscal year 2008,
13 $400,000,000 for fiscal year 2009, $400,000,000 for fis-
14 cal year 2010, $400,000,000 for fiscal year 2011,
15 $400,000,000 for fiscal year 2012, and $300,000,000 for
16 fiscal year 2013, to remain available until expended, for
17 generation projects and air pollution control projects.
18 Such projects may include—

19 "(1) coal-based electrical generation equipment
20 and processes, including gasification combined cycle
21 or other coal-based generation equipment and proc-
22 esses;

23 "(2) associated environmental control equip-
24 ment, that will be cost-effective and that is designed
25 to meet anticipated regulatory requirements;

1 "(3) coal-based electrical generation equipment
2 and processes, including gasification fuel cells, gas-
3 ification coproduction, and hybrid gasification/com-
4 bustion projects; and
5 "(4) advanced coal-based electrical generation
6 equipment and processes, including oxidation com-
7 bustion techniques, ultra-supercritical boilers, and
8 chemical looping, which the Secretary determines
9 will be cost-effective and could substantially con-
10 tribute to meeting anticipated environmental or en-
11 ergy needs.
12 "(c) LIMITATION.—Funds placed at risk during any
13 fiscal year for Federal loans or loan guarantees pursuant
14 to this title may not exceed 30 percent of the total funds
15 obligated under this title.

16 **"SEC. 3104. AIR POLLUTION CONTROL PROJECT CRITERIA.**

17 "The Secretary shall pursuant to authorizations con-
18 tained in section 3103 provide funding for air pollution
19 control projects designed to facilitate compliance with
20 Federal and State environmental regulations, including
21 any regulation that may be established with respect to
22 mercury.

23 **"SEC. 3105. CRITERIA FOR GENERATION PROJECTS.**

24 "(a) CRITERIA.—The Secretary shall establish cri-
25 teria on which selection of individual projects described in

section 3103(b) should be based. The Secretary may modify the criteria as appropriate to reflect improvements in equipment, except that the criteria shall not be modified to be less stringent. These selection criteria shall include—

"(1) prioritization of projects whose installation is likely to result in significant air quality improvements in nonattainment air quality areas;

"(2) prioritization of projects that result in the repowering or replacement of older, less efficient units;

"(3) documented broad interest in the procurement of the equipment and utilization of the processes used in the projects by electrical generator owners or operators;

"(4) equipment and processes beginning in 2006 through 2011 that are projected to achieve an thermal efficiency of—

"(A) 40 percent for coal of more than 9,000 Btu per pound based on higher heating values;

"(B) 38 percent for coal of 7,000 to 9,000 Btu per pound based on higher heating values; and

"(C) 36 percent for coal of less than 7,000 Btu per pound based on higher heating values,

1 except that energy used for coproduction or cogen-
2 eration shall not be counted in calculating the ther-
3 mal efficiency under this paragraph; and
4 ''(5) equipment and processes beginning in
5 2012 and 2013 that are projected to achieve an
6 thermal efficiency of—
7 ''(A) 45 percent for coal of more than
8 9,000 Btu per pound based on higher heating
9 values;
10 ''(B) 44 percent for coal of 7,000 to 9,000
11 Btu per pound based on higher heating values;
12 and
13 ''(C) 40 percent for coal of less than 7,000
14 Btu per pound based on higher heating values,
15 except that energy used for coproduction or cogen-
16 eration shall not be counted in calculating the ther-
17 mal efficiency under this paragraph.
18 ''(b) SELECTION.—(1) In selecting the projects, up
19 to 25 percent of the projects selected may be either co-
20 production or cogeneration or other gasification projects,
21 but at least 25 percent of the projects shall be for the
22 sole purpose of electrical generation, and priority should
23 be given to equipment and projects less than or equal to
24 600 MW to foster and promote standard designs.

1 “(2) The Secretary shall give priority to projects that
2 have been developed and demonstrated that are not yet
3 cost competitive, and for coal energy generation projects
4 that advance efficiency, environmental performance, or
5 cost competitiveness significantly beyond the level of pollu-
6 tion control equipment that is in operation on a full scale.

7 **“SEC. 3106. FINANCIAL CRITERIA.**

8 “(a) IN GENERAL.—The Secretary shall only provide
9 financial assistance to projects that meet the requirements
10 of sections 3103 and 3104 and are likely to—

11 “(1) achieve overall cost reductions in the utili-
12 zation of coal to generate useful forms of energy;
13 and

14 “(2) improve the competitiveness of coal in
15 order to maintain a diversity of domestic fuel choices
16 in the United States to meet electricity generation
17 requirements.

18 “(b) CONDITIONS.—The Secretary shall not provide
19 a funding award under this title unless—

20 “(1) the award recipient is financially viable
21 without the receipt of additional Federal funding;
22 and

23 “(2) the recipient provides sufficient informa-
24 tion to the Secretary for the Secretary to ensure

1 that the award funds are spent efficiently and effec-
2 tively.

3 ''(c) EQUAL ACCESS.—The Secretary shall, to the ex-
4 tent practical, utilize cooperative agreement, loan guar-
5 antee, and direct Federal loan mechanisms designed to en-
6 sure that all electrical generation owners have equal access
7 to these technology deployment incentives. The Secretary
8 shall develop and direct a competitive solicitation process
9 for the selection of technologies and projects under this
10 title.

11 **''SEC. 3107. FEDERAL SHARE.**

12 ''The Federal share of the cost of a coal or related
13 technology project funded by the Secretary under this title
14 shall not exceed 50 percent. For purposes of this title,
15 Federal funding includes only appropriated funds.

16 **''SEC. 3108. APPLICABILITY.**

17 ''No technology, or level of emission reduction, shall
18 be treated as adequately demonstrated for purposes of sec-
19 tion 111 of the Clean Air Act (42 U.S.C. 7411), achievable
20 for purposes of section 169 of the Clean Air Act (42
21 U.S.C. 7479), or achievable in practice for purposes of
22 section 171 of the Clean Air Act (42 U.S.C. 7501) solely
23 by reason of the use of such technology, or the achieve-
24 ment of such emission reduction, by one or more facilities
25 receiving assistance under this title.''.

1 (b) TABLE OF CONTENTS AMENDMENT.—The table
2 of contents of the Energy Policy Act of 1992 is amended
3 by adding at the end the following:

"TITLE XXXI—CLEAN AIR COAL PROGRAM

"Sec. 3101. Findings; purposes; definitions.
"Sec. 3102. Authorization of program.
"Sec. 3103. Authorization of appropriations.
"Sec. 3104. Air pollution control project criteria.
"Sec. 3105. Criteria for generation projects.
"Sec. 3106. Financial criteria.
"Sec. 3107. Federal share.
"Sec. 3108. Applicability.".

4 TITLE V—INDIAN ENERGY

5 **SEC. 501. SHORT TITLE.**

6 This title may be cited as the "Indian Tribal Energy
7 Development and Self-Determination Act of 2005".

8 **SEC. 502. OFFICE OF INDIAN ENERGY POLICY AND PRO-**
9 **GRAMS.**

10 (a) IN GENERAL.—Title II of the Department of En-
11 ergy Organization Act (42 U.S.C. 7131 et seq.) is amend-
12 ed by adding at the end the following:

13 "OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS

14 "SEC. 217.

15 "(a) ESTABLISHMENT.—There is established within
16 the Department an Office of Indian Energy Policy and
17 Programs (referred to in this section as the 'Office'). The
18 Office shall be headed by a Director, who shall be ap-
19 pointed by the Secretary and compensated at a rate equal

1 to that of level IV of the Executive Schedule under section
2 5315 of title 5, United States Code.

3 "(b) DUTIES OF DIRECTOR.—The Director, in ac-
4 cordance with Federal policies promoting Indian self-de-
5 termination and the purposes of this Act, shall provide,
6 direct, foster, coordinate, and implement energy planning,
7 education, management, conservation, and delivery pro-
8 grams of the Department that—

9 "(1) promote Indian tribal energy development,
10 efficiency, and use;

11 "(2) reduce or stabilize energy costs;

12 "(3) enhance and strengthen Indian tribal en-
13 ergy and economic infrastructure relating to natural
14 resource development and electrification; and

15 "(4) bring electrical power and service to In-
16 dian land and the homes of tribal members located
17 on Indian lands or acquired, constructed, or im-
18 proved (in whole or in part) with Federal funds.".

19 (b) CONFORMING AMENDMENTS.—

20 (1) The table of contents of the Department of
21 Energy Organization Act (42 U.S.C. prec. 7101) is
22 amended—

23 (A) in the item relating to section 209, by
24 striking "Section" and inserting "Sec."; and

1 (B) by striking the items relating to sec-
2 tions 213 through 216 and inserting the fol-
3 lowing:

"Sec. 213. Establishment of policy for National Nuclear Security Administration.
"Sec. 214. Establishment of security, counterintelligence, and intelligence policies.
"Sec. 215. Office of Counterintelligence.
"Sec. 216. Office of Intelligence.
"Sec. 217. Office of Indian Energy Policy and Programs.".

4 (2) Section 5315 of title 5, United States Code,
5 is amended by inserting after the item related to the
6 Inspector General, Department of Energy the fol-
7 lowing new item:
8 "Director, Office of Indian Energy Policy and
9 Programs, Department of Energy.".

10 **SEC. 503. INDIAN ENERGY.**

11 (a) IN GENERAL.—Title XXVI of the Energy Policy
12 Act of 1992 (25 U.S.C. 3501 et seq.) is amended to read
13 as follows:

14 # "TITLE XXVI—INDIAN ENERGY
15 # RESOURCES

16 **"SEC. 2601. DEFINITIONS.**

17 "For purposes of this title:
18 "(1) The term 'Director' means the Director of
19 the Office of Indian Energy Policy and Programs,
20 Department of Energy.
21 "(2) The term 'Indian land' means—

1 “(A) any land located within the bound-
2 aries of an Indian reservation, pueblo, or
3 rancheria; and
4 “(B) any land not located within the
5 boundaries of an Indian reservation, pueblo, or
6 rancheria, the title to which is held—
7 “(i) in trust by the United States for
8 the benefit of an Indian tribe or an indi-
9 vidual Indian;
10 “(ii) by an Indian tribe or an indi-
11 vidual Indian, subject to restriction against
12 alienation under laws of the United States;
13 or
14 “(iii) by a dependent Indian commu-
15 nity.
16 “(3) The term ‘Indian reservation’ includes—
17 “(A) an Indian reservation in existence in
18 any State or States as of the date of enactment
19 of this paragraph;
20 “(B) a public domain Indian allotment;
21 and
22 “(C) a dependent Indian community lo-
23 cated within the borders of the United States,
24 regardless of whether the community is
25 located—

1 "(i) on original or acquired territory
2 of the community; or
3 "(ii) within or outside the boundaries
4 of any particular State.
5 "(4) The term 'Indian tribe' has the meaning
6 given the term in section 4 of the Indian Self-Deter-
7 mination and Education Assistance Act (25 U.S.C.
8 450b), except that the term 'Indian tribe', for the
9 purpose of paragraph (11) and sections 2603(b)(3)
10 and 2604, shall not include any Native Corporation.
11 "(5) The term 'integration of energy resources'
12 means any project or activity that promotes the loca-
13 tion and operation of a facility (including any pipe-
14 line, gathering system, transportation system or fa-
15 cility, or electric transmission or distribution facility)
16 on or near Indian land to process, refine, generate
17 electricity from, or otherwise develop energy re-
18 sources on, Indian land.
19 "(6) The term 'Native Corporation' has the
20 meaning given the term in section 3 of the Alaska
21 Native Claims Settlement Act (43 U.S.C. 1602).
22 "(7) The term 'organization' means a partner-
23 ship, joint venture, limited liability company, or
24 other unincorporated association or entity that is es-
25 tablished to develop Indian energy resources.

"(8) The term 'Program' means the Indian energy resource development program established under section 2602(a).

"(9) The term 'Secretary' means the Secretary of the Interior.

"(10) The term 'tribal energy resource development organization' means an organization of 2 or more entities, at least 1 of which is an Indian tribe, that has the written consent of the governing bodies of all Indian tribes participating in the organization to apply for a grant, loan, or other assistance authorized by section 2602.

"(11) The term 'tribal land' means any land or interests in land owned by any Indian tribe, title to which is held in trust by the United States or which is subject to a restriction against alienation under laws of the United States.

"SEC. 2602. INDIAN TRIBAL ENERGY RESOURCE DEVELOPMENT.

"(a) DEPARTMENT OF THE INTERIOR PROGRAM.—

"(1) To assist Indian tribes in the development of energy resources and further the goal of Indian self-determination, the Secretary shall establish and implement an Indian energy resource development program to assist consenting Indian tribes and tribal

1 energy resource development organizations in achiev-
2 ing the purposes of this title.
3 ''(2) In carrying out the Program, the Sec-
4 retary shall—
5 ''(A) provide development grants to Indian
6 tribes and tribal energy resource development
7 organizations for use in developing or obtaining
8 the managerial and technical capacity needed to
9 develop energy resources on Indian land, and to
10 properly account for resulting energy produc-
11 tion and revenues;
12 ''(B) provide grants to Indian tribes and
13 tribal energy resource development organiza-
14 tions for use in carrying out projects to pro-
15 mote the integration of energy resources, and to
16 process, use, or develop those energy resources,
17 on Indian land; and
18 ''(C) provide low-interest loans to Indian
19 tribes and tribal energy resource development
20 organizations for use in the promotion of en-
21 ergy resource development on Indian land and
22 integration of energy resources.
23 ''(3) There are authorized to be appropriated to
24 carry out this subsection such sums as are necessary
25 for each of fiscal years 2006 through 2016.

1 "(b) DEPARTMENT OF ENERGY INDIAN ENERGY
2 EDUCATION PLANNING AND MANAGEMENT ASSISTANCE
3 PROGRAM.—

4 "(1) The Director shall establish programs to
5 assist consenting Indian tribes in meeting energy
6 education, research and development, planning, and
7 management needs.

8 "(2) In carrying out this subsection, the Direc-
9 tor may provide grants, on a competitive basis, to an
10 Indian tribe or tribal energy resource development
11 organization for use in carrying out—

12 "(A) energy, energy efficiency, and energy
13 conservation programs;

14 "(B) studies and other activities sup-
15 porting tribal acquisitions of energy supplies,
16 services, and facilities;

17 "(C) planning, construction, development,
18 operation, maintenance, and improvement of
19 tribal electrical generation, transmission, and
20 distribution facilities located on Indian land;
21 and

22 "(D) development, construction, and inter-
23 connection of electric power transmission facili-
24 ties located on Indian land with other electric
25 transmission facilities.

1 "(3)(A) The Director may develop, in consulta-
2 tion with Indian tribes, a formula for providing
3 grants under this subsection.

4 "(B) In providing a grant under this sub-
5 section, the Director shall give priority to an applica-
6 tion received from an Indian tribe with inadequate
7 electric service (as determined by the Director).

8 "(4) The Secretary of Energy may issue such
9 regulations as necessary to carry out this subsection.

10 "(5) There are authorized to be appropriated to
11 carry out this subsection such sums as are necessary
12 for each of fiscal years 2006 through 2016.

13 "(c) DEPARTMENT OF ENERGY LOAN GUARANTEE
14 PROGRAM.—

15 "(1) Subject to paragraph (3), the Secretary of
16 Energy may provide loan guarantees (as defined in
17 section 502 of the Federal Credit Reform Act of
18 1990 (2 U.S.C. 661a)) for not more than 90 percent
19 of the unpaid principal and interest due on any loan
20 made to any Indian tribe for energy development.

21 "(2) A loan guarantee under this subsection
22 shall be made by—

23 "(A) a financial institution subject to ex-
24 amination by the Secretary of Energy; or

1 "(B) an Indian tribe, from funds of the In-
2 dian tribe.
3 "(3) The aggregate outstanding amount guar-
4 anteed by the Secretary of Energy at any time under
5 this subsection shall not exceed $2,000,000,000.
6 "(4) The Secretary of Energy may issue such
7 regulations as the Secretary of Energy determines
8 are necessary to carry out this subsection.
9 "(5) There are authorized to be appropriated
10 such sums as are necessary to carry out this sub-
11 section, to remain available until expended.
12 "(6) Not later than 1 year from the date of en-
13 actment of this section, the Secretary of Energy
14 shall report to Congress on the financing require-
15 ments of Indian tribes for energy development on In-
16 dian land.
17 "(d) FEDERAL AGENCIES-INDIAN ENERGY PREF-
18 ERENCE.—
19 "(1) In purchasing electricity or any other en-
20 ergy product or by-product, a Federal agency or de-
21 partment may give preference to an energy and re-
22 source production enterprise, partnership, consor-
23 tium, corporation, or other type of business organi-
24 zation the majority of the interest in which is owned
25 and controlled by 1 or more Indian tribes.

1 “(2) In carrying out this subsection, a Federal
2 agency or department shall not—
3 “(A) pay more than the prevailing market
4 price for an energy product or by-product; or
5 “(B) obtain less than prevailing market
6 terms and conditions.

7 **“SEC. 2603. INDIAN TRIBAL ENERGY RESOURCE REGULA-**
8 **TION.**

9 “(a) GRANTS.—The Secretary may provide to Indian
10 tribes, on an annual basis, grants for use in accordance
11 with subsection (b).
12 “(b) USE OF FUNDS.—Funds from a grant provided
13 under this section may be used—
14 “(1) by an Indian tribe for the development of
15 a tribal energy resource inventory or tribal energy
16 resource on Indian land;
17 “(2) by an Indian tribe for the development of
18 a feasibility study or other report necessary to the
19 development of energy resources on Indian land;
20 “(3) by an Indian tribe (other than an Indian
21 Tribe in Alaska except the Metlakatla Indian Com-
22 munity) for the development and enforcement of
23 tribal laws (including regulations) relating to tribal
24 energy resource development and the development of

1 technical infrastructure to protect the environment
2 under applicable law;
3 "(4) by a Native Corporation for the develop-
4 ment and implementation of corporate policies and
5 the development of technical infrastructure related
6 to energy development and environmental protection
7 under applicable law; and
8 "(5) by an Indian tribe for the training of em-
9 ployees that—
10 "(A) are engaged in the development of en-
11 ergy resources on Indian land; or
12 "(B) are responsible for protecting the en-
13 vironment.
14 "(c) OTHER ASSISTANCE.—In carrying out the obli-
15 gations of the United States under this title, the Secretary
16 shall ensure, to the maximum extent practicable and to
17 the extent of available resources, that upon the request
18 of an Indian tribe, the Indian tribe shall have available
19 scientific and technical information and expertise, for use
20 in the Indian tribe's regulation, development, and manage-
21 ment of energy resources on Indian land. The Secretary
22 may fulfill this responsibility either directly, through the
23 use of Federal officials, or indirectly, by providing finan-
24 cial assistance to the Indian tribe to secure independent
25 assistance.

1 **"SEC. 2604. LEASES, BUSINESS AGREEMENTS, AND RIGHTS-**
2 **OF-WAY INVOLVING ENERGY DEVELOPMENT**
3 **OR TRANSMISSION.**

4 "(a) LEASES AND BUSINESS AGREEMENTS.—Subject
5 to the provisions of this section—
6 "(1) an Indian tribe may, at its discretion,
7 enter into a lease or business agreement for the pur-
8 pose of energy resource development on tribal land,
9 including a lease or business agreement for—
10 "(A) exploration for, extraction of, proc-
11 essing of, or other development of the Indian
12 tribe's energy mineral resources located on trib-
13 al land; and
14 "(B) construction or operation of an elec-
15 tric generation, transmission, or distribution fa-
16 cility located on tribal land or a facility to proc-
17 ess or refine energy resources developed on trib-
18 al land; and
19 "(2) such lease or business agreement described
20 in paragraph (1) shall not require the approval of
21 the Secretary under section 2103 of the Revised
22 Statutes (25 U.S.C. 81) or any other provision of
23 law, if—
24 "(A) the lease or business agreement is ex-
25 ecuted pursuant to a tribal energy resource

1 agreement approved by the Secretary under
2 subsection (e);
3 ''(B) the term of the lease or business
4 agreement does not exceed—
5 ''(i) 30 years; or
6 ''(ii) in the case of a lease for the pro-
7 duction of oil resources, gas resources, or
8 both, 10 years and as long thereafter as oil
9 or gas is produced in paying quantities;
10 and
11 ''(C) the Indian tribe has entered into a
12 tribal energy resource agreement with the Sec-
13 retary, as described in subsection (e), relating
14 to the development of energy resources on tribal
15 land (including the periodic review and evalua-
16 tion of the activities of the Indian tribe under
17 the agreement, to be conducted pursuant to the
18 provisions required by subsection (e)(2)(D)(i)).
19 ''(b) RIGHTS-OF-WAY FOR PIPELINES OR ELECTRIC
20 TRANSMISSION OR DISTRIBUTION LINES.—An Indian
21 tribe may grant a right-of-way over tribal land for a pipe-
22 line or an electric transmission or distribution line without
23 approval by the Secretary if—

1 "(1) the right-of-way is executed in accordance
2 with a tribal energy resource agreement approved by
3 the Secretary under subsection (e);

4 "(2) the term of the right-of-way does not ex-
5 ceed 30 years;

6 "(3) the pipeline or electric transmission or dis-
7 tribution line serves—

8 "(A) an electric generation, transmission,
9 or distribution facility located on tribal land; or

10 "(B) a facility located on tribal land that
11 processes or refines energy resources developed
12 on tribal land; and

13 "(4) the Indian tribe has entered into a tribal
14 energy resource agreement with the Secretary, as de-
15 scribed in subsection (e), relating to the development
16 of energy resources on tribal land (including the
17 periodic review and evaluation of the Indian tribe's
18 activities under such agreement described in sub-
19 paragraphs (D) and (E) of subsection (e)(2)).

20 "(c) RENEWALS.—A lease or business agreement en-
21 tered into or a right-of-way granted by an Indian tribe
22 under this section may be renewed at the discretion of the
23 Indian tribe in accordance with this section.

24 "(d) VALIDITY.—No lease, business agreement, or
25 right-of-way relating to the development of tribal energy

1 resources pursuant to the provisions of this section shall
2 be valid unless the lease, business agreement, or right-of-
3 way is authorized by the provisions of a tribal energy re-
4 source agreement approved by the Secretary under sub-
5 section (e)(2).

6 ''(e) TRIBAL ENERGY RESOURCE AGREEMENTS.—

7 ''(1) On issuance of regulations under para-
8 graph (8), an Indian tribe may submit to the Sec-
9 retary for approval a tribal energy resource agree-
10 ment governing leases, business agreements, and
11 rights-of-way under this section.

12 ''(2)(A) Not later than 180 days after the date
13 on which the Secretary receives a tribal energy re-
14 source agreement submitted by an Indian tribe
15 under paragraph (1), or not later than 60 days after
16 the Secretary receives a revised tribal energy re-
17 source agreement submitted by an Indian tribe
18 under paragraph (4)(C), (or such later date as may
19 be agreed to by the Secretary and the Indian tribe),
20 the Secretary shall approve or disapprove the tribal
21 energy resource agreement.

22 ''(B) The Secretary shall approve a tribal en-
23 ergy resource agreement submitted under paragraph
24 (1) if—

1 "(i) the Secretary determines that the In-
2 dian tribe has demonstrated that the Indian
3 tribe has sufficient capacity to regulate the de-
4 velopment of energy resources of the Indian
5 tribe;

6 "(ii) the tribal energy resource agreement
7 includes provisions required under subpara-
8 graph (D); and

9 "(iii) the tribal energy resource agreement
10 includes provisions that, with respect to a lease,
11 business agreement, or right-of-way under this
12 section—

13 "(I) ensure the acquisition of nec-
14 essary information from the applicant for
15 the lease, business agreement, or right-of-
16 way;

17 "(II) address the term of the lease or
18 business agreement or the term of convey-
19 ance of the right-of-way;

20 "(III) address amendments and re-
21 newals;

22 "(IV) address the economic return to
23 the Indian tribe under leases, business
24 agreements, and rights-of-way;

1 "(V) address technical or other relevant requirements;
3 "(VI) establish requirements for environmental review in accordance with subparagraph (C);
6 "(VII) ensure compliance with all applicable environmental laws;
8 "(VIII) identify final approval authority;
10 "(IX) provide for public notification of final approvals;
12 "(X) establish a process for consultation with any affected States concerning off-reservation impacts, if any, identified pursuant to the provisions required under subparagraph (C)(i);
17 "(XI) describe the remedies for breach of the lease, business agreement, or right-of-way;
20 "(XII) require each lease, business agreement, and right-of-way to include a statement that, in the event that any of its provisions violates an express term or requirement set forth in the tribal energy re-

1 source agreement pursuant to which it was
2 executed—
3 “(aa) such provision shall be null
4 and void; and
5 “(bb) if the Secretary determines
6 such provision to be material, the Sec-
7 retary shall have the authority to sus-
8 pend or rescind the lease, business
9 agreement, or right-of-way or take
10 other appropriate action that the Sec-
11 retary determines to be in the best in-
12 terest of the Indian tribe;
13 “(XIII) require each lease, business
14 agreement, and right-of-way to provide
15 that it will become effective on the date on
16 which a copy of the executed lease, busi-
17 ness agreement, or right-of-way is deliv-
18 ered to the Secretary in accordance with
19 regulations adopted pursuant to this sub-
20 section; and
21 “(XIV) include citations to tribal
22 laws, regulations, or procedures, if any,
23 that set out tribal remedies that must be
24 exhausted before a petition may be sub-

1 mitted to the Secretary pursuant to para-
2 graph (7)(B).
3 ''(C) Tribal energy resource agreements sub-
4 mitted under paragraph (1) shall establish, and in-
5 clude provisions to ensure compliance with, an envi-
6 ronmental review process that, with respect to a
7 lease, business agreement, or right-of-way under this
8 section, provides for—
9 ''(i) the identification and evaluation of all
10 significant environmental impacts (as compared
11 with a no-action alternative), including effects
12 on cultural resources;
13 ''(ii) the identification of proposed mitiga-
14 tion;
15 ''(iii) a process for ensuring that the public
16 is informed of and has an opportunity to com-
17 ment on the environmental impacts of the pro-
18 posed action before tribal approval of the lease,
19 business agreement, or right-of-way; and
20 ''(iv) sufficient administrative support and
21 technical capability to carry out the environ-
22 mental review process.
23 ''(D) A tribal energy resource agreement nego-
24 tiated between the Secretary and an Indian tribe in
25 accordance with this subsection shall include—

1 "(i) provisions requiring the Secretary to
2 conduct a periodic review and evaluation to
3 monitor the performance of the Indian tribe's
4 activities associated with the development of en-
5 ergy resources under the tribal energy resource
6 agreement; and

7 "(ii) when such review and evaluation re-
8 sult in a finding by the Secretary of imminent
9 jeopardy to a physical trust asset arising from
10 a violation of the tribal energy resource agree-
11 ment or applicable Federal laws, provisions au-
12 thorizing the Secretary to take appropriate ac-
13 tions determined by the Secretary to be nec-
14 essary to protect such asset, which actions may
15 include reassumption of responsibility for activi-
16 ties associated with the development of energy
17 resources on tribal land until the violation and
18 conditions that gave rise to such jeopardy have
19 been corrected.

20 "(E) The periodic review and evaluation de-
21 scribed in subparagraph (D) shall be conducted on
22 an annual basis, except that, after the third such an-
23 nual review and evaluation, the Secretary and the
24 Indian tribe may mutually agree to amend the tribal
25 energy resource agreement to authorize the review

1 and evaluation required by subparagraph (D) to be
2 conducted once every 2 years.

3 ''(3) The Secretary shall provide notice and op-
4 portunity for public comment on tribal energy re-
5 source agreements submitted for approval under
6 paragraph (1). The Secretary's review of a tribal en-
7 ergy resource agreement under the National Envi-
8 ronmental Policy Act of 1969 (42 U.S.C. 4321 et
9 seq.) shall be limited to the direct effects of that ap-
10 proval.

11 ''(4) If the Secretary disapproves a tribal en-
12 ergy resource agreement submitted by an Indian
13 tribe under paragraph (1), the Secretary shall, not
14 later than 10 days after the date of disapproval—

15 ''(A) notify the Indian tribe in writing of
16 the basis for the disapproval;

17 ''(B) identify what changes or other ac-
18 tions are required to address the concerns of
19 the Secretary; and

20 ''(C) provide the Indian tribe with an op-
21 portunity to revise and resubmit the tribal en-
22 ergy resource agreement.

23 ''(5) If an Indian tribe executes a lease or busi-
24 ness agreement or grants a right-of-way in accord-
25 ance with a tribal energy resource agreement ap-

proved under this subsection, the Indian tribe shall, in accordance with the process and requirements set forth in the Secretary's regulations adopted pursuant to paragraph (8), provide to the Secretary—

"(A) a copy of the lease, business agreement, or right-of-way document (including all amendments to and renewals of the document); and

"(B) in the case of a tribal energy resource agreement or a lease, business agreement, or right-of-way that permits payments to be made directly to the Indian tribe, information and documentation of those payments sufficient to enable the Secretary to discharge the trust responsibility of the United States to enforce the terms of, and protect the Indian tribe's rights under, the lease, business agreement, or right-of-way.

"(6)(A) For purposes of the activities to be undertaken by the Secretary pursuant to this section, the Secretary shall—

"(i) carry out such activities in a manner consistent with the trust responsibility of the United States relating to mineral and other trust resources; and

1 “(ii) act in good faith and in the best in-
2 terests of the Indian tribes.

3 “(B) Subject to the provisions of subsections
4 (a)(2), (b), and (c) waiving the requirement of Sec-
5 retarial approval of leases, business agreements, and
6 rights-of-way executed pursuant to tribal energy re-
7 source agreements approved under this section, and
8 the provisions of subparagraph (D), nothing in this
9 section shall absolve the United States from any re-
10 sponsibility to Indians or Indian tribes, including,
11 but not limited to, those which derive from the trust
12 relationship or from any treaties, statutes, and other
13 laws of the United States, Executive Orders, or
14 agreements between the United States and any In-
15 dian tribe.

16 “(C) The Secretary shall continue to have a
17 trust obligation to ensure that the rights and inter-
18 ests of an Indian tribe are protected in the event
19 that—

20 “(i) any other party to any such lease,
21 business agreement, or right-of-way violates any
22 applicable provision of Federal law or the terms
23 of any lease, business agreement, or right-of-
24 way under this section; or

1 “(ii) any provision in such lease, business
2 agreement, or right-of-way violates any express
3 provision or requirement set forth in the tribal
4 energy resource agreement pursuant to which
5 the lease, business agreement, or right-of-way
6 was executed.

7 “(D) Notwithstanding subparagraph (B), the
8 United States shall not be liable to any party (in-
9 cluding any Indian tribe) for any of the negotiated
10 terms of, or any losses resulting from the negotiated
11 terms of, a lease, business agreement, or right-of-
12 way executed pursuant to and in accordance with a
13 tribal energy resource agreement approved by the
14 Secretary under paragraph (2). For the purpose of
15 this subparagraph, the term ‘negotiated terms’
16 means any terms or provisions that are negotiated
17 by an Indian tribe and any other party or parties to
18 a lease, business agreement, or right-of-way entered
19 into pursuant to an approved tribal energy resource
20 agreement.

21 “(7)(A) In this paragraph, the term ‘interested
22 party’ means any person or entity the interests of
23 which have sustained or will sustain a significant ad-
24 verse environmental impact as a result of the failure
25 of an Indian tribe to comply with a tribal energy re-

source agreement of the Indian tribe approved by the Secretary under paragraph (2).

"(B) After exhaustion of tribal remedies, and in accordance with the process and requirements set forth in regulations adopted by the Secretary pursuant to paragraph (8), an interested party may submit to the Secretary a petition to review compliance of an Indian tribe with a tribal energy resource agreement of the Indian tribe approved by the Secretary under paragraph (2).

"(C)(i) Not later than 120 days after the date on which the Secretary receives a petition under subparagraph (B), the Secretary shall determine whether the Indian tribe is not in compliance with the tribal energy resource agreement, as alleged in the petition.

"(ii) The Secretary may adopt procedures under paragraph (8) authorizing an extension of time, not to exceed 120 days, for making the determination under clause (i) in any case in which the Secretary determines that additional time is necessary to evaluate the allegations of the petition.

"(iii) Subject to subparagraph (D), if the Secretary determines that the Indian tribe is not in compliance with the tribal energy resource agree-

1 ment as alleged in the petition, the Secretary shall
2 take such action as is necessary to ensure compli-
3 ance with the provisions of the tribal energy resource
4 agreement, which action may include—
5 ‘‘(I) temporarily suspending some or all ac-
6 tivities under a lease, business agreement, or
7 right-of-way under this section until the Indian
8 tribe or such activities are in compliance with
9 the provisions of the approved tribal energy re-
10 source agreement; or
11 ‘‘(II) rescinding approval of all or part of
12 the tribal energy resource agreement, and if all
13 of such agreement is rescinded, reassuming the
14 responsibility for approval of any future leases,
15 business agreements, or rights-of-way described
16 in subsections (a) and (b).
17 ‘‘(D) Prior to seeking to ensure compliance with
18 the provisions of the tribal energy resource agree-
19 ment of an Indian tribe under subparagraph (C)(iii),
20 the Secretary shall—
21 ‘‘(i) make a written determination that de-
22 scribes the manner in which the tribal energy
23 resource agreement has been violated;

1 "(ii) provide the Indian tribe with a writ-
2 ten notice of the violations together with the
3 written determination; and
4 "(iii) before taking any action described in
5 subparagraph (C)(iii) or seeking any other rem-
6 edy, provide the Indian tribe with a hearing and
7 a reasonable opportunity to attain compliance
8 with the tribal energy resource agreement.
9 "(E) An Indian tribe described in subparagraph
10 (D) shall retain all rights to appeal as provided in
11 regulations issued by the Secretary.
12 "(8) Not later than 1 year after the date of en-
13 actment of the Indian Tribal Energy Development
14 and Self-Determination Act of 2005, the Secretary
15 shall issue regulations that implement the provisions
16 of this subsection, including—
17 "(A) criteria to be used in determining the
18 capacity of an Indian tribe described in para-
19 graph (2)(B)(i), including the experience of the
20 Indian tribe in managing natural resources and
21 financial and administrative resources available
22 for use by the Indian tribe in implementing the
23 approved tribal energy resource agreement of
24 the Indian tribe;

1 "(B) a process and requirements in accordance with which an Indian tribe may—

3 "(i) voluntarily rescind a tribal energy resource agreement approved by the Secretary under this subsection; and

6 "(ii) return to the Secretary the responsibility to approve any future leases, business agreements, and rights-of-way described in this subsection;

10 "(C) provisions setting forth the scope of, and procedures for, the periodic review and evaluation described in subparagraphs (D) and (E) of paragraph (2), including provisions for review of transactions, reports, site inspections, and any other review activities the Secretary determines to be appropriate; and

17 "(D) provisions defining final agency actions after exhaustion of administrative appeals from determinations of the Secretary under paragraph (7).

21 "(f) NO EFFECT ON OTHER LAW.—Nothing in this section affects the application of—

23 "(1) any Federal environment law;

24 "(2) the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); or

1 “(3) except as otherwise provided in this title,
2 the Indian Mineral Development Act of 1982 (25
3 U.S.C. 2101 et seq.) and the National Environ-
4 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
5 “(g) AUTHORIZATION OF APPROPRIATIONS.—There
6 are authorized to be appropriated to the Secretary such
7 sums as are necessary for each of fiscal years 2006
8 through 2016 to implement the provisions of this section
9 and to make grants or provide other appropriate assist-
10 ance to Indian tribes to assist the Indian tribes in devel-
11 oping and implementing tribal energy resource agreements
12 in accordance with the provisions of this section.

13 **“SEC. 2605. INDIAN MINERAL DEVELOPMENT REVIEW.**

14 “(a) IN GENERAL.—The Secretary shall conduct a
15 review of all activities being conducted under the Indian
16 Mineral Development Act of 1982 (25 U.S.C. 2101 et
17 seq.) as of that date.
18 “(b) REPORT.—Not later than 1 year after the date
19 of enactment of the Indian Tribal Energy Development
20 and Self-Determination Act of 2005, the Secretary shall
21 submit to Congress a report that includes—
22 “(1) the results of the review;
23 “(2) recommendations to ensure that Indian
24 tribes have the opportunity to develop Indian energy
25 resources; and

1 ''(3) an analysis of the barriers to the develop-
2 ment of energy resources on Indian land (including
3 legal, fiscal, market, and other barriers), along with
4 recommendations for the removal of those barriers.

5 **''SEC. 2606. FEDERAL POWER MARKETING ADMINISTRA-**
6 **TIONS.**

7 ''(a) DEFINITIONS.—In this section:
8 ''(1) The term 'Administrator' means the Ad-
9 ministrator of the Bonneville Power Administration
10 and the Administrator of the Western Area Power
11 Administration.
12 ''(2) The term 'power marketing administra-
13 tion' means—
14 ''(A) the Bonneville Power Administration;
15 ''(B) the Western Area Power Administra-
16 tion; and
17 ''(C) any other power administration the
18 power allocation of which is used by or for the
19 benefit of an Indian tribe located in the service
20 area of the administration.
21 ''(b) ENCOURAGEMENT OF INDIAN TRIBAL ENERGY
22 DEVELOPMENT.—Each Administrator shall encourage In-
23 dian tribal energy development by taking such actions as
24 are appropriate, including administration of programs of
25 the Bonneville Power Administration and the Western

1 Area Power Administration, in accordance with this sec-
2 tion.

3 "(c) ACTION BY THE ADMINISTRATOR.—In carrying
4 out this section, and in accordance with existing law—

5 "(1) each Administrator shall consider the
6 unique relationship that exists between the United
7 States and Indian tribes;

8 "(2) power allocations from the Western Area
9 Power Administration to Indian tribes may be used
10 to meet firming and reserve needs of Indian-owned
11 energy projects on Indian land;

12 "(3) the Administrator of the Western Area
13 Power Administration may purchase non-federally
14 generated power from Indian tribes to meet the
15 firming and reserve requirements of the Western
16 Area Power Administration; and

17 "(4) each Administrator shall not pay more
18 than the prevailing market price for an energy prod-
19 uct nor obtain less than prevailing market terms and
20 conditions.

21 "(d) ASSISTANCE FOR TRANSMISSION SYSTEM
22 USE.—(1) An Administrator may provide technical assist-
23 ance to Indian tribes seeking to use the high-voltage trans-
24 mission system for delivery of electric power.

1 "(2) The costs of technical assistance provided under
2 paragraph (1) shall be funded by the Secretary of Energy
3 using nonreimbursable funds appropriated for that pur-
4 pose, or by the applicable Indian tribes.

5 "(e) POWER ALLOCATION STUDY.—Not later than 2
6 years after the date of enactment of the Indian Tribal En-
7 ergy Development and Self-Determination Act of 2005,
8 the Secretary of Energy shall submit to Congress a report
9 that—

10 "(1) describes the use by Indian tribes of Fed-
11 eral power allocations of the Western Area Power
12 Administration (or power sold by the Southwestern
13 Power Administration) and the Bonneville Power
14 Administration to or for the benefit of Indian tribes
15 in service areas of those administrations; and

16 "(2) identifies—

17 "(A) the quantity of power allocated to, or
18 used for the benefit of, Indian tribes by the
19 Western Area Power Administration;

20 "(B) the quantity of power sold to Indian
21 tribes by other power marketing administra-
22 tions; and

23 "(C) barriers that impede tribal access to
24 and use of Federal power, including an assess-
25 ment of opportunities to remove those barriers

1 and improve the ability of power marketing ad-
2 ministrations to deliver Federal power.

3 "(f) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated to carry out this section
5 $750,000, which shall remain available until expended and
6 shall not be reimbursable.".

7 (b) CONFORMING AMENDMENT.—The table of con-
8 tents for the Energy Policy Act of 1992 is amended by
9 striking the items relating to title XXVI (other than the
10 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.".

11 **SEC. 504. CONSULTATION WITH INDIAN TRIBES.**

12 In carrying out this title and the amendments made
13 by this title, the Secretary of Energy and the Secretary
14 shall, as appropriate and to the maximum extent prac-
15 ticable, involve and consult with Indian tribes.

16 **SEC. 505. FOUR CORNERS TRANSMISSION LINE PROJECT.**

17 The Dine Power Authority, an enterprise of the Nav-
18 ajo Nation, shall be eligible to receive grants and other
19 assistance as authorized by section 217 of the Department
20 of Energy Organization Act, as added by section 502 of
21 this title, and section 2602 of the Energy Policy Act of
22 1992, as amended by this title, for activities associated

with the development of a transmission line from the Four Corners Area to southern Nevada, including related power generation opportunities.

TITLE VI—NUCLEAR MATTERS

Subtitle A—Price-Anderson Act Amendments

SEC. 601. SHORT TITLE.

This subtitle may be cited as the ''Price-Anderson Amendments Act of 2005''.

SEC. 602. EXTENSION OF INDEMNIFICATION AUTHORITY.

(a) INDEMNIFICATION OF NUCLEAR REGULATORY COMMISSION LICENSEES.—Section 170 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(c)) is amended—

(1) in the subsection heading, by striking ''LICENSES'' and inserting ''LICENSEES''; and

(2) by striking ''December 31, 2003'' each place it appears and inserting ''December 31, 2025''.

(b) INDEMNIFICATION OF DEPARTMENT OF ENERGY CONTRACTORS.—Section 170 d.(1)(A) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)(1)(A)) is amended by striking ''December 31, 2006'' and inserting ''December 31, 2025''.

(c) INDEMNIFICATION OF NONPROFIT EDUCATIONAL INSTITUTIONS.—Section 170 k. of the Atomic Energy Act

1 of 1954 (42 U.S.C. 2210(k)) is amended by striking ''Au-
2 gust 1, 2002'' each place it appears and inserting ''Decem-
3 ber 31, 2025''.

4 **SEC. 603. MAXIMUM ASSESSMENT.**

5 Section 170 of the Atomic Energy Act of 1954 (42
6 U.S.C. 2210) is amended—
7 (1) in the second proviso of the third sentence
8 of subsection b.(1)—
9 (A) by striking ''$63,000,000'' and insert-
10 ing ''$95,800,000''; and
11 (B) by striking ''$10,000,000 in any 1
12 year'' and inserting ''$15,000,000 in any 1 year
13 (subject to adjustment for inflation under sub-
14 section t.)''; and
15 (2) in subsection t.(1)—
16 (A) by inserting ''total and annual'' after
17 ''amount of the maximum'';
18 (B) by striking ''the date of the enactment
19 of the Price-Anderson Amendments Act of
20 1988'' and inserting ''August 20, 2003''; and
21 (C) in subparagraph (A), by striking ''such
22 date of enactment'' and inserting ''August 20,
23 2003''.

1 **SEC. 604. DEPARTMENT OF ENERGY LIABILITY LIMIT.**

2 (a) INDEMNIFICATION OF DEPARTMENT OF ENERGY
3 CONTRACTORS.—Section 170 d. of the Atomic Energy Act
4 of 1954 (42 U.S.C. 2210(d)) is amended by striking para-
5 graph (2) and inserting the following:

6 ''(2) In an agreement of indemnification entered into
7 under paragraph (1), the Secretary—

8 ''(A) may require the contractor to provide and
9 maintain financial protection of such a type and in
10 such amounts as the Secretary shall determine to be
11 appropriate to cover public liability arising out of or
12 in connection with the contractual activity; and

13 ''(B) shall indemnify the persons indemnified
14 against such liability above the amount of the finan-
15 cial protection required, in the amount of
16 $10,000,000,000 (subject to adjustment for inflation
17 under subsection t.), in the aggregate, for all per-
18 sons indemnified in connection with the contract and
19 for each nuclear incident, including such legal costs
20 of the contractor as are approved by the Secretary.''.

21 (b) CONTRACT AMENDMENTS.—Section 170 d. of the
22 Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is further
23 amended by striking paragraph (3) and inserting the
24 following—

25 ''(3) All agreements of indemnification under which
26 the Department of Energy (or its predecessor agencies)

1 may be required to indemnify any person under this sec-
2 tion shall be deemed to be amended, on the date of enact-
3 ment of the Price-Anderson Amendments Act of 2005, to
4 reflect the amount of indemnity for public liability and any
5 applicable financial protection required of the contractor
6 under this subsection.''.

7 (c) LIABILITY LIMIT.—Section 170 e.(1)(B) of the
8 Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(1)(B)) is
9 amended—

10 (1) by striking ''the maximum amount of finan-
11 cial protection required under subsection b. or''; and

12 (2) by striking ''paragraph (3) of subsection d.,
13 whichever amount is more'' and inserting ''para-
14 graph (2) of subsection d.''.

15 **SEC. 605. INCIDENTS OUTSIDE THE UNITED STATES.**

16 (a) AMOUNT OF INDEMNIFICATION.—Section 170
17 d.(5) of the Atomic Energy Act of 1954 (42 U.S.C.
18 2210(d)(5)) is amended by striking ''$100,000,000'' and
19 inserting ''$500,000,000''.

20 (b) LIABILITY LIMIT.—Section 170 e.(4) of the
21 Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(4)) is
22 amended by striking ''$100,000,000'' and inserting
23 ''$500,000,000''.

1 **SEC. 606. REPORTS.**

2 Section 170 p. of the Atomic Energy Act of 1954 (42
3 U.S.C. 2210(p)) is amended by striking ''August 1, 1998''
4 and inserting ''December 31, 2021''.

5 **SEC. 607. INFLATION ADJUSTMENT.**

6 Section 170 t. of the Atomic Energy Act of 1954 (42
7 U.S.C. 2210(t)) is amended—

8 (1) by redesignating paragraph (2) as para-
9 graph (3); and

10 (2) by inserting after paragraph (1) the fol-
11 lowing:

12 ''(2) The Secretary shall adjust the amount of indem-
13 nification provided under an agreement of indemnification
14 under subsection d. not less than once during each 5-year
15 period following July 1, 2003, in accordance with the ag-
16 gregate percentage change in the Consumer Price Index
17 since—

18 ''(A) that date, in the case of the first adjust-
19 ment under this paragraph; or

20 ''(B) the previous adjustment under this para-
21 graph.''.

22 **SEC. 608. TREATMENT OF MODULAR REACTORS.**

23 Section 170 b. of the Atomic Energy Act of 1954 (42
24 U.S.C. 2210(b)) is amended by adding at the end the fol-
25 lowing:

1 "(5)(A) For purposes of this section only, the Com-
2 mission shall consider a combination of facilities described
3 in subparagraph (B) to be a single facility having a rated
4 capacity of 100,000 electrical kilowatts or more.

5 "(B) A combination of facilities referred to in sub-
6 paragraph (A) is 2 or more facilities located at a single
7 site, each of which has a rated capacity of 100,000 elec-
8 trical kilowatts or more but not more than 300,000 elec-
9 trical kilowatts, with a combined rated capacity of not
10 more than 1,300,000 electrical kilowatts.".

11 **SEC. 609. APPLICABILITY.**

12 The amendments made by sections 603, 604, and 605
13 do not apply to a nuclear incident that occurs before the
14 date of the enactment of this Act.

15 **SEC. 610. PROHIBITION ON ASSUMPTION BY UNITED**
16 **STATES GOVERNMENT OF LIABILITY FOR**
17 **CERTAIN FOREIGN INCIDENTS.**

18 Section 170 of the Atomic Energy Act of 1954 (42
19 U.S.C. 2210) is amended by adding at the end the fol-
20 lowing new subsection:

21 "u. PROHIBITION ON ASSUMPTION OF LIABILITY FOR
22 CERTAIN FOREIGN INCIDENTS.—Notwithstanding this
23 section or any other provision of law, no officer of the
24 United States or of any department, agency, or instrumen-
25 tality of the United States Government may enter into any

1 contract or other arrangement, or into any amendment or
2 modification of a contract or other arrangement, the pur-
3 pose or effect of which would be to directly or indirectly
4 impose liability on the United States Government, or any
5 department, agency, or instrumentality of the United
6 States Government, or to otherwise directly or indirectly
7 require an indemnity by the United States Government,
8 for nuclear incidents occurring in connection with the de-
9 sign, construction, or operation of a production facility or
10 utilization facility in any country whose government has
11 been identified by the Secretary of State as engaged in
12 state sponsorship of terrorist activities (specifically includ-
13 ing any country the government of which, as of September
14 11, 2001, had been determined by the Secretary of State
15 under section 620A(a) of the Foreign Assistance Act of
16 1961 (22 U.S.C. 2371(a)), section 6(j)(1) of the Export
17 Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)),
18 or section 40(d) of the Arms Export Control Act (22
19 U.S.C. 2780(d)) to have repeatedly provided support for
20 acts of international terrorism). This subsection shall not
21 apply to nuclear incidents occurring as a result of mis-
22 sions, carried out under the direction of the Secretary of
23 Energy, the Secretary of Defense, or the Secretary of
24 State, that are necessary to safely secure, store, transport,

or remove nuclear materials for nuclear safety or nonproliferation purposes.''.

SEC. 611. CIVIL PENALTIES.

(a) REPEAL OF AUTOMATIC REMISSION.—Section 234A b.(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2282a(b)(2)) is amended by striking the last sentence.

(b) LIMITATION FOR NOT-FOR-PROFIT INSTITUTIONS.—Subsection d. of section 234A of the Atomic Energy Act of 1954 (42 U.S.C. 2282a(d)) is amended to read as follows:

''d.(1) Notwithstanding subsection a., in the case of any not-for-profit contractor, subcontractor, or supplier, the total amount of civil penalties paid under subsection a. may not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under the contract under which the violation occurs.

''(2) For purposes of this section, the term 'not-for-profit' means that no part of the net earnings of the contractor, subcontractor, or supplier inures to the benefit of any natural person or for-profit artificial person.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall not apply to any violation of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) occurring under a contract entered into before the date of enactment of this section.

1 **SEC. 612. FINANCIAL ACCOUNTABILITY.**

2 (a) AMENDMENT.—Section 170 of the Atomic En-
3 ergy Act of 1954 (42 U.S.C. 2210) is amended by adding
4 at the end the following new subsection:

5 "v. FINANCIAL ACCOUNTABILITY.—(1) Notwith-
6 standing subsection d., the Attorney General may bring
7 an action in the appropriate United States district court
8 to recover from a contractor of the Secretary (or subcon-
9 tractor or supplier of such contractor) amounts paid by
10 the Federal Government under an agreement of indem-
11 nification under subsection d. for public liability resulting
12 from conduct which constitutes intentional misconduct of
13 any corporate officer, manager, or superintendent of such
14 contractor (or subcontractor or supplier of such con-
15 tractor).

16 "(2) The Attorney General may recover under
17 paragraph (1) an amount not to exceed the amount
18 of the profit derived by the defendant from the con-
19 tract.

20 "(3) No amount recovered from any contractor
21 (or subcontractor or supplier of such contractor)
22 under paragraph (1) may be reimbursed directly or
23 indirectly by the Department of Energy.

24 "(4) Paragraph (1) shall not apply to any non-
25 profit entity conducting activities under contract for
26 the Secretary.

"(5) No waiver of a defense required under this section shall prevent a defendant from asserting such defense in an action brought under this subsection.

"(6) The Secretary shall, by rule, define the terms 'profit' and 'nonprofit entity' for purposes of this subsection. Such rulemaking shall be completed not later than 180 days after the date of the enactment of this subsection.".

(b) EFFECTIVE DATE.—The amendment made by this section shall not apply to any agreement of indemnification entered into under section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) before the date of the enactment of this Act.

Subtitle B—General Nuclear Matters

SEC. 621. LICENSES.

Section 103 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2133(c)) is amended by inserting "from the authorization to commence operations" after "forty years".

SEC. 622. NRC TRAINING PROGRAM.

(a) IN GENERAL.—In order to maintain the human resource investment and infrastructure of the United States in the nuclear sciences, health physics, and engineering fields, in accordance with the statutory authorities

1 of the Nuclear Regulatory Commission relating to the ci-
2 vilian nuclear energy program, the Nuclear Regulatory
3 Commission shall carry out a training and fellowship pro-
4 gram to address shortages of individuals with critical nu-
5 clear safety regulatory skills.

6 (b) AUTHORIZATION OF APPROPRIATIONS.—

7 (1) IN GENERAL.—There are authorized to be
8 appropriated to the Nuclear Regulatory Commission
9 to carry out this section $1,000,000 for each of fis-
10 cal years 2005 through 2009.

11 (2) AVAILABILITY.—Funds made available
12 under paragraph (1) shall remain available until ex-
13 pended.

14 **SEC. 623. COST RECOVERY FROM GOVERNMENT AGENCIES.**

15 Section 161 w. of the Atomic Energy Act of 1954
16 (42 U.S.C. 2201(w)) is amended—

17 (1) by striking "for or is issued" and all that
18 follows through "1702" and inserting "to the Com-
19 mission for, or is issued by the Commission, a li-
20 cense or certificate";

21 (2) by striking "483a" and inserting "9701";
22 and

23 (3) by striking ", of applicants for, or holders
24 of, such licenses or certificates".

1 **SEC. 624. ELIMINATION OF PENSION OFFSET.**

2 Section 161 of the Atomic Energy Act of 1954 (42
3 U.S.C. 2201) is amended by adding at the end the fol-
4 lowing:

5 ''y. Exempt from the application of sections 8344 and
6 8468 of title 5, United States Code, an annuitant who was
7 formerly an employee of the Commission who is hired by
8 the Commission as a consultant, if the Commission finds
9 that the annuitant has a skill that is critical to the per-
10 formance of the duties of the Commission.''.

11 **SEC. 625. ANTITRUST REVIEW.**

12 Section 105 c. of the Atomic Energy Act of 1954 (42
13 U.S.C. 2135(c)) is amended by adding at the end the fol-
14 lowing:

15 ''(9) APPLICABILITY.—This subsection does not
16 apply to an application for a license to construct or oper-
17 ate a utilization facility or production facility under sec-
18 tion 103 or 104 b. that is filed on or after the date of
19 enactment of this paragraph.''.

20 **SEC. 626. DECOMMISSIONING.**

21 Section 161 i. of the Atomic Energy Act of 1954 (42
22 U.S.C. 2201(i)) is amended—

23 (1) by striking ''and (3)'' and inserting ''(3)'';
24 and

25 (2) by inserting before the semicolon at the end
26 the following: '', and (4) to ensure that sufficient

1 funds will be available for the decommissioning of
2 any production or utilization facility licensed under
3 section 103 or 104 b., including standards and re-
4 strictions governing the control, maintenance, use,
5 and disbursement by any former licensee under this
6 Act that has control over any fund for the decom-
7 missioning of the facility''.

8 **SEC. 627. LIMITATION ON LEGAL FEE REIMBURSEMENT.**

9 Title II of the Energy Reorganization Act of 1974
10 (42 U.S.C. 5841 et seq.) is amended by adding at the end
11 the following new section:

12 ''LIMITATION ON LEGAL FEE REIMBURSEMENT

13 ''SEC. 212. The Department of Energy shall not, ex-
14 cept as required under a contract entered into before the
15 date of enactment of this section, reimburse any con-
16 tractor or subcontractor of the Department for any legal
17 fees or expenses incurred with respect to a complaint sub-
18 sequent to—

19 ''(1) an adverse determination on the merits
20 with respect to such complaint against the con-
21 tractor or subcontractor by the Director of the De-
22 partment of Energy's Office of Hearings and Ap-
23 peals pursuant to part 708 of title 10, Code of Fed-
24 eral Regulations, or by a Department of Labor Ad-
25 ministrative Law Judge pursuant to section 211 of
26 this Act; or

1 “(2) an adverse final judgment by any State or
2 Federal court with respect to such complaint against
3 the contractor or subcontractor for wrongful termi-
4 nation or retaliation due to the making of disclo-
5 sures protected under chapter 12 of title 5, United
6 States Code, section 211 of this Act, or any com-
7 parable State law,

8 unless the adverse determination or final judgment is re-
9 versed upon further administrative or judicial review.”.

10 **SEC. 629. REPORT ON FEASIBILITY OF DEVELOPING COM-**
11 **MERCIAL NUCLEAR ENERGY GENERATION**
12 **FACILITIES AT EXISTING DEPARTMENT OF**
13 **ENERGY SITES.**

14 Not later than 1 year after the date of the enactment
15 of this Act, the Secretary of Energy shall submit to Con-
16 gress a report on the feasibility of developing commercial
17 nuclear energy generation facilities at Department of En-
18 ergy sites in existence on the date of enactment of this
19 Act.

20 **SEC. 630. URANIUM SALES.**

21 (a) SALES, TRANSFERS, AND SERVICES.—Section
22 3112 of the USEC Privatization Act (42 U.S.C. 2297h–
23 10) is amended by striking subsections (d), (e), and (f)
24 and inserting the following:

1 “(3) The Secretary may transfer to the Corporation,
2 notwithstanding subsections (b)(2) and (d), natural ura-
3 nium in amounts sufficient to fulfill the Department of
4 Energy’s commitments under Article 4(B) of the Agree-
5 ment between the Department and the Corporation dated
6 June 17, 2002.

7 “(d) INVENTORY SALES.—(1) In addition to the
8 transfers and sales authorized under subsections (b) and
9 (c) and under paragraph (5) of this subsection, the United
10 States Government may transfer or sell uranium in any
11 form subject to paragraphs (2), (3), and (4).

12 “(2) Except as provided in subsections (b) and (c)
13 and paragraph (5) of this subsection, no sale or transfer
14 of uranium shall be made under this subsection by the
15 United States Government unless—

16 “(A) the President determines that the material
17 is not necessary for national security needs and the
18 sale or transfer has no adverse impact on implemen-
19 tation of existing government-to-government agree-
20 ments;

21 “(B) the price paid to the appropriate Federal
22 agency, if the transaction is a sale, will not be less
23 than the fair market value of the material; and

1 "(C) the sale or transfer to commercial nuclear
2 power end users is made pursuant to a contract of
3 at least 3 years' duration.

4 "(3) Except as provided in paragraph (5), the United
5 States Government shall not make any transfer or sale
6 of uranium in any form under this subsection that would
7 cause the total amount of uranium transferred or sold pur-
8 suant to this subsection that is delivered for consumption
9 by commercial nuclear power end users to exceed—

10 "(A) 3,000,000 pounds of U_3 O_8 equivalent in
11 fiscal year 2005, 2006, 2007, 2008, or 2009;

12 "(B) 5,000,000 pounds of U_3O_8 equivalent in
13 fiscal year 2010 or 2011;

14 "(C) 7,000,000 pounds of U_3O_8 equivalent in
15 fiscal year 2012; and

16 "(D) 10,000,000 pounds of U_3O_8 equivalent in
17 fiscal year 2013 or any fiscal year thereafter.

18 "(4) Except for sales or transfers under paragraph
19 (5), for the purposes of this subsection, the recovery of
20 uranium from uranium bearing materials transferred or
21 sold by the United States Government to the domestic
22 uranium industry shall be the preferred method of making
23 uranium available. The recovered uranium shall be count-
24 ed against the annual maximum deliveries set forth in this
25 section, when such uranium is sold to end users.

1 ''(5) The United States Government may make the
2 following sales and transfers:
3 ''(A) Sales or transfers to a Federal agency if
4 the material is transferred for the use of the receiv-
5 ing agency without any resale or transfer to another
6 entity and the material does not meet commercial
7 specifications.
8 ''(B) Sales or transfers to any person for na-
9 tional security purposes, as determined by the Sec-
10 retary.
11 ''(C) Sales or transfers to any State or local
12 agency or nonprofit, charitable, or educational insti-
13 tution for use other than the generation of electricity
14 for commercial use.
15 ''(D) Sales or transfers to the Department of
16 Energy research reactor sales program.
17 ''(E) Sales or transfers, at fair market value,
18 for emergency purposes in the event of a disruption
19 in supply to commercial nuclear power end users in
20 the United States.
21 ''(F) Sales or transfers, at fair market value,
22 for use in a commercial reactor in the United States
23 with nonstandard fuel requirements.
24 ''(G) Sales or transfers provided for under law
25 for use by the Tennessee Valley Authority in relation

1 to the Department of Energy's highly enriched ura-
2 nium or tritium programs.
3 "(6) For purposes of this subsection, the term
4 'United States Government' does not include the Ten-
5 nessee Valley Authority.
6 "(e) SAVINGS PROVISION.—Nothing in this sub-
7 chapter modifies the terms of the Russian HEU Agree-
8 ment.
9 "(f) SERVICES.—Notwithstanding any other provi-
10 sion of this section, if the Secretary determines that the
11 Corporation has failed, or may fail, to perform any obliga-
12 tion under the Agreement between the Department of En-
13 ergy and the Corporation dated June 17, 2002, and as
14 amended thereafter, which failure could result in termi-
15 nation of the Agreement, the Secretary shall notify Con-
16 gress, in such a manner that affords Congress an oppor-
17 tunity to comment, prior to a determination by the Sec-
18 retary whether termination, waiver, or modification of the
19 Agreement is required. The Secretary is authorized to take
20 such action as he determines necessary under the Agree-
21 ment to terminate, waive, or modify provisions of the
22 Agreement to achieve its purposes.".
23 (b) REPORT.—Not later than 3 years after the date
24 of enactment of this Act, the Secretary of Energy shall
25 report to Congress on the implementation of this section.

1 The report shall include a discussion of available excess
2 uranium inventories; all sales or transfers made by the
3 United States Government; the impact of such sales or
4 transfers on the domestic uranium industry, the spot mar-
5 ket uranium price, and the national security interests of
6 the United States; and any steps taken to remediate any
7 adverse impacts of such sales or transfers.

8 **SEC. 631. COOPERATIVE RESEARCH AND DEVELOPMENT**
9 **AND SPECIAL DEMONSTRATION PROJECTS**
10 **FOR THE URANIUM MINING INDUSTRY.**

11 (a) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated to the Secretary of En-
13 ergy $10,000,000 for each of fiscal years 2006, 2007, and
14 2008 for—

15 (1) cooperative, cost-shared agreements between
16 the Department of Energy and domestic uranium
17 producers to identify, test, and develop improved in
18 situ leaching mining technologies, including low-cost
19 environmental restoration technologies that may be
20 applied to sites after completion of in situ leaching
21 operations; and

22 (2) funding for competitively selected dem-
23 onstration projects with domestic uranium producers
24 relating to—

1 (A) enhanced production with minimal en-
2 vironmental impacts;
3 (B) restoration of well fields; and
4 (C) decommissioning and decontamination
5 activities.
6 (b) DOMESTIC URANIUM PRODUCER.—For purposes
7 of this section, the term ''domestic uranium producer'' has
8 the meaning given that term in section 1018(4) of the En-
9 ergy Policy Act of 1992 (42 U.S.C. 2296b–7(4)), except
10 that the term shall not include any producer that has not
11 produced uranium from domestic reserves on or after July
12 30, 1998.
13 (c) LIMITATION.—No activities funded under this
14 section may be carried out in the State of New Mexico.

15 **SEC. 632. WHISTLEBLOWER PROTECTION.**

16 (a) DEFINITION OF EMPLOYER.—Section 211(a)(2)
17 of the Energy Reorganization Act of 1974 (42 U.S.C.
18 5851(a)(2)) is amended—
19 (1) in subparagraph (C), by striking ''and'' at
20 the end;
21 (2) in subparagraph (D), by striking the period
22 at the end and inserting ''; and'' and
23 (3) by adding at the end the following:
24 ''(E) a contractor or subcontractor of the
25 Commission.''.

1 (b) DE NOVO REVIEW.—Subsection (b) of such sec-
2 tion 211 is amended by adding at the end the following
3 new paragraph:

4 "(4) If the Secretary has not issued a final de-
5 cision within 540 days after the filing of a complaint
6 under paragraph (1), and there is no showing that
7 such delay is due to the bad faith of the person
8 seeking relief under this paragraph, such person
9 may bring an action at law or equity for de novo re-
10 view in the appropriate district court of the United
11 States, which shall have jurisdiction over such an ac-
12 tion without regard to the amount in controversy.".

13 **SEC. 633. MEDICAL ISOTOPE PRODUCTION.**

14 Section 134 of the Atomic Energy Act of 1954 (42
15 U.S.C. 2160d) is amended—

16 (1) in subsection a., by striking "a. The Com-
17 mission" and inserting "a. IN GENERAL.—Except as
18 provided in subsection b., the Commission";

19 (2) by redesignating subsection b. as subsection
20 c.; and

21 (3) by inserting after subsection a. the fol-
22 lowing:

23 "b. MEDICAL ISOTOPE PRODUCTION.—

24 "(1) DEFINITIONS.—In this subsection:

1 "(A) HIGHLY ENRICHED URANIUM.—The
2 term 'highly enriched uranium' means uranium
3 enriched to include concentration of U–235
4 above 20 percent.

5 "(B) MEDICAL ISOTOPE.—The term 'med-
6 ical isotope' includes Molybdenum 99, Iodine
7 131, Xenon 133, and other radioactive mate-
8 rials used to produce a radiopharmaceutical for
9 diagnostic, therapeutic procedures or for re-
10 search and development.

11 "(C) RADIOPHARMACEUTICAL.—The term
12 'radiopharmaceutical' means a radioactive iso-
13 tope that—

14 "(i) contains byproduct material com-
15 bined with chemical or biological material;
16 and

17 "(ii) is designed to accumulate tempo-
18 rarily in a part of the body for therapeutic
19 purposes or for enabling the production of
20 a useful image for use in a diagnosis of a
21 medical condition.

22 "(D) RECIPIENT COUNTRY.—The term 're-
23 cipient country' means Canada, Belgium,
24 France, Germany, and the Netherlands.

1 "(2) LICENSES.—The Commission may issue a
2 license authorizing the export (including shipment to
3 and use at intermediate and ultimate consignees
4 specified in the license) to a recipient country of
5 highly enriched uranium for medical isotope produc-
6 tion if, in addition to any other requirements of this
7 Act (except subsection a.), the Commission deter-
8 mines that—

9 "(A) a recipient country that supplies an
10 assurance letter to the United States Govern-
11 ment in connection with the consideration by
12 the Commission of the export license applica-
13 tion has informed the United States Govern-
14 ment that any intermediate consignees and the
15 ultimate consignee specified in the application
16 are required to use the highly enriched uranium
17 solely to produce medical isotopes; and

18 "(B) the highly enriched uranium for med-
19 ical isotope production will be irradiated only in
20 a reactor in a recipient country that—

21 "(i) uses an alternative nuclear reac-
22 tor fuel; or

23 "(ii) is the subject of an agreement
24 with the United States Government to con-
25 vert to an alternative nuclear reactor fuel

1 when alternative nuclear reactor fuel can
2 be used in the reactor.
3 "(3) REVIEW OF PHYSICAL PROTECTION RE-
4 QUIREMENTS.—
5 "(A) IN GENERAL.—The Commission shall
6 review the adequacy of physical protection re-
7 quirements that, as of the date of an applica-
8 tion under paragraph (2), are applicable to the
9 transportation and storage of highly enriched
10 uranium for medical isotope production or con-
11 trol of residual material after irradiation and
12 extraction of medical isotopes.
13 "(B) IMPOSITION OF ADDITIONAL RE-
14 QUIREMENTS.—If the Commission determines
15 that additional physical protection requirements
16 are necessary (including a limit on the quantity
17 of highly enriched uranium that may be con-
18 tained in a single shipment), the Commission
19 shall impose such requirements as license condi-
20 tions or through other appropriate means.
21 "(4) FIRST REPORT TO CONGRESS.—
22 "(A) NAS STUDY.—The Secretary shall
23 enter into an arrangement with the National
24 Academy of Sciences to conduct a study to
25 determine—

1 "(i) the feasibility of procuring sup-
2 plies of medical isotopes from commercial
3 sources that do not use highly enriched
4 uranium;

5 "(ii) the current and projected de-
6 mand and availability of medical isotopes
7 in regular current domestic use;

8 "(iii) the progress that is being made
9 by the Department of Energy and others
10 to eliminate all use of highly enriched ura-
11 nium in reactor fuel, reactor targets, and
12 medical isotope production facilities; and

13 "(iv) the potential cost differential in
14 medical isotope production in the reactors
15 and target processing facilities if the prod-
16 ucts were derived from production systems
17 that do not involve fuels and targets with
18 highly enriched uranium.

19 "(B) FEASIBILITY.—For the purpose of
20 this subsection, the use of low enriched uranium
21 to produce medical isotopes shall be determined
22 to be feasible if—

23 "(i) low enriched uranium targets
24 have been developed and demonstrated for
25 use in the reactors and target processing

1 facilities that produce significant quantities
2 of medical isotopes to serve United States
3 needs for such isotopes;

4 "(ii) sufficient quantities of medical
5 isotopes are available from low enriched
6 uranium targets and fuel to meet United
7 States domestic needs; and

8 "(iii) the average anticipated total
9 cost increase from production of medical
10 isotopes in such facilities without use of
11 highly enriched uranium is less than 10
12 percent.

13 "(C) REPORT BY THE SECRETARY.—Not
14 later than 5 years after the date of enactment
15 of the Energy Policy Act of 2005, the Secretary
16 shall submit to Congress a report that—

17 "(i) contains the findings of the Na-
18 tional Academy of Sciences made in the
19 study under subparagraph (A); and

20 "(ii) discloses the existence of any
21 commitments from commercial producers
22 to provide domestic requirements for med-
23 ical isotopes without use of highly enriched
24 uranium consistent with the feasibility cri-
25 teria described in subparagraph (B) not

1 later than the date that is 4 years after
2 the date of submission of the report.
3 ‘‘(5) SECOND REPORT TO CONGRESS.—If the
4 study of the National Academy of Sciences deter-
5 mines under paragraph (4)(A)(i) that the procure-
6 ment of supplies of medical isotopes from commer-
7 cial sources that do not use highly enriched uranium
8 is feasible, but the Secretary is unable to report the
9 existence of commitments under paragraph
10 (4)(C)(ii), not later than the date that is 6 years
11 after the date of enactment of the Energy Policy Act
12 of 2005, the Secretary shall submit to Congress a
13 report that describes options for developing domestic
14 supplies of medical isotopes in quantities that are
15 adequate to meet domestic demand without the use
16 of highly enriched uranium consistent with the cost
17 increase described in paragraph (4)(B)(iii).
18 ‘‘(6) CERTIFICATION.—At such time as com-
19 mercial facilities that do not use highly enriched
20 uranium are capable of meeting domestic require-
21 ments for medical isotopes, within the cost increase
22 described in paragraph (4)(B)(iii) and without im-
23 pairing the reliable supply of medical isotopes for
24 domestic utilization, the Secretary shall submit to
25 Congress a certification to that effect.

1 “(7) SUNSET PROVISION.—After the Secretary
2 submits a certification under paragraph (6), the
3 Commission shall, by rule, terminate its review of
4 export license applications under this subsection.”.

5 **SEC. 634. FERNALD BYPRODUCT MATERIAL.**

6 Title III of the Nuclear Waste Policy Act of 1982
7 (42 U.S.C. 10221 et seq.) is amended by adding at the
8 end the following new section:

9 “FERNALD BYPRODUCT MATERIAL

10 “SEC. 307. Notwithstanding any other law, the mate-
11 rial in the concrete silos at the Fernald uranium proc-
12 essing facility managed on the date of enactment of this
13 section by the Department shall be considered byproduct
14 material (as defined by section 11 e.(2) of the Atomic En-
15 ergy Act of 1954 (42 U.S.C. 2014(e)(2))). The Depart-
16 ment may dispose of the material in a facility regulated
17 by the Commission or by an Agreement State. If the De-
18 partment disposes of the material in such a facility, the
19 Commission or the Agreement State shall regulate the ma-
20 terial as byproduct material under that Act. This material
21 shall remain subject to the jurisdiction of the Department
22 until it is received at a commercial, Commission-licensed,
23 or Agreement State-licensed facility, at which time the
24 material shall be subject to the health and safety require-
25 ments of the Commission or the Agreement State with ju-
26 risdiction over the disposal site.”.

1 **SEC. 635. SAFE DISPOSAL OF GREATER-THAN-CLASS C RA-**
2 **DIOACTIVE WASTE.**

3 Subtitle D of title I of the Nuclear Waste Policy Act
4 of 1982 (42 U.S.C. 10171) is amended by adding at the
5 end the following new section:

6 ''SAFE DISPOSAL OF GREATER-THAN-CLASS C
7 RADIOACTIVE WASTE

8 ''SEC. 152. (a) DESIGNATION OF RESPONSIBILITY.—
9 The Secretary shall designate an Office within the Depart-
10 ment to have the responsibility for activities needed to de-
11 velop a new, or use an existing, facility for safely disposing
12 of all low-level radioactive waste with concentrations of
13 radionuclides that exceed the limits established by the
14 Commission for Class C radioactive waste (referred to in
15 this section as 'GTCC waste').

16 ''(b) COMPREHENSIVE PLAN.—The Secretary shall
17 develop a comprehensive plan for permanent disposal of
18 GTCC waste which includes plans for a disposal facility.
19 This plan shall be transmitted to Congress in a series of
20 reports, including the following:

21 ''(1) REPORT ON SHORT-TERM PLAN.—Not
22 later than 180 days after the date of enactment of
23 this section, the Secretary shall submit to Congress
24 a plan describing the Secretary's operational strat-
25 egy for continued recovery and storage of GTCC
26 waste until a permanent disposal facility is available.

1 "(2) UPDATE OF 1987 REPORT.—

2 "(A) IN GENERAL.—Not later than 1 year
3 after the date of enactment of this section, the
4 Secretary shall submit to Congress an update of
5 the Secretary's February 1987 report submitted
6 to Congress that made comprehensive rec-
7 ommendations for the disposal of GTCC waste.

8 "(B) CONTENTS.—The update under this
9 paragraph shall contain—

10 "(i) a detailed description and identi-
11 fication of the GTCC waste that is to be
12 disposed;

13 "(ii) a description of current domestic
14 and international programs, both Federal
15 and commercial, for management and dis-
16 position of GTCC waste;

17 "(iii) an identification of the Federal
18 and private options and costs for the safe
19 disposal of GTCC waste;

20 "(iv) an identification of the options
21 for ensuring that, wherever possible, gen-
22 erators and users of GTCC waste bear all
23 reasonable costs of waste disposal;

1 "(v) an identification of any new stat-
2 utory authority required for disposal of
3 GTCC waste; and
4 "(vi) in coordination with the Envi-
5 ronmental Protection Agency and the Com-
6 mission, an identification of any new regu-
7 latory guidance needed for the disposal of
8 GTCC waste.
9 "(3) REPORT ON COST AND SCHEDULE FOR
10 COMPLETION OF ENVIRONMENTAL IMPACT STATE-
11 MENT AND RECORD OF DECISION.—Not later than
12 180 days after the date of submission of the update
13 required under paragraph (2), the Secretary shall
14 submit to Congress a report containing an estimate
15 of the cost and schedule to complete a draft and
16 final environmental impact statement and to issue a
17 record of decision for a permanent disposal facility,
18 utilizing either a new or existing facility, for GTCC
19 waste.".

20 **SEC. 636. PROHIBITION ON NUCLEAR EXPORTS TO COUN-**
21 **TRIES THAT SPONSOR TERRORISM.**

22 (a) IN GENERAL.—Section 129 of the Atomic Energy
23 Act of 1954 (42 U.S.C. 2158) is amended—
24 (1) by inserting "a." before "No nuclear mate-
25 rials and equipment"; and

1 (2) by adding at the end the following new sub-
2 section:
3 “b.(1) Notwithstanding any other provision of law,
4 including specifically section 121 of this Act, and except
5 as provided in paragraphs (2) and (3), no nuclear mate-
6 rials and equipment or sensitive nuclear technology, in-
7 cluding items and assistance authorized by section 57 b.
8 of this Act and regulated under part 810 of title 10, Code
9 of Federal Regulations, and nuclear-related items on the
10 Commerce Control List maintained under part 774 of title
11 15 of the Code of Federal Regulations, shall be exported
12 or reexported, or transferred or retransferred whether di-
13 rectly or indirectly, and no Federal agency shall issue any
14 license, approval, or authorization for the export or reex-
15 port, or transfer, or retransfer, whether directly or indi-
16 rectly, of these items or assistance (as defined in this para-
17 graph) to any country whose government has been identi-
18 fied by the Secretary of State as engaged in state sponsor-
19 ship of terrorist activities (specifically including any coun-
20 try the government of which has been determined by the
21 Secretary of State under section 620A(a) of the Foreign
22 Assistance Act of 1961 (22 U.S.C. 2371(a)), section
23 6(j)(1) of the Export Administration Act of 1979 (50
24 U.S.C. App. 2405(j)(1)), or section 40(d) of the Arms Ex-

1 port Control Act (22 U.S.C. 2780(d)) to have repeatedly
2 provided support for acts of international terrorism).

3 ‘‘(2) This subsection shall not apply to exports, reex-
4 ports, transfers, or retransfers of radiation monitoring
5 technologies, surveillance equipment, seals, cameras, tam-
6 per-indication devices, nuclear detectors, monitoring sys-
7 tems, or equipment necessary to safely store, transport,
8 or remove hazardous materials, whether such items, serv-
9 ices, or information are regulated by the Department of
10 Energy, the Department of Commerce, or the Nuclear
11 Regulatory Commission, except to the extent that such
12 technologies, equipment, seals, cameras, devices, detectors,
13 or systems are available for use in the design or construc-
14 tion of nuclear reactors or nuclear weapons.

15 ‘‘(3) The President may waive the application of
16 paragraph (1) to a country if the President determines
17 and certifies to Congress that the waiver will not result
18 in any increased risk that the country receiving the waiver
19 will acquire nuclear weapons, nuclear reactors, or any ma-
20 terials or components of nuclear weapons and—

21 ‘‘(A) the government of such country has not
22 within the preceding 12-month period willfully aided
23 or abetted the international proliferation of nuclear
24 explosive devices to individuals or groups or willfully

1 aided and abetted an individual or groups in acquir-
2 ing unsafeguarded nuclear materials;

3 "(B) in the judgment of the President, the gov-
4 ernment of such country has provided adequate,
5 verifiable assurances that it will cease its support for
6 acts of international terrorism;

7 "(C) the waiver of that paragraph is in the vital
8 national security interest of the United States; or

9 "(D) such a waiver is essential to prevent or re-
10 spond to a serious radiological hazard in the country
11 receiving the waiver that may or does threaten pub-
12 lic health and safety.".

13 (b) APPLICABILITY TO EXPORTS APPROVED FOR
14 TRANSFER BUT NOT TRANSFERRED.—Subsection b. of
15 section 129 of Atomic Energy Act of 1954, as added by
16 subsection (a) of this section, shall apply with respect to
17 exports that have been approved for transfer as of the date
18 of the enactment of this Act but have not yet been trans-
19 ferred as of that date.

20 **SEC. 638. NATIONAL URANIUM STOCKPILE.**

21 The USEC Privatization Act (42 U.S.C. 2297h et
22 seq.) is amended by adding at the end the following new
23 section:

1 **“SEC. 3118. NATIONAL URANIUM STOCKPILE.**

2 ‘‘(a) STOCKPILE CREATION.—The Secretary of En-
3 ergy may create a national low-enriched uranium stockpile
4 with the goals to—

5 ‘‘(1) enhance national energy security; and

6 ‘‘(2) reduce global proliferation threats.

7 ‘‘(b) SOURCE OF MATERIAL.—The Secretary shall
8 obtain material for the stockpile from—

9 ‘‘(1) material derived from blend-down of Rus-
10 sian highly enriched uranium derived from weapons
11 materials; and

12 ‘‘(2) domestically mined and enriched uranium.

13 ‘‘(c) LIMITATION ON SALES OR TRANSFERS.—Sales
14 or transfer of materials in the stockpile shall occur pursu-
15 ant to section 3112.’’.

16 **SEC. 639. NUCLEAR REGULATORY COMMISSION MEETINGS.**

17 If a quorum of the Nuclear Regulatory Commission
18 gathers to discuss official Commission business the discus-
19 sions shall be recorded, and the Commission shall notify
20 the public of such discussions within 15 days after they
21 occur. The Commission shall promptly make a transcript
22 of the recording available to the public on request, except
23 to the extent that public disclosure is exempted or prohib-
24 ited by law. This section shall not apply to a meeting,
25 within the meaning of that term under section 552b(a)(2)
26 of title 5, United States Code.

1 **SEC. 640. EMPLOYEE BENEFITS.**

2 Section 3110(a) 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.—To the extent ap-
6 propriations are provided in advance for this purpose or
7 are otherwise available, not later than 30 days after the
8 date of enactment of this paragraph, the Secretary shall
9 implement such actions as are necessary to ensure that
10 any employee who—

11 "(A) is involved in providing infrastructure or
12 environmental remediation services at the Ports-
13 mouth, Ohio, or the Paducah, Kentucky, Gaseous
14 Diffusion Plant;

15 "(B) has been an employee of the Department
16 of Energy's predecessor management and inte-
17 grating contractor (or its first or second tier sub-
18 contractors), or of the Corporation, at the Ports-
19 mouth, Ohio, or the Paducah, Kentucky, facility;
20 and

21 "(C) was eligible as of April 1, 2005, to partici-
22 pate in or transfer into the Multiple Employer Pen-
23 sion Plan or the associated multiple employer retiree
24 health care benefit plans, as defined in those plans,
25 shall continue to be eligible to participate in or transfer
26 into such pension or health care benefit plans.".

Subtitle C—Additional Hydrogen Production Provisions

SEC. 651. HYDROGEN PRODUCTION PROGRAMS.

(a) ADVANCED REACTOR HYDROGEN COGENERATION PROJECT.—

(1) PROJECT ESTABLISHMENT.—The Secretary is directed to establish an Advanced Reactor Hydrogen Cogeneration Project.

(2) PROJECT DEFINITION.—The project shall consist of the research, development, design, construction, and operation of a hydrogen production cogeneration research facility that, relative to the current commercial reactors, enhances safety features, reduces waste production, enhances thermal efficiencies, increases proliferation resistance, and has the potential for improved economics and physical security in reactor siting. This facility shall be constructed so as to enable research and development on advanced reactors of the type selected and on alternative approaches for reactor-based production of hydrogen.

(3) PROJECT MANAGEMENT.—

(A) MANAGEMENT.—The project shall be managed within the Department by the Office 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

partners where such specialists or facilities provide access to cost-effective and relevant skills or test capabilities.

(iii) GENERATION IV INTERNATIONAL FORUM.—International activities shall be coordinated with the Generation IV International Forum.

(iv) GENERATION IV NUCLEAR ENERGY SYSTEMS PROGRAM.—The Secretary may combine this project with the Generation IV Nuclear Energy Systems Program.

(C) DEMONSTRATION.—The overall project, which may involve demonstration of selected project objectives in a partner nation, must demonstrate both electricity and hydrogen production and may provide flexibility, where technically and economically feasible in the design and construction, to enable tests of alternative reactor core and cooling configurations.

(D) PARTNERSHIPS.—The Secretary shall establish cost-shared partnerships with domestic industry or international participants for the research, development, design, construction, and operation of the research facility, and preference 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;

(3) $85,962,500 for fiscal year 2008;

(4) $98,856,875 for fiscal year 2009;

(5) $113,685,406 for fiscal year 2010;

(6) $130,738,217 for fiscal year 2011;

(7) $150,348,950 for fiscal year 2012;

(8) $172,901,292 for fiscal year 2013;

(9) $198,836,486 for fiscal year 2014; and

(10) $228,661,959 for fiscal year 2015.

SEC. 652. DEFINITIONS.

For purposes of this subtitle—

(1) the term "advanced nuclear reactor technologies" means—

(A) technologies related to advanced light water reactors that may be commercially available in the near-term, including mid-sized reactors with passive safety features, for the generation of electric power from nuclear fission and the production of hydrogen; and

(B) technologies related to other nuclear reactors that may require prototype demonstration prior to availability in the mid-term or long-term, including high-temperature, gas-cooled reactors and liquid metal reactors, for the generation of electric power from nuclear fission and the production of hydrogen;

(2) the term ''institution of higher education'' has the meaning given to that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)); and

(3) the term ''Secretary'' means the Secretary of Energy.

Subtitle D—Nuclear Security

SEC. 661. NUCLEAR FACILITY THREATS.

(a) STUDY.—The President, in consultation with the Nuclear Regulatory Commission (referred to in this subtitle as the ''Commission'') and other appropriate Federal, State, and local agencies and private entities, shall conduct a study to identify the types of threats that pose an appreciable risk to the security of the various classes of facilities licensed by the Commission under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.). Such study shall take into account, but not be limited to—

(1) the events of September 11, 2001;

(2) an assessment of physical, cyber, biochemical, and other terrorist threats;

(3) the potential for attack on facilities by multiple coordinated teams of a large number of individuals;

(4) the potential for assistance in an attack 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
16 background 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(c))
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(a)(4) and
8 (o) 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) and (o);
9 "(B) chapter 53 of title 26, United States
10 Code, except for section 5844; and
11 "(C) a background check by the Attorney
12 General, based on fingerprints and including a
13 check of the system established under section
14 103(b) of the Brady Handgun Violence Preven-
15 tion Act (18 U.S.C. 922 note) to determine
16 whether the person applying for the authority is
17 prohibited from possessing or receiving a fire-
18 arm under Federal or State law.
19 "(3) This subsection shall become effective
20 upon the issuance of guidelines by the Commission,
21 with the approval of the Attorney General, to govern
22 the implementation of this subsection.
23 "(4) In this subsection, the terms 'handgun',
24 'rifle', 'shotgun', 'firearm', 'ammunition', 'machine-
25 gun', 'semiautomatic assault weapon', 'large capacity

1 ammunition feeding device', 'short-barreled shotgun',
2 and 'short-barreled rifle' shall have the meanings
3 given those terms in section 921(a) of title 18,
4 United States Code.''.

5 **SEC. 664. UNAUTHORIZED INTRODUCTION OF DANGEROUS**
6 **WEAPONS.**

7 Section 229 a. of the Atomic Energy Act of 1954 (42
8 U.S.C. 2278a(a)) is amended in the first sentence by in-
9 serting ''or subject to the licensing authority of the Com-
10 mission or to certification by the Commission under this
11 Act or any other Act'' before the period at the end.

12 **SEC. 665. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.**

13 (a) IN GENERAL.—Section 236 a. of the Atomic En-
14 ergy Act of 1954 (42 U.S.C. 2284(a)) is amended—
15 (1) in paragraph (2), by striking ''storage facil-
16 ity'' and inserting ''storage, treatment, or disposal
17 facility'';
18 (2) in paragraph (3)—
19 (A) by striking ''such a utilization facility''
20 and inserting ''a utilization facility licensed
21 under this Act''; and
22 (B) by striking ''or'' at the end;
23 (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
15 amended—

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.

(b) TOPICS.—As part of the study under subsection (a), the Secretary shall specifically identify—

(1) the number of alternative fueled vehicles acquired by fleets or covered persons required to acquire alternative fueled vehicles;

(2) the quantity, by type, of alternative fuel actually used in alternative fueled vehicles acquired by fleets or covered persons;

(3) the quantity of petroleum displaced by the use of alternative fuels in alternative fueled vehicles acquired by fleets or covered persons;

(4) the direct and indirect costs of compliance with requirements under titles III, IV, and V of the Energy Policy Act of 1992 (42 U.S.C. 13211 et seq.), including—

(A) vehicle acquisition requirements imposed on fleets or covered persons;

(B) administrative and recordkeeping expenses;

(C) fuel and fuel infrastructure costs;

(D) associated training and employee expenses; and

(E) any other factors or expenses the Secretary determines to be necessary to compile reliable 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''.

Subtitle B—Hybrid Vehicles, Advanced Vehicles, and Fuel Cell Buses

PART 1—HYBRID VEHICLES

SEC. 711. HYBRID VEHICLES.

The Secretary of Energy shall accelerate efforts directed toward the improvement of batteries and other rechargeable energy storage systems, power electronics, hybrid systems integration, and other technologies for use in hybrid vehicles.

SEC. 712. HYBRID RETROFIT AND ELECTRIC CONVERSION PROGRAM.

(a) ESTABLISHMENT.—The Administrator of the Environmental Protection Agency, in consultation with the Secretary, shall establish a program for awarding grants on a competitive basis to entities for the installation of hybrid retrofit and electric conversion technologies for combustion engine vehicles.

(b) ELIGIBLE RECIPIENTS.—A grant shall be awarded under this section only—

(1) to a local or State governmental entity;

(2) to a for-profit or nonprofit corporation or 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
20 demonstrated—
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
22 expended—
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 **SEC. 713. EFFICIENT HYBRID AND ADVANCED DIESEL VEHI-**
4 **CLES.**

5 (a) PROGRAM.—The Administrator of the Environ-
6 mental Protection Agency shall establish a program to en-
7 courage domestic production and sales of efficient hybrid
8 and advanced diesel vehicles. The program shall include
9 grants to domestic automobile manufacturers to—

10 (1) encourage production of efficient hybrid and
11 advanced diesel vehicles; and

12 (2) provide consumer incentives, including dis-
13 counts and rebates, for the purchase of efficient hy-
14 brid and advanced diesel vehicles.

15 (b) AUTHORIZATION OF APPROPRIATIONS.—There
16 are authorized to be appropriated to the Administrator of
17 the Environmental Protection Agency for carrying out this
18 section $300,000,000 for each of the fiscal years 2006
19 through 2015.

20 **PART 2—ADVANCED VEHICLES**

21 **SEC. 721. DEFINITIONS.**

22 In this part:

23 (1) ALTERNATIVE FUELED VEHICLE.—

24 (A) IN GENERAL.—The term ''alternative
25 fueled vehicle'' means a vehicle propelled solely

1 on an alternative fuel (as defined in section 301
2 of the Energy Policy Act of 1992 (42 U.S.C.
3 13211)).

4 (B) EXCLUSION.—The term ''alternative
5 fueled vehicle'' does not include a vehicle that
6 the Secretary determines, by regulation, does
7 not yield substantial environmental benefits
8 over a vehicle operating solely on gasoline or
9 diesel derived from fossil fuels.

10 (2) FUEL CELL VEHICLE.—The term ''fuel cell
11 vehicle'' means a vehicle propelled by an electric
12 motor powered by a fuel cell system that converts
13 chemical energy into electricity by combining oxygen
14 (from air) with hydrogen fuel that is stored on the
15 vehicle or is produced onboard by reformation of a
16 hydrocarbon fuel. Such fuel cell system may or may
17 not include the use of auxiliary energy storage sys-
18 tems to enhance vehicle performance.

19 (3) HYBRID VEHICLE.—The term ''hybrid vehi-
20 cle'' means a medium or heavy duty vehicle propelled
21 by an internal combustion engine or heat engine
22 using any combustible fuel and an onboard recharge-
23 able energy storage device.

1 (4) NEIGHBORHOOD ELECTRIC VEHICLE.—The
2 term ''neighborhood electric vehicle'' means a motor
3 vehicle that—
4 (A) meets the definition of a low-speed ve-
5 hicle (as defined in part 571 of title 49, Code
6 of Federal Regulations);
7 (B) meets the definition of a zero-emission
8 vehicle (as defined in section 86.1702–99 of
9 title 40, Code of Federal Regulations);
10 (C) meets the requirements of Federal
11 Motor Vehicle Safety Standard No. 500; and
12 (D) has a maximum speed of not greater
13 than 25 miles per hour.
14 (5) PILOT PROGRAM.—The term ''pilot pro-
15 gram'' means the competitive grant program estab-
16 lished under section 722.
17 (6) SECRETARY.—The term ''Secretary'' means
18 the Secretary of Energy.
19 (7) ULTRA-LOW SULFUR DIESEL VEHICLE.—
20 The term ''ultra-low sulfur diesel vehicle'' means a
21 vehicle manufactured in any of model years 2004
22 through 2006 powered by a heavy-duty diesel engine
23 that—

1 (A) is fueled by diesel fuel that contains
2 sulfur at not more than 15 parts per million;
3 and

4 (B) emits not more than the lesser of—

5 (i) for vehicles manufactured in model
6 years 2004 through 2006, 2.5 grams per
7 brake horsepower-hour of nonmethane hy-
8 drocarbons and oxides of nitrogen and .01
9 grams per brake horsepower-hour of par-
10 ticulate matter; or

11 (ii) the quantity of emissions of non-
12 methane hydrocarbons, oxides of nitrogen,
13 and particulate matter of the best-per-
14 forming technology of ultra-low sulfur die-
15 sel vehicles of the same class and applica-
16 tion that are commercially available.

17 **SEC. 722. PILOT PROGRAM.**

18 (a) ESTABLISHMENT.—The Secretary, in consulta-
19 tion with the Secretary of Transportation, shall establish
20 a competitive grant pilot program, to be administered
21 through the Clean Cities Program of the Department of
22 Energy, to provide not more than 30 geographically dis-
23 persed project grants to State governments, local govern-
24 ments, or metropolitan transportation authorities to carry

1 out a project or projects for the purposes described in sub-
2 section (b).
3 (b) GRANT PURPOSES.—A grant under this section
4 may be used for the following purposes:
5 (1) The acquisition of alternative fueled vehicles
6 or fuel cell vehicles, including—
7 (A) passenger vehicles (including neighbor-
8 hood electric vehicles); and
9 (B) motorized 2-wheel bicycles or other ve-
10 hicles for use by law enforcement personnel or
11 other State or local government or metropolitan
12 transportation authority employees.
13 (2) The acquisition of alternative fueled vehi-
14 cles, hybrid vehicles, or fuel cell vehicles, including—
15 (A) buses used for public transportation or
16 transportation to and from schools;
17 (B) delivery vehicles for goods or services;
18 and
19 (C) ground support vehicles at public air-
20 ports (including vehicles to carry baggage or
21 push or pull airplanes toward or away from ter-
22 minal gates).
23 (3) The acquisition of ultra-low sulfur diesel ve-
24 hicles.

1 (4) Installation or acquisition of infrastructure
2 necessary to directly support an alternative fueled
3 vehicle, fuel cell vehicle, or hybrid vehicle project
4 funded by the grant, including fueling and other
5 support equipment.

6 (5) Operation and maintenance of vehicles, in-
7 frastructure, and equipment acquired as part of a
8 project funded by the grant.

9 (c) APPLICATIONS.—

10 (1) REQUIREMENTS.—

11 (A) IN GENERAL.—The Secretary shall
12 issue requirements for applying for grants
13 under the pilot program.

14 (B) MINIMUM REQUIREMENTS.—At a min-
15 imum, the Secretary shall require that an appli-
16 cation for a grant—

17 (i) be submitted by the head of a
18 State or local government or a metropoli-
19 tan transportation authority, or any com-
20 bination thereof, and a registered partici-
21 pant in the Clean Cities Program of the
22 Department of Energy; and

23 (ii) include—

24 (I) a description of the project
25 proposed in the application, including

1 how the project meets the require-
2 ments of this part;
3 (II) an estimate of the ridership
4 or degree of use of the project;
5 (III) an estimate of the air pollu-
6 tion emissions reduced and fossil fuel
7 displaced as a result of the project,
8 and a plan to collect and disseminate
9 environmental data, related to the
10 project to be funded under the grant,
11 over the life of the project;
12 (IV) a description of how the
13 project will be sustainable without
14 Federal assistance after the comple-
15 tion of the term of the grant;
16 (V) a complete description of the
17 costs of the project, including acquisi-
18 tion, construction, operation, and
19 maintenance costs over the expected
20 life of the project;
21 (VI) a description of which costs
22 of the project will be supported by
23 Federal assistance under this part;
24 and

1 (VII) documentation to the satis-
2 faction of the Secretary that diesel
3 fuel containing sulfur at not more
4 than 15 parts per million is available
5 for carrying out the project, and a
6 commitment by the applicant to use
7 such fuel in carrying out the project.
8 (2) PARTNERS.—An applicant under paragraph
9 (1) may carry out a project under the pilot program
10 in partnership with public and private entities.
11 (d) SELECTION CRITERIA.—In evaluating applica-
12 tions under the pilot program, the Secretary shall—
13 (1) consider each applicant's previous experi-
14 ence with similar projects; and
15 (2) give priority consideration to applications
16 that—
17 (A) are most likely to maximize protection
18 of the environment;
19 (B) demonstrate the greatest commitment
20 on the part of the applicant to ensure funding
21 for the proposed project and the greatest likeli-
22 hood that the project will be maintained or ex-
23 panded after Federal assistance under this part
24 is completed; and

1 (C) exceed the minimum requirements of
2 subsection (c)(1)(B)(ii).
3 (e) PILOT PROJECT REQUIREMENTS.—
4 (1) MAXIMUM AMOUNT.—The Secretary shall
5 not provide more than $15,000,000 in Federal as-
6 sistance under the pilot program to any applicant.
7 (2) COST SHARING.—The Secretary shall not
8 provide more than 50 percent of the cost, incurred
9 during the period of the grant, of any project under
10 the pilot program.
11 (3) MAXIMUM PERIOD OF GRANTS.—The Sec-
12 retary shall not fund any applicant under the pilot
13 program for more than 5 years.
14 (4) DEPLOYMENT AND DISTRIBUTION.—The
15 Secretary shall seek to the maximum extent prac-
16 ticable to ensure a broad geographic distribution of
17 project sites.
18 (5) TRANSFER OF INFORMATION AND KNOWL-
19 EDGE.—The Secretary shall establish mechanisms to
20 ensure that the information and knowledge gained
21 by participants in the pilot program are transferred
22 among the pilot program participants and to other
23 interested parties, including other applicants that
24 submitted applications.
25 (f) SCHEDULE.—

1 (1) PUBLICATION.—Not later than 90 days
2 after the date of enactment of this Act, the Sec-
3 retary shall publish in the Federal Register, Com-
4 merce Business Daily, and elsewhere as appropriate,
5 a request for applications to undertake projects
6 under the pilot program. Applications shall be due
7 not later than 180 days after the date of publication
8 of the notice.

9 (2) SELECTION.—Not later than 180 days after
10 the date by which applications for grants are due,
11 the Secretary shall select by competitive, peer re-
12 viewed proposal, all applications for projects to be
13 awarded a grant under the pilot program.

14 (g) LIMIT ON FUNDING.—The Secretary shall pro-
15 vide not less than 20 nor more than 25 percent of the
16 grant funding made available under this section for the
17 acquisition of ultra-low sulfur diesel vehicles.

18 **SEC. 723. REPORTS TO CONGRESS.**

19 (a) INITIAL REPORT.—Not later than 60 days after
20 the date on which grants are awarded under this part,
21 the Secretary shall submit to Congress a report
22 containing—

23 (1) an identification of the grant recipients and
24 a description of the projects to be funded;

(2) an identification of other applicants that submitted applications for the pilot program; and

(3) a description of the mechanisms used by the Secretary to ensure that the information and knowledge gained by participants in the pilot program are transferred among the pilot program participants and to other interested parties, including other applicants that submitted applications.

(b) EVALUATION.—Not later than 3 years after the date of enactment of this Act, and annually thereafter until the pilot program ends, the Secretary shall submit to Congress a report containing an evaluation of the effectiveness of the pilot program, including—

(1) an assessment of the benefits to the environment derived from the projects included in the pilot program; and

(2) an estimate of the potential benefits to the environment to be derived from widespread application of alternative fueled vehicles and ultra-low sulfur diesel vehicles.

SEC. 724. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary to carry out this part $200,000,000, to remain available until expended.

PART 3—FUEL CELL BUSES

SEC. 731. FUEL CELL TRANSIT BUS DEMONSTRATION.

(a) IN GENERAL.—The Secretary of Energy, in consultation with the Secretary of Transportation, shall establish a transit bus demonstration program to make competitive, merit-based awards for 5-year projects to demonstrate not more than 25 fuel cell transit buses (and necessary infrastructure) in 5 geographically dispersed localities.

(b) PREFERENCE.—In selecting projects under this section, the Secretary of Energy shall give preference to projects that are most likely to mitigate congestion and improve air quality.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy to carry out this section $10,000,000 for each of fiscal years 2006 through 2010.

Subtitle C—Clean School Buses

SEC. 741. DEFINITIONS.

In this subtitle:

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

(2) ALTERNATIVE FUEL.—The term ''alternative fuel'' means liquefied natural gas, compressed natural gas, liquefied petroleum gas, hydrogen, pro-

1 pane, or methanol or ethanol at no less than 85 per-
2 cent by volume.

3 (3) ALTERNATIVE FUEL SCHOOL BUS.—The
4 term ''alternative fuel school bus'' means a school
5 bus that meets all of the requirements of this sub-
6 title and is operated solely on an alternative fuel.

7 (4) EMISSIONS CONTROL RETROFIT TECH-
8 NOLOGY.—The term ''emissions control retrofit tech-
9 nology'' means a particulate filter or other emissions
10 control equipment that is verified or certified by the
11 Administrator or the California Air Resources Board
12 as an effective emission reduction technology when
13 installed on an existing school bus.

14 (5) IDLING.—The term ''idling'' means oper-
15 ating an engine while remaining stationary for more
16 than approximately 15 minutes, except that the term
17 does not apply to routine stoppages associated with
18 traffic movement or congestion.

19 (6) SECRETARY.—The term ''Secretary'' means
20 the Secretary of Energy.

21 (7) ULTRA-LOW SULFUR DIESEL FUEL.—The
22 term ''ultra-low sulfur diesel fuel'' means diesel fuel
23 that contains sulfur at not more than 15 parts per
24 million.

1 (8) ULTRA-LOW SULFUR DIESEL FUEL SCHOOL
2 BUS.—The term ''ultra-low sulfur diesel fuel school
3 bus'' means a school bus that meets all of the re-
4 quirements of this subtitle and is operated solely on
5 ultra-low sulfur diesel fuel.

6 **SEC. 742. PROGRAM FOR REPLACEMENT OF CERTAIN**
7 **SCHOOL BUSES WITH CLEAN SCHOOL BUSES.**

8 (a) ESTABLISHMENT.—The Administrator, in con-
9 sultation with the Secretary and other appropriate Federal
10 departments and agencies, shall establish a program for
11 awarding grants on a competitive basis to eligible entities
12 for the replacement of existing school buses manufactured
13 before model year 1991 with alternative fuel school buses
14 and ultra-low sulfur diesel fuel school buses.

15 (b) REQUIREMENTS.—

16 (1) IN GENERAL.—Not later than 90 days after
17 the date of enactment of this Act, the Administrator
18 shall establish and publish in the Federal Register
19 grant requirements on eligibility for assistance, and
20 on implementation of the program established under
21 subsection (a), including instructions for the submis-
22 sion of grant applications and certification require-
23 ments to ensure compliance with this subtitle.

1 (2) APPLICATION DEADLINES.—The require-
2 ments established under paragraph (1) shall require
3 submission of grant applications not later than—
4 (A) in the case of the first year of program
5 implementation, the date that is 180 days after
6 the publication of the requirements in the Fed-
7 eral Register; and
8 (B) in the case of each subsequent year,
9 June 1 of the year.
10 (c) ELIGIBLE RECIPIENTS.—A grant shall be award-
11 ed under this section only—
12 (1) to 1 or more local or State governmental
13 entities responsible for providing school bus service
14 to 1 or more public school systems or responsible for
15 the purchase of school buses;
16 (2) to 1 or more contracting entities that pro-
17 vide school bus service to 1 or more public school
18 systems, if the grant application is submitted jointly
19 with the 1 or more school systems to be served by
20 the buses, except that the application may provide
21 that buses purchased using funds awarded shall be
22 owned, operated, and maintained exclusively by the
23 1 or more contracting entities; or
24 (3) to a nonprofit school transportation associa-
25 tion representing private contracting entities, if the

1 association has notified and received approval from
2 the 1 or more school systems to be served by the
3 buses.

4 (d) AWARD DEADLINES.—

5 (1) IN GENERAL.—Subject to paragraph (2),
6 the Administrator shall award a grant made to a
7 qualified applicant for a fiscal year—

8 (A) in the case of the first fiscal year of
9 program implementation, not later than the
10 date that is 90 days after the application dead-
11 line established under subsection (b)(2); and

12 (B) in the case of each subsequent fiscal
13 year, not later than August 1 of the fiscal year.

14 (2) INSUFFICIENT NUMBER OF QUALIFIED
15 GRANT APPLICATIONS.—If the Administrator does
16 not receive a sufficient number of qualified grant ap-
17 plications to meet the requirements of subsection
18 (i)(1) for a fiscal year, the Administrator shall
19 award a grant made to a qualified applicant under
20 subsection (i)(2) not later than September 30 of the
21 fiscal year.

22 (e) TYPES OF GRANTS.—

23 (1) IN GENERAL.—A grant under this section
24 shall be used for the replacement of school buses
25 manufactured before model year 1991 with alter-

1 native fuel school buses and ultra-low sulfur diesel
2 fuel school buses.
3 (2) NO ECONOMIC BENEFIT.—Other than the
4 receipt of the grant, a recipient of a grant under this
5 section may not receive any economic benefit in con-
6 nection with the receipt of the grant.
7 (3) PRIORITY OF GRANT APPLICATIONS.—The
8 Administrator shall give priority to applicants that
9 propose to replace school buses manufactured before
10 model year 1977.
11 (f) CONDITIONS OF GRANT.—A grant provided under
12 this section shall include the following conditions:
13 (1) SCHOOL BUS FLEET.—All buses acquired
14 with funds provided under the grant shall be oper-
15 ated as part of the school bus fleet for which the
16 grant was made for a minimum of 5 years.
17 (2) USE OF FUNDS.—Funds provided under the
18 grant may only be used—
19 (A) to pay the cost, except as provided in
20 paragraph (3), of new alternative fuel school
21 buses or ultra-low sulfur diesel fuel school
22 buses, including State taxes and contract fees
23 associated with the acquisition of such buses;
24 and
25 (B) to provide—

1 (i) up to 20 percent of the price of the
2 alternative fuel school buses acquired, for
3 necessary alternative fuel infrastructure if
4 the infrastructure will only be available to
5 the grant recipient; and
6 (ii) up to 25 percent of the price of
7 the alternative fuel school buses acquired,
8 for necessary alternative fuel infrastructure
9 if the infrastructure will be available to the
10 grant recipient and to other bus fleets.
11 (3) GRANT RECIPIENT FUNDS.—The grant re-
12 cipient shall be required to provide at least—
13 (A) in the case of a grant recipient de-
14 scribed in paragraph (1) or (3) of subsection
15 (c), the lesser of—
16 (i) an amount equal to 15 percent of
17 the total cost of each bus received; or
18 (ii) $15,000 per bus; and
19 (B) in the case of a grant recipient de-
20 scribed in subsection (c)(2), the lesser of—
21 (i) an amount equal to 20 percent of
22 the total cost of each bus received; or
23 (ii) $20,000 per bus.
24 (4) ULTRA-LOW SULFUR DIESEL FUEL.—In the
25 case of a grant recipient receiving a grant for ultra-

1 low sulfur diesel fuel school buses, the grant recipi-
2 ent shall be required to provide documentation to
3 the satisfaction of the Administrator that diesel fuel
4 containing sulfur at not more than 15 parts per mil-
5 lion is available for carrying out the purposes of the
6 grant, and a commitment by the applicant to use
7 such fuel in carrying out the purposes of the grant.
8 (5) TIMING.—All alternative fuel school buses,
9 ultra-low sulfur diesel fuel school buses, or alter-
10 native fuel infrastructure acquired under a grant
11 awarded under this section shall be purchased and
12 placed in service as soon as practicable.
13 (g) BUSES.—
14 (1) IN GENERAL.—Except as provided in para-
15 graph (2), funding under a grant made under this
16 section for the acquisition of new alternative fuel
17 school buses or ultra-low sulfur diesel fuel school
18 buses shall only be used to acquire school buses—
19 (A) with a gross vehicle weight of greater
20 than 14,000 pounds;
21 (B) that are powered by a heavy duty en-
22 gine;
23 (C) in the case of alternative fuel school
24 buses manufactured in model years 2004
25 through 2006, that emit not more than 1.8

1 grams per brake horsepower-hour of non-
2 methane hydrocarbons and oxides of nitrogen
3 and .01 grams per brake horsepower-hour of
4 particulate matter; and

5 (D) in the case of ultra-low sulfur diesel
6 fuel school buses manufactured in model years
7 2004 through 2006, that emit not more than
8 2.5 grams per brake horsepower-hour of non-
9 methane hydrocarbons and oxides of nitrogen
10 and .01 grams per brake horsepower-hour of
11 particulate matter.

12 (2) LIMITATIONS.—A bus shall not be acquired
13 under this section that emits nonmethane hydro-
14 carbons, oxides of nitrogen, or particulate matter at
15 a rate greater than the best performing technology
16 of the same class of ultra-low sulfur diesel fuel
17 school buses commercially available at the time the
18 grant is made.

19 (h) DEPLOYMENT AND DISTRIBUTION.—The Admin-
20 istrator shall—

21 (1) seek, to the maximum extent practicable, to
22 achieve nationwide deployment of alternative fuel
23 school buses and ultra-low sulfur diesel fuel school
24 buses through the program under this section; and

1 (2) ensure a broad geographic distribution of
2 grant awards, with a goal of no State receiving more
3 than 10 percent of the grant funding made available
4 under this section for a fiscal year.
5 (i) ALLOCATION OF FUNDS.—
6 (1) IN GENERAL.—Subject to paragraph (2), of
7 the amount of grant funding made available to carry
8 out this section for any fiscal year, the Adminis-
9 trator shall use—
10 (A) 70 percent for the acquisition of alter-
11 native fuel school buses or supporting infra-
12 structure; and
13 (B) 30 percent for the acquisition of ultra-
14 low sulfur diesel fuel school buses.
15 (2) INSUFFICIENT NUMBER OF QUALIFIED
16 GRANT APPLICATIONS.—After the first fiscal year in
17 which this program is in effect, if the Administrator
18 does not receive a sufficient number of qualified
19 grant applications to meet the requirements of sub-
20 paragraph (A) or (B) of paragraph (1) for a fiscal
21 year, effective beginning on August 1 of the fiscal
22 year, the Administrator shall make the remaining
23 funds available to other qualified grant applicants
24 under this section.

1 (j) REDUCTION OF SCHOOL BUS IDLING.—Each
2 local educational agency (as defined in section 9101 of the
3 Elementary and Secondary Education Act of 1965 (20
4 U.S.C. 7801)) that receives Federal funds under the Ele-
5 mentary and Secondary Education Act of 1965 (20 U.S.C.
6 6301 et seq.) is encouraged to develop a policy, consistent
7 with the health, safety, and welfare of students and the
8 proper operation and maintenance of school buses, to re-
9 duce the incidence of unnecessary school bus idling at
10 schools when picking up and unloading students.

11 (k) ANNUAL REPORT.—

12 (1) IN GENERAL.—Not later than January 31
13 of each year, the Administrator shall transmit to
14 Congress a report evaluating implementation of the
15 programs under this section and section 743.

16 (2) COMPONENTS.—The reports shall include a
17 description of—

18 (A) the total number of grant applications
19 received;

20 (B) the number and types of alternative
21 fuel school buses, ultra-low sulfur diesel fuel
22 school buses, and retrofitted buses requested in
23 grant applications;

24 (C) grants awarded and the criteria used
25 to select the grant recipients;

1 (D) certified engine emission levels of all
2 buses purchased or retrofitted under the pro-
3 grams under this section and section 743;
4 (E) an evaluation of the in-use emission
5 level of buses purchased or retrofitted under the
6 programs under this section and section 743;
7 and
8 (F) any other information the Adminis-
9 trator considers appropriate.
10 (l) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated to the Administrator to
12 carry out this section, to remain available until
13 expended—
14 (1) $45,000,000 for fiscal year 2005;
15 (2) $65,000,000 for fiscal year 2006;
16 (3) $90,000,000 for fiscal year 2007; and
17 (4) such sums as are necessary for each of fis-
18 cal years 2008 and 2009.
19 **SEC. 743. DIESEL RETROFIT PROGRAM.**
20 (a) ESTABLISHMENT.—The Administrator, in con-
21 sultation with the Secretary, shall establish a program for
22 awarding grants on a competitive basis to entities for the
23 installation of retrofit technologies for diesel school buses.
24 (b) ELIGIBLE RECIPIENTS.—A grant shall be award-
25 ed under this section only—

1 (1) to a local or State governmental entity re-
2 sponsible for providing school bus service to 1 or
3 more public school systems;
4 (2) to 1 or more contracting entities that pro-
5 vide school bus service to 1 or more public school
6 systems, if the grant application is submitted jointly
7 with the 1 or more school systems that the buses
8 will serve, except that the application may provide
9 that buses purchased using funds awarded shall be
10 owned, operated, and maintained exclusively by the
11 1 or more contracting entities; or
12 (3) to a nonprofit school transportation associa-
13 tion representing private contracting entities, if the
14 association has notified and received approval from
15 the 1 or more school systems to be served by the
16 buses.
17 (c) AWARDS.—
18 (1) IN GENERAL.—The Administrator shall
19 seek, to the maximum extent practicable, to ensure
20 a broad geographic distribution of grants under this
21 section.
22 (2) PREFERENCES.—In making awards of
23 grants under this section, the Administrator shall
24 give preference to proposals that—

1 (A) will achieve the greatest reductions in
2 emissions of nonmethane hydrocarbons, oxides
3 of nitrogen, or particulate matter per proposal
4 or per bus; or
5 (B) involve the use of emissions control
6 retrofit technology on diesel school buses that
7 operate solely on ultra-low sulfur diesel fuel.
8 (d) CONDITIONS OF GRANT.—A grant shall be pro-
9 vided under this section on the conditions that—
10 (1) buses on which retrofit emissions-control
11 technology are to be demonstrated—
12 (A) will operate on ultra-low sulfur diesel
13 fuel where such fuel is reasonably available or
14 required for sale by State or local law or regula-
15 tion;
16 (B) were manufactured in model year 1991
17 or later; and
18 (C) will be used for the transportation of
19 school children to and from school for a min-
20 imum of 5 years;
21 (2) grant funds will be used for the purchase of
22 emission control retrofit technology, including State
23 taxes and contract fees; and
24 (3) grant recipients will provide at least 15 per-
25 cent of the total cost of the retrofit, including the

1 purchase of emission control retrofit technology and
2 all necessary labor for installation of the retrofit.
3 (e) VERIFICATION.—Not later than 90 days after the
4 date of enactment of this Act, the Administrator shall
5 publish in the Federal Register procedures to verify—
6 (1) the retrofit emissions-control technology to
7 be demonstrated;
8 (2) that buses powered by ultra-low sulfur die-
9 sel fuel on which retrofit emissions-control tech-
10 nology are to be demonstrated will operate on diesel
11 fuel containing not more than 15 parts per million
12 of sulfur; and
13 (3) that grants are administered in accordance
14 with this section.
15 (f) AUTHORIZATION OF APPROPRIATIONS.—There
16 are authorized to be appropriated to the Administrator to
17 carry out this section, to remain available until
18 expended—
19 (1) $20,000,000 for fiscal year 2005;
20 (2) $35,000,000 for fiscal year 2006;
21 (3) $45,000,000 for fiscal year 2007; and
22 (4) such sums as are necessary for each of fis-
23 cal years 2008 and 2009.

1 **SEC. 743A. DIESEL TRUCK RETROFIT AND FLEET MOD-**
2 **ERNIZATION PROGRAM.**

3 (a) ESTABLISHMENT.—The Administrator of the En-
4 vironmental Protection Agency, in consultation with the
5 Secretary of Energy, shall establish a program for award-
6 ing grants on a competitive basis to public agencies and
7 entities for fleet modernization programs including instal-
8 lation of retrofit technologies for diesel trucks.

9 (b) ELIGIBLE RECIPIENTS.—A grant shall be award-
10 ed under this section only to a State or local government
11 or an agency or instrumentality of a State or local govern-
12 ment or of two or more State or local governments who
13 will allocate funds, with preference to ports and other
14 major hauling operations.

15 (c) AWARDS.—

16 (1) IN GENERAL.—The Administrator shall
17 seek, to the maximum extent practicable, to ensure
18 a broad geographic distribution of grants under this
19 section.

20 (2) PREFERENCES.—In making awards of
21 grants under this section, the Administrator shall
22 give preference to proposals that—

23 (A) will achieve the greatest reductions in
24 emissions of nonmethane hydrocarbons, oxides
25 of nitrogen, and/or particulate matter per pro-
26 posal or per truck; or

1 (B) involve the use of Environmental Pro-
2 tection Agency or California Air Resources
3 Board verified emissions control retrofit tech-
4 nology on diesel trucks that operate solely on
5 ultra-low sulfur diesel fuel after September
6 2006.

7 (d) CONDITIONS OF GRANT.—A grant shall be pro-
8 vided under this section on the conditions that—

9 (1) trucks which are replacing scrapped trucks
10 and on which retrofit emissions-control technology
11 are to be demonstrated—

12 (A) will operate on ultra-low sulfur diesel
13 fuel where such fuel is reasonably available or
14 required for sale by State or local law or regula-
15 tion;

16 (B) were manufactured in model year 1998
17 and before; and

18 (C) will be used for the transportation of
19 cargo goods especially in port areas or used in
20 goods movement and major hauling operations;

21 (2) grant funds will be used for the purchase of
22 emission control retrofit technology, including State
23 taxes and contract fees; and

24 (3) grant recipients will provide at least 5 per-
25 cent of the total cost of the retrofit, including the

1 purchase of emission control retrofit technology and
2 all necessary labor for installation of the retrofit,
3 from any source other than this section.

4 (e) VERIFICATION.—Not later than 90 days after the
5 date of enactment of this Act, the Administrator shall
6 publish in the Federal Register procedures to—

7 (1) make grants pursuant to this section;

8 (2) verify that trucks powered by ultra-low sul-
9 fur diesel fuel on which retrofit emissions-control
10 technology are to be demonstrated will operate on
11 diesel fuel containing not more than 15 parts per
12 million of sulfur after September 2006; and

13 (3) verify that grants are administered in ac-
14 cordance with this section.

15 (f) AUTHORIZATION OF APPROPRIATIONS.—There
16 are authorized to be appropriated to the Administrator to
17 carry out this section, to remain available until expended
18 the following sums:

19 (1) $20,000,000 for fiscal year 2005.

20 (2) $35,000,000 for fiscal year 2006.

21 (3) $45,000,000 for fiscal year 2007.

22 (4) Such sums as are necessary for each of fis-
23 cal years 2008 and 2009.

1 **SEC. 744. FUEL CELL SCHOOL BUSES.**

2 (a) ESTABLISHMENT.—The Secretary shall establish
3 a program for entering into cooperative agreements—

4 (1) with private sector fuel cell bus developers
5 for the development of fuel cell-powered school
6 buses; and

7 (2) subsequently, with not less than 2 units of
8 local government using natural gas-powered school
9 buses and such private sector fuel cell bus developers
10 to demonstrate the use of fuel cell-powered school
11 buses.

12 (b) COST SHARING.—The non-Federal contribution
13 for activities funded under this section shall be not less
14 than—

15 (1) 20 percent for fuel infrastructure develop-
16 ment activities; and

17 (2) 50 percent for demonstration activities and
18 for development activities not described in paragraph
19 (1).

20 (c) REPORTS TO CONGRESS.—Not later than 3 years
21 after the date of enactment of this Act, the Secretary shall
22 transmit to Congress a report that—

23 (1) evaluates the process of converting natural
24 gas infrastructure to accommodate fuel cell-powered
25 school buses; and

1 (2) assesses the results of the development and
2 demonstration program under this section.
3 (d) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated to the Secretary to carry
5 out this section $25,000,000 for the period of fiscal years
6 2005 through 2007.

7 Subtitle D—Miscellaneous

8 SEC. 751. RAILROAD EFFICIENCY.

9 (a) ESTABLISHMENT.—The Secretary of Energy
10 shall, in cooperation with the Secretary of Transportation
11 and the Administrator of the Environmental Protection
12 Agency, establish a cost-shared, public-private research
13 partnership involving the Federal Government, railroad
14 carriers, locomotive manufacturers and equipment sup-
15 pliers, and the Association of American Railroads, to de-
16 velop and demonstrate railroad locomotive technologies
17 that increase fuel economy, reduce emissions, and lower
18 costs of operation.
19 (b) AUTHORIZATION OF APPROPRIATIONS.—There
20 are authorized to be appropriated to the Secretary of En-
21 ergy to carry out this section—
22 (1) $25,000,000 for fiscal year 2006;
23 (2) $35,000,000 for fiscal year 2007; and
24 (3) $50,000,000 for fiscal year 2008.

SEC. 752. MOBILE EMISSION REDUCTIONS TRADING AND CREDITING.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall submit to Congress a report on the experience of the Administrator with the trading of mobile source emission reduction credits for use by owners and operators of stationary source emission sources to meet emission offset requirements within a nonattainment area.

(b) CONTENTS.—The report shall describe—

(1) projects approved by the Administrator that include the trading of mobile source emission reduction credits for use by stationary sources in complying with offset requirements, including a description of—

(A) project and stationary sources location;

(B) volumes of emissions offset and traded;

(C) the sources of mobile emission reduction credits; and

(D) if available, the cost of the credits;

(2) the significant issues identified by the Administrator in consideration and approval of trading in the projects;

1 (3) the requirements for monitoring and assessing the air quality benefits of any approved project;
3 (4) the statutory authority on which the Administrator has based approval of the projects;
5 (5) an evaluation of how the resolution of issues in approved projects could be used in other projects; and
8 (6) any other issues that the Administrator considers relevant to the trading and generation of mobile source emission reduction credits for use by stationary sources or for other purposes.

12 **SEC. 753. AVIATION FUEL CONSERVATION AND EMISSIONS.**

13 (a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration and the Administrator of the Environmental Protection Agency shall jointly initiate a study to identify—

18 (1) the impact of aircraft emissions on air quality in nonattainment areas;
20 (2) ways to promote fuel conservation measures for aviation to enhance fuel efficiency and reduce emissions; and
23 (3) opportunities to reduce air traffic inefficiencies that increase fuel burn and emissions.

1 (b) FOCUS.—The study under subsection (a) shall
2 focus on how air traffic management inefficiencies, such
3 as aircraft idling at airports, result in unnecessary fuel
4 burn and air emissions.
5 (c) REPORT.—Not later than 1 year after the date
6 of the initiation of the study under subsection (a), the Ad-
7 ministrator of the Federal Aviation Administration and
8 the Administrator of the Environmental Protection Agen-
9 cy shall jointly submit to the Committee on Energy and
10 Commerce and the Committee on Transportation and In-
11 frastructure of the House of Representatives and the Com-
12 mittee on Environment and Public Works and the Com-
13 mittee on Commerce, Science, and Transportation of the
14 Senate a report that—
15 (1) describes the results of the study; and
16 (2) includes any recommendations on ways in
17 which unnecessary fuel use and emissions affecting
18 air quality may be reduced—
19 (A) without adversely affecting safety and
20 security and increasing individual aircraft noise;
21 and
22 (B) while taking into account all aircraft
23 emissions and the impact of those emissions on
24 the human health.

1 (d) RISK ASSESSMENTS.—Any assessment of risk to
2 human health and the environment prepared by the Ad-
3 ministrator of the Federal Aviation Administration or the
4 Administrator of the Environmental Protection Agency to
5 support the report in this section shall be based on sound
6 and objective scientific practices, shall consider the best
7 available science, and shall present the weight of the sci-
8 entific evidence concerning such risks.

9 **SEC. 754. DIESEL FUELED VEHICLES.**

10 (a) DEFINITION OF TIER 2 EMISSION STANDARDS.—
11 In this section, the term ''tier 2 emission standards''
12 means the motor vehicle emission standards that apply to
13 passenger cars, light trucks, and larger passenger vehicles
14 manufactured after the 2003 model year, as issued on
15 February 10, 2000, by the Administrator of the Environ-
16 mental Protection Agency under sections 202 and 211 of
17 the Clean Air Act (42 U.S.C. 7521, 7545).

18 (b) DIESEL COMBUSTION AND AFTER-TREATMENT
19 TECHNOLOGIES.—The Secretary of Energy shall accel-
20 erate efforts to improve diesel combustion and after-treat-
21 ment technologies for use in diesel fueled motor vehicles.

22 (c) GOALS.—The Secretary shall carry out subsection
23 (b) with a view toward achieving the following goals:

1 (1) Developing and demonstrating diesel tech-
2 nologies that, not later than 2010, meet the fol-
3 lowing standards:
4 (A) Tier 2 emission standards.
5 (B) The heavy-duty emissions standards of
6 2007 that are applicable to heavy-duty vehicles
7 under regulations issued by the Administrator
8 of the Environmental Protection Agency as of
9 the date of enactment of this Act.
10 (2) Developing the next generation of low-emis-
11 sion, high efficiency diesel engine technologies, in-
12 cluding homogeneous charge compression ignition
13 technology.

14 **SEC. 755. CONSERVE BY BICYCLING PROGRAM.**

15 (a) DEFINITIONS.—In this section:
16 (1) PROGRAM.—The term ''program'' means
17 the Conserve by Bicycling Program established by
18 subsection (b).
19 (2) SECRETARY.—The term ''Secretary'' means
20 the Secretary of Transportation.
21 (b) ESTABLISHMENT.—There is established within
22 the Department of Transportation a program to be known
23 as the ''Conserve by Bicycling Program''.
24 (c) PROJECTS.—

1 (1) IN GENERAL.—In carrying out the program,
2 the Secretary shall establish not more than 10 pilot
3 projects that are—
4 (A) dispersed geographically throughout
5 the United States; and
6 (B) designed to conserve energy resources
7 by encouraging the use of bicycles in place of
8 motor vehicles.
9 (2) REQUIREMENTS.—A pilot project described
10 in paragraph (1) shall—
11 (A) use education and marketing to con-
12 vert motor vehicle trips to bicycle trips;
13 (B) document project results and energy
14 savings (in estimated units of energy con-
15 served);
16 (C) facilitate partnerships among inter-
17 ested parties in at least 2 of the fields of—
18 (i) transportation;
19 (ii) law enforcement;
20 (iii) education;
21 (iv) public health;
22 (v) environment; and
23 (vi) energy;
24 (D) maximize bicycle facility investments;

1 (E) demonstrate methods that may be
2 used in other regions of the United States; and
3 (F) facilitate the continuation of ongoing
4 programs that are sustained by local resources.
5 (3) COST SHARING.—At least 20 percent of the
6 cost of each pilot project described in paragraph (1)
7 shall be provided from State or local sources.
8 (d) ENERGY AND BICYCLING RESEARCH STUDY.—
9 (1) IN GENERAL.—Not later than 2 years after
10 the date of enactment of this Act, the Secretary
11 shall enter into a contract with the National Acad-
12 emy of Sciences for, and the National Academy of
13 Sciences shall conduct and submit to Congress a re-
14 port on, a study on the feasibility of converting
15 motor vehicle trips to bicycle trips.
16 (2) COMPONENTS.—The study shall—
17 (A) document the results or progress of
18 the pilot projects under subsection (c);
19 (B) determine the type and duration of
20 motor vehicle trips that people in the United
21 States may feasibly make by bicycle, taking into
22 consideration factors such as—
23 (i) weather;
24 (ii) land use and traffic patterns;

1 (iii) the carrying capacity of bicycles;
2 and
3 (iv) bicycle infrastructure;
4 (C) determine any energy savings that
5 would result from the conversion of motor vehi-
6 cle trips to bicycle trips;
7 (D) include a cost-benefit analysis of bicy-
8 cle infrastructure investments; and
9 (E) include a description of any factors
10 that would encourage more motor vehicle trips
11 to be replaced with bicycle trips.
12 (e) AUTHORIZATION OF APPROPRIATIONS.—There is
13 authorized to be appropriated to carry out this section
14 $6,200,000, to remain available until expended, of
15 which—
16 (1) $5,150,000 shall be used to carry out pilot
17 projects described in subsection (c);
18 (2) $300,000 shall be used by the Secretary to
19 coordinate, publicize, and disseminate the results of
20 the program; and
21 (3) $750,000 shall be used to carry out sub-
22 section (d).
23 **SEC. 756. REDUCTION OF ENGINE IDLING OF HEAVY-DUTY**
24 **VEHICLES.**
25 (a) DEFINITIONS.—In this section:

1 (1) ADMINISTRATOR.—The term ''Adminis-
2 trator'' means the Administrator of the Environ-
3 mental Protection Agency.
4 (2) ADVANCED TRUCK STOP ELECTRIFICATION
5 SYSTEM.—The term ''advanced truck stop elec-
6 trification system'' means a stationary system that
7 delivers heat, air conditioning, electricity, or commu-
8 nications, and is capable of providing verifiable and
9 auditable evidence of use of those services, to a
10 heavy-duty vehicle and any occupants of the heavy-
11 duty vehicle with or without relying on components
12 mounted onboard the heavy-duty vehicle for delivery
13 of those services.
14 (3) AUXILIARY POWER UNIT.—The term ''auxil-
15 iary power unit'' means an integrated system that—
16 (A) provides heat, air conditioning, engine
17 warming, or electricity to components on a
18 heavy-duty vehicle; and
19 (B) is certified by the Administrator under
20 part 89 of title 40, Code of Federal Regulations
21 (or any successor regulation), as meeting appli-
22 cable emission standards.
23 (4) HEAVY-DUTY VEHICLE.—The term ''heavy-
24 duty vehicle'' means a vehicle that—

1 (A) has a gross vehicle weight rating great-
2 er than 8,500 pounds; and
3 (B) is powered by a diesel engine.
4 (5) IDLE REDUCTION TECHNOLOGY.—The term
5 ‘‘idle reduction technology’’ means an advanced
6 truck stop electrification system, auxiliary power
7 unit, or other device or system of devices that—
8 (A) is used to reduce long-duration idling
9 of a heavy-duty vehicle; and
10 (B) allows for the main drive engine or
11 auxiliary refrigeration engine of a heavy-duty
12 vehicle to be shut down.
13 (6) ENERGY CONSERVATION TECHNOLOGY.—
14 the term ‘‘energy conservation technology’’ means
15 any device, system of devices, or equipment that im-
16 proves the fuel economy of a heavy-duty vehicle.
17 (7) LONG-DURATION IDLING.—
18 (A) IN GENERAL.—The term ‘‘long-dura-
19 tion idling’’ means the operation of a main
20 drive engine or auxiliary refrigeration engine of
21 a heavy-duty vehicle, for a period greater than
22 15 consecutive minutes, at a time at which the
23 main drive engine is not engaged in gear.
24 (B) EXCLUSIONS.—The term ‘‘long-dura-
25 tion idling’’ does not include the operation of a

1 main drive engine or auxiliary refrigeration en-
2 gine of a heavy-duty vehicle during a routine
3 stoppage associated with traffic movement or
4 congestion.

5 (b) IDLE REDUCTION TECHNOLOGY BENEFITS, PRO-
6 GRAMS, AND STUDIES.—

7 (1) IN GENERAL.—Not later than 90 days after
8 the date of enactment of this Act, the Administrator
9 shall—

10 (A)(i) commence a review of the mobile
11 source air emission models of the Environ-
12 mental Protection Agency used under the Clean
13 Air Act (42 U.S.C. 7401 et seq.) to determine
14 whether the models accurately reflect the emis-
15 sions resulting from long-duration idling of
16 heavy-duty vehicles and other vehicles and en-
17 gines; and

18 (ii) update those models as the Adminis-
19 trator determines to be appropriate; and

20 (B)(i) commence a review of the emission
21 reductions achieved by the use of idle reduction
22 technology; and

23 (ii) complete such revisions of the regula-
24 tions and guidance of the Environmental Pro-

1 tection Agency as the Administrator determines
2 to be appropriate.
3 (2) DEADLINE FOR COMPLETION.—Not later
4 than 180 days after the date of enactment of this
5 Act, the Administrator shall—
6 (A) complete the reviews under subpara-
7 graphs (A)(i) and (B)(i) of paragraph (1); and
8 (B) prepare and make publicly available 1
9 or more reports on the results of the reviews.
10 (3) DISCRETIONARY INCLUSIONS.—The reviews
11 under subparagraphs (A)(i) and (B)(i) of paragraph
12 (1) and the reports under paragraph (2)(B) may ad-
13 dress the potential fuel savings resulting from use of
14 idle reduction technology.
15 (4) IDLE REDUCTION AND ENERGY CONSERVA-
16 TION DEPLOYMENT PROGRAM.—
17 (A) ESTABLISHMENT.—
18 (i) IN GENERAL.—Not later than 90
19 days after the date of enactment of this
20 Act, the Administrator, in consultation
21 with the Secretary of Transportation shall,
22 through the Environmental Protection
23 Agency's SmartWay Transport Partner-
24 ship, establish a program to support de-

1 ployment of idle reduction and energy con-
2 servation technologies .
3 (ii) PRIORITY.—The Administrator
4 shall give priority to the deployment of idle
5 reduction and energy conservation tech-
6 nologies based on the costs and beneficial
7 effects on air quality and ability to lessen
8 the emission of criteria air pollutants.
9 (B) FUNDING.—
10 (i) AUTHORIZATION OF APPROPRIA-
11 TIONS.—There are authorized to be appro-
12 priated to the Administrator to carry out
13 subparagraph (A) $19,500,000 for fiscal
14 year 2006, $30,000,000 for fiscal year
15 2007, and $45,000,000 for fiscal year
16 2008.
17 (ii) COST SHARING.—Subject to clause
18 (iii), the Administrator shall require at
19 least 50 percent of the costs directly and
20 specifically related to any project under
21 this section to be provided from non-Fed-
22 eral sources.
23 (iii) NECESSARY AND APPROPRIATE
24 REDUCTIONS.—The Administrator may re-
25 duce the non-Federal requirement under

clause (ii) if the Administrator determines that the reduction is necessary and appropriate to meet the objectives of this section.

(5) IDLING LOCATION STUDY.—

(A) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Administrator, in consultation with the Secretary of Transportation, shall commence a study to analyze all locations at which heavy-duty vehicles stop for long-duration idling, including—

(i) truck stops;

(ii) rest areas;

(iii) border crossings;

(iv) ports;

(v) transfer facilities; and

(vi) private terminals.

(B) DEADLINE FOR COMPLETION.—Not later than 180 days after the date of enactment of this Act, the Administrator shall—

(i) complete the study under subparagraph (A); and

(ii) prepare and make publicly available 1 or more reports of the results of the study.

1 (c) VEHICLE WEIGHT EXEMPTION.—Section 127(a)
2 of title 23, United States Code, is amended—
3 (1) by designating the first through eleventh
4 sentences as paragraphs (1) through (11), respec-
5 tively; and
6 (2) by adding at the end the following:
7 "(12) HEAVY DUTY VEHICLES.—
8 "(A) IN GENERAL.—Subject to subpara-
9 graphs (B) and (C), in order to promote reduc-
10 tion of fuel use and emissions because of engine
11 idling, the maximum gross vehicle weight limit
12 and the axle weight limit for any heavy-duty ve-
13 hicle equipped with an idle reduction technology
14 shall be increased by a quantity necessary to
15 compensate for the additional weight of the idle
16 reduction system.
17 "(B) MAXIMUM WEIGHT INCREASE.—The
18 weight increase under subparagraph (A) shall
19 be not greater than 400 pounds.
20 "(C) PROOF.—On request by a regulatory
21 agency or law enforcement agency, the vehicle
22 operator shall provide proof (through dem-
23 onstration or certification) that—
24 "(i) the idle reduction technology is
25 fully functional at all times; and

1 “(ii) the 400-pound gross weight in-
2 crease is not used for any purpose other
3 than the use of idle reduction technology
4 described in subparagraph (A).”.
5 (d) REPORT.—Not later than 60 days after the date
6 on which funds are initially awarded under this section,
7 and on an annual basis thereafter, the Administrator shall
8 submit to Congress a report containing—
9 (1) an identification of the grant recipients, a
10 description of the projects to be funded and the
11 amount of funding provided; and
12 (2) an identification of all other applicants that
13 submitted applications under the program.
14 **SEC. 757. BIODIESEL ENGINE TESTING PROGRAM.**
15 (a) IN GENERAL.—Not later that 180 days after the
16 date of enactment of this Act, the Secretary shall initiate
17 a partnership with diesel engine, diesel fuel injection sys-
18 tem, and diesel vehicle manufacturers and diesel and bio-
19 diesel fuel providers, to include biodiesel testing in ad-
20 vanced diesel engine and fuel system technology.
21 (b) SCOPE.—The program shall provide for testing
22 to determine the impact of biodiesel from different sources
23 on current and future emission control technologies, with
24 emphasis on—

1 (1) the impact of biodiesel on emissions war-
2 ranty, in-use liability, and antitampering provisions;
3 (2) the impact of long-term use of biodiesel on
4 engine operations;
5 (3) the options for optimizing these technologies
6 for both emissions and performance when switching
7 between biodiesel and diesel fuel; and
8 (4) the impact of using biodiesel in these fuel-
9 ing systems and engines when used as a blend with
10 2006 Environmental Protection Agency-mandated
11 diesel fuel containing a maximum of 15-parts-per-
12 million sulfur content.
13 (c) REPORT.—Not later than 2 years after the date
14 of enactment of this Act, the Secretary shall provide an
15 interim report to Congress on the findings of the program,
16 including a comprehensive analysis of impacts from bio-
17 diesel on engine operation for both existing and expected
18 future diesel technologies, and recommendations for en-
19 suring optimal emissions reductions and engine perform-
20 ance with biodiesel.
21 (d) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated $5,000,000 for each of
23 fiscal years 2006 through 2010 to carry out this section.
24 (e) DEFINITION.—For purposes of this section, the
25 term ''biodiesel'' means a diesel fuel substitute produced

1 from nonpetroleum renewable resources that meets the
2 registration requirements for fuels and fuel additives es-
3 tablished by the Environmental Protection Agency under
4 section 211 of the Clean Air Act (42 U.S.C. 7545) and
5 that meets the American Society for Testing and Materials
6 D6751–02a Standard Specification for Biodiesel Fuel
7 (B100) Blend Stock for Distillate Fuels.

8 **SEC. 758. HIGH OCCUPANCY VEHICLE EXCEPTION.**

9 Notwithstanding section 102(a) of title 23, United
10 States Code, a State may permit a vehicle with fewer than
11 2 occupants to operate in high occupancy vehicle lanes if
12 the vehicle—

13 (1) is a dedicated vehicle (as defined in section
14 301 of the Energy Policy Act of 1992 (42 U.S.
15 13211)); or

16 (2) is a hybrid vehicle (as defined by the State
17 for the purpose of this section).

18 **SEC. 759. ULTRA-EFFICIENT ENGINE TECHNOLOGY FOR**
19 **AIRCRAFT.**

20 (a) ULTRA-EFFICIENT ENGINE TECHNOLOGY PART-
21 NERSHIP.—The Secretary of Energy shall enter into a co-
22 operative agreement with the National Aeronautics and
23 Space Administration for the development of ultra-effi-
24 cient engine technology for aircraft.

1 (b) PERFORMANCE OBJECTIVE.—The Secretary of
2 Energy shall establish the following performance objec-
3 tives for the program set forth in subsection (a):
4 (1) A fuel efficiency increase of 10 percent.
5 (2) A reduction in the impact of landing and
6 takeoff nitrogen oxides emissions on local air quality
7 of 70 percent.
8 (c) AUTHORIZATION OF APPROPRIATIONS .—There
9 are authorized to be appropriated to the Secretary of En-
10 ergy for carrying out this section $45,000,000 for each
11 of the fiscal years 2006, 2007, 2008, 2009, and 2010.

12 Subtitle E—Automobile Efficiency

13 SEC. 771. AUTHORIZATION OF APPROPRIATIONS FOR IM-
14 PLEMENTATION AND ENFORCEMENT OF
15 FUEL ECONOMY STANDARDS.

16 In addition to any other funds authorized by law,
17 there are authorized to be appropriated to the National
18 Highway Traffic Safety Administration to carry out its ob-
19 ligations with respect to average fuel economy standards
20 $2,000,000 for each of fiscal years 2006 through 2010.

21 SEC. 772. REVISED CONSIDERATIONS FOR DECISIONS ON
22 MAXIMUM FEASIBLE AVERAGE FUEL ECON-
23 OMY.

24 Section 32902(f) of title 49, United States Code, is
25 amended to read as follows:

1 "(f) CONSIDERATIONS FOR DECISIONS ON MAXIMUM
2 FEASIBLE AVERAGE FUEL ECONOMY.—When deciding
3 maximum feasible average fuel economy under this sec-
4 tion, the Secretary of Transportation shall consider the
5 following matters:
6 "(1) Technological feasibility.
7 "(2) Economic practicability.
8 "(3) The effect of other motor vehicle standards
9 of the Government on fuel economy.
10 "(4) The need of the United States to conserve
11 energy.
12 "(5) The effects of fuel economy standards on
13 passenger automobiles, nonpassenger automobiles,
14 and occupant safety.
15 "(6) The effects of compliance with average fuel
16 economy standards on levels of automobile industry
17 employment in the United States.".
18 **SEC. 773. EXTENSION OF MAXIMUM FUEL ECONOMY IN-**
19 **CREASE FOR ALTERNATIVE FUELED VEHI-**
20 **CLES.**
21 (a) MANUFACTURING INCENTIVES.—Section 32905
22 of title 49, United States Code, is amended—
23 (1) in each of subsections (b) and (d), by strik-
24 ing "1993–2004" and inserting "1993–2010";

1 (2) in subsection (f), by striking "2001" and
2 inserting "2007"; and

3 (3) in subsection (f)(1), by striking "2004" and
4 inserting "2010".

5 (b) MAXIMUM FUEL ECONOMY INCREASE.—Sub-
6 section (a)(1) of section 32906 of title 49, United States
7 Code, is amended—

8 (1) in subparagraph (A), by striking "the model
9 years 1993–2004" and inserting "model years
10 1993–2010"; and

11 (2) in subparagraph (B), by striking "the model
12 years 2005–2008" and inserting "model years
13 2011–2014".

14 **SEC. 774. STUDY OF FEASIBILITY AND EFFECTS OF REDUC-**
15 **ING USE OF FUEL FOR AUTOMOBILES.**

16 (a) IN GENERAL.—Not later than 30 days after the
17 date of the enactment of this Act, the Administrator of
18 the National Highway Traffic Safety Administration shall
19 initiate a study of the feasibility and effects of reducing
20 by model year 2014, by a significant percentage, the
21 amount of fuel consumed by automobiles.

22 (b) SUBJECTS OF STUDY.—The study under this sec-
23 tion shall include—

24 (1) examination of, and recommendation of al-
25 ternatives to, the policy under current Federal law

1 of establishing average fuel economy standards for
2 automobiles and requiring each automobile manufac-
3 turer to comply with average fuel economy standards
4 that apply to the automobiles it manufactures;
5 (2) examination of how automobile manufactur-
6 ers could contribute toward achieving the reduction
7 referred to in subsection (a);
8 (3) examination of the potential of fuel cell
9 technology in motor vehicles in order to determine
10 the extent to which such technology may contribute
11 to achieving the reduction referred to in subsection
12 (a); and
13 (4) examination of the effects of the reduction
14 referred to in subsection (a) on—
15 (A) gasoline supplies;
16 (B) the automobile industry, including
17 sales of automobiles manufactured in the
18 United States;
19 (C) motor vehicle safety; and
20 (D) air quality.
21 (c) REPORT.—The Administrator shall submit to
22 Congress a report on the findings, conclusion, and rec-
23 ommendations of the study under this section by not later
24 than 1 year after the date of the enactment of this Act.

1 **SEC. 775. UPDATE TESTING PROCEDURES.**

2 The Administrator of the Environmental Protection
3 Agency shall update or revise the adjustment factors in
4 sections 600.209–85 and 600.209–95, of the Code of Fed-
5 eral Regulations, CFR Part 600 (1995) Fuel Economy
6 Regulations for 1977 and Later Model Year Automobiles
7 to take into consideration higher speed limits, faster accel-
8 eration rates, variations in temperature, use of air condi-
9 tioning, shorter city test cycle lengths, current reference
10 fuels, and the use of other fuel depleting features.

11 # TITLE VIII—HYDROGEN

12 **SEC. 801. DEFINITIONS.**

13 In this title:

14 (1) ADVISORY COMMITTEE.—The term ''Advi-
15 sory Committee'' means the Hydrogen Technical and
16 Fuel Cell Advisory Committee established under sec-
17 tion 805.

18 (2) DEPARTMENT.—The term ''Department''
19 means the Department of Energy.

20 (3) FUEL CELL.—The term ''fuel cell'' means a
21 device that directly converts the chemical energy of
22 a fuel and an oxidant into electricity by an electro-
23 chemical process taking place at separate electrodes
24 in the device.

25 (4) INFRASTRUCTURE.—The term ''infrastruc-
26 ture'' means the equipment, systems, or facilities

used to produce, distribute, deliver, or store hydrogen.

(5) LIGHT DUTY VEHICLE.—The term ''light duty vehicle'' means a car or truck classified by the Department of Transportation as a Class I or IIA vehicle.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

SEC. 802. PLAN.

Not later than 6 months after the date of enactment of this Act, the Secretary shall transmit to Congress a coordinated plan for the programs described in this title and any other programs of the Department that are directly related to fuel cells or hydrogen. The plan shall describe, at a minimum—

(1) the agenda for the next 5 years for the programs authorized under this title, including the agenda for each activity enumerated in section 803(a);

(2) the types of entities that will carry out the activities under this title and what role each entity is expected to play;

(3) the milestones that will be used to evaluate the programs for the next 5 years;

1 (4) the most significant technical and nontech-
2 nical hurdles that stand in the way of achieving the
3 goals described in section 803(b), and how the pro-
4 grams will address those hurdles; and
5 (5) the policy assumptions that are implicit in
6 the plan, including any assumptions that would af-
7 fect the sources of hydrogen or the marketability of
8 hydrogen-related products.

9 **SEC. 803. PROGRAMS.**

10 (a) ACTIVITIES.—The Secretary, in partnership with
11 the private sector, shall conduct programs to address—
12 (1) production of hydrogen from diverse energy
13 sources, including—
14 (A) fossil fuels, which may include carbon
15 capture and sequestration;
16 (B) hydrogen-carrier fuels (including eth-
17 anol and methanol);
18 (C) renewable energy resources, including
19 biomass; and
20 (D) nuclear energy;
21 (2) use of hydrogen for commercial, industrial,
22 and residential electric power generation;
23 (3) safe delivery of hydrogen or hydrogen-car-
24 rier fuels, including—

1 (A) transmission by pipeline and other dis-
2 tribution methods; and
3 (B) convenient and economic refueling of
4 vehicles either at central refueling stations or
5 through distributed on-site generation;
6 (4) advanced vehicle technologies, including—
7 (A) engine and emission control systems;
8 (B) energy storage, electric propulsion, and
9 hybrid systems;
10 (C) automotive materials; and
11 (D) other advanced vehicle technologies;
12 (5) storage of hydrogen or hydrogen-carrier
13 fuels, including development of materials for safe
14 and economic storage in gaseous, liquid, or solid
15 form at refueling facilities and onboard vehicles;
16 (6) development of safe, durable, affordable,
17 and efficient fuel cells, including fuel-flexible fuel cell
18 power systems, improved manufacturing processes,
19 high-temperature membranes, cost-effective fuel
20 processing for natural gas, fuel cell stack and system
21 reliability, low temperature operation, and cold start
22 capability;
23 (7) development, after consultation with the pri-
24 vate sector, of necessary codes and standards (in-
25 cluding international codes and standards and vol-

1 untary consensus standards adopted in accordance
2 with OMB Circular A–119) and safety practices for
3 the production, distribution, storage, and use of hy-
4 drogen, hydrogen-carrier fuels, and related products;
5 (8) a public education program to develop im-
6 proved knowledge and acceptability of hydrogen-
7 based systems; and
8 (9) the ability of domestic automobile manufac-
9 turers to manufacture commercially available com-
10 petitive hybrid vehicle technologies in the United
11 States.
12 (b) PROGRAM GOALS.—
13 (1) VEHICLES.—For vehicles, the goals of the
14 program are—
15 (A) to enable a commitment by auto-
16 makers no later than year 2015 to offer safe,
17 affordable, and technically viable hydrogen fuel
18 cell vehicles in the mass consumer market; and
19 (B) to enable production, delivery, and ac-
20 ceptance by consumers of model year 2020 hy-
21 drogen fuel cell and other hydrogen-powered ve-
22 hicles that will have—
23 (i) a range of at least 300 miles;
24 (ii) improved performance and ease of
25 driving;

1 (iii) safety and performance comparable to vehicle technologies in the market; and

4 (iv) when compared to light duty vehicles in model year 2003—

6 (I) fuel economy that is substantially higher;

8 (II) substantially lower emissions of air pollutants; and

10 (III) equivalent or improved vehicle fuel system crash integrity and occupant protection.

13 (2) HYDROGEN ENERGY AND ENERGY INFRASTRUCTURE.—For hydrogen energy and energy infrastructure, the goals of the program are to enable a commitment not later than 2015 that will lead to infrastructure by 2020 that will provide—

18 (A) safe and convenient refueling;

19 (B) improved overall efficiency;

20 (C) widespread availability of hydrogen from domestic energy sources through—

22 (i) production, with consideration of emissions levels;

1 (ii) delivery, including transmission by
2 pipeline and other distribution methods for
3 hydrogen; and
4 (iii) storage, including storage in sur-
5 face transportation vehicles;
6 (D) hydrogen for fuel cells, internal com-
7 bustion engines, and other energy conversion
8 devices for portable, stationary, and transpor-
9 tation applications; and
10 (E) other technologies consistent with the
11 Department's plan.
12 (3) FUEL CELLS.—The goals for fuel cells and
13 their portable, stationary, and transportation appli-
14 cations are to enable—
15 (A) safe, economical, and environmentally
16 sound hydrogen fuel cells;
17 (B) fuel cells for light duty and other vehi-
18 cles; and
19 (C) other technologies consistent with the
20 Department's plan.
21 (c) DEMONSTRATION.—In carrying out the programs
22 under this section, the Secretary shall fund a limited num-
23 ber of demonstration projects, consistent with a deter-
24 mination of the maturity, cost-effectiveness, and environ-
25 mental impacts of technologies supporting each project. In

1 selecting projects under this subsection, the Secretary
2 shall, to the extent practicable and in the public interest,
3 select projects that—
4 (1) involve using hydrogen and related products
5 at existing facilities or installations, such as existing
6 office buildings, military bases, vehicle fleet centers,
7 transit bus authorities, or units of the National Park
8 System;
9 (2) depend on reliable power from hydrogen to
10 carry out essential activities;
11 (3) lead to the replication of hydrogen tech-
12 nologies and draw such technologies into the market-
13 place;
14 (4) include vehicle, portable, and stationary
15 demonstrations of fuel cell and hydrogen-based en-
16 ergy technologies;
17 (5) address the interdependency of demand for
18 hydrogen fuel cell applications and hydrogen fuel in-
19 frastructure;
20 (6) raise awareness of hydrogen technology
21 among the public;
22 (7) facilitate identification of an optimum tech-
23 nology among competing alternatives;
24 (8) address distributed generation using renew-
25 able sources; and

1 (9) address applications specific to rural or re-
2 mote locations, including isolated villages and is-
3 lands, the National Park System, and tribal entities.
4 The Secretary shall give preference to projects which ad-
5 dress multiple elements contained in paragraphs (1)
6 through (9).

7 (d) DEPLOYMENT.—In carrying out the programs
8 under this section, the Secretary shall, in partnership with
9 the private sector, conduct activities to facilitate the de-
10 ployment of hydrogen energy and energy infrastructure,
11 fuel cells, and advanced vehicle technologies.

12 (e) FUNDING.—

13 (1) IN GENERAL.—The Secretary shall carry
14 out the programs under this section using a competi-
15 tive, merit-based review process and consistent with
16 the generally applicable Federal laws and regulations
17 governing awards of financial assistance, contracts,
18 or other agreements.

19 (2) RESEARCH CENTERS.—Activities under this
20 section may be carried out by funding nationally rec-
21 ognized university-based or Federal laboratory re-
22 search centers.

23 (f) COST SHARING.—

24 (1) RESEARCH AND DEVELOPMENT.—Except as
25 otherwise provided in this title, for research and de-

1 velopment programs carried out under this title the
2 Secretary shall require a commitment from non-Fed-
3 eral sources of at least 20 percent of the cost of the
4 project. The Secretary may reduce or eliminate the
5 non-Federal requirement under this paragraph if the
6 Secretary determines that the research and develop-
7 ment is of a basic or fundamental nature or involves
8 technical analyses or educational activities.

9 (2) DEMONSTRATION AND COMMERCIAL APPLI-
10 CATION.—Except as otherwise provided in this title,
11 the Secretary shall require at least 50 percent of the
12 costs directly and specifically related to any dem-
13 onstration or commercial application project under
14 this title to be provided from non-Federal sources.
15 The Secretary may reduce the non-Federal require-
16 ment under this paragraph if the Secretary deter-
17 mines that the reduction is necessary and appro-
18 priate considering the technological risks involved in
19 the project and is necessary to meet the objectives
20 of this title.

21 (3) CALCULATION OF AMOUNT.—In calculating
22 the amount of the non-Federal commitment under
23 paragraph (1) or (2), the Secretary may include per-
24 sonnel, services, equipment, and other resources.

1 (4) SIZE OF NON-FEDERAL SHARE.—The Sec-
2 retary may consider the size of the non-Federal
3 share in selecting projects.

4 (g) DISCLOSURE.—Section 623 of the Energy Policy
5 Act of 1992 (42 U.S.C. 13293) relating to the protection
6 of information shall apply to projects carried out through
7 grants, cooperative agreements, or contracts under this
8 title.

9 **SEC. 804. INTERAGENCY TASK FORCE.**

10 (a) ESTABLISHMENT.—Not later than 120 days after
11 the date of enactment of this Act, the President shall es-
12 tablish an interagency task force chaired by the Secretary
13 with representatives from each of the following:

14 (1) The Office of Science and Technology Pol-
15 icy within the Executive Office of the President.

16 (2) The Department of Transportation.

17 (3) The Department of Defense.

18 (4) The Department of Commerce (including
19 the National Institute of Standards and Tech-
20 nology).

21 (5) The Department of State.

22 (6) The Environmental Protection Agency.

23 (7) The National Aeronautics and Space Ad-
24 ministration.

1 (8) Other Federal agencies as the Secretary de-
2 termines appropriate.
3 (b) DUTIES.—
4 (1) PLANNING.—The interagency task force
5 shall work toward—
6 (A) a safe, economical, and environ-
7 mentally sound fuel infrastructure for hydrogen
8 and hydrogen-carrier fuels, including an infra-
9 structure that supports buses and other fleet
10 transportation;
11 (B) fuel cells in government and other ap-
12 plications, including portable, stationary, and
13 transportation applications;
14 (C) distributed power generation, including
15 the generation of combined heat, power, and
16 clean fuels including hydrogen;
17 (D) uniform hydrogen codes, standards,
18 and safety protocols; and
19 (E) vehicle hydrogen fuel system integrity
20 safety performance.
21 (2) ACTIVITIES.—The interagency task force
22 may organize workshops and conferences, may issue
23 publications, and may create databases to carry out
24 its duties. The interagency task force shall—

1 (A) foster the exchange of generic, non-
2 proprietary information and technology among
3 industry, academia, and government;
4 (B) develop and maintain an inventory and
5 assessment of hydrogen, fuel cells, and other
6 advanced technologies, including the commercial
7 capability of each technology for the economic
8 and environmentally safe production, distribu-
9 tion, delivery, storage, and use of hydrogen;
10 (C) integrate technical and other informa-
11 tion made available as a result of the programs
12 and activities under this title;
13 (D) promote the marketplace introduction
14 of infrastructure for hydrogen fuel vehicles; and
15 (E) conduct an education program to pro-
16 vide hydrogen and fuel cell information to po-
17 tential end-users.
18 (c) AGENCY COOPERATION.—The heads of all agen-
19 cies, including those whose agencies are not represented
20 on the interagency task force, shall cooperate with and
21 furnish information to the interagency task force, the Ad-
22 visory Committee, and the Department.

SEC. 805. ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—The Hydrogen Technical and Fuel Cell Advisory Committee is established to advise the Secretary on the programs and activities under this title.

(b) MEMBERSHIP.—

(1) MEMBERS.—The Advisory Committee shall be comprised of not fewer than 12 nor more than 25 members. The members shall be appointed by the Secretary to represent domestic industry, academia, professional societies, government agencies, Federal laboratories, previous advisory panels, and financial, environmental, and other appropriate organizations based on the Department's assessment of the technical and other qualifications of committee members and the needs of the Advisory Committee.

(2) TERMS.—The term of a member of the Advisory Committee shall not be more than 3 years. The Secretary may appoint members of the Advisory Committee in a manner that allows the terms of the members serving at any time to expire at spaced intervals so as to ensure continuity in the functioning of the Advisory Committee. A member of the Advisory Committee whose term is expiring may be reappointed.

(3) CHAIRPERSON.—The Advisory Committee shall have a chairperson, who is elected by the members from among their number.

(c) REVIEW.—The Advisory Committee shall review and make recommendations to the Secretary on—

(1) the implementation of programs and activities under this title;

(2) the safety, economical, and environmental consequences of technologies for the production, distribution, delivery, storage, or use of hydrogen energy and fuel cells; and

(3) the plan under section 802.

(d) RESPONSE.—

(1) CONSIDERATION OF RECOMMENDATIONS.—The Secretary shall consider, but need not adopt, any recommendations of the Advisory Committee under subsection (c).

(2) BIENNIAL REPORT.—The Secretary shall transmit a biennial report to Congress describing any recommendations made by the Advisory Committee since the previous report. The report shall include a description of how the Secretary has implemented or plans to implement the recommendations, or an explanation of the reasons that a recommendation will not be implemented. The report shall be

1 transmitted along with the President's budget pro-
2 posal.
3 (e) SUPPORT.—The Secretary shall provide resources
4 necessary in the judgment of the Secretary for the Advi-
5 sory Committee to carry out its responsibilities under this
6 title.

7 **SEC. 806. EXTERNAL REVIEW.**

8 (a) PLAN.—The Secretary shall enter into an ar-
9 rangement with the National Academy of Sciences to re-
10 view the plan prepared under section 802, which shall be
11 completed not later than 6 months after the Academy re-
12 ceives the plan. Not later than 45 days after receiving the
13 review, the Secretary shall transmit the review to Congress
14 along with a plan to implement the review's recommenda-
15 tions or an explanation of the reasons that a recommenda-
16 tion will not be implemented.
17 (b) ADDITIONAL REVIEW.—The Secretary shall enter
18 into an arrangement with the National Academy of
19 Sciences under which the Academy will review the pro-
20 grams under section 803 during the fourth year following
21 the date of enactment of this Act. The Academy's review
22 shall include the research priorities and technical mile-
23 stones, and evaluate the progress toward achieving them.
24 The review shall be completed not later than 5 years after
25 the date of enactment of this Act. Not later than 45 days

1 after receiving the review, the Secretary shall transmit the
2 review to Congress along with a plan to implement the
3 review's recommendations or an explanation for the rea-
4 sons that a recommendation will not be implemented.

5 **SEC. 807. MISCELLANEOUS PROVISIONS.**

6 (a) REPRESENTATION.—The Secretary may rep-
7 resent the United States interests with respect to activities
8 and programs under this title, in coordination with the
9 Department of Transportation, the National Institute of
10 Standards and Technology, and other relevant Federal
11 agencies, before governments and nongovernmental orga-
12 nizations including—

13 (1) other Federal, State, regional, and local
14 governments and their representatives;

15 (2) industry and its representatives, including
16 members of the energy and transportation indus-
17 tries; and

18 (3) in consultation with the Department of
19 State, foreign governments and their representatives
20 including international organizations.

21 (b) REGULATORY AUTHORITY.—Nothing in this title
22 shall be construed to alter the regulatory authority of the
23 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
26 program—

1 (A) to develop optimized concentrating
2 solar power devices that may be used for the
3 production of both electricity and hydrogen; and
4 (B) to evaluate the use of thermochemical
5 cycles for hydrogen production at the tempera-
6 tures attainable with concentrating solar power
7 devices;
8 (4) coordinate with activities sponsored by the
9 Department 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.

23 **SEC. 811. HYDROGEN FUEL CELL BUSES.**

24 The Secretary of Energy, through the advanced vehi-
25 cle technologies program, in coordination with the Sec-

1 retary of Transportation, shall advance the development
2 of fuel cell bus technologies by providing funding for 4
3 demonstration sites that—

4 (1) have or will soon have hydrogen infrastruc-
5 ture for fuel cell bus operation; and

6 (2) are operated by entities with experience in
7 the development of fuel cell bus technologies, to en-
8 able the widespread utilization of fuel cell buses.

9 Such demonstrations shall address the reliability of fuel
10 cell heavy-duty vehicles, expense, infrastructure, contain-
11 ment, storage, safety, training, and other issues.

12 TITLE IX—RESEARCH AND
13 DEVELOPMENT

14 **SEC. 900. SHORT TITLE; DEFINITIONS.**

15 (a) SHORT TITLE.—This title may be cited as the
16 "Energy Research, Development, Demonstration, and
17 Commercial Application Act of 2005".

18 (b) DEFINITIONS.—For purposes of this title:

19 (1) APPLIED PROGRAMS.—The term "applied
20 programs" means the research, development, dem-
21 onstration, and commercial application programs of
22 the Department concerning energy efficiency, renew-
23 able energy, nuclear energy, fossil energy, and elec-
24 tricity transmission and distribution.

25 (2) BIOMASS.—The term "biomass" means—

1 (A) any organic material grown for the
2 purpose of being converted to energy;
3 (B) any organic byproduct of agriculture
4 (including wastes from food production and
5 processing) that can be converted into energy;
6 or
7 (C) any waste material that can be con-
8 verted to energy, is segregated from other waste
9 materials, and is derived from—
10 (i) any of the following forest-related
11 resources: mill residues, precommercial
12 thinnings, slash, brush, or otherwise non-
13 merchantable material; or
14 (ii) wood waste materials, including
15 waste pallets, crates, dunnage, manufac-
16 turing and construction wood wastes (other
17 than pressure-treated, chemically-treated,
18 or painted wood wastes), and landscape or
19 right-of-way tree trimmings, but not in-
20 cluding municipal solid waste, gas derived
21 from the biodegradation of municipal solid
22 waste, or paper that is commonly recycled.
23 (3) DEPARTMENT.—The term ''Department''
24 means the Department of Energy.

1 (4) DEPARTMENTAL MISSION.—The term ''de-
2 partmental mission'' means any of the functions
3 vested in the Secretary of Energy by the Depart-
4 ment of Energy Organization Act (42 U.S.C. 7101
5 et seq.) or other law.
6 (5) INSTITUTION OF HIGHER EDUCATION.—The
7 term ''institution of higher education'' has the
8 meaning given that term in section 101(a) of the
9 Higher Education Act of 1965 (20 U.S.C. 1001(a)).
10 (6) NATIONAL LABORATORY.—The term ''Na-
11 tional Laboratory'' means any of the following lab-
12 oratories owned by the Department:
13 (A) Ames Laboratory.
14 (B) Argonne National Laboratory.
15 (C) Brookhaven National Laboratory.
16 (D) Fermi National Accelerator Labora-
17 tory.
18 (E) Idaho National Laboratory.
19 (F) Lawrence Berkeley National Labora-
20 tory.
21 (G) Lawrence Livermore National Labora-
22 tory.
23 (H) Los Alamos National Laboratory.
24 (I) National Energy Technology Labora-
25 tory.

1 (J) National Renewable Energy Labora-
2 tory.
3 (K) Oak Ridge National Laboratory.
4 (L) Pacific Northwest National Labora-
5 tory.
6 (M) Princeton Plasma Physics Laboratory.
7 (N) Sandia National Laboratories.
8 (O) Savannah River National Laboratory.
9 (P) Stanford Linear Accelerator Center.
10 (Q) Thomas Jefferson National Accel-
11 erator Facility.
12 (7) RENEWABLE ENERGY.—The term ''renew-
13 able energy'' means energy from wind, sunlight, the
14 flow of water, heat from the Earth, or biomass that
15 can be converted into a usable form such as process
16 heat, electricity, fuel, or space heat.
17 (8) SECRETARY.—The term ''Secretary'' means
18 the Secretary of Energy.
19 (9) STATE.—The term ''State'' means any of
20 the several States, the District of Columbia, the
21 Commonwealth of Puerto Rico, the United States
22 Virgin Islands, Guam, American Samoa, the North-
23 ern Mariana Islands, and any other commonwealth,
24 territory, or possession of the United States.

1 (10) UNIVERSITY.—The term ''university'' has
2 the meaning given the term ''institution of higher
3 education'' in section 101 of the Higher Education
4 Act of 1965 (20 U.S.C. 1001).
5 (11) USER FACILITY.—The term ''user facility''
6 means a research and development facility sup-
7 ported, in whole or in part, by Departmental funds
8 that is open, at a minimum, to all qualified United
9 States researchers.

10 Subtitle A—Science Programs

11 SEC. 901. OFFICE OF SCIENCE PROGRAMS.

12 (a) IN GENERAL.—The Secretary shall conduct,
13 through the Office of Science, programs of research, devel-
14 opment, demonstration, and commercial application in
15 high energy physics, nuclear physics, biological and envi-
16 ronmental research, basic energy sciences, advanced sci-
17 entific computing research, and fusion energy sciences, in-
18 cluding activities described in this subtitle. The programs
19 shall include support for facilities and infrastructure, edu-
20 cation, outreach, information, analysis, and coordination
21 activities.
22 (b) RARE ISOTOPE ACCELERATOR.—
23 (1) ESTABLISHMENT.—The Secretary shall con-
24 struct and operate a Rare Isotope Accelerator. The

1 Secretary shall commence construction no later than
2 September 30, 2008.
3 (2) AUTHORIZATION OF APPROPRIATIONS.—
4 There are authorized to be appropriated to the Sec-
5 retary such sums as may be necessary to carry out
6 this subsection. The Secretary shall not spend more
7 than $1,100,000,000 in Federal funds for all activi-
8 ties associated with the Rare Isotope Accelerator
9 prior to operation.
10 **SEC. 902. SYSTEMS BIOLOGY PROGRAM.**
11 (a) PROGRAM.—
12 (1) ESTABLISHMENT.—The Secretary shall es-
13 tablish a research, development, and demonstration
14 program in genetics, protein science, and computa-
15 tional biology to support the energy, national secu-
16 rity, and environmental missions of the Department.
17 (2) GRANTS.—The program shall support indi-
18 vidual researchers and multidisciplinary teams of re-
19 searchers through competitive, merit-reviewed
20 grants.
21 (3) CONSULTATION.—In carrying out the pro-
22 gram, the Secretary shall consult with other Federal
23 agencies that conduct genetic and protein research.

1 (b) GOALS.—The program shall have the goal of de-
2 veloping technologies and methods based on the biological
3 functions of genomes, microbes, and plants that—
4 (1) can facilitate the production of fuels, includ-
5 ing hydrogen;
6 (2) convert carbon dioxide to organic carbon;
7 (3) detoxify soils and water, including at De-
8 partmental facilities, contaminated with heavy met-
9 als and radiological materials; and
10 (4) address other Department missions as iden-
11 tified by the Secretary.
12 (c) PLAN.—
13 (1) DEVELOPMENT OF PLAN.—Not later than 1
14 year after the date of enactment of this Act, the
15 Secretary shall prepare and transmit to Congress a
16 research plan describing how the program author-
17 ized pursuant to this section will be undertaken to
18 accomplish the program goals established in sub-
19 section (b).
20 (2) REVIEW OF PLAN.—The Secretary shall
21 contract with the National Academy of Sciences to
22 review the research plan developed under this sub-
23 section. The Secretary shall transmit the review to
24 Congress not later than 18 months after transmittal
25 of the research plan under paragraph (1), along with

1 the Secretary's response to the recommendations
2 contained in the review.

3 (d) USER FACILITIES AND ANCILLARY EQUIP-
4 MENT.—Within the funds authorized to be appropriated
5 pursuant to this subtitle, the amounts specified under sec-
6 tion 910(b)(1), (c)(1), (d)(1), (e)(1), and (f)(1) shall be
7 available for projects to develop, plan, construct, acquire,
8 or operate special equipment, instrumentation, or facili-
9 ties, including user facilities, for researchers conducting
10 research, development, demonstration, and commercial ap-
11 plication in systems biology and proteomics and associated
12 biological disciplines.

13 (e) PROHIBITION ON BIOMEDICAL AND HUMAN CELL
14 AND HUMAN SUBJECT RESEARCH.—

15 (1) NO BIOMEDICAL RESEARCH.—In carrying
16 out the program under this section, the Secretary
17 shall not conduct biomedical research.

18 (2) LIMITATIONS.—Nothing in this section shall
19 authorize the Secretary to conduct any research or
20 demonstrations—

21 (A) on human cells or human subjects; or
22 (B) designed to have direct application
23 with respect to human cells or human subjects.

1 **SEC. 903. CATALYSIS RESEARCH AND DEVELOPMENT PRO-**
2 **GRAM.**

3 (a) ESTABLISHMENT.—The Secretary shall conduct
4 a program of research and development in catalysis
5 science, including efforts to—

6 (1) enable molecular-level catalyst design by
7 coupling experimental and computational ap-
8 proaches;

9 (2) enable nanoscale, high-throughput syn-
10 thesis, assay, and characterization; and

11 (3) synthesize catalysts with specific site archi-
12 tectures.

13 (b) PROGRAM ACTIVITIES.—In carrying out the pro-
14 gram under this section, the Secretary shall—

15 (1) support both individual researchers and
16 multidisciplinary teams of researchers to pioneer
17 new approaches in catalytic design;

18 (2) develop, plan, construct, acquire, or operate
19 special equipment or facilities, including user facili-
20 ties;

21 (3) support technology transfer activities to
22 benefit industry and other users of catalysis science
23 and engineering; and

24 (4) coordinate research and development activi-
25 ties with industry and other Federal agencies.

1 **SEC. 904. HYDROGEN.**

2 The Secretary shall conduct a program of funda-
3 mental research and development in support of programs
4 authorized in titleVIII.

5 **SEC. 905. ADVANCED SCIENTIFIC COMPUTING RESEARCH.**

6 The Secretary shall conduct an advanced scientific
7 computing research and development program, including
8 in applied mathematics and the activities authorized by
9 the Department of Energy High-End Computing Revital-
10 ization Act of 2004 (15 U.S.C. 5541 et seq.). The Sec-
11 retary shall carry out this program with the goal of sup-
12 porting departmental missions and providing the high-per-
13 formance computational, networking, and workforce re-
14 sources that are required for world leadership in science.

15 **SEC. 906. FUSION ENERGY SCIENCES PROGRAM.**

16 (a) DECLARATION OF POLICY.—It shall be the policy
17 of the United States to conduct research, development,
18 demonstration, and commercial application to provide for
19 the scientific, engineering, and commercial infrastructure
20 necessary to ensure that the United States is competitive
21 with other nations in providing fusion energy for its own
22 needs and the needs of other nations, including by dem-
23 onstrating electric power or hydrogen production for the
24 United States energy grid utilizing fusion energy at the
25 earliest date possible.

26 (b) PLANNING.—

1 (1) IN GENERAL.—Not later than 180 days
2 after the date of enactment of this Act, the Sec-
3 retary shall transmit to Congress a plan, with pro-
4 posed cost estimates, budgets, and lists of potential
5 international partners, for the implementation of the
6 policy described in subsection (a). The plan shall en-
7 sure that—

8 (A) existing fusion research facilities are
9 more fully utilized;

10 (B) fusion science, technology, theory, ad-
11 vanced computation, modeling, and simulation
12 are strengthened;

13 (C) new magnetic and inertial fusion re-
14 search and development facilities are selected
15 based on scientific innovation, cost effective-
16 ness, and their potential to advance the goal of
17 practical fusion energy at the earliest date pos-
18 sible, and those that are selected are funded at
19 a cost-effective rate;

20 (D) communication of scientific results and
21 methods between the fusion energy science com-
22 munity and the broader scientific and tech-
23 nology communities is improved;

24 (E) inertial confinement fusion facilities
25 are utilized to the extent practicable for the

1 purpose of inertial fusion energy research and
2 development; and
3 (F) attractive alternative inertial and mag-
4 netic fusion energy approaches are more fully
5 explored.
6 (2) COSTS AND SCHEDULES.—Such plan shall
7 also address the status of and, to the degree pos-
8 sible, costs and schedules for—
9 (A) the design and implementation of
10 international or national facilities for the test-
11 ing of fusion materials; and
12 (B) the design and implementation of
13 international or national facilities for the test-
14 ing and development of key fusion technologies.
15 (c) UNITED STATES PARTICIPATION IN ITER.—
16 (1) IN GENERAL.—The United States may par-
17 ticipate in ITER only in accordance with this sub-
18 section.
19 (2) AGREEMENT.—
20 (A) IN GENERAL.—The Secretary is au-
21 thorized to negotiate an agreement for United
22 States participation in ITER.
23 (B) CONTENTS.—Any agreement for
24 United States participation in ITER shall, at a
25 minimum—

1 (i) clearly define the United States fi-
2 nancial contribution to construction and
3 operating costs, as well as any other costs
4 associated with the project;
5 (ii) ensure that the share of ITER's
6 high-technology components manufactured
7 in the United States is at least propor-
8 tionate to the United States financial con-
9 tribution to ITER;
10 (iii) ensure that the United States will
11 not be financially responsible for cost over-
12 runs in components manufactured in other
13 ITER participating countries;
14 (iv) guarantee the United States full
15 access to all data generated by ITER;
16 (v) enable United States researchers
17 to propose and carry out an equitable
18 share of the experiments at ITER;
19 (vi) provide the United States with a
20 role in all collective decisionmaking related
21 to ITER; and
22 (vii) describe the process for dis-
23 continuing or decommissioning ITER and
24 any United States role in that process.

1 (3) PLAN.—The Secretary, in consultation with
2 the Fusion Energy Sciences Advisory Committee,
3 shall develop a plan for the participation of United
4 States scientists in ITER that shall include the
5 United States research agenda for ITER, methods
6 to evaluate whether ITER is promoting progress to-
7 ward making fusion a reliable and affordable source
8 of power, and a description of how work at ITER
9 will relate to other elements of the United States fu-
10 sion program. The Secretary shall request a review
11 of the plan by the National Academy of Sciences.
12 (4) LIMITATION.—No Federal funds shall be
13 expended for the construction of ITER until the
14 Secretary has transmitted to Congress—
15 (A) the agreement negotiated pursuant to
16 paragraph (2) and 120 days have elapsed since
17 that transmission;
18 (B) a report describing the management
19 structure of ITER and providing a fixed dollar
20 estimate of the cost of United States participa-
21 tion in the construction of ITER, and 120 days
22 have elapsed since that transmission;
23 (C) a report describing how United States
24 participation in ITER will be funded without
25 reducing funding for other programs in the Of-

1 fice of Science, including other fusion programs,
2 and 60 days have elapsed since that trans-
3 mission; and
4 (D) the plan required by paragraph (3)
5 (but not the National Academy of Sciences re-
6 view of that plan), and 60 days have elapsed
7 since that transmission.
8 (5) ALTERNATIVE TO ITER.—If at any time
9 during the negotiations on ITER, the Secretary de-
10 termines that construction and operation of ITER is
11 unlikely or infeasible, the Secretary shall send to
12 Congress, as part of the budget request for the fol-
13 lowing year, a plan for implementing a domestic
14 burning plasma experiment including costs and
15 schedules for such a plan. The Secretary shall refine
16 such plan in full consultation with the Fusion En-
17 ergy Sciences Advisory Committee and shall also
18 transmit such plan to the National Academy of
19 Sciences for review.
20 (6) DEFINITIONS.—In this subsection:
21 (A) CONSTRUCTION.—The term ''construc-
22 tion'' means the physical construction of the
23 ITER facility, and the physical construction,
24 purchase, or manufacture of equipment or com-
25 ponents that are specifically designed for the

1 ITER facility, but does not mean the design of
2 the facility, equipment, or components.
3 (B) ITER.—The term "ITER" means the
4 international burning plasma fusion research
5 project in which the President announced
6 United States participation on January 30,
7 2003, or any similar international project.

8 **SEC. 907. SCIENCE AND TECHNOLOGY SCHOLARSHIP PRO-**
9 **GRAM.**

10 (a) ESTABLISHMENT OF PROGRAM.—
11 (1) IN GENERAL.—The Secretary is authorized
12 to establish a Science and Technology Scholarship
13 Program to award scholarships to individuals that is
14 designed to recruit and prepare students for careers
15 in the Department.
16 (2) COMPETITIVE PROCESS.—Individuals shall
17 be selected to receive scholarships under this section
18 through a competitive process primarily on the basis
19 of academic merit, with consideration given to finan-
20 cial need and the goal of promoting the participation
21 of individuals identified in section 33 or 34 of the
22 Science and Engineering Equal Opportunities Act
23 (42 U.S.C. 1885a or 1885b).
24 (3) SERVICE AGREEMENTS.—To carry out the
25 Program the Secretary shall enter into contractual

1 agreements with individuals selected under para-
2 graph (2) under which the individuals agree to serve
3 as full-time employees of the Department, for the
4 period described in subsection (f)(1), in positions
5 needed by the Department and for which the individ-
6 uals are qualified, in exchange for receiving a schol-
7 arship.

8 (b) SCHOLARSHIP ELIGIBILITY.—In order to be eligi-
9 ble to participate in the Program, an individual must—

10 (1) be enrolled or accepted for enrollment as a
11 full-time graduate student at an institution of higher
12 education in an academic program or field of study
13 described in the list made available under subsection
14 (d);

15 (2) be a United States citizen; and

16 (3) at the time of the initial scholarship award,
17 not be a Federal employee as defined in section
18 2105 of title 5 of the United States Code.

19 (c) APPLICATION REQUIRED.—An individual seeking
20 a scholarship under this section shall submit an applica-
21 tion to the Secretary at such time, in such manner, and
22 containing such information, agreements, or assurances as
23 the Secretary may require.

24 (d) ELIGIBLE ACADEMIC PROGRAMS.—The Secretary
25 shall make publicly available a list of academic programs

1 and fields of study for which scholarships under the Pro-
2 gram may be utilized, and shall update the list as nec-
3 essary.

4 (e) SCHOLARSHIP REQUIREMENT.—

5 (1) IN GENERAL.—The Secretary may provide a
6 scholarship under the Program for an academic year
7 if the individual applying for the scholarship has
8 submitted to the Secretary, as part of the applica-
9 tion required under subsection (c), a proposed aca-
10 demic program leading to a degree in a program or
11 field of study on the list made available under sub-
12 section (d).

13 (2) DURATION OF ELIGIBILITY.—An individual
14 may not receive a scholarship under this section for
15 more than 4 academic years, unless the Secretary
16 grants a waiver.

17 (3) SCHOLARSHIP AMOUNT.—The dollar
18 amount of a scholarship under this section for an
19 academic year shall be determined under regulations
20 issued by the Secretary, but shall in no case exceed
21 the cost of attendance.

22 (4) AUTHORIZED USES.—A scholarship pro-
23 vided under this section may be expended for tuition,
24 fees, and other authorized expenses as established by
25 the Secretary by regulation.

1 (5) CONTRACTS REGARDING DIRECT PAYMENTS
2 TO INSTITUTIONS.—The Secretary may enter into a
3 contractual agreement with an institution of higher
4 education under which the amounts provided for a
5 scholarship under this section for tuition, fees, and
6 other authorized expenses are paid directly to the in-
7 stitution with respect to which the scholarship is
8 provided.
9 (f) PERIOD OF OBLIGATED SERVICE.—
10 (1) DURATION OF SERVICE.—The period of
11 service for which an individual shall be obligated to
12 serve as an employee of the Department is, except
13 as provided in subsection (h)(2), 24 months for each
14 academic year for which a scholarship under this
15 section is provided.
16 (2) SCHEDULE FOR SERVICE.—
17 (A) IN GENERAL.—Except as provided in
18 subparagraph (B), obligated service under para-
19 graph (1) shall begin not later than 60 days
20 after the individual obtains the educational de-
21 gree for which the scholarship was provided.
22 (B) DEFERRAL.—The Secretary may defer
23 the obligation of an individual to provide a pe-
24 riod of service under paragraph (1) if the Sec-
25 retary determines that such a deferral is appro-

1 priate. The Secretary shall prescribe the terms
2 and conditions under which a service obligation
3 may be deferred through regulation.

4 (g) PENALTIES FOR BREACH OF SCHOLARSHIP
5 AGREEMENT.—

6 (1) FAILURE TO COMPLETE ACADEMIC TRAIN-
7 ING.—Scholarship recipients who fail to maintain a
8 high level of academic standing, as defined by the
9 Secretary by regulation, who are dismissed from
10 their educational institutions for disciplinary rea-
11 sons, or who voluntarily terminate academic training
12 before graduation from the educational program for
13 which the scholarship was awarded, shall be in
14 breach of their contractual agreement and, in lieu of
15 any service obligation arising under such agreement,
16 shall be liable to the United States for repayment
17 not later than 1 year after the date of default of all
18 scholarship funds paid to them and to the institution
19 of higher education on their behalf under the agree-
20 ment, except as provided in subsection (h)(2). The
21 repayment period may be extended by the Secretary
22 when determined to be necessary, as established by
23 regulation.

24 (2) FAILURE TO BEGIN OR COMPLETE THE
25 SERVICE OBLIGATION OR MEET THE TERMS AND

1 CONDITIONS OF DEFERMENT.—A scholarship recipi-
2 ent who, for any reason, fails to begin or complete
3 a service obligation under this section after comple-
4 tion of academic training, or fails to comply with the
5 terms and conditions of deferment established by the
6 Secretary pursuant to subsection (f)(2)(B), shall be
7 in breach of the contractual agreement. When a re-
8 cipient breaches an agreement for the reasons stated
9 in the preceding sentence, the recipient shall be lia-
10 ble to the United States for an amount equal to—
11 (A) the total amount of scholarships re-
12 ceived by such individual under this section;
13 plus
14 (B) the interest on the amounts of such
15 awards which would be payable if at the time
16 the awards were received they were loans bear-
17 ing interest at the maximum legal prevailing
18 rate, as determined by the Treasurer of the
19 United States,
20 multiplied by 3.
21 (h) WAIVER OR SUSPENSION OF OBLIGATION.—
22 (1) DEATH OF INDIVIDUAL.—Any obligation of
23 an individual incurred under the Program (or a con-
24 tractual agreement thereunder) for service or pay-

1 ment shall be canceled upon the death of the indi-
2 vidual.
3 (2) IMPOSSIBILITY OR EXTREME HARDSHIP.—
4 The Secretary shall by regulation provide for the
5 partial or total waiver or suspension of any obliga-
6 tion of service or payment incurred by an individual
7 under the Program (or a contractual agreement
8 thereunder) whenever compliance by the individual is
9 impossible or would involve extreme hardship to the
10 individual, or if enforcement of such obligation with
11 respect to the individual would be contrary to the
12 best interests of the Government.
13 (i) DEFINITIONS.—In this section the following defi-
14 nitions apply:
15 (1) COST OF ATTENDANCE.—The term ''cost of
16 attendance'' has the meaning given that term in sec-
17 tion 472 of the Higher Education Act of 1965 (20
18 U.S.C. 1087*ll*).
19 (2) PROGRAM.—The term ''Program'' means
20 the Science and Technology Scholarship Program es-
21 tablished under this section.
22 **SEC. 908. OFFICE OF SCIENTIFIC AND TECHNICAL INFOR-**
23 **MATION.**
24 The Secretary shall maintain within the Department
25 the Office of Scientific and Technical Information.

1 **SEC. 909. SCIENCE AND ENGINEERING PILOT PROGRAM.**

2 (a) ESTABLISHMENT OF CONSORTIUM.—Notwith-
3 standing section 913, the Secretary shall award a grant
4 to Oak Ridge Associated Universities to establish a univer-
5 sity consortium to carry out a regional pilot program for
6 enhancing scientific, technological, engineering, and math-
7 ematical literacy, creativity, and decisionmaking. The con-
8 sortium shall include leading research universities, one or
9 more universities that train substantial numbers of ele-
10 mentary and secondary school teachers, and, where appro-
11 priate, National Laboratories.

12 (b) PROGRAM ELEMENTS.—The program shall
13 include—

14 (1) expanding strategic, formal partnerships
15 among universities with strength in research, univer-
16 sities that train substantial numbers of elementary
17 and secondary school teachers, and the private sec-
18 tor;

19 (2) combining Department expertise with one or
20 more National Aeronautics and Space Administra-
21 tion Educator Resource Centers;

22 (3) developing programs to permit current and
23 future teachers to participate in ongoing research
24 projects at National Laboratories and research uni-
25 versities and to adapt lessons learned to the class-
26 room;

1 (4) designing and implementing course work;
2 (5) designing and implementing a strategy for
3 measuring and assessing progress under the pro-
4 gram; and
5 (6) developing models for transferring knowl-
6 edge gained under the pilot program to other insti-
7 tutions and areas of the country.
8 (c) REPORT.—Not later than 2 years after appropria-
9 tions are first available for the program, the Secretary
10 shall transmit to Congress a report outlining lessons
11 learned and containing a plan for expanding the program
12 nationwide. The Secretary may begin implementation of
13 such plan for expansion of the program on October 1,
14 2008. The expansion of the program shall be subject to
15 section 913.

16 **SEC. 910. AUTHORIZATION OF APPROPRIATIONS.**

17 (a) IN GENERAL.—In addition to amounts authorized
18 to be appropriated under the 21st Century
19 Nanotechnology Research and Development Act (15
20 U.S.C. 7501 et seq.) and the Department of Energy High-
21 End Computing Revitalization Act of 2004 (15 U.S.C.
22 5541 et seq.), the following sums are authorized to be ap-
23 propriated to the Secretary for the purposes of carrying
24 out this subtitle:
25 (1) For fiscal year 2006, $3,785,000,000.

1 (2) For fiscal year 2007, $4,153,000,000.
2 (3) For fiscal year 2008, $4,628,000,000.
3 (4) For fiscal year 2009, $5,300,000,000.
4 (5) For fiscal year 2010, $5,800,000,000.
5 (b) 2006 ALLOCATIONS.—From amounts authorized
6 under subsection (a)(1), the following sums are authorized
7 for fiscal year 2006:
8 (1) SYSTEMS BIOLOGY.—For activities under
9 section 902, $100,000,000.
10 (2) SCIENTIFIC COMPUTING.—For activities
11 under section 905, $252,000,000.
12 (3) FUSION ENERGY SCIENCES.—For activities
13 under section 906, excluding activities under sub-
14 section (c) of that section, $335,000,000.
15 (4) SCHOLARSHIP.—For the scholarship pro-
16 gram described in section 907, $800,000.
17 (5) OFFICE OF SCIENTIFIC AND TECHNICAL IN-
18 FORMATION.—For activities under section 908,
19 $7,000,000.
20 (6) PILOT PROGRAM.—For activities under sec-
21 tion 909, $4,000,000.
22 (c) 2007 ALLOCATIONS.—From amounts authorized
23 under subsection (a)(2), the following sums are authorized
24 for fiscal year 2007:

1 (1) SYSTEMS BIOLOGY.—For activities under
2 section 902, such sums as may be necessary.
3 (2) SCIENTIFIC COMPUTING.—For activities
4 under section 905, $270,000,000.
5 (3) FUSION ENERGY SCIENCES.—For activities
6 under section 906, excluding activities under sub-
7 section (c) of that section, $349,000,000.
8 (4) SCHOLARSHIP.—For the scholarship pro-
9 gram described in section 907, $1,600,000.
10 (5) OFFICE OF SCIENTIFIC AND TECHNICAL IN-
11 FORMATION.—For activities under section 908,
12 $7,500,000.
13 (6) PILOT PROGRAM.—For activities under sec-
14 tion 909, $4,000,000.
15 (d) 2008 ALLOCATIONS.—From amounts authorized
16 under subsection (a)(3), the following sums are authorized
17 for fiscal year 2008:
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, $350,000,000.
22 (3) FUSION ENERGY SCIENCES.—For activities
23 under section 906, excluding activities under sub-
24 section (c) of that section, $362,000,000.

1 (4) SCHOLARSHIP.—For the scholarship pro-
2 gram described in section 907, $2,000,000.
3 (5) OFFICE OF SCIENTIFIC AND TECHNICAL IN-
4 FORMATION.—For activities under section 908,
5 $8,000,000.
6 (6) PILOT PROGRAM.—For activities under sec-
7 tion 909, $4,000,000.
8 (e) 2009 ALLOCATIONS.—From amounts authorized
9 under subsection (a)(4), the following sums are authorized
10 for fiscal year 2009:
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, $375,000,000.
15 (3) FUSION ENERGY SCIENCES.—For activities
16 under section 906, excluding activities under sub-
17 section (c) of that section, $377,000,000.
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, $8,000,000.

1 (f) 2010 ALLOCATIONS.—From amounts authorized
2 under subsection (a)(5), the following sums are authorized
3 for fiscal year 2010:
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, $400,000,000.
8 (3) FUSION ENERGY SCIENCES.—For activities
9 under section 906, excluding activities under sub-
10 section (c) of that section, $393,000,000.
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 $8,500,000.
16 (6) PILOT PROGRAM.—For activities under sec-
17 tion 909, $8,000,000.
18 (g) ITER CONSTRUCTION.—From amounts author-
19 ized under subsection (a) and in addition to amounts au-
20 thorized under subsections (b)(3), (c)(3), (d)(3), (e)(3),
21 and (f)(3), there are authorized to be appropriated to the
22 Secretary such sums as may be necessary for ITER con-
23 struction, consistent with the limitations of section 906(c).
24 (h) INTEGRATED BIOENERGY RESEARCH AND DE-
25 VELOPMENT.—In addition to amounts otherwise author-

1 ized by this section, there are authorized to be appro-
2 priated to the Secretary for integrated bioenergy research
3 and development programs, projects, and activities,
4 $49,000,000 for each of the fiscal years 2005 through
5 2009. Activities funded under this subsection shall be co-
6 ordinated with ongoing related programs of other Federal
7 agencies, including the Plant Genome Program of the Na-
8 tional Science Foundation. Of the funds authorized under
9 this subsection, at least $5,000,000 for each fiscal year
10 shall be for training and education targeted to minority
11 and social disadvantaged farmers and ranchers.

12 Subtitle B—Research 13 Administration and Operations

14 SEC. 911. COST SHARING.

15 (a) RESEARCH AND DEVELOPMENT.—Except as oth-
16 erwise provided in this title, for research and development
17 programs carried out under this title, the Secretary shall
18 require a commitment from non-Federal sources of at
19 least 20 percent of the cost of the project. The Secretary
20 may reduce or eliminate the non-Federal requirement
21 under this subsection if the Secretary determines that the
22 research and development is of a basic or fundamental na-
23 ture.

24 (b) DEMONSTRATION AND COMMERCIAL APPLICA-
25 TION.—Except as otherwise provided in this title, the Sec-

1 retary shall require at least 50 percent of the costs related
2 to any demonstration or commercial application activities
3 under this title to be provided from non-Federal sources.
4 The Secretary may reduce the non-Federal requirement
5 under this subsection if the Secretary determines that the
6 reduction is necessary and appropriate considering the
7 technological risks involved in the project and is necessary
8 to meet the objectives of this title.

9 (c) CALCULATION OF AMOUNT.—In calculating the
10 amount of the non-Federal commitment under subsection
11 (a) or (b), the Secretary may include personnel, services,
12 equipment, and other resources.

13 (d) SIZE OF NON-FEDERAL SHARE.—The Secretary
14 may consider the amount of the non-Federal share in se-
15 lecting projects under this title.

16 **SEC. 912. REPROGRAMMING.**

17 (a) DISTRIBUTION REPORT.—Not later than 60 days
18 after the date of enactment of an Act appropriating
19 amounts authorized under this title, the Secretary shall
20 transmit to Congress a report explaining how such
21 amounts will be distributed among the activities author-
22 ized by this title.

23 (b) REPROGRAMMING LETTER.—No amount author-
24 ized by this title shall be obligated or expended for a pur-
25 pose inconsistent with the appropriations Act appro-

1 priating such amount, the report accompanying such ap-
2 propriations Act, or a distribution report transmitted
3 under subsection (a) if such obligation or expenditure
4 would change an individual amount, as represented in
5 such an Act, report, or distribution report, by more than
6 2 percent or $2,000,000, whichever is smaller, unless the
7 Secretary has transmitted to Congress a letter of expla-
8 nation and a period of 30 days has elapsed after Congress
9 receives the letter.

10 (c) COMPUTATION.—The computation of the 30-day
11 period described in subsection (b) shall exclude any day
12 on which either House of Congress is not in session be-
13 cause of an adjournment of more than 3 days to a day
14 certain.

15 **SEC. 913. MERIT-BASED COMPETITION.**

16 (a) COMPETITIVE MERIT REVIEW.—Awardees of
17 funds authorized under this title shall be selected through
18 open competitions. Funds shall be competitively awarded
19 only after an impartial review of the scientific and tech-
20 nical merit of the proposals for such awards has been car-
21 ried out by or for the Department on the basis of criteria
22 outlined by the Secretary in the solicitation of proposals.

23 (b) COMPETITION.—Competitive awards under this
24 title shall involve competitions open to all qualified entities
25 within one or more of the following categories:

1 (1) Institutions of higher education.
2 (2) National Laboratories.
3 (3) Nonprofit and for-profit private entities.
4 (4) State and local governments.
5 (5) Consortia of entities described in para-
6 graphs (1) through (4).
7 (c) CONGRESSIONAL NOTIFICATION.—The Secretary
8 shall notify Congress within 30 days after awarding more
9 than $500,000 through a competition described in sub-
10 section (b) that is limited to 1 of the categories described
11 in paragraphs (1) through (4) of subsection (b).
12 (d) WAIVERS.—The Secretary may waive the require-
13 ment under subsection (a) requiring competition if the
14 Secretary considers it necessary to more quickly advance
15 research, development, demonstration, or commercial ap-
16 plication activities. The Secretary shall notify Congress
17 within 30 days when a waiver is granted under this sub-
18 section. The Secretary may not delegate the waiver au-
19 thority under this subsection for awards over $500,000.

20 **SEC. 914. EXTERNAL TECHNICAL REVIEW OF DEPART-**
21 **MENTAL PROGRAMS.**

22 (a) NATIONAL APPLIED ENERGY RESEARCH AND
23 DEVELOPMENT ADVISORY COMMITTEES.—
24 (1) IN GENERAL.—The Secretary shall establish
25 one or more advisory committees to review and ad-

1 vise the Department's applied programs in the fol-
2 lowing areas:
3 (A) Energy efficiency.
4 (B) Renewable energy.
5 (C) Nuclear energy.
6 (D) Fossil energy.
7 (2) EXISTING ADVISORY COMMITTEES.—The
8 Secretary may designate an existing advisory com-
9 mittee within the Department to fulfill the respon-
10 sibilities of an advisory committee under this sub-
11 section.
12 (b) OFFICE OF SCIENCE ADVISORY COMMITTEES.—
13 (1) USE OF EXISTING COMMITTEES.—Except as
14 otherwise provided under the Federal Advisory Com-
15 mittee Act, the Secretary shall continue to use the
16 scientific program advisory committees chartered
17 under the Federal Advisory Committee Act (5
18 U.S.C. App.) by the Office of Science to oversee re-
19 search and development programs under that Office.
20 (2) REPORT.—Before the Department issues
21 any new guidance regarding the membership for Of-
22 fice of Science scientific program advisory commit-
23 tees, the Secretary shall transmit a report to the
24 Congress outlining the reasons for the proposed
25 changes, and 60 days must have elapsed after trans-

1 mittal of the report before the Department may im-
2 plement those changes.
3 (3) SCIENCE ADVISORY COMMITTEE.—
4 (A) ESTABLISHMENT.—There shall be a
5 Science Advisory Committee for the Office of
6 Science that includes the chairs of each of the
7 advisory committees described in paragraph (1).
8 (B) RESPONSIBILITIES.—The Science Ad-
9 visory Committee shall—
10 (i) advise the Director of the Office of
11 Science on science issues;
12 (ii) advise the Director of the Office
13 of Science with respect to the well-being
14 and management of the National Labora-
15 tories and Department research facilities;
16 (iii) advise the Director of the Office
17 of Science with respect to education and
18 workforce training activities required for
19 effective short-term and long-term basic
20 and applied research activities of the Office
21 of Science; and
22 (iv) advise the Director of the Office
23 of Science with respect to the well-being of
24 the university research programs supported
25 by the Office of Science.

1 (c) MEMBERSHIP.—Each member of an advisory
2 committee appointed under this section shall have signifi-
3 cant scientific, technical, or other appropriate expertise.
4 The membership of each committee shall represent a wide
5 range of expertise, including, to the extent practicable,
6 members with expertise from outside the disciplines cov-
7 ered by the program, and a diverse set of interests.

8 (d) MEETINGS AND PURPOSES.—Each advisory com-
9 mittee under this section shall meet at least semiannually
10 to review and advise on the progress made by the respec-
11 tive research, development, demonstration, and commer-
12 cial application program or programs. The advisory com-
13 mittee shall also review the measurable cost and perform-
14 ance-based goals for the applied programs, and the
15 progress on meeting such goals.

16 (e) REVIEW AND ASSESSMENT.—Not later than 6
17 months after the date of enactment of this Act, the Sec-
18 retary shall enter into arrangements with the National
19 Academy of Sciences to conduct reviews and assessments
20 of the programs authorized by this title, the measurable
21 cost and performance-based goals for the applied pro-
22 grams, and the progress in meeting such goals. Such re-
23 views and assessments shall be completed and reports con-
24 taining the results of all such reviews and assessments

1 transmitted to the Congress not later than 2 years after
2 the date of enactment of this Act.

3 **SEC. 915. COMPETITIVE AWARD OF MANAGEMENT CON-**
4 **TRACTS.**

5 None of the funds authorized to be appropriated to
6 the Secretary by this title may be used to award a manage-
7 ment and operating contract for a National Laboratory
8 (excluding those named in subparagraphs (G), (H), (N),
9 (O) of section 900(b)(6)), unless such contract is competi-
10 tively awarded, or the Secretary grants, on a case-by-case
11 basis, a waiver. The Secretary may not delegate the au-
12 thority to grant such a waiver and shall submit to the Con-
13 gress a report notifying it of the waiver, and setting forth
14 the reasons for the waiver, at least 60 days prior to the
15 date of the award of such contract.

16 **SEC. 916. NATIONAL LABORATORY DESIGNATION.**

17 After the date of enactment of this Act the Secretary
18 shall not designate a facility that is not referred to in sec-
19 tion 900(b)(6) as a National Laboratory.

20 **SEC. 917. REPORT ON EQUAL EMPLOYMENT OPPORTUNITY**
21 **PRACTICES.**

22 Not later than 12 months after the date of enactment
23 of this Act, and biennially thereafter, the Secretary shall
24 transmit to Congress a report on the equal employment

1 opportunity practices at National Laboratories. Such re-
2 port shall include—
3 (1) a thorough review of each laboratory con-
4 tractor's equal employment opportunity policies, in-
5 cluding promotion to management and professional
6 positions and pay raises;
7 (2) a statistical report on complaints and their
8 disposition in the laboratories;
9 (3) a description of how equal employment op-
10 portunity practices at the laboratories are treated in
11 the contract and in calculating award fees for each
12 contractor;
13 (4) a summary of disciplinary actions and their
14 disposition by either the Department or the relevant
15 contractors for each laboratory;
16 (5) a summary of outreach efforts to attract
17 women and minorities to the laboratories;
18 (6) a summary of efforts to retain women and
19 minorities in the laboratories; and
20 (7) a summary of collaboration efforts with the
21 Office of Federal Contract Compliance Programs to
22 improve equal employment opportunity practices at
23 the laboratories.

1 **SEC. 918. USER FACILITY BEST PRACTICES PLAN.**

2 The Secretary shall not allow any Department facility
3 to begin functioning as a user facility after the date of
4 enactment of this Act until the Secretary, for that
5 facility—

6 (1) develops a plan to ensure that the facility
7 will—

8 (A) have a skilled staff to support a wide
9 range of users;

10 (B) have a fair method for allocating time
11 to users that provides for input from facility
12 management, user representatives, and outside
13 experts; and

14 (C) be operated in a safe and fiscally pru-
15 dent manner; and

16 (2) transmits such plan to Congress and 60
17 days have elapsed.

18 **SEC. 919. SUPPORT FOR SCIENCE AND ENERGY INFRA-**
19 **STRUCTURE AND FACILITIES.**

20 (a) STRATEGY.—The Secretary shall develop and im-
21 plement a strategy for infrastructure and facilities sup-
22 ported primarily from the Office of Science and the ap-
23 plied programs at each National Laboratory and Depart-
24 ment research facility. Such strategy shall provide cost-
25 effective means for—

1 (1) maintaining existing facilities and infra-
2 structure, as needed;
3 (2) closing unneeded facilities;
4 (3) making facility modifications; and
5 (4) building new facilities.
6 (b) REPORT.—
7 (1) REQUIREMENT.—The Secretary shall pre-
8 pare and transmit to the Congress not later than
9 June 1, 2007, a report summarizing the strategies
10 developed under subsection (a).
11 (2) CONTENTS.—For each National Laboratory
12 and Department research facility, for the facilities
13 primarily used for science and energy research, such
14 report shall contain—
15 (A) the current priority list of proposed fa-
16 cilities and infrastructure projects, including
17 cost and schedule requirements;
18 (B) a current 10-year plan that dem-
19 onstrates the reconfiguration of its facilities and
20 infrastructure to meet its missions and to ad-
21 dress its long-term operational costs and return
22 on investment;
23 (C) the total current budget for all facili-
24 ties and infrastructure funding; and

(D) the current status of each facility and infrastructure project compared to the original baseline cost, schedule, and scope.

SEC. 920. COORDINATION PLAN.

(a) IN GENERAL.—The Secretary shall develop a coordination plan to improve coordination and collaboration in research, development, demonstration, and commercial application activities across Department organizational boundaries.

(b) PLAN CONTENTS.—The plan shall describe—

(1) how the Secretary will ensure that the applied programs are coordinating their activities, including a description of specific research questions that cross organizational boundaries and of how the relevant applied programs are coordinating their efforts to answer those questions, and how such cross-cutting research questions will be identified in the future;

(2) how the Secretary will ensure that research that has been supported by the Office of Science is being or will be used by the applied programs, including a description of specific Office of Science-supported research that is relevant to the applied programs and of how the applied programs have used or will use that research; and

1 (3) a description of how the Secretary will en-
2 sure that the research agenda of the Office of
3 Science includes research questions of concern to the
4 applied programs, including a description of specific
5 research questions that the Office of Science will ad-
6 dress to assist the applied programs.

7 (c) PLAN TRANSMITTAL.—The Secretary shall trans-
8 mit the coordination plan to Congress not later than 9
9 months after the date of enactment of this Act, and every
10 2 years thereafter shall transmit a revised coordination
11 plan.

12 (d) CONFERENCE.—Not less than 6 months after the
13 date of enactment of this Act, the Secretary shall convene
14 a conference of program managers from the Office of
15 Science and the applied programs to review ideas and ex-
16 plore possibilities for effective cross-program collaboration.
17 The Secretary also shall invite participation relevant Fed-
18 eral agencies and other programs in the Federal Govern-
19 ment conducting relevant research, and other stakeholders
20 as appropriate.

21 **SEC. 921. AVAILABILITY OF FUNDS.**

22 Funds appropriated to the Secretary for activities au-
23 thorized under this title shall remain available for three
24 years. Funds that are not obligated at the end of three
25 years shall be returned to the Treasury.

Subtitle C—Energy Efficiency

CHAPTER 1—VEHICLES, BUILDINGS, AND INDUSTRIES

SEC. 922. PROGRAMS.

(a) IN GENERAL.—The Secretary shall conduct programs of energy efficiency research, development, demonstration, and commercial application, including activities described in this chapter. Such programs shall be focused on the following objectives:

(1) Increasing the energy efficiency of vehicles, buildings, and industrial processes.

(2) Reducing the Nation's demand for energy, especially energy from foreign sources.

(3) Reducing the cost of energy and making the economy more efficient and competitive.

(4) Improving the Nation's energy security.

(5) Reducing the environmental impact of energy-related activities.

(b) GOALS.—

(1) INITIAL GOALS.—In accordance with the performance plan and report requirements in section 4 of the Government Performance Results Act of 1993, the Secretary shall transmit to the Congress, along with the President's annual budget request for fiscal year 2007, a report containing outcome meas-

1 ures with explicitly stated cost and performance
2 baselines. The measures shall specify energy effi-
3 ciency performance goals, with quantifiable 5-year
4 cost and energy savings target levels, for vehicles,
5 buildings, and industries, and any other such goals
6 the Secretary considers appropriate.

7 (2) SUBSEQUENT TRANSMITTALS.—The Sec-
8 retary shall transmit to the Congress, along with the
9 President's annual budget request for each fiscal
10 year after 2007, a report containing—

11 (A) a description, including quantitative
12 analysis, of progress in achieving performance
13 goals transmitted under paragraph (1), as com-
14 pared to the baselines transmitted under para-
15 graph (1); and

16 (B) any amendments to such goals.

17 (c) PUBLIC INPUT.—The Secretary shall consider ad-
18 vice from industry, universities, and other interested par-
19 ties through seeking comments in the Federal Register
20 and other means before transmitting each report under
21 subsection (b).

22 **SEC. 923. VEHICLES.**

23 (a) ADVANCED, COST-EFFECTIVE TECHNOLOGIES.—
24 The Secretary shall conduct a program of research, devel-
25 opment, demonstration, and commercial application of ad-

1 vanced, cost-effective technologies to improve the energy
2 efficiency and environmental performance of light-duty
3 and heavy-duty vehicles, including—
4 (1) hybrid and electric propulsion systems, in-
5 cluding plug-in hybrid systems;
6 (2) advanced engines, including combustion en-
7 gines;
8 (3) advanced materials, including high strength,
9 lightweight materials, such as nanostructured mate-
10 rials, composites, multimaterial parts, carbon fibers,
11 and materials with high thermal conductivity;
12 (4) technologies for reduced drag and rolling re-
13 sistance;
14 (5) whole-vehicle design optimization to reduce
15 the weight of component parts and thus increase the
16 fuel economy of the vehicle, including fiber optics to
17 replace traditional wiring;
18 (6) thermoelectric devices that capture waste
19 heat and convert thermal energy into electricity; and
20 (7) advanced drivetrains.
21 (b) LOW-COST HYDROGEN PROPULSION AND INFRA-
22 STRUCTURE.—The Secretary of Energy shall—
23 (1) establish a research, development, and dem-
24 onstration program to determine the feasibility of
25 using hydrogen propulsion in light-weight vehicles

1 and the integration of the associated hydrogen pro-
2 duction infrastructure using off-the-shelf compo-
3 nents; and
4 (2) identify universities and institutions that—
5 (A) have expertise in researching and test-
6 ing vehicles fueled by hydrogen, methane, and
7 other fuels;
8 (B) have expertise in integrating off-the-
9 shelf components to minimize cost; and
10 (C) within two years can test a vehicle
11 based on an existing commercially available
12 platform with a curb weight of not less than
13 2,000 pounds before modifications, that—
14 (i) operates solely on hydrogen gas;
15 (ii) can travel a minimum of 300
16 miles under normal road conditions; and
17 (iii) uses hydrogen produced from
18 water using only solar energy.
19 **SEC. 924. BUILDINGS.**
20 (a) PROGRAM.—The Secretary shall conduct a pro-
21 gram of research, development, demonstration, and com-
22 mercial application of cost-effective technologies, for new
23 construction and retrofit, to improve the energy efficiency
24 and environmental performance of commercial, industrial,
25 institutional, and residential buildings. The program shall

1 use a whole-buildings approach, integrating work on ele-
2 ments including—
3 (1) advanced controls, including occupancy sen-
4 sors, daylighting controls, wireless technologies,
5 automated responses to changes in the internal and
6 external environment, and real time delivery of infor-
7 mation on building system and component perform-
8 ance;
9 (2) building envelope, including windows, roof-
10 ing systems and materials, and building-integrated
11 photovoltaics;
12 (3) building systems components, including—
13 (A) lighting;
14 (B) appliances, including advanced tech-
15 nologies, such as stand-by load technologies, for
16 office equipment, food service equipment, and
17 laundry equipment; and
18 (C) heating, ventilation, and cooling sys-
19 tems, including ground-source heat pumps and
20 radiant heating; and
21 (4) onsite renewable energy generation.
22 (b) ENERGY EFFICIENT BUILDING PILOT GRANT
23 PROGRAM.—
24 (1) IN GENERAL.—Not later than 6 months
25 after the date of enactment of this Act, the Sec-

retary shall establish a pilot program to award grants to businesses and organizations for new construction of energy efficient buildings, or major renovations of buildings that will result in energy efficient buildings, to demonstrate innovative energy efficiency technologies, especially those sponsored by the Department.

(2) AWARDS.—The Secretary shall award grants under this subsection competitively to those applicants whose proposals—

(A) best demonstrate—

(i) likelihood to meet or exceed the design standards referred to in paragraph (7);

(ii) likelihood to maximize cost-effective energy efficiency opportunities; and

(iii) advanced energy efficiency technologies; and

(B) are least likely to be realized without Federal assistance.

(3) AMOUNT OF GRANTS.—Grants under this subsection shall be for up to 50 percent of design and energy modeling costs, not to exceed $50,000 per building. No single grantee may be eligible for more than 3 grants per year under this program.

1 (4) GRANT PAYMENTS.—
2 (A) INITIAL PAYMENT.—The Secretary
3 shall pay 50 percent of the total amount of the
4 grant to grant recipients upon selection.
5 (B) REMAINDER OF PAYMENT.—The Sec-
6 retary shall pay the remaining 50 percent of the
7 grant only after independent certification of
8 operational buildings for compliance with the
9 standards for energy efficient buildings de-
10 scribed in paragraph (7).
11 (C) FAILURE TO COMPLY.—The Secretary
12 shall not provide the remainder of the payment
13 unless the building is certified within 6 months
14 after operation of the completed building to
15 meet the requirements described in subpara-
16 graph (B), or in the case of major renovations
17 the building is certified within 6 months of the
18 completion of the renovations.
19 (5) REPORT TO CONGRESS.—Not later than 3
20 years after awarding the first grant under this sub-
21 section, the Secretary shall transmit to Congress a
22 report containing—
23 (A) the total number and dollar amount of
24 grants awarded under this subsection; and

1 (B) an estimate of aggregate cost and en-
2 ergy savings enabled by the pilot program
3 under this subsection.
4 (6) ADMINISTRATIVE EXPENSES.—Administra-
5 tive expenses for the program under this subsection
6 shall not exceed 10 percent of appropriated funds.
7 (7) DEFINITION OF ENERGY EFFICIENT BUILD-
8 ING.—For purposes of this subsection, the term ''en-
9 ergy efficient building'' means a building that is
10 independently certified—
11 (A) to meet or exceed the applicable
12 United States Green Building Council's Leader-
13 ship in Energy and Environmental Design
14 standards for a silver, gold, or platinum rating;
15 and
16 (B) to achieve a reduction in energy con-
17 sumption of—
18 (i) at least 25 percent for new con-
19 struction, compared to the energy stand-
20 ards set by the Federal Building Code (10
21 CFR part 434); and
22 (ii) at least 20 percent for major ren-
23 ovations, compared to energy consumption
24 before renovations are begun.
25 (c) STANDARDIZATION REPORT AND PROGRAM.—

1 (1) REPORT.—The Secretary shall enter into an
2 arrangement with the National Institute of Building
3 Sciences to—
4 (A) conduct a comprehensive assessment of
5 how well current voluntary consensus standards
6 related to buildings match state-of-the-art
7 knowledge on the design, construction, oper-
8 ation, repair, and renovation of high-perform-
9 ance buildings; and
10 (B) recommend steps for the Secretary to
11 take to accelerate the development and promul-
12 gation of voluntary consensus standards for
13 high-performance buildings that would address
14 all major high-performance building attributes,
15 including energy efficiency, sustainability, safe-
16 ty and security, life-cycle cost, and productivity.
17 (2) PROGRAM.—After receiving the report
18 under paragraph (1), the Secretary shall establish a
19 program of technical assistance and grants to sup-
20 port standards development organizations in—
21 (A) the revision of existing standards, to
22 reflect current knowledge of high-performance
23 buildings; and
24 (B) the development and promulgation of
25 new standards in areas important to high-per-

formance buildings where there is no existing standard or where an existing standard cannot easily be modified.

SEC. 925. INDUSTRIES.

(a) PROGRAM.—The Secretary shall conduct a program of research, development, demonstration, and commercial application of advanced technologies to improve the energy efficiency, environmental performance, and process efficiency of energy-intensive and waste-intensive industries. Such program shall be focused on industries whose total annual energy consumption amounts to more than 1.0 percent of the total nationwide annual energy consumption, according to the most recent data available to the Department. Research and development efforts under this section shall give a higher priority to broad-benefit efficiency technologies that have practical application across industry sectors.

(b) ELECTRIC MOTOR CONTROL TECHNOLOGY.—The program conducted under subsection (a) shall include research on, and development, demonstration, and commercial application of, advanced control devices to improve the energy efficiency of electric motors, including those used in industrial processes, heating, ventilation, and cooling.

1 **SEC. 926. DEMONSTRATION AND COMMERCIAL APPLICA-**
2 **TION.**

3 (a) APPLIANCES AND TESTING.—The Secretary shall
4 conduct research and analysis to determine whether, given
5 Department-sponsored and other advances in energy effi-
6 ciency technologies, demonstration and commercial appli-
7 cation of innovative, cost-effective energy savings and pol-
8 lution reducing technologies could be used to improve ap-
9 pliances and test procedures used to measure appliance
10 efficiency.

11 (b) BUILDING ENERGY CODES.—The Secretary shall,
12 in coordination with government, nongovernment, and
13 commercial partners, conduct research and analyses of the
14 best cost-effective practices in the development and updat-
15 ing of building energy codes, including for manufactured
16 housing. Analyses shall focus on how to encourage energy
17 efficiency and adoption of newly developed energy produc-
18 tion and use equipment.

19 (c) ADVANCED ENERGY TECHNOLOGY TRANSFER
20 CENTERS.—

21 (1) GRANTS.—Not later than 18 months after
22 the date of enactment of this Act, the Secretary
23 shall make grants to nonprofit institutions, State
24 and local governments, or universities (or consortia
25 thereof), to establish a geographically dispersed net-
26 work of Advanced Energy Technology Transfer Cen-

1 ters, to be located in areas the Secretary determines
2 have the greatest need of the services of such Cen-
3 ters.

4 (2) ACTIVITIES.—

5 (A) IN GENERAL.—Each Center shall oper-
6 ate a program to encourage demonstration and
7 commercial application of advanced energy
8 methods and technologies through education
9 and outreach to building and industrial profes-
10 sionals, and to other individuals and organiza-
11 tions with an interest in efficient energy use.

12 (B) ADVISORY PANEL.—Each Center shall
13 establish an advisory panel to advise the Center
14 on how best to accomplish the activities under
15 subparagraph (A).

16 (3) APPLICATION.—A person seeking a grant
17 under this subsection shall submit to the Secretary
18 an application in such form and containing such in-
19 formation as the Secretary may require. The Sec-
20 retary may award a grant under this subsection to
21 an entity already in existence if the entity is other-
22 wise eligible under this subsection.

23 (4) SELECTION CRITERIA.—The Secretary shall
24 award grants under this subsection on the basis of
25 the following criteria, at a minimum:

1 (A) The ability of the applicant to carry
2 out the activities in paragraph (2).
3 (B) The extent to which the applicant will
4 coordinate the activities of the Center with
5 other entities, such as State and local govern-
6 ments, utilities, and educational and research
7 institutions.
8 (5) MATCHING FUNDS.—The Secretary shall re-
9 quire a non-Federal matching requirement of at
10 least 50 percent of the costs of establishing and op-
11 erating each Center.
12 (6) ADVISORY COMMITTEE.—The Secretary
13 shall establish an advisory committee to advise the
14 Secretary on the establishment of Centers under this
15 subsection. The advisory committee shall be com-
16 posed of individuals with expertise in the area of ad-
17 vanced energy methods and technologies, including
18 at least 1 representative from—
19 (A) State or local energy offices;
20 (B) energy professionals;
21 (C) trade or professional associations;
22 (D) architects, engineers, or construction
23 professionals;
24 (E) manufacturers;
25 (F) the research community; and

1 (G) nonprofit energy or environmental or-
2 ganizations.
3 (7) DEFINITIONS.—For purposes of this sub-
4 section:
5 (A) ADVANCED ENERGY METHODS AND
6 TECHNOLOGIES.—The term ''advanced energy
7 methods and technologies'' means all methods
8 and technologies that promote energy efficiency
9 and conservation, including distributed genera-
10 tion technologies, and life-cycle analysis of en-
11 ergy use.
12 (B) CENTER.—The term ''Center'' means
13 an Advanced Energy Technology Transfer Cen-
14 ter established pursuant to this subsection.
15 (C) DISTRIBUTED GENERATION.—The
16 term ''distributed generation'' means an electric
17 power generation facility that is designed to
18 serve retail electric consumers at or near the fa-
19 cility site.
20 (d) REPORT.—Not later than 2 years after the date
21 of enactment of this Act, and once every 3 years there-
22 after, the Secretary shall transmit to Congress a report
23 on the results of research and analysis under this section.
24 In calculating cost-effectiveness for purposes of such re-
25 ports, the Secretary shall include, at a minimum, the

1 avoided cost of additional energy production, savings to
2 the economy from lower peak energy prices and reduced
3 price volatility, and the public and private benefits of re-
4 duced pollution.

5 **SEC. 927. SECONDARY ELECTRIC VEHICLE BATTERY USE**
6 **PROGRAM.**

7 (a) DEFINITIONS.—For purposes of this section:

8 (1) ASSOCIATED EQUIPMENT.—The term ''asso-
9 ciated equipment'' means equipment located where
10 the batteries will be used that is necessary to enable
11 the use of the energy stored in the batteries.

12 (2) BATTERY.—The term ''battery'' means an
13 energy storage device that previously has been used
14 to provide motive power in a vehicle powered in
15 whole or in part by electricity.

16 (b) PROGRAM.—The Secretary shall establish and
17 conduct a research, development, demonstration, and com-
18 mercial application program for the secondary use of bat-
19 teries if the Secretary finds that there are sufficient num-
20 bers of such batteries to support the program. The pro-
21 gram shall be—

22 (1) designed to demonstrate the use of batteries
23 in secondary applications, including utility and com-
24 mercial power storage and power quality;

1 (2) structured to evaluate the performance, in-
2 cluding useful service life and costs, of such bat-
3 teries in field operations, and the necessary sup-
4 porting infrastructure, including reuse and disposal
5 of batteries; and

6 (3) coordinated with ongoing secondary battery
7 use programs at the National Laboratories and in
8 industry.

9 (c) SOLICITATION.—Not later than 180 days after
10 the date of enactment of this Act, if the Secretary finds
11 under subsection (b) that there are sufficient numbers of
12 batteries to support the program, the Secretary shall so-
13 licit proposals to demonstrate the secondary use of bat-
14 teries and associated equipment and supporting infra-
15 structure in geographic locations throughout the United
16 States. The Secretary may make additional solicitations
17 for proposals if the Secretary determines that such solici-
18 tations are necessary to carry out this section.

19 (d) SELECTION OF PROPOSALS.—

20 (1) IN GENERAL.—The Secretary shall, not
21 later than 90 days after the closing date established
22 by the Secretary for receipt of proposals under sub-
23 section (c), select up to 5 proposals which may re-
24 ceive financial assistance under this section, subject
25 to the availability of appropriations.

1 (2) DIVERSITY; ENVIRONMENTAL EFFECT.—In
2 selecting proposals, the Secretary shall consider di-
3 versity of battery type, geographic and climatic di-
4 versity, and life-cycle environmental effects of the
5 approaches.

6 (3) LIMITATION.—No 1 project selected under
7 this section shall receive more than 25 percent of the
8 funds authorized for the program under this section.

9 (4) OPTIMIZATION OF FEDERAL RESOURCES.—
10 The Secretary shall consider the extent of involve-
11 ment of State or local government and other persons
12 in each demonstration project to optimize use of
13 Federal resources.

14 (5) OTHER CRITERIA.—The Secretary may con-
15 sider such other criteria as the Secretary considers
16 appropriate.

17 (e) CONDITIONS.—The Secretary shall require that—

18 (1) relevant information be provided to the De-
19 partment, the users of the batteries, the proposers,
20 and the battery manufacturers;

21 (2) the proposer provide at least 50 percent of
22 the costs associated with the proposal; and

23 (3) the proposer provide to the Secretary such
24 information regarding the disposal of the batteries
25 as the Secretary may require to ensure that the pro-

1 poser disposes of the batteries in accordance with
2 applicable law.

3 **SEC. 928. NEXT GENERATION LIGHTING INITIATIVE.**

4 (a) IN GENERAL.—The Secretary shall carry out a
5 Next Generation Lighting Initiative in accordance with
6 this section to support research, development, demonstra-
7 tion, and commercial application activities related to ad-
8 vanced solid-state lighting technologies based on white
9 light emitting diodes.

10 (b) OBJECTIVES.—The objectives of the initiative
11 shall be to develop advanced solid-state organic and inor-
12 ganic lighting technologies based on white light emitting
13 diodes that, compared to incandescent and fluorescent
14 lighting technologies, are longer lasting; more energy-effi-
15 cient; and cost-competitive, and have less environmental
16 impact.

17 (c) INDUSTRY ALLIANCE.—The Secretary shall, not
18 later than 3 months after the date of enactment of this
19 section, competitively select an Industry Alliance to rep-
20 resent participants that are private, for-profit firms which,
21 as a group, are broadly representative of United States
22 solid state lighting research, development, infrastructure,
23 and manufacturing expertise as a whole.

24 (d) RESEARCH.—

1 (1) IN GENERAL.—The Secretary shall carry
2 out the research activities of the Next Generation
3 Lighting Initiative through competitively awarded
4 grants to researchers, including Industry Alliance
5 participants, National Laboratories, and institutions
6 of higher education.
7 (2) ASSISTANCE FROM THE INDUSTRY ALLI-
8 ANCE.—The Secretary shall annually solicit from the
9 Industry Alliance—
10 (A) comments to identify solid-state light-
11 ing technology needs;
12 (B) assessment of the progress of the Ini-
13 tiative's research activities; and
14 (C) assistance in annually updating solid-
15 state lighting technology roadmaps.
16 (3) AVAILABILITY OF INFORMATION AND ROAD-
17 MAPS.—The information and roadmaps under para-
18 graph (2) shall be available to the public and public
19 response shall be solicited by the Secretary.
20 (e) DEVELOPMENT, DEMONSTRATION, AND COMMER-
21 CIAL APPLICATION.—The Secretary shall carry out a de-
22 velopment, demonstration, and commercial application
23 program for the Next Generation Lighting Initiative
24 through competitively selected awards. The Secretary may

1 give preference to participants of the Industry Alliance se-
2 lected pursuant to subsection (c).

3 (f) INTELLECTUAL PROPERTY.—The Secretary may
4 require, in accordance with the authorities provided in sec-
5 tion 202(a)(ii) of title 35, United States Code, section 152
6 of the Atomic Energy Act of 1954 (42 U.S.C. 2182), and
7 section 9 of the Federal Nonnuclear Energy Research and
8 Development Act of 1974 (42 U.S.C. 5908), that—

9 (1) for any new invention resulting from activi-
10 ties under subsection (d)—

11 (A) the Industry Alliance members that
12 are active participants in research, development,
13 and demonstration activities related to the ad-
14 vanced solid-state lighting technologies that are
15 the subject of this section shall be granted first
16 option to negotiate with the invention owner
17 nonexclusive licenses and royalties for uses of
18 the invention related to solid-state lighting on
19 terms that are reasonable under the cir-
20 cumstances; and

21 (B)(i) for 1 year after a United States pat-
22 ent is issued for the invention, the patent hold-
23 er shall not negotiate any license or royalty
24 with any entity that is not a participant in the

Industry Alliance described in subparagraph (A); and

(ii) during the year described in clause (i), the invention owner shall negotiate nonexclusive licenses and royalties in good faith with any interested participant in the Industry Alliance described in subparagraph (A); and

(2) such other terms as the Secretary determines are required to promote accelerated commercialization of inventions made under the Initiative.

(g) NATIONAL ACADEMY REVIEW.—The Secretary shall enter into an arrangement with the National Academy of Sciences to conduct periodic reviews of the Next Generation Lighting Initiative. The Academy shall review the research priorities, technical milestones, and plans for technology transfer and progress towards achieving them. The Secretary shall consider the results of such reviews in evaluating the information obtained under subsection (d)(2).

(h) DEFINITIONS.—As used in this section:

(1) ADVANCED SOLID-STATE LIGHTING.—The term ''advanced solid-state lighting'' means a semiconducting device package and delivery system that produces white light using externally applied voltage.

1 (2) RESEARCH.—The term ''research'' includes
2 research on the technologies, materials, and manu-
3 facturing processes required for white light emitting
4 diodes.
5 (3) INDUSTRY ALLIANCE.—The term ''Industry
6 Alliance'' means an entity selected by the Secretary
7 under subsection (c).
8 (4) WHITE LIGHT EMITTING DIODE.—The term
9 ''white light emitting diode'' means a
10 semiconducting package, utilizing either organic or
11 inorganic materials, that produces white light using
12 externally applied voltage.

13 **SEC. 929. DEFINITIONS.**

14 For the purposes of this chapter—
15 (1) the term ''cost-effective'' means resulting in
16 a simple payback of costs in 10 years or less; and
17 (2) the term ''whole-buildings approach'' in-
18 cludes, on a life-cycle basis, the energy use, cost of
19 operations, and ease of repair or upgrade of a build-
20 ing.

21 **SEC. 930. AUTHORIZATION OF APPROPRIATIONS.**

22 The following sums are authorized to be appropriated
23 to the Secretary for the purposes of carrying out this
24 chapter:

1 (1) For fiscal year 2006, $620,000,000,
2 including—
3 (A) $200,000,000 for carrying out the ve-
4 hicles program under section 923;
5 (B) $100,000,000 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) $100,000,000 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) $4,000,000 for carrying out the sec-
18 ondary electric vehicle battery use program
19 under section 927; and
20 (G) $20,000,000 for carrying out the Next
21 Generation Lighting Initiative under section
22 928.
23 (2) For fiscal year 2007, $700,000,000,
24 including—

1 (A) $240,000,000 for carrying out the ve-
2 hicles program under section 923;
3 (B) $130,000,000 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) $115,000,000 for carrying out the in-
8 dustries program under section 925(a);
9 (D) $2,000,000 for carrying out the elec-
10 tric motor control technology program under
11 section 925(b);
12 (E) $10,000,000 for carrying out dem-
13 onstration and commercial applications activi-
14 ties under section 926;
15 (F) $7,000,000 for carrying out the sec-
16 ondary electric vehicle battery use program
17 under section 927; and
18 (G) $30,000,000 for carrying out the Next
19 Generation Lighting Initiative under section
20 928.
21 (3) For fiscal year 2008, $800,000,000,
22 including—
23 (A) $270,000,000 for carrying out the ve-
24 hicles program under section 923;

1 (B) $160,000,000 for carrying out the
2 buildings program under section 924, of which
3 $10,000,000 shall be for the grant program
4 under section 924(b);
5 (C) $140,000,000 for carrying out the in-
6 dustries program under section 925(a);
7 (D) $2,000,000 for carrying out the elec-
8 tric motor control technology program under
9 section 925(b);
10 (E) $10,000,000 for carrying out dem-
11 onstration and commercial applications activi-
12 ties under section 926;
13 (F) $7,000,000 for carrying out the sec-
14 ondary electric vehicle battery use program
15 under section 927; and
16 (G) $50,000,000 for carrying out the Next
17 Generation Lighting Initiative under section
18 928.
19 (4) For fiscal year 2009, $925,000,000,
20 including—
21 (A) $310,000,000 for carrying out the ve-
22 hicles program under section 923;
23 (B) $200,000,000 for carrying out the
24 buildings program under section 924, of which

1 $10,000,000 shall be for the grant program
2 under section 924(b);
3 (C) $170,000,000 for carrying out the in-
4 dustries program under section 925(a);
5 (D) $10,000,000 for carrying out dem-
6 onstration and commercial applications activi-
7 ties under section 926;
8 (E) $7,000,000 for carrying out the sec-
9 ondary electric vehicle battery use program
10 under section 927; and
11 (F) $50,000,000 for carrying out the Next
12 Generation Lighting Initiative under section
13 928.
14 (5) For fiscal year 2010, $1,000,000,000,
15 including—
16 (A) $340,000,000 for carrying out the ve-
17 hicles program under section 923;
18 (B) $240,000,000 for carrying out the
19 buildings program under section 924, of which
20 $10,000,000 shall be for the grant program
21 under section 924(b);
22 (C) $190,000,000 for carrying out the in-
23 dustries program under section 925(a);

(D) $10,000,000 for carrying out demonstration and commercial applications activities under section 926;

(E) $7,000,000 for carrying out the secondary electric vehicle battery use program under section 927; and

(F) $50,000,000 for carrying out the Next Generation Lighting Initiative under section 928.

SEC. 931. LIMITATION ON USE OF FUNDS.

None of the funds authorized to be appropriated under this chapter may be used for—

(1) the issuance and implementation of energy efficiency regulations;

(2) the Weatherization Assistance Program under part A of title IV of the Energy Conservation and Production Act (42 U.S.C. 6861 et seq.);

(3) the State Energy Program under part D of title III of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.); or

(4) the Federal Energy Management Program under part 3 of title V of the National Energy Conservation 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
7 explore—
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-

hance reliability, operational flexibility, or power-carrying capability;

(2) advanced grid reliability and efficiency technology development;

(3) technologies contributing to significant load reductions;

(4) advanced metering, load management, and control technologies;

(5) technologies to enhance existing grid components;

(6) the development and use of high-temperature superconductors to—

(A) enhance the reliability, operational flexibility, or power-carrying capability of electric transmission or distribution systems; or

(B) increase the efficiency of electric energy generation, transmission, distribution, or storage systems;

(7) integration of power systems, including systems to deliver high-quality electric power, electric power reliability, and combined heat and power;

(8) supply of electricity to the power grid by small-scale, distributed, and residential-based power 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

commercial application programs for renewable energy, the United States can create an export industry and improve the balance of trade.

(12) Renewable energy can significantly reduce the environmental impacts of energy production.

SEC. 936. DEFINITIONS.

For purposes of this subtitle:

(1) BIOBASED PRODUCT.—The term ''biobased product'' means a product determined by the Secretary to be a commercial or industrial product (other than food or feed) that is—

(A) composed, in whole or in significant part, of—

(i) biological products;

(ii) renewable domestic agricultural materials (including plant, animal, and marine materials); or

(iii) forestry materials; and

(B) produced in connection with the conversion of biomass to energy or fuel.

(2) CELLULOSIC BIOMASS.—The term ''cellulosic biomass'' means a crop containing lignocellulose or hemicellulose, including barley grain, grapeseed, forest thinnings, rice bran, rice 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
13 industry—
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.

(2) PROPOSALS.—Not later than 6 months after the date of enactment of this Act, the Secretary shall solicit proposals for demonstration of advanced biorefineries. The Secretary shall select only proposals that—

(A) demonstrate that the project will be able to operate profitably without direct Federal subsidy after initial construction costs are paid; and

(B) enable the biorefinery to be easily replicated.

(d) UNIVERSITY BIODIESEL PROGRAM.—The Secretary shall establish a demonstraton program to determine the feasibility of the operation of diesel electric power generators, using biodiesel fuels, with ratings as high as B100 at a university electric generation facility. The program shall examine—

(1) heat rates of diesel fuels with large quantities of cellulosic content;

(2) the reliability of operation of various fuel blends;

(3) performance in cold or freezing weather;

(4) stability of fuel after extended storage; and

(5) other criteria, as determined by the Secretary.

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 clude 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
25 include—

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

(E) $300,000,000 shall be for carrying out the photovoltaic demonstration program under section 942.

Subtitle E—Nuclear Energy Programs

SEC. 946. DEFINITION.

In this subtitle, the term ''junior faculty'' means a faculty member who was awarded a doctorate less than 10 years before receipt of an award from the grant program described in section 949(b)(2).

SEC. 947. PROGRAMS.

(a) IN GENERAL.—The Secretary shall conduct programs of civilian nuclear energy research, development, demonstration, and commercial application, including activities described in this subtitle. Programs under this subtitle shall be focused on—

(1) enhancing nuclear power's viability as part of the United States energy portfolio;

(2) providing the technical means to reduce the likelihood of nuclear proliferation;

(3) maintaining a cadre of nuclear scientists and engineers;

(4) maintaining National Laboratory and university nuclear programs, including their infrastructure;

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

and availability of these facilities elsewhere in the National Laboratories; and

(7) include a timeline and a proposed budget for the completion of deferred maintenance on plant and equipment.

(b) TRANSMITTAL TO CONGRESS.—Not later than one year after the date of enactment of this Act, the Secretary shall transmit such plan to Congress.

SEC. 956. AUTHORIZATION OF APPROPRIATIONS.

(a) PROGRAM AUTHORIZATION.—The following sums are authorized to be appropriated to the Secretary for the purposes of carrying out this chapter:

(1) $407,000,000 for fiscal year 2006.

(2) $427,000,000 for fiscal year 2007.

(3) $449,000,000 for fiscal year 2008.

(4) $471,000,000 for fiscal year 2009.

(5) $495,000,000 for fiscal year 2010.

(b) UNIVERSITY SUPPORT.—Of the funds authorized under subsection (a), the following sums are authorized to be appropriated to carry out section 949:

(1) $35,200,000 for fiscal year 2006.

(2) $44,350,000 for fiscal year 2007.

(3) $49,200,000 for fiscal year 2008.

(4) $55,000,000 for fiscal year 2009.

(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 sepa-
2 ration devices, and carbon dioxide separation tech-
3 nologies.
4 (4) Coal gas and post-combustion emission
5 cleanup and disposal equipment, including carbon di-
6 oxide capture and disposal equipment.
7 (5) Average per-foot drilling costs for oil and
8 gas, segregated by appropriate drilling regimes, in-
9 cluding onshore versus offshore and depth cat-
10 egories.
11 (6) Production of liquid fuels from nontradi-
12 tional feedstocks, including syngas, biomass, meth-
13 ane, and combinations thereof.
14 (7) Environmental discharge per barrel of oil or
15 oil-equivalent production, including reinjected waste.
16 (8) Surface disturbance on both a per-well and
17 per-barrel of oil or oil-equivalent production basis.
18 (d) PUBLIC INPUT.—The Secretary shall consider ad-
19 vice from industry, universities, and other interested par-
20 ties through seeking comments in the Federal Register
21 and other means before transmitting each report under
22 subsection (b).

23 **SEC. 963. FOSSIL RESEARCH AND DEVELOPMENT.**

24 (a) OBJECTIVES.—The Secretary shall conduct a pro-
25 gram 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 **SEC. 968A. WESTERN MICHIGAN DEMONSTRATION**
14 **PROJECT.**

15 The Administrator of the Environmental Protection
16 Agency, in consultation with the State of Michigan and
17 affected local officials, shall conduct a demonstration
18 project to address the effect of transported ozone and
19 ozone precursors in Southwestern Michigan. The dem-
20 onstration program shall address projected nonattainment
21 areas in Southwestern Michigan that include counties with
22 design values for ozone of less than .095 based on years
23 2000 to 2002 or the most current 3-year period of air
24 quality data. The Administrator shall assess any difficul-
25 ties such areas may experience in meeting the 8 hour na-

1 tional ambient air quality standard for ozone due to the
2 effect of transported ozone or ozone precursors into the
3 areas. The Administrator shall work with State and local
4 officials to determine the extent of ozone and ozone pre-
5 cursor transport, to assess alternatives to achieve compli-
6 ance with the 8 hour standard apart from local controls,
7 and to determine the timeframe in which such compliance
8 could take place. The Administrator shall complete this
9 demonstration project no later than 2 years after the date
10 of enactment of this section and shall not impose any re-
11 quirement or sanction that might otherwise apply during
12 the pendency of the demonstration project.

13 **SEC. 968B. WESTERN HEMISPHERE ENERGY COOPERATION.**

14 (a) PROGRAM.—The Secretary shall carry out a pro-
15 gram to promote cooperation on energy issues with West-
16 ern Hemisphere countries.

17 (b) ACTIVITIES.—Under the program, the Secretary
18 shall fund activities to work with Western Hemisphere
19 countries to—

20 (1) assist the countries in formulating and
21 adopting changes in economic policies and other poli-
22 cies to—

23 (A) increase the production of energy sup-
24 plies; and

25 (B) improve energy efficiency; and

1 (2) assist in the development and transfer of
2 energy supply and efficiency technologies that would
3 have a beneficial impact on world energy markets.

4 (c) UNIVERSITY PARTICIPATION.—To the extent
5 practicable, the Secretary shall carry out the program
6 under this section with the participation of universities so
7 as to take advantage of the acceptance of universities by
8 Western Hemisphere countries as sources of unbiased
9 technical and policy expertise when assisting the Secretary
10 in—

11 (1) evaluating new technologies;

12 (2) resolving technical issues;

13 (3) working with those countries in the develop-
14 ment of new policies; and

15 (4) training policymakers, particularly in the
16 case of universities that involve the participation of
17 minority students, such as Hispanic-serving institu-
18 tions and Historically Black Colleges and Univer-
19 sities.

20 (d) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated to carry out this
22 section—

23 (1) $8,000,000 for fiscal year 2006;

24 (2) $10,000,000 for fiscal year 2007;

25 (3) $13,000,000 for fiscal year 2008;

1 (4) $16,000,000 for fiscal year 2009; and
2 (5) $19,000,000 for fiscal year 2010.

3 **SEC. 968C. ARCTIC ENGINEERING RESEARCH CENTER.**

4 (a) IN GENERAL.—The Secretary of Energy (referred
5 to in this section as the ''Secretary'') in consultation with
6 the Secretary of Transportation and the United States
7 Arctic Research Commission shall provide annual grants
8 to a university located adjacent to the Arctic Energy Of-
9 fice of the Department of Energy, to establish and operate
10 a university research center to be headquartered in Fair-
11 banks and to be known as the ''Arctic Engineering Re-
12 search Center'' (referred to in this section as the ''Cen-
13 ter'').

14 (b) PURPOSE.—The purpose of the Center shall be
15 to conduct research on, and develop improved methods of,
16 construction and use of materials to improve the overall
17 performance of roads, bridges, residential, commercial,
18 and industrial structures, and other infrastructure in the
19 Arctic region, with an emphasis on developing—

20 (1) new construction techniques for roads,
21 bridges, rail, and related transportation infrastruc-
22 ture and residential, commercial, and industrial in-
23 frastructure that are capable of withstanding the
24 Arctic environment and using limited energy re-
25 sources as efficiently as possible;

1 (2) technologies and procedures for increasing
2 road, bridge, rail, and related transportation infra-
3 structure and residential, commercial, and industrial
4 infrastructure safety, reliability, and integrity in the
5 Arctic region;
6 (3) new materials and improving the perform-
7 ance and energy efficiency of existing materials for
8 the construction of roads, bridges, rail, and related
9 transportation infrastructure and residential, com-
10 mercial, and industrial infrastructure in the Arctic
11 region; and
12 (4) recommendations for new local, regional,
13 and State permitting and building codes to ensure
14 transportation and building safety and efficient en-
15 ergy use when constructing, using, and occupying
16 such infrastructure in the Arctic region.
17 (c) OBJECTIVES.—The Center shall carry out—
18 (1) basic and applied research in the subjects
19 described in subsection (b), the products of which
20 shall be judged by peers or other experts in the field
21 to advance the body of knowledge in road, bridge,
22 rail, and infrastructure engineering in the Arctic re-
23 gion; and

1 (2) an ongoing program of technology transfer
2 that makes research results available to potential
3 users in a form that can be implemented.
4 (d) AMOUNT OF GRANT.—For each of fiscal years
5 2006 through 2011, the Secretary shall provide a grant
6 in the amount of $3,000,000 to the institution specified
7 in subsection (a) to carry out this section.
8 (e) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated to carry out this section
10 $3,000,000 for each of fiscal years 2006 through 2011.
11 **SEC. 968D. BARROW GEOPHYSICAL RESEARCH FACILITY.**
12 (a) ESTABLISHMENT.—The Secretary of Commerce,
13 in consultation with the Secretaries of Energy and the In-
14 terior, the Director of the National Science Foundation,
15 and the Administrator of the Environmental Protection
16 Agency, shall establish a joint research facility in Barrow,
17 Alaska, to be known as the ''Barrow Geophysical Research
18 Facility'', to support scientific research activities in the
19 Arctic.
20 (b) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated to the Secretaries of
22 Commerce, Energy, and the Interior, the Director of the
23 National Science Foundation, and the Administrator of
24 the Environmental Protection Agency for the planning,

1 design, construction, and support of the Barrow Geo-
2 physical Research Facility $61,000,000.

3 CHAPTER 2—ULTRA-DEEPWATER AND UN- 4 CONVENTIONAL NATURAL GAS AND 5 OTHER PETROLEUM RESOURCES

6 SEC. 969. PROGRAM AUTHORITY.

7 (a) IN GENERAL.—The Secretary shall carry out a
8 program under this chapter of research, development,
9 demonstration, and commercial application of technologies
10 for ultra-deepwater and unconventional natural gas and
11 other petroleum resource exploration and production, in-
12 cluding addressing the technology challenges for small
13 producers, safe operations, and environmental mitigation
14 (including reduction of greenhouse gas emissions and se-
15 questration of carbon).

16 (b) PROGRAM ELEMENTS.—The program under this
17 chapter shall address the following areas, including im-
18 proving safety and minimizing environmental impacts of
19 activities within each area:

20 (1) Ultra-deepwater architecture and tech-
21 nology, including drilling to formations in the Outer
22 Continental Shelf to depths greater than 15,000
23 feet.

1 (2) Unconventional natural gas and other petro-
2 leum resource exploration and production tech-
3 nology.
4 (3) The technology challenges of small pro-
5 ducers.
6 (4) Complementary research performed by the
7 National Energy Technology Laboratory for the
8 United States Department of Energy.
9 (c) LIMITATION ON LOCATION OF FIELD ACTIVI-
10 TIES.—Field activities under the program under this
11 chapter shall be carried out only—
12 (1) in—
13 (A) areas in the territorial waters of the
14 United States not under any Outer Continental
15 Shelf moratorium as of September 30, 2002;
16 (B) areas onshore in the United States on
17 public land administered by the Secretary of the
18 Interior available for oil and gas leasing, where
19 consistent with applicable law and land use
20 plans; and
21 (C) areas onshore in the United States on
22 State or private land, subject to applicable law;
23 and

1 (2) with the approval of the appropriate Fed-
2 eral or State land management agency or private
3 land owner.

4 (d) ACTIVITIES AT THE NATIONAL ENERGY TECH-
5 NOLOGY LABORATORY.—The Secretary, through the Na-
6 tional Energy Technology Laboratory, shall carry out a
7 program of research and other activities complementary
8 to and supportive of the research programs under sub-
9 section (b).

10 (e) CONSULTATION WITH SECRETARY OF THE INTE-
11 RIOR.—In carrying out this part, the Secretary shall con-
12 sult regularly with the Secretary of the Interior.

13 **SEC. 970. ULTRA-DEEPWATER AND UNCONVENTIONAL ON-**
14 **SHORE NATURAL GAS AND OTHER PETRO-**
15 **LEUM RESEARCH AND DEVELOPMENT PRO-**
16 **GRAM.**

17 (a) IN GENERAL.—The Secretary shall carry out the
18 activities under section 969, to maximize the value of nat-
19 ural gas and other petroleum resources of the United
20 States, by increasing the supply of such resources, through
21 reducing the cost and increasing the efficiency of explo-
22 ration for and production of such resources, while improv-
23 ing safety and minimizing environmental impacts.

1 (b) ROLE OF THE SECRETARY.—The Secretary shall
2 have ultimate responsibility for, and oversight of, all as-
3 pects of the program under this section.
4 (c) ROLE OF THE PROGRAM CONSORTIUM.—
5 (1) IN GENERAL.—The Secretary shall contract
6 with a consortium to—
7 (A) manage awards pursuant to subsection
8 (f)(3);
9 (B) issue project solicitations upon ap-
10 proval of the Secretary;
11 (C) make project awards upon approval of
12 the Secretary;
13 (D) disburse funds awarded under sub-
14 section (f) as directed by the Secretary in ac-
15 cordance with the annual plan under subsection
16 (e); and
17 (E) carry out other activities assigned to
18 the program consortium by this section.
19 (2) LIMITATION.—The Secretary may not as-
20 sign any activities to the program consortium except
21 as specifically authorized under this section.
22 (3) CONFLICT OF INTEREST.—
23 (A) PROCEDURES.—The Secretary shall
24 establish procedures—

1 (i) to ensure that each board member,
2 officer, or employee of the program consor-
3 tium who is in a decisionmaking capacity
4 under subsection (f)(3) shall disclose to the
5 Secretary any financial interests in, or fi-
6 nancial relationships with, applicants for or
7 recipients of awards under this section, in-
8 cluding those of his or her spouse or minor
9 child, unless such relationships or interests
10 would be considered to be remote or incon-
11 sequential; and
12 (ii) to require any board member, offi-
13 cer, or employee with a financial relation-
14 ship or interest disclosed under clause (i)
15 to recuse himself or herself from any over-
16 sight under subsection (f)(4) with respect
17 to such applicant or recipient.
18 (B) FAILURE TO COMPLY.—The Secretary
19 may disqualify an application or revoke an
20 award under this section if a board member, of-
21 ficer, or employee has failed to comply with pro-
22 cedures required under subparagraph (A)(ii).
23 (d) SELECTION OF THE PROGRAM CONSORTIUM.—

1 (1) IN GENERAL.—The Secretary shall select
2 the program consortium through an open, competi-
3 tive process.
4 (2) MEMBERS.—The program consortium may
5 include corporations, trade associations, institutions
6 of higher education, National Laboratories, or other
7 research institutions. After submitting a proposal
8 under paragraph (4), the program consortium may
9 not add members without the consent of the Sec-
10 retary.
11 (3) REQUIREMENT OF SECTION 501(C)(3) STA-
12 TUS.—The Secretary shall not select a consortium
13 under this section unless such consortium is an or-
14 ganization described in section 501(c)(3) of the In-
15 ternal Revenue Code of 1986 and exempt from tax
16 under such section 501(a) of such Code.
17 (4) SCHEDULE.—Not later than 90 days after
18 the date of enactment of this Act, the Secretary
19 shall solicit proposals from eligible consortia to per-
20 form the duties in subsection (c)(1), which shall be
21 submitted not later than 180 days after the date of
22 enactment of this Act. The Secretary shall select the
23 program consortium not later than 270 days after
24 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
16 affords—

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 or 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) to States and to the Reclamation Fund under the Mineral Leasing Act (30 U.S.C. 191(a)); and

(2) to other funds receiving monies from Federal oil and gas leasing programs, including—

(A) any recipients pursuant to section 8(g) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g));

(B) the Land and Water Conservation Fund, pursuant to section 2(c) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–5(c));

(C) the Historic Preservation Fund, pursuant to section 108 of the National Historic Preservation Act (16 U.S.C. 470h); and

(D) the Secure Energy Reinvestment Fund.

(d) ALLOCATION.—Amounts obligated from the Fund under subsection (a)(1) in each fiscal year shall be allocated as follows:

(1) 35 percent shall be for activities under section 969(b)(1).

(2) 32.5 percent shall be for activities under section 969(b)(2).

(3) 7.5 percent shall be for activities under section 969(b)(3).

(4) 25 percent shall be for complementary research under section 969(b)(4) and other activities under section 969(b) to include program direction funds, overall program oversight, contract management, and the establishment and operation of a technical committee to ensure that in-house research activities funded under subsection 969(b)(4) are technically complementary to, and not duplicative of, research conducted under section 969(b)(1), (2), and (3).

(e) FUND.—There is hereby established in the Treasury of the United States a separate fund to be known as the ''Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Research Fund''.

TITLE X—DEPARTMENT OF ENERGY MANAGEMENT

SEC. 1002. OTHER TRANSACTIONS AUTHORITY.

Section 646 of the Department of Energy Organization Act (42 U.S.C. 7256) is amended by adding at the end the following:

''(g)(1) In addition to other authorities granted to the Secretary under law, the Secretary may exercise the same authority (subject to the same restrictions and conditions)

1 with respect to such research and projects as the Secretary
2 of Defense may exercise under section 2371 of title 10,
3 United States Code, except for subsections (b) and (f) of
4 such section 2371. Such other transactions shall not be
5 subject to the provisions of section 9 of the Federal Non-
6 nuclear Energy Research and Development Act of 1974
7 (42 U.S.C. 5908) or section 152 of the Atomic Energy
8 Act of 1954 (42 U.S.C. 2182).

9 ''(2)(A) The Secretary may, under the authority of
10 paragraph (1), carry out prototype projects in accordance
11 with the requirements and conditions provided for car-
12 rying out prototype projects under section 845 of the Na-
13 tional Defense Authorization Act for Fiscal Year 1994
14 (Public Law 103–160; 10 U.S.C. 2371 note), including
15 that, to the maximum extent practicable, competitive pro-
16 cedures shall be used when entering into agreements to
17 carry out projects under subsection (a) of that section and
18 that the period of authority to carry out projects under
19 such subsection (a) terminates as provided in subsection
20 (g) of that section.

21 ''(B) In applying the requirements and conditions of
22 section 845 of the National Defense Authorization Act for
23 Fiscal Year 1994 under this subsection—

1 "(i) subsection (c) of that section shall apply
2 with respect to prototype projects carried out under
3 this paragraph; and

4 "(ii) the Director of the Office of Management
5 and Budget shall perform the functions of the Sec-
6 retary of Defense under subsection (d) of that sec-
7 tion.

8 "(C) The Secretary may exercise authority under this
9 subsection for a project only if authorized by the Director
10 of the Office of Management and Budget to use the au-
11 thority for such project.

12 "(D) The annual report of the head of an executive
13 agency that is required under subsection (h) of section
14 2371 of title 10, United States Code, as applied to the
15 head of the executive agency by subsection (a), shall be
16 submitted to Congress.

17 "(3) Not later than 90 days after the date of enact-
18 ment of this subsection, the Secretary, in consultation
19 with the Director of the Office of Management and Budg-
20 et, shall prescribe guidelines for using other transactions
21 authorized by paragraph (1). Such guidelines shall be pub-
22 lished in the Federal Register for public comment under
23 rulemaking procedures of the Department.

24 "(4) The authority of the Secretary under this sub-
25 section may be delegated only to an officer of the Depart-

1 ment who is appointed by the President by and with the
2 advice and consent of the Senate and may not be delegated
3 to any other person.

4 ''(5)(A) Not later than September 31, 2006, the
5 Comptroller General of the United States shall report to
6 Congress on the Department's use of the authorities
7 granted under this section, including the ability to attract
8 nontraditional government contractors and whether addi-
9 tional safeguards are needed with respect to the use of
10 such authorities.

11 ''(B) In this section, the term 'nontraditional Govern-
12 ment contractor' has the same meaning as the term 'non-
13 traditional defense contractor' as defined in section 845(e)
14 of the National Defense Authorization Act for Fiscal Year
15 1994 (Public Law 103–160; 10 U.S.C. 2371 note).''.

16 **SEC. 1003. UNIVERSITY COLLABORATION.**

17 Not later than 2 years after the date of enactment
18 of this Act, the Secretary of Energy shall transmit to the
19 Congress a report that examines the feasibility of pro-
20 moting collaborations between major universities and
21 other colleges and universities in grants, contracts, and
22 cooperative agreements made by the Secretary for energy
23 projects. For purposes of this section, major universities
24 are schools listed by the Carnegie Foundation as Doctoral
25 Research Extensive Universities. The Secretary shall also

1 consider providing incentives to increase the inclusion of
2 small institutions of higher education, including minority-
3 serving institutions, in energy grants, contracts, and coop-
4 erative agreements.

5 **SEC. 1004. SENSE OF CONGRESS.**

6 It is the sense of the Congress that—

7 (1) the Secretary of Energy should develop and
8 implement more stringent procurement and inven-
9 tory controls, including controls on the purchase
10 card program, to prevent waste, fraud, and abuse of
11 taxpayer funds by employees and contractors of the
12 Department of Energy; and

13 (2) the Department's Inspector General should
14 continue to closely review purchase card purchases
15 and other procurement and inventory practices at
16 the Department.

17 TITLE XII—ELECTRICITY

18 **SEC. 1201. SHORT TITLE.**

19 This title may be cited as the ''Electric Reliability
20 Act of 2005''.

21 Subtitle A—Reliability Standards

22 **SEC. 1211. ELECTRIC RELIABILITY STANDARDS.**

23 (a) IN GENERAL.—Part II of the Federal Power Act
24 (16 U.S.C 824 et seq.) is amended by adding at the end
25 the following:

1 **“SEC. 215. ELECTRIC RELIABILITY.**

2 ‘‘(a) DEFINITIONS.—For purposes of this section:

3 ‘‘(1) The term ‘bulk-power system’ means—

4 ‘‘(A) facilities and control systems nec-
5 essary for operating an interconnected electric
6 energy transmission network (or any portion
7 thereof); and

8 ‘‘(B) electric energy from generation facili-
9 ties needed to maintain transmission system re-
10 liability.

11 The term does not include facilities used in the local
12 distribution of electric energy.

13 ‘‘(2) The terms ‘Electric Reliability Organiza-
14 tion’ and ‘ERO’ mean the organization certified by
15 the Commission under subsection (c) the purpose of
16 which is to establish and enforce reliability stand-
17 ards for the bulk-power system, subject to Commis-
18 sion review.

19 ‘‘(3) The term ‘reliability standard’ means a re-
20 quirement, approved by the Commission under this
21 section, to provide for reliable operation of the bulk-
22 power system. The term includes requirements for
23 the operation of existing bulk-power system facilities,
24 including cybersecurity protection, and the design of
25 planned additions or modifications to such facilities
26 to the extent necessary to provide for reliable oper-

1 ation of the bulk-power system, but the term does
2 not include any requirement to enlarge such facilities
3 or to construct new transmission capacity or genera-
4 tion capacity.

5 ''(4) The term 'reliable operation' means oper-
6 ating the elements of the bulk-power system within
7 equipment and electric system thermal, voltage, and
8 stability limits so that instability, uncontrolled sepa-
9 ration, or cascading failures of such system will not
10 occur as a result of a sudden disturbance, including
11 a cybersecurity incident, or unanticipated failure of
12 system elements.

13 ''(5) The term 'Interconnection' means a geo-
14 graphic area in which the operation of bulk-power
15 system components is synchronized such that the
16 failure of 1 or more of such components may ad-
17 versely affect the ability of the operators of other
18 components within the system to maintain reliable
19 operation of the facilities within their control.

20 ''(6) The term 'transmission organization'
21 means a Regional Transmission Organization, Inde-
22 pendent System Operator, independent transmission
23 provider, or other transmission organization finally
24 approved by the Commission for the operation of
25 transmission facilities.

1 "(7) The term 'regional entity' means an entity
2 having enforcement authority pursuant to subsection
3 (e)(4).

4 "(8) The term 'cybersecurity incident' means a
5 malicious act or suspicious event that disrupts, or
6 was an attempt to disrupt, the operation of those
7 programmable electronic devices and communication
8 networks including hardware, software and data that
9 are essential to the reliable operation of the bulk
10 power system.

11 "(b) JURISDICTION AND APPLICABILITY.—(1) The
12 Commission shall have jurisdiction, within the United
13 States, over the ERO certified by the Commission under
14 subsection (c), any regional entities, and all users, owners
15 and operators of the bulk-power system, including but not
16 limited to the entities described in section 201(f), for pur-
17 poses of approving reliability standards established under
18 this section and enforcing compliance with this section. All
19 users, owners and operators of the bulk-power system
20 shall comply with reliability standards that take effect
21 under this section.

22 "(2) The Commission shall issue a final rule to imple-
23 ment the requirements of this section not later than 180
24 days after the date of enactment of this section.

1 "(c) CERTIFICATION.—Following the issuance of a
2 Commission rule under subsection (b)(2), any person may
3 submit an application to the Commission for certification
4 as the Electric Reliability Organization. The Commission
5 may certify 1 such ERO if the Commission determines
6 that such ERO—

7 "(1) has the ability to develop and enforce, sub-
8 ject to subsection (e)(2), reliability standards that
9 provide for an adequate level of reliability of the
10 bulk-power system; and

11 "(2) has established rules that—

12 "(A) assure its independence of the users
13 and owners and operators of the bulk-power
14 system, while assuring fair stakeholder rep-
15 resentation in the selection of its directors and
16 balanced decisionmaking in any ERO com-
17 mittee or subordinate organizational structure;

18 "(B) allocate equitably reasonable dues,
19 fees, and other charges among end users for all
20 activities under this section;

21 "(C) provide fair and impartial procedures
22 for enforcement of reliability standards through
23 the imposition of penalties in accordance with
24 subsection (e) (including limitations on activi-

1 ties, functions, or operations, or other appro-
2 priate sanctions);
3 ‘‘(D) provide for reasonable notice and op-
4 portunity for public comment, due process,
5 openness, and balance of interests in developing
6 reliability standards and otherwise exercising its
7 duties; and
8 ‘‘(E) provide for taking, after certification,
9 appropriate steps to gain recognition in Canada
10 and Mexico.
11 The total amount of all dues, fees, and other charges
12 collected by the ERO in each of the fiscal years
13 2006 through 2015 and allocated under subpara-
14 graph (B) shall not exceed $50,000,000.
15 ‘‘(d) RELIABILITY STANDARDS.—(1) The Electric
16 Reliability Organization shall file each reliability standard
17 or modification to a reliability standard that it proposes
18 to be made effective under this section with the Commis-
19 sion.
20 ‘‘(2) The Commission may approve, by rule or order,
21 a proposed reliability standard or modification to a reli-
22 ability standard if it determines that the standard is just,
23 reasonable, not unduly discriminatory or preferential, and
24 in the public interest. The Commission shall give due
25 weight to the technical expertise of the Electric Reliability

Organization with respect to the content of a proposed standard or modification to a reliability standard and to the technical expertise of a regional entity organized on an Interconnection-wide basis with respect to a reliability standard to be applicable within that Interconnection, but shall not defer with respect to the effect of a standard on competition. A proposed standard or modification shall take effect upon approval by the Commission.

"(3) The Electric Reliability Organization shall rebuttably presume that a proposal from a regional entity organized on an Interconnection-wide basis for a reliability standard or modification to a reliability standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest.

"(4) The Commission shall remand to the Electric Reliability Organization for further consideration a proposed reliability standard or a modification to a reliability standard that the Commission disapproves in whole or in part.

"(5) The Commission, upon its own motion or upon complaint, may order the Electric Reliability Organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such

1 a new or modified reliability standard appropriate to carry
2 out this section.

3 ''(6) The final rule adopted under subsection (b)(2)
4 shall include fair processes for the identification and time-
5 ly resolution of any conflict between a reliability standard
6 and any function, rule, order, tariff, rate schedule, or
7 agreement accepted, approved, or ordered by the Commis-
8 sion applicable to a transmission organization. Such trans-
9 mission organization shall continue to comply with such
10 function, rule, order, tariff, rate schedule or agreement ac-
11 cepted approved, or ordered by the Commission until—

12 ''(A) the Commission finds a conflict exists be-
13 tween a reliability standard and any such provision;

14 ''(B) the Commission orders a change to such
15 provision pursuant to section 206 of this part; and

16 ''(C) the ordered change becomes effective
17 under this part.

18 If the Commission determines that a reliability standard
19 needs to be changed as a result of such a conflict, it shall
20 order the ERO to develop and file with the Commission
21 a modified reliability standard under paragraph (4) or (5)
22 of this subsection.

23 ''(e) ENFORCEMENT.—(1) The ERO may impose,
24 subject to paragraph (2), a penalty on a user or owner
25 or operator of the bulk-power system for a violation of a

1 reliability standard approved by the Commission under
2 subsection (d) if the ERO, after notice and an opportunity
3 for a hearing—

4 ''(A) finds that the user or owner or operator
5 has violated a reliability standard approved by the
6 Commission under subsection (d); and

7 ''(B) files notice and the record of the pro-
8 ceeding with the Commission.

9 ''(2) A penalty imposed under paragraph (1) may
10 take effect not earlier than the 31st day after the ERO
11 files with the Commission notice of the penalty and the
12 record of proceedings. Such penalty shall be subject to re-
13 view by the Commission, on its own motion or upon appli-
14 cation by the user, owner or operator that is the subject
15 of the penalty filed within 30 days after the date such
16 notice is filed with the Commission. Application to the
17 Commission for review, or the initiation of review by the
18 Commission on its own motion, shall not operate as a stay
19 of such penalty unless the Commission otherwise orders
20 upon its own motion or upon application by the user,
21 owner or operator that is the subject of such penalty. In
22 any proceeding to review a penalty imposed under para-
23 graph (1), the Commission, after notice and opportunity
24 for hearing (which hearing may consist solely of the record
25 before the ERO and opportunity for the presentation of

1 supporting reasons to affirm, modify, or set aside the pen-
2 alty), shall by order affirm, set aside, reinstate, or modify
3 the penalty, and, if appropriate, remand to the ERO for
4 further proceedings. The Commission shall implement ex-
5 pedited procedures for such hearings.

6 ''(3) On its own motion or upon complaint, the Com-
7 mission may order compliance with a reliability standard
8 and may impose a penalty against a user or owner or oper-
9 ator of the bulk-power system if the Commission finds,
10 after notice and opportunity for a hearing, that the user
11 or owner or operator of the bulk-power system has en-
12 gaged or is about to engage in any acts or practices that
13 constitute or will constitute a violation of a reliability
14 standard.

15 ''(4) The Commission shall issue regulations author-
16 izing the ERO to enter into an agreement to delegate au-
17 thority to a regional entity for the purpose of proposing
18 reliability standards to the ERO and enforcing reliability
19 standards under paragraph (1) if—

20 ''(A) the regional entity is governed by—

21 ''(i) an independent board;

22 ''(ii) a balanced stakeholder board; or

23 ''(iii) a combination independent and
24 balanced stakeholder board.

1 "(B) the regional entity otherwise satisfies the
2 provisions of subsection (c)(1) and (2); and
3 "(C) the agreement promotes effective and effi-
4 cient administration of bulk-power system reliability.
5 The Commission may modify such delegation. The ERO
6 and the Commission shall rebuttably presume that a pro-
7 posal for delegation to a regional entity organized on an
8 Interconnection-wide basis promotes effective and efficient
9 administration of bulk-power system reliability and should
10 be approved. Such regulation may provide that the Com-
11 mission may assign the ERO's authority to enforce reli-
12 ability standards under paragraph (1) directly to a re-
13 gional entity consistent with the requirements of this para-
14 graph.
15 "(5) The Commission may take such action as is nec-
16 essary or appropriate against the ERO or a regional entity
17 to ensure compliance with a reliability standard or any
18 Commission order affecting the ERO or a regional entity.
19 "(6) Any penalty imposed under this section shall
20 bear a reasonable relation to the seriousness of the viola-
21 tion and shall take into consideration the efforts of such
22 user, owner, or operator to remedy the violation in a time-
23 ly manner.
24 "(f) CHANGES IN ELECTRIC RELIABILITY ORGANIZA-
25 TION RULES.—The Electric Reliability Organization shall

1 file with the Commission for approval any proposed rule
2 or proposed rule change, accompanied by an explanation
3 of its basis and purpose. The Commission, upon its own
4 motion or complaint, may propose a change to the rules
5 of the ERO. A proposed rule or proposed rule change shall
6 take effect upon a finding by the Commission, after notice
7 and opportunity for comment, that the change is just, rea-
8 sonable, not unduly discriminatory or preferential, is in
9 the public interest, and satisfies the requirements of sub-
10 section (c).

11 "(g) RELIABILITY REPORTS.—The ERO shall con-
12 duct periodic assessments of the reliability and adequacy
13 of the bulk-power system in North America.

14 "(h) COORDINATION WITH CANADA AND MEXICO.—
15 The President is urged to negotiate international agree-
16 ments with the governments of Canada and Mexico to pro-
17 vide for effective compliance with reliability standards and
18 the effectiveness of the ERO in the United States and
19 Canada or Mexico.

20 "(i) SAVINGS PROVISIONS.—(1) The ERO shall have
21 authority to develop and enforce compliance with reli-
22 ability standards for only the bulk-power system.

23 "(2) This section does not authorize the ERO or the
24 Commission to order the construction of additional gen-
25 eration or transmission capacity or to set and enforce com-

1 pliance with standards for adequacy or safety of electric
2 facilities or services.

3 ''(3) Nothing in this section shall be construed to pre-
4 empt any authority of any State to take action to ensure
5 the safety, adequacy, and reliability of electric service
6 within that State, as long as such action is not incon-
7 sistent with any reliability standard, except that the State
8 of New York may establish rules that result in greater
9 reliability within that State, as long as such action does
10 not result in lesser reliability outside the State than that
11 provided by the reliability standards.

12 ''(4) Within 90 days of the application of the Electric
13 Reliability Organization or other affected party, and after
14 notice and opportunity for comment, the Commission shall
15 issue a final order determining whether a State action is
16 inconsistent with a reliability standard, taking into consid-
17 eration any recommendation of the ERO.

18 ''(5) The Commission, after consultation with the
19 ERO and the State taking action, may stay the effective-
20 ness of any State action, pending the Commission's
21 issuance of a final order.

22 ''(j) REGIONAL ADVISORY BODIES.—The Commis-
23 sion shall establish a regional advisory body on the petition
24 of at least ⅔ of the States within a region that have more
25 than ½ of their electric load served within the region. A

1 regional advisory body shall be composed of 1 member
2 from each participating State in the region, appointed by
3 the Governor of each State, and may include representa-
4 tives of agencies, States, and provinces outside the United
5 States. A regional advisory body may provide advice to the
6 Electric Reliability Organization, a regional entity, or the
7 Commission regarding the governance of an existing or
8 proposed regional entity within the same region, whether
9 a standard proposed to apply within the region is just,
10 reasonable, not unduly discriminatory or preferential, and
11 in the public interest, whether fees proposed to be assessed
12 within the region are just, reasonable, not unduly discrimi-
13 natory or preferential, and in the public interest and any
14 other responsibilities requested by the Commission. The
15 Commission may give deference to the advice of any such
16 regional advisory body if that body is organized on an
17 Interconnection-wide basis.

18 ''(k) ALASKA AND HAWAII.—The provisions of this
19 section do not apply to Alaska or Hawaii.''.

20 (b) STATUS OF ERO.—The Electric Reliability Orga-
21 nization certified by the Federal Energy Regulatory Com-
22 mission under section 215(c) of the Federal Power Act
23 and any regional entity delegated enforcement authority
24 pursuant to section 215(e)(4) of that Act are not depart-

1 ments, agencies, or instrumentalities of the United States
2 Government.
3 (c) LIMITATION ON ANNUAL APPROPRIATIONS.—
4 There is authorized to be appropriated not more than
5 $50,000,000 per year for fiscal years 2006 through 2015
6 for all activities under the amendment made by subsection
7 (a).

8 Subtitle B—Transmission 9 Infrastructure Modernization

10 SEC. 1221. SITING OF INTERSTATE ELECTRIC TRANS- 11 MISSION FACILITIES.

12 (a) AMENDMENT OF FEDERAL POWER ACT.—Part
13 II of the Federal Power Act is amended by adding at the
14 end the following:

15 "SEC. 216. SITING OF INTERSTATE ELECTRIC TRANS- 16 MISSION FACILITIES.

17 "(a) DESIGNATION OF NATIONAL INTEREST ELEC-
18 TRIC TRANSMISSION CORRIDORS.—
19 "(1) TRANSMISSION CONGESTION STUDY.—
20 Within 1 year after the enactment of this section,
21 and every 3 years thereafter, the Secretary of En-
22 ergy, in consultation with affected States, shall con-
23 duct a study of electric transmission congestion.
24 After considering alternatives and recommendations
25 from interested parties, including an opportunity for

1 comment from affected States, the Secretary shall
2 issue a report, based on such study, which may des-
3 ignate any geographic area experiencing electric en-
4 ergy transmission capacity constraints or congestion
5 that adversely affects consumers as a national inter-
6 est electric transmission corridor. The Secretary
7 shall conduct the study and issue the report in con-
8 sultation with any appropriate regional entity ref-
9 erenced in section 215 of this Act.

10 ''(2) CONSIDERATIONS.—In determining wheth-
11 er to designate a national interest electric trans-
12 mission corridor referred to in paragraph (1) under
13 this section, the Secretary may consider whether—

14 ''(A) the economic vitality and development
15 of the corridor, or the end markets served by
16 the corridor, may be constrained by lack of ade-
17 quate or reasonably priced electricity;

18 ''(B)(i) economic growth in the corridor, or
19 the end markets served by the corridor, may be
20 jeopardized by reliance on limited sources of en-
21 ergy; and

22 ''(ii) a diversification of supply is war-
23 ranted;

1 "(C) the energy independence of the
2 United States would be served by the designa-
3 tion;
4 "(D) the designation would be in the inter-
5 est of national energy policy; and
6 "(E) the designation would enhance na-
7 tional defense and homeland security.
8 "(b) CONSTRUCTION PERMIT.—Except as provided
9 in subsection (i), the Commission is authorized, after no-
10 tice and an opportunity for hearing, to issue a permit or
11 permits for the construction or modification of electric
12 transmission facilities in a national interest electric trans-
13 mission corridor designated by the Secretary under sub-
14 section (a) if the Commission finds that—
15 "(1)(A) a State in which the transmission fa-
16 cilities are to be constructed or modified is without
17 authority to—
18 "(i) approve the siting of the facilities; or
19 "(ii) consider the interstate benefits ex-
20 pected to be achieved by the proposed construc-
21 tion or modification of transmission facilities in
22 the State;
23 "(B) the applicant for a permit is a transmit-
24 ting utility under this Act but does not qualify to
25 apply for a permit or siting approval for the pro-

1 posed project in a State because the applicant does
2 not serve end-use customers in the State; or
3 ''(C) a State commission or other entity that
4 has authority to approve the siting of the facilities
5 has—
6 ''(i) withheld approval for more than 1
7 year after the filing of an application pursuant
8 to applicable law seeking approval or 1 year
9 after the designation of the relevant national in-
10 terest electric transmission corridor, whichever
11 is later; or
12 ''(ii) conditioned its approval in such a
13 manner that the proposed construction or modi-
14 fication will not significantly reduce trans-
15 mission congestion in interstate commerce or is
16 not economically feasible;
17 ''(2) the facilities to be authorized by the per-
18 mit will be used for the transmission of electric en-
19 ergy in interstate commerce;
20 ''(3) the proposed construction or modification
21 is consistent with the public interest;
22 ''(4) the proposed construction or modification
23 will significantly reduce transmission congestion in
24 interstate commerce and protects or benefits con-
25 sumers; and

1 "(5) the proposed construction or modification
2 is consistent with sound national energy policy and
3 will enhance energy independence.

4 "(c) PERMIT APPLICATIONS.—Permit applications
5 under subsection (b) shall be made in writing to the Com-
6 mission. The Commission shall issue rules setting forth
7 the form of the application, the information to be con-
8 tained in the application, and the manner of service of no-
9 tice of the permit application upon interested persons.

10 "(d) COMMENTS.—In any proceeding before the
11 Commission under subsection (b), the Commission shall
12 afford each State in which a transmission facility covered
13 by the permit is or will be located, each affected Federal
14 agency and Indian tribe, private property owners, and
15 other interested persons, a reasonable opportunity to
16 present their views and recommendations with respect to
17 the need for and impact of a facility covered by the permit.

18 "(e) RIGHTS-OF-WAY.—In the case of a permit under
19 subsection (b) for electric transmission facilities to be lo-
20 cated on property other than property owned by the
21 United States or a State, if the permit holder cannot ac-
22 quire by contract, or is unable to agree with the owner
23 of the property to the compensation to be paid for, the
24 necessary right-of-way to construct or modify such trans-
25 mission facilities, the permit holder may acquire the right-

1 of-way by the exercise of the right of eminent domain in
2 the district court of the United States for the district in
3 which the property concerned is located, or in the appro-
4 priate court of the State in which the property is located.
5 The practice and procedure in any action or proceeding
6 for that purpose in the district court of the United States
7 shall conform as nearly as may be with the practice and
8 procedure in similar action or proceeding in the courts of
9 the State where the property is situated.

10 ''(f) STATE LAW.—Nothing in this section shall pre-
11 clude any person from constructing or modifying any
12 transmission facility pursuant to State law.

13 ''(g) COMPENSATION.—Any exercise of eminent do-
14 main authority pursuant to this section shall be considered
15 a taking of private property for which just compensation
16 is due. Just compensation shall be an amount equal to
17 the full fair market value of the property taken on the
18 date of the exercise of eminent domain authority, except
19 that the compensation shall exceed fair market value if
20 necessary to make the landowner whole for decreases in
21 the value of any portion of the land not subject to eminent
22 domain. Any parcel of land acquired by eminent domain
23 under this subsection shall be transferred back to the
24 owner from whom it was acquired (or his heirs or assigns)
25 if the land is not used for the construction or modification

1 of electric transmission facilities within a reasonable pe-
2 riod of time after the acquisition. Other than construction,
3 modification, operation, or maintenance of electric trans-
4 mission facilities and related facilities, property acquired
5 under subsection (e) may not be used for any purpose (in-
6 cluding use for any heritage area, recreational trail, or
7 park) without the consent of the owner of the parcel from
8 whom the property was acquired (or the owner's heirs or
9 assigns).

10 ''(h) COORDINATION OF FEDERAL AUTHORIZATIONS
11 FOR TRANSMISSION AND DISTRIBUTION FACILITIES.—

12 ''(1) LEAD AGENCY.—If an applicant, or pro-
13 spective applicant, for a Federal authorization re-
14 lated to an electric transmission or distribution facil-
15 ity so requests, the Department of Energy (DOE)
16 shall act as the lead agency for purposes of coordi-
17 nating all applicable Federal authorizations and re-
18 lated environmental reviews of the facility. For pur-
19 poses of this subsection, the term 'Federal author-
20 ization' means any authorization required under
21 Federal law in order to site a transmission or dis-
22 tribution facility, including but not limited to such
23 permits, special use authorizations, certifications,
24 opinions, or other approvals as may be required,
25 whether issued by a Federal or a State agency. To

1 the maximum extent practicable under applicable
2 Federal law, the Secretary of Energy shall coordi-
3 nate this Federal authorization and review process
4 with any Indian tribes, multi-State entities, and
5 State agencies that are responsible for conducting
6 any separate permitting and environmental reviews
7 of the facility, to ensure timely and efficient review
8 and permit decisions.

9 "(2) AUTHORITY TO SET DEADLINES.—As lead
10 agency, the Department of Energy, in consultation
11 with agencies responsible for Federal authorizations
12 and, as appropriate, with Indian tribes, multi-State
13 entities, and State agencies that are willing to co-
14 ordinate their own separate permitting and environ-
15 mental reviews with the Federal authorization and
16 environmental reviews, shall establish prompt and
17 binding intermediate milestones and ultimate dead-
18 lines for the review of, and Federal authorization de-
19 cisions relating to, the proposed facility. The Sec-
20 retary of Energy shall ensure that once an applica-
21 tion has been submitted with such data as the Sec-
22 retary considers necessary, all permit decisions and
23 related environmental reviews under all applicable
24 Federal laws shall be completed within 1 year or, if
25 a requirement of another provision of Federal law

1 makes this impossible, as soon thereafter as is prac-
2 ticable. The Secretary of Energy also shall provide
3 an expeditious pre-application mechanism for pro-
4 spective applicants to confer with the agencies in-
5 volved to have each such agency determine and com-
6 municate to the prospective applicant within 60 days
7 of when the prospective applicant submits a request
8 for such information concerning—

9 ''(A) the likelihood of approval for a poten-
10 tial facility; and

11 ''(B) key issues of concern to the agencies
12 and public.

13 ''(3) CONSOLIDATED ENVIRONMENTAL REVIEW
14 AND RECORD OF DECISION.—As lead agency head,
15 the Secretary of Energy, in consultation with the af-
16 fected agencies, shall prepare a single environmental
17 review document, which shall be used as the basis
18 for all decisions on the proposed project under Fed-
19 eral law. The document may be an environmental as-
20 sessment or environmental impact statement under
21 the National Environmental Policy Act of 1969 if
22 warranted, or such other form of analysis as may be
23 warranted. The Secretary of Energy and the heads
24 of other agencies shall streamline the review and
25 permitting of transmission and distribution facilities

1 within corridors designated under section 503 of the
2 Federal Land Policy and Management Act (43
3 U.S.C. 1763) by fully taking into account prior anal-
4 yses and decisions relating to the corridors. Such
5 document shall include consideration by the relevant
6 agencies of any applicable criteria or other matters
7 as required under applicable laws.

8 "(4) APPEALS.—In the event that any agency
9 has denied a Federal authorization required for a
10 transmission or distribution facility, or has failed to
11 act by the deadline established by the Secretary pur-
12 suant to this section for deciding whether to issue
13 the authorization, the applicant or any State in
14 which the facility would be located may file an ap-
15 peal with the Secretary, who shall, in consultation
16 with the affected agency, review the denial or take
17 action on the pending application. Based on the
18 overall record and in consultation with the affected
19 agency, the Secretary may then either issue the nec-
20 essary authorization with any appropriate condi-
21 tions, or deny the application. The Secretary shall
22 issue a decision within 90 days of the filing of the
23 appeal. In making a decision under this paragraph,
24 the Secretary shall comply with applicable require-
25 ments of Federal law, including any requirements of

1 the Endangered Species Act, the Clean Water Act,
2 the National Forest Management Act, the National
3 Environmental Policy Act of 1969, and the Federal
4 Land Policy and Management Act.

5 "(5) CONFORMING REGULATIONS AND MEMO-
6 RANDA OF UNDERSTANDING.—Not later than 18
7 months after the date of enactment of this section,
8 the Secretary of Energy shall issue any regulations
9 necessary to implement this subsection. Not later
10 than 1 year after the date of enactment of this sec-
11 tion, the Secretary and the heads of all Federal
12 agencies with authority to issue Federal authoriza-
13 tions shall enter into Memoranda of Understanding
14 to ensure the timely and coordinated review and per-
15 mitting of electricity transmission and distribution
16 facilities. The head of each Federal agency with au-
17 thority to issue a Federal authorization shall des-
18 ignate a senior official responsible for, and dedicate
19 sufficient other staff and resources to ensure, full
20 implementation of the DOE regulations and any
21 Memoranda. Interested Indian tribes, multi-State
22 entities, and State agencies may enter such Memo-
23 randa of Understanding.

1 "(6) DURATION AND RENEWAL.—Each Federal
2 land use authorization for an electricity transmission
3 or distribution facility shall be issued—
4 "(A) for a duration, as determined by the
5 Secretary of Energy, commensurate with the
6 anticipated use of the facility, and
7 "(B) with appropriate authority to manage
8 the right-of-way for reliability and environ-
9 mental protection.
10 Upon the expiration of any such authorization (in-
11 cluding an authorization issued prior to enactment
12 of this section), the authorization shall be reviewed
13 for renewal taking fully into account reliance on
14 such electricity infrastructure, recognizing its impor-
15 tance for public health, safety and economic welfare
16 and as a legitimate use of Federal lands.
17 "(7) MAINTAINING AND ENHANCING THE
18 TRANSMISSION INFRASTRUCTURE.—In exercising the
19 responsibilities under this section, the Secretary of
20 Energy shall consult regularly with the Federal En-
21 ergy Regulatory Commission (FERC), FERC-ap-
22 proved electric reliability organizations (including re-
23 lated regional entities), and FERC-approved Re-
24 gional Transmission Organizations and Independent
25 System Operators.

1 "(i) INTERSTATE COMPACTS.—The consent of Con-
2 gress is hereby given for 3 or more contiguous States to
3 enter into an interstate compact, subject to approval by
4 Congress, establishing regional transmission siting agen-
5 cies to facilitate siting of future electric energy trans-
6 mission facilities within such States and to carry out the
7 electric energy transmission siting responsibilities of such
8 States. The Secretary of Energy may provide technical as-
9 sistance to regional transmission siting agencies estab-
10 lished under this subsection. Such regional transmission
11 siting agencies shall have the authority to review, certify,
12 and permit siting of transmission facilities, including fa-
13 cilities in national interest electric transmission corridors
14 (other than facilities on property owned by the United
15 States). The Commission shall have no authority to issue
16 a permit for the construction or modification of electric
17 transmission facilities within a State that is a party to
18 a compact, unless the members of a compact are in dis-
19 agreement and the Secretary makes, after notice and an
20 opportunity for a hearing, the finding described in sub-
21 section (b)(1)(C).

22 "(j) SAVINGS CLAUSE.—Nothing in this section shall
23 be construed to affect any requirement of the environ-
24 mental laws of the United States, including, but not lim-
25 ited to, the National Environmental Policy Act of 1969.

1 Subsection (h)(4) of this section shall not apply to any
2 Congressionally-designated components of the National
3 Wilderness Preservation System, the National Wild and
4 Scenic Rivers System, or the National Park system (in-
5 cluding National Monuments therein).

6 ''(k) ERCOT.—This section shall not apply within
7 the area referred to in section 212(k)(2)(A).''.

8 (b) REPORTS TO CONGRESS ON CORRIDORS AND
9 RIGHTS OF WAY ON FEDERAL LANDS.—The Secretary of
10 the Interior, the Secretary of Energy, the Secretary of Ag-
11 riculture, and the Chairman of the Council on Environ-
12 mental Quality shall, within 90 days of the date of enact-
13 ment of this subsection, submit a joint report to Congress
14 identifying each of the following:

15 (1) All existing designated transmission and
16 distribution corridors on Federal land and the status
17 of work related to proposed transmission and dis-
18 tribution corridor designations under Title V of the
19 Federal Land Policy and Management Act (43
20 U.S.C. 1761 et seq.), the schedule for completing
21 such work, any impediments to completing the work,
22 and steps that Congress could take to expedite the
23 process.

24 (2) The number of pending applications to lo-
25 cate transmission and distribution facilities on Fed-

1 eral lands, key information relating to each such fa-
2 cility, how long each application has been pending,
3 the schedule for issuing a timely decision as to each
4 facility, and progress in incorporating existing and
5 new such rights-of-way into relevant land use and
6 resource management plans or their equivalent.
7 (3) The number of existing transmission and
8 distribution rights-of-way on Federal lands that will
9 come up for renewal within the following 5, 10, and
10 15 year periods, and a description of how the Secre-
11 taries plan to manage such renewals.

12 **SEC. 1222. THIRD-PARTY FINANCE.**

13 (a) EXISTING FACILITIES.—The Secretary of Energy
14 (hereinafter in this section referred to as the ''Secretary''),
15 acting through the Administrator of the Western Area
16 Power Administration (hereinafter in this section referred
17 to as ''WAPA''), or through the Administrator of the
18 Southwestern Power Administration (hereinafter in this
19 section referred to as ''SWPA''), or both, may design, de-
20 velop, construct, operate, maintain, or own, or participate
21 with other entities in designing, developing, constructing,
22 operating, maintaining, or owning, an electric power
23 transmission facility and related facilities (''Project'')
24 needed to upgrade existing transmission facilities owned
25 by SWPA or WAPA if the Secretary of Energy, in con-

1 sultation with the applicable Administrator, determines
2 that the proposed Project—
3 (1)(A) is located in a national interest electric
4 transmission corridor designated under section
5 216(a) of the Federal Power Act and will reduce
6 congestion of electric transmission in interstate com-
7 merce; or
8 (B) is necessary to accommodate an actual or
9 projected increase in demand for electric trans-
10 mission capacity;
11 (2) is consistent with—
12 (A) transmission needs identified, in a
13 transmission expansion plan or otherwise, by
14 the appropriate Regional Transmission Organi-
15 zation or Independent System Operator (as de-
16 fined in the Federal Power Act), if any, or ap-
17 proved regional reliability organization; and
18 (B) efficient and reliable operation of the
19 transmission grid; and
20 (3) would be operated in conformance with pru-
21 dent utility practice.
22 (b) NEW FACILITIES.—The Secretary, acting
23 through WAPA or SWPA, or both, may design, develop,
24 construct, operate, maintain, or own, or participate with
25 other entities in designing, developing, constructing, oper-

1 ating, maintaining, or owning, a new electric power trans-
2 mission facility and related facilities (''Project'') located
3 within any State in which WAPA or SWPA operates if
4 the Secretary, in consultation with the applicable Adminis-
5 trator, determines that the proposed Project—

6 (1)(A) is located in an area designated under
7 section 216(a) of the Federal Power Act and will re-
8 duce congestion of electric transmission in interstate
9 commerce; or

10 (B) is necessary to accommodate an actual or
11 projected increase in demand for electric trans-
12 mission capacity;

13 (2) is consistent with—

14 (A) transmission needs identified, in a
15 transmission expansion plan or otherwise, by
16 the appropriate Regional Transmission Organi-
17 zation or Independent System Operator, if any,
18 or approved regional reliability organization;
19 and

20 (B) efficient and reliable operation of the
21 transmission grid;

22 (3) will be operated in conformance with pru-
23 dent utility practice;

24 (4) will be operated by, or in conformance with
25 the rules of, the appropriate (A) Regional Trans-

1 mission Organization or Independent System Oper-
2 ator, if any, or (B) if such an organization does not
3 exist, regional reliability organization; and
4 (5) will not duplicate the functions of existing
5 transmission facilities or proposed facilities which
6 are the subject of ongoing or approved siting and re-
7 lated permitting proceedings.
8 (c) OTHER FUNDS.—
9 (1) IN GENERAL.—In carrying out a Project
10 under subsection (a) or (b), the Secretary may ac-
11 cept and use funds contributed by another entity for
12 the purpose of carrying out the Project.
13 (2) AVAILABILITY.—The contributed funds
14 shall be available for expenditure for the purpose of
15 carrying out the Project—
16 (A) without fiscal year limitation; and
17 (B) as if the funds had been appropriated
18 specifically for that Project.
19 (3) ALLOCATION OF COSTS.—In carrying out a
20 Project under subsection (a) or (b), any costs of the
21 Project not paid for by contributions from another
22 entity shall be collected through rates charged to
23 customers using the new transmission capability pro-
24 vided by the Project and allocated equitably among

1 these project beneficiaries using the new trans-
2 mission capability.
3 (d) RELATIONSHIP TO OTHER LAWS.—Nothing in
4 this section affects any requirement of—
5 (1) any Federal environmental law, including
6 the National Environmental Policy Act of 1969 (42
7 U.S.C. 4321 et seq.);
8 (2) any Federal or State law relating to the
9 siting of energy facilities; or
10 (3) any existing authorizing statutes.
11 (e) SAVINGS CLAUSE.—Nothing in this section shall
12 constrain or restrict an Administrator in the utilization
13 of other authority delegated to the Administrator of
14 WAPA or SWPA.
15 (f) SECRETARIAL DETERMINATIONS.—Any deter-
16 mination made pursuant to subsections (a) or (b) shall
17 be based on findings by the Secretary using the best avail-
18 able data.
19 (g) MAXIMUM FUNDING AMOUNT.—The Secretary
20 shall not accept and use more than $100,000,000 under
21 subsection (c)(1) for the period encompassing fiscal years
22 2006 through 2015.
23 **SEC. 1223. TRANSMISSION SYSTEM MONITORING.**
24 Within 6 months after the date of enactment of this
25 Act, the Secretary of Energy and the Federal Energy Reg-

1 ulatory Commission shall study and report to Congress on
2 the steps which must be taken to establish a system to
3 make available to all transmission system owners and Re-
4 gional Transmission Organizations (as defined in the Fed-
5 eral Power Act) within the Eastern and Western Inter-
6 connections real-time information on the functional status
7 of all transmission lines within such Interconnections. In
8 such study, the Commission shall assess technical means
9 for implementing such transmission information system
10 and identify the steps the Commission or Congress must
11 take to require the implementation of such system.

12 **SEC. 1224. ADVANCED TRANSMISSION TECHNOLOGIES.**

13 (a) AUTHORITY.—The Federal Energy Regulatory
14 Commission, in the exercise of its authorities under the
15 Federal Power Act and the Public Utility Regulatory Poli-
16 cies Act of 1978, shall encourage the deployment of ad-
17 vanced transmission technologies.

18 (b) DEFINITION.—For the purposes of this section,
19 the term ''advanced transmission technologies'' means
20 technologies that increase the capacity, efficiency, or reli-
21 ability of existing or new transmission facilities, including,
22 but not limited to—

23 (1) high-temperature lines (including super-
24 conducting cables);

25 (2) underground cables;

1 (3) advanced conductor technology (including
2 advanced composite conductors, high-temperature
3 low-sag conductors, and fiber optic temperature
4 sensing conductors);
5 (4) high-capacity ceramic electric wire, connec-
6 tors, and insulators;
7 (5) optimized transmission line configurations
8 (including multiple phased transmission lines);
9 (6) modular equipment;
10 (7) wireless power transmission;
11 (8) ultra-high voltage lines;
12 (9) high-voltage DC technology;
13 (10) flexible AC transmission systems;
14 (11) energy storage devices (including pumped
15 hydro, compressed air, superconducting magnetic en-
16 ergy storage, flywheels, and batteries);
17 (12) controllable load;
18 (13) distributed generation (including PV, fuel
19 cells, microturbines);
20 (14) enhanced power device monitoring;
21 (15) direct system state sensors;
22 (16) fiber optic technologies;
23 (17) power electronics and related software (in-
24 cluding real time monitoring and analytical soft-
25 ware); and

1 (18) any other technologies the Commission
2 considers appropriate.

3 (c) OBSOLETE OR IMPRACTICABLE TECH-
4 NOLOGIES.—The Commission is authorized to cease en-
5 couraging the deployment of any technology described in
6 this section on a finding that such technology has been
7 rendered obsolete or otherwise impracticable to deploy.

8 **SEC. 1225. ELECTRIC TRANSMISSION AND DISTRIBUTION**
9 **PROGRAMS.**

10 (a) ELECTRIC TRANSMISSION AND DISTRIBUTION
11 PROGRAM.—The Secretary of Energy (hereinafter in this
12 section referred to as the ''Secretary'') acting through the
13 Director of the Office of Electric Transmission and Dis-
14 tribution shall establish a comprehensive research, devel-
15 opment, demonstration and commercial application pro-
16 gram to promote improved reliability and efficiency of
17 electrical transmission and distribution systems. This pro-
18 gram shall include—

19 (1) advanced energy delivery and storage tech-
20 nologies, materials, and systems, including new
21 transmission technologies, such as flexible alter-
22 nating current transmission systems, composite con-
23 ductor materials and other technologies that enhance
24 reliability, operational flexibility, or power-carrying
25 capability;

1 (2) advanced grid reliability and efficiency tech-
2 nology development;
3 (3) technologies contributing to significant load
4 reductions;
5 (4) advanced metering, load management, and
6 control technologies;
7 (5) technologies to enhance existing grid compo-
8 nents;
9 (6) the development and use of high-tempera-
10 ture superconductors to—
11 (A) enhance the reliability, operational
12 flexibility, or power-carrying capability of elec-
13 tric transmission or distribution systems; or
14 (B) increase the efficiency of electric en-
15 ergy generation, transmission, distribution, or
16 storage systems;
17 (7) integration of power systems, including sys-
18 tems to deliver high-quality electric power, electric
19 power reliability, and combined heat and power;
20 (8) supply of electricity to the power grid by
21 small scale, distributed and residential-based power
22 generators;
23 (9) the development and use of advanced grid
24 design, operation and planning tools;

1 (10) any other infrastructure technologies, as
2 appropriate; and

3 (11) technology transfer and education.

4 (b) PROGRAM PLAN.—Not later than 1 year after the
5 date of the enactment of this legislation, the Secretary,
6 in consultation with other appropriate Federal agencies,
7 shall prepare and transmit to Congress a 5-year program
8 plan to guide activities under this section. In preparing
9 the program plan, the Secretary may consult with utilities,
10 energy services providers, manufacturers, institutions of
11 higher education, other appropriate State and local agen-
12 cies, environmental organizations, professional and tech-
13 nical societies, and any other persons the Secretary con-
14 siders appropriate.

15 (c) IMPLEMENTATION.—The Secretary shall consider
16 implementing this program using a consortium of indus-
17 try, university and national laboratory participants.

18 (d) REPORT.—Not later than 2 years after the trans-
19 mittal of the plan under subsection (b), the Secretary shall
20 transmit a report to Congress describing the progress
21 made under this section and identifying any additional re-
22 sources needed to continue the development and commer-
23 cial application of transmission and distribution infra-
24 structure technologies.

25 (e) POWER DELIVERY RESEARCH INITIATIVE.—

1 (1) IN GENERAL.—The Secretary shall establish
2 a research, development, demonstration, and com-
3 mercial application initiative specifically focused on
4 power delivery utilizing components incorporating
5 high temperature superconductivity.
6 (2) GOALS.—The goals of this initiative shall be
7 to—
8 (A) establish facilities to develop high tem-
9 perature superconductivity power applications
10 in partnership with manufacturers and utilities;
11 (B) provide technical leadership for estab-
12 lishing reliability for high temperature super-
13 conductivity power applications including suit-
14 able modeling and analysis;
15 (C) facilitate commercial transition toward
16 direct current power transmission, storage, and
17 use for high power systems utilizing high tem-
18 perature superconductivity; and
19 (D) facilitate the integration of very low
20 impedance high temperature superconducting
21 wires and cables in existing electric networks to
22 improve system performance, power flow control
23 and reliability.
24 (3) REQUIREMENTS.—The initiative shall
25 include—

1 (A) feasibility analysis, planning, research,
2 and design to construct demonstrations of
3 superconducting links in high power, direct cur-
4 rent and controllable alternating current trans-
5 mission systems;
6 (B) public-private partnerships to dem-
7 onstrate deployment of high temperature super-
8 conducting cable into testbeds simulating a re-
9 alistic transmission grid and under varying
10 transmission conditions, including actual grid
11 insertions; and
12 (C) testbeds developed in cooperation with
13 national laboratories, industries, and univer-
14 sities to demonstrate these technologies, pre-
15 pare the technologies for commercial introduc-
16 tion, and address cost or performance road-
17 blocks to successful commercial use.
18 (4) AUTHORIZATION OF APPROPRIATIONS.—For
19 purposes of carrying out this subsection, there are
20 authorized to be appropriated—
21 (A) for fiscal year 2006, $15,000,000;
22 (B) for fiscal year 2007, $20,000,000;
23 (C) for fiscal year 2008, $30,000,000;
24 (D) for fiscal year 2009, $35,000,000; and
25 (E) for fiscal year 2010, $40,000,000.

1 **SEC. 1226. ADVANCED POWER SYSTEM TECHNOLOGY IN-**
2 **CENTIVE PROGRAM.**

3 (a) PROGRAM.—The Secretary of Energy is author-
4 ized to establish an Advanced Power System Technology
5 Incentive Program to support the deployment of certain
6 advanced power system technologies and to improve and
7 protect certain critical governmental, industrial, and com-
8 mercial processes. Funds provided under this section shall
9 be used by the Secretary to make incentive payments to
10 eligible owners or operators of advanced power system
11 technologies to increase power generation through en-
12 hanced operational, economic, and environmental perform-
13 ance. Payments under this section may only be made upon
14 receipt by the Secretary of an incentive payment applica-
15 tion establishing an applicant as either—
16 (1) a qualifying advanced power system tech-
17 nology facility; or
18 (2) a qualifying security and assured power fa-
19 cility.
20 (b) INCENTIVES.—Subject to availability of funds, a
21 payment of 1.8 cents per kilowatt-hour shall be paid to
22 the owner or operator of a qualifying advanced power sys-
23 tem technology facility under this section for electricity
24 generated at such facility. An additional 0.7 cents per kilo-
25 watt-hour shall be paid to the owner or operator of a quali-
26 fying security and assured power facility for electricity

1 generated at such facility. Any facility qualifying under
2 this section shall be eligible for an incentive payment for
3 up to, but not more than, the first 10,000,000 kilowatt-
4 hours produced in any fiscal year.

5 (c) ELIGIBILITY.—For purposes of this section:

6 (1) QUALIFYING ADVANCED POWER SYSTEM
7 TECHNOLOGY FACILITY.—The term ''qualifying ad-
8 vanced power system technology facility'' means a
9 facility using an advanced fuel cell, turbine, or hy-
10 brid power system or power storage system to gen-
11 erate or store electric energy.

12 (2) QUALIFYING SECURITY AND ASSURED
13 POWER FACILITY.—The term ''qualifying security
14 and assured power facility'' means a qualifying ad-
15 vanced power system technology facility determined
16 by the Secretary of Energy, in consultation with the
17 Secretary of Homeland Security, to be in critical
18 need of secure, reliable, rapidly available, high-qual-
19 ity power for critical governmental, industrial, or
20 commercial applications.

21 (d) AUTHORIZATION.—There are authorized to be ap-
22 propriated to the Secretary of Energy for the purposes
23 of this section, $10,000,000 for each of the fiscal years
24 2006 through 2012.

1 **SEC. 1227. OFFICE OF ELECTRIC TRANSMISSION AND DIS-**
2 **TRIBUTION.**

3 (a) CREATION OF AN OFFICE OF ELECTRIC TRANS-
4 MISSION AND DISTRIBUTION.—Title II of the Department
5 of Energy Organization Act (42 U.S.C. 7131 et seq.) (as
6 amended by section 502(a) of this Act) is amended by in-
7 serting the following after section 217, as added by title
8 V of this Act:

9 **"SEC. 218. OFFICE OF ELECTRIC TRANSMISSION AND DIS-**
10 **TRIBUTION.**

11 ''(a) ESTABLISHMENT.—There is established within
12 the Department an Office of Electric Transmission and
13 Distribution. This Office shall be headed by a Director,
14 subject to the authority of the Secretary. The Director
15 shall be appointed by the Secretary. The Director shall
16 be compensated at the annual rate prescribed for level IV
17 of the Executive Schedule under section 5315 of title 5,
18 United States Code.

19 ''(b) DIRECTOR.—The Director shall—

20 ''(1) coordinate and develop a comprehensive,
21 multi-year strategy to improve the Nation's elec-
22 tricity transmission and distribution;

23 ''(2) implement or, where appropriate, coordi-
24 nate the implementation of, the recommendations
25 made in the Secretary's May 2002 National Trans-
26 mission Grid Study;

1 "(3) oversee research, development, and dem-
2 onstration to support Federal energy policy related
3 to electricity transmission and distribution;
4 "(4) grant authorizations for electricity import
5 and export pursuant to section 202(c), (d), (e), and
6 (f) of the Federal Power Act (16 U.S.C. 824a);
7 "(5) perform other functions, assigned by the
8 Secretary, related to electricity transmission and dis-
9 tribution; and
10 "(6) develop programs for workforce training in
11 power and transmission engineering.".
12 (b) CONFORMING AMENDMENTS.—(1) The table of
13 contents of the Department of Energy Organization Act
14 (42 U.S.C. 7101 note) is amended by inserting after the
15 item relating to section 217 the following new item:

"Sec. 218. Office of Electric Transmission and Distribution.".

16 (2) Section 5315 of title 5, United States Code, is
17 amended by inserting after the item relating to "Inspector
18 General, Department of Energy." the following:
19 "Director, Office of Electric Transmission and
20 Distribution, Department of Energy.".

Subtitle C—Transmission Operation Improvements

SEC. 1231. OPEN NONDISCRIMINATORY ACCESS.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by inserting after section 211 the following new section:

"SEC. 211A. OPEN ACCESS BY UNREGULATED TRANSMITTING UTILITIES.

"(a) TRANSMISSION SERVICES.—Subject to section 212(h), the Commission may, by rule or order, require an unregulated transmitting utility to provide transmission services—

"(1) at rates that are comparable to those that the unregulated transmitting utility charges itself; and

"(2) on terms and conditions (not relating to rates) that are comparable to those under which such unregulated transmitting utility provides transmission services to itself and that are not unduly discriminatory or preferential.

"(b) EXEMPTION.—The Commission shall exempt from any rule or order under this section any unregulated transmitting utility that—

"(1) sells no more than 4,000,000 megawatt hours of electricity per year; or

1 “(2) does not own or operate any transmission
2 facilities that are necessary for operating an inter-
3 connected transmission system (or any portion
4 thereof); or

5 “(3) meets other criteria the Commission deter-
6 mines to be in the public interest.

7 “(c) LOCAL DISTRIBUTION FACILITIES.—The re-
8 quirements of subsection (a) shall not apply to facilities
9 used in local distribution.

10 “(d) EXEMPTION TERMINATION.—Whenever the
11 Commission, after an evidentiary hearing held upon a
12 complaint and after giving consideration to reliability
13 standards established under section 215, finds on the
14 basis of a preponderance of the evidence that any exemp-
15 tion granted pursuant to subsection (b) unreasonably im-
16 pairs the continued reliability of an interconnected trans-
17 mission system, it shall revoke the exemption granted to
18 that transmitting utility.

19 “(e) APPLICATION TO UNREGULATED TRANSMIT-
20 TING UTILITIES.—The rate changing procedures applica-
21 ble to public utilities under subsections (c) and (d) of sec-
22 tion 205 are applicable to unregulated transmitting utili-
23 ties for purposes of this section.

24 “(f) REMAND.—In exercising its authority under
25 paragraph (1) of subsection (a), the Commission may re-

1 mand transmission rates to an unregulated transmitting
2 utility for review and revision where necessary to meet the
3 requirements of subsection (a).

4 "(g) OTHER REQUESTS.—The provision of trans-
5 mission services under subsection (a) does not preclude a
6 request for transmission services under section 211.

7 "(h) LIMITATION.—The Commission may not require
8 a State or municipality to take action under this section
9 that would violate a private activity bond rule for purposes
10 of section 141 of the Internal Revenue Code of 1986 (26
11 U.S.C. 141).

12 "(i) TRANSFER OF CONTROL OF TRANSMITTING FA-
13 CILITIES.—Nothing in this section authorizes the Commis-
14 sion to require an unregulated transmitting utility to
15 transfer control or operational control of its transmitting
16 facilities to an RTO or any other Commission-approved
17 independent transmission organization designated to pro-
18 vide nondiscriminatory transmission access.

19 "(j) DEFINITION.—For purposes of this section, the
20 term 'unregulated transmitting utility' means an entity
21 that—

22 "(1) owns or operates facilities used for the
23 transmission of electric energy in interstate com-
24 merce; and

25 "(2) is an entity described in section 201(f).".

1 **SEC. 1232. SENSE OF CONGRESS ON REGIONAL TRANS-**
2 **MISSION ORGANIZATIONS.**

3 It is the sense of Congress that, in order to promote
4 fair, open access to electric transmission service, benefit
5 retail consumers, facilitate wholesale competition, improve
6 efficiencies in transmission grid management, promote
7 grid reliability, remove opportunities for unduly discrimi-
8 natory or preferential transmission practices, and provide
9 for the efficient development of transmission infrastruc-
10 ture needed to meet the growing demands of competitive
11 wholesale power markets, all transmitting utilities in inter-
12 state commerce should voluntarily become members of Re-
13 gional Transmission Organizations as defined in section
14 3 of the Federal Power Act.

15 **SEC. 1233. REGIONAL TRANSMISSION ORGANIZATION AP-**
16 **PLICATIONS PROGRESS REPORT.**

17 Not later than 120 days after the date of enactment
18 of this section, the Federal Energy Regulatory Commis-
19 sion shall submit to Congress a report containing each of
20 the following:

21 (1) A list of all regional transmission organiza-
22 tion applications filed at the Commission pursuant
23 to subpart F of part 35 of title 18, Code of Federal
24 Regulations (in this section referred to as ''Order
25 No. 2000''), including an identification of each pub-
26 lic utility and other entity included within the pro-

1 posed membership of the regional transmission orga-
2 nization.

3 (2) A brief description of the status of each
4 pending regional transmission organization applica-
5 tion, including a precise explanation of how each
6 fails to comply with the minimal requirements of
7 Order No. 2000 and what steps need to be taken to
8 bring each application into such compliance.

9 (3) For any application that has not been fi-
10 nally approved by the Commission, a detailed de-
11 scription of every aspect of the application that the
12 Commission has determined does not conform to the
13 requirements of Order No. 2000.

14 (4) For any application that has not been fi-
15 nally approved by the Commission, an explanation
16 by the Commission of why the items described pur-
17 suant to paragraph (3) constitute material non-
18 compliance with the requirements of the Commis-
19 sion's Order No. 2000 sufficient to justify denial of
20 approval by the Commission.

21 (5) For all regional transmission organization
22 applications filed pursuant to the Commission's
23 Order No. 2000, whether finally approved or not—

(A) a discussion of that regional transmission organization's efforts to minimize rate seams between itself and—

(i) other regional transmission organizations; and

(ii) entities not participating in a regional transmission organization;

(B) a discussion of the impact of such seams on consumers and wholesale competition; and

(C) a discussion of minimizing cost-shifting on consumers.

SEC. 1234. FEDERAL UTILITY PARTICIPATION IN REGIONAL TRANSMISSION ORGANIZATIONS.

(a) DEFINITIONS.—For purposes of this section—

(1) APPROPRIATE FEDERAL REGULATORY AUTHORITY.—The term ''appropriate Federal regulatory authority'' means—

(A) with respect to a Federal power marketing agency (as defined in the Federal Power Act), the Secretary of Energy, except that the Secretary may designate the Administrator of a Federal power marketing agency to act as the appropriate Federal regulatory authority with

1 respect to the transmission system of that Fed-
2 eral power marketing agency; and
3 (B) with respect to the Tennessee Valley
4 Authority, the Board of Directors of the Ten-
5 nessee Valley Authority.
6 (2) FEDERAL UTILITY.—The term ''Federal
7 utility'' means a Federal power marketing agency or
8 the Tennessee Valley Authority.
9 (3) TRANSMISSION SYSTEM.—The term ''trans-
10 mission system'' means electric transmission facili-
11 ties owned, leased, or contracted for by the United
12 States and operated by a Federal utility.
13 (b) TRANSFER.—The appropriate Federal regulatory
14 authority is authorized to enter into a contract, agreement
15 or other arrangement transferring control and use of all
16 or part of the Federal utility's transmission system to an
17 RTO or ISO (as defined in the Federal Power Act), ap-
18 proved by the Federal Energy Regulatory Commission.
19 Such contract, agreement or arrangement shall include—
20 (1) performance standards for operation and
21 use of the transmission system that the head of the
22 Federal utility determines necessary or appropriate,
23 including standards that assure recovery of all the
24 Federal utility's costs and expenses related to the
25 transmission facilities that are the subject of the

1 contract, agreement or other arrangement; consist-
2 ency with existing contracts and third-party financ-
3 ing arrangements; and consistency with said Federal
4 utility's statutory authorities, obligations, and limi-
5 tations;

6 (2) provisions for monitoring and oversight by
7 the Federal utility of the RTO's or ISO's fulfillment
8 of the terms and conditions of the contract, agree-
9 ment or other arrangement, including a provision for
10 the resolution of disputes through arbitration or
11 other means with the regional transmission organi-
12 zation or with other participants, notwithstanding
13 the obligations and limitations of any other law re-
14 garding arbitration; and

15 (3) a provision that allows the Federal utility to
16 withdraw from the RTO or ISO and terminate the
17 contract, agreement or other arrangement in accord-
18 ance with its terms.

19 Neither this section, actions taken pursuant to it, nor any
20 other transaction of a Federal utility using an RTO or
21 ISO shall confer upon the Federal Energy Regulatory
22 Commission jurisdiction or authority over the Federal util-
23 ity's electric generation assets, electric capacity or energy
24 that the Federal utility is authorized by law to market,
25 or the Federal utility's power sales activities.

1 (c) EXISTING STATUTORY AND OTHER OBLIGA-
2 TIONS.—
3 (1) SYSTEM OPERATION REQUIREMENTS.—No
4 statutory provision requiring or authorizing a Fed-
5 eral utility to transmit electric power or to construct,
6 operate or maintain its transmission system shall be
7 construed to prohibit a transfer of control and use
8 of its transmission system pursuant to, and subject
9 to all requirements of subsection (b).
10 (2) OTHER OBLIGATIONS.—This subsection
11 shall not be construed to—
12 (A) suspend, or exempt any Federal utility
13 from, any provision of existing Federal law, in-
14 cluding but not limited to any requirement or
15 direction relating to the use of the Federal util-
16 ity's transmission system, environmental protec-
17 tion, fish and wildlife protection, flood control,
18 navigation, water delivery, or recreation; or
19 (B) authorize abrogation of any contract
20 or treaty obligation.
21 (3) REPEAL.—Section 311 of title III of Appen-
22 dix B of the Act of October 27, 2000 (P.L. 106–
23 377, section 1(a)(2); 114 Stat. 1441, 1441A–80; 16
24 U.S.C. 824n) is repealed.

1 **SEC. 1235. STANDARD MARKET DESIGN.**

2 (a) REMAND.—The Commission's proposed rule-
3 making entitled "Remedying Undue Discrimination
4 through Open Access Transmission Service and Standard
5 Electricity Market Design" (Docket No. RM01–12–000)
6 ("SMD NOPR") is remanded to the Commission for re-
7 consideration. No final rule mandating a standard elec-
8 tricity market design pursuant to the proposed rule-
9 making, including any rule or order of general applica-
10 bility within the scope of the proposed rulemaking, may
11 be issued before October 31, 2006, or take effect before
12 December 31, 2006. Any final rule issued by the Commis-
13 sion pursuant to the proposed rulemaking shall be pre-
14 ceded by a second notice of proposed rulemaking issued
15 after the date of enactment of this Act and an opportunity
16 for public comment.

17 (b) SAVINGS CLAUSE.—This section shall not be con-
18 strued to modify or diminish any authority or obligation
19 the Commission has under this Act, the Federal Power
20 Act, or other applicable law, including, but not limited to,
21 any authority to—

22 (1) issue any rule or order (of general or par-
23 ticular applicability) pursuant to any such authority
24 or obligation; or

25 (2) act on a filing or filings by 1 or more trans-
26 mitting utilities for the voluntary formation of a Re-

1 gional Transmission Organization or Independent
2 System Operator (as defined in the Federal Power
3 Act) (and related market structures or rules) or vol-
4 untary modification of an existing Regional Trans-
5 mission Organization or Independent System Oper-
6 ator (and related market structures or rules).

7 **SEC. 1236. NATIVE LOAD SERVICE OBLIGATION.**

8 Part II of the Federal Power Act (16 U.S.C. 824 et
9 seq.) is amended by adding at the end the following:

10 **"SEC. 217. NATIVE LOAD SERVICE OBLIGATION.**

11 "(a) MEETING SERVICE OBLIGATIONS.—(1) Any
12 load-serving entity that, as of the date of enactment of
13 this section—

14 "(A) owns generation facilities, markets the
15 output of Federal generation facilities, or holds
16 rights under 1 or more wholesale contracts to pur-
17 chase electric energy, for the purpose of meeting a
18 service obligation, and

19 "(B) by reason of ownership of transmission fa-
20 cilities, or 1 or more contracts or service agreements
21 for firm transmission service, holds firm trans-
22 mission rights for delivery of the output of such gen-
23 eration facilities or such purchased energy to meet
24 such service obligation,

is entitled to use such firm transmission rights, or, equivalent tradable or financial transmission rights, in order to deliver such output or purchased energy, or the output of other generating facilities or purchased energy to the extent deliverable using such rights, to the extent required to meet its service obligation.

''(2) To the extent that all or a portion of the service obligation covered by such firm transmission rights or equivalent tradable or financial transmission rights is transferred to another load-serving entity, the successor load-serving entity shall be entitled to use the firm transmission rights or equivalent tradable or financial transmission rights associated with the transferred service obligation. Subsequent transfers to another load-serving entity, or back to the original load-serving entity, shall be entitled to the same rights.

''(3) The Commission shall exercise its authority under this Act in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy their service obligations, and enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long term basis for long term power supply arrangements made, or planned, to meet such needs.

1 "(b) ALLOCATION OF TRANSMISSION RIGHTS.—
2 Nothing in subsections (a)(1) and (a) (2) of this section
3 shall affect any existing or future methodology employed
4 by an RTO or ISO for allocating or auctioning trans-
5 mission rights if such RTO or ISO was authorized by the
6 Commission to allocate or auction financial transmission
7 rights on its system as of January 1, 2005, and the Com-
8 mission determines that any future allocation or auction
9 is just, reasonable and not unduly discriminatory or pref-
10 erential, provided, however, that if such an RTO or ISO
11 never allocated financial transmission rights on its system
12 that pertained to a period before January 1, 2005, with
13 respect to any application by such RTO or ISO that would
14 change its methodology the Commission shall exercise its
15 authority in a manner consistent with the Act and the
16 policies expressed in subsections (a)(1) and (a)(2) as ap-
17 plied to firm transmission rights held by a load serving
18 entity as of January 1, 2005, to the extent the associated
19 generation ownership or power purchase arrangements re-
20 main in effect.
21 "(c) CERTAIN TRANSMISSION RIGHTS.—The Com-
22 mission may exercise authority under this Act to make
23 transmission rights not used to meet an obligation covered
24 by subsection (a) available to other entities in a manner

1 determined by the Commission to be just, reasonable, and
2 not unduly discriminatory or preferential.

3 "(d) OBLIGATION TO BUILD.—Nothing in this Act
4 shall relieve a load-serving entity from any obligation
5 under State or local law to build transmission or distribu-
6 tion facilities adequate to meet its service obligations.

7 "(e) CONTRACTS.—Nothing in this section shall pro-
8 vide a basis for abrogating any contract or service agree-
9 ment for firm transmission service or rights in effect as
10 of the date of the enactment of this subsection. If an ISO
11 in the Western Interconnection had allocated financial
12 transmission rights prior to the date of enactment of this
13 section but had not done so with respect to one or more
14 load-serving entities' firm transmission rights held under
15 contracts to which the preceding sentence applies (or held
16 by reason of ownership of transmission facilities), such
17 load-serving entities may not be required, without their
18 consent, to convert such firm transmission rights to
19 tradable or financial rights, except where the load-serving
20 entity has voluntarily joined the ISO as a participating
21 transmission owner (or its successor) in accordance with
22 the ISO tariff.

23 "(f) WATER PUMPING FACILITIES.—The Commis-
24 sion shall ensure that any entity described in section
25 201(f) that owns transmission facilities used predomi-

1 nately to support its own water pumping facilities shall
2 have, with respect to such facilities, protections for trans-
3 mission service comparable to those provided to load-serv-
4 ing entities pursuant to this section.

5 ''(g) FERC RULEMAKING ON LONG-TERM TRANS-
6 MISSION RIGHTS IN ORGANIZED MARKETS.—Within one
7 year after the date of enactment of this section and after
8 notice and an opportunity for comment, the Commission
9 shall by rule or order implement subsection (a)(3) in Com-
10 mission-approved RTOs and ISOs with organized elec-
11 tricity markets.

12 ''(h) ERCOT.—This section shall not apply within
13 the area referred to in section 212(k)(2)(A).

14 ''(i) JURISDICTION.—This section does not authorize
15 the Commission to take any action not otherwise within
16 its jurisdiction.

17 ''(j) EFFECT OF EXERCISING RIGHTS.—An entity
18 that lawfully exercises rights granted under subsection (a)
19 shall not be considered by such action as engaging in
20 undue discrimination or preference under this Act.

21 ''(k) TVA AREA.—For purposes of subsection
22 (a)(1)(B), a load-serving entity that is located within the
23 service area of the Tennessee Valley Authority and that
24 has a firm wholesale power supply contract with the Ten-

1 nessee Valley Authority shall be deemed to hold firm
2 transmission rights for the transmission of such power.
3 ''(l) DEFINITIONS.—For purposes of this section:
4 ''(1) The term 'distribution utility' means an
5 electric utility that has a service obligation to end-
6 users or to a State utility or electric cooperative
7 that, directly or indirectly, through 1 or more addi-
8 tional State utilities or electric cooperatives, provides
9 electric service to end-users.
10 ''(2) The term 'load-serving entity' means a dis-
11 tribution utility or an electric utility that has a serv-
12 ice obligation.
13 ''(3) The term 'service obligation' means a re-
14 quirement applicable to, or the exercise of authority
15 granted to, an electric utility under Federal, State
16 or local law or under long-term contracts to provide
17 electric service to end-users or to a distribution util-
18 ity.
19 ''(4) The term 'State utility' means a State or
20 any political subdivision of a State, or any agency,
21 authority, or instrumentality of any 1 or more of the
22 foregoing, or a corporation which is wholly owned,
23 directly or indirectly, by any 1 or more of the fore-
24 going, competent to carry on the business of devel-
25 oping, transmitting, utilizing or distributing power.''.

1 **SEC. 1237. STUDY ON THE BENEFITS OF ECONOMIC DIS-**
2 **PATCH.**

3 (a) STUDY.—The Secretary of Energy, in coordina-
4 tion and consultation with the States, shall conduct a
5 study on—

6 (1) the procedures currently used by electric
7 utilities to perform economic dispatch;

8 (2) identifying possible revisions to those proce-
9 dures to improve the ability of nonutility generation
10 resources to offer their output for sale for the pur-
11 pose of inclusion in economic dispatch; and

12 (3) the potential benefits to residential, com-
13 mercial, and industrial electricity consumers nation-
14 ally and in each state if economic dispatch proce-
15 dures were revised to improve the ability of non-
16 utility generation resources to offer their output for
17 inclusion in economic dispatch.

18 (b) DEFINITION.—The term ''economic dispatch''
19 when used in this section means the operation of genera-
20 tion facilities to produce energy at the lowest cost to reli-
21 ably serve consumers, recognizing any operational limits
22 of generation and transmission facilities.

23 (c) REPORT TO CONGRESS AND THE STATES.—Not
24 later than 90 days after the date of enactment of this Act,
25 and on a yearly basis following, the Secretary of Energy
26 shall submit a report to Congress and the States on the

1 results of the study conducted under subsection (a), in-
2 cluding recommendations to Congress and the States for
3 any suggested legislative or regulatory changes.

4 Subtitle D—Transmission Rate
5 Reform

6 **SEC. 1241. TRANSMISSION INFRASTRUCTURE INVESTMENT.**

7 Part II of the Federal Power Act (16 U.S.C. 824 et
8 seq.) is amended by adding at the end the following:

9 **"SEC. 218. TRANSMISSION INFRASTRUCTURE INVESTMENT.**

10 "(a) RULEMAKING REQUIREMENT.—Within 1 year
11 after the enactment of this section, the Commission shall
12 establish, by rule, incentive-based (including, but not lim-
13 ited to performance-based) rate treatments for the trans-
14 mission of electric energy in interstate commerce by public
15 utilities for the purpose of benefiting consumers by ensur-
16 ing reliability and reducing the cost of delivered power by
17 reducing transmission congestion. Such rule shall—

18 "(1) promote reliable and economically efficient
19 transmission and generation of electricity by pro-
20 moting capital investment in the enlargement, im-
21 provement, maintenance and operation of facilities
22 for the transmission of electric energy in interstate
23 commerce;

1 "(2) provide a return on equity that attracts
2 new investment in transmission facilities (including
3 related transmission technologies);
4 "(3) encourage deployment of transmission
5 technologies and other measures to increase the ca-
6 pacity and efficiency of existing transmission facili-
7 ties and improve the operation of such facilities; and
8 "(4) allow recovery of all prudently incurred
9 costs necessary to comply with mandatory reliability
10 standards issued pursuant to section 215 of this
11 Act.
12 The Commission may, from time to time, revise such rule.
13 "(b) ADDITIONAL INCENTIVES FOR RTO PARTICIPA-
14 TION.—In the rule issued under this section, the Commis-
15 sion shall, to the extent within its jurisdiction, provide for
16 incentives to each transmitting utility or electric utility
17 that joins a Regional Transmission Organization or Inde-
18 pendent System Operator. Incentives provided by the
19 Commission pursuant to such rule shall include—
20 "(1) recovery of all prudently incurred costs to
21 develop and participate in any proposed or approved
22 RTO, ISO, or independent transmission company;
23 "(2) recovery of all costs previously approved by
24 a State commission which exercised jurisdiction over
25 the transmission facilities prior to the utility's par-

1 ticipation in the RTO or ISO, including costs nec-
2 essary to honor preexisting transmission service con-
3 tracts, in a manner which does not reduce the reve-
4 nues the utility receives for transmission services for
5 a reasonable transition period after the utility joins
6 the RTO or ISO;

7 ‘‘(3) recovery as an expense in rates of the
8 costs prudently incurred to conduct transmission
9 planning and reliability activities, including the costs
10 of participating in RTO, ISO and other regional
11 planning activities and design, study and other
12 precertification costs involved in seeking permits and
13 approvals for proposed transmission facilities;

14 ‘‘(4) a current return in rates for construction
15 work in progress for transmission facilities and full
16 recovery of prudently incurred costs for constructing
17 transmission facilities;

18 ‘‘(5) formula transmission rates; and

19 ‘‘(6) a maximum 15 year accelerated deprecia-
20 tion on new transmission facilities for rate treatment
21 purposes.

22 The Commission shall ensure that any costs recoverable
23 pursuant to this subsection may be recovered by such util-
24 ity through the transmission rates charged by such utility

1 or through the transmission rates charged by the RTO
2 or ISO that provides transmission service to such utility.
3 "(c) JUST AND REASONABLE RATES.—All rates ap-
4 proved under the rules adopted pursuant to this section,
5 including any revisions to such rules, are subject to the
6 requirement of sections 205 and 206 that all rates,
7 charges, terms, and conditions be just and reasonable and
8 not unduly discriminatory or preferential.".

9 Subtitle E—Amendments to PURPA

10 SEC. 1251. NET METERING AND ADDITIONAL STANDARDS.

11 (a) ADOPTION OF STANDARDS.—Section 111(d) of
12 the Public Utility Regulatory Policies Act of 1978 (16
13 U.S.C. 2621(d)) is amended by adding at the end the fol-
14 lowing:

15 "(11) NET METERING.—Each electric utility
16 shall make available upon request net metering serv-
17 ice to any electric consumer that the electric utility
18 serves. For purposes of this paragraph, the term
19 'net metering service' means service to an electric
20 consumer under which electric energy generated by
21 that electric consumer from an eligible on-site gener-
22 ating facility and delivered to the local distribution
23 facilities may be used to offset electric energy pro-
24 vided by the electric utility to the electric consumer
25 during the applicable billing period.

1 "(12) FUEL SOURCES.—Each electric utility
2 shall develop a plan to minimize dependence on 1
3 fuel source and to ensure that the electric energy it
4 sells to consumers is generated using a diverse range
5 of fuels and technologies, including renewable tech-
6 nologies.

7 "(13) FOSSIL FUEL GENERATION EFFI-
8 CIENCY.—Each electric utility shall develop and im-
9 plement a 10-year plan to increase the efficiency of
10 its fossil fuel generation.".

11 (b) COMPLIANCE.—

12 (1) TIME LIMITATIONS.—Section 112(b) of the
13 Public Utility Regulatory Policies Act of 1978 (16
14 U.S.C. 2622(b)) is amended by adding at the end
15 the following:

16 "(3)(A) Not later than 2 years after the enactment
17 of this paragraph, each State regulatory authority (with
18 respect to each electric utility for which it has ratemaking
19 authority) and each nonregulated electric utility shall com-
20 mence the consideration referred to in section 111, or set
21 a hearing date for such consideration, with respect to each
22 standard established by paragraphs (11) through (13) of
23 section 111(d).

24 "(B) Not later than 3 years after the date of the en-
25 actment of this paragraph, each State regulatory authority

1 (with respect to each electric utility for which it has rate-
2 making authority), and each nonregulated electric utility,
3 shall complete the consideration, and shall make the deter-
4 mination, referred to in section 111 with respect to each
5 standard established by paragraphs (11) through (13) of
6 section 111(d).''.

7 (2) FAILURE TO COMPLY.—Section 112(c) of
8 the Public Utility Regulatory Policies Act of 1978
9 (16 U.S.C. 2622(c)) is amended by adding at the
10 end the following:

11 ''In the case of each standard established by paragraphs
12 (11) through (13) of section 111(d), the reference con-
13 tained in this subsection to the date of enactment of this
14 Act shall be deemed to be a reference to the date of enact-
15 ment of such paragraphs (11) through (13).''.

16 (3) PRIOR STATE ACTIONS.—

17 (A) IN GENERAL.—Section 112 of the
18 Public Utility Regulatory Policies Act of 1978
19 (16 U.S.C. 2622) is amended by adding at the
20 end the following:

21 ''(d) PRIOR STATE ACTIONS.—Subsections (b) and
22 (c) of this section shall not apply to the standards estab-
23 lished by paragraphs (11) through (13) of section 111(d)
24 in the case of any electric utility in a State if, before the
25 enactment of this subsection—

1 "(1) the State has implemented for such utility
2 the standard concerned (or a comparable standard);
3 "(2) the State regulatory authority for such
4 State or relevant nonregulated electric utility has
5 conducted a proceeding to consider implementation
6 of the standard concerned (or a comparable stand-
7 ard) for such utility; or
8 "(3) the State legislature has voted on the im-
9 plementation of such standard (or a comparable
10 standard) for such utility.".
11 (B) CROSS REFERENCE.—Section 124 of
12 such Act (16 U.S.C. 2634) is amended by add-
13 ing the following at the end thereof: "In the
14 case of each standard established by paragraphs
15 (11) through (13) of section 111(d), the ref-
16 erence contained in this subsection to the date
17 of enactment of this Act shall be deemed to be
18 a reference to the date of enactment of such
19 paragraphs (11) through (13).".

20 **SEC. 1252. SMART METERING.**

21 (a) IN GENERAL.—Section 111(d) of the Public Util-
22 ity Regulatory Policies Act of 1978 (16 U.S.C. 2621(d))
23 is amended by adding at the end the following:
24 "(14) TIME-BASED METERING AND COMMU-
25 NICATIONS.—

1 "(A) Not later than 18 months after the
2 date of enactment of this paragraph, each elec-
3 tric utility shall offer each of its customer class-
4 es, and provide individual customers upon cus-
5 tomer request, a time-based rate schedule under
6 which the rate charged by the electric utility
7 varies during different time periods and reflects
8 the variance, if any, in the utility's costs of gen-
9 erating and purchasing electricity at the whole-
10 sale level. The time-based rate schedule shall
11 enable the electric consumer to manage energy
12 use and cost through advanced metering and
13 communications technology.
14 "(B) The types of time-based rate sched-
15 ules that may be offered under the schedule re-
16 ferred to in subparagraph (A) include, among
17 others—
18 "(i) time-of-use pricing whereby elec-
19 tricity prices are set for a specific time pe-
20 riod on an advance or forward basis, typi-
21 cally not changing more often than twice a
22 year, based on the utility's cost of gener-
23 ating and/or purchasing such electricity at
24 the wholesale level for the benefit of the
25 consumer. Prices paid for energy consumed

1 during these periods shall be pre-estab-
2 lished and known to consumers in advance
3 of such consumption, allowing them to
4 vary their demand and usage in response
5 to such prices and manage their energy
6 costs by shifting usage to a lower cost pe-
7 riod or reducing their consumption overall;
8 ''(ii) critical peak pricing whereby
9 time-of-use prices are in effect except for
10 certain peak days, when prices may reflect
11 the costs of generating and/or purchasing
12 electricity at the wholesale level and when
13 consumers may receive additional discounts
14 for reducing peak period energy consump-
15 tion;
16 ''(iii) real-time pricing whereby elec-
17 tricity prices are set for a specific time pe-
18 riod on an advanced or forward basis, re-
19 flecting the utility's cost of generating and/
20 or purchasing electricity at the wholesale
21 level, and may change as often as hourly;
22 and
23 ''(iv) credits for consumers with large
24 loads who enter into pre-established peak

1 load reduction agreements that reduce a
2 utility's planned capacity obligations.
3 ''(C) Each electric utility subject to sub-
4 paragraph (A) shall provide each customer re-
5 questing a time-based rate with a time-based
6 meter capable of enabling the utility and cus-
7 tomer to offer and receive such rate, respec-
8 tively.
9 ''(D) For purposes of implementing this
10 paragraph, any reference contained in this sec-
11 tion to the date of enactment of the Public Util-
12 ity Regulatory Policies Act of 1978 shall be
13 deemed to be a reference to the date of enact-
14 ment of this paragraph.
15 ''(E) In a State that permits third-party
16 marketers to sell electric energy to retail elec-
17 tric consumers, such consumers shall be entitled
18 to receive the same time-based metering and
19 communications device and service as a retail
20 electric consumer of the electric utility.
21 ''(F) Notwithstanding subsections (b) and
22 (c) of section 112, each State regulatory au-
23 thority shall, not later than 18 months after the
24 date of enactment of this paragraph conduct an
25 investigation in accordance with section 115(i)

1 and issue a decision whether it is appropriate to
2 implement the standards set out in subpara-
3 graphs (A) and (C).''.

4 (b) STATE INVESTIGATION OF DEMAND RESPONSE
5 AND TIME-BASED METERING.—Section 115 of the Public
6 Utility Regulatory Policies Act of 1978 (16 U.S.C. 2625)
7 is amended as follows:

8 (1) By inserting in subsection (b) after the
9 phrase ''the standard for time-of-day rates estab-
10 lished by section 111(d)(3)'' the following: ''and the
11 standard for time-based metering and communica-
12 tions established by section 111(d)(14)''.

13 (2) By inserting in subsection (b) after the
14 phrase ''are likely to exceed the metering'' the fol-
15 lowing: ''and communications''.

16 (3) By adding the at the end the following:

17 ''(i) TIME-BASED METERING AND COMMUNICA-
18 TIONS.—In making a determination with respect to the
19 standard established by section 111(d)(14), the investiga-
20 tion requirement of section 111(d)(14)(F) shall be as fol-
21 lows: Each State regulatory authority shall conduct an in-
22 vestigation and issue a decision whether or not it is appro-
23 priate for electric utilities to provide and install time-based
24 meters and communications devices for each of their cus-
25 tomers which enable such customers to participate in time-

1 based pricing rate schedules and other demand response
2 programs.''.
3 (c) FEDERAL ASSISTANCE ON DEMAND RE-
4 SPONSE.—Section 132(a) of the Public Utility Regulatory
5 Policies Act of 1978 (16 U.S.C. 2642(a)) is amended by
6 striking ''and'' at the end of paragraph (3), striking the
7 period at the end of paragraph (4) and inserting ''; and'',
8 and by adding the following at the end thereof:
9 ''(5) technologies, techniques, and rate-making
10 methods related to advanced metering and commu-
11 nications and the use of these technologies, tech-
12 niques and methods in demand response programs.''.
13 (d) FEDERAL GUIDANCE.—Section 132 of the Public
14 Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642)
15 is amended by adding the following at the end thereof:
16 ''(d) DEMAND RESPONSE.—The Secretary shall be
17 responsible for—
18 ''(1) educating consumers on the availability,
19 advantages, and benefits of advanced metering and
20 communications technologies, including the funding
21 of demonstration or pilot projects;
22 ''(2) working with States, utilities, other energy
23 providers and advanced metering and communica-
24 tions experts to identify and address barriers to the
25 adoption of demand response programs; and

1 "(3) not later than 180 days after the date of
2 enactment of the Energy Policy Act of 2005, pro-
3 viding Congress with a report that identifies and
4 quantifies the national benefits of demand response
5 and makes a recommendation on achieving specific
6 levels of such benefits by January 1, 2007.".

7 (e) DEMAND RESPONSE AND REGIONAL COORDINA-
8 TION.—

9 (1) IN GENERAL.—It is the policy of the United
10 States to encourage States to coordinate, on a re-
11 gional basis, State energy policies to provide reliable
12 and affordable demand response services to the pub-
13 lic.

14 (2) TECHNICAL ASSISTANCE.—The Secretary of
15 Energy shall provide technical assistance to States
16 and regional organizations formed by 2 or more
17 States to assist them in—

18 (A) identifying the areas with the greatest
19 demand response potential;

20 (B) identifying and resolving problems in
21 transmission and distribution networks, includ-
22 ing through the use of demand response;

23 (C) developing plans and programs to use
24 demand response to respond to peak demand or
25 emergency needs; and

1 (D) identifying specific measures con-
2 sumers can take to participate in these demand
3 response programs.
4 (3) REPORT.—Not later than 1 year after the
5 date of enactment of the Energy Policy Act of 2005,
6 the Commission shall prepare and publish an annual
7 report, by appropriate region, that assesses demand
8 response resources, including those available from all
9 consumer classes, and which identifies and reviews—
10 (A) saturation and penetration rate of ad-
11 vanced meters and communications tech-
12 nologies, devices and systems;
13 (B) existing demand response programs
14 and time-based rate programs;
15 (C) the annual resource contribution of de-
16 mand resources;
17 (D) the potential for demand response as
18 a quantifiable, reliable resource for regional
19 planning purposes;
20 (E) steps taken to ensure that, in regional
21 transmission planning and operations, demand
22 resources are provided equitable treatment as a
23 quantifiable, reliable resource relative to the re-
24 source obligations of any load-serving entity,

1 transmission provider, or transmitting party;
2 and

3 (F) regulatory barriers to improved cus-
4 tomer participation in demand response, peak
5 reduction and critical period pricing programs.

6 (f) FEDERAL ENCOURAGEMENT OF DEMAND RE-
7 SPONSE DEVICES.—It is the policy of the United States
8 that time-based pricing and other forms of demand re-
9 sponse, whereby electricity customers are provided with
10 electricity price signals and the ability to benefit by re-
11 sponding to them, shall be encouraged, the deployment of
12 such technology and devices that enable electricity cus-
13 tomers to participate in such pricing and demand response
14 systems shall be facilitated, and unnecessary barriers to
15 demand response participation in energy, capacity and an-
16 cillary service markets shall be eliminated. It is further
17 the policy of the United States that the benefits of such
18 demand response that accrue to those not deploying such
19 technology and devices, but who are part of the same re-
20 gional electricity entity, shall be recognized.

21 (g) TIME LIMITATIONS.—Section 112(b) of the Pub-
22 lic Utility Regulatory Policies Act of 1978 (16 U.S.C.
23 2622(b)) is amended by adding at the end the following:

24 "(4)(A) Not later than 1 year after the enact-
25 ment of this paragraph, each State regulatory au-

1 thority (with respect to each electric utility for which
2 it has ratemaking authority) and each nonregulated
3 electric utility shall commence the consideration re-
4 ferred to in section 111, or set a hearing date for
5 such consideration, with respect to the standard es-
6 tablished by paragraph (14) of section 111(d).

7 ''(B) Not later than 2 years after the date of
8 the enactment of this paragraph, each State regu-
9 latory authority (with respect to each electric utility
10 for which it has ratemaking authority), and each
11 nonregulated electric utility, shall complete the con-
12 sideration, and shall make the determination, re-
13 ferred to in section 111 with respect to the standard
14 established by paragraph (14) of section 111(d).''.

15 (h) FAILURE TO COMPLY.—Section 112(c) of the
16 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.
17 2622(c)) is amended by adding at the end the following:
18 ''In the case of the standard established by paragraph (14)
19 of section 111(d), the reference contained in this sub-
20 section to the date of enactment of this Act shall be
21 deemed to be a reference to the date of enactment of such
22 paragraph (14).''.

23 (i) PRIOR STATE ACTIONS REGARDING SMART ME-
24 TERING STANDARDS.—

1 (1) IN GENERAL.—Section 112 of the Public
2 Utility Regulatory Policies Act of 1978 (16 U.S.C.
3 2622) is amended by adding at the end the fol-
4 lowing:

5 ''(e) PRIOR STATE ACTIONS.—Subsections (b) and
6 (c) of this section shall not apply to the standard estab-
7 lished by paragraph (14) of section 111(d) in the case of
8 any electric utility in a State if, before the enactment of
9 this subsection—

10 ''(1) the State has implemented for such utility
11 the standard concerned (or a comparable standard);

12 ''(2) the State regulatory authority for such
13 State or relevant nonregulated electric utility has
14 conducted a proceeding to consider implementation
15 of the standard concerned (or a comparable stand-
16 ard) for such utility within the previous 3 years; or

17 ''(3) the State legislature has voted on the im-
18 plementation of such standard (or a comparable
19 standard) for such utility within the previous 3
20 years.''.

21 (2) CROSS REFERENCE.—Section 124 of such
22 Act (16 U.S.C. 2634) is amended by adding the fol-
23 lowing at the end thereof: ''In the case of the stand-
24 ard established by paragraph (14) of section 111(d),
25 the reference contained in this subsection to the date

1 of enactment of this Act shall be deemed to be a ref-
2 erence to the date of enactment of such paragraph
3 (14).''.

4 **SEC. 1253. COGENERATION AND SMALL POWER PRODUC-**
5 **TION PURCHASE AND SALE REQUIREMENTS.**

6 (a) TERMINATION OF MANDATORY PURCHASE AND
7 SALE REQUIREMENTS.—Section 210 of the Public Utility
8 Regulatory Policies Act of 1978 (16 U.S.C. 824a–3) is
9 amended by adding at the end the following:

10 ''(m) TERMINATION OF MANDATORY PURCHASE AND
11 SALE REQUIREMENTS.—

12 ''(1) OBLIGATION TO PURCHASE.—After the
13 date of enactment of this subsection, no electric util-
14 ity shall be required to enter into a new contract or
15 obligation to purchase electric energy from a quali-
16 fying cogeneration facility or a qualifying small
17 power production facility under this section if the
18 Commission finds that the qualifying cogeneration
19 facility or qualifying small power production facility
20 has nondiscriminatory access to—

21 ''(A)(i) independently administered, auc-
22 tion-based day ahead and real time wholesale
23 markets for the sale of electric energy; and (ii)
24 wholesale markets for long-term sales of capac-
25 ity and electric energy; or

1 "(B)(i) transmission and interconnection
2 services that are provided by a Commission-ap-
3 proved regional transmission entity and admin-
4 istered pursuant to an open access transmission
5 tariff that affords nondiscriminatory treatment
6 to all customers; and (ii) competitive wholesale
7 markets that provide a meaningful opportunity
8 to sell capacity, including long-term and short-
9 term sales, and electric energy, including long-
10 term, short-term and real-time sales, to buyers
11 other than the utility to which the qualifying fa-
12 cility is interconnected. In determining whether
13 a meaningful opportunity to sell exists, the
14 Commission shall consider, among other fac-
15 tors, evidence of transactions within the rel-
16 evant market; or

17 "(C) wholesale markets for the sale of ca-
18 pacity and electric energy that are, at a min-
19 imum, of comparable competitive quality as
20 markets described in subparagraphs (A) and
21 (B).

22 "(2) REVISED PURCHASE AND SALE OBLIGA-
23 TION FOR NEW FACILITIES.—(A) After the date of
24 enactment of this subsection, no electric utility shall
25 be required pursuant to this section to enter into a

1 new contract or obligation to purchase from or sell
2 electric energy to a facility that is not an existing
3 qualifying cogeneration facility unless the facility
4 meets the criteria for qualifying cogeneration facili-
5 ties established by the Commission pursuant to the
6 rulemaking required by subsection (n).

7 ‘‘(B) For the purposes of this paragraph, the
8 term ‘existing qualifying cogeneration facility’ means
9 a facility that—

10 ‘‘(i) was a qualifying cogeneration facility
11 on the date of enactment of subsection (m); or

12 ‘‘(ii) had filed with the Commission a no-
13 tice of self-certification, self recertification or
14 an application for Commission certification
15 under 18 C.F.R. 292.207 prior to the date on
16 which the Commission issues the final rule re-
17 quired by subsection (n).

18 ‘‘(3) COMMISSION REVIEW.—Any electric utility
19 may file an application with the Commission for re-
20 lief from the mandatory purchase obligation pursu-
21 ant to this subsection on a service territory-wide
22 basis. Such application shall set forth the factual
23 basis upon which relief is requested and describe
24 why the conditions set forth in subparagraphs (A),
25 (B) or (C) of paragraph (1) of this subsection have

1 been met. After notice, including sufficient notice to
2 potentially affected qualifying cogeneration facilities
3 and qualifying small power production facilities, and
4 an opportunity for comment, the Commission shall
5 make a final determination within 90 days of such
6 application regarding whether the conditions set
7 forth in subparagraphs (A), (B) or (C) of paragraph
8 (1) have been met.

9 ''(4) REINSTATEMENT OF OBLIGATION TO PUR-
10 CHASE.—At any time after the Commission makes a
11 finding under paragraph (3) relieving an electric
12 utility of its obligation to purchase electric energy,
13 a qualifying cogeneration facility, a qualifying small
14 power production facility, a State agency, or any
15 other affected person may apply to the Commission
16 for an order reinstating the electric utility's obliga-
17 tion to purchase electric energy under this section.
18 Such application shall set forth the factual basis
19 upon which the application is based and describe
20 why the conditions set forth in subparagraphs (A),
21 (B) or (C) of paragraph (1) of this subsection are
22 no longer met. After notice, including sufficient no-
23 tice to potentially affected utilities, and opportunity
24 for comment, the Commission shall issue an order
25 within 90 days of such application reinstating the

1 electric utility's obligation to purchase electric en-
2 ergy under this section if the Commission finds that
3 the conditions set forth in subparagraphs (A), (B) or
4 (C) of paragraph (1) which relieved the obligation to
5 purchase, are no longer met.

6 "(5) OBLIGATION TO SELL.—After the date of
7 enactment of this subsection, no electric utility shall
8 be required to enter into a new contract or obliga-
9 tion to sell electric energy to a qualifying cogenera-
10 tion facility or a qualifying small power production
11 facility under this section if the Commission finds
12 that—

13 "(A) competing retail electric suppliers are
14 willing and able to sell and deliver electric en-
15 ergy to the qualifying cogeneration facility or
16 qualifying small power production facility; and

17 "(B) the electric utility is not required by
18 State law to sell electric energy in its service
19 territory.

20 "(6) NO EFFECT ON EXISTING RIGHTS AND
21 REMEDIES.—Nothing in this subsection affects the
22 rights or remedies of any party under any contract
23 or obligation, in effect or pending approval before
24 the appropriate State regulatory authority or non-
25 regulated electric utility on the date of enactment of

1 this subsection, to purchase electric energy or capac-
2 ity from or to sell electric energy or capacity to a
3 qualifying cogeneration facility or qualifying small
4 power production facility under this Act (including
5 the right to recover costs of purchasing electric en-
6 ergy or capacity).

7 ''(7) RECOVERY OF COSTS.—(A) The Commis-
8 sion shall issue and enforce such regulations as are
9 necessary to ensure that an electric utility that pur-
10 chases electric energy or capacity from a qualifying
11 cogeneration facility or qualifying small power pro-
12 duction facility in accordance with any legally en-
13 forceable obligation entered into or imposed under
14 this section recovers all prudently incurred costs as-
15 sociated with the purchase.

16 ''(B) A regulation under subparagraph (A) shall
17 be enforceable in accordance with the provisions of
18 law applicable to enforcement of regulations under
19 the Federal Power Act (16 U.S.C. 791a et seq.).

20 ''(n) RULEMAKING FOR NEW QUALIFYING FACILI-
21 TIES.—(1)(A) Not later than 180 days after the date of
22 enactment of this section, the Commission shall issue a
23 rule revising the criteria in 18 C.F.R. 292.205 for new
24 qualifying cogeneration facilities seeking to sell electric en-
25 ergy pursuant to section 210 of this Act to ensure—

1 "(i) that the thermal energy output of a new
2 qualifying cogeneration facility is used in a produc-
3 tive and beneficial manner;

4 "(ii) the electrical, thermal, and chemical out-
5 put of the cogeneration facility is used fundamen-
6 tally for industrial, commercial, or institutional pur-
7 poses and is not intended fundamentally for sale to
8 an electric utility, taking into account technological,
9 efficiency, economic, and variable thermal energy re-
10 quirements, as well as State laws applicable to sales
11 of electric energy from a qualifying facility to its
12 host facility; and

13 "(iii) continuing progress in the development of
14 efficient electric energy generating technology.

15 "(B) The rule issued pursuant to paragraph (1)(A)
16 of this subsection shall be applicable only to facilities that
17 seek to sell electric energy pursuant to section 210 of this
18 Act. For all other purposes, except as specifically provided
19 in subsection (m)(2)(A), qualifying facility status shall be
20 determined in accordance with the rules and regulations
21 of this Act.

22 "(2) Notwithstanding rule revisions under paragraph
23 (1), the Commission's criteria for qualifying cogeneration
24 facilities in effect prior to the date on which the Commis-

1 sion issues the final rule required by paragraph (1) shall
2 continue to apply to any cogeneration facility that—
3 ''(A) was a qualifying cogeneration facility on
4 the date of enactment of subsection (m), or
5 ''(B) had filed with the Commission a notice of
6 self-certification, self-recertification or an application
7 for Commission certification under 18 C.F.R.
8 292.207 prior to the date on which the Commission
9 issues the final rule required by paragraph (1).''.
10 (b) ELIMINATION OF OWNERSHIP LIMITATIONS.—
11 (1) QUALIFYING SMALL POWER PRODUCTION
12 FACILITY.—Section 3(17)(C) of the Federal Power
13 Act (16 U.S.C. 796(17)(C)) is amended to read as
14 follows:
15 ''(C) 'qualifying small power production fa-
16 cility' means a small power production facility
17 that the Commission determines, by rule, meets
18 such requirements (including requirements re-
19 specting fuel use, fuel efficiency, and reliability)
20 as the Commission may, by rule, prescribe;''.
21 (2) QUALIFYING COGENERATION FACILITY.—
22 Section 3(18)(B) of the Federal Power Act (16
23 U.S.C. 796(18)(B)) is amended to read as follows:
24 ''(B) 'qualifying cogeneration facility'
25 means a cogeneration facility that the Commis-

1 sion determines, by rule, meets such require-
2 ments (including requirements respecting min-
3 imum size, fuel use, and fuel efficiency) as the
4 Commission may, by rule, prescribe;''.

5 **SEC. 1254. INTERCONNECTION.**

6 (a) ADOPTION OF STANDARDS.—Section 111(d) of
7 the Public Utility Regulatory Policies Act of 1978 (16
8 U.S.C. 2621 (d)) is amended by adding at the end the
9 following:

10 ''(16) INTERCONNECTION.—Each electric utility
11 shall make available, upon request, interconnection
12 service to any electric consumer that the electric
13 utility serves. For purposes of this paragraph, the
14 term 'interconnection service' means service to an
15 electric consumer under which an on-site generating
16 facility on the consumer's premises shall be con-
17 nected to the local distribution facilities. Inter-
18 connection services shall be offered based upon the
19 standards developed by the Institute of Electrical
20 and Electronics Engineers: IEEE Standard 1547 for
21 Interconnecting Distributed Resources with Electric
22 Power Systems, as they may be amended from time
23 to time. In addition, agreements and procedures
24 shall be established whereby the services are offered
25 shall promote current best practices of interconnec-

1 tion for distributed generation, including but not
2 limited to practices stipulated in model codes adopt-
3 ed by associations of state regulatory agencies. All
4 such agreements and procedures shall be just and
5 reasonable, and not unduly discriminatory or pref-
6 erential.''.

7 (b) COMPLIANCE.—

8 (1) TIME LIMITATIONS.—Section 112 (b) of the
9 Public Utility Regulatory Policies Act of 1978 (16
10 U.S.C. 2622(b)) is amended by adding at the end
11 the following:

12 ''(5)(A) Not later than one year after the enact-
13 ment of this paragraph, each State regulatory au-
14 thority (with respect to each electric utility for which
15 it has ratemaking authority) and each nonregulated
16 utility shall commence the consideration referred to
17 in section 111, or set a hearing date for consider-
18 ation, with respect to the standard established by
19 paragraph (16) of section 111(d).

20 ''(B) Not later than two years after the date of
21 the enactment of the this paragraph, each State reg-
22 ulatory authority (with respect to each electric utility
23 for which it has ratemaking authority), and each
24 nonregulated electric utility, shall complete the con-
25 sideration, and shall make the determination, re-

1 ferred to in section 111 with respect to each stand-
2 ard established by paragraph (16) of section
3 111(d).''.
4 (2) FAILURE TO COMPLY.—Section 112(d) of
5 the Public Utility Regulatory Policies Act of 1978
6 (16 U.S.C. 2622 (c)) is amended by adding at the
7 end the following: ''In the case of the standard es-
8 tablished by paragraph (16), the reference contained
9 in this subsection to the date of enactment of this
10 Act shall be deemed to be a reference to the date of
11 enactment of paragraph (16).''.
12 (3) PRIOR STATE ACTIONS.—
13 (A) IN GENERAL.—Section 112 of the
14 Public Utility Regulatory Policies Act of 1978
15 (16 U.S.C. 2622) is amended by adding at the
16 end the following:
17 ''(d) PRIOR STATE ACTIONS.—Subsections (b) and
18 (c) of this section shall not apply to the standards estab-
19 lished by paragraphs (16) of section 111(d) in the case
20 of any electric utility in a State if, before the enactment
21 of this subsection—
22 ''(1) the State has implemented for such utility
23 the standard concerned (or a comparable standard);
24 ''(2) the State regulatory authority for such
25 State or relevant nonregulated electric utility has

1 conducted a proceeding to consider implementation
2 of the standard concerned (or a comparable stand-
3 ard) for such utility; or
4 ''(3) the State legislature has voted on the im-
5 plementation of such standard (or a comparable
6 standard) for such utility.''.
7 (B) CROSS REFERENCE.—Section 124 of
8 such Act (16 U.S.C. 2634) is amended by add-
9 ing the following at the end thereof: ''In the
10 case of each standard established by paragraph
11 (16) of section 111(d), the reference contained
12 in this subsection to the date of enactment of
13 the Act shall be deemed to be a reference to the
14 date of enactment of paragraph (16).''.

15 Subtitle F—Repeal of PUHCA

16 **SEC. 1261. SHORT TITLE.**

17 This subtitle may be cited as the ''Public Utility
18 Holding Company Act of 2005''.

19 **SEC. 1262. DEFINITIONS.**

20 For purposes of this subtitle:
21 (1) AFFILIATE.—The term ''affiliate'' of a com-
22 pany means any company, 5 percent or more of the
23 outstanding voting securities of which are owned,
24 controlled, or held with power to vote, directly or in-
25 directly, by such company.

1 (2) ASSOCIATE COMPANY.—The term ''associate
2 company'' of a company means any company in the
3 same holding company system with such company.
4 (3) COMMISSION.—The term ''Commission''
5 means the Federal Energy Regulatory Commission.
6 (4) COMPANY.—The term ''company'' means a
7 corporation, partnership, association, joint stock
8 company, business trust, or any organized group of
9 persons, whether incorporated or not, or a receiver,
10 trustee, or other liquidating agent of any of the fore-
11 going.
12 (5) ELECTRIC UTILITY COMPANY.—The term
13 ''electric utility company'' means any company that
14 owns or operates facilities used for the generation,
15 transmission, or distribution of electric energy for
16 sale.
17 (6) EXEMPT WHOLESALE GENERATOR AND
18 FOREIGN UTILITY COMPANY.—The terms ''exempt
19 wholesale generator'' and ''foreign utility company''
20 have the same meanings as in sections 32 and 33,
21 respectively, of the Public Utility Holding Company
22 Act of 1935 (15 U.S.C. 79z–5a, 79z–5b), as those
23 sections existed on the day before the effective date
24 of this subtitle.

1 (7) GAS UTILITY COMPANY.—The term ''gas
2 utility company'' means any company that owns or
3 operates facilities used for distribution at retail
4 (other than the distribution only in enclosed portable
5 containers or distribution to tenants or employees of
6 the company operating such facilities for their own
7 use and not for resale) of natural or manufactured
8 gas for heat, light, or power.
9 (8) HOLDING COMPANY.—The term ''holding
10 company'' means—
11 (A) any company that directly or indirectly
12 owns, controls, or holds, with power to vote, 10
13 percent or more of the outstanding voting secu-
14 rities of a public-utility company or of a holding
15 company of any public-utility company; and
16 (B) any person, determined by the Com-
17 mission, after notice and opportunity for hear-
18 ing, to exercise directly or indirectly (either
19 alone or pursuant to an arrangement or under-
20 standing with 1 or more persons) such a con-
21 trolling influence over the management or poli-
22 cies of any public-utility company or holding
23 company as to make it necessary or appropriate
24 for the rate protection of utility customers with
25 respect to rates that such person be subject to

1 the obligations, duties, and liabilities imposed
2 by this subtitle upon holding companies.
3 (9) HOLDING COMPANY SYSTEM.—The term
4 ''holding company system'' means a holding com-
5 pany, together with its subsidiary companies.
6 (10) JURISDICTIONAL RATES.—The term ''ju-
7 risdictional rates'' means rates accepted or estab-
8 lished by the Commission for the transmission of
9 electric energy in interstate commerce, the sale of
10 electric energy at wholesale in interstate commerce,
11 the transportation of natural gas in interstate com-
12 merce, and the sale in interstate commerce of nat-
13 ural gas for resale for ultimate public consumption
14 for domestic, commercial, industrial, or any other
15 use.
16 (11) NATURAL GAS COMPANY.—The term ''nat-
17 ural gas company'' means a person engaged in the
18 transportation of natural gas in interstate commerce
19 or the sale of such gas in interstate commerce for
20 resale.
21 (12) PERSON.—The term ''person'' means an
22 individual or company.
23 (13) PUBLIC UTILITY.—The term ''public util-
24 ity'' means any person who owns or operates facili-
25 ties used for transmission of electric energy in inter-

1 state commerce or sales of electric energy at whole-
2 sale in interstate commerce.

3 (14) PUBLIC-UTILITY COMPANY.—The term
4 ''public-utility company'' means an electric utility
5 company or a gas utility company.

6 (15) STATE COMMISSION.—The term ''State
7 commission'' means any commission, board, agency,
8 or officer, by whatever name designated, of a State,
9 municipality, or other political subdivision of a State
10 that, under the laws of such State, has jurisdiction
11 to regulate public utility companies.

12 (16) SUBSIDIARY COMPANY.—The term ''sub-
13 sidiary company'' of a holding company means—

14 (A) any company, 10 percent or more of
15 the outstanding voting securities of which are
16 directly or indirectly owned, controlled, or held
17 with power to vote, by such holding company;
18 and

19 (B) any person, the management or poli-
20 cies of which the Commission, after notice and
21 opportunity for hearing, determines to be sub-
22 ject to a controlling influence, directly or indi-
23 rectly, by such holding company (either alone or
24 pursuant to an arrangement or understanding
25 with 1 or more other persons) so as to make it

necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

(17) VOTING SECURITY.—The term ''voting security'' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

SEC. 1263. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) is repealed.

SEC. 1264. FEDERAL ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Each holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(b) AFFILIATE COMPANIES.—Each affiliate of a holding company or of any subsidiary company of a holding company shall maintain, and shall make available to the

1 Commission, such books, accounts, memoranda, and other
2 records with respect to any transaction with another affil-
3 iate, as the Commission determines are relevant to costs
4 incurred by a public utility or natural gas company that
5 is an associate company of such holding company and nec-
6 essary or appropriate for the protection of utility cus-
7 tomers with respect to jurisdictional rates.

8 (c) HOLDING COMPANY SYSTEMS.—The Commission
9 may examine the books, accounts, memoranda, and other
10 records of any company in a holding company system, or
11 any affiliate thereof, as the Commission determines are
12 relevant to costs incurred by a public utility or natural
13 gas company within such holding company system and
14 necessary or appropriate for the protection of utility cus-
15 tomers with respect to jurisdictional rates.

16 (d) CONFIDENTIALITY.—No member, officer, or em-
17 ployee of the Commission shall divulge any fact or infor-
18 mation that may come to his or her knowledge during the
19 course of examination of books, accounts, memoranda, or
20 other records as provided in this section, except as may
21 be directed by the Commission or by a court of competent
22 jurisdiction.

23 **SEC. 1265. STATE ACCESS TO BOOKS AND RECORDS.**

24 (a) IN GENERAL.—Upon the written request of a
25 State commission having jurisdiction to regulate a public-

1 utility company in a holding company system, the holding
2 company or any associate company or affiliate thereof,
3 other than such public-utility company, wherever located,
4 shall produce for inspection books, accounts, memoranda,
5 and other records that—
6 (1) have been identified in reasonable detail in
7 a proceeding before the State commission;
8 (2) the State commission determines are rel-
9 evant to costs incurred by such public-utility com-
10 pany; and
11 (3) are necessary for the effective discharge of
12 the responsibilities of the State commission with re-
13 spect to such proceeding.
14 (b) LIMITATION.—Subsection (a) does not apply to
15 any person that is a holding company solely by reason of
16 ownership of 1 or more qualifying facilities under the Pub-
17 lic Utility Regulatory Policies Act of 1978 (16 U.S.C.
18 2601 et seq.).
19 (c) CONFIDENTIALITY OF INFORMATION.—The pro-
20 duction of books, accounts, memoranda, and other records
21 under subsection (a) shall be subject to such terms and
22 conditions as may be necessary and appropriate to safe-
23 guard against unwarranted disclosure to the public of any
24 trade secrets or sensitive commercial information.

1 (d) EFFECT ON STATE LAW.—Nothing in this sec-
2 tion shall preempt applicable State law concerning the pro-
3 vision of books, accounts, memoranda, and other records,
4 or in any way limit the rights of any State to obtain books,
5 accounts, memoranda, and other records under any other
6 Federal law, contract, or otherwise.

7 (e) COURT JURISDICTION.—Any United States dis-
8 trict court located in the State in which the State commis-
9 sion referred to in subsection (a) is located shall have ju-
10 risdiction to enforce compliance with this section.

11 **SEC. 1266. EXEMPTION AUTHORITY.**

12 (a) RULEMAKING.—Not later than 90 days after the
13 effective date of this subtitle, the Commission shall issue
14 a final rule to exempt from the requirements of section
15 1264 (relating to Federal access to books and records) any
16 person that is a holding company, solely with respect to
17 1 or more—

18 (1) qualifying facilities under the Public Utility
19 Regulatory Policies Act of 1978 (16 U.S.C. 2601 et
20 seq.);

21 (2) exempt wholesale generators; or

22 (3) foreign utility companies.

23 (b) OTHER AUTHORITY.—The Commission shall ex-
24 empt a person or transaction from the requirements of
25 section 1264 (relating to Federal access to books and

1 records) if, upon application or upon the motion of the
2 Commission—
3 (1) the Commission finds that the books, ac-
4 counts, memoranda, and other records of any person
5 are not relevant to the jurisdictional rates of a pub-
6 lic utility or natural gas company; or
7 (2) the Commission finds that any class of
8 transactions is not relevant to the jurisdictional
9 rates of a public utility or natural gas company.
10 **SEC. 1267. AFFILIATE TRANSACTIONS.**
11 (a) COMMISSION AUTHORITY UNAFFECTED.—Noth-
12 ing in this subtitle shall limit the authority of the Commis-
13 sion under the Federal Power Act (16 U.S.C. 791a et seq.)
14 to require that jurisdictional rates are just and reasonable,
15 including the ability to deny or approve the pass through
16 of costs, the prevention of cross-subsidization, and the
17 issuance of such rules and regulations as are necessary
18 or appropriate for the protection of utility consumers.
19 (b) RECOVERY OF COSTS.—Nothing in this subtitle
20 shall preclude the Commission or a State commission from
21 exercising its jurisdiction under otherwise applicable law
22 to determine whether a public-utility company, public util-
23 ity, or natural gas company may recover in rates any costs
24 of an activity performed by an associate company, or any

costs of goods or services acquired by such public-utility company from an associate company.

SEC. 1268. APPLICABILITY.

Except as otherwise specifically provided in this subtitle, no provision of this subtitle shall apply to, or be deemed to include—

(1) the United States;

(2) a State or any political subdivision of a State;

(3) any foreign governmental authority not operating in the United States;

(4) any agency, authority, or instrumentality of any entity referred to in paragraph (1), (2), or (3); or

(5) any officer, agent, or employee of any entity referred to in paragraph (1), (2), (3), or (4) acting as such in the course of his or her official duty.

SEC. 1269. EFFECT ON OTHER REGULATIONS.

Nothing in this subtitle precludes the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to protect utility customers.

SEC. 1270. ENFORCEMENT.

The Commission shall have the same powers as set forth in sections 306 through 317 of the Federal Power

1 Act (16 U.S.C. 825e–825p) to enforce the provisions of
2 this subtitle.

3 **SEC. 1271. SAVINGS PROVISIONS.**

4 (a) IN GENERAL.—Nothing in this subtitle, or other-
5 wise in the Public Utility Holding Company Act of 1935,
6 or rules, regulations, or orders thereunder, prohibits a per-
7 son from engaging in or continuing to engage in activities
8 or transactions in which it is legally engaged or authorized
9 to engage on the date of enactment of this Act, if that
10 person continues to comply with the terms (other than an
11 expiration date or termination date) of any such author-
12 ization, whether by rule or by order.

13 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—
14 Nothing in this subtitle limits the authority of the Com-
15 mission under the Federal Power Act (16 U.S.C. 791a et
16 seq.) or the Natural Gas Act (15 U.S.C. 717 et seq.).

17 **SEC. 1272. IMPLEMENTATION.**

18 Not later than 12 months after the date of enactment
19 of this subtitle, the Commission shall—

20 (1) issue such regulations as may be necessary
21 or appropriate to implement this subtitle (other than
22 section 1265, relating to State access to books and
23 records); and

24 (2) submit to Congress detailed recommenda-
25 tions on technical and conforming amendments to

1 Federal law necessary to carry out this subtitle and
2 the amendments made by this subtitle.

3 **SEC. 1273. TRANSFER OF RESOURCES.**

4 All books and records that relate primarily to the
5 functions transferred to the Commission under this sub-
6 title shall be transferred from the Securities and Exchange
7 Commission to the Commission.

8 **SEC. 1274. EFFECTIVE DATE.**

9 (a) IN GENERAL.—Except for sections 1269 (relating
10 to effect on other regulations), 1270 (relating to enforce-
11 ment), 1271 (relating to savings provisions), and 1272
12 (relating to implementation), this subtitle shall take effect
13 12 months after the date of enactment of this subtitle.
14 (b) COMPLIANCE WITH CERTAIN RULES.—If the
15 Commission approves and makes effective any final rule-
16 making modifying the standards of conduct governing en-
17 tities that own, operate, or control facilities for trans-
18 mission of electricity in interstate commerce or transpor-
19 tation of natural gas in interstate commerce prior to the
20 effective date of this subtitle, any action taken by a public-
21 utility company or utility holding company to comply with
22 the requirements of such rulemaking shall not subject
23 such public-utility company or utility holding company to
24 any regulatory requirement applicable to a holding com-

pany under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.).

SEC. 1275. SERVICE ALLOCATION.

(a) FERC REVIEW.—In the case of non-power goods or administrative or management services provided by an associate company organized specifically for the purpose of providing such goods or services to any public utility in the same holding company system, at the election of the system or a State commission having jurisdiction over the public utility, the Commission, after the effective date of this subtitle, shall review and authorize the allocation of the costs for such goods or services to the extent relevant to that associate company in order to assure that each allocation is appropriate for the protection of investors and consumers of such public utility.

(b) COST ALLOCATION.—Nothing in this section shall preclude the Commission or a State commission from exercising its jurisdiction under other applicable law with respect to the review or authorization of any costs allocated to a public utility in a holding company system located in the affected State as a result of the acquisition of non-power goods or administrative and management services by such public utility from an associate company organized specifically for that purpose.

1 (c) RULES.—Not later than 6 months after the date
2 of enactment of this Act, the Commission shall issue rules
3 (which rules shall be effective no earlier than the effective
4 date of this subtitle) to exempt from the requirements of
5 this section any company in a holding company system
6 whose public utility operations are confined substantially
7 to a single State and any other class of transactions that
8 the Commission finds is not relevant to the jurisdictional
9 rates of a public utility.

10 (d) PUBLIC UTILITY.—As used in this section, the
11 term "public utility" has the meaning given that term in
12 section 201(e) of the Federal Power Act.

13 **SEC. 1276. AUTHORIZATION OF APPROPRIATIONS.**

14 There are authorized to be appropriated such funds
15 as may be necessary to carry out this subtitle.

16 **SEC. 1277. CONFORMING AMENDMENTS TO THE FEDERAL**
17 **POWER ACT.**

18 (a) CONFLICT OF JURISDICTION.—Section 318 of the
19 Federal Power Act (16 U.S.C. 825q) is repealed.

20 (b) DEFINITIONS.—(1) Section 201(g)(5) of the Fed-
21 eral Power Act (16 U.S.C. 824(g)(5)) is amended by strik-
22 ing "1935" and inserting "2005".

23 (2) Section 214 of the Federal Power Act (16 U.S.C.
24 824m) is amended by striking "1935" and inserting
25 "2005".

Subtitle G—Market Transparency, Enforcement, and Consumer Protection

SEC. 1281. MARKET TRANSPARENCY RULES.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

"SEC. 220. MARKET TRANSPARENCY RULES.

"(a) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules establishing an electronic information system to provide the Commission and the public with access to such information as is necessary or appropriate to facilitate price transparency and participation in markets subject to the Commission's jurisdiction under this Act. Such systems shall provide information about the availability and market price of wholesale electric energy and transmission services to the Commission, State commissions, buyers and sellers of wholesale electric energy, users of transmission services, and the public on a timely basis. The Commission shall have authority to obtain such information from any electric utility or transmitting utility, including any entity described in section 201(f).

"(b) EXEMPTIONS.—The Commission shall exempt from disclosure information it determines would, if disclosed, be detrimental to the operation of an effective mar-

1 ket or jeopardize system security. This section shall not
2 apply to transactions for the purchase or sale of wholesale
3 electric energy or transmission services within the area de-
4 scribed in section 212(k)(2)(A). In determining the infor-
5 mation to be made available under this section and time
6 to make such information available, the Commission shall
7 seek to ensure that consumers and competitive markets
8 are protected from the adverse effects of potential collu-
9 sion or other anti-competitive behaviors that can be facili-
10 tated by untimely public disclosure of transaction-specific
11 information.

12 ''(c) COMMODITY FUTURES TRADING COMMIS-
13 SION.—This section shall not affect the exclusive jurisdic-
14 tion of the Commodity Futures Trading Commission with
15 respect to accounts, agreements, contracts, or transactions
16 in commodities under the Commodity Exchange Act (7
17 U.S.C. 1 et seq.).

18 ''(d) SAVINGS PROVISION.—In exercising its author-
19 ity under this section, the Commission shall not—

20 ''(1) compete with, or displace from the market
21 place, any price publisher; or

22 ''(2) regulate price publishers or impose any re-
23 quirements on the publication of information.''.

1 **SEC. 1282. MARKET MANIPULATION.**

2 Part II of the Federal Power Act (16 U.S.C. 824 et
3 seq.) is amended by adding at the end the following:

4 **"SEC. 221. PROHIBITION ON FILING FALSE INFORMATION.**

5 ''No person or other entity (including an entity de-
6 scribed in section 201(f)) shall willfully and knowingly re-
7 port any information relating to the price of electricity
8 sold at wholesale or availability of transmission capacity,
9 which information the person or any other entity knew to
10 be false at the time of the reporting, to a Federal agency
11 with intent to fraudulently affect the data being compiled
12 by such Federal agency.

13 **"SEC. 222. PROHIBITION ON ROUND TRIP TRADING.**

14 ''(a) PROHIBITION.—No person or other entity (in-
15 cluding an entity described in section 201(f)) shall willfully
16 and knowingly enter into any contract or other arrange-
17 ment to execute a 'round trip trade' for the purchase or
18 sale of electric energy at wholesale.

19 ''(b) DEFINITION.—For the purposes of this section,
20 the term 'round trip trade' means a transaction, or com-
21 bination of transactions, in which a person or any other
22 entity—

23 ''(1) enters into a contract or other arrange-
24 ment to purchase from, or sell to, any other person
25 or other entity electric energy at wholesale;

1 "(2) simultaneously with entering into the con-
2 tract or arrangement described in paragraph (1), ar-
3 ranges a financially offsetting trade with such other
4 person or entity for the same such electric energy,
5 at the same location, price, quantity and terms so
6 that, collectively, the purchase and sale transactions
7 in themselves result in no financial gain or loss; and
8 "(3) enters into the contract or arrangement
9 with a specific intent to fraudulently affect reported
10 revenues, trading volumes, or prices.".

11 **SEC. 1283. ENFORCEMENT.**

12 (a) COMPLAINTS.—Section 306 of the Federal Power
13 Act (16 U.S.C. 825e) is amended as follows:
14 (1) By inserting "electric utility," after "Any
15 person,".
16 (2) By inserting ", transmitting utility," after
17 "licensee" each place it appears.
18 (b) REVIEW OF COMMISSION ORDERS.—Section
19 313(a) of the Federal Power Act (16 U.S.C. 8251) is
20 amended by inserting "electric utility," after "person," in
21 the first 2 places it appears and by striking "any person
22 unless such person" and inserting "any entity unless such
23 entity".
24 (c) INVESTIGATIONS.—Section 307(a) of the Federal
25 Power Act (16 U.S.C. 825f(a)) is amended as follows:

1 (1) By inserting ", electric utility, transmitting
2 utility, or other entity" after "person" each time it
3 appears.
4 (2) By striking the period at the end of the
5 first sentence and inserting the following: "or in ob-
6 taining information about the sale of electric energy
7 at wholesale in interstate commerce and the trans-
8 mission of electric energy in interstate commerce.".
9 (d) CRIMINAL PENALTIES.—Section 316 of the Fed-
10 eral Power Act (16 U.S.C. 825o) is amended—
11 (1) in subsection (a), by striking "$5,000" and
12 inserting "$1,000,000", and by striking "two years"
13 and inserting "5 years";
14 (2) in subsection (b), by striking "$500" and
15 inserting "$25,000"; and
16 (3) by striking subsection (c).
17 (e) CIVIL PENALTIES.—Section 316A of the Federal
18 Power Act (16 U.S.C. 825o–1) is amended as follows:
19 (1) In subsections (a) and (b), by striking "sec-
20 tion 211, 212, 213, or 214" each place it appears
21 and inserting "Part II".
22 (2) In subsection (b), by striking "$10,000"
23 and inserting "$1,000,000".

1 **SEC. 1284. REFUND EFFECTIVE DATE.**

2 Section 206(b) of the Federal Power Act (16 U.S.C.
3 824e(b)) is amended as follows:

4 (1) By striking ''the date 60 days after the fil-
5 ing of such complaint nor later than 5 months after
6 the expiration of such 60-day period'' in the second
7 sentence and inserting ''the date of the filing of such
8 complaint nor later than 5 months after the filing of
9 such complaint''.

10 (2) By striking ''60 days after'' in the third
11 sentence and inserting ''of''.

12 (3) By striking ''expiration of such 60-day pe-
13 riod'' in the third sentence and inserting ''publica-
14 tion date''.

15 (4) By striking the fifth sentence and inserting
16 the following: ''If no final decision is rendered by the
17 conclusion of the 180-day period commencing upon
18 initiation of a proceeding pursuant to this section,
19 the Commission shall state the reasons why it has
20 failed to do so and shall state its best estimate as
21 to when it reasonably expects to make such deci-
22 sion.''.

23 **SEC. 1285. REFUND AUTHORITY.**

24 Section 206 of the Federal Power Act (16 U.S.C.
25 824e) is amended by adding the following new subsection
26 at the end thereof:

1 "(e)(1) Except as provided in paragraph (2), if an
2 entity described in section 201(f) voluntarily makes a
3 short-term sale of electric energy and the sale violates
4 Commission rules in effect at the time of the sale, such
5 entity shall be subject to the Commission's refund author-
6 ity under this section with respect to such violation.
7 "(2) This section shall not apply to—
8 "(A) any entity that sells less than 8,000,000
9 megawatt hours of electricity per year; or
10 "(B) any electric cooperative.
11 "(3) For purposes of this subsection, the term 'short-
12 term sale' means an agreement for the sale of electric en-
13 ergy at wholesale in interstate commerce that is for a pe-
14 riod of 31 days or less (excluding monthly contracts sub-
15 ject to automatic renewal).
16 "(4) The Commission shall have refund authority
17 under subsection (e)(1) with respect to a voluntary short-
18 term sale of electric energy by the Bonneville Power Ad-
19 ministration (in this section 'Bonneville') only if the sale
20 is at an unjust and unreasonable rate and, in that event,
21 may order a refund only for short-term sales made by
22 Bonneville at rates that are higher than the highest just
23 and reasonable rate charged by any other entity for a
24 short-term sale of electric energy in the same geographic

1 market for the same, or most nearly comparable, period
2 as the sale by Bonneville.

3 ''(5) With respect to any Federal power marketing
4 agency or the Tennessee Valley Authority, the Commission
5 shall not assert or exercise any regulatory authority or
6 powers under subsection (e)(1) other than the ordering of
7 refunds to achieve a just and reasonable rate.''.

8 **SEC. 1286. SANCTITY OF CONTRACT.**

9 (a) IN GENERAL.—The Federal Energy Regulatory
10 Commission (in this section, ''the Commission'') shall have
11 no authority to abrogate or modify any provision of an
12 executed contract or executed contract amendment de-
13 scribed in subsection (b) that has been entered into or
14 taken effect, except upon a finding that failure to take
15 such action would be contrary to the public interest.

16 (b) LIMITATION.—Except as provided in subsection
17 (c), this section shall apply only to a contract or contract
18 amendment—

19 (1) executed on or after the date of enactment
20 of this Act; and

21 (2) entered into—

22 (A) for the purchase or sale of electric en-
23 ergy under section 205 of the Federal Power
24 Act (16 U.S.C. 824d) where the seller has been

1 authorized by the Commission to charge mar-
2 ket-based rates; or
3 (B) under section 4 of the Natural Gas
4 Act (15 U.S.C. 717c) where the natural gas
5 company has been authorized by the Commis-
6 sion to charge market-based rates for the serv-
7 ice described in the contract.
8 (c) EXCLUSION.—This section shall not apply to an
9 executed contract or executed contract amendment that
10 expressly provides for a standard of review other than the
11 public interest standard.
12 (d) SAVINGS PROVISION.—With respect to contracts
13 to which this section does not apply, nothing in this sec-
14 tion alters existing law regarding the applicable standard
15 of review for a contract subject to the jurisdiction of the
16 Commission.

17 **SEC. 1287. CONSUMER PRIVACY AND UNFAIR TRADE PRAC-**
18 **TICES.**

19 (a) PRIVACY.—The Federal Trade Commission may
20 issue rules protecting the privacy of electric consumers
21 from the disclosure of consumer information obtained in
22 connection with the sale or delivery of electric energy to
23 electric consumers.
24 (b) SLAMMING.—The Federal Trade Commission
25 may issue rules prohibiting the change of selection of an

1 electric utility except with the informed consent of the
2 electric consumer or if approved by the appropriate State
3 regulatory authority.

4 (c) CRAMMING.—The Federal Trade Commission
5 may issue rules prohibiting the sale of goods and services
6 to an electric consumer unless expressly authorized by law
7 or the electric consumer.

8 (d) RULEMAKING.—The Federal Trade Commission
9 shall proceed in accordance with section 553 of title 5,
10 United States Code, when prescribing a rule under this
11 section.

12 (e) STATE AUTHORITY.—If the Federal Trade Com-
13 mission determines that a State's regulations provide
14 equivalent or greater protection than the provisions of this
15 section, such State regulations shall apply in that State
16 in lieu of the regulations issued by the Commission under
17 this section.

18 (f) DEFINITIONS.—For purposes of this section:

19 (1) STATE REGULATORY AUTHORITY.—The
20 term ''State regulatory authority'' has the meaning
21 given that term in section 3(21) of the Federal
22 Power Act (16 U.S.C. 796(21)).

23 (2) ELECTRIC CONSUMER AND ELECTRIC UTIL-
24 ITY.—The terms ''electric consumer'' and ''electric
25 utility'' have the meanings given those terms in sec-

tion 3 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602).

Subtitle H—Merger Reform

SEC. 1291. MERGER REVIEW REFORM AND ACCOUNTABILITY.

(a) MERGER REVIEW REFORM.—Within 180 days after the date of enactment of this Act, the Secretary of Energy, in consultation with the Federal Energy Regulatory Commission and the Attorney General of the United States, shall prepare, and transmit to Congress each of the following:

(1) A study of the extent to which the authorities vested in the Federal Energy Regulatory Commission under section 203 of the Federal Power Act are duplicative of authorities vested in—

(A) other agencies of Federal and State Government; and

(B) the Federal Energy Regulatory Commission, including under sections 205 and 206 of the Federal Power Act.

(2) Recommendations on reforms to the Federal Power Act that would eliminate any unnecessary duplication in the exercise of regulatory authority or unnecessary delays in the approval (or dis-

1 approval) of applications for the sale, lease, or other
2 disposition of public utility facilities.
3 (b) MERGER REVIEW ACCOUNTABILITY.—Not later
4 than 1 year after the date of enactment of this Act and
5 annually thereafter, with respect to all orders issued with-
6 in the preceding year that impose a condition on a sale,
7 lease, or other disposition of public utility facilities under
8 section 203(b) of the Federal Power Act, the Federal En-
9 ergy Regulatory Commission shall transmit a report to
10 Congress explaining each of the following:
11 (1) The condition imposed.
12 (2) Whether the Commission could have im-
13 posed such condition by exercising its authority
14 under any provision of the Federal Power Act other
15 than under section 203(b).
16 (3) If the Commission could not have imposed
17 such condition other than under section 203(b), why
18 the Commission determined that such condition was
19 consistent with the public interest.
20 **SEC. 1292. ELECTRIC UTILITY MERGERS.**
21 (a) AMENDMENT.—Section 203(a) of the Federal
22 Power Act (16 U.S.C. 824b(a)) is amended to read as fol-
23 lows:

1 “(a)(1) No public utility shall, without first having
2 secured an order of the Commission authorizing it to do
3 so—

4 “(A) sell, lease, or otherwise dispose of the
5 whole of its facilities subject to the jurisdiction of
6 the Commission, or any part thereof of a value in
7 excess of $10,000,000;

8 “(B) merge or consolidate, directly or indi-
9 rectly, such facilities or any part thereof with those
10 of any other person, by any means whatsoever; or

11 “(C) purchase, acquire, or take any security
12 with a value in excess of $10,000,000 of any other
13 public utility.

14 “(2) No holding company in a holding company sys-
15 tem that includes a public utility shall purchase, acquire,
16 or take any security with a value in excess of $10,000,000
17 of, or, by any means whatsoever, directly or indirectly,
18 merge or consolidate with, a public utility or a holding
19 company in a holding company system that includes a
20 public utility with a value in excess of $10,000,000 with-
21 out first having secured an order of the Commission au-
22 thorizing it to do so.

23 “(3) Upon receipt of an application for such approval
24 the Commission shall give reasonable notice in writing to
25 the Governor and State commission of each of the States

1 in which the physical property affected, or any part there-
2 of, is situated, and to such other persons as it may deem
3 advisable.

4 ''(4) After notice and opportunity for hearing, the
5 Commission shall approve the proposed disposition, con-
6 solidation, acquisition, or change in control, if it finds that
7 the proposed transaction will be consistent with the public
8 interest. In evaluating whether a transaction will be con-
9 sistent with the public interest, the Commission shall con-
10 sider whether the proposed transaction—

11 ''(A) will adequately protect consumer interests;

12 ''(B) will be consistent with competitive whole-
13 sale markets;

14 ''(C) will impair the financial integrity of any
15 public utility that is a party to the transaction or an
16 associate company of any party to the transaction;
17 and

18 ''(D) satisfies such other criteria as the Com-
19 mission considers consistent with the public interest.

20 ''(5) The Commission shall, by rule, adopt procedures
21 for the expeditious consideration of applications for the
22 approval of dispositions, consolidations, or acquisitions
23 under this section. Such rules shall identify classes of
24 transactions, or specify criteria for transactions, that nor-
25 mally meet the standards established in paragraph (4).

1 The Commission shall provide expedited review for such
2 transactions. The Commission shall grant or deny any
3 other application for approval of a transaction not later
4 than 180 days after the application is filed. If the Com-
5 mission does not act within 180 days, such application
6 shall be deemed granted unless the Commission finds,
7 based on good cause, that further consideration is required
8 to determine whether the proposed transaction meets the
9 standards of paragraph (4) and issues an order tolling the
10 time for acting on the application for not more than 180
11 days, at the end of which additional period the Commis-
12 sion shall grant or deny the application.

13 ''(6) For purposes of this subsection, the terms 'asso-
14 ciate company', 'holding company', and 'holding company
15 system' have the meaning given those terms in the Public
16 Utility Holding Company Act of 2005.''.

17 (b) EFFECTIVE DATE.—The amendments made by
18 this section shall take effect 12 months after the date of
19 enactment of this section.

20 Subtitle I—Definitions

21 SEC. 1295. DEFINITIONS.

22 (a) ELECTRIC UTILITY.—Section 3(22) of the Fed-
23 eral Power Act (16 U.S.C. 796(22)) is amended to read
24 as follows:

1 "(22) ELECTRIC UTILITY.—The term 'electric
2 utility' means any person or Federal or State agency
3 (including any entity described in section 201(f))
4 that sells electric energy; such term includes the
5 Tennessee Valley Authority and each Federal power
6 marketing administration.".
7 (b) TRANSMITTING UTILITY.—Section 3(23) of the
8 Federal Power Act (16 U.S.C. 796(23)) is amended to
9 read as follows:
10 "(23) TRANSMITTING UTILITY.—The term
11 'transmitting utility' means an entity, including any
12 entity described in section 201(f), that owns, oper-
13 ates, or controls facilities used for the transmission
14 of electric energy—
15 "(A) in interstate commerce; or
16 "(B) for the sale of electric energy at
17 wholesale.".
18 (c) ADDITIONAL DEFINITIONS.—Section 3 of the
19 Federal Power Act (16 U.S.C. 796) is amended by adding
20 at the end the following:
21 "(26) ELECTRIC COOPERATIVE.—The term
22 'electric cooperative' means a cooperatively owned
23 electric utility.
24 "(27) RTO.—The term 'Regional Transmission
25 Organization' or 'RTO' means an entity of sufficient

1 regional scope approved by the Commission to exer-
2 cise operational or functional control of facilities
3 used for the transmission of electric energy in inter-
4 state commerce and to ensure nondiscriminatory ac-
5 cess to such facilities.

6 ''(28) ISO.—The term 'Independent System
7 Operator' or 'ISO' means an entity approved by the
8 Commission to exercise operational or functional
9 control of facilities used for the transmission of elec-
10 tric energy in interstate commerce and to ensure
11 nondiscriminatory access to such facilities.''.

12 (d) COMMISSION.—For the purposes of this title, the
13 term ''Commission'' means the Federal Energy Regu-
14 latory Commission.

15 (e) APPLICABILITY.—Section 201(f) of the Federal
16 Power Act (16 U.S.C. 824(f)) is amended by adding after
17 ''political subdivision of a state,'' the following: ''an elec-
18 tric cooperative that has financing under the Rural Elec-
19 trification Act of 1936 (7 U.S.C. 901 et seq.) or that sells
20 less than 4,000,000 megawatt hours of electricity per
21 year,''.

22 Subtitle J—Technical and
23 Conforming Amendments

24 **SEC. 1297. CONFORMING AMENDMENTS.**

25 The Federal Power Act is amended as follows:

1 (1) Section 201(b)(2) of such Act (16 U.S.C.
2 824(b)(2)) is amended as follows:
3 (A) In the first sentence by striking "210,
4 211, and 212" and inserting "203(a)(2),
5 206(e), 210, 211, 211A, 212, 215, 216, 217,
6 218, 219, 220, 221, and 222".
7 (B) In the second sentence by striking
8 "210 or 211" and inserting "203(a)(2), 206(e),
9 210, 211, 211A, 212, 215, 216, 217, 218, 219,
10 220, 221, and 222".
11 (C) Section 201(b)(2) of such Act is
12 amended by striking "The" in the first place it
13 appears and inserting "Notwithstanding section
14 201(f), the" and in the second sentence after
15 "any order" by inserting "or rule".
16 (2) Section 201(e) of such Act is amended by
17 striking "210, 211, or 212" and inserting "206(e),
18 206(f), 210, 211, 211A, 212, 215, 216, 217, 218,
19 219, 220, 221, and 222".
20 (3) Section 206 of such Act (16 U.S.C. 824e)
21 is amended as follows:
22 (A) In subsection (b), in the seventh sen-
23 tence, by striking "the public utility to make".

1 (B) In the first sentence of subsection (a),
2 by striking ‘‘hearing had’’ and inserting ‘‘hear-
3 ing held’’.
4 (4) Section 211(c) of such Act (16 U.S.C.
5 824j(c)) is amended by—
6 (A) striking ‘‘(2)’’;
7 (B) striking ‘‘(A)’’ and inserting ‘‘(1)’’
8 (C) striking ‘‘(B)’’ and inserting ‘‘(2)’’;
9 and
10 (D) striking ‘‘termination of modification’’
11 and inserting ‘‘termination or modification’’.
12 (5) Section 211(d)(1) of such Act (16 U.S.C.
13 824j(d)(1)) is amended by striking ‘‘electric utility’’
14 the second time it appears and inserting ‘‘transmit-
15 ting utility’’.
16 (6) Section 315 (c) of such Act (16 U.S.C.
17 825n(c)) is amended by striking ‘‘subsection’’ and
18 inserting ‘‘section’’.

19 Subtitle K—Economic Dispatch

20 SEC. 1298. ECONOMIC DISPATCH.

21 Part II of the Federal Power Act (16 U.S.C. 824 et
22 seq.) is amended by adding at the end the following:

23 ‘‘SEC. 223. JOINT BOARDS ON ECONOMIC DISPATCH.

24 ‘‘(a) IN GENERAL.—The Commission shall convene
25 joint boards on a regional basis pursuant to section 209

1 of this Act to study the issue of security constrained eco-
2 nomic dispatch for the various market regions. The Com-
3 mission shall designate the appropriate regions to be cov-
4 ered by each such joint board for purposes of this section.
5 ''(b) MEMBERSHIP.—The Commission shall request
6 each State to nominate a representative for the appro-
7 priate regional joint board, and shall designate a member
8 of the Commission to chair and participate as a member
9 of each such board.
10 ''(c) POWERS.—The sole authority of each joint
11 board convened under this section shall be to consider
12 issues relevant to what constitutes 'security constrained
13 economic dispatch' and how such a mode of operating an
14 electric energy system affects or enhances the reliability
15 and affordability of service to customers in the region con-
16 cerned and to make recommendations to the Commission
17 regarding such issues.
18 ''(d) REPORT TO THE CONGRESS.—Within one year
19 after enactment of this section, the Commission shall issue
20 a report and submit such report to the Congress regarding
21 the recommendations of the joint boards under this section
22 and the Commission may consolidate the recommenda-
23 tions of more than one such regional joint board, including
24 any consensus recommendations for statutory or regu-
25 latory reform.''.

TITLE XIII—ENERGY TAX INCENTIVES

SEC. 1300. SHORT TITLE; ETC.

(a) SHORT TITLE.—This title may be cited as the "Enhanced Energy Infrastructure and Technology Tax Act of 2005".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

Subtitle A—Energy Infrastructure Tax Incentives

SEC. 1301. NATURAL GAS GATHERING LINES TREATED AS 7-YEAR PROPERTY.

(a) IN GENERAL.—Subparagraph (C) of section 168(e)(3) (relating to classification of certain property) is amended by striking "and" at the end of clause (iii), by redesignating clause (iv) as clause (v), and by inserting after clause (iii) the following new clause:

"(iv) any natural gas gathering line, 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(c)(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 serting "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 serting "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 redesig-
18 nating 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 redesig-
12 nating 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
21 section—
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 serting 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(c)(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:

"If vehicle inertia weight class is:	The 2000 model year city fuel economy is:
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

"If vehicle inertia weight class is:	The 2000 model year city fuel economy is:
4,000 lbs	19.3 mpg
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:

"If vehicle inertia weight class is:	The 2000 model year city fuel economy is:
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
16 section—
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, after April 1, 2003, the Administrator
14 made a reclassification determination under sub-
15 section (b)(2)(A) for any downwind area, and the
16 Administrator approves the plan revision referred to
17 in paragraph (3) for such area, the reclassification
18 shall be withdrawn and the attainment date ex-
19 tended in accordance with paragraph (5) upon such
20 approval. The Administrator shall also withdraw a
21 reclassification determination under subsection
22 (b)(2)(A) made after the date of enactment of this
23 subsection and extend the attainment date in ac-
24 cordance with paragraph (5) if the Administrator
25 approves the plan revision referred to in paragraph

1 (3) within 12 months of the date the reclassification
2 determination under subsection (b)(2)(A) is issued.
3 In such instances the 'current classification' used for
4 evaluating the revision of the applicable implementa-
5 tion plan under paragraph (3) shall be the classifica-
6 tion of the downwind area under this section imme-
7 diately prior to such reclassification.

8 ''(5) EXTENDED DATE.—The attainment date
9 extended under this subsection shall provide for at-
10 tainment of such national ambient air quality stand-
11 ard for ozone in the downwind area as expeditiously
12 as practicable but no later than the date on which
13 the last reductions in pollution transport necessary
14 for attainment in the downwind area are required to
15 be achieved by the upwind area or areas.''.

16 **SEC. 1444. ENERGY PRODUCTION INCENTIVES.**

17 (a) IN GENERAL.—A State may provide to any
18 entity—

19 (1) a credit against any tax or fee owed to the
20 State under a State law, or

21 (2) any other tax incentive,

22 determined by the State to be appropriate, in the amount
23 calculated under and in accordance with a formula deter-
24 mined by the State, for production described in subsection

1 (b) in the State by the entity that receives such credit or
2 such incentive.

3 (b) ELIGIBLE ENTITIES.—Subsection (a) shall apply
4 with respect to the production in the State of—

5 (1) electricity from coal mined in the State and
6 used in a facility, if such production meets all appli-
7 cable Federal and State laws and if such facility
8 uses scrubbers or other forms of clean coal tech-
9 nology,

10 (2) electricity from a renewable source such as
11 wind, solar, or biomass, or

12 (3) ethanol.

13 (c) EFFECT ON INTERSTATE COMMERCE.—Any ac-
14 tion taken by a State in accordance with this section with
15 respect to a tax or fee payable, or incentive applicable,
16 for any period beginning after the date of the enactment
17 of this Act shall—

18 (1) be considered to be a reasonable regulation
19 of commerce; and

20 (2) not be considered to impose an undue bur-
21 den on interstate commerce or to otherwise impair,
22 restrain, or discriminate, against interstate com-
23 merce.

1 **SEC. 1446. REGULATION OF CERTAIN OIL USED IN TRANS-**
2 **FORMERS.**

3 Notwithstanding any other provision of law, or rule
4 promulgated by the Environmental Protection Agency,
5 vegetable oil made from soybeans and used in electric
6 transformers as thermal insulation shall not be regulated
7 as an oil identified under section 2(a)(1)(B) of the Edible
8 Oil Regulatory Reform Act (33 U.S.C. 2720(a)(1)(B)).

9 **SEC. 1447. RISK ASSESSMENTS.**

10 Subtitle B of title XXX of the Energy Policy Act of
11 1992 is amended by adding at the end the following new
12 section:

13 **"SEC. 3022. RISK ASSESSMENT.**

14 "Federal agencies conducting assessments of risks to
15 human health and the environment from energy tech-
16 nology, production, transport, transmission, distribution,
17 storage, use, or conservation activities shall use sound and
18 objective scientific practices in assessing such risks, shall
19 consider the best available science (including peer reviewed
20 studies), and shall include a description of the weight of
21 the scientific evidence concerning such risks.".

22 **SEC. 1448. OXYGEN-FUEL.**

23 (a) PROGRAM.—The Secretary of Energy shall estab-
24 lish a program on oxygen-fuel systems. If feasible, the pro-
25 gram shall include renovation of at least one existing large
26 unit and one existing small unit, and construction of one

1 new large unit and one new small unit. Cost sharing shall
2 not be required.

3 (b) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated to the Secretary for car-
5 rying out this section—

6 (1) $100,000,000 for fiscal year 2006;

7 (2) $100,000,000 for fiscal year 2007; and

8 (3) $100,000,000 for fiscal year 2008.

9 (c) DEFINITIONS.—For purposes of this section—

10 (1) the term ''large unit'' means a unit with a
11 generating capacity of 100 megawatts or more;

12 (2) the term ''oxygen-fuel systems'' means sys-
13 tems that utilize fuel efficiency benefits of oil, gas,
14 coal, and biomass combustion using substantially
15 pure oxygen, with high flame temperatures and the
16 exclusion of air from the boiler, in industrial or elec-
17 tric utility steam generating units; and

18 (3) the term ''small unit'' means a unit with a
19 generating capacity in the 10–50 megawatt range.

20 **SEC. 1449. PETROCHEMICAL AND OIL REFINERY FACILITY**
21 **HEALTH ASSESSMENT.**

22 (a) ESTABLISHMENT.—The Secretary of Energy
23 shall conduct a study of direct and significant health im-
24 pacts to persons resulting from living in proximity to pe-
25 trochemical and oil refinery facilities. The Secretary shall

1 consult with the Director of the National Cancer Institute
2 and other Federal Government bodies with expertise in the
3 field it deems appropriate in the design of such study. The
4 study shall be conducted according to sound and objective
5 scientific practices and present the weight of the scientific
6 evidence. The Secretary shall obtain scientific peer review
7 of the draft study.

8 (b) REPORT TO CONGRESS.—The Secretary shall
9 transmit the results of the study to Congress within 6
10 months of the enactment of this section.

11 (c) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated to the Secretary for ac-
13 tivities under this section such sums as are necessary for
14 the completion of the study.

15 **SEC. 1450. UNITED STATES-ISRAEL COOPERATION.**

16 (a) FINDINGS.—The Congress finds that—

17 (1) on February 1, 1996, United States Sec-
18 retary of Energy Hazel R. O'Leary and Israeli Min-
19 ister of Energy and Infrastructure Gonen Segev
20 signed the Agreement between the Department of
21 Energy of the United States of America and the
22 Ministry of Energy and Infrastructure of Israel Con-
23 cerning Energy Cooperation, to establish a frame-
24 work for collaboration between the United States

and Israel in energy research and development activities;

(2) the Agreement entered into force in February 2000;

(3) in February 2005, the Agreement was automatically renewed for one additional 5-year period pursuant to Article X of the Agreement; and

(4) under the Agreement, the United States and Israel may cooperate in energy research and development in a variety of alternative and advanced energy sectors.

(b) REPORT TO CONGRESS.—(1) The Secretary of Energy shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate on—

(A) how the United States and Israel have cooperated on energy research and development activities under the Agreement;

(B) projects initiated pursuant to the Agreement; and

(C) plans for future cooperation and joint projects under the Agreement.

(2) The report shall be submitted no later than three months after the date of enactment of this Act.

1 (c) SENSE OF CONGRESS.—It is the sense of the Con-
2 gress that energy cooperation between the Governments
3 of the United States and Israel is mutually beneficial in
4 the development of energy technology.

5 **SEC. 1451. CARBON-BASED FUEL CELL DEVELOPMENT.**

6 (a) GRANT AUTHORITY.—The Secretary of Energy is
7 authorized to make a single grant to a qualified institution
8 to design and fabricate a 5-kilowatt prototype coal-based
9 fuel cell with the following performance objectives:

10 (1) A current density of 600 milliamps per
11 square centimeter at a cell voltage of 0.8 volts.

12 (2) An operating temperature range not to ex-
13 ceed 900 degrees celsius.

14 (b) QUALIFIED INSTITUTION.—For the purposes of
15 subsection (a), a qualified institution is a research-inten-
16 sive institution of higher education with demonstrated ex-
17 pertise in the development of carbon-based fuel cells allow-
18 ing the direct use of high sulfur content coal as fuel, and
19 which has produced a laboratory-scale carbon-based fuel
20 cell with a proven current density of 100 milliamps per
21 square centimeter at a voltage of 0.6 volts.

22 (c) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated to the Secretary of En-
24 ergy for carrying out this section $850,000 for fiscal year
25 2006.

1 **SEC. 1452. NATIONAL PRIORITY PROJECT DESIGNATION.**

2 (a) DEFINITIONS.—For purposes of this section:

3 (1) SECRETARY.—The term ''Secretary'' means
4 the Secretary of Energy.

5 (2) DEPARTMENT.—The term ''Department''
6 means the Department of Energy.

7 (b) DESIGNATION OF NATIONAL PRIORITY
8 PROJECTS.—

9 (1) IN GENERAL.—There is hereby established
10 the National Priority Project designation, which
11 shall be evidenced by a medal bearing the inscription
12 ''National Priority Project''. The medal shall be of
13 such design and materials and bear such additional
14 inscriptions as the President may prescribe.

15 (2) MAKING AND PRESENTATION OF DESIGNA-
16 TION.—

17 (A) IN GENERAL.—The President, on the
18 basis of recommendations made by the Sec-
19 retary, shall annually designate organizations, if
20 any, that have—

21 (i) advanced the field of renewable en-
22 ergy technology and contribute to North
23 American energy independence; and

24 (ii) a project that has been certified
25 by the Secretary under subsection (c).

1 (B) PRESENTATION.—The President shall
2 designate projects with such ceremonies as the
3 President may prescribe.
4 (C) USE OF DESIGNATION.—An organiza-
5 tion that receives a designation under this sec-
6 tion may publicize its designation as a National
7 Priority Project in its advertising.
8 (D) CATEGORIES IN WHICH THE DESIGNA-
9 TION MAY BE GIVEN.—Separate designations
10 shall be made to qualifying projects in each of
11 the following categories:
12 (i) Renewable energy generation
13 projects.
14 (ii) Energy efficient and renewable en-
15 ergy building projects.
16 (c) APPLICATION AND CERTIFICATION.—
17 (1) SELECTION CRITERIA.—Certification and
18 selection of the projects to receive the designation
19 shall be based on the following criteria:
20 (A) FOR ALL PROJECTS.—The project
21 demonstrates that it will install no less than 30
22 megawatts of renewable energy generation ca-
23 pacity.
24 (B) FOR ENERGY EFFICIENT BUILDING
25 AND RENEWABLE ENERGY PROJECTS.—In addi-

1 tion to meeting the criteria established in sub-
2 paragraph (A), building projects shall—
3 (i) comply with nationally recognized
4 standards for high-performance, sustain-
5 able buildings;
6 (ii) utilize whole-building integration
7 of energy efficiency and environmental per-
8 formance design and technology, including
9 advanced building controls;
10 (iii) utilize renewable energy for at
11 least 50 percent of its energy consumption;
12 (iv) comply with applicable Energy
13 Star standards; and
14 (v) include at least 5,000,000 square
15 feet of enclosed space.
16 (2) APPLICATION.—
17 (A) INITIAL APPLICATIONS.—No later than
18 4 months after the date of enactment of this
19 Act, and annually thereafter, the Secretary
20 shall publish in the Federal Register an invita-
21 tion and guidelines for submitting applications,
22 consistent with the provisions of this section.
23 (B) CONTENTS.—The application shall de-
24 scribe the project, or planned project, and its

1 plans to meet the criteria listed in paragraph
2 (1).
3 (3) CERTIFICATION.—Not later than 60 days
4 after the application period described in paragraph
5 (2), the Secretary shall certify projects that are rea-
6 sonably expected to meet the criteria described in
7 paragraph (1).

8 TITLE XV—ETHANOL AND 9 MOTOR FUELS

10 Subtitle A—General Provisions

11 SEC. 1501. RENEWABLE CONTENT OF MOTOR VEHICLE 12 FUEL.

13 (a) IN GENERAL.—Section 211 of the Clean Air Act
14 (42 U.S.C. 7545) is amended—
15 (1) by redesignating subsection (o) as sub-
16 section (q); and
17 (2) by inserting after subsection (n) the fol-
18 lowing:
19 ''(o) RENEWABLE FUEL PROGRAM.—
20 ''(1) DEFINITIONS.—In this section:
21 ''(A) ETHANOL.—(i) The term 'cellulosic
22 biomass ethanol' means ethanol derived from
23 any lignocellulosic or hemicellulosic matter that
24 is available on a renewable or recurring basis,
25 including—

1 “(I) dedicated energy crops and trees;
2 “(II) wood and wood residues;
3 “(III) plants;
4 “(IV) grasses;
5 “(V) agricultural residues; and
6 “(VI) fibers.
7 “(ii) The term ‘waste derived ethanol’
8 means ethanol derived from—
9 “(I) animal wastes, including poultry
10 fats and poultry wastes, and other waste
11 materials; or
12 “(II) municipal solid waste.
13 “(B) RENEWABLE FUEL.—
14 “(i) IN GENERAL.—The term ‘renew-
15 able fuel’ means motor vehicle fuel that—
16 “(I)(aa) is produced from grain,
17 starch, oilseeds, or other biomass; or
18 “(bb) is natural gas produced
19 from a biogas source, including a
20 landfill, sewage waste treatment plant,
21 feedlot, or other place where decaying
22 organic material is found; and
23 “(II) is used to replace or reduce
24 the quantity of fossil fuel present in a

1 fuel mixture used to operate a motor
2 vehicle.
3 "(ii) INCLUSION.—The term 'renew-
4 able fuel' includes cellulosic biomass eth-
5 anol, waste derived ethanol, and biodiesel
6 (as defined in section 312(f) of the Energy
7 Policy Act of 1992 (42 U.S.C. 13220(f))
8 and any blending components derived from
9 renewable fuel (provided that only the re-
10 newable fuel portion of any such blending
11 component shall be considered part of the
12 applicable volume under the renewable fuel
13 program established by this subsection).
14 "(C) SMALL REFINERY.—The term 'small
15 refinery' means a refinery for which average ag-
16 gregate daily crude oil throughput for the cal-
17 endar year (as determined by dividing the ag-
18 gregate throughput for the calendar year by the
19 number of days in the calendar year) does not
20 exceed 75,000 barrels.
21 "(2) RENEWABLE FUEL PROGRAM.—
22 "(A) IN GENERAL.—Not later than 1 year
23 after the enactment of this subsection, the Ad-
24 ministrator shall promulgate regulations ensur-
25 ing that motor vehicle fuel sold or dispensed to

1 consumers in the contiguous United States, on
2 an annual average basis, contains the applicable
3 volume of renewable fuel as specified in sub-
4 paragraph (B). Regardless of the date of pro-
5 mulgation, such regulations shall contain com-
6 pliance provisions for refiners, blenders, and
7 importers, as appropriate, to ensure that the re-
8 quirements of this section are met, but shall not
9 restrict where renewable fuel can be used, or
10 impose any per-gallon obligation for the use of
11 renewable fuel. If the Administrator does not
12 promulgate such regulations, the applicable per-
13 centage referred to in paragraph (4), on a vol-
14 ume percentage of gasoline basis, shall be 2.2
15 in 2005.

16 ''(B) APPLICABLE VOLUME.—

17 ''(i) CALENDAR YEARS 2005 THROUGH
18 2012.—For the purpose of subparagraph
19 (A), the applicable volume for any of cal-
20 endar years 2005 through 2012 shall be
21 determined in accordance with the fol-
22 lowing table:

''Calendar year	**Applicable volume of renewable fuel (in billions of gallons)**
2005	3.1
2006	3.3
2007	3.5
2008	3.8
2009	4.1

“Calendar year	Applicable volume of renewable fuel (in billions of gallons)
2010	4.4
2011	4.7
2012	5.0

1 “(ii) CALENDAR YEAR 2013 AND
2 THEREAFTER.—For the purpose of sub-
3 paragraph (A), the applicable volume for
4 calendar year 2013 and each calendar year
5 thereafter shall be equal to the product ob-
6 tained by multiplying—
7 “(I) the number of gallons of
8 gasoline that the Administrator esti-
9 mates will be sold or introduced into
10 commerce in the calendar year; and
11 “(II) the ratio that—
12 “(aa) 5.0 billion gallons of
13 renewable fuels; bears to
14 “(bb) the number of gallons
15 of gasoline sold or introduced
16 into commerce in calendar year
17 2012.
18 “(3) NON-CONTIGUOUS STATE OPT-IN.—Upon
19 the petition of a non-contiguous State, the Adminis-
20 trator may allow the renewable fuel program estab-
21 lished by subtitle A of title XV of the Energy Policy
22 Act of 2005 to apply in such non-contiguous State

1 at the same time or any time after the Adminis-
2 trator promulgates regulations under paragraph (2).
3 The Administrator may promulgate or revise regula-
4 tions under paragraph (2), establish applicable per-
5 centages under paragraph (4), provide for the gen-
6 eration of credits under paragraph (6), and take
7 such other actions as may be necessary to allow for
8 the application of the renewable fuels program in a
9 non-contiguous State.

10 ‘‘(4) APPLICABLE PERCENTAGES.—

11 ‘‘(A) PROVISION OF ESTIMATE OF VOL-
12 UMES OF GASOLINE SALES.—Not later than Oc-
13 tober 31 of each of calendar years 2005
14 through 2011, the Administrator of the Energy
15 Information Administration shall provide to the
16 Administrator of the Environmental Protection
17 Agency an estimate of the volumes of gasoline
18 that will be sold or introduced into commerce in
19 the United States during the following calendar
20 year.

21 ‘‘(B) DETERMINATION OF APPLICABLE
22 PERCENTAGES.—

23 ‘‘(i) IN GENERAL.—Not later than
24 November 30 of each of the calendar years
25 2005 through 2011, based on the estimate

1 provided under subparagraph (A), the Ad-
2 ministrator shall determine and publish in
3 the Federal Register, with respect to the
4 following calendar year, the renewable fuel
5 obligation that ensures that the require-
6 ments of paragraph (2) are met.

7 "(ii) REQUIRED ELEMENTS.—The re-
8 newable fuel obligation determined for a
9 calendar year under clause (i) shall—

10 "(I) be applicable to refiners,
11 blenders, and importers, as appro-
12 priate;

13 "(II) be expressed in terms of a
14 volume percentage of gasoline sold or
15 introduced into commerce; and

16 "(III) subject to subparagraph
17 (C)(i), consist of a single applicable
18 percentage that applies to all cat-
19 egories of persons specified in sub-
20 clause (I).

21 "(C) ADJUSTMENTS.—In determining the
22 applicable percentage for a calendar year, the
23 Administrator shall make adjustments—

1 "(i) to prevent the imposition of re-
2 dundant obligations to any person specified
3 in subparagraph (B)(ii)(I); and
4 "(ii) to account for the use of renew-
5 able fuel during the previous calendar year
6 by small refineries that are exempt under
7 paragraph (11).
8 "(5) EQUIVALENCY.—For the purpose of para-
9 graph (2), 1 gallon of either cellulosic biomass eth-
10 anol or waste derived ethanol—
11 "(A) shall be considered to be the equiva-
12 lent of 1.5 gallon of renewable fuel; or
13 "(B) if the cellulostic biomass ethanol or
14 waste derived ethanol is derived from agricul-
15 tural residue or wood residue or is an agricul-
16 tural byproduct (as that term is used in section
17 919 of the Energy Policy Act of 2005), shall be
18 considered to be the equivalent of 2.5 gallons of
19 renewable fuel.
20 "(6) CREDIT PROGRAM.—
21 "(A) IN GENERAL.—The regulations pro-
22 mulgated to carry out this subsection shall pro-
23 vide for the generation of an appropriate
24 amount of credits by any person that refines,
25 blends, or imports gasoline that contains a

1 quantity of renewable fuel that is greater than
2 the quantity required under paragraph (2).
3 Such regulations shall provide for the genera-
4 tion of an appropriate amount of credits for
5 biodiesel fuel. If a small refinery notifies the
6 Administrator that it waives the exemption pro-
7 vided paragraph (11), the regulations shall pro-
8 vide for the generation of credits by the small
9 refinery beginning in the year following such
10 notification.

11 ''(B) USE OF CREDITS.—A person that
12 generates credits under subparagraph (A) may
13 use the credits, or transfer all or a portion of
14 the credits to another person, for the purpose
15 of complying with paragraph (2).

16 ''(C) LIFE OF CREDITS.—A credit gen-
17 erated under this paragraph shall be valid to
18 show compliance—

19 ''(i) in the calendar year in which the
20 credit was generated or the next calendar
21 year; or

22 ''(ii) in the calendar year in which the
23 credit was generated or next two consecu-
24 tive calendar years if the Administrator

1 promulgates regulations under paragraph
2 (7).
3 "(D) INABILITY TO PURCHASE SUFFICIENT
4 CREDITS.—The regulations promulgated to
5 carry out this subsection shall include provi-
6 sions allowing any person that is unable to gen-
7 erate or purchase sufficient credits to meet the
8 requirements under paragraph (2) to carry for-
9 ward a renewable fuel deficit provided that, in
10 the calendar year following the year in which
11 the renewable fuel deficit is created, such per-
12 son shall achieve compliance with the renewable
13 fuel requirement under paragraph (2), and shall
14 generate or purchase additional renewable fuel
15 credits to offset the renewable fuel deficit of the
16 previous year.
17 "(7) SEASONAL VARIATIONS IN RENEWABLE
18 FUEL USE.—
19 "(A) STUDY.—For each of the calendar
20 years 2005 through 2012, the Administrator of
21 the Energy Information Administration shall
22 conduct a study of renewable fuels blending to
23 determine whether there are excessive seasonal
24 variations in the use of renewable fuels.

1 "(B) REGULATION OF EXCESSIVE SEA-
2 SONAL VARIATIONS.—If, for any calendar year,
3 the Administrator of the Energy Information
4 Administration, based on the study under sub-
5 paragraph (A), makes the determinations speci-
6 fied in subparagraph (C), the Administrator
7 shall promulgate regulations to ensure that 35
8 percent or more of the quantity of renewable
9 fuels necessary to meet the requirement of
10 paragraph (2) is used during each of the peri-
11 ods specified in subparagraph (D) of each sub-
12 sequent calendar year.
13 "(C) DETERMINATIONS.—The determina-
14 tions referred to in subparagraph (B) are
15 that—
16 "(i) less than 35 percent of the quan-
17 tity of renewable fuels necessary to meet
18 the requirement of paragraph (2) has been
19 used during one of the periods specified in
20 subparagraph (D) of the calendar year;
21 "(ii) a pattern of excessive seasonal
22 variation described in clause (i) will con-
23 tinue in subsequent calendar years; and
24 "(iii) promulgating regulations or
25 other requirements to impose a 35 percent

1 or more seasonal use of renewable fuels
2 will not prevent or interfere with the at-
3 tainment of national ambient air quality
4 standards or significantly increase the
5 price of motor fuels to the consumer.
6 ‘‘(D) PERIODS.—The two periods referred
7 to in this paragraph are—
8 ‘‘(i) April through September; and
9 ‘‘(ii) January through March and Oc-
10 tober through December.
11 ‘‘(E) EXCLUSIONS.—Renewable fuels
12 blended or consumed in 2005 in a State which
13 has received a waiver under section 209(b) shall
14 not be included in the study in subparagraph
15 (A).
16 ‘‘(8) WAIVERS.—
17 ‘‘(A) IN GENERAL.—The Administrator, in
18 consultation with the Secretary of Agriculture
19 and the Secretary of Energy, may waive the re-
20 quirement of paragraph (2) in whole or in part
21 on petition by one or more States by reducing
22 the national quantity of renewable fuel required
23 under this subsection—
24 ‘‘(i) based on a determination by the
25 Administrator, after public notice and op-

1 portunity for comment, that implementa-
2 tion of the requirement would severely
3 harm the economy or environment of a
4 State, a region, or the United States; or
5 ''(ii) based on a determination by the
6 Administrator, after public notice and op-
7 portunity for comment, that there is an in-
8 adequate domestic supply or distribution
9 capacity to meet the requirement.
10 ''(B) PETITIONS FOR WAIVERS.—The Ad-
11 ministrator, in consultation with the Secretary
12 of Agriculture and the Secretary of Energy,
13 shall approve or disapprove a State petition for
14 a waiver of the requirement of paragraph (2)
15 within 90 days after the date on which the peti-
16 tion is received by the Administrator.
17 ''(C) TERMINATION OF WAIVERS.—A waiv-
18 er granted under subparagraph (A) shall termi-
19 nate after 1 year, but may be renewed by the
20 Administrator after consultation with the Sec-
21 retary of Agriculture and the Secretary of En-
22 ergy.
23 ''(9) STUDY AND WAIVER FOR INITIAL YEAR OF
24 PROGRAM.—Not later than 180 days after the enact-
25 ment of this subsection, the Secretary of Energy

1 shall complete for the Administrator a study assess-
2 ing whether the renewable fuels requirement under
3 paragraph (2) will likely result in significant adverse
4 consumer impacts in 2005, on a national, regional,
5 or State basis. Such study shall evaluate renewable
6 fuel supplies and prices, blendstock supplies, and
7 supply and distribution system capabilities. Based
8 on such study, the Secretary shall make specific rec-
9 ommendations to the Administrator regarding waiv-
10 er of the requirements of paragraph (2), in whole or
11 in part, to avoid any such adverse impacts. Within
12 270 days after the enactment of this subsection, the
13 Administrator shall, consistent with the rec-
14 ommendations of the Secretary, waive, in whole or in
15 part, the renewable fuels requirement under para-
16 graph (2) by reducing the national quantity of re-
17 newable fuel required under this subsection in 2005.
18 This paragraph shall not be interpreted as limiting
19 the Administrator's authority to waive the require-
20 ments of paragraph (2) in whole, or in part, under
21 paragraph (8) or paragraph (10), pertaining to
22 waivers.

23 ''(10) ASSESSMENT AND WAIVER.—The Admin-
24 istrator, in consultation with the Secretary of En-
25 ergy and the Secretary of Agriculture, shall evaluate

1 the requirement of paragraph (2) and determine,
2 prior to January 1, 2007, and prior to January 1
3 of any subsequent year in which the applicable vol-
4 ume of renewable fuel is increased under paragraph
5 (2)(B), whether the requirement of paragraph (2),
6 including the applicable volume of renewable fuel
7 contained in paragraph (2)(B) should remain in ef-
8 fect, in whole or in part, during 2007 or any year
9 or years subsequent to 2007. In evaluating the re-
10 quirement of paragraph (2) and in making any de-
11 termination under this section, the Administrator
12 shall consider the best available information and
13 data collected by accepted methods or best available
14 means regarding—

15 "(A) the capacity of renewable fuel pro-
16 ducers to supply an adequate amount of renew-
17 able fuel at competitive prices to fulfill the re-
18 quirement of paragraph (2);

19 "(B) the potential of the requirement of
20 paragraph (2) to significantly raise the price of
21 gasoline, food (excluding the net price impact
22 on the requirement in paragraph (2) on com-
23 modities used in the production of ethanol), or
24 heating oil for consumers in any significant
25 area or region of the country above the price

1 that would otherwise apply to such commodities
2 in the absence of such requirement;
3 ''(C) the potential of the requirement of
4 paragraph (2) to interfere with the supply of
5 fuel in any significant gasoline market or region
6 of the country, including interference with the
7 efficient operation of refiners, blenders, import-
8 ers, wholesale suppliers, and retail vendors of
9 gasoline, and other motor fuels; and
10 ''(D) the potential of the requirement of
11 paragraph (2) to cause or promote exceedances
12 of Federal, State, or local air quality standards.
13 If the Administrator determines, by clear and con-
14 vincing information, after public notice and the op-
15 portunity for comment, that the requirement of
16 paragraph (2) would have significant and meaning-
17 ful adverse impact on the supply of fuel and related
18 infrastructure or on the economy, public health, or
19 environment of any significant area or region of the
20 country, the Administrator may waive, in whole or
21 in part, the requirement of paragraph (2) in any one
22 year for which the determination is made for that
23 area or region of the country, except that any such
24 waiver shall not have the effect of reducing the ap-
25 plicable volume of renewable fuel specified in para-

1 graph (2)(B) with respect to any year for which the
2 determination is made. In determining economic im-
3 pact under this paragraph, the Administrator shall
4 not consider the reduced revenues available from the
5 Highway Trust Fund (section 9503 of the Internal
6 Revenue Code of 1986) as a result of the use of eth-
7 anol.

8 ‘‘(11) SMALL REFINERIES.—

9 ‘‘(A) IN GENERAL.—The requirement of
10 paragraph (2) shall not apply to small refineries
11 until the first calendar year beginning more
12 than 5 years after the first year set forth in the
13 table in paragraph (2)(B)(i). Not later than De-
14 cember 31, 2007, the Secretary of Energy shall
15 complete for the Administrator a study to de-
16 termine whether the requirement of paragraph
17 (2) would impose a disproportionate economic
18 hardship on small refineries. For any small re-
19 finery that the Secretary of Energy determines
20 would experience a disproportionate economic
21 hardship, the Administrator shall extend the
22 small refinery exemption for such small refinery
23 for no less than two additional years.

24 ‘‘(B) ECONOMIC HARDSHIP.—

1 "(i) EXTENSION OF EXEMPTION.—A
2 small refinery may at any time petition the
3 Administrator for an extension of the ex-
4 emption from the requirement of para-
5 graph (2) for the reason of dispropor-
6 tionate economic hardship. In evaluating a
7 hardship petition, the Administrator, in
8 consultation with the Secretary of Energy,
9 shall consider the findings of the study in
10 addition to other economic factors.

11 "(ii) DEADLINE FOR ACTION ON PETI-
12 TIONS.—The Administrator shall act on
13 any petition submitted by a small refinery
14 for a hardship exemption not later than 90
15 days after the receipt of the petition.

16 "(C) CREDIT PROGRAM.—If a small refin-
17 ery notifies the Administrator that it waives the
18 exemption provided by this Act, the regulations
19 shall provide for the generation of credits by
20 the small refinery beginning in the year fol-
21 lowing such notification.

22 "(D) OPT-IN FOR SMALL REFINERS.—A
23 small refinery shall be subject to the require-
24 ments of this section if it notifies the Adminis-

1 trator that it waives the exemption under sub-
2 paragraph (A).
3 "(12) ETHANOL MARKET CONCENTRATION
4 ANALYSIS.—
5 "(A) ANALYSIS.—
6 "(i) IN GENERAL.—Not later than
7 180 days after the date of enactment of
8 this subsection, and annually thereafter,
9 the Federal Trade Commission shall per-
10 form a market concentration analysis of
11 the ethanol production industry using the
12 Herfindahl-Hirschman Index to determine
13 whether there is sufficient competition
14 among industry participants to avoid price
15 setting and other anticompetitive behavior.
16 "(ii) SCORING.—For the purpose of
17 scoring under clause (i) using the
18 Herfindahl-Hirschman Index, all mar-
19 keting arrangements among industry par-
20 ticipants shall be considered.
21 "(B) REPORT.—Not later than December
22 1, 2005, and annually thereafter, the Federal
23 Trade Commission shall submit to Congress
24 and the Administrator a report on the results

1 of the market concentration analysis performed
2 under subparagraph (A)(i).''.
3 (b) PENALTIES AND ENFORCEMENT.—Section
4 211(d) of the Clean Air Act (42 U.S.C. 7545(d)) is
5 amended as follows:
6 (1) In paragraph (1)—
7 (A) in the first sentence, by striking ''or
8 (n)'' each place it appears and inserting ''(n),
9 or (o)''; and
10 (B) in the second sentence, by striking ''or
11 (m)'' and inserting ''(m), or (o)''.
12 (2) In the first sentence of paragraph (2), by
13 striking ''and (n)'' each place it appears and insert-
14 ing ''(n), and (o)''.
15 (c) SURVEY OF RENEWABLE FUEL MARKET.—
16 (1) SURVEY AND REPORT.—Not later than De-
17 cember 1, 2006, and annually thereafter, the Admin-
18 istrator of the Environmental Protection Agency (in
19 consultation with the Secretary of Energy acting
20 through the Administrator of the Energy Informa-
21 tion Administration) shall—
22 (A) conduct, with respect to each conven-
23 tional gasoline use area and each reformulated
24 gasoline use area in each State, a survey to de-
25 termine the market shares of—

1 (i) conventional gasoline containing
2 ethanol;
3 (ii) reformulated gasoline containing
4 ethanol;
5 (iii) conventional gasoline containing
6 renewable fuel; and
7 (iv) reformulated gasoline containing
8 renewable fuel; and
9 (B) submit to Congress, and make publicly
10 available, a report on the results of the survey
11 under subparagraph (A).
12 (2) RECORDKEEPING AND REPORTING RE-
13 QUIREMENTS.—The Administrator of the Environ-
14 mental Protection Agency (hereinafter in this sub-
15 section referred to as the ''Administrator'') may re-
16 quire any refiner, blender, or importer to keep such
17 records and make such reports as are necessary to
18 ensure that the survey conducted under paragraph
19 (1) is accurate. The Administrator, to avoid duplica-
20 tive requirements, shall rely, to the extent prac-
21 ticable, on existing reporting and recordkeeping re-
22 quirements and other information available to the
23 Administrator including gasoline distribution pat-
24 terns that include multistate use areas.

1 (3) APPLICABLE LAW.—Activities carried out
2 under this subsection shall be conducted in a man-
3 ner designed to protect confidentiality of individual
4 responses.

5 **SEC. 1502. FUELS SAFE HARBOR.**

6 (a) IN GENERAL.—Notwithstanding any other provi-
7 sion of Federal or State law, no renewable fuel, as defined
8 by section 211(o)(1) of the Clean Air Act, or methyl ter-
9 tiary butyl ether (hereafter in this section referred to as
10 ''MTBE''), used or intended to be used as a motor vehicle
11 fuel, nor any motor vehicle fuel containing such renewable
12 fuel or MTBE, shall be deemed a defective product by vir-
13 tue of the fact that it is, or contains, such a renewable
14 fuel or MTBE, if it does not violate a control or prohibi-
15 tion imposed by the Administrator of the Environmental
16 Protection Agency (hereinafter in this section referred to
17 as the ''Administrator'') under section 211 of such Act,
18 and the manufacturer is in compliance with all requests
19 for information under subsection (b) of such section 211
20 of such Act. If the safe harbor provided by this section
21 does not apply, the existence of a claim of defective prod-
22 uct shall be determined under otherwise applicable law.
23 Nothing in this subsection shall be construed to affect the
24 liability of any person for environmental remediation costs,
25 drinking water contamination, negligence for spills or

1 other reasonably foreseeable events, public or private nui-
2 sance, trespass, breach of warranty, breach of contract,
3 or any other liability other than liability based upon a
4 claim of defective product.

5 (b) EFFECTIVE DATE.—This section shall be effec-
6 tive as of September 5, 2003, and shall apply with respect
7 to all claims filed on or after that date.

8 **SEC. 1503. FINDINGS AND MTBE TRANSITION ASSISTANCE.**

9 (a) FINDINGS.—Congress finds that—

10 (1) since 1979, methyl tertiary butyl ether
11 (hereinafter in this section referred to as ''MTBE'')
12 has been used nationwide at low levels in gasoline to
13 replace lead as an octane booster or anti-knocking
14 agent;

15 (2) Public Law 101–549 (commonly known as
16 the ''Clean Air Act Amendments of 1990'') (42
17 U.S.C. 7401 et seq.) established a fuel oxygenate
18 standard under which reformulated gasoline must
19 contain at least 2 percent oxygen by weight;

20 (3) at the time of the adoption of the fuel oxy-
21 gen standard, Congress was aware that significant
22 use of MTBE would result from the adoption of that
23 standard, and that the use of MTBE would likely be
24 important to the cost-effective implementation of
25 that program;

1 (4) Congress was aware that gasoline and its
2 component additives can and do leak from storage
3 tanks;
4 (5) the fuel industry responded to the fuel oxy-
5 genate standard established by Public Law 101–549
6 by making substantial investments in—
7 (A) MTBE production capacity; and
8 (B) systems to deliver MTBE-containing
9 gasoline to the marketplace;
10 (6) having previously required oxygenates like
11 MTBE for air quality purposes, Congress has—
12 (A) reconsidered the relative value of
13 MTBE in gasoline;
14 (B) decided to establish a date certain for
15 action by the Environmental Protection Agency
16 to prohibit the use of MTBE in gasoline; and
17 (C) decided to provide for the elimination
18 of the oxygenate requirement for reformulated
19 gasoline and to provide for a renewable fuels
20 content requirement for motor fuel; and
21 (7) it is appropriate for Congress to provide
22 some limited transition assistance—
23 (A) to merchant producers of MTBE who
24 produced MTBE in response to a market cre-

ated by the oxygenate requirement contained in the Clean Air Act; and

(B) for the purpose of mitigating any fuel supply problems that may result from the elimination of the oxygenate requirement for reformulated gasoline and from the decision to establish a date certain for action by the Environmental Protection Agency to prohibit the use of MTBE in gasoline.

(b) PURPOSES.—The purpose of this section is to provide assistance to merchant producers of MTBE in making the transition from producing MTBE to producing other fuel additives.

(c) MTBE MERCHANT PRODUCER CONVERSION ASSISTANCE.—Section 211(c) of the Clean Air Act (42 U.S.C. 7545(c)) is amended by adding at the end the following:

"(5) MTBE MERCHANT PRODUCER CONVERSION ASSISTANCE.—

"(A) IN GENERAL.—

"(i) GRANTS.—The Secretary of Energy, in consultation with the Administrator, may make grants to merchant producers of methyl tertiary butyl ether (hereinafter in this subsection referred to as

1 'MTBE') in the United States to assist the
2 producers in the conversion of eligible pro-
3 duction facilities described in subpara-
4 graph (C) to the production of iso-octane,
5 iso-octene, alkylates, or renewable fuels.

6 "(ii) DETERMINATION.—The Admin-
7 istrator, in consultation with the Secretary
8 of Energy, may determine that transition
9 assistance for the production of iso-octane,
10 iso-octene, alkylates, or renewable fuels is
11 inconsistent with the provisions of sub-
12 paragraph (B) and, on that basis, may
13 deny applications for grants authorized by
14 this paragraph.

15 "(B) FURTHER GRANTS.—The Secretary
16 of Energy, in consultation with the Adminis-
17 trator, may also further make grants to mer-
18 chant producers of MTBE in the United States
19 to assist the producers in the conversion of eli-
20 gible production facilities described in subpara-
21 graph (C) to the production of such other fuel
22 additives (unless the Administrator determines
23 that such fuel additives may reasonably be an-
24 ticipated to endanger public health or the envi-
25 ronment) that, consistent with this subsection—

1 "(i) have been registered and have
2 been tested or are being tested in accord-
3 ance with the requirements of this section;
4 and
5 "(ii) will contribute to replacing gaso-
6 line volumes lost as a result of amend-
7 ments made to subsection (k) of this sec-
8 tion by section 1504(a) and 1506 of the
9 Energy Policy Act of 2005.
10 "(C) ELIGIBLE PRODUCTION FACILI-
11 TIES.—A production facility shall be eligible to
12 receive a grant under this paragraph if the pro-
13 duction facility—
14 "(i) is located in the United States;
15 and
16 "(ii) produced MTBE for consump-
17 tion before April 1, 2003 and ceased pro-
18 duction at any time after the date of en-
19 actment of this paragraph.
20 "(D) AUTHORIZATION OF APPROPRIA-
21 TIONS.—There are authorized to be appro-
22 priated to carry out this paragraph
23 $250,000,000 for each of fiscal years 2005
24 through 2012, to remain available until ex-
25 pended.".

1 **SEC. 1504. USE OF MTBE.**

2 (a) IN GENERAL.—Subject to subsections (e) and (f),
3 not later than December 31, 2014, the use of methyl ter-
4 tiary butyl ether (hereinafter in this section referred to
5 as ''MTBE'') in motor vehicle fuel in any State other than
6 a State described in subsection (c) is prohibited.

7 (b) REGULATIONS.—The Administrator of the Envi-
8 ronmental Protection Agency (hereafter referred to in this
9 section as the ''Administrator'') shall promulgate regula-
10 tions to effect the prohibition in subsection (a).

11 (c) STATES THAT AUTHORIZE USE.—A State de-
12 scribed in this subsection is a State in which the Governor
13 of the State submits a notification to the Administrator
14 authorizing the use of MTBE in motor vehicle fuel sold
15 or used in the State.

16 (d) PUBLICATION OF NOTICE.—The Administrator
17 shall publish in the Federal Register each notice submitted
18 by a State under subsection (c).

19 (e) TRACE QUANTITIES.—In carrying out subsection
20 (a), the Administrator may allow trace quantities of
21 MTBE, not to exceed 0.5 percent by volume, to be present
22 in motor vehicle fuel in cases that the Administrator deter-
23 mines to be appropriate.

24 (f) LIMITATION.—The Administrator, under author-
25 ity of subsection (a), shall not prohibit or control the pro-

1 duction of MTBE for export from the United States or
2 for any other use other than for use in motor vehicle fuel.
3 (g) EFFECT ON STATE LAW.—The amendments
4 made by this title have no effect regarding any available
5 authority of States to limit the use of methyl tertiary butyl
6 ether in motor vehicle fuel.

7 **SEC. 1505. NATIONAL ACADEMY OF SCIENCES REVIEW AND**
8 **PRESIDENTIAL DETERMINATION.**

9 (a) NAS REVIEW.—Not later than May 31, 2013, the
10 Secretary shall enter into an arrangement with the Na-
11 tional Academy of Sciences to review the use of methyl
12 tertiary butyl ether (hereafter referred to in this section
13 as "MTBE") in fuel and fuel additives. The review shall
14 only use the best available scientific information and data
15 collected by accepted methods or the best available means.
16 The review shall examine the use of MTBE in fuel and
17 fuel additives, significant beneficial and detrimental ef-
18 fects of this use on environmental quality or public health
19 or welfare including the costs and benefits of such effects,
20 likely effects of controls or prohibitions on MTBE regard-
21 ing fuel availability and price, and other appropriate and
22 reasonable actions that are available to protect the envi-
23 ronment or public health or welfare from any detrimental
24 effects of the use of MTBE in fuel or fuel additives. The
25 review shall be peer-reviewed prior to publication and all

1 supporting data and analytical models shall be available
2 to the public. The review shall commence after May 31,
3 2013, and shall be completed no later than May 31, 2014.
4 (b) PRESIDENTIAL DETERMINATION.—After comple-
5 tion of the review under subsection (a) and no later than
6 June 30, 2014, the President may make a determination
7 that restrictions on the use of MTBE to be implemented
8 pursuant to section 1504 shall not take place and that
9 the legal authority contained in section 1504 to prohibit
10 the use of MTBE in motor vehicle fuel shall become null
11 and void.

12 **SEC. 1506. ELIMINATION OF OXYGEN CONTENT REQUIRE-**
13 **MENT FOR REFORMULATED GASOLINE.**

14 (a) ELIMINATION.—
15 (1) IN GENERAL.—Section 211(k) of the Clean
16 Air Act (42 U.S.C. 7545(k)) is amended as follows:
17 (A) In paragraph (2)—
18 (i) in the second sentence of subpara-
19 graph (A), by striking "(including the oxy-
20 gen content requirement contained in sub-
21 paragraph (B))";
22 (ii) by striking subparagraph (B); and
23 (iii) by redesignating subparagraphs
24 (C) and (D) as subparagraphs (B) and
25 (C), respectively.

1 (B) In paragraph (3)(A), by striking
2 clause (v).
3 (C) In paragraph (7)—
4 (i) in subparagraph (A)—
5 (I) by striking clause (i); and
6 (II) by redesignating clauses (ii)
7 and (iii) as clauses (i) and (ii), respec-
8 tively; and
9 (ii) in subparagraph (C)—
10 (I) by striking clause (ii).
11 (II) by redesignating clause (iii)
12 as clause (ii).
13 (2) EFFECTIVE DATE.—The amendments made
14 by paragraph (1) take effect 270 days after the date
15 of enactment of this Act, except that such amend-
16 ments shall take effect upon such date of enactment
17 in any State that has received a waiver under sec-
18 tion 209(b) of the Clean Air Act.
19 (b) MAINTENANCE OF TOXIC AIR POLLUTANT EMIS-
20 SION REDUCTIONS.—Section 211(k)(1) of the Clean Air
21 Act (42 U.S.C. 7545(k)(1)) is amended as follows:
22 (1) By striking ''Within 1 year after the enact-
23 ment of the Clean Air Act Amendments of 1990,''
24 and inserting the following:

1 "(A) IN GENERAL.—Not later than No-
2 vember 15, 1991,".
3 (2) By adding at the end the following:
4 "(B) MAINTENANCE OF TOXIC AIR POL-
5 LUTANT EMISSIONS REDUCTIONS FROM REFOR-
6 MULATED GASOLINE.—
7 "(i) DEFINITIONS.—In this subpara-
8 graph the term 'PADD' means a Petro-
9 leum Administration for Defense District.
10 "(ii) REGULATIONS REGARDING EMIS-
11 SIONS OF TOXIC AIR POLLUTANTS.—Not
12 later than 270 days after the date of en-
13 actment of this subparagraph the Adminis-
14 trator shall establish, for each refinery or
15 importer, standards for toxic air pollutants
16 from use of the reformulated gasoline pro-
17 duced or distributed by the refinery or im-
18 porter that maintain the reduction of the
19 average annual aggregate emissions of
20 toxic air pollutants for reformulated gaso-
21 line produced or distributed by the refinery
22 or importer during calendar years 1999
23 and 2000, determined on the basis of data
24 collected by the Administrator with respect
25 to the refinery or importer.

1 "(iii) STANDARDS APPLICABLE TO
2 SPECIFIC REFINERIES OR IMPORTERS.—
3 "(I) APPLICABILITY OF STAND-
4 ARDS.—For any calendar year, the
5 standards applicable to a refinery or
6 importer under clause (ii) shall apply
7 to the quantity of gasoline produced
8 or distributed by the refinery or im-
9 porter in the calendar year only to the
10 extent that the quantity is less than
11 or equal to the average annual quan-
12 tity of reformulated gasoline produced
13 or distributed by the refinery or im-
14 porter during calendar years 1999
15 and 2000.
16 "(II) APPLICABILITY OF OTHER
17 STANDARDS.—For any calendar year,
18 the quantity of gasoline produced or
19 distributed by a refinery or importer
20 that is in excess of the quantity sub-
21 ject to subclause (I) shall be subject
22 to standards for toxic air pollutants
23 promulgated under subparagraph (A)
24 and paragraph (3)(B).

1 "(iv) CREDIT PROGRAM.—The Admin-
2 istrator shall provide for the granting and
3 use of credits for emissions of toxic air pol-
4 lutants in the same manner as provided in
5 paragraph (7).
6 "(v) REGIONAL PROTECTION OF
7 TOXICS REDUCTION BASELINES.—
8 "(I) IN GENERAL.—Not later
9 than 60 days after the date of enact-
10 ment of this subparagraph, and not
11 later than April 1 of each calendar
12 year that begins after that date of en-
13 actment, the Administrator shall pub-
14 lish in the Federal Register a report
15 that specifies, with respect to the pre-
16 vious calendar year—
17 "(aa) the quantity of refor-
18 mulated gasoline produced that is
19 in excess of the average annual
20 quantity of reformulated gasoline
21 produced in 1999 and 2000; and
22 "(bb) the reduction of the
23 average annual aggregate emis-
24 sions of toxic air pollutants in
25 each PADD, based on retail sur-

1 vey data or data from other ap-
2 propriate sources.

3 "(II) EFFECT OF FAILURE TO
4 MAINTAIN AGGREGATE TOXICS RE-
5 DUCTIONS.—If, in any calendar year,
6 the reduction of the average annual
7 aggregate emissions of toxic air pol-
8 lutants in a PADD fails to meet or
9 exceed the reduction of the average
10 annual aggregate emissions of toxic
11 air pollutants in the PADD in cal-
12 endar years 1999 and 2000, the Ad-
13 ministrator, not later than 90 days
14 after the date of publication of the re-
15 port for the calendar year under sub-
16 clause (I), shall—

17 "(aa) identify, to the max-
18 imum extent practicable, the rea-
19 sons for the failure, including the
20 sources, volumes, and character-
21 istics of reformulated gasoline
22 that contributed to the failure;
23 and

24 "(bb) promulgate revisions
25 to the regulations promulgated

1 under clause (ii), to take effect
2 not earlier than 180 days but not
3 later than 270 days after the
4 date of promulgation, to provide
5 that, notwithstanding clause
6 (iii)(II), all reformulated gasoline
7 produced or distributed at each
8 refinery or importer shall meet
9 the standards applicable under
10 clause (ii) not later than April 1
11 of the year following the report
12 in subclause (II) and for subse-
13 quent years.
14 "(vi) REGULATIONS TO CONTROL
15 HAZARDOUS AIR POLLUTANTS FROM
16 MOTOR VEHICLES AND MOTOR VEHICLE
17 FUELS.—Not later than July 1, 2005, the
18 Administrator shall promulgate final regu-
19 lations to control hazardous air pollutants
20 from motor vehicles and motor vehicle
21 fuels, as provided for in section 80.1045 of
22 title 40, Code of Federal Regulations (as
23 in effect on the date of enactment of this
24 subparagraph).".

1 (c) CONSOLIDATION IN REFORMULATED GASOLINE
2 REGULATIONS.—Not later than 180 days after the date
3 of enactment of this Act, the Administrator of the Envi-
4 ronmental Protection Agency shall revise the reformulated
5 gasoline regulations under subpart D of part 80 of title
6 40, Code of Federal Regulations, to consolidate the regula-
7 tions applicable to VOC-Control Regions 1 and 2 under
8 section 80.41 of that title by eliminating the less stringent
9 requirements applicable to gasoline designated for VOC-
10 Control Region 2 and instead applying the more stringent
11 requirements applicable to gasoline designated for VOC-
12 Control Region 1.

13 (d) SAVINGS CLAUSE.—Nothing in this section is in-
14 tended to affect or prejudice either any legal claims or ac-
15 tions with respect to regulations promulgated by the Ad-
16 ministrator of the Environmental Protection Agency
17 (hereinafter in this subsection referred to as the ''Admin-
18 istrator'') prior to the date of enactment of this Act re-
19 garding emissions of toxic air pollutants from motor vehi-
20 cles or the adjustment of standards applicable to a specific
21 refinery or importer made under such prior regulations
22 and the Administrator may apply such adjustments to the
23 standards applicable to such refinery or importer under
24 clause (iii)(I) of section 211(k)(1)(B) of the Clean Air Act,
25 except that—

1 (1) the Administrator shall revise such adjust-
2 ments to be based only on calendar years 1999–
3 2000; and
4 (2) for adjustments based on toxic air pollutant
5 emissions from reformulated gasoline significantly
6 below the national annual average emissions of toxic
7 air pollutants from all reformulated gasoline, the
8 Administrator may revise such adjustments to take
9 account of the scope of Federal or State prohibitions
10 on the use of methyl tertiary butyl ether imposed
11 after the date of the enactment of this paragraph,
12 except that any such adjustment shall require such
13 refiner or importer, to the greatest extent prac-
14 ticable, to maintain the reduction achieved during
15 calendar years 1999–2000 in the average annual ag-
16 gregate emissions of toxic air pollutants from refor-
17 mulated gasoline produced or distributed by the re-
18 finery or importer; *Provided*, that any such adjust-
19 ment shall not be made at a level below the average
20 percentage of reductions of emissions of toxic air
21 pollutants for reformulated gasoline supplied to
22 PADD I during calendar years 1999–2000.

23 **SEC. 1507. ANALYSES OF MOTOR VEHICLE FUEL CHANGES.**

24 Section 211 of the Clean Air Act (42 U.S.C. 7545)
25 is amended by inserting after subsection (o) the following:

1 "(p) ANALYSES OF MOTOR VEHICLE FUEL CHANGES
2 AND EMISSIONS MODEL.—
3 "(1) ANTI-BACKSLIDING ANALYSIS.—
4 "(A) DRAFT ANALYSIS.—Not later than 4
5 years after the date of enactment of this sub-
6 section, the Administrator shall publish for pub-
7 lic comment a draft analysis of the changes in
8 emissions of air pollutants and air quality due
9 to the use of motor vehicle fuel and fuel addi-
10 tives resulting from implementation of the
11 amendments made by subtitle A of title XV of
12 the Energy Policy Act of 2005.
13 "(B) FINAL ANALYSIS.—After providing a
14 reasonable opportunity for comment but not
15 later than 5 years after the date of enactment
16 of this paragraph, the Administrator shall pub-
17 lish the analysis in final form.
18 "(2) EMISSIONS MODEL.—For the purposes of
19 this subsection, as soon as the necessary data are
20 available, the Administrator shall develop and final-
21 ize an emissions model that reasonably reflects the
22 effects of gasoline characteristics or components on
23 emissions from vehicles in the motor vehicle fleet
24 during calendar year 2005.".

1 **SEC. 1508. DATA COLLECTION.**

2 Section 205 of the Department of Energy Organiza-
3 tion Act (42 U.S.C. 7135) is amended by adding at the
4 end the following:

5 ''(m) RENEWABLE FUELS SURVEY.—(1) In order to
6 improve the ability to evaluate the effectiveness of the Na-
7 tion's renewable fuels mandate, the Administrator shall
8 conduct and publish the results of a survey of renewable
9 fuels demand in the motor vehicle fuels market in the
10 United States monthly, and in a manner designed to pro-
11 tect the confidentiality of individual responses. In con-
12 ducting the survey, the Administrator shall collect infor-
13 mation both on a national and regional basis, including
14 each of the following:

15 ''(A) The quantity of renewable fuels produced.

16 ''(B) The quantity of renewable fuels blended.

17 ''(C) The quantity of renewable fuels imported.

18 ''(D) The quantity of renewable fuels de-
19 manded.

20 ''(E) Market price data.

21 ''(F) Such other analyses or evaluations as the
22 Administrator finds is necessary to achieve the pur-
23 poses of this section.

24 ''(2) The Administrator shall also collect or estimate
25 information both on a national and regional basis, pursu-

1 ant to subparagraphs (A) through (F) of paragraph (1),
2 for the 5 years prior to implementation of this subsection.
3 ''(3) This subsection does not affect the authority of
4 the Administrator to collect data under section 52 of the
5 Federal Energy Administration Act of 1974 (15 U.S.C.
6 790a).''.

7 **SEC. 1509. REDUCING THE PROLIFERATION OF STATE FUEL**
8 **CONTROLS.**

9 (a) EPA APPROVAL OF STATE PLANS WITH FUEL
10 CONTROLS.—Section 211(c)(4)(C) of the Clean Air Act
11 (42 U.S.C. 7545(c)(4)(C)) is amended by adding at the
12 end the following: ''The Administrator shall not approve
13 a control or prohibition respecting the use of a fuel or fuel
14 additive under this subparagraph unless the Adminis-
15 trator, after consultation with the Secretary of Energy,
16 publishes in the Federal Register a finding that, in the
17 Administrator's judgment, such control or prohibition will
18 not cause fuel supply or distribution interruptions or have
19 a significant adverse impact on fuel producibility in the
20 affected area or contiguous areas.''.

21 (b) STUDY.—The Administrator of the Environ-
22 mental Protection Agency (hereinafter in this subsection
23 referred to as the ''Administrator''), in cooperation with
24 the Secretary of Energy, shall undertake a study of the
25 projected effects on air quality, the proliferation of fuel

1 blends, fuel availability, and fuel costs of providing a pref-
2 erence for each of the following:
3 (A) Reformulated gasoline referred to in sub-
4 section (k) of section 211 of the Clean Air Act.
5 (B) A low RVP gasoline blend that has been
6 certified by the Administrator as having a Reid
7 Vapor Pressure of 7.0 pounds per square inch (psi).
8 (C) A low RVP gasoline blend that has been
9 certified by the Administrator as having a Reid
10 Vapor Pressure of 7.8 pounds per square inch (psi).
11 In carrying out such study, the Administrator shall obtain
12 comments from affected parties. The Administrator shall
13 submit the results of such study to the Congress not later
14 than 18 months after the date of enactment of this Act,
15 together with any recommended legislative changes.
16 **SEC. 1510. FUEL SYSTEM REQUIREMENTS HARMONIZATION**
17 **STUDY.**
18 (a) STUDY.—
19 (1) IN GENERAL.—The Administrator of the
20 Environmental Protection Agency (hereinafter in
21 this section referred to as the ''Administrator'') and
22 the Secretary of Energy shall jointly conduct a study
23 of Federal, State, and local requirements concerning
24 motor vehicle fuels, including—

1 (A) requirements relating to reformulated
2 gasoline, volatility (measured in Reid vapor
3 pressure), oxygenated fuel, and diesel fuel; and
4 (B) other requirements that vary from
5 State to State, region to region, or locality to
6 locality.
7 (2) REQUIRED ELEMENTS.—The study shall
8 assess—
9 (A) the effect of the variety of require-
10 ments described in paragraph (1) on the supply,
11 quality, and price of motor vehicle fuels avail-
12 able to consumers in various States and local-
13 ities;
14 (B) the effect of the requirements de-
15 scribed in paragraph (1) on achievement of—
16 (i) national, regional, and local air
17 quality standards and goals; and
18 (ii) related environmental and public
19 health protection standards and goals;
20 (C) the effect of Federal, State, and local
21 motor vehicle fuel regulations, including mul-
22 tiple motor vehicle fuel requirements, on—
23 (i) domestic refineries;
24 (ii) the fuel distribution system; and

1 (iii) industry investment in new capac-
2 ity;
3 (D) the effect of the requirements de-
4 scribed in paragraph (1) on emissions from ve-
5 hicles, refineries, and fuel handling facilities;
6 (E) the feasibility of developing national or
7 regional motor vehicle fuel slates for the 48
8 contiguous States that, while improving air
9 quality at the national, regional and local levels
10 consistent with the attainment of national am-
11 bient air quality standards, could—
12 (i) enhance flexibility in the fuel dis-
13 tribution infrastructure and improve fuel
14 fungibility;
15 (ii) reduce price volatility and costs to
16 consumers and producers;
17 (iii) provide increased liquidity to the
18 gasoline market; and
19 (iv) enhance fuel quality, consistency,
20 and supply;
21 (F) the feasibility of providing incentives
22 to promote cleaner burning motor vehicle fuel;
23 and
24 (G) the extent to which improvements in
25 air quality and any increases or decreases in

1 the price of motor fuel can be projected to re-
2 sult from the Environmental Protection Agen-
3 cy's Tier II requirements for conventional gaso-
4 line and vehicle emission systems, on-road and
5 off-road diesel rules, the reformulated gasoline
6 program, the renewable content requirements
7 established by this subtitle, State programs re-
8 garding gasoline volatility, and any other re-
9 quirements imposed by the Federal Govern-
10 ment, States or localities affecting the composi-
11 tion of motor fuel.

12 (b) REPORT.—

13 (1) IN GENERAL.—Not later than December 31,
14 2009, the Administrator and the Secretary of En-
15 ergy shall submit to Congress a report on the results
16 of the study conducted under subsection (a).

17 (2) RECOMMENDATIONS.—

18 (A) IN GENERAL.—The report under this
19 subsection shall contain recommendations for
20 legislative and administrative actions that may
21 be taken—

22 (i) to improve air quality;

23 (ii) to reduce costs to consumers and
24 producers; and

25 (iii) to increase supply liquidity.

1 (B) REQUIRED CONSIDERATIONS.—The
2 recommendations under subparagraph (A) shall
3 take into account the need to provide advance
4 notice of required modifications to refinery and
5 fuel distribution systems in order to ensure an
6 adequate supply of motor vehicle fuel in all
7 States.
8 (3) CONSULTATION.—In developing the report
9 under this subsection, the Administrator and the
10 Secretary of Energy shall consult with—
11 (A) the Governors of the States;
12 (B) automobile manufacturers;
13 (C) motor vehicle fuel producers and dis-
14 tributors; and
15 (D) the public.
16 **SEC. 1511. COMMERCIAL BYPRODUCTS FROM MUNICIPAL**
17 **SOLID WASTE AND CELLULOSIC BIOMASS**
18 **LOAN GUARANTEE PROGRAM.**
19 (a) DEFINITION OF MUNICIPAL SOLID WASTE.—In
20 this section, the term ''municipal solid waste'' has the
21 meaning given the term ''solid waste'' in section 1004 of
22 the Solid Waste Disposal Act (42 U.S.C. 6903).
23 (b) ESTABLISHMENT OF PROGRAM.—The Secretary
24 of Energy (hereinafter in this section referred to as the
25 ''Secretary'') shall establish a program to provide guaran-

1 tees of loans by private institutions for the construction
2 of facilities for the processing and conversion of municipal
3 solid waste and cellulosic biomass into fuel ethanol and
4 other commercial byproducts.

5 (c) REQUIREMENTS.—The Secretary may provide a
6 loan guarantee under subsection (b) to an applicant if—

7 (1) without a loan guarantee, credit is not
8 available to the applicant under reasonable terms or
9 conditions sufficient to finance the construction of a
10 facility described in subsection (b);

11 (2) the prospective earning power of the appli-
12 cant and the character and value of the security
13 pledged provide a reasonable assurance of repayment
14 of the loan to be guaranteed in accordance with the
15 terms of the loan; and

16 (3) the loan bears interest at a rate determined
17 by the Secretary to be reasonable, taking into ac-
18 count the current average yield on outstanding obli-
19 gations of the United States with remaining periods
20 of maturity comparable to the maturity of the loan.

21 (d) CRITERIA.—In selecting recipients of loan guar-
22 antees from among applicants, the Secretary shall give
23 preference to proposals that—

24 (1) meet all applicable Federal and State per-
25 mitting requirements;

1 (2) are most likely to be successful; and
2 (3) are located in local markets that have the
3 greatest need for the facility because of—
4 (A) the limited availability of land for
5 waste disposal;
6 (B) the availability of sufficient quantities
7 of cellulosic biomass; or
8 (C) a high level of demand for fuel ethanol
9 or other commercial byproducts of the facility.
10 (e) MATURITY.—A loan guaranteed under subsection
11 (b) shall have a maturity of not more than 20 years.
12 (f) TERMS AND CONDITIONS.—The loan agreement
13 for a loan guaranteed under subsection (b) shall provide
14 that no provision of the loan agreement may be amended
15 or waived without the consent of the Secretary.
16 (g) ASSURANCE OF REPAYMENT.—The Secretary
17 shall require that an applicant for a loan guarantee under
18 subsection (b) provide an assurance of repayment in the
19 form of a performance bond, insurance, collateral, or other
20 means acceptable to the Secretary in an amount equal to
21 not less than 20 percent of the amount of the loan.
22 (h) GUARANTEE FEE.—The recipient of a loan guar-
23 antee under subsection (b) shall pay the Secretary an
24 amount determined by the Secretary to be sufficient to

1 cover the administrative costs of the Secretary relating to
2 the loan guarantee.

3 (i) FULL FAITH AND CREDIT.—The full faith and
4 credit of the United States is pledged to the payment of
5 all guarantees made under this section. Any such guar-
6 antee made by the Secretary shall be conclusive evidence
7 of the eligibility of the loan for the guarantee with respect
8 to principal and interest. The validity of the guarantee
9 shall be incontestable in the hands of a holder of the guar-
10 anteed loan.

11 (j) REPORTS.—Until each guaranteed loan under this
12 section has been repaid in full, the Secretary shall annu-
13 ally submit to Congress a report on the activities of the
14 Secretary under this section.

15 (k) AUTHORIZATION OF APPROPRIATIONS.—There
16 are authorized to be appropriated such sums as are nec-
17 essary to carry out this section.

18 (l) TERMINATION OF AUTHORITY.—The authority of
19 the Secretary to issue a loan guarantee under subsection
20 (b) terminates on the date that is 10 years after the date
21 of enactment of this Act.

1 **SEC. 1512. CONVERSION ASSITANCE FOR CELLULOSIC BIO-**
2 **MASS, WASTE-DERIVED ETHANOL, APPROVED**
3 **RENEWABLE FUELS.**

4 Section 211 of the Clean Air Act (42 U.S.C. 7545)
5 is amended by adding at the end the following:

6 "(r) CONVERSION ASSISTANCE FOR CELLULOSIC
7 BIOMASS, WASTE-DERIVED ETHANOL, APPROVED RE-
8 NEWABLE FUELS.—

9 "(1) IN GENERAL.—The Secretary of Energy
10 may provide grants to merchant producers of cel-
11 lulosic biomass ethanol, waste-derived ethanol, and
12 approved renewable fules in the United States to as-
13 sist the producers in building eligible production fa-
14 cilities described in paragraph (2) for the production
15 of ethanol or approved renewable fuels.

16 "(2) ELIGIBLE PRODUCTION FACILITIES.—A
17 production facility shall be eligible to receive a grant
18 under this subsection if the production facility—

19 "(A) is located in the United States; and

20 "(B) uses cellulosic or renewable biomass
21 or waste-derived feedstocks derived from agri-
22 cultural residues, wood residues, municipal solid
23 waste, or agricultural byproducts as that term
24 is used in section 919 of the Energy Policy Act
25 of 2005.

1 ‘‘(3) AUTHORIZATION OF APPROPRIATIONS.—
2 There are authorized to be appropriated the fol-
3 lowing amounts to carry out this subsection:
4 ‘‘(A) $100,000,000 for fiscal year 2005.
5 ‘‘(B) $250,000,000 for fiscal year 2006.
6 ‘‘(C) $400,000,000 for fiscal year 2007.
7 ‘‘(4) DEFINITIONS.—For the purposes of this
8 subsection:
9 ‘‘(A) The term ‘approved renewable fuels’
10 are fuels and components of fuels that have
11 been approved by the Department of Energy, as
12 defined in section 301 of the Energy Policy Act
13 of 1992 (42 U.S.C. 13211)), which have been
14 made from renewable biomass.
15 ‘‘(B) The term ‘renewable biomass’ is, as
16 defined in Presidential Executive Order 13134,
17 published in the Federal Register on August
18 16, 1999, any organic matter that is available
19 on a renewable or recurring basis (excluding
20 old-growth timber), including dedicated energy
21 crops and trees, agricultural food and feed crop
22 residues, acquatic plants, animal wastes, wood
23 and wood residues, paper and paper residues,
24 and other vegetative waste materials. Old-
25 growth timber means timber of a forest from

1 the late successional stage of forest develop-
2 ment.''.

3 **SEC. 1513. BLENDING OF COMPLIANT REFORMULATED GAS-**
4 **OLINES.**

5 Section 211 of the Clean Air Act (42 U.S.C. 7545)
6 is amended by adding at the end the following:

7 ''(s) BLENDING OF COMPLIANT REFORMULATED
8 GASOLINES.—

9 ''(1) IN GENERAL.—Notwithstanding sub-
10 sections (h) and (k) and subject to the limitations in
11 paragraph (2) of this subsection, it shall not be a
12 violation of this subtitle for a gasoline retailer, dur-
13 ing any month of the year, to blend at a retail loca-
14 tion batches of ethanol-blended and non-ethanol-
15 blended reformulated gasoline, provided that—

16 ''(A) each batch of gasoline to be blended
17 has been individually certified as in compliance
18 with subsections (h) and (k) prior to being
19 blended;

20 ''(B) the retailer notifies the Administrator
21 prior to such blending, and identifies the exact
22 location of the retail station and the specific
23 tank in which such blending will take place;

24 ''(C) the retailer retains and, as requested
25 by the Administrator or the Administrator's

1 designee, makes available for inspection such
2 certifications accounting for all gasoline at the
3 retail outlet; and

4 ‘‘(D) the retailer does not, between June 1
5 and September 15 of each year, blend a batch
6 of VOC-controlled, or ‘summer’, gasoline with a
7 batch of non-VOC-controlled, or ‘winter’, gaso-
8 line (as these terms are defined under sub-
9 sections (h) and (k)).

10 ‘‘(2) LIMITATIONS.—

11 ‘‘(A) FREQUENCY LIMITATION.—A retailer shall
12 only be permitted to blend batches of compliant re-
13 formulated gasoline under this subsection a max-
14 imum of two blending periods between May 1 and
15 September 15 of each calendar year.

16 ‘‘(B) DURATION OF BLENDING PERIOD.—Each
17 blending period authorized under subparagraph (A)
18 shall extend for a period of no more than 10 con-
19 secutive calendar days.

20 ‘‘(3) SURVEYS.—A sample of gasoline taken
21 from a retail location that has blended gasoline with-
22 in the past 30 days and is in compliance with sub-
23 paragraphs (A), (B), (C), and (D) of paragraph (1)
24 shall not be used in a VOC survey mandated by 40
25 C.F.R. Part 80.

1 "(4) STATE IMPLEMENTATION PLANS.—A State
2 shall be held harmless and shall not be required to
3 revise its State implementation plan under section
4 110 to account for the emissions from blended gaso-
5 line authorized under paragraph (1).
6 "(5) PRESERVATION OF STATE LAW.—Nothing
7 in this subsection shall—
8 "(A) preempt existing State laws or regu-
9 lations regulating the blending of compliant
10 gasolines; or
11 "(B) prohibit a State from adopting such
12 restrictions in the future.
13 "(6) REGULATIONS.—The Administrator shall
14 promulgate, after notice and comment, regulations
15 implementing this subsection within one year after
16 the date of enactment of this subsection.
17 "(7) EFFECTIVE DATE.—This subsection shall
18 become effective 15 months after the date of its en-
19 actment and shall apply to blended batches of refor-
20 mulated gasoline on or after that date, regardless of
21 whether the implementing regulations required by
22 paragraph (6) have been promulgated by the Admin-
23 istrator by that date.
24 "(8) LIABILITY.—No person other than the
25 person responsible for blending under this subsection

1 shall be subject to an enforcement action or pen-
2 alties under subsection (d) solely arising from the
3 blending of compliant reformulated gasolines by the
4 retailers.

5 ‘‘(9) FORMULATION OF GASOLINE.—This sub-
6 section does not grant authority to the Adminis-
7 trator or any State (or any subdivision thereof) to
8 require reformulation of gasoline at the refinery to
9 adjust for potential or actual emissions increases due
10 to the blending authorized by this subsection.’’.

11 Subtitle B—Underground Storage 12 Tank Compliance

13 SEC. 1521. SHORT TITLE.

14 This subtitle may be cited as the ‘‘Underground Stor-
15 age Tank Compliance Act of 2005’’.

16 SEC. 1522. LEAKING UNDERGROUND STORAGE TANKS.

17 (a) IN GENERAL.—Section 9004 of the Solid Waste
18 Disposal Act (42 U.S.C. 6991c) is amended by adding at
19 the end the following:

20 ‘‘(f) TRUST FUND DISTRIBUTION.—

21 ‘‘(1) IN GENERAL.—

22 ‘‘(A) AMOUNT AND PERMITTED USES OF
23 DISTRIBUTION.—The Administrator shall dis-
24 tribute to States not less than 80 percent of the
25 funds from the Trust Fund that are made

1 available to the Administrator under section
2 9014(2)(A) for each fiscal year for use in pay-
3 ing the reasonable costs, incurred under a coop-
4 erative agreement with any State for—
5 "(i) corrective actions taken by the
6 State under section 9003(h)(7)(A);
7 "(ii) necessary administrative ex-
8 penses, as determined by the Adminis-
9 trator, that are directly related to State
10 fund or State assurance programs under
11 subsection (c)(1); or
12 "(iii) enforcement, by a State or a
13 local government, of State or local regula-
14 tions pertaining to underground storage
15 tanks regulated under this subtitle.
16 "(B) USE OF FUNDS FOR ENFORCE-
17 MENT.—In addition to the uses of funds au-
18 thorized under subparagraph (A), the Adminis-
19 trator may use funds from the Trust Fund that
20 are not distributed to States under subpara-
21 graph (A) for enforcement of any regulation
22 promulgated by the Administrator under this
23 subtitle.
24 "(C) PROHIBITED USES.—Funds provided
25 to a State by the Administrator under subpara-

1 graph (A) shall not be used by the State to pro-
2 vide financial assistance to an owner or oper-
3 ator to meet any requirement relating to under-
4 ground storage tanks under subparts B, C, D,
5 H, and G of part 280 of title 40, Code of Fed-
6 eral Regulations (as in effect on the date of en-
7 actment of this subsection).

8 ''(2) ALLOCATION.—

9 ''(A) PROCESS.—Subject to subparagraphs
10 (B) and (C), in the case of a State with which
11 the Administrator has entered into a coopera-
12 tive agreement under section 9003(h)(7)(A),
13 the Administrator shall distribute funds from
14 the Trust Fund to the State using an allocation
15 process developed by the Administrator.

16 ''(B) DIVERSION OF STATE FUNDS.—The
17 Administrator shall not distribute funds under
18 subparagraph (A)(iii) of subsection (f)(1) to
19 any State that has diverted funds from a State
20 fund or State assurance program for purposes
21 other than those related to the regulation of un-
22 derground storage tanks covered by this sub-
23 title, with the exception of those transfers that
24 had been completed earlier than the date of en-
25 actment of this subsection.

1 "(C) REVISIONS TO PROCESS.—The Ad-
2 ministrator may revise the allocation process re-
3 ferred to in subparagraph (A) after—
4 "(i) consulting with State agencies re-
5 sponsible for overseeing corrective action
6 for releases from underground storage
7 tanks; and
8 "(ii) taking into consideration, at a
9 minimum, each of the following:
10 "(I) The number of confirmed re-
11 leases from federally regulated leaking
12 underground storage tanks in the
13 States.
14 "(II) The number of federally
15 regulated underground storage tanks
16 in the States.
17 "(III) The performance of the
18 States in implementing and enforcing
19 the program.
20 "(IV) The financial needs of the
21 States.
22 "(V) The ability of the States to
23 use the funds referred to in subpara-
24 graph (A) in any year.

1 "(3) DISTRIBUTIONS TO STATE AGENCIES.—
2 Distributions from the Trust Fund under this sub-
3 section shall be made directly to a State agency
4 that—
5 "(A) enters into a cooperative agreement
6 referred to in paragraph (2)(A); or
7 "(B) is enforcing a State program ap-
8 proved under this section.".
9 (b) WITHDRAWAL OF APPROVAL OF STATE
10 FUNDS.—Section 9004(c) of the Solid Waste Disposal Act
11 (42 U.S.C. 6991c(c)) is amended by inserting the fol-
12 lowing new paragraph at the end thereof:
13 "(6) WITHDRAWAL OF APPROVAL.—After an
14 opportunity for good faith, collaborative efforts to
15 correct financial deficiencies with a State fund, the
16 Administrator may withdraw approval of any State
17 fund or State assurance program to be used as a fi-
18 nancial responsibility mechanism without with-
19 drawing approval of a State underground storage
20 tank program under section 9004(a).".
21 (c) ABILITY TO PAY.—Section 9003(h)(6) of the
22 Solid Waste Disposal Act (42 U.S.C. 6591a(h)(6)) is
23 amended by adding the following new subparagraph at the
24 end thereof:

1 "(E) INABILITY OR LIMITED ABILITY TO
2 PAY.—
3 "(i) IN GENERAL.—In determining
4 the level of recovery effort, or amount that
5 should be recovered, the Administrator (or
6 the State pursuant to paragraph (7)) shall
7 consider the owner or operator's ability to
8 pay. An inability or limited ability to pay
9 corrective action costs must be dem-
10 onstrated to the Administrator (or the
11 State pursuant to paragraph (7)) by the
12 owner or operator.
13 "(ii) CONSIDERATIONS.—In deter-
14 mining whether or not a demonstration is
15 made under clause (i), the Administrator
16 (or the State pursuant to paragraph (7))
17 shall take into consideration the ability of
18 the owner or operator to pay corrective ac-
19 tion costs and still maintain its basic busi-
20 ness operations, including consideration of
21 the overall financial condition of the owner
22 or operator and demonstrable constraints
23 on the ability of the owner or operator to
24 raise revenues.

1 “(iii) INFORMATION.—An owner or
2 operator requesting consideration under
3 this subparagraph shall promptly provide
4 the Administrator (or the State pursuant
5 to paragraph (7)) with all relevant infor-
6 mation needed to determine the ability of
7 the owner or operator to pay corrective ac-
8 tion costs.

9 “(iv) ALTERNATIVE PAYMENT METH-
10 ODS.—The Administrator (or the State
11 pursuant to paragraph (7)) shall consider
12 alternative payment methods as may be
13 necessary or appropriate if the Adminis-
14 trator (or the State pursuant to paragraph
15 (7)) determines that an owner or operator
16 cannot pay all or a portion of the costs in
17 a lump sum payment.

18 “(iii) MISREPRESENTATION.—If an
19 owner or operator provides false informa-
20 tion or otherwise misrepresents their finan-
21 cial situation under clause (ii), the Admin-
22 istrator (or the State pursuant to para-
23 graph (7)) shall seek full recovery of the
24 costs of all such actions pursuant to the
25 provisions of subparagraph (A) without

1 consideration of the factors in subpara-
2 graph (B).''.

3 **SEC. 1523. INSPECTION OF UNDERGROUND STORAGE**
4 **TANKS.**

5 (a) INSPECTION REQUIREMENTS.—Section 9005 of
6 the Solid Waste Disposal Act (42 U.S.C. 6991d) is amend-
7 ed by inserting the following new subsection at the end
8 thereof:

9 ''(c) INSPECTION REQUIREMENTS.—

10 ''(1) UNINSPECTED TANKS.—In the case of un-
11 derground storage tanks regulated under this sub-
12 title that have not undergone an inspection since De-
13 cember 22, 1998, not later than 2 years after the
14 date of enactment of this subsection, the Adminis-
15 trator or a State that receives funding under this
16 subtitle, as appropriate, shall conduct on-site inspec-
17 tions of all such tanks to determine compliance with
18 this subtitle and the regulations under this subtitle
19 (40 C.F.R. 280) or a requirement or standard of a
20 State program developed under section 9004.

21 ''(2) PERIODIC INSPECTIONS.—After completion
22 of all inspections required under paragraph (1), the
23 Administrator or a State that receives funding under
24 this subtitle, as appropriate, shall conduct on-site in-
25 spections of each underground storage tank regu-

1 lated under this subtitle at least once every 3 years
2 to determine compliance with this subtitle and the
3 regulations under this subtitle (40 C.F.R. 280) or a
4 requirement or standard of a State program devel-
5 oped under section 9004. The Administrator may ex-
6 tend for up to one additional year the first 3-year
7 inspection interval under this paragraph if the State
8 demonstrates that it has insufficient resources to
9 complete all such inspections within the first 3-year
10 period.

11 ''(3) INSPECTION AUTHORITY.—Nothing in this
12 section shall be construed to diminish the Adminis-
13 trator's or a State's authorities under section
14 9005(a).''.

15 (b) STUDY OF ALTERNATIVE INSPECTION PRO-
16 GRAMS.—The Administrator of the Environmental Protec-
17 tion Agency, in coordination with a State, shall gather in-
18 formation on compliance assurance programs that could
19 serve as an alternative to the inspection programs under
20 section 9005(c) of the Solid Waste Disposal Act (42
21 U.S.C. 6991d(c)) and shall, within 4 years after the date
22 of enactment of this Act, submit a report to the Congress
23 containing the results of such study.

1 SEC. 1524. OPERATOR TRAINING.

2 (a) IN GENERAL.—Section 9010 of the Solid Waste
3 Disposal Act (42 U.S.C. 6991i) is amended to read as fol-
4 lows:

5 "SEC. 9010. OPERATOR TRAINING.

6 "(a) GUIDELINES.—

7 "(1) IN GENERAL.—Not later than 2 years
8 after the date of enactment of the Underground
9 Storage Tank Compliance Act of 2005, in consulta-
10 tion and cooperation with States and after public no-
11 tice and opportunity for comment, the Administrator
12 shall publish guidelines that specify training require-
13 ments for—

14 "(A) persons having primary responsibility
15 for on-site operation and maintenance of under-
16 ground storage tank systems;

17 "(B) persons having daily on-site responsi-
18 bility for the operation and maintenance of un-
19 derground storage tanks systems; and

20 "(C) daily, on-site employees having pri-
21 mary responsibility for addressing emergencies
22 presented by a spill or release from an under-
23 ground storage tank system.

24 "(2) CONSIDERATIONS.—The guidelines de-
25 scribed in paragraph (1) shall take into account—

1 ‘‘(A) State training programs in existence
2 as of the date of publication of the guidelines;
3 ‘‘(B) training programs that are being em-
4 ployed by tank owners and tank operators as of
5 the date of enactment of the Underground Stor-
6 age Tank Compliance Act of 2005;
7 ‘‘(C) the high turnover rate of tank opera-
8 tors and other personnel;
9 ‘‘(D) the frequency of improvement in un-
10 derground storage tank equipment technology;
11 ‘‘(E) the nature of the businesses in which
12 the tank operators are engaged;
13 ‘‘(F) the substantial differences in the
14 scope and length of training needed for the dif-
15 ferent classes of persons described in subpara-
16 graphs (A), (B), and (C) of paragraph (1); and
17 ‘‘(G) such other factors as the Adminis-
18 trator determines to be necessary to carry out
19 this section.
20 ‘‘(b) STATE PROGRAMS.—
21 ‘‘(1) IN GENERAL.—Not later than 2 years
22 after the date on which the Administrator publishes
23 the guidelines under subsection (a)(1), each State
24 that receives funding under this subtitle shall de-
25 velop State-specific training requirements that are

1 consistent with the guidelines developed under sub-
2 section (a)(1).
3 "(2) REQUIREMENTS.—State requirements de-
4 scribed in paragraph (1) shall—
5 "(A) be consistent with subsection (a);
6 "(B) be developed in cooperation with tank
7 owners and tank operators;
8 "(C) take into consideration training pro-
9 grams implemented by tank owners and tank
10 operators as of the date of enactment of this
11 section; and
12 "(D) be appropriately communicated to
13 tank owners and operators.
14 "(3) FINANCIAL INCENTIVE.—The Adminis-
15 trator may award to a State that develops and im-
16 plements requirements described in paragraph (1),
17 in addition to any funds that the State is entitled to
18 receive under this subtitle, not more than $200,000,
19 to be used to carry out the requirements.
20 "(c) TRAINING.—All persons that are subject to the
21 operator training requirements of subsection (a) shall—
22 "(1) meet the training requirements developed
23 under subsection (b); and
24 "(2) repeat the applicable requirements devel-
25 oped under subsection (b), if the tank for which they

1 have primary daily on-site management responsibil-
2 ities is determined to be out of compliance with—
3 ‘‘(A) a requirement or standard promul-
4 gated by the Administrator under section 9003;
5 or
6 ‘‘(B) a requirement or standard of a State
7 program approved under section 9004.’’.
8 (b) STATE PROGRAM REQUIREMENT.—Section
9 9004(a) of the Solid Waste Disposal Act (42 U.S.C.
10 6991c(a)) is amended by striking ‘‘and’’ at the end of
11 paragraph (7), by striking the period at the end of para-
12 graph (8) and inserting ‘‘; and’’, and by adding the fol-
13 lowing new paragraph at the end thereof:
14 ‘‘(9) State-specific training requirements as re-
15 quired by section 9010.’’.
16 (c) ENFORCEMENT.—Section 9006(d)(2) of such Act
17 (42 U.S.C. 6991e) is amended as follows:
18 (1) By striking ‘‘or’’ at the end of subpara-
19 graph (B).
20 (2) By adding the following new subparagraph
21 after subparagraph (C):
22 ‘‘(D) the training requirements established by
23 States pursuant to section 9010 (relating to oper-
24 ator training); or’’.

1 (d) TABLE OF CONTENTS.—The item relating to sec-
2 tion 9010 in table of contents for the Solid Waste Disposal
3 Act is amended to read as follows:

"Sec. 9010. Operator training.".

4 **SEC. 1525. REMEDIATION FROM OXYGENATED FUEL ADDI-**
5 **TIVES.**

6 Section 9003(h) of the Solid Waste Disposal Act (42
7 U.S.C. 6991b(h)) is amended as follows:
8 (1) In paragraph (7)(A)—
9 (A) by striking "paragraphs (1) and (2) of
10 this subsection" and inserting "paragraphs (1),
11 (2), and (12)"; and
12 (B) by striking "and including the authori-
13 ties of paragraphs (4), (6), and (8) of this sub-
14 section" and inserting "and the authority under
15 sections 9011 and 9012 and paragraphs (4),
16 (6), and (8),".
17 (2) By adding at the end the following:
18 "(12) REMEDIATION OF OXYGENATED FUEL
19 CONTAMINATION.—
20 "(A) IN GENERAL.—The Administrator
21 and the States may use funds made available
22 under section 9014(2)(B) to carry out correc-
23 tive actions with respect to a release of a fuel
24 containing an oxygenated fuel additive that pre-

1 sents a threat to human health or welfare or
2 the environment.
3 "(B) APPLICABLE AUTHORITY.—The Ad-
4 ministrator or a State shall carry out subpara-
5 graph (A) in accordance with paragraph (2),
6 and in the case of a State, in accordance with
7 a cooperative agreement entered into by the Ad-
8 ministrator and the State under paragraph
9 (7).".

10 **SEC. 1526. RELEASE PREVENTION, COMPLIANCE, AND EN-**
11 **FORCEMENT.**

12 (a) RELEASE PREVENTION AND COMPLIANCE.—Sub-
13 title I of the Solid Waste Disposal Act (42 U.S.C. 6991
14 et seq.) is amended by adding at the end the following:

15 **"SEC. 9011. USE OF FUNDS FOR RELEASE PREVENTION AND**
16 **COMPLIANCE.**

17 "Funds made available under section 9014(2)(D)
18 from the Trust Fund may be used to conduct inspections,
19 issue orders, or bring actions under this subtitle—
20 "(1) by a State, in accordance with a grant or
21 cooperative agreement with the Administrator, of
22 State regulations pertaining to underground storage
23 tanks regulated under this subtitle; and

1 ‘‘(2) by the Administrator, for tanks regulated
2 under this subtitle (including under a State program
3 approved under section 9004).’’.
4 (b) GOVERNMENT-OWNED TANKS.—Section 9003 of
5 the Solid Waste Disposal Act (42 U.S.C. 6991b) is amend-
6 ed by adding at the end the following:
7 ‘‘(i) GOVERNMENT-OWNED TANKS.—
8 ‘‘(1) STATE COMPLIANCE REPORT.—(A) Not
9 later than 2 years after the date of enactment of
10 this subsection, each State that receives funding
11 under this subtitle shall submit to the Administrator
12 a State compliance report that—
13 ‘‘(i) lists the location and owner of each
14 underground storage tank described in subpara-
15 graph (B) in the State that, as of the date of
16 submission of the report, is not in compliance
17 with section 9003; and
18 ‘‘(ii) specifies the date of the last inspec-
19 tion and describes the actions that have been
20 and will be taken to ensure compliance of the
21 underground storage tank listed under clause
22 (i) with this subtitle.
23 ‘‘(B) An underground storage tank described in
24 this subparagraph is an underground storage tank
25 that is—

1 ''(i) regulated under this subtitle; and
2 ''(ii) owned or operated by the Federal,
3 State, or local government.
4 ''(C) The Administrator shall make each report,
5 received under subparagraph (A), available to the
6 public through an appropriate media.
7 ''(2) FINANCIAL INCENTIVE.—The Adminis-
8 trator may award to a State that develops a report
9 described in paragraph (1), in addition to any other
10 funds that the State is entitled to receive under this
11 subtitle, not more than $50,000, to be used to carry
12 out the report.
13 ''(3) NOT A SAFE HARBOR.—This subsection
14 does not relieve any person from any obligation or
15 requirement under this subtitle.''.
16 (c) PUBLIC RECORD.—Section 9002 of the Solid
17 Waste Disposal Act (42 U.S.C. 6991a) is amended by add-
18 ing at the end the following:
19 ''(d) PUBLIC RECORD.—
20 ''(1) IN GENERAL.—The Administrator shall re-
21 quire each State that receives Federal funds to carry
22 out this subtitle to maintain, update at least annu-
23 ally, and make available to the public, in such man-
24 ner and form as the Administrator shall prescribe

1 (after consultation with States), a record of under-
2 ground storage tanks regulated under this subtitle.
3 ''(2) CONSIDERATIONS.—To the maximum ex-
4 tent practicable, the public record of a State, respec-
5 tively, shall include, for each year—
6 ''(A) the number, sources, and causes of
7 underground storage tank releases in the State;
8 ''(B) the record of compliance by under-
9 ground storage tanks in the State with—
10 ''(i) this subtitle; or
11 ''(ii) an applicable State program ap-
12 proved under section 9004; and
13 ''(C) data on the number of underground
14 storage tank equipment failures in the State.''.
15 (d) INCENTIVE FOR PERFORMANCE.—Section 9006
16 of the Solid Waste Disposal Act (42 U.S.C. 6991e) is
17 amended by adding at the end the following:
18 ''(e) INCENTIVE FOR PERFORMANCE.—Both of the
19 following may be taken into account in determining the
20 terms of a civil penalty under subsection (d):
21 ''(1) The compliance history of an owner or op-
22 erator in accordance with this subtitle or a program
23 approved under section 9004.
24 ''(2) Any other factor the Administrator con-
25 siders appropriate.''.

1 (e) TABLE OF CONTENTS.—The table of contents for
2 such subtitle I is amended by adding the following new
3 item at the end thereof:

"Sec. 9011. Use of funds for release prevention and compliance.".

4 **SEC. 1527. DELIVERY PROHIBITION.**

5 (a) IN GENERAL.—Subtitle I of the Solid Waste Dis-
6 posal Act (42 U.S.C. 6991 et seq.) is amended by adding
7 at the end the following:

8 **"SEC. 9012. DELIVERY PROHIBITION.**

9 "(a) REQUIREMENTS.—

10 "(1) PROHIBITION OF DELIVERY OR DE-
11 POSIT.—Beginning 2 years after the date of enact-
12 ment of this section, it shall be unlawful to deliver
13 to, deposit into, or accept a regulated substance into
14 an underground storage tank at a facility which has
15 been identified by the Administrator or a State im-
16 plementing agency to be ineligible for fuel delivery or
17 deposit.

18 "(2) GUIDANCE.—Within 1 year after the date
19 of enactment of this section, the Administrator and
20 States that receive funding under this subtitle shall,
21 in consultation with the underground storage tank
22 owner and product delivery industries, for territory
23 for which they are the primary implementing agen-
24 cies, publish guidelines detailing the specific proc-
25 esses and procedures they will use to implement the

1 provisions of this section. The processes and proce-
2 dures include, at a minimum—
3 ‘‘(A) the criteria for determining which un-
4 derground storage tank facilities are ineligible
5 for delivery or deposit;
6 ‘‘(B) the mechanisms for identifying which
7 facilities are ineligible for delivery or deposit to
8 the underground storage tank owning and fuel
9 delivery industries;
10 ‘‘(C) the process for reclassifying ineligible
11 facilities as eligible for delivery or deposit; and
12 ‘‘(D) a delineation of, or a process for de-
13 termining, the specified geographic areas sub-
14 ject to paragraph (4).
15 ‘‘(3) DELIVERY PROHIBITION NOTICE.—
16 ‘‘(A) ROSTER.—The Administrator and
17 each State implementing agency that receives
18 funding under this subtitle shall establish with-
19 in 24 months after the date of enactment of
20 this section a Delivery Prohibition Roster list-
21 ing underground storage tanks under the Ad-
22 ministrator's or the State's jurisdiction that are
23 determined to be ineligible for delivery or de-
24 posit pursuant to paragraph (2).

1 "(B) NOTIFICATION.—The Administrator
2 and each State, as appropriate, shall make
3 readily known, to underground storage tank
4 owners and operators and to product delivery
5 industries, the underground storage tanks listed
6 on a Delivery Prohibition Roster by:
7 "(i) posting such Rosters, including
8 the physical location and street address of
9 each listed underground storage tank, on
10 official web sites and, if the Administrator
11 or the State so chooses, other electronic
12 means;
13 "(ii) updating these Rosters periodi-
14 cally; and
15 "(iii) installing a tamper-proof tag,
16 seal, or other device blocking the fill pipes
17 of such underground storage tanks to pre-
18 vent the delivery of product into such un-
19 derground storage tanks.
20 "(C) ROSTER UPDATES.—The Adminis-
21 trator and the State shall update the Delivery
22 Prohibition Rosters as appropriate, but not less
23 than once a month on the first day of the
24 month.
25 "(D) TAMPERING WITH DEVICE.—

1 "(i) PROHIBITION.—It shall be unlaw-
2 ful for any person, other than an author-
3 ized representative of the Administrator or
4 a State, as appropriate, to remove, tamper
5 with, destroy, or damage a device installed
6 by the Administrator or a State, as appro-
7 priate, under subparagraph (B)(iii) of this
8 subsection.
9 "(ii) CIVIL PENALTIES.—Any person
10 violating clause (i) of this subparagraph
11 shall be subject to a civil penalty not to ex-
12 ceed $10,000 for each violation.
13 "(4) LIMITATION.—
14 "(A) RURAL AND REMOTE AREAS.—Sub-
15 ject to subparagraph (B), the Administrator or
16 a State shall not include an underground stor-
17 age tank on a Delivery Prohibition Roster
18 under paragraph (3) if an urgent threat to pub-
19 lic health, as determined by the Administrator,
20 does not exist and if such a delivery prohibition
21 would jeopardize the availability of, or access
22 to, fuel in any rural and remote areas.
23 "(B) APPLICABILITY OF LIMITATION.—
24 The limitation under subparagraph (A) shall
25 apply only during the 180-day period following

1 the date of a determination by the Adminis-
2 trator or the appropriate State that exercising
3 the authority of paragraph (3) is limited by
4 subparagraph (A).

5 ''(b) EFFECT ON STATE AUTHORITY.—Nothing in
6 this section shall affect the authority of a State to prohibit
7 the delivery of a regulated substance to an underground
8 storage tank.

9 ''(c) DEFENSE TO VIOLATION.—A person shall not
10 be in violation of subsection (a)(1) if the underground
11 storage tank into which a regulated substance is delivered
12 is not listed on the Administrator's or the appropriate
13 State's Prohibited Delivery Roster 7 calendar days prior
14 to the delivery being made.''.

15 (b) ENFORCEMENT.—Section 9006(d)(2) of such Act
16 (42 U.S.C. 6991e(d)(2)) is amended as follows:

17 (1) By adding the following new subparagraph
18 after subparagraph (D):

19 ''(E) the delivery prohibition requirement estab-
20 lished by section 9012,''.

21 (2) By adding the following new sentence at the
22 end thereof: ''Any person making or accepting a de-
23 livery or deposit of a regulated substance to an un-
24 derground storage tank at an ineligible facility in

1 violation of section 9012 shall also be subject to the
2 same civil penalty for each day of such violation.''.
3 (c) TABLE OF CONTENTS.—The table of contents for
4 such subtitle I is amended by adding the following new
5 item at the end thereof:

''Sec. 9012. Delivery prohibition.''.

6 **SEC. 1528. FEDERAL FACILITIES.**

7 Section 9007 of the Solid Waste Disposal Act (42
8 U.S.C. 6991f) is amended to read as follows:

9 **''SEC. 9007. FEDERAL FACILITIES.**

10 ''(a) IN GENERAL.—Each department, agency, and
11 instrumentality of the executive, legislative, and judicial
12 branches of the Federal Government (1) having jurisdic-
13 tion over any underground storage tank or underground
14 storage tank system, or (2) engaged in any activity result-
15 ing, or which may result, in the installation, operation,
16 management, or closure of any underground storage tank,
17 release response activities related thereto, or in the deliv-
18 ery, acceptance, or deposit of any regulated substance to
19 an underground storage tank or underground storage tank
20 system shall be subject to, and comply with, all Federal,
21 State, interstate, and local requirements, both substantive
22 and procedural (including any requirement for permits or
23 reporting or any provisions for injunctive relief and such
24 sanctions as may be imposed by a court to enforce such
25 relief), respecting underground storage tanks in the same

1 manner, and to the same extent, as any person is subject
2 to such requirements, including the payment of reasonable
3 service charges. The Federal, State, interstate, and local
4 substantive and procedural requirements referred to in
5 this subsection include, but are not limited to, all adminis-
6 trative orders and all civil and administrative penalties
7 and fines, regardless of whether such penalties or fines
8 are punitive or coercive in nature or are imposed for iso-
9 lated, intermittent, or continuing violations. The United
10 States hereby expressly waives any immunity otherwise
11 applicable to the United States with respect to any such
12 substantive or procedural requirement (including, but not
13 limited to, any injunctive relief, administrative order or
14 civil or administrative penalty or fine referred to in the
15 preceding sentence, or reasonable service charge). The rea-
16 sonable service charges referred to in this subsection in-
17 clude, but are not limited to, fees or charges assessed in
18 connection with the processing and issuance of permits,
19 renewal of permits, amendments to permits, review of
20 plans, studies, and other documents, and inspection and
21 monitoring of facilities, as well as any other nondiscrim-
22 inatory charges that are assessed in connection with a
23 Federal, State, interstate, or local underground storage
24 tank regulatory program. Neither the United States, nor
25 any agent, employee, or officer thereof, shall be immune

1 or exempt from any process or sanction of any State or
2 Federal Court with respect to the enforcement of any such
3 injunctive relief. No agent, employee, or officer of the
4 United States shall be personally liable for any civil pen-
5 alty under any Federal, State, interstate, or local law con-
6 cerning underground storage tanks with respect to any act
7 or omission within the scope of the official duties of the
8 agent, employee, or officer. An agent, employee, or officer
9 of the United States shall be subject to any criminal sanc-
10 tion (including, but not limited to, any fine or imprison-
11 ment) under any Federal or State law concerning under-
12 ground storage tanks, but no department, agency, or in-
13 strumentality of the executive, legislative, or judicial
14 branch of the Federal Government shall be subject to any
15 such sanction. The President may exempt any under-
16 ground storage tank of any department, agency, or instru-
17 mentality in the executive branch from compliance with
18 such a requirement if he determines it to be in the para-
19 mount interest of the United States to do so. No such
20 exemption shall be granted due to lack of appropriation
21 unless the President shall have specifically requested such
22 appropriation as a part of the budgetary process and the
23 Congress shall have failed to make available such re-
24 quested appropriation. Any exemption shall be for a period
25 not in excess of one year, but additional exemptions may

1 be granted for periods not to exceed one year upon the
2 President's making a new determination. The President
3 shall report each January to the Congress all exemptions
4 from the requirements of this section granted during the
5 preceding calendar year, together with his reason for
6 granting each such exemption.

7 "(b) REVIEW OF AND REPORT ON FEDERAL UNDER-
8 GROUND STORAGE TANKS.—

9 "(1) REVIEW.—Not later than 12 months after
10 the date of enactment of the Underground Storage
11 Tank Compliance Act of 2005, each Federal agency
12 that owns or operates 1 or more underground stor-
13 age tanks, or that manages land on which 1 or more
14 underground storage tanks are located, shall submit
15 to the Administrator, the Committee on Energy and
16 Commerce of the United States House of Represent-
17 atives, and the Committee on the Environment and
18 Public Works of the United States Senate a compli-
19 ance strategy report that—

20 "(A) lists the location and owner of each
21 underground storage tank described in this
22 paragraph;

23 "(B) lists all tanks that are not in compli-
24 ance with this subtitle that are owned or oper-
25 ated by the Federal agency;

1 "(C) specifies the date of the last inspec-
2 tion by a State or Federal inspector of each un-
3 derground storage tank owned or operated by
4 the agency;
5 "(D) lists each violation of this subtitle re-
6 specting any underground storage tank owned
7 or operated by the agency;
8 "(E) describes the operator training that
9 has been provided to the operator and other
10 persons having primary daily on-site manage-
11 ment responsibility for the operation and main-
12 tenance of underground storage tanks owned or
13 operated by the agency; and
14 "(F) describes the actions that have been
15 and will be taken to ensure compliance for each
16 underground storage tank identified under sub-
17 paragraph (B).
18 "(2) NOT A SAFE HARBOR.—This subsection
19 does not relieve any person from any obligation or
20 requirement under this subtitle.".
21 **SEC. 1529. TANKS ON TRIBAL LANDS.**
22 (a) IN GENERAL.—Subtitle I of the Solid Waste Dis-
23 posal Act (42 U.S.C. 6991 et seq.) is amended by adding
24 the following at the end thereof:

1 **"SEC. 9013. TANKS ON TRIBAL LANDS.**

2 "(a) STRATEGY.—The Administrator, in coordination
3 with Indian tribes, shall, not later than 1 year after the
4 date of enactment of this section, develop and implement
5 a strategy—

6 "(1) giving priority to releases that present the
7 greatest threat to human health or the environment,
8 to take necessary corrective action in response to re-
9 leases from leaking underground storage tanks lo-
10 cated wholly within the boundaries of—

11 "(A) an Indian reservation; or

12 "(B) any other area under the jurisdiction
13 of an Indian tribe; and

14 "(2) to implement and enforce requirements
15 concerning underground storage tanks located wholly
16 within the boundaries of—

17 "(A) an Indian reservation; or

18 "(B) any other area under the jurisdiction
19 of an Indian tribe.

20 "(b) REPORT.—Not later than 2 years after the date
21 of enactment of this section, the Administrator shall sub-
22 mit to Congress a report that summarizes the status of
23 implementation and enforcement of this subtitle in areas
24 located wholly within—

25 "(1) the boundaries of Indian reservations; and

1 “(2) any other areas under the jurisdiction of
2 an Indian tribe.

3 The Administrator shall make the report under this sub-
4 section available to the public.

5 “(c) NOT A SAFE HARBOR.—This section does not
6 relieve any person from any obligation or requirement
7 under this subtitle.

8 “(d) STATE AUTHORITY.—Nothing in this section
9 applies to any underground storage tank that is located
10 in an area under the jurisdiction of a State, or that is
11 subject to regulation by a State, as of the date of enact-
12 ment of this section.”.

13 (b) TABLE OF CONTENTS.—The table of contents for
14 such subtitle I is amended by adding the following new
15 item at the end thereof:

“Sec. 9013. Tanks on Tribal lands.”.

16 **SEC. 1530. ADDITIONAL MEASURES TO PROTECT GROUND-**
17 **WATER.**

18 (a) IN GENERAL.—Section 9003 of the Solid Waste
19 Disposal Act (42 U.S.C. 6991b) is amended by adding the
20 following new subsection at the end:

21 “(i) ADDITIONAL MEASURES TO PROTECT GROUND-
22 WATER FROM CONTAMINATION.—The Administrator shall
23 require each State that receives funding under this sub-
24 title to require one of the following:

1 "(1) TANK AND PIPING SECONDARY CONTAIN-
2 MENT.—(A) Each new underground storage tank, or
3 piping connected to any such new tank, installed
4 after the effective date of this subsection, or any ex-
5 isting underground storage tank, or existing piping
6 connected to such existing tank, that is replaced
7 after the effective date of this subsection, shall be
8 secondarily contained and monitored for leaks if the
9 new or replaced underground storage tank or piping
10 is within 1,000 feet of any existing community water
11 system or any existing potable drinking water well.
12 "(B) In the case of a new underground storage
13 tank system consisting of one or more underground
14 storage tanks and connected by piping, subpara-
15 graph (A) shall apply to all underground storage
16 tanks and connected pipes comprising such system.
17 "(C) In the case of a replacement of an existing
18 underground storage tank or existing piping con-
19 nected to the underground storage tank, subpara-
20 graph (A) shall apply only to the specific under-
21 ground storage tank or piping being replaced, not to
22 other underground storage tanks and connected
23 pipes comprising such system.
24 "(D) Each installation of a new motor fuel dis-
25 penser system, after the effective date of this sub-

1 section, shall include under-dispenser spill contain-
2 ment if the new dispenser is within 1,000 feet of any
3 existing community water system or any existing po-
4 table drinking water well.

5 ''(E) This paragraph shall not apply to repairs
6 to an underground storage tank, piping, or dispenser
7 that are meant to restore a tank, pipe, or dispenser
8 to operating condition

9 ''(F) As used in this subsection:

10 ''(i) The term 'secondarily contained'
11 means a release detection and prevention sys-
12 tem that meets the requirements of 40 CFR
13 280.43(g), but shall not include under-dispenser
14 spill containment or control systems.

15 ''(ii) The term 'underground storage tank'
16 has the meaning given to it in section 9001, ex-
17 cept that such term does not include tank com-
18 binations or more than a single underground
19 pipe connected to a tank.

20 ''(iii) The term 'installation of a new motor
21 fuel dispenser system' means the installation of
22 a new motor fuel dispenser and the equipment
23 necessary to connect the dispenser to the under-
24 ground storage tank system, but does not mean
25 the installation of a motor fuel dispenser in-

1 stalled separately from the equipment need to
2 connect the dispenser to the underground stor-
3 age tank system.

4 ''(2) EVIDENCE OF FINANCIAL RESPONSIBILITY
5 AND CERTIFICATION.—

6 ''(A) MANUFACTURER AND INSTALLER FI-
7 NANCIAL RESPONSIBILITY.—A person that
8 manufactures an underground storage tank or
9 piping for an underground storage tank system
10 or that installs an underground storage tank
11 system is required to maintain evidence of fi-
12 nancial responsibility under section 9003(d) in
13 order to provide for the costs of corrective ac-
14 tions directly related to releases caused by im-
15 proper manufacture or installation unless the
16 person can demonstrate themselves to be al-
17 ready covered as an owner or operator of an
18 underground storage tank under section 9003.

19 ''(B) INSTALLER CERTIFICATION.—The
20 Administrator and each State that receives
21 funding under this subtitle, as appropriate,
22 shall require that a person that installs an un-
23 derground storage tank system is—

24 ''(i) certified or licensed by the tank
25 and piping manufacturer;

1 "(ii) certified or licensed by the Ad-
2 ministrator or a State, as appropriate;
3 "(iii) has their underground storage
4 tank system installation certified by a reg-
5 istered professional engineer with edu-
6 cation and experience in underground stor-
7 age tank system installation;
8 "(iv) has had their installation of the
9 underground storage tank inspected and
10 approved by the Administrator or the
11 State, as appropriate;
12 "(v) compliant with a code of practice
13 developed by a nationally recognized asso-
14 ciation or independent testing laboratory
15 and in accordance with the manufacturers
16 instructions; or
17 "(vi) compliant with another method
18 that is determined by the Administrator or
19 a State, as appropriate, to be no less pro-
20 tective of human health and the environ-
21 ment.".
22 (b) EFFECTIVE DATE.—This subsection shall take
23 effect 18 months after the date of enactment of this sub-
24 section.

(c) PROMULGATION OF REGULATIONS OR GUIDELINES.—The Administrator shall issue regulations or guidelines implementing the requirements of this subsection, including guidance to differentiate between the terms ‘‘repair’’ and ‘‘replace’’ for the purposes of section 9003(i)(1) of the Solid Waste Disposal Act.

(d) PENALTIES.—Section 9006(d)(2) of such Act (42 U.S.C. 6991e(d)(2)) is amended as follows:

(1) By striking ‘‘or’’ at the end of subparagraph (B).

(2) By inserting ‘‘; or’’ at the end of subparagraph (C).

(3) By adding the following new subparagraph after subparagraph (C):

‘‘(D) the requirements established in section 9003(i),’’.

SEC. 1531. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) is amended by adding at the end the following:

‘‘SEC. 9014. AUTHORIZATION OF APPROPRIATIONS.

‘‘There are authorized to be appropriated to the Administrator the following amounts:

1 "(1) To carry out subtitle I (except sections
2 9003(h), 9005(c), 9011 and 9012) $50,000,000 for
3 each of fiscal years 2005 through 2009.
4 "(2) From the Trust Fund, notwithstanding
5 section 9508(c)(1) of the Internal Revenue Code of
6 1986:
7 "(A) to carry out section 9003(h) (except
8 section 9003(h)(12)) $200,000,000 for each of
9 fiscal years 2005 through 2009;
10 "(B) to carry out section 9003(h)(12),
11 $200,000,000 for each of fiscal years 2005
12 through 2009;
13 "(C) to carry out sections 9003(i),
14 9004(f), and 9005(c) $100,000,000 for each of
15 fiscal years 2005 through 2009; and
16 "(D) to carry out sections 9010, 9011,
17 9012, and 9013 $55,000,000 for each of fiscal
18 years 2005 through 2009.".
19 (b) TABLE OF CONTENTS.—The table of contents for
20 such subtitle I is amended by adding the following new
21 item at the end thereof:

"Sec. 9014. Authorization of appropriations.".

22 **SEC. 1532. CONFORMING AMENDMENTS.**

23 (a) IN GENERAL.—Section 9001 of the Solid Waste
24 Disposal Act (42 U.S.C. 6991) is amended as follows:

1 (1) By striking "For the purposes of this sub-
2 title—" and inserting "In this subtitle:".
3 (2) By redesignating paragraphs (1), (2), (3),
4 (4), (5), (6), (7), and (8) as paragraphs (10), (7),
5 (4), (3), (8), (5), (2), and (6), respectively.
6 (3) By inserting before paragraph (2) (as redes-
7 ignated by paragraph (2) of this subsection) the fol-
8 lowing:
9 "(1) INDIAN TRIBE.—
10 "(A) IN GENERAL.—The term 'Indian
11 tribe' means any Indian tribe, band, nation, or
12 other organized group or community that is rec-
13 ognized as being eligible for special programs
14 and services provided by the United States to
15 Indians because of their status as Indians.
16 "(B) INCLUSIONS.—The term 'Indian
17 tribe' includes an Alaska Native village, as de-
18 fined in or established under the Alaska Native
19 Claims Settlement Act (43 U.S.C. 1601 et
20 seq.); and".
21 (4) By inserting after paragraph (8) (as redes-
22 ignated by paragraph (2) of this subsection) the fol-
23 lowing:
24 "(9) TRUST FUND.—The term 'Trust Fund'
25 means the Leaking Underground Storage Tank

1 Trust Fund established by section 9508 of the Inter-
2 nal Revenue Code of 1986.''.
3 (b) CONFORMING AMENDMENTS.—The Solid Waste
4 Disposal Act (42 U.S.C. 6901 and following) is amended
5 as follows:
6 (1) Section 9003(f) (42 U.S.C. 6991b(f)) is
7 amended—
8 (A) in paragraph (1), by striking
9 ''9001(2)(B)'' and inserting ''9001(7)(B)''; and
10 (B) in paragraphs (2) and (3), by striking
11 ''9001(2)(A)'' each place it appears and insert-
12 ing ''9001(7)(A)''.
13 (2) Section 9003(h) (42 U.S.C. 6991b(h)) is
14 amended in paragraphs (1), (2)(C), (7)(A), and (11)
15 by striking ''Leaking Underground Storage Tank
16 Trust Fund'' each place it appears and inserting
17 ''Trust Fund''.
18 (3) Section 9009 (42 U.S.C. 6991h) is
19 amended—
20 (A) in subsection (a), by striking
21 ''9001(2)(B)'' and inserting ''9001(7)(B)''; and
22 (B) in subsection (d), by striking ''section
23 9001(1) (A) and (B)'' and inserting ''subpara-
24 graphs (A) and (B) of section 9001(10)''.

1 **SEC. 1533. TECHNICAL AMENDMENTS.**

2 The Solid Waste Disposal Act is amended as follows:

3 (1) Section 9001(4)(A) (42 U.S.C. 6991(4)(A))
4 is amended by striking ‘‘sustances’’ and inserting
5 ‘‘substances’’.

6 (2) Section 9003(f)(1) (42 U.S.C. 6991b(f)(1))
7 is amended by striking ‘‘subsection (c) and (d) of
8 this section’’ and inserting ‘‘subsections (c) and
9 (d)’’.

10 (3) Section 9004(a) (42 U.S.C. 6991c(a)) is
11 amended by striking ‘‘in 9001(2) (A) or (B) or
12 both’’ and inserting ‘‘in subparagraph (A) or (B) of
13 section 9001(7)’’.

14 (4) Section 9005 (42 U.S.C. 6991d) is
15 amended—

16 (A) in subsection (a), by striking ‘‘study
17 taking’’ and inserting ‘‘study, taking’’;

18 (B) in subsection (b)(1), by striking
19 ‘‘relevent’’ and inserting ‘‘relevant’’; and

20 (C) in subsection (b)(4), by striking
21 ‘‘Evironmental’’ and inserting ‘‘Environ-
22 mental’’.

Subtitle C—Boutique Fuels

SEC. 1541. REDUCING THE PROLIFERATION OF BOUTIQUE FUELS.

(a) TEMPORARY WAIVERS DURING SUPPLY EMERGENCIES.—Section 211(c)(4)(C) of the Clean Air Act (42 U.S.C. 7545(c)(4)(C)) is amended by inserting ''(i)'' after ''(C)'' and by adding the following new clauses at the end thereof:

''(ii) The Administrator may temporarily waive a control or prohibition respecting the use of a fuel or fuel additive required or regulated by the Administrator pursuant to subsection (c), (h), (i), (k), or (m) of this section or prescribed in an applicable implementation plan under section 110 approved by the Administrator under clause (i) of this subparagraph if, after consultation with, and concurrence by, the Secretary of Energy, the Administrator determines that—

''(I) extreme and unusual fuel or fuel additive supply circumstances exist in a State or region of the Nation which prevent the distribution of an adequate supply of the fuel or fuel additive to consumers;

''(II) such extreme and unusual fuel and fuel additive supply circumstances are the result of a natural disaster, an Act of God, a pipeline or refin-

1 ery equipment failure, or another event that could
2 not reasonably have been foreseen or prevented and
3 not the lack of prudent planning on the part of the
4 suppliers of the fuel or fuel additive to such State
5 or region; and

6 ''(III) it is in the public interest to grant the
7 waiver (for example, when a waiver is necessary to
8 meet projected temporary shortfalls in the supply of
9 the fuel or fuel additive in a State or region of the
10 Nation which cannot otherwise be compensated for).

11 ''(iii) If the Administrator makes the determinations
12 required under clause (ii), such a temporary extreme and
13 unusual fuel and fuel additive supply circumstances waiver
14 shall be permitted only if—

15 ''(I) the waiver applies to the smallest geo-
16 graphic area necessary to address the extreme and
17 unusual fuel and fuel additive supply circumstances;

18 ''(II) the waiver is effective for a period of 20
19 calendar days or, if the Administrator determines
20 that a shorter waiver period is adequate, for the
21 shortest practicable time period necessary to permit
22 the correction of the extreme and unusual fuel and
23 fuel additive supply circumstances and to mitigate
24 impact on air quality;

1 "(III) the waiver permits a transitional period,
2 the exact duration of which shall be determined by
3 the Administrator, after the termination of the tem-
4 porary waiver to permit wholesalers and retailers to
5 blend down their wholesale and retail inventory;

6 "(IV) the waiver applies to all persons in the
7 motor fuel distribution system; and

8 "(V) the Administrator has given public notice
9 to all parties in the motor fuel distribution system,
10 and local and State regulators, in the State or re-
11 gion to be covered by the waiver.

12 The term 'motor fuel distribution system' as used in this
13 clause shall be defined by the Administrator through rule-
14 making.

15 "(iv) Within 180 days of the date of enactment of
16 this clause, the Administrator shall promulgate regula-
17 tions to implement clauses (ii) and (iii).

18 "(v) Nothing in this subparagraph shall—

19 "(I) limit or otherwise affect the application of
20 any other waiver authority of the Administrator pur-
21 suant to this section or pursuant to a regulation
22 promulgated pursuant to this section; and

23 "(II) subject any State or person to an enforce-
24 ment action, penalties, or liability solely arising from

1 actions taken pursuant to the issuance of a waiver
2 under this subparagraph.''.
3 (b) LIMIT ON NUMBER OF BOUTIQUE FUELS.—Sec-
4 tion 211(c)(4)(C) of the Clean Air Act (42 U.S.C.
5 7545(c)(4)), as amended by subsection (a), is further
6 amended by adding at the end the following:
7 ''(v)(I) The Administrator shall have no authority,
8 when considering a State implementation plan or a State
9 implementation plan revision, to approve under this para-
10 graph any fuel included in such plan or revision if the ef-
11 fect of such approval increases the total number of fuels
12 approved under this paragraph as of September 1, 2004,
13 in all State implementation plans.
14 ''(II) The Administrator, in consultation with the
15 Secretary of Energy, shall determine the total number of
16 fuels approved under this paragraph as of September 1,
17 2004, in all State implementation plans and shall publish
18 a list of such fuels, including the states and Petroleum
19 Administration for Defense District in which they are
20 used, in the Federal Register for public review and com-
21 ment no later than 90 days after enactment.
22 ''(III) The Administrator shall remove a fuel from the
23 list published under subclause (II) if a fuel ceases to be
24 included in a State implementation plan or if a fuel in
25 a State implementation plan is identical to a Federal fuel

1 formulation implemented by the Administrator, but the
2 Administrator shall not reduce the total number of fuels
3 authorized under the list published under subclause (II).
4 ''(IV) Subclause (I) shall not limit the Administra-
5 tor's authority to approve a control or prohibition respect-
6 ing any new fuel under this paragraph in a State imple-
7 mentation plan or revision to a State implementation plan
8 if such new fuel:
9 ''(aa) completely replaces a fuel on the list pub-
10 lished under subclause (II); or
11 ''(bb) does not increase the total number of
12 fuels on the list published under subclause (II) as of
13 September 1, 2004.
14 In the event that the total number of fuels on the list pub-
15 lished under subclause (II) at the time of the Administra-
16 tor's consideration of a control or prohibition respecting
17 a new fuel is lower than the total number of fuels on such
18 list as of September 1, 2004, the Administrator may ap-
19 prove a control or prohibition respecting a new fuel under
20 this subclause if the Administrator, after consultation with
21 the Secretary of Energy, publishes in the Federal Register
22 after notice and comment a finding that, in the Adminis-
23 trator's judgment, such control or prohibition respecting
24 a new fuel will not cause fuel supply or distribution inter-

1 ruptions or have a significant adverse impact on fuel
2 producibility in the affected area or contiguous areas.
3 "(V) The Administrator shall have no authority
4 under this paragraph, when considering any particular
5 State's implementation plan or a revision to that State's
6 implementation plan, to approve any fuel unless that fuel
7 was, as of the date of such consideration, approved in at
8 least one State implementation plan in the applicable Pe-
9 troleum Administration for Defense District. However, the
10 Administrator may approve as part of a State implementa-
11 tion plan or State implementation plan revision a fuel with
12 a summertime Reid Vapor Pressure of 7.0 psi. In no event
13 shall such approval by the Administrator cause an increase
14 in the total number of fuels on the list published under
15 subclause (II).
16 "(VI) Nothing in this clause shall be construed to
17 have any effect regarding any available authority of States
18 to require the use of any fuel additive registered in accord-
19 ance with subsection (b), including any fuel additive reg-
20 istered in accordance with subsection (b) after the enact-
21 ment of this subclause.".
22 (c) STUDY AND REPORT TO CONGRESS ON BOU-
23 TIQUE FUELS.—
24 (1) JOINT STUDY.—The Administrator of the
25 Environmental Protection Agency and the Secretary

1 of Energy shall undertake a study of the effects on
2 air quality, on the number of fuel blends, on fuel
3 availability, on fuel fungibility, and on fuel costs of
4 the State plan provisions adopted pursuant to sec-
5 tion 211(c)(4)(C) of the Clean Air Act (42 U.S.C.
6 7545(c)(4)(C)).

7 (2) FOCUS OF STUDY.—The primary focus of
8 the study required under paragraph (1) shall be to
9 determine how to develop a Federal fuels system
10 that maximizes motor fuel fungibility and supply,
11 addresses air quality requirements, and reduces
12 motor fuel price volatility including that which has
13 resulted from the proliferation of boutique fuels, and
14 to recommend to Congress such legislative changes
15 as are necessary to implement such a system. The
16 study should include the impacts on overall energy
17 supply, distribution, and use as a result of the legis-
18 lative changes recommended.

19 (3) CONDUCT OF STUDY.—In carrying out their
20 joint duties under this section, the Administrator
21 and the Secretary shall use sound science and objec-
22 tive science practices, shall consider the best avail-
23 able science, shall use data collected by accepted
24 means and shall consider and include a description
25 of the weight of the scientific evidence. The Adminis-

1 trator and the Secretary shall coordinate the study
2 required by this section with other studies required
3 by the act and shall endeavor to avoid duplication of
4 effort with regard to such studies.

5 (4) RESPONSIBILITY OF ADMINISTRATOR.—In
6 carrying out the study required by this section, the
7 Administrator shall coordinate obtaining comments
8 from affected parties interested in the air quality
9 impact assessment portion of the study.

10 (5) RESPONSIBILITY OF SECRETARY.—In car-
11 rying out the study required by this section, the Sec-
12 retary shall coordinate obtaining comments from af-
13 fected parties interested in the fuel availability,
14 number of fuel blends, fuel fungibility and fuel costs
15 portion of the study.

16 (6) REPORT TO CONGRESS.—The Administrator
17 and the Secretary jointly shall submit the results of
18 the study required by this section in a report to the
19 Congress not later than 12 months after the date of
20 the enactment of this Act, together with any rec-
21 ommended regulatory and legislative changes. Such
22 report shall be submitted to the Committee on En-
23 ergy and Commerce of the House of Representatives
24 and the Committee on Environment and Public
25 Works of the Senate.

1 (7) AUTHORIZATION OF APPROPRIATIONS.—
2 There is authorized to be appropriated jointly to the
3 Administrator and the Secretary $500,000 for the
4 completion of the study required under this sub-
5 section.
6 (d) DEFINITIONS.—In this section:
7 (1) The term ''Administrator'' means the Ad-
8 ministrator of the Environmental Protection Agency.
9 (2) The term ''Secretary'' means the Secretary
10 of Energy.
11 (3) The term ''fuel'' means gasoline, diesel fuel,
12 and any other liquid petroleum product commercially
13 known as gasoline and diesel fuel for use in highway
14 and nonroad motor vehicles.
15 (4) The term ''a control or prohibition respect-
16 ing a new fuel'' means a control or prohibition on
17 the formulation, composition, or emissions character-
18 istics of a fuel that would require the increase or de-
19 crease of a constituent in gasoline or diesel fuel.

20 TITLE XVI—STUDIES

21 SEC. 1601. STUDY ON INVENTORY OF PETROLEUM AND 22 NATURAL GAS STORAGE.

23 (a) DEFINITION.—For purposes of this section ''pe-
24 troleum'' means crude oil, motor gasoline, jet fuel, dis-
25 tillates, and propane.

1 (b) STUDY.—The Secretary of Energy shall conduct
2 a study on petroleum and natural gas storage capacity and
3 operational inventory levels, nationwide and by major geo-
4 graphical regions.

5 (c) CONTENTS.—The study shall address—

6 (1) historical normal ranges for petroleum and
7 natural gas inventory levels;

8 (2) historical and projected storage capacity
9 trends;

10 (3) estimated operation inventory levels below
11 which outages, delivery slowdown, rationing, inter-
12 ruptions in service, or other indicators of shortage
13 begin to appear;

14 (4) explanations for inventory levels dropping
15 below normal ranges; and

16 (5) the ability of industry to meet United
17 States demand for petroleum and natural gas with-
18 out shortages or price spikes, when inventory levels
19 are below normal ranges.

20 (d) REPORT TO CONGRESS.—Not later than 1 year
21 after the date of enactment of this Act, the Secretary of
22 Energy shall submit a report to Congress on the results
23 of the study, including findings and any recommendations
24 for preventing future supply shortages.

1 **SEC. 1605. STUDY OF ENERGY EFFICIENCY STANDARDS.**

2 The Secretary of Energy shall contract with the Na-
3 tional Academy of Sciences for a study, to be completed
4 within 1 year after the date of enactment of this Act, to
5 examine whether the goals of energy efficiency standards
6 are best served by measurement of energy consumed, and
7 efficiency improvements, at the actual site of energy con-
8 sumption, or through the full fuel cycle, beginning at the
9 source of energy production. The Secretary shall submit
10 the report to Congress.

11 **SEC. 1606. TELECOMMUTING STUDY.**

12 (a) STUDY REQUIRED.—The Secretary, in consulta-
13 tion with the Commission, the Director of the Office of
14 Personnel Management, the Administrator of General
15 Services, and the Administrator of NTIA, shall conduct
16 a study of the energy conservation implications of the
17 widespread adoption of telecommuting by Federal employ-
18 ees in the United States.

19 (b) REQUIRED SUBJECTS OF STUDY.—The study re-
20 quired by subsection (a) shall analyze the following sub-
21 jects in relation to the energy saving potential of telecom-
22 muting by Federal employees:

23 (1) Reductions of energy use and energy costs
24 in commuting and regular office heating, cooling,
25 and other operations.

1 (2) Other energy reductions accomplished by
2 telecommuting.

3 (3) Existing regulatory barriers that hamper
4 telecommuting, including barriers to broadband tele-
5 communications services deployment.

6 (4) Collateral benefits to the environment, fam-
7 ily life, and other values.

8 (c) REPORT REQUIRED.—The Secretary shall submit
9 to the President and Congress a report on the study re-
10 quired by this section not later than 6 months after the
11 date of enactment of this Act. Such report shall include
12 a description of the results of the analysis of each of the
13 subject described in subsection (b).

14 (d) DEFINITIONS.—As used in this section:

15 (1) SECRETARY.—The term ''Secretary'' means
16 the Secretary of Energy.

17 (2) COMMISSION.—The term ''Commission''
18 means the Federal Communications Commission.

19 (3) NTIA.—The term ''NTIA'' means the Na-
20 tional Telecommunications and Information Admin-
21 istration of the Department of Commerce.

22 (4) TELECOMMUTING.—The term ''telecom-
23 muting'' means the performance of work functions
24 using communications technologies, thereby elimi-

1 nating or substantially reducing the need to com-
2 mute to and from traditional worksites.
3 (5) FEDERAL EMPLOYEE.—The term ''Federal
4 employee'' has the meaning provided the term ''em-
5 ployee'' by section 2105 of title 5, United States
6 Code.

7 **SEC. 1607. LIHEAP REPORT.**

8 Not later than 1 year after the date of enactment
9 of this Act, the Secretary of Health and Human Services
10 shall transmit to Congress a report on how the Low-In-
11 come Home Energy Assistance Program could be used
12 more effectively to prevent loss of life from extreme tem-
13 peratures. In preparing such report, the Secretary shall
14 consult with appropriate officials in all 50 States and the
15 District of Columbia.

16 **SEC. 1608. OIL BYPASS FILTRATION TECHNOLOGY.**

17 The Secretary of Energy and the Administrator of
18 the Environmental Protection Agency shall—
19 (1) conduct a joint study of the benefits of oil
20 bypass filtration technology in reducing demand for
21 oil and protecting the environment;
22 (2) examine the feasibility of using oil bypass
23 filtration technology in Federal motor vehicle fleets;
24 and

1 (3) include in such study, prior to any deter-
2 mination of the feasibility of using oil bypass filtra-
3 tion technology, the evaluation of products and var-
4 ious manufacturers.

5 **SEC. 1609. TOTAL INTEGRATED THERMAL SYSTEMS.**

6 The Secretary of Energy shall—
7 (1) conduct a study of the benefits of total inte-
8 grated thermal systems in reducing demand for oil
9 and protecting the environment; and
10 (2) examine the feasibility of using total inte-
11 grated thermal systems in Department of Defense
12 and other Federal motor vehicle fleets.

13 **SEC. 1610. UNIVERSITY COLLABORATION.**

14 Not later than 2 years after the date of enactment
15 of this Act, the Secretary of Energy shall transmit to Con-
16 gress a report that examines the feasibility of promoting
17 collaborations between large institutions of higher edu-
18 cation and small institutions of higher education through
19 grants, contracts, and cooperative agreements made by the
20 Secretary for energy projects. The Secretary shall also
21 consider providing incentives for the inclusion of small in-
22 stitutions of higher education, including minority-serving
23 institutions, in energy research grants, contracts, and co-
24 operative agreements.

SEC. 1611. RELIABILITY AND CONSUMER PROTECTION ASSESSMENT.

Not later than 5 years after the date of enactment of this Act, and each 5 years thereafter, the Federal Energy Regulatory Commission shall assess the effects of the exemption of electric cooperatives and government-owned utilities from Commission regulation under section 201(f) of the Federal Power Act. The assessment shall include any effects on—

(1) reliability of interstate electric transmission networks;

(2) benefit to consumers, and efficiency, of competitive wholesale electricity markets;

(3) just and reasonable rates for electricity consumers; and

(4) the ability of the Commission to protect electricity consumers.

If the Commission finds that the 201(f) exemption results in adverse effects on consumers or electric reliability, the Commission shall make appropriate recommendations to Congress pursuant to section 311 of the Federal Power Act.

SEC. 1612. REPORT ON ENERGY INTEGRATION WITH LATIN AMERICA.

The Secretary of Energy shall submit an annual report to the Committee on Energy and Commerce of the

1 United States House of Representatives and to the Com-
2 mittee on Energy and Natural Resources of the United
3 States Senate concerning the status of energy export de-
4 velopment in Latin America and efforts by the Secretary
5 and other departments and agencies of the United States
6 to promote energy integration with Latin America. The
7 report shall contain a detailed analysis of the status of
8 energy export development in Mexico and a description of
9 all significant efforts by the Secretary and other depart-
10 ments and agencies to promote a constructive relationship
11 with Mexico regarding the development of that nation's
12 energy capacity. In particular this report shall outline ef-
13 forts the Secretary and other departments and agencies
14 have made to ensure that regulatory approval and over-
15 sight of United States/Mexico border projects that result
16 in the expansion of Mexican energy capacity are effectively
17 coordinated across departments and with the Mexican gov-
18 ernment.

19 **SEC. 1613. LOW-VOLUME GAS RESERVOIR STUDY.**

20 (a) STUDY.—The Secretary of Energy shall make a
21 grant to an organization of oil and gas producing States,
22 specifically those containing significant numbers of mar-
23 ginal oil and natural gas wells, for conducting an annual
24 study of low-volume natural gas reservoirs. Such organiza-

1 tion shall work with the State geologist of each State being
2 studied.

3 (b) CONTENTS.—The studies under this section
4 shall—

5 (1) determine the status and location of mar-
6 ginal wells and gas reservoirs;

7 (2) gather the production information of these
8 marginal wells and reservoirs;

9 (3) estimate the remaining producible reserves
10 based on variable pipeline pressures;

11 (4) locate low-pressure gathering facilities and
12 pipelines;

13 (5) recommend incentives which will enable the
14 continued production of these resources;

15 (6) produce maps and literature to disseminate
16 to States to promote conservation of natural gas re-
17 serves; and

18 (7) evaluate the amount of natural gas that is
19 being wasted through the practice of venting or flar-
20 ing of natural gas produced in association with
21 crude oil well production.

22 (c) DATA ANALYSIS.—Data development and anal-
23 ysis under this section shall be performed by an institution
24 of higher education with GIS capabilities. If the organiza-
25 tion receiving the grant under subsection (a) does not have

1 GIS capabilities, such organization shall contract with one
2 or more entities with—
3 (1) technological capabilities and resources to
4 perform advanced image processing, GIS program-
5 ming, and data analysis; and
6 (2) the ability to—
7 (A) process remotely sensed imagery with
8 high spatial resolution;
9 (B) deploy global positioning systems;
10 (C) process and synthesize existing, vari-
11 able-format gas well, pipeline, gathering facility,
12 and reservoir data;
13 (D) create and query GIS databases with
14 infrastructure location and attribute informa-
15 tion;
16 (E) write computer programs to customize
17 relevant GIS software;
18 (F) generate maps, charts, and graphs
19 which summarize findings from data research
20 for presentation to different audiences; and
21 (G) deliver data in a variety of formats, in-
22 cluding Internet Map Server for query and dis-
23 play, desktop computer display, and access
24 through handheld personal digital assistants.

1 (d) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to the Secretary of En-
3 ergy for carrying out this section—
4 (1) $1,500,000 for fiscal year 2006; and
5 (2) $450,000 for each of the fiscal years 2007
6 through 2010.
7 (e) DEFINITIONS.—For purposes of this section, the
8 term ''GIS'' means geographic information systems tech-
9 nology that facilitates the organization and management
10 of data with a geographic component.

11 **SEC. 1614. CONSOLIDATION OF GASOLINE INDUSTRY.**

12 (a) IN GENERAL.—The Comptroller General of the
13 United States shall conduct a study of the consolidation
14 of the refiners, importers, producers, and wholesalers of
15 gasoline with the sellers of such gasoline at retail. The
16 study shall include an analysis of the impact of such con-
17 solidation on—
18 (1) the retail price of gasoline,
19 (2) small business ownership,
20 (3) other corollary effects on the market econ-
21 omy of fuel distribution,
22 (4) local communities, and
23 (5) other market impacts of such consolidation.

1 (b) SUBMISSION TO CONGRESS.—The Comptroller
2 General shall submit such study to the Congress not later
3 than one year after the date of the enactment of this Act.

4 **SEC. 1615. STUDY OF FUEL SAVINGS FROM INFORMATION**
5 **TECHNOLOGY FOR TRANSPORTATION.**

6 Not later than 2 years after the date of enactment
7 of this Act, the Secretary of Energy shall, in consultation
8 with the Secretary of Transportation, report to Congress
9 on the potential fuel savings from information technology
10 systems that help businesses and consumers to plan their
11 travel and avoid delays. These systems may include web-
12 based real-time transit information systems, congestion in-
13 formation systems, carpool information systems, parking
14 information systems, freight route management, and traf-
15 fic management systems. The report shall include analysis
16 of fuel savings, analysis of system costs, assessment of
17 local, State, and regional differences in applicability, and
18 evaluation of case studies, best practices, and emerging
19 technologies from both the private and public sector.

20 **SEC. 1616. FEASIBILITY STUDY OF MUSTARD SEED BIO-**
21 **DIESEL.**

22 (a) STUDY.—The Secretary of Energy shall enter
23 into an arrangement with the National Academy of
24 Sciences for a study to determine the feasibility of using
25 of mustard seed as a feedstock for biodiesel.

1 (b) CONTENTS.—The study shall include comparisons
2 to other biodiesel feedstocks using the following criteria:
3 (1) Economics from crop production to biodiesel
4 in the typical percentage blends.
5 (2) Adaptability to various geographic and agri-
6 cultural regions in the United States.
7 (3) Percentage and quality of oil content.
8 (4) Cetene ratings, viscosity ratings, emissions
9 for the typical percentage blends.
10 (5) Potential to enhance oil, pesticide and her-
11 bicide qualities.
12 (6) Process technologies to convert into bio-
13 diesel.
14 (7) Usefulness of byproducts from the conver-
15 sion process.
16 (8) Other criteria the National Academy of
17 Sciences considers pertinent.
18 (c) REPORT TO CONGRESS.—Not later than 1 year
19 after the date of enactment of this Act, the National Acad-
20 emy of Sciences shall transmit results of the study to Con-
21 gress, the Secretary of Energy, and the Secretary of Agri-
22 culture, including any findings and recommendations.

TITLE XVII—RENEWABLE ENERGY —RESOURCES

SEC. 1701. GRANTS TO IMPROVE THE COMMERCIAL VALUE OF FOREST BIOMASS FOR ELECTRIC ENERGY, USEFUL HEAT, TRANSPORTATION FUELS, PETROLEUM-BASED PRODUCT SUBSTITUTES, AND OTHER COMMERCIAL PURPOSES.

(a) FINDINGS.—Congress finds the following:

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

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

1 well as diminished fish and wildlife habitat and de-
2 creased timber values.

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

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

25 (5) The United States should—

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

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

10 (b) DEFINITIONS.—In this section:

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

16 (A) to reduce hazardous fuels; or

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

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

23 (3) PERSON.—The term "person" includes—

24 (A) an individual;

1 (B) a community (as determined by the
2 Secretary concerned);
3 (C) an Indian tribe;
4 (D) a small business, micro-business, or a
5 corporation that is incorporated in the United
6 States; and
7 (E) a nonprofit organization.
8 (4) PREFERRED COMMUNITY.—The term ''pre-
9 ferred community'' means—
10 (A) any town, township, municipality, or
11 other similar unit of local government (as deter-
12 mined by the Secretary concerned) that—
13 (i) has a population of not more than
14 50,000 individuals; and
15 (ii) the Secretary concerned, in the
16 sole discretion of the Secretary concerned,
17 determines contains or is located near
18 land, the condition of which is at signifi-
19 cant risk of catastrophic wildfire, disease,
20 or insect infestation or which suffers from
21 disease or insect infestation; or
22 (B) any county that—
23 (i) is not contained within a metro-
24 politan statistical area; and

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

8 (5) SECRETARY CONCERNED.—The term "Sec-
9 retary concerned" means the Secretary of Agri-
10 culture or the Secretary of the Interior.

11 (c) BIOMASS COMMERCIAL USE GRANT PROGRAM.—

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

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

22 (3) MONITORING OF GRANT RECIPIENT ACTIVI-
23 TIES.—As a condition of a grant under this sub-
24 section, the grant recipient shall keep such records
25 as the Secretary concerned may require to fully and

1 correctly disclose the use of the grant funds and all
2 transactions involved in the purchase of biomass.
3 Upon notice by a representative of the Secretary
4 concerned, the grant recipient shall afford the rep-
5 resentative reasonable access to the facility that pur-
6 chases or uses biomass and an opportunity to exam-
7 ine the inventory and records of the facility.

8 (d) IMPROVED BIOMASS USE GRANT PROGRAM.—

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

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

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

1 (e) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated $50,000,000 for each
3 of the fiscal years 2006 through 2016 to carry out this
4 section.
5 (f) REPORT.—Not later than October 1, 2010, the
6 Secretary of Agriculture, in consultation with the Sec-
7 retary of the Interior, shall submit to the Committee on
8 Energy and Natural Resources and the Committee on Ag-
9 riculture, Nutrition, and Forestry of the Senate and the
10 Committee on Resources, the Committee on Energy and
11 Commerce, and the Committee on Agriculture of the
12 House of Representatives a report describing the results
13 of the grant programs authorized by this section. The re-
14 port shall include the following:
15 (1) An identification of the size, type, and the
16 use of biomass by persons that receive grants under
17 this section.
18 (2) The distance between the land from which
19 the biomass was removed and the facility that used
20 the biomass.
21 (3) The economic impacts, particularly new job
22 creation, resulting from the grants to and operation
23 of the eligible operations.

1 **SEC. 1702. ENVIRONMENTAL REVIEW FOR RENEWABLE EN-**
2 **ERGY PROJECTS.**

3 (a) COMPLIANCE WITH NEPA FOR RENEWABLE EN-
4 ERGY PROJECTS.—Notwithstanding any other law, in pre-
5 paring an environmental assessment or environmental im-
6 pact statement required under section 102 of the National
7 Environmental Policy Act of 1969 (42 U.S.C. 4332) with
8 respect to any action authorizing a renewable energy
9 project under the jurisdiction of a Federal agency—

10 (1) no Federal agency is required to identify al-
11 ternative project locations or actions other than the
12 proposed action and the no action alternative; and

13 (2) no Federal agency is required to analyze the
14 environmental effects of alternative locations or ac-
15 tions other than those submitted by the project pro-
16 ponent.

17 (b) CONSIDERATION OF ALTERNATIVES.—In any en-
18 vironmental assessment or environmental impact state-
19 ment referred to in subsection (a), the Federal agency
20 shall only identify and analyze the environmental effects
21 and potential mitigation measures of—

22 (1) the proposed action; and

23 (2) the no action alternative.

24 (c) PUBLIC COMMENT.—In preparing an environ-
25 mental assessment or environmental impact statement re-
26 ferred to in subsection (a), the Federal agency shall only

1 consider public comments that specifically address the pre-
2 ferred action and that are filed within 20 days after publi-
3 cation of a draft environmental assessment or draft envi-
4 ronmental impact statement. Notwithstanding any other
5 law, compliance with this subsection is deemed to satisfy
6 section 102(2) of the National Environmental Policy Act
7 of 1969 (42 U.S.C. 4332(2)) and the applicable regula-
8 tions and administrative guidelines with respect to pro-
9 posed renewable energy projects.

10 (d) RENEWABLE ENERGY PROJECT DEFINED.—For
11 purposes of this section, the term ''renewable energy
12 project''—

13 (1) means any proposal to utilize an energy
14 source other than nuclear power, coal, oil, or natural
15 gas; and

16 (2) includes the use of wind, solar, geothermal,
17 biomass, or tidal forces to generate energy.

18 **SEC. 1703. SENSE OF CONGRESS REGARDING GENERATION**
19 **CAPACITY OF ELECTRICITY FROM RENEW-**
20 **ABLE ENERGY RESOURCES ON PUBLIC**
21 **LANDS.**

22 It is the sense of the Congress that the Secretary of
23 the Interior should, before the end of the 10-year period
24 beginning on the date of enactment of this Act, seek to
25 have approved non-hydropower renewable energy projects

1 located on the public lands with a generation capacity of
2 at least 10,000 megawatts of electricity.

3 TITLE XVIII—GEOTHERMAL 4 ENERGY

5 **SEC. 1801. SHORT TITLE.**

6 This title may be cited as the ''John Rishel Geo-
7 thermal Steam Act Amendments of 2005''.

8 **SEC. 1802. COMPETITIVE LEASE SALE REQUIREMENTS.**

9 Section 4 of the Geothermal Steam Act of 1970 (30
10 U.S.C. 1003) is amended to read as follows:

11 **''SEC. 4. LEASING PROCEDURES.**

12 ''(a) NOMINATIONS.—The Secretary shall accept
13 nominations of lands available for leasing at any time from
14 qualified companies and individuals under this Act.

15 ''(b) COMPETITIVE LEASE SALE REQUIRED.—The
16 Secretary shall hold a competitive lease sale at least once
17 every 2 years for lands in a State which has nominations
18 pending under subsection (a) if such lands are otherwise
19 available for leasing. Lands that are subject to a mining
20 claim for which a plan of operations has been approved
21 by the relevant Federal land management agency are not
22 available for competitive leasing.

23 ''(c) NONCOMPETITIVE LEASING.—

24 ''(1) REQUIREMENT.—The Secretary shall
25 make available for a period of 2 years for non-

1 competitive leasing any tract for which a competitive
2 lease sale is held, but for which the Secretary does
3 not receive any bids in a competitive lease sale.

4 "(2) STATES WITHOUT NOMINATIONS.—In any
5 State for which there are no nominations received
6 under subsection (a) and having a total acreage
7 under lease or the subject of an application for lease
8 of less than 10,000 acres, the Secretary may des-
9 ignate lands available for 2 years for noncompetitive
10 leasing.

11 "(d) LEASES SOLD AS A BLOCK.—If information is
12 available to the Secretary indicating a geothermal resource
13 that could be produced as 1 unit can reasonably be ex-
14 pected to underlie more than 1 parcel to be offered in a
15 competitive lease sale, the parcels for such a resource may
16 be offered for bidding as a block in the competitive lease
17 sale.

18 "(e) AREA SUBJECT TO LEASE FOR GEOTHERMAL
19 RESOURCES.—A geothermal lease for the use of geo-
20 thermal resources shall embrace not more than the
21 amount of acreage determined by the Secretary to be ap-
22 propriate.".

1 **SEC. 1803. DIRECT USE.**

2 (a) FEES FOR DIRECT USE.—Section 5 of the Geo-
3 thermal Steam Act of 1970 (30 U.S.C. 1004) is
4 amended—

5 (1) in paragraph (c) by redesignating subpara-
6 graphs (1) and (2) as subparagraphs (A) and (B);

7 (2) by redesignating paragraphs (a) through (d)
8 in order as paragraphs (1) through (4);

9 (3) by inserting ''(a) IN GENERAL.—'' after
10 ''SEC. 5.''; and

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

12 ''(b) FEES FOR DIRECT USE.—

13 ''(1) IN GENERAL.—Notwithstanding subsection
14 (a)(1), with respect to the direct use of geothermal
15 resources for purposes other than the commercial
16 generation of electricity, the Secretary of the Inte-
17 rior shall establish a schedule of fees and collect fees
18 pursuant to such a schedule in lieu of royalties. Not-
19 withstanding section 102(a)(9) of the Federal Land
20 Policy and Management Act of 1976 (43 U.S.C.
21 1701(a)(9)), the schedule of fees shall be based upon
22 comparable non-Federal fees charged for direct use
23 of geothermal resources within the State concerned.
24 For direct use by a State or local government for
25 public purposes, the fee charged shall be nominal.
26 Leases in existence on the date of enactment of this

1 subsection shall be modified in order to reflect the
2 provisions of this subsection.

3 "(2) FINAL REGULATION.—In issuing any final
4 regulation establishing a schedule of fees under this
5 subsection, the Secretary shall seek—

6 "(A) to provide lessees with a simplified
7 administrative system;

8 "(B) to encourage development of this un-
9 derutilized energy resource on the Federal es-
10 tate; and

11 "(C) to contribute to sustainable economic
12 development opportunities for host commu-
13 nities.".

14 (b) LEASING FOR DIRECT USE.—Section 4 of the
15 Geothermal Steam Act of 1970 (30 U.S.C. 1003) is fur-
16 ther amended by adding at the end the following:

17 "(f) LEASING FOR DIRECT USE OF GEOTHERMAL
18 RESOURCES.—Lands leased under this Act exclusively for
19 direct use of geothermal resources shall be leased to any
20 qualified applicant who first applies for such a lease under
21 regulations issued by the Secretary, if—

22 "(1) the Secretary publishes a notice of the
23 lands proposed for leasing 60 days before the date
24 of the issuance of the lease; and

1 "(2) the Secretary does not receive in the 60-
2 day period beginning on the date of such publication
3 any nomination to include the lands concerned in the
4 next competitive lease sale.

5 "(g) AREA SUBJECT TO LEASE FOR DIRECT USE.—
6 A geothermal lease for the direct use of geothermal re-
7 sources shall embrace not more than the amount of acre-
8 age determined by the Secretary to be reasonably nec-
9 essary for such proposed utilization.".

10 (c) EXISTING LEASES WITH A DIRECT USE FACIL-
11 ITY.—

12 (1) APPLICATION TO CONVERT.—Any lessee
13 under a lease under the Geothermal Steam Act of
14 1970 that was issued before the date of enactment
15 of this Act may apply to the Secretary of the Inte-
16 rior, by not later than 18 months after the date of
17 enactment of this Act, to convert such lease to a
18 lease for direct utilization of geothermal resources in
19 accordance with the amendments made by this sec-
20 tion.

21 (2) CONVERSION.—The Secretary shall approve
22 such an application and convert such a lease to a
23 lease in accordance with the amendments by not
24 later than 180 days after receipt of such application,

1 unless the Secretary determines that the applicant is
2 not a qualified applicant with respect to the lease.
3 (3) APPLICATION OF NEW LEASE TERMS.—The
4 schedule of fees established under the amendment
5 made by subsection (a)(4) shall apply with respect to
6 payments under a lease converted under this sub-
7 section that are due and owing to the United States
8 on or after July 16, 2003.

9 **SEC. 1804. ROYALTIES AND NEAR-TERM PRODUCTION IN-**
10 **CENTIVES.**

11 (a) ROYALTY.—Section 5 of the Geothermal Steam
12 Act of 1970 (30 U.S.C. 1004) is further amended—
13 (1) in subsection (a) by striking paragraph (1)
14 and inserting the following:
15 ''(1) a royalty on electricity produced using geo-
16 thermal resources, other than direct use of geo-
17 thermal resources, that shall be—
18 ''(A) not less than 1 percent and not more
19 than 2.5 percent of the gross proceeds from the
20 sale of electricity produced from such resources
21 during the first 10 years of production under
22 the lease; and
23 ''(B) not less than 2 and not more than 5
24 percent of the gross proceeds from the sale of

1 electricity produced from such resources during
2 each year after such 10-year period;''; and
3 (2) by adding at the end the following:
4 ''(c) FINAL REGULATION ESTABLISHING ROYALTY
5 RATES.—In issuing any final regulation establishing roy-
6 alty rates under this section, the Secretary shall seek—
7 ''(1) to provide lessees a simplified administra-
8 tive system;
9 ''(2) to encourage new development;
10 ''(3) to achieve the same long-term level of roy-
11 alty revenues to States and counties as the regula-
12 tion in effect on the date of enactment of this sub-
13 section; and
14 ''(4) to reflect any change in profitability of op-
15 erations for which royalties will be paid due to the
16 requirements imposed by Federal agencies, including
17 delays.
18 ''(d) CREDITS FOR IN-KIND PAYMENTS OF ELEC-
19 TRICITY.—The Secretary may provide to a lessee a credit
20 against royalties owed under this Act, in an amount equal
21 to the value of electricity provided under contract to a
22 State or county government that is entitled to a portion
23 of such royalties under section 20 of this Act, section 35
24 of the Mineral Leasing Act (30 U.S.C. 191), or section

1 6 of the Mineral Leasing Act for Acquired Lands (30
2 U.S.C. 355), if—
3 ''(1) the Secretary has approved in advance the
4 contract between the lessee and the State or county
5 government for such in-kind payments;
6 ''(2) the contract establishes a specific method-
7 ology to determine the value of such credits; and
8 ''(3) the maximum credit will be equal to the
9 royalty value owed to the State or county that is a
10 party to the contract and the electricity received will
11 serve as the royalty payment from the Federal Gov-
12 ernment to that entity.''.
13 (b) DISPOSAL OF MONEYS FROM SALES, BONUSES,
14 ROYALTIES, AND RENTS.—Section 20 of the Geothermal
15 Steam Act of 1970 (30 U.S.C. 1019) is amended to read
16 as follows:
17 **''SEC. 20. DISPOSAL OF MONEYS FROM SALES, BONUSES,**
18 **RENTALS, AND ROYALTIES.**
19 ''(a) IN GENERAL.—Except with respect to lands in
20 the State of Alaska, all monies received by the United
21 States from sales, bonuses, rentals, and royalties under
22 this Act shall be paid into the Treasury of the United
23 States. Of amounts deposited under this subsection, sub-
24 ject to the provisions of section 35 of the Mineral Leasing
25 Act (30 U.S.C. 191(b)) and section 5(a)(2) of this Act—

1 "(1) 50 percent shall be paid to the State with-
2 in the boundaries of which the leased lands or geo-
3 thermal resources are or were located; and
4 "(2) 25 percent shall be paid to the County
5 within the boundaries of which the leased lands or
6 geothermal resources are or were located.
7 "(b) USE OF PAYMENTS.—Amounts paid to a State
8 or county under subsection (a) shall be used consistent
9 with the terms of section 35 of the Mineral Leasing Act
10 (30 U.S.C. 191).".
11 (c) NEAR-TERM PRODUCTION INCENTIVE FOR EX-
12 ISTING LEASES.—
13 (1) IN GENERAL.—Notwithstanding section
14 5(a) of the Geothermal Steam Act of 1970, the roy-
15 alty required to be paid shall be 50 percent of the
16 amount of the royalty otherwise required, on any
17 lease issued before the date of enactment of this Act
18 that does not convert to new royalty terms under
19 subsection (e)—
20 (A) with respect to commercial production
21 of energy from a facility that begins such pro-
22 duction in the 6-year period beginning on the
23 date of enactment of this Act; or
24 (B) on qualified expansion geothermal en-
25 ergy.

1 (2) 4-YEAR APPLICATION.—Paragraph (1) ap-
2 plies only to new commercial production of energy
3 from a facility in the first 4 years of such produc-
4 tion.
5 (d) DEFINITION OF QUALIFIED EXPANSION GEO-
6 THERMAL ENERGY.—In this section, the term ''qualified
7 expansion geothermal energy'' means geothermal energy
8 produced from a generation facility for which—
9 (1) the production is increased by more than 10
10 percent as a result of expansion of the facility car-
11 ried out in the 6-year period beginning on the date
12 of enactment of this Act; and
13 (2) such production increase is greater than 10
14 percent of the average production by the facility dur-
15 ing the 5-year period preceding the expansion of the
16 facility (as such average is adjusted to reflect any
17 trend, in changes in production during that period).
18 (e) ROYALTY UNDER EXISTING LEASES.—
19 (1) IN GENERAL.—Any lessee under a lease
20 issued under the Geothermal Steam Act of 1970 be-
21 fore the date of enactment of this Act may modify
22 the terms of the lease relating to payment of royal-
23 ties to comply with the amendment made by sub-
24 section (a), by applying to the Secretary of the Inte-

1 rior by not later than 18 months after the date of
2 enactment of this Act.
3 (2) APPLICATION OF MODIFICATION.—Such
4 modification shall apply to any use of geothermal re-
5 sources to which the amendment applies that occurs
6 after the date of that application.
7 (3) CONSULTATION.—The Secretary—
8 (A) shall consult with the State and local
9 governments affected by any proposed changes
10 in lease royalty terms under this subsection;
11 and
12 (B) may establish royalty based on a gross
13 proceeds percentage within the range specified
14 in the amendment made by subsection (a)(1)
15 and with the concurrence of the lessee and the
16 State.

17 **SEC. 1805. EXPEDITING ADMINISTRATIVE ACTION FOR GEO-**
18 **THERMAL LEASING.**

19 (a) TREATMENT OF GEOTHERMAL LEASING WITH
20 RESPECT TO FEDERAL LAND MANAGEMENT PLAN RE-
21 QUIREMENTS.—Section 15 of the Geothermal Steam Act
22 of 1970 (30 U.S.C. 1014) is amended by adding at the
23 end the following:
24 ''(d) TREATMENT OF GEOTHERMAL LEASING UNDER
25 FEDERAL LAND MANAGEMENT PLANS.—Geothermal

1 leasing and development of Federal lands in accordance
2 with this Act is deemed to be consistent with the manage-
3 ment of National Forest System lands under section 6 of
4 the Forest and Rangeland Renewable Resources Planning
5 Act of 1974 (16 U.S.C. 1604) and public lands under sec-
6 tion 202 of the Federal Land Policy and Management Act
7 of 1976 (43 U.S.C. 1712). Land and resource manage-
8 ment plans and land use plans in effect under such sec-
9 tions on the date of the enactment of this subsection are
10 deemed to be adequate to proceed with the issuance of
11 leases under this Act.''.

12 (b) LEASE APPLICATIONS PENDING ON JANUARY 1,
13 2005.—

14 (1) PRIORITY.—It shall be a priority for the
15 Secretary of the Interior, and for the Secretary of
16 Agriculture with respect to National Forest Systems
17 lands, to ensure timely completion of administrative
18 actions necessary to process applications for geo-
19 thermal leasing pending on January 1, 2005.

20 (2) APPLICABLE LAW.—An application referred
21 to in paragraph (1), and any lease issued pursuant
22 to such an application—

23 (A) except as provided in subparagraph
24 (B), shall be subject to this section as in effect
25 on January 1, 2005; or

1 (B) at the election of the applicant, shall
2 be subject to this section as in effect on the ef-
3 fective date of this paragraph.

4 **SEC. 1806. COORDINATION OF GEOTHERMAL LEASING AND**
5 **PERMITTING ON FEDERAL LANDS.**

6 (a) IN GENERAL.—Not later than 180 days after the
7 date of enactment of this section, the Secretary of the In-
8 terior and the Secretary of Agriculture shall enter into and
9 submit to Congress a memorandum of understanding in
10 accordance with this section, the Geothermal Steam Act
11 of 1970 (as amended by this Act), and other applicable
12 laws, regarding coordination of leasing and permitting for
13 geothermal development of public lands and National For-
14 est System lands under their respective jurisdictions.

15 (b) LEASE AND PERMIT APPLICATIONS.—The memo-
16 randum of understanding shall—

17 (1) establish an administrative procedure for
18 processing geothermal lease applications, including
19 lines of authority, steps in application processing,
20 and time limits for application procession;

21 (2) establish a 5-year program for geothermal
22 leasing of lands in the National Forest System, and
23 a process for updating that program every 5 years;
24 and

1 (3) establish a program for reducing the
2 backlog of geothermal lease application pending on
3 January 1, 2005, by 90 percent within the 5-year
4 period beginning on the date of enactment of this
5 Act, including, as necessary, by—

6 (A) issuing leases, rejecting lease applica-
7 tions for failure to comply with the provisions
8 of the regulations under which they were filed,
9 or determining that an original applicant (or
10 the applicant's assigns, heirs, or estate) is no
11 longer interested in pursuing the lease applica-
12 tion;

13 (B) making diligent efforts to directly con-
14 tact the lease applicants (including their heirs,
15 assigns, or estates); and

16 (C) ensuring that no lease application is
17 rejected except in compliance with all require-
18 ments regarding diligent direct contact.

19 (c) DATA RETRIEVAL SYSTEM.—The memorandum
20 of understanding shall establish a joint data retrieval sys-
21 tem that is capable of tracking lease and permit applica-
22 tions and providing to the applicant information as to
23 their status within the Departments of the Interior and
24 Agriculture, including an estimate of the time required for
25 administrative action.

1 **SEC. 1807. REVIEW AND REPORT TO CONGRESS.**

2 The Secretary of the Interior shall promptly review
3 and report to Congress not later than 3 years after the
4 date of enactment of this Act regarding the status of all
5 withdrawals from leasing under the Geothermal Steam Act
6 of 1970 (30 U.S.C. 1001 et seq.) of Federal lands, speci-
7 fying for each such area whether the basis for such with-
8 drawal still applies.

9 **SEC. 1808. REIMBURSEMENT FOR COSTS OF NEPA ANAL-**
10 **YSES, DOCUMENTATION, AND STUDIES.**

11 (a) IN GENERAL.—The Geothermal Steam Act of
12 1970 (30 U.S.C. 1001 et seq.) is amended by adding at
13 the end the following:

14 **"SEC. 30. REIMBURSEMENT FOR COSTS OF CERTAIN ANAL-**
15 **YSES, DOCUMENTATION, AND STUDIES.**

16 "(a) IN GENERAL.—The Secretary of the Interior
17 shall issue regulations under which the Secretary shall re-
18 imburse a person that is a lessee, operator, operating
19 rights owner, or applicant for any lease under this Act
20 for reasonable amounts paid by the person for preparation
21 for the Secretary by a contractor or other person selected
22 by the Secretary of any project-level analysis, documenta-
23 tion, or related study required pursuant to the National
24 Environmental Policy Act of 1969 (42 U.S.C. 4321 et
25 seq.) with respect to the lease.

1 ''(b) CONDITIONS.—The Secretary may provide reim-
2 bursement under subsection (a) only if—
3 ''(1) adequate funding to enable the Secretary
4 to timely prepare the analysis, documentation, or re-
5 lated study is not appropriated;
6 ''(2) the person paid the costs voluntarily;
7 ''(3) the person maintains records of its costs
8 in accordance with regulations issued by the Sec-
9 retary;
10 ''(4) the reimbursement is in the form of a re-
11 duction in the Federal share of the royalty required
12 to be paid for the lease for which the analysis, docu-
13 mentation, or related study is conducted, and is
14 agreed to by the Secretary and the person reim-
15 bursed prior to commencing the analysis, docu-
16 mentation, or related study; and
17 ''(5) the agreement required under paragraph
18 (4) contains provisions—
19 ''(A) reducing royalties owed on lease pro-
20 duction based on market prices;
21 ''(B) stipulating an automatic termination
22 of the royalty reduction upon recovery of docu-
23 mented costs; and
24 ''(C) providing a process by which the les-
25 see may seek reimbursement for circumstances

1 in which production from the specified lease is
2 not possible.''.
3 (b) APPLICATION.—The amendment made by this
4 section shall apply with respect to an analysis, documenta-
5 tion, or a related study conducted on or after the date
6 of enactment of this Act for any lease entered into before,
7 on, or after the date of enactment of this Act.
8 (c) DEADLINE FOR REGULATIONS.—The Secretary
9 shall issue regulations implementing the amendment made
10 by this section by not later than 1 year after the date
11 of enactment of this Act.

12 **SEC. 1809. ASSESSMENT OF GEOTHERMAL ENERGY POTEN-**
13 **TIAL.**

14 The Secretary of Interior, acting through the Direc-
15 tor of the United States Geological Survey and in coopera-
16 tion with the States, shall update the 1978 Assessment
17 of Geothermal Resources, and submit that updated assess-
18 ment to Congress—
19 (1) not later than 3 years after the date of en-
20 actment of this Act; and
21 (2) thereafter as the availability of data and de-
22 velopments in technology warrant.

23 **SEC. 1810. COOPERATIVE OR UNIT PLANS.**

24 Section 18 of the Geothermal Steam Act of 1970 (30
25 U.S.C. 1017) is amended to read as follows:

1 **"SEC. 18. UNIT AND COMMUNITIZATION AGREEMENTS.**

2 "(a) ADOPTION OF UNITS BY LESSEES.—

3 "(1) IN GENERAL.—For the purpose of more
4 properly conserving the natural resources of any
5 geothermal reservoir, field, or like area, or any part
6 thereof (whether or not any part of the geothermal
7 field, or like area, is then subject to any Unit Agree-
8 ment (cooperative plan of development or oper-
9 ation)), lessees thereof and their representatives may
10 unite with each other, or jointly or separately with
11 others, in collectively adopting and operating under
12 a Unit Agreement for such field, or like area, or any
13 part thereof including direct use resources, if deter-
14 mined and certified by the Secretary to be necessary
15 or advisable in the public interest. A majority inter-
16 est of lessees under any single lease shall have the
17 authority to commit that lease to a Unit Agreement.
18 The Secretary of the Interior may also initiate the
19 formation of a Unit Agreement, if such action is in
20 the public interest.

21 "(2) MODIFICATION OF LEASE REQUIREMENTS
22 BY SECRETARY.—The Secretary may, in the discre-
23 tion of the Secretary, and with the consent of the
24 holders of leases involved, establish, alter, change, or
25 revoke rates of operations (including drilling, oper-
26 ations, production, and other requirements) of such

1 leases and make conditions with reference to such
2 leases, with the consent of the lessees, in connection
3 with the creation and operation of any such Unit
4 Agreement as the Secretary may deem necessary or
5 proper to secure the proper protection of the public
6 interest. Leases with unlike lease terms or royalty
7 rates do not need to be modified to be in the same
8 unit.

9 ''(b) REQUIREMENT OF PLANS UNDER NEW
10 LEASES.—The Secretary—

11 ''(1) may provide that geothermal leases issued
12 under this Act shall contain a provision requiring
13 the lessee to operate under such a reasonable Unit
14 Agreement; and

15 ''(2) may prescribe such an Agreement under
16 which such lessee shall operate, which shall ade-
17 quately protect the rights of all parties in interest,
18 including the United States.

19 ''(c) MODIFICATION OF RATE OF PROSPECTING, DE-
20 VELOPMENT, AND PRODUCTION.—The Secretary may re-
21 quire that any Agreement authorized by this section that
22 applies to lands owned by the United States contain a pro-
23 vision under which authority is vested in the Secretary,
24 or any person, committee, or State or Federal officer or
25 agency as may be designated in the Agreement to alter

1 or modify from time to time the rate of prospecting and
2 development and the quantity and rate of production
3 under such an Agreement.

4 "(d) EXCLUSION FROM DETERMINATION OF HOLD-
5 ING OR CONTROL.—Any lands that are subject to any
6 Agreement approved or prescribed by the Secretary under
7 this section shall not be considered in determining hold-
8 ings or control under any provision of this Act.

9 "(e) POOLING OF CERTAIN LANDS.—If separate
10 tracts of lands cannot be independently developed and op-
11 erated to use geothermal resources pursuant to any sec-
12 tion of this Act—

13 "(1) such lands, or a portion thereof, may be
14 pooled with other lands, whether or not owned by
15 the United States, for purposes of development and
16 operation under a Communitization Agreement pro-
17 viding for an apportionment of production or royal-
18 ties among the separate tracts of land comprising
19 the production unit, if such pooling is determined by
20 the Secretary to be in the public interest; and

21 "(2) operation or production pursuant to such
22 an Agreement shall be treated as operation or pro-
23 duction with respect to each tract of land that is
24 subject to the agreement.

1 "(f) UNIT AGREEMENT REVIEW.—No more than 5
2 years after approval of any cooperative or Unit Agreement
3 and at least every 5 years thereafter, the Secretary shall
4 review each such Agreement and, after notice and oppor-
5 tunity for comment, eliminate from inclusion in such
6 Agreement any lands that the Secretary determines are
7 not reasonably necessary for Unit operations under the
8 Agreement. Such elimination shall be based on scientific
9 evidence, and shall occur only if it is determined by the
10 Secretary to be for the purpose of conserving and properly
11 managing the geothermal resource. Any land so eliminated
12 shall be eligible for an extension under subsection (g) of
13 section 6 if it meets the requirements for such an exten-
14 sion.

15 "(g) DRILLING OR DEVELOPMENT CONTRACTS.—
16 The Secretary may, on such conditions as the Secretary
17 may prescribe, approve drilling or development contracts
18 made by 1 or more lessees of geothermal leases, with 1
19 or more persons, associations, or corporations if, in the
20 discretion of the Secretary, the conservation of natural re-
21 sources or the public convenience or necessity may require
22 or the interests of the United States may be best served
23 thereby. All leases operated under such approved drilling
24 or development contracts, and interests thereunder, shall

1 be excepted in determining holdings or control under sec-
2 tion 7.

3 "(h) COORDINATION WITH STATE GOVERNMENTS.—
4 The Secretary shall coordinate unitization and pooling ac-
5 tivities with the appropriate State agencies and shall en-
6 sure that State leases included in any unitization or pool-
7 ing arrangement are treated equally with Federal leases.".

8 **SEC. 1811. ROYALTY ON BYPRODUCTS.**

9 Section 5 of the Geothermal Steam Act of 1970 (30
10 U.S.C. 1004) is further amended in subsection (a) by
11 striking paragraph (2) and inserting the following:

12 "(2) a royalty on any byproduct that is a min-
13 eral named in the first section of the Mineral Leas-
14 ing Act (30 U.S.C. 181), and that is derived from
15 production under the lease, at the rate of the royalty
16 that applies under that Act to production of such
17 mineral under a lease under that Act;".

18 **SEC. 1812. REPEAL OF AUTHORITIES OF SECRETARY TO RE-**
19 **ADJUST TERMS, CONDITIONS, RENTALS, AND**
20 **ROYALTIES.**

21 Section 8 of the Geothermal Steam Act of 1970 (30
22 U.S.C. 1007) is amended by repealing subsection (b), and
23 by redesignating subsection (c) as subsection (b).

1 **SEC. 1813. CREDITING OF RENTAL TOWARD ROYALTY.**

2 Section 5 of the Geothermal Steam Act of 1970 (30
3 U.S.C. 1004) is further amended—

4 (1) in subsection (a)(2) by inserting ''and''
5 after the semicolon at the end;

6 (2) in subsection (a)(3) by striking ''; and'' and
7 inserting a period;

8 (3) by striking paragraph (4) of subsection (a);
9 and

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

11 ''(e) CREDITING OF RENTAL TOWARD ROYALTY.—
12 Any annual rental under this section that is paid with re-
13 spect to a lease before the first day of the year for which
14 the annual rental is owed shall be credited to the amount
15 of royalty that is required to be paid under the lease for
16 that year.''.

17 **SEC. 1814. LEASE DURATION AND WORK COMMITMENT RE-**
18 **QUIREMENTS.**

19 Section 6 of the Geothermal Steam Act of 1970 (30
20 U.S.C. 1005) is amended—

21 (1) by striking so much as precedes subsection
22 (c), and striking subsections (e), (g), (h), (i), and
23 (j);

24 (2) by redesignating subsections (c), (d), and
25 (f) in order as subsections (g), (h), and (i); and

1 (3) by inserting before subsection (g), as so re-
2 designated, the following:

3 **"SEC. 6. LEASE TERM AND WORK COMMITMENT REQUIRE-**
4 **MENTS.**

5 "(a) IN GENERAL.—
6 "(1) PRIMARY TERM.—A geothermal lease shall
7 be for a primary term of 10 years.
8 "(2) INITIAL EXTENSION.—The Secretary shall
9 extend the primary term of a geothermal lease for
10 5 years if, for each year after the fifth year of the
11 lease—
12 "(A) the Secretary determined under sub-
13 section (c) that the lessee satisfied the work
14 commitment requirements that applied to the
15 lease for that year; or
16 "(B) the lessee paid in accordance with
17 subsection (d) the value of any work that was
18 not completed in accordance with those require-
19 ments.
20 "(3) ADDITIONAL EXTENSION.—The Secretary
21 shall extend the primary term of a geothermal lease
22 (after an initial extension under paragraph (2)) for
23 an additional 5 years if, for each year of the initial
24 extension under paragraph (2), the Secretary deter-
25 mined under subsection (c) that the lessee satisfied

1 the work commitment requirements that applied to
2 the lease for that year.

3 "(b) REQUIREMENT TO SATISFY ANNUAL WORK
4 COMMITMENT REQUIREMENT.—

5 "(1) IN GENERAL.—The lessee for a geothermal
6 lease shall, for each year after the fifth year of the
7 lease, satisfy work commitment requirements pre-
8 scribed by the Secretary that apply to the lease for
9 that year.

10 "(2) PRESCRIPTION OF WORK COMMITMENT RE-
11 QUIREMENTS.—The Secretary shall issue regulations
12 prescribing minimum equivalent dollar value work
13 commitment requirements for geothermal leases,
14 that—

15 "(A) require that a lessee, in each year
16 after the fifth year of the primary term of a
17 geothermal lease, diligently work to achieve
18 commercial utilization of geothermal resources
19 under the lease;

20 "(B) describe work that qualifies to meet
21 these requirements and factors, such as force
22 majeure events, that suspend or modify the
23 work commitment obligation;

24 "(C) carry forward and apply to work com-
25 mitment requirements for a year, work com-

1 pleted in any year in the preceding 3-year pe-
2 riod that was in excess of the work required to
3 be performed in that preceding year;
4 "(D) establish transition rules for leases
5 issued before the date of the enactment of this
6 subsection, including terms under which a lease
7 that is near the end of its term on the date of
8 enactment of this subsection may be extended
9 for up to 2 years—
10 "(i) to allow achievement of produc-
11 tion under the lease; or
12 "(ii) to allow the lease to be included
13 in a producing unit; and
14 "(E) establish an annual payment that, at
15 the option of the lessee, may be exercised in lieu
16 of meeting any work requirement for a limited
17 number of years that the Secretary determines
18 will not impair achieving diligent development
19 of the geothermal resource.
20 "(3) GEOTHERMAL LEASE OVERLYING MINING
21 CLAIM.—
22 "(A) EXEMPTION.—The lessee for a geo-
23 thermal lease of an area overlying an area sub-
24 ject to a mining claim for which a plan of oper-
25 ations has been approved by the relevant Fed-

1 eral land management agency is exempt from
2 annual work requirements established under
3 this Act, if development of the geothermal re-
4 source subject to the lease would interfere with
5 the mining operations under such claim.

6 "(B) TERMINATION OF EXEMPTION.—An
7 exemption under this paragraph expires upon
8 the termination of the mining operations.

9 "(4) TERMINATION OF APPLICATION OF RE-
10 QUIREMENTS.—Work commitment requirements pre-
11 scribed under this subsection shall not apply to a
12 geothermal lease after the date on which the geo-
13 thermal resource is utilized under the lease in com-
14 mercial quantities.

15 "(c) DETERMINATION OF WHETHER REQUIREMENTS
16 SATISFIED.—The Secretary shall, by not later than 90
17 days after the end of each year for which work commit-
18 ment requirements under subsection (b) apply to a geo-
19 thermal lease—

20 "(1) determine whether the lessee has satisfied
21 the requirements that apply for that year;

22 "(2) notify the lessee of that determination; and

23 "(3) in the case of a notification that the lessee
24 did not satisfy work commitment requirements for
25 the year, include in the notification—

1 "(A) a description of the specific work that
2 was not completed by the lessee in accordance
3 with the requirements; and
4 "(B) the amount of the dollar value of
5 such work that was not completed, reduced by
6 the amount of expenditures made for work com-
7 pleted in a prior year that is carried forward
8 pursuant to subsection (b)(2)(D).
9 "(d) PAYMENT OF VALUE OF UNCOMPLETED
10 WORK.—
11 "(1) IN GENERAL.—If the Secretary notifies a
12 lessee that the lessee failed to satisfy work commit-
13 ment requirements under subsection (b), the lessee
14 shall pay to the Secretary, by not later than the end
15 of the 60-day period beginning on the date of the
16 notification, the dollar value of work that was not
17 completed by the lessee, in the amount stated in the
18 notification (as reduced under subsection (c)(3)(B)).
19 "(2) FAILURE TO PAY VALUE OF
20 UNCOMPLETED WORK.—If a lessee fails to pay such
21 amount to the Secretary before the end of that pe-
22 riod, the lease shall terminate upon the expiration of
23 the period.
24 "(e) CONTINUATION DURING COMMERCIAL UTILIZA-
25 TION.—

1 "(1) IN GENERAL.—If a geothermal resource
2 that is subject to a geothermal lease is utilized in
3 commercial quantities within the primary term of
4 the lease under subsection (a) (including any exten-
5 sion of the lease under subsection (a)), such lease
6 shall continue until the date on which the geo-
7 thermal resource is no longer utilized in commercial
8 quantities.

9 "(2) CONTINUATION OF ASSOCIATED LEASES.—
10 If a geothermal lease is for an area in which there
11 is injected fluid or steam from a nearby geothermal
12 resource for the purpose of maintaining commercial
13 utilization of a geothermal resource, such lease shall
14 continue until such commercial utilization is termi-
15 nated.

16 "(f) CONVERSION OF GEOTHERMAL LEASE TO MIN-
17 ERAL LEASE.—A lessee under a lease for a geothermal
18 resource that has been utilized for commercial production
19 of electricity, has been determined by the Secretary to be
20 incapable of any further commercial utilization, and is
21 producing any valuable byproduct in payable quantities
22 may, within 6 months after such determination—

23 "(1) convert the lease to a mineral lease under
24 the Mineral Leasing Act (30 U.S.C. 181 et seq.) or
25 under the Mineral Leasing Act for Acquired Lands

(30 U.S.C. 351 et seq.), if the lands that are subject to the lease can be leased under that Act for the production of such byproduct; or

"(2) convert the lease to a mining claim under the general mining laws, if the byproduct is a locatable mineral.".

SEC. 1815. ADVANCED ROYALTIES REQUIRED FOR SUSPENSION OF PRODUCTION.

Section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) is further amended by adding at the end the following:

"(f) ADVANCED ROYALTIES REQUIRED FOR SUSPENSION OF PRODUCTION.—

"(1) CONTINUATION OF LEASE FOLLOWING CESSATION OF PRODUCTION.—If, at any time after commercial production under a geothermal lease is achieved, production ceases for any cause the lease shall remain in full force and effect—

"(A) during the 1-year period beginning on the date production ceases; and

"(B) after such period if, and so long as, the lessee commences and continues diligently and in good faith until such production is resumed the steps, operations, or procedures nec-

1 essary to cause a resumption of such production.
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3 ''(2) ADVANCE ROYALTIES FOLLOWING SUSPENSION OF PRODUCTION.—If production of heat or energy under a geothermal lease is suspended after the date of any such production for which royalty is required under subsection (a) and the terms of paragraph (1) are not met, the Secretary shall require the lessee, until the end of such suspension, to pay royalty in advance at the monthly pro rata rate of the average annual rate at which such royalty was paid each year in the 5-year-period preceding the date of suspension.
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14 ''(3) LIMITATION ON APPLICATION.—Paragraph (2) shall not apply if the suspension is required or otherwise caused by the Secretary, the Secretary of a military department, a State or local government, or a force majeure.''.
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19 **SEC. 1816. ANNUAL RENTAL.**

20 (a) ANNUAL RENTAL RATE.—Section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) is further amended in subsection (a) in paragraph (3) by striking ''$1 per acre or fraction thereof for each year of the lease'' and all that follows through the end of the paragraph and inserting ''$1 per acre or fraction thereof for each year
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1 of the lease through the tenth year in the case of a lease
2 awarded in a noncompetitive lease sale; or $2 per acre or
3 fraction thereof for the first year, $3 per acre or fraction
4 thereof for each of the second through tenth years, in the
5 case of a lease awarded in a competitive lease sale; and
6 $5 per acre or fraction thereof for each year after the 10th
7 year thereof for all leases.''.

8 (b) TERMINATION OF LEASE FOR FAILURE TO PAY
9 RENTAL.—Section 5 of the Geothermal Steam Act of
10 1970 (30 U.S.C. 1004) is further amended by adding at
11 the end the following:

12 ''(g) TERMINATION OF LEASE FOR FAILURE TO PAY
13 RENTAL.—

14 ''(1) IN GENERAL.—The Secretary shall termi-
15 nate any geothermal lease with respect to which
16 rental is not paid in accordance with this Act and
17 the terms of the lease under which the rental is re-
18 quired, upon the expiration of the 45-day period be-
19 ginning on the date of the failure to pay such rental.

20 ''(2) NOTIFICATION.—The Secretary shall
21 promptly notify a lessee that has not paid rental re-
22 quired under the lease that the lease will be termi-
23 nated at the end of the period referred to in para-
24 graph (1).

1 "(3) REINSTATEMENT.—A geothermal lease
2 that would otherwise terminate under paragraph (1)
3 shall not terminate under that paragraph if the les-
4 see pays to the Secretary, before the end of the pe-
5 riod referred to in paragraph (1), the amount of
6 rental due plus a late fee equal to 10 percent of such
7 amount.".

8 **SEC. 1817. DEPOSIT AND USE OF GEOTHERMAL LEASE REV-**
9 **ENUES FOR 5 FISCAL YEARS.**

10 (a) DEPOSIT OF GEOTHERMAL RESOURCES
11 LEASES.—Notwithstanding any other provision of law,
12 amounts received by the United States in the first 5 fiscal
13 years beginning after the date of enactment of this Act
14 as rentals, royalties, and other payments required under
15 leases under the Geothermal Steam Act of 1970, excluding
16 funds required to be paid to State and county govern-
17 ments, shall be deposited into a separate account in the
18 Treasury.

19 (b) USE OF DEPOSITS.—Subject to appropriations,
20 the Secretary may use amounts deposited under sub-
21 section (a) to implement the Geothermal Steam Act of
22 1970 and this Act.

23 **SEC. 1818. REPEAL OF ACREAGE LIMITATIONS.**

24 Section 7 of the Geothermal Steam Act of 1970 (30
25 U.S.C. 1006) is repealed.

1 **SEC. 1819. TECHNICAL AMENDMENTS.**

2 The Geothermal Steam Act of 1970 (30 U.S.C. 1001
3 et seq.) is further amended as follows:

4 (1) By striking ''geothermal steam and associ-
5 ated geothermal resources'' each place it appears
6 and inserting ''geothermal resources''.

7 (2) Section 2(e) (30 U.S.C. 1001(e)) is amend-
8 ed to read as follows:

9 ''(e) 'direct use' means utilization of geothermal
10 resources for commercial, residential, agricultural,
11 public facilities, off-grid generation of electricity, or
12 other energy needs other than the commercial pro-
13 duction of electricity; and''.

14 (3) Section 21 (30 U.S.C. 1020) is amended by
15 striking ''(a) Within one hundred'' and all that fol-
16 lows through ''(b) Geothermal'' and inserting ''Geo-
17 thermal''.

18 (4) The first section (30 U.S.C. 1001 note) is
19 amended by striking ''That this'' and inserting the
20 following:

21 **''SECTION 1. SHORT TITLE.**

22 ''This''.

23 (5) Section 2 (30 U.S.C. 1001) is amended by
24 striking ''SEC. 2. As'' and inserting the following:

25 **''SEC. 2. DEFINITIONS.**

26 ''As''.

1 (6) Section 3 (30 U.S.C. 1002) is amended by
2 striking "SEC. 3. Subject" and inserting the fol-
3 lowing:

4 **"SEC. 3. LANDS SUBJECT TO GEOTHERMAL LEASING.**

5 "Subject".

6 (7) Section 5 (30 U.S.C. 1004) is further
7 amended by striking "SEC. 5.", and by inserting im-
8 mediately before and above subsection (a) the fol-
9 lowing:

10 **"SEC. 5. RENTS AND ROYALTIES.".**

11 (8) Section 8 (30 U.S.C. 1007) is amended by
12 striking "SEC. 8. (a) The" and inserting the fol-
13 lowing:

14 **"SEC. 8. READJUSTMENT OF LEASE TERMS AND CONDI-**
15 **TIONS.**

16 "(a) The".

17 (9) Section 9 (30 U.S.C. 1008) is amended by
18 striking "SEC. 9. If" and inserting the following:

19 **"SEC. 9. BYPRODUCTS.**

20 "If".

21 (10) Section 10 (30 U.S.C. 1009) is amended
22 by striking "SEC. 10. The" and inserting the fol-
23 lowing:

24 **"SEC. 10. RELINQUISHMENT OF GEOTHERMAL RIGHTS.**

25 "The".

1 (11) Section 11 (30 U.S.C. 1010) is amended
2 by striking ‘‘SEC. 11. The’’ and inserting the fol-
3 lowing:

4 **‘‘SEC. 11. SUSPENSION OF OPERATIONS AND PRODUCTION.**

5 ‘‘The’’.

6 (12) Section 12 (30 U.S.C. 1011) is amended
7 by striking ‘‘SEC. 12. Leases’’ and inserting the fol-
8 lowing:

9 **‘‘SEC. 12. TERMINATION OF LEASES.**

10 ‘‘Leases’’.

11 (13) Section 13 (30 U.S.C. 1012) is amended
12 by striking ‘‘SEC. 13. The’’ and inserting the fol-
13 lowing:

14 **‘‘SEC. 13. WAIVER, SUSPENSION, OR REDUCTION OF RENT-**
15 **AL OR ROYALTY.**

16 ‘‘The’’.

17 (14) Section 14 (30 U.S.C. 1013) is amended
18 by striking ‘‘SEC. 14. Subject’’ and inserting the fol-
19 lowing:

20 **‘‘SEC. 14. SURFACE LAND USE.**

21 ‘‘Subject’’.

22 (15) Section 15 (30 U.S.C. 1014) is amended
23 by striking ‘‘SEC. 15. (a) Geothermal’’ and inserting
24 the following:

1 **"SEC. 15. LANDS SUBJECT TO GEOTHERMAL LEASING.**

2 ''(a) Geothermal''.

3 (16) Section 16 (30 U.S.C. 1015) is amended
4 by striking ''SEC. 16. Leases'' and inserting the fol-
5 lowing:

6 **"SEC. 16. REQUIREMENT FOR LESSEES.**

7 ''Leases''.

8 (17) Section 17 (30 U.S.C. 1016) is amended
9 by striking ''SEC. 17. Administration'' and inserting
10 the following:

11 **"SEC. 17. ADMINISTRATION.**

12 ''Administration''.

13 (18) Section 19 (30 U.S.C. 1018) is amended
14 by striking ''SEC. 19. Upon'' and inserting the fol-
15 lowing:

16 **"SEC. 19. DATA FROM FEDERAL AGENCIES.**

17 ''Upon''.

18 (19) Section 21 (30 U.S.C. 1020) is further
19 amended by striking ''SEC. 21.'', and by inserting
20 immediately before and above the remainder of that
21 section the following:

22 **"SEC. 21. PUBLICATION IN FEDERAL REGISTER; RESERVA-**
23 **TION OF MINERAL RIGHTS.".**

24 (20) Section 22 (30 U.S.C. 1021) is amended
25 by striking ''SEC. 22. Nothing'' and inserting the
26 following:

1 "SEC. 22. FEDERAL EXEMPTION FROM STATE WATER LAWS.

2 "Nothing".

3 (21) Section 23 (30 U.S.C. 1022) is amended
4 by striking "SEC. 23. (a) All" and inserting the fol-
5 lowing:

6 "SEC. 23. PREVENTION OF WASTE; EXCLUSIVITY.

7 "(a) All".

8 (22) Section 24 (30 U.S.C. 1023) is amended
9 by striking "SEC. 24. The" and inserting the fol-
10 lowing:

11 "SEC. 24. RULES AND REGULATIONS.

12 "The".

13 (23) Section 25 (30 U.S.C. 1024) is amended
14 by striking "SEC. 25. As" and inserting the fol-
15 lowing:

16 "SEC. 25. INCLUSION OF GEOTHERMAL LEASING UNDER
17 CERTAIN OTHER LAWS.

18 "As".

19 (24) Section 26 is amended by striking "SEC.
20 26. The" and inserting the following:

21 "SEC. 26. AMENDMENT.

22 "The".

23 (25) Section 27 (30 U.S.C. 1025) is amended
24 by striking "SEC. 27. The" and inserting the fol-
25 lowing:

1 **"SEC. 27. FEDERAL RESERVATION OF CERTAIN MINERAL**
2 **RIGHTS.**
3 ''The''.
4 (26) Section 28 (30 U.S.C. 1026) is amended
5 by striking ''SEC. 28. (a)(1) The'' and inserting the
6 following:
7 **"SEC. 28. SIGNIFICANT THERMAL FEATURES.**
8 ''(a)(1) The''.
9 (27) Section 29 (30 U.S.C. 1027) is amended
10 by striking ''SEC. 29. The'' and inserting the fol-
11 lowing:
12 **"SEC. 29. LAND SUBJECT TO PROHIBITION ON LEASING.**
13 ''The''.
14 **SEC. 1820. INTERMOUNTAIN WEST GEOTHERMAL CONSOR-**
15 **TIUM.**
16 (a) PARTICIPATION AUTHORIZED.—The Secretary of
17 Energy, acting through the Idaho National Laboratory,
18 may participate in a consortium described in subsection
19 (b) to address science and science policy issues sur-
20 rounding the expanded discovery and use of geothermal
21 energy, including from geothermal resources on public
22 lands.
23 (b) MEMBERS.—The consortium referred to in sub-
24 section (a) shall—
25 (1) be known as the ''Intermountain West Geo-
26 thermal Consortium'';

1 (2) be a regional consortium of institutions and
2 government agencies that focuses on building col-
3 laborative efforts among the universities in the State
4 of Idaho, other regional universities, State agencies,
5 and the Idaho National Laboratory;
6 (3) include Boise State University, the Univer-
7 sity of Idaho (including the Idaho Water Resources
8 Research Institute), the Oregon Institute of Tech-
9 nology, the Desert Research Institute with the Uni-
10 versity and Community College System of Nevada,
11 and the Energy and Geoscience Institute at the Uni-
12 versity of Utah;
13 (4) be hosted and managed by Boise State Uni-
14 versity; and
15 (5) have a director appointed by Boise State
16 University, and associate directors appointed by each
17 participating institution.
18 (c) FINANCIAL ASSISTANCE.—The Secretary of En-
19 ergy, acting through the Idaho National Laboratory and
20 subject to the availability of appropriations, will provide
21 financial assistance to Boise State University for expendi-
22 ture under contracts with members of the consortium to
23 carry out the activities of the consortium.

1 # TITLE XIX—HYDROPOWER—
2 # RESOURCES

3 **SEC. 1901. INCREASED HYDROELECTRIC GENERATION AT**
4 **EXISTING FEDERAL FACILITIES.**

5 (a) IN GENERAL.—The Secretary of the Interior, the
6 Secretary of Energy, and the Secretary of the Army shall
7 jointly conduct a study of the potential for increasing elec-
8 tric power production capability at federally owned or op-
9 erated water regulation, storage, and conveyance facilities.
10 (b) CONTENT.—The study under this section shall in-
11 clude identification and description in detail of each facil-
12 ity that is capable, with or without modification, of pro-
13 ducing additional hydroelectric power, including esti-
14 mation of the existing potential for the facility to generate
15 hydroelectric power.
16 (c) REPORT.—The Secretaries shall submit to the
17 Committees on Energy and Commerce, Resources, and
18 Transportation and Infrastructure of the House of Rep-
19 resentatives and the Committee on Energy and Natural
20 Resources of the Senate a report on the findings, conclu-
21 sions, and recommendations of the study under this sec-
22 tion by not later than 18 months after the date of the
23 enactment of this Act. The report shall include each of
24 the following:

1 (1) The identifications, descriptions, and esti-
2 mations referred to in subsection (b).
3 (2) A description of activities currently con-
4 ducted or considered, or that could be considered, to
5 produce additional hydroelectric power from each
6 identified facility.
7 (3) A summary of prior actions taken by the
8 Secretaries to produce additional hydroelectric power
9 from each identified facility.
10 (4) The costs to install, upgrade, or modify
11 equipment or take other actions to produce addi-
12 tional hydroelectric power from each identified facil-
13 ity and the level of Federal power customer involve-
14 ment in the determination of such costs.
15 (5) The benefits that would be achieved by such
16 installation, upgrade, modification, or other action,
17 including quantified estimates of any additional en-
18 ergy or capacity from each facility identified under
19 subsection (b).
20 (6) A description of actions that are planned,
21 underway, or might reasonably be considered to in-
22 crease hydroelectric power production by replacing
23 turbine runners, by performing generator upgrades
24 or rewinds, or construction of pumped storage facili-
25 ties.

1 (7) The impact of increased hydroelectric power
2 production on irrigation, water supply, fish, wildlife,
3 Indian tribes, river health, water quality, navigation,
4 recreation, fishing, and flood control.
5 (8) Any additional recommendations to increase
6 hydroelectric power production from, and reduce
7 costs and improve efficiency at, federally owned or
8 operated water regulation, storage, and conveyance
9 facilities.

10 **SEC. 1902. SHIFT OF PROJECT LOADS TO OFF-PEAK PERI-**
11 **ODS.**

12 (a) IN GENERAL.—The Secretary of the Interior
13 shall—
14 (1) review electric power consumption by Bu-
15 reau of Reclamation facilities for water pumping
16 purposes; and
17 (2) make such adjustments in such pumping as
18 possible to minimize the amount of electric power
19 consumed for such pumping during periods of peak
20 electric power consumption, including by performing
21 as much of such pumping as possible during off-
22 peak hours at night.
23 (b) CONSENT OF AFFECTED IRRIGATION CUSTOMERS
24 REQUIRED.—The Secretary may not under this section
25 make any adjustment in pumping at a facility without the

1 consent of each person that has contracted with the
2 United States for delivery of water from the facility for
3 use for irrigation and that would be affected by such ad-
4 justment.

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

10 **SEC. 1903. REPORT IDENTIFYING AND DESCRIBING THE**
11 **STATUS OF POTENTIAL HYDROPOWER FA-**
12 **CILITIES.**

13 (a) REPORT REQUIREMENT.—Not later than 90 days
14 after the date of enactment of this Act, the Secretary of
15 the Interior, acting through the Bureau of Reclamation,
16 shall submit to the Committee on Resources of the House
17 of Representatives and the Committee on Energy and
18 Natural Resources of the Senate a report identifying and
19 describing the status of potential hydropower facilities in-
20 cluded in water surface storage studies undertaken by the
21 Secretary for projects that have not been completed or au-
22 thorized for construction.

23 (b) REPORT CONTENTS.—The report shall include
24 the following:

1 (1) Identification of all surface storage studies
2 authorized by Congress since the enactment of the
3 Reclamation Project Act of 1939 (43 U.S.C. 485 et
4 seq.).
5 (2) The purposes of each project included with-
6 in each study identified under paragraph (1).
7 (3) The status of each study identified under
8 paragraph (1), including for each study—
9 (A) whether the study is completed or, if
10 not completed, still authorized;
11 (B) the level of analyses conducted at the
12 feasibility and reconnaissance levels of review;
13 (C) identifiable environmental impacts of
14 each project included in the study, including to
15 fish and wildlife, water quality, and recreation;
16 (D) projected water yield from each such
17 project;
18 (E) beneficiaries of each such project;
19 (F) the amount authorized and expended;
20 (G) projected funding needs and timelines
21 for completing the study (if applicable);
22 (H) anticipated costs of each such project;
23 and
24 (I) other factors that might interfere with
25 construction of any such project.

1 (4) An identification of potential hydroelectric
2 facilities that might be developed pursuant to each
3 study identified under paragraph (1).
4 (5) Applicable costs and benefits associated
5 with potential hydroelectric production pursuant to
6 each study.

7 TITLE XX—OIL AND GAS—
8 RESOURCES

9 Subtitle A—Production Incentives

10 SEC. 2001. DEFINITION OF SECRETARY.

11 In this subtitle, the term ''Secretary'' means the Sec-
12 retary of the Interior.

13 SEC. 2002. PROGRAM ON OIL AND GAS ROYALTIES IN-KIND.

14 (a) APPLICABILITY OF SECTION.—Notwithstanding
15 any other provision of law, this section applies to all roy-
16 alty in-kind accepted by the Secretary on or after the date
17 of enactment of this Act under any Federal oil or gas lease
18 or permit under section 36 of the Mineral Leasing Act
19 (30 U.S.C. 192), section 27 of the Outer Continental Shelf
20 Lands Act (43 U.S.C. 1353), or any other Federal law
21 governing leasing of Federal land for oil and gas develop-
22 ment.
23 (b) TERMS AND CONDITIONS.—All royalty accruing
24 to the United States shall, on the demand of the Sec-

1 retary, be paid in oil or gas. If the Secretary makes such
2 a demand, the following provisions apply to such payment:
3 (1) SATISFACTION OF ROYALTY OBLIGATION.—
4 Delivery by, or on behalf of, the lessee of the royalty
5 amount and quality due under the lease satisfies the
6 lessee's royalty obligation for the amount delivered,
7 except that transportation and processing reimburse-
8 ments paid to, or deductions claimed by, the lessee
9 shall be subject to review and audit.
10 (2) MARKETABLE CONDITION.—
11 (A) IN GENERAL.—Royalty production
12 shall be placed in marketable condition by the
13 lessee at no cost to the United States.
14 (B) DEFINITION OF MARKETABLE CONDI-
15 TION.—In this paragraph, the term "in market-
16 able condition" means sufficiently free from im-
17 purities and otherwise in a condition that the
18 royalty production will be accepted by a pur-
19 chaser under a sales contract typical of the field
20 or area in which the royalty production was
21 produced.
22 (3) DISPOSITION BY THE SECRETARY.—The
23 Secretary may—
24 (A) sell or otherwise dispose of any royalty
25 production taken in-kind (other than oil or gas

1 transferred under section 27(a)(3) of the Outer
2 Continental Shelf Lands Act (43 U.S.C.
3 1353(a)(3))) for not less than the market price;
4 and

5 (B) transport or process (or both) any roy-
6 alty production taken in-kind.

7 (4) RETENTION BY THE SECRETARY.—The Sec-
8 retary may, notwithstanding section 3302 of title 31,
9 United States Code, retain and use a portion of the
10 revenues from the sale of oil and gas taken in-kind
11 that otherwise would be deposited to miscellaneous
12 receipts, without regard to fiscal year limitation, or
13 may use oil or gas received as royalty taken in-kind
14 (in this paragraph referred to as "royalty produc-
15 tion") to pay the cost of—

16 (A) transporting the royalty production;

17 (B) processing the royalty production;

18 (C) disposing of the royalty production; or

19 (D) any combination of transporting, proc-
20 essing, and disposing of the royalty production.

21 (5) LIMITATION.—

22 (A) IN GENERAL.—Except as provided in
23 subparagraph (B), the Secretary may not use
24 revenues from the sale of oil and gas taken in-

1 kind to pay for personnel, travel, or other ad-
2 ministrative costs of the Federal Government.
3 (B) EXCEPTION.—Notwithstanding sub-
4 paragraph (A), the Secretary may use a portion
5 of the revenues from the sale of oil taken in-
6 kind, without fiscal year limitation, to pay sala-
7 ries and other administrative costs directly re-
8 lated to the royalty-in-kind program.
9 (c) REIMBURSEMENT OF COST.—If the lessee, pursu-
10 ant to an agreement with the United States or as provided
11 in the lease, processes the royalty gas or delivers the roy-
12 alty oil or gas at a point not on or adjacent to the lease
13 area, the Secretary shall—
14 (1) reimburse the lessee for the reasonable costs
15 of transportation (not including gathering) from the
16 lease to the point of delivery or for processing costs;
17 or
18 (2) allow the lessee to deduct the transportation
19 or processing costs in reporting and paying royalties
20 in-value for other Federal oil and gas leases.
21 (d) BENEFIT TO THE UNITED STATES REQUIRED.—
22 The Secretary may receive oil or gas royalties in-kind only
23 if the Secretary determines that receiving royalties in-kind
24 provides benefits to the United States that are greater

1 than or equal to the benefits that are likely to have been
2 received had royalties been taken in-value.

3 (e) REPORTS.—

4 (1) IN GENERAL.—Not later than September
5 30, 2005, the Secretary shall submit to Congress a
6 report that addresses—

7 (A) actions taken to develop businesses
8 processes and automated systems to fully sup-
9 port the royalty-in-kind capability to be used in
10 tandem with the royalty-in-value approach in
11 managing Federal oil and gas revenue; and

12 (B) future royalty-in-kind businesses oper-
13 ation plans and objectives.

14 (2) REPORTS ON OIL OR GAS ROYALTIES TAKEN
15 IN-KIND.—For each of fiscal years 2005 through
16 2014 in which the United States takes oil or gas
17 royalties in-kind from production in any State or
18 from the outer Continental Shelf, excluding royalties
19 taken in-kind and sold to refineries under subsection
20 (h), the Secretary shall submit to Congress a report
21 that describes—

22 (A) the methodology or methodologies used
23 by the Secretary to determine compliance with
24 subsection (d), including the performance
25 standard for comparing amounts received by

1 the United States derived from royalties in-kind
2 to amounts likely to have been received had roy-
3 alties been taken in-value;
4 (B) an explanation of the evaluation that
5 led the Secretary to take royalties in-kind from
6 a lease or group of leases, including the ex-
7 pected revenue effect of taking royalties in-kind;
8 (C) actual amounts received by the United
9 States derived from taking royalties in-kind and
10 costs and savings incurred by the United States
11 associated with taking royalties in-kind, includ-
12 ing, but not limited to, administrative savings
13 and any new or increased administrative costs;
14 and
15 (D) an evaluation of other relevant public
16 benefits or detriments associated with taking
17 royalties in-kind.
18 (f) DEDUCTION OF EXPENSES.—
19 (1) IN GENERAL.—Before making payments
20 under section 35 of the Mineral Leasing Act (30
21 U.S.C. 191) or section 8(g) of the Outer Continental
22 Shelf Lands Act (43 U.S.C. 1337(g)) of revenues
23 derived from the sale of royalty production taken in-
24 kind from a lease, the Secretary shall deduct
25 amounts paid or deducted under subsections (b)(4)

1 and (c) and deposit the amount of the deductions in
2 the miscellaneous receipts of the United States
3 Treasury.

4 (2) ACCOUNTING FOR DEDUCTIONS.—When the
5 Secretary allows the lessee to deduct transportation
6 or processing costs under subsection (c), the Sec-
7 retary may not reduce any payments to recipients of
8 revenues derived from any other Federal oil and gas
9 lease as a consequence of that deduction.

10 (g) CONSULTATION WITH STATES.—The
11 Secretary—

12 (1) shall consult with a State before conducting
13 a royalty in-kind program under this subtitle within
14 the State, and may delegate management of any
15 portion of the Federal royalty in-kind program to
16 the State except as otherwise prohibited by Federal
17 law; and

18 (2) shall consult annually with any State from
19 which Federal oil or gas royalty is being taken in-
20 kind to ensure, to the maximum extent practicable,
21 that the royalty in-kind program provides revenues
22 to the State greater than or equal to those likely to
23 have been received had royalties been taken in-value.

24 (h) SMALL REFINERIES.—

1 (1) PREFERENCE.—If the Secretary finds that
2 sufficient supplies of crude oil are not available in
3 the open market to refineries that do not have their
4 own source of supply for crude oil, the Secretary
5 may grant preference to such refineries in the sale
6 of any royalty oil accruing or reserved to the United
7 States under Federal oil and gas leases issued under
8 any mineral leasing law, for processing or use in
9 such refineries at private sale at not less than the
10 market price.
11 (2) PRORATION AMONG REFINERIES IN PRO-
12 DUCTION AREA.—In disposing of oil under this sub-
13 section, the Secretary of Energy may, at the discre-
14 tion of the Secretary, prorate the oil among refin-
15 eries described in paragraph (1) in the area in which
16 the oil is produced.
17 (i) DISPOSITION TO FEDERAL AGENCIES.—
18 (1) ONSHORE ROYALTY.—Any royalty oil or gas
19 taken by the Secretary in-kind from onshore oil and
20 gas leases may be sold at not less than the market
21 price to any Federal agency.
22 (2) OFFSHORE ROYALTY.—Any royalty oil or
23 gas taken in-kind from a Federal oil or gas lease on
24 the outer Continental Shelf may be disposed of only

under section 27 of the Outer Continental Shelf Lands Act (43 U.S.C. 1353).

(j) FEDERAL LOW-INCOME ENERGY ASSISTANCE PROGRAMS.—

(1) PREFERENCE.—In disposing of royalty oil or gas taken in-kind under this section, the Secretary may grant a preference to any person, including any Federal or State agency, for the purpose of providing additional resources to any Federal low-income energy assistance program.

(2) REPORT.—Not later than 3 years after the date of enactment of this Act, the Secretary shall transmit a report to Congress, assessing the effectiveness of granting preferences specified in paragraph (1) and providing a specific recommendation on the continuation of authority to grant preferences.

SEC. 2003. MARGINAL PROPERTY PRODUCTION INCENTIVES.

(a) DEFINITION OF MARGINAL PROPERTY.—Until such time as the Secretary issues regulations under subsection (e) that prescribe a different definition, in this section the term ''marginal property'' means an onshore unit, communitization agreement, or lease not within a unit or communitization agreement, that produces on average the

1 combined equivalent of less than 15 barrels of oil per well
2 per day or 90 million British thermal units of gas per well
3 per day calculated based on the average over the 3 most
4 recent production months, including only wells that
5 produce on more than half of the days during those 3 pro-
6 duction months.

7 (b) CONDITIONS FOR REDUCTION OF ROYALTY
8 RATE.—Until such time as the Secretary issues regula-
9 tions under subsection (e) that prescribe different thresh-
10 olds or standards, the Secretary shall reduce the royalty
11 rate on—

12 (1) oil production from marginal properties as
13 prescribed in subsection (c) when the spot price of
14 West Texas Intermediate crude oil at Cushing, Okla-
15 homa, is, on average, less than $15 per barrel for 90
16 consecutive trading days; and

17 (2) gas production from marginal properties as
18 prescribed in subsection (c) when the spot price of
19 natural gas delivered at Henry Hub, Louisiana, is,
20 on average, less than $2.00 per million British ther-
21 mal units for 90 consecutive trading days.

22 (c) REDUCED ROYALTY RATE.—

23 (1) IN GENERAL.—When a marginal property
24 meets the conditions specified in subsection (b), the
25 royalty rate shall be the lesser of—

1 (A) 5 percent; or
2 (B) the applicable rate under any other
3 statutory or regulatory royalty relief provision
4 that applies to the affected production.
5 (2) PERIOD OF EFFECTIVENESS.—The reduced
6 royalty rate under this subsection shall be effective
7 beginning on the first day of the production month
8 following the date on which the applicable condition
9 specified in subsection (b) is met.
10 (d) TERMINATION OF REDUCED ROYALTY RATE.—
11 A royalty rate prescribed in subsection (d)(1)(A) shall
12 terminate—
13 (1) with respect to oil production from a mar-
14 ginal property, on the first day of the production
15 month following the date on which—
16 (A) the spot price of West Texas Inter-
17 mediate crude oil at Cushing, Oklahoma, on av-
18 erage, exceeds $15 per barrel for 90 consecutive
19 trading days; or
20 (B) the property no longer qualifies as a
21 marginal property; and
22 (2) with respect to gas production from a mar-
23 ginal property, on the first day of the production
24 month following the date on which—

1 (A) the spot price of natural gas delivered
2 at Henry Hub, Louisiana, on average, exceeds
3 $2.00 per million British thermal units for 90
4 consecutive trading days; or
5 (B) the property no longer qualifies as a
6 marginal property.
7 (e) REGULATIONS PRESCRIBING DIFFERENT RE-
8 LIEF.—
9 (1) DISCRETIONARY REGULATIONS.—The Sec-
10 retary may by regulation prescribe different param-
11 eters, standards, and requirements for, and a dif-
12 ferent degree or extent of, royalty relief for marginal
13 properties in lieu of those prescribed in subsections
14 (a) through (d).
15 (2) MANDATORY REGULATIONS.—Not later
16 than 18 months after the date of enactment of this
17 Act, the Secretary shall by regulation—
18 (A) prescribe standards and requirements
19 for, and the extent of royalty relief for, mar-
20 ginal properties for oil and gas leases on the
21 outer Continental Shelf; and
22 (B) define what constitutes a marginal
23 property on the outer Continental Shelf for pur-
24 poses of this section.

1 (3) CONSIDERATIONS.—In promulgating regu-
2 lations under this subsection, the Secretary may
3 consider—
4 (A) oil and gas prices and market trends;
5 (B) production costs;
6 (C) abandonment costs;
7 (D) Federal and State tax provisions and
8 the effects of those provisions on production ec-
9 onomics;
10 (E) other royalty relief programs;
11 (F) regional differences in average well-
12 head prices;
13 (G) national energy security issues; and
14 (H) other relevant matters.
15 (f) SAVINGS PROVISION.—Nothing in this section
16 prevents a lessee from receiving royalty relief or a royalty
17 reduction pursuant to any other law (including a regula-
18 tion) that provides more relief than the amounts provided
19 by this section.
20 **SEC. 2004. INCENTIVES FOR NATURAL GAS PRODUCTION**
21 **FROM DEEP WELLS IN THE SHALLOW WA-**
22 **TERS OF THE GULF OF MEXICO.**
23 (a) ROYALTY INCENTIVE REGULATIONS FOR ULTRA
24 DEEP GAS WELLS.—

1 (1) IN GENERAL.—Not later than 180 days
2 after the date of enactment of this Act, in addition
3 to any other regulations that may provide royalty in-
4 centives for natural gas produced from deep wells on
5 oil and gas leases issued pursuant to the Outer Con-
6 tinental Shelf Lands Act (43 U.S.C. 1331 et seq.),
7 the Secretary shall issue regulations granting royalty
8 relief suspension volumes of not less than
9 35,000,000,000 cubic feet with respect to the pro-
10 duction of natural gas from ultra deep wells on
11 leases issued in shallow waters less than 400 meters
12 deep located in the Gulf of Mexico wholly west of 87
13 degrees, 30 minutes west longitude. Regulations
14 issued under this subsection shall be retroactive to
15 the date that the notice of proposed rulemaking is
16 published in the Federal Register.

17 (2) DEFINITION OF ULTRA DEEP WELL.—In
18 this subsection, the term ''ultra deep well'' means a
19 well drilled with a perforated interval, the top of
20 which is at least 20,000 feet true vertical depth
21 below the datum at mean sea level.

22 (b) ROYALTY INCENTIVE REGULATIONS FOR DEEP
23 GAS WELLS.—Not later than 180 days after the date of
24 enactment of this Act, in addition to any other regulations
25 that may provide royalty incentives for natural gas pro-

1 duced from deep wells on oil and gas leases issued pursu-
2 ant to the Outer Continental Shelf Lands Act (43 U.S.C.
3 1331 et seq.), the Secretary shall issue regulations grant-
4 ing royalty relief suspension volumes with respect to the
5 production of natural gas from deep wells on leases issued
6 in waters more than 200 meters but less than 400 meters
7 deep located in the Gulf of Mexico wholly west of 87 de-
8 grees, 30 minutes west longitude. The suspension volumes
9 for deep wells within 200 to 400 meters of water depth
10 shall be calculated using the same methodology used to
11 calculate the suspension volumes for deep wells in the
12 shallower waters of the Gulf of Mexico, and in no case
13 shall the suspension volumes for deep wells within 200 to
14 400 meters of water depth be lower than those for deep
15 wells in shallower waters. Regulations issued under this
16 subsection shall be retroactive to the date that the notice
17 of proposed rulemaking is published in the Federal Reg-
18 ister.

19 (c) LIMITATION.—The Secretary may place limita-
20 tions on the suspension of royalty relief granted based on
21 market price.

22 **SEC. 2005. ROYALTY RELIEF FOR DEEP WATER PRODUC-**
23 **TION.**

24 (a) IN GENERAL.—For all tracts located in water
25 depths of greater than 400 meters in the Western and

1 Central Planning Area of the Gulf of Mexico, including
2 the portion of the Eastern Planning Area of the Gulf of
3 Mexico encompassing whole lease blocks lying west of 87
4 degrees, 30 minutes West longitude, any oil or gas lease
5 sale under the Outer Continental Shelf Lands Act (43
6 U.S.C. 1331 et seq.) occurring within 5 years after the
7 date of enactment of this Act shall use the bidding system
8 authorized in section 8(a)(1)(H) of the Outer Continental
9 Shelf Lands Act (43 U.S.C. 1337(a)(1)(H)), except that
10 the suspension of royalties shall be set at a volume of not
11 less than—

12 (1) 5,000,000 barrels of oil equivalent for each
13 lease in water depths of 400 to 800 meters;

14 (2) 9,000,000 barrels of oil equivalent for each
15 lease in water depths of 800 to 1,600 meters;

16 (3) 12,000,000 barrels of oil equivalent for each
17 lease in water depths of 1,600 to 2,000 meters; and

18 (4) 16,000,000 barrels of oil equivalent for each
19 lease in water depths greater than 2,000 meters.

20 (b) LIMITATION.—The Secretary may place limita-
21 tions on the suspension of royalty relief granted based on
22 market price.

23 **SEC. 2006. ALASKA OFFSHORE ROYALTY SUSPENSION.**

24 Section 8(a)(3)(B) of the Outer Continental Shelf
25 Lands Act (43 U.S.C. 1337(a)(3)(B)) is amended by in-

1 serting ‘‘and in the Planning Areas offshore Alaska’’ after
2 ‘‘West longitude’’.

3 **SEC. 2007. OIL AND GAS LEASING IN THE NATIONAL PETRO-**
4 **LEUM RESERVE IN ALASKA.**

5 (a) TRANSFER OF AUTHORITY.—
6 (1) REDESIGNATION.—The Naval Petroleum
7 Reserves Production Act of 1976 (42 U.S.C. 6501
8 et seq.) is amended by redesignating section 107 (42
9 U.S.C. 6507) as section 108.
10 (2) TRANSFER.—The matter under the heading
11 ‘‘EXPLORATION OF NATIONAL PETROLEUM RESERVE
12 IN ALASKA’’ under the heading ‘‘ENERGY AND
13 MINERALS’’ of title I of Public Law 96–514 (42
14 U.S.C. 6508) is—
15 (A) transferred to the Naval Petroleum
16 Reserves Production Act of 1976 (42 U.S.C.
17 6501 et seq.);
18 (B) designated as section 107 of that Act;
19 and
20 (C) moved so as to appear after section
21 106 of that Act (42 U.S.C. 6506).
22 (b) COMPETITIVE LEASING.—Section 107 of the
23 Naval Petroleum Reserves Production Act of 1976 (as
24 amended by subsection (a) of this section) is amended—

1 (1) by striking the heading and all that follows
2 through "*Provided*, That (1) activities" and insert-
3 ing the following:

4 **"SEC. 107. COMPETITIVE LEASING OF OIL AND GAS.**

5 "(a) IN GENERAL.—Notwithstanding any other pro-
6 vision of law and pursuant to regulations issued by the
7 Secretary, the Secretary shall conduct an expeditious pro-
8 gram of competitive leasing of oil and gas in the National
9 Petroleum Reserve in Alaska (referred to in this section
10 as the 'Reserve').

11 "(b) MITIGATION OF ADVERSE EFFECTS.—Activi-
12 ties";

13 (2) by striking "Alaska (the Reserve); (2) the"
14 and inserting

15 "Alaska.

16 "(c) LAND USE PLANNING; BLM WILDERNESS
17 STUDY.—The";

18 (3) by striking "Reserve; (3) the" and inserting
19 "Reserve.

20 "(d) FIRST LEASE SALE.—The";

21 (4) by striking "4332); (4) the" and inserting
22 "4321 et seq.).

23 "(e) WITHDRAWALS.—The";

24 (5) by striking "herein; (5) bidding" and insert-
25 ing

1 "under this section.

2 "(f) BIDDING SYSTEMS.—Bidding";

3 (6) by striking "629); (6) lease" and inserting

4 "629).

5 "(g) GEOLOGICAL STRUCTURES.—Lease";

6 (7) by striking "structures; (7) the" and insert-

7 ing

8 "structures.

9 "(h) SIZE OF LEASE TRACTS.—The";

10 (8) by striking "Secretary; (8)" and all that fol-

11 lows through "Drilling, production," and inserting

12 "Secretary.

13 "(i) TERMS.—

14 "(1) IN GENERAL.—Each lease shall be—

15 "(A) issued for an initial period of not

16 more than 10 years; and

17 "(B) renewed for successive 10-year terms

18 if—

19 "(i) oil or gas is produced from the

20 lease in paying quantities;

21 "(ii) oil or gas is capable of being pro-

22 duced in paying quantities; or

23 "(iii) drilling or reworking operations,

24 as approved by the Secretary, are con-

25 ducted on the leased land.

1 "(2) RENEWAL OF NONPRODUCING LEASES.—
2 The Secretary shall renew for an additional 10-year
3 term a lease that does not meet the requirements of
4 paragraph (1)(B) if the lessee submits to the Sec-
5 retary an application for renewal not later than 60
6 days before the expiration of the primary lease
7 and—

8 "(A) the lessee certifies, and the Secretary
9 agrees, that hydrocarbon resources were discov-
10 ered on 1 or more wells drilled on the leased
11 land in such quantities that a prudent operator
12 would hold the lease for potential future devel-
13 opment;

14 "(B) the lessee—

15 "(i) pays the Secretary a renewal fee
16 of $100 per acre of leased land; and

17 "(ii) provides evidence, and the Sec-
18 retary agrees that, the lessee has diligently
19 pursued exploration that warrants continu-
20 ation with the intent of continued explo-
21 ration or future development of the leased
22 land; or

23 "(C) all or part of the lease—

1 ‘‘(i) is part of a unit agreement cov-
2 ering a lease described in subparagraph
3 (A) or (B); and
4 ‘‘(ii) has not been previously con-
5 tracted out of the unit.
6 ‘‘(3) APPLICABILITY.—This subsection applies
7 to a lease that—
8 ‘‘(A) is entered into before, on, or after the
9 date of enactment of the Energy Policy Act of
10 2005; and
11 ‘‘(B) is effective on or after the date of en-
12 actment of that Act.
13 ‘‘(j) UNIT AGREEMENTS.—
14 ‘‘(1) IN GENERAL.—For the purpose of con-
15 servation of the natural resources of all or part of
16 any oil or gas pool, field, reservoir, or like area, les-
17 sees (including representatives) of the pool, field,
18 reservoir, or like area may unite with each other, or
19 jointly or separately with others, in collectively
20 adopting and operating under a unit agreement for
21 all or part of the pool, field, reservoir, or like area
22 (whether or not any other part of the oil or gas pool,
23 field, reservoir, or like area is already subject to any
24 cooperative or unit plan of development or oper-

1 ation), if the Secretary determines the action to be
2 necessary or advisable in the public interest.
3 "(2) PARTICIPATION BY STATE OF ALASKA.—
4 The Secretary shall ensure that the State of Alaska
5 is provided the opportunity for active participation
6 concerning creation and management of units
7 formed or expanded under this subsection that in-
8 clude acreage in which the State of Alaska has an
9 interest in the mineral estate.
10 "(3) PARTICIPATION BY REGIONAL CORPORA-
11 TIONS.—The Secretary shall ensure that any Re-
12 gional Corporation (as defined in section 3 of the
13 Alaska Native Claims Settlement Act (43 U.S.C.
14 1602)) is provided the opportunity for active partici-
15 pation concerning creation and management of units
16 that include acreage in which the Regional Corpora-
17 tion has an interest in the mineral estate.
18 "(4) PRODUCTION ALLOCATION METHOD-
19 OLOGY.—The Secretary may use a production alloca-
20 tion methodology for each participating area within
21 a unit created for land in the Reserve, State of Alas-
22 ka land, or Regional Corporation land shall, when
23 appropriate, be based on the characteristics of each
24 specific oil or gas pool, field, reservoir, or like area
25 to take into account reservoir heterogeneity and a

1 real variation in reservoir producibility across diverse
2 leasehold interests.
3 "(5) BENEFIT OF OPERATIONS.—Drilling, pro-
4 duction,";
5 (9) by striking "When separate" and inserting
6 the following:
7 "(6) POOLING.—If separate";
8 (10) by inserting "(in consultation with the
9 owners of the other land)" after "determined by the
10 Secretary of the Interior";
11 (11) by striking "thereto; (10) to" and all that
12 follows through "the terms provided therein." and
13 inserting
14 "to the agreement.
15 "(k) EXPLORATION INCENTIVES.—
16 "(1) IN GENERAL.—
17 "(A) WAIVER, SUSPENSION, OR REDUC-
18 TION.—To encourage the greatest ultimate re-
19 covery of oil or gas or in the interest of con-
20 servation, the Secretary may waive, suspend, or
21 reduce the rental fees or minimum royalty, or
22 reduce the royalty on an entire leasehold (in-
23 cluding on any lease operated pursuant to a
24 unit agreement), if (after consultation with the
25 State of Alaska and the North Slope Borough

1 of Alaska and the concurrence of any Regional
2 Corporation for leases that include lands avail-
3 able for acquisition by the Regional Corporation
4 under the provisions of section 1431(o) of the
5 Alaska National Interest Lands Conservation
6 Act (16 U.S.C. 3101 et seq.)) the Secretary de-
7 termines that the waiver, suspension, or reduc-
8 tion is in the public interest.

9 ''(B) APPLICABILITY.—This paragraph ap-
10 plies to a lease that—

11 ''(i) is entered into before, on, or after
12 the date of enactment of the Energy Policy
13 Act of 2005; and

14 ''(ii) is effective on or after the date
15 of enactment of that Act.'';

16 (12) by striking ''The Secretary is authorized
17 to'' and inserting the following:

18 ''(2) SUSPENSION OF OPERATIONS AND PRO-
19 DUCTION.—The Secretary may'';

20 (13) by striking ''In the event'' and inserting
21 the following:

22 ''(3) SUSPENSION OF PAYMENTS.—If'';

23 (14) by striking ''thereto; and (11) all'' and in-
24 serting

25 ''to the lease.

1 "(l) RECEIPTS.—All";

2 (15) by redesignating clauses (A), (B), and (C)
3 as clauses (1), (2), and (3), respectively;

4 (16) by striking "Any agency" and inserting
5 the following:

6 "(m) EXPLORATIONS.—Any agency";

7 (17) by striking "Any action" and inserting the
8 following:

9 "(n) ENVIRONMENTAL IMPACT STATEMENTS.—

10 "(1) JUDICIAL REVIEW.—Any action";

11 (18) by striking "The detailed" and inserting
12 the following:

13 "(2) INITIAL LEASE SALES.—The detailed";

14 (19) by striking "of the Naval Petroleum Re-
15 serves Production Act of 1976 (90 Stat. 304; 42
16 U.S.C. 6504)"; and

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

18 "(o) WAIVER OF ADMINISTRATION FOR CONVEYED
19 LANDS.—Notwithstanding section 14(g) of the Alaska
20 Native Claims Settlement Act (43 U.S.C. 1613(g)) or any
21 other provision of law—

22 "(1) the Secretary of the Interior shall waive
23 administration of any oil and gas lease insofar as
24 such lease covers any land in the National Petro-
25 leum Reserve in Alaska in which the subsurface es-

1 tate is conveyed to the Arctic Slope Regional Cor-
2 poration; and

3 "(2) if any such conveyance of such subsurface
4 estate does not cover all the land embraced within
5 any such oil and gas lease—

6 "(A) the person who owns the subsurface
7 estate in any particular portion of the land cov-
8 ered by such lease shall be entitled to all of the
9 revenues reserved under such lease as to such
10 portion, including, without limitation, all the
11 royalty payable with respect to oil or gas pro-
12 duced from or allocated to such particular por-
13 tion of the land covered by such lease; and

14 "(B) the Secretary of the Interior shall
15 segregate such lease into 2 leases, 1 of which
16 shall cover only the subsurface estate conveyed
17 to the Arctic Slope Regional Corporation, and
18 operations, production, or other circumstances
19 (other than payment of rentals or royalties)
20 that satisfy obligations of the lessee under, or
21 maintain, either of the segregated leases shall
22 likewise satisfy obligations of the lessee under,
23 or maintain, the other segregated lease to the
24 same extent as if such segregated leases re-

1 mained a part of the original unsegregated
2 lease.''.

3 **SEC. 2008. ORPHANED, ABANDONED, OR IDLED WELLS ON**
4 **FEDERAL LAND.**

5 (a) IN GENERAL.—The Secretary, in cooperation
6 with the Secretary of Agriculture, shall establish a pro-
7 gram not later than 1 year after the date of enactment
8 of this Act to remediate, reclaim, and close orphaned,
9 abandoned, or idled oil and gas wells located on land ad-
10 ministered by the land management agencies within the
11 Department of the Interior and the Department of Agri-
12 culture.

13 (b) ACTIVITIES.—The program under subsection (a)
14 shall—

15 (1) include a means of ranking orphaned, aban-
16 doned, or idled wells sites for priority in remedi-
17 ation, reclamation, and closure, based on public
18 health and safety, potential environmental harm,
19 and other land use priorities;

20 (2) provide for identification and recovery of
21 the costs of remediation, reclamation, and closure
22 from persons or other entities currently providing a
23 bond or other financial assurance required under
24 State or Federal law for an oil or gas well that is
25 orphaned, abandoned, or idled; and

1 (3) provide for recovery from the persons or en-
2 tities identified under paragraph (2), or their sure-
3 ties or guarantors, of the costs of remediation, rec-
4 lamation, and closure of such wells.
5 (c) COOPERATION AND CONSULTATIONS.—In car-
6 rying out the program under subsection (a), the Secretary
7 shall—
8 (1) work cooperatively with the Secretary of Ag-
9 riculture and the States within which Federal land
10 is located; and
11 (2) consult with the Secretary of Energy and
12 the Interstate Oil and Gas Compact Commission.
13 (d) PLAN.—Not later than 1 year after the date of
14 enactment of this Act, the Secretary, in cooperation with
15 the Secretary of Agriculture, shall submit to Congress a
16 plan for carrying out the program under subsection (a).
17 (e) IDLED WELL.—For the purposes of this section,
18 a well is idled if—
19 (1) the well has been nonoperational for at least
20 7 years; and
21 (2) there is no anticipated beneficial use for the
22 well.
23 (f) TECHNICAL ASSISTANCE PROGRAM FOR NON-
24 FEDERAL LAND.—

1 (1) IN GENERAL.—The Secretary of Energy
2 shall establish a program to provide technical and fi-
3 nancial assistance to oil and gas producing States to
4 facilitate State efforts over a 10-year period to en-
5 sure a practical and economical remedy for environ-
6 mental problems caused by orphaned or abandoned
7 oil and gas exploration or production well sites on
8 State or private land.
9 (2) ASSISTANCE.—The Secretary of Energy
10 shall work with the States, through the Interstate
11 Oil and Gas Compact Commission, to assist the
12 States in quantifying and mitigating environmental
13 risks of onshore orphaned or abandoned oil or gas
14 wells on State and private land.
15 (3) ACTIVITIES.—The program under para-
16 graph (1) shall include—
17 (A) mechanisms to facilitate identification,
18 if feasible, of the persons currently providing a
19 bond or other form of financial assurance re-
20 quired under State or Federal law for an oil or
21 gas well that is orphaned or abandoned;
22 (B) criteria for ranking orphaned or aban-
23 doned well sites based on factors such as public
24 health and safety, potential environmental
25 harm, and other land use priorities;

1 (C) information and training programs on
2 best practices for remediation of different types
3 of sites; and
4 (D) funding of State mitigation efforts on
5 a cost-shared basis.
6 (g) FEDERAL REIMBURSEMENT FOR ORPHANED
7 WELL RECLAMATION PILOT PROGRAM.—
8 (1) REIMBURSEMENT FOR REMEDIATING, RE-
9 CLAIMING, AND CLOSING WELLS ON LAND SUBJECT
10 TO A NEW LEASE.—The Secretary shall carry out a
11 pilot program under which, in issuing a new oil and
12 gas lease on federally owned land on which 1 or
13 more orphaned wells are located, the Secretary—
14 (A) may require, but not as a condition of
15 the lease, that the lessee remediate, reclaim,
16 and close in accordance with standards estab-
17 lished by the Secretary, all orphaned wells on
18 the land leased; and
19 (B) shall develop a program to reimburse
20 a lessee, through a royalty credit against the
21 Federal share of royalties owed or other means,
22 for the reasonable actual costs of remediating,
23 reclaiming, and closing the orphaned well pur-
24 suant to that requirement.

1 (2) REIMBURSEMENT FOR RECLAIMING OR-
2 PHANED WELLS ON OTHER LAND.—In carrying out
3 this subsection, the Secretary—
4 (A) may authorize any lessee under an oil
5 and gas lease on federally owned land to re-
6 claim in accordance with the Secretary's
7 standards—
8 (i) an orphaned well on unleased fed-
9 erally owned land; or
10 (ii) an orphaned well located on an ex-
11 isting lease on federally owned land for the
12 reclamation of which the lessee is not le-
13 gally responsible; and
14 (B) shall develop a program to provide re-
15 imbursement of 115 percent of the reasonable
16 actual costs of remediating, reclaiming, and
17 closing the orphaned well, through credits
18 against the Federal share of royalties or other
19 means.
20 (3) EFFECT OF REMEDIATION, RECLAMATION,
21 OR CLOSURE OF WELL PURSUANT TO AN APPROVED
22 REMEDIATION PLAN.—
23 (A) DEFINITION OF REMEDIATING
24 PARTY.—In this paragraph the term "remedi-
25 ating party" means a person who remediates,

1 reclaims, or closes an abandoned, orphaned, or
2 idled well pursuant to this subsection.
3 (B) GENERAL RULE.—A remediating party
4 who remediates, reclaims, or closes an aban-
5 doned, orphaned, or idled well in accordance
6 with a detailed written remediation plan ap-
7 proved by the Secretary under this subsection,
8 shall be immune from civil liability under Fed-
9 eral environmental laws, for—
10 (i) pre-existing environmental condi-
11 tions at or associated with the well, unless
12 the remediating party owns or operates, in
13 the past owned or operated, or is related to
14 a person that owns or operates or in the
15 past owned or operated, the well or the
16 land on which the well is located; or
17 (ii) any remaining releases of pollut-
18 ants from the well during or after comple-
19 tion of the remediation, reclamation, or
20 closure of the well, unless the remediating
21 party causes increased pollution as a result
22 of activities that are not in accordance
23 with the approved remediation plan.
24 (C) LIMITATIONS.—Nothing in this section
25 shall limit in any way the liability of a remedi-

1 ating party for injury, damage, or pollution re-
2 sulting from the remediating party's acts or
3 omissions that are not in accordance with the
4 approved remediation plan, are reckless or will-
5 ful, constitute gross negligence or wanton mis-
6 conduct, or are unlawful.
7 (4) REGULATIONS.—The Secretary may issue
8 such regulations as are appropriate to carry out this
9 subsection.
10 (h) AUTHORIZATION OF APPROPRIATIONS.—
11 (1) IN GENERAL.—There are authorized to be
12 appropriated to carry out this section $25,000,000
13 for each of fiscal years 2006 through 2010.
14 (2) USE.—Of the amounts authorized under
15 paragraph (1), $5,000,000 are authorized for each
16 fiscal year for activities under subsection (f).
17 **SEC. 2009. COMBINED HYDROCARBON LEASING.**
18 (a) SPECIAL PROVISIONS REGARDING LEASING.—
19 Section 17(b)(2) of the Mineral Leasing Act (30 U.S.C.
20 226(b)(2)) is amended—
21 (1) by inserting "(A)" after "(2)"; and
22 (2) by adding at the end the following:
23 "(B) For any area that contains any combination of
24 tar sand and oil or gas (or both), the Secretary may issue
25 under this Act, separately—

1 "(i) a lease for exploration for and extraction of
2 tar sand; and
3 "(ii) a lease for exploration for and development
4 of oil and gas.
5 "(C) A lease issued for tar sand shall be issued using
6 the same bidding process, annual rental, and posting pe-
7 riod as a lease issued for oil and gas, except that the min-
8 imum acceptable bid required for a lease issued for tar
9 sand shall be $2 per acre.
10 "(D) The Secretary may waive, suspend, or alter any
11 requirement under section 26 that a permittee under a
12 permit authorizing prospecting for tar sand must exercise
13 due diligence, to promote any resource covered by a com-
14 bined hydrocarbon lease.".
15 (b) CONFORMING AMENDMENT.—Section
16 17(b)(1)(B) of the Mineral Leasing Act (30 U.S.C.
17 226(b)(1)(B)) is amended in the second sentence by in-
18 serting ", subject to paragraph (2)(B)," after "Sec-
19 retary".
20 (c) REGULATIONS.—Not later than 45 days after the
21 date of enactment of this Act, the Secretary shall issue
22 final regulations to implement this section.

1 **SEC. 2010. ALTERNATE ENERGY-RELATED USES ON THE**
2 **OUTER CONTINENTAL SHELF.**

3 (a) AMENDMENT TO OUTER CONTINENTAL SHELF
4 LANDS ACT.—Section 8 of the Outer Continental Shelf
5 Lands Act (43 U.S.C. 1337) is amended by adding at the
6 end the following:

7 "(p) LEASES, EASEMENTS, OR RIGHTS-OF-WAY FOR
8 ENERGY AND RELATED PURPOSES.—

9 "(1) IN GENERAL.—The Secretary, in consulta-
10 tion with the Secretary of the Department in which
11 the Coast Guard is operating and other relevant de-
12 partments and agencies of the Federal Government,
13 may grant a lease, easement, or right-of-way on the
14 outer Continental Shelf for activities not otherwise
15 authorized in this Act, the Deepwater Port Act of
16 1974 (33 U.S.C. 1501 et seq.), the Ocean Thermal
17 Energy Conversion Act of 1980 (42 U.S.C. 9101 et
18 seq.), or other applicable law, if those activities—

19 "(A) support exploration, development,
20 production, transportation, or storage of oil,
21 natural gas, or other minerals;

22 "(B) produce or support production, trans-
23 portation, or transmission of energy from
24 sources other than oil and gas; or

1 ''(C) use, for energy-related or marine-re-
2 lated purposes, facilities currently or previously
3 used for activities authorized under this Act.
4 ''(2) PAYMENTS.—The Secretary shall establish
5 reasonable forms of payments for any easement or
6 right-of-way granted under this subsection. Such
7 payments shall not be assessed on the basis of
8 throughput or production. The Secretary may estab-
9 lish fees, rentals, bonus, or other payments by rule
10 or by agreement with the party to which the lease,
11 easement, or right-of-way is granted. If a lease,
12 easement, right-of-way, license, or permit under this
13 subsection covers a specific tract of, or regards a fa-
14 cility located on, the outer Continental Shelf and is
15 not an easement or right-of-way for transmission or
16 transportation of energy, minerals, or other natural
17 resources, the Secretary shall pay 50 percent of any
18 amount received from the holder of the lease, ease-
19 ment, right-of-way, license, or permit to the State
20 off the shore of which the geographic center of the
21 area covered by the lease, easement, right-of-way, li-
22 cense, permit, or facility is located, in accordance
23 with Federal law determining the seaward lateral
24 boundaries of the coastal States.

1 "(3) CONSULTATION.—Before exercising au-
2 thority under this subsection, the Secretary shall
3 consult with the Secretary of Defense and other ap-
4 propriate agencies concerning issues related to na-
5 tional security and navigational obstruction.
6 "(4) COMPETITIVE OR NONCOMPETITIVE
7 BASIS.—
8 "(A) IN GENERAL.—The Secretary may
9 issue a lease, easement, or right-of-way for en-
10 ergy and related purposes as described in para-
11 graph (1) on a competitive or noncompetitive
12 basis.
13 "(B) CONSIDERATIONS.—In determining
14 whether a lease, easement, or right-of-way shall
15 be granted competitively or noncompetitively,
16 the Secretary shall consider such factors as—
17 "(i) prevention of waste and conserva-
18 tion of natural resources;
19 "(ii) the economic viability of an en-
20 ergy project;
21 "(iii) protection of the environment;
22 "(iv) the national interest and na-
23 tional security;
24 "(v) human safety;

1 "(vi) protection of correlative rights;
2 and
3 "(vii) potential return for the lease,
4 easement, or right-of-way.
5 "(5) REGULATIONS.—Not later than 270 days
6 after the date of enactment of the Energy Policy Act
7 of 2005, the Secretary, in consultation with the Sec-
8 retary of the Department in which the Coast Guard
9 is operating and other relevant agencies of the Fed-
10 eral Government and affected States, shall issue any
11 necessary regulations to ensure safety, protection of
12 the environment, prevention of waste, and conserva-
13 tion of the natural resources of the outer Conti-
14 nental Shelf, protection of national security inter-
15 ests, and protection of correlative rights in the outer
16 Continental Shelf.
17 "(6) SECURITY.—The Secretary shall require
18 the holder of a lease, easement, or right-of-way
19 granted under this subsection to furnish a surety
20 bond or other form of security, as prescribed by the
21 Secretary, and to comply with such other require-
22 ments as the Secretary considers necessary to pro-
23 tect the interests of the United States.
24 "(7) EFFECT OF SUBSECTION.—Nothing in this
25 subsection displaces, supersedes, limits, or modifies

1 the jurisdiction, responsibility, or authority of any
2 Federal or State agency under any other Federal
3 law.

4 "(8) APPLICABILITY.—This subsection does not
5 apply to any area on the outer Continental Shelf
6 designated as a National Marine Sanctuary.".

7 (b) CONFORMING AMENDMENT.—Section 8 of the
8 Outer Continental Shelf Lands Act (43 U.S.C. 1337) is
9 amended by striking the section heading and inserting the
10 following: "LEASES, EASEMENTS, AND RIGHTS-OF-WAY
11 ON THE OUTER CONTINENTAL SHELF.—".

12 (c) SAVINGS PROVISION.—Nothing in the amendment
13 made by subsection (a) requires, with respect to any
14 project—

15 (1) for which offshore test facilities have been
16 constructed before the date of enactment of this Act;
17 or

18 (2) for which a request for proposals has been
19 issued by a public authority,

20 any resubmittal of documents previously submitted or any
21 reauthorization of actions previously authorized.

1 **SEC. 2011. PRESERVATION OF GEOLOGICAL AND GEO-**
2 **PHYSICAL DATA.**
3 (a) SHORT TITLE.—This section may be cited as the
4 ''National Geological and Geophysical Data Preservation
5 Program Act of 2005''.
6 (b) PROGRAM.—The Secretary shall carry out a Na-
7 tional Geological and Geophysical Data Preservation Pro-
8 gram in accordance with this section—
9 (1) to archive geologic, geophysical, and engi-
10 neering data, maps, well logs, and samples;
11 (2) to provide a national catalog of such archi-
12 val material; and
13 (3) to provide technical and financial assistance
14 related to the archival material.
15 (c) PLAN.—Not later than 1 year after the date of
16 enactment of this Act, the Secretary shall submit to Con-
17 gress a plan for the implementation of the Program.
18 (d) DATA ARCHIVE SYSTEM.—
19 (1) ESTABLISHMENT.—The Secretary shall es-
20 tablish, as a component of the Program, a data ar-
21 chive system to provide for the storage, preservation,
22 and archiving of subsurface, surface, geological, geo-
23 physical, and engineering data and samples. The
24 Secretary, in consultation with the Advisory Com-
25 mittee, shall develop guidelines relating to the data

1 archive system, including the types of data and sam-
2 ples to be preserved.
3 (2) SYSTEM COMPONENTS.—The system shall
4 be comprised of State agencies that elect to be part
5 of the system and agencies within the Department
6 of the Interior that maintain geological and geo-
7 physical data and samples that are designated by
8 the Secretary in accordance with this subsection.
9 The Program shall provide for the storage of data
10 and samples through data repositories operated by
11 such agencies.
12 (3) LIMITATION OF DESIGNATION.—The Sec-
13 retary may not designate a State agency as a com-
14 ponent of the data archive system unless that agency
15 is the agency that acts as the geological survey in
16 the State.
17 (4) DATA FROM FEDERAL LAND.—The data ar-
18 chive system shall provide for the archiving of rel-
19 evant subsurface data and samples obtained from
20 Federal land—
21 (A) in the most appropriate repository des-
22 ignated under paragraph (2), with preference
23 being given to archiving data in the State in
24 which the data were collected; and

1 (B) consistent with all applicable law and
2 requirements relating to confidentiality and pro-
3 prietary data.
4 (e) NATIONAL CATALOG.—
5 (1) IN GENERAL.—As soon as practicable after
6 the date of enactment of this Act, the Secretary
7 shall develop and maintain, as a component of the
8 Program, a national catalog that identifies—
9 (A) data and samples available in the data
10 archive system established under subsection (d);
11 (B) the repository for particular material
12 in the system; and
13 (C) the means of accessing the material.
14 (2) AVAILABILITY.—The Secretary shall make
15 the national catalog accessible to the public on the
16 site of the Survey on the Internet, consistent with all
17 applicable requirements related to confidentiality
18 and proprietary data.
19 (f) ADVISORY COMMITTEE.—
20 (1) IN GENERAL.—The Advisory Committee
21 shall advise the Secretary on planning and imple-
22 mentation of the Program.
23 (2) NEW DUTIES.—In addition to its duties
24 under the National Geologic Mapping Act of 1992

1 (43 U.S.C. 31a et seq.), the Advisory Committee
2 shall perform the following duties:
3 (A) Advise the Secretary on developing
4 guidelines and procedures for providing assist-
5 ance for facilities under subsection (g)(1).
6 (B) Review and critique the draft imple-
7 mentation plan prepared by the Secretary under
8 subsection (c).
9 (C) Identify useful studies of data archived
10 under the Program that will advance under-
11 standing of the Nation's energy and mineral re-
12 sources, geologic hazards, and engineering geol-
13 ogy.
14 (D) Review the progress of the Program in
15 archiving significant data and preventing the
16 loss of such data, and the scientific progress of
17 the studies funded under the Program.
18 (E) Include in the annual report to the
19 Secretary required under section 5(b)(3) of the
20 National Geologic Mapping Act of 1992 (43
21 U.S.C. 31d(b)(3)) an evaluation of the progress
22 of the Program toward fulfilling the purposes of
23 the Program under subsection (b).
24 (g) FINANCIAL ASSISTANCE.—

1 (1) ARCHIVE FACILITIES.—Subject to the avail-
2 ability of appropriations, the Secretary shall provide
3 financial assistance to a State agency that is des-
4 ignated under subsection (d)(2) for providing facili-
5 ties to archive energy material.

6 (2) STUDIES.—Subject to the availability of ap-
7 propriations, the Secretary shall provide financial as-
8 sistance to any State agency designated under sub-
9 section (d)(2) for studies and technical assistance
10 activities that enhance understanding, interpreta-
11 tion, and use of materials archived in the data ar-
12 chive system established under subsection (d).

13 (3) FEDERAL SHARE.—The Federal share of
14 the cost of an activity carried out with assistance
15 under this subsection shall be not more than 50 per-
16 cent of the total cost of the activity.

17 (4) PRIVATE CONTRIBUTIONS.—The Secretary
18 shall apply to the non-Federal share of the cost of
19 an activity carried out with assistance under this
20 subsection the value of private contributions of prop-
21 erty and services used for that activity.

22 (h) REPORT.—The Secretary shall include in each re-
23 port under section 8 of the National Geologic Mapping Act
24 of 1992 (43 U.S.C. 31g)—

25 (1) a description of the status of the Program;

1 (2) an evaluation of the progress achieved in
2 developing the Program during the period covered by
3 the report; and
4 (3) any recommendations for legislative or other
5 action the Secretary considers necessary and appro-
6 priate to fulfill the purposes of the Program under
7 subsection (b).
8 (i) MAINTENANCE OF STATE EFFORT.—It is the in-
9 tent of Congress that the States not use this section as
10 an opportunity to reduce State resources applied to the
11 activities that are the subject of the Program.
12 (j) DEFINITIONS.—In this section:
13 (1) ADVISORY COMMITTEE.—The term ''Advi-
14 sory Committee'' means the advisory committee es-
15 tablished under section 5 of the National Geologic
16 Mapping Act of 1992 (43 U.S.C. 31d).
17 (2) PROGRAM.—The term ''Program'' means
18 the National Geological and Geophysical Data Pres-
19 ervation Program carried out under this section.
20 (3) SECRETARY.—The term ''Secretary'' means
21 the Secretary of the Interior, acting through the Di-
22 rector of the United States Geological Survey.
23 (4) SURVEY.—The term ''Survey'' means the
24 United States Geological Survey.

1 (k) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to carry out this section
3 $30,000,000 for each of fiscal years 2006 through 2010.

4 **SEC. 2012. OIL AND GAS LEASE ACREAGE LIMITATIONS.**

5 Section 27(d)(1) of the Mineral Leasing Act (30
6 U.S.C. 184(d)(1)) is amended by inserting after ''acreage
7 held in special tar sand areas'' the following: '', and acre-
8 age under any lease any portion of which has been com-
9 mitted to a federally approved unit or cooperative plan or
10 communitization agreement or for which royalty (includ-
11 ing compensatory royalty or royalty in-kind) was paid in
12 the preceding calendar year,''.

13 **SEC. 2013. DEADLINE FOR DECISION ON APPEALS OF CON-**
14 **SISTENCY DETERMINATION UNDER THE**
15 **COASTAL ZONE MANAGEMENT ACT OF 1972.**

16 (a) IN GENERAL.—Section 319 of the Coastal Zone
17 Management Act of 1972 (16 U.S.C. 1465) is amended
18 to read as follows:

19 ''APPEALS TO THE SECRETARY

20 ''SEC. 319. (a) NOTICE.—The Secretary shall publish
21 an initial notice in the Federal Register not later than 30
22 days after the date of the filing of any appeal to the Sec-
23 retary of a consistency determination under section 307.

24 ''(b) CLOSURE OF RECORD.—

25 ''(1) IN GENERAL.—Not later than the end of
26 the 120-day period beginning on the date of publica-

1 tion of an initial notice under subsection (a), the
2 Secretary shall receive no more filings on the appeal
3 and the administrative record regarding the appeal
4 shall be closed.

5 "(2) NOTICE.—Upon the closure of the admin-
6 istrative record, the Secretary shall immediately
7 publish a notice that the administrative record has
8 been closed.

9 "(c) DEADLINE FOR DECISION.—The Secretary shall
10 issue a decision in any appeal filed under section 307 not
11 later than 120 days after the closure of the administrative
12 record.

13 "(d) APPLICATION.—This section applies to appeals
14 initiated by the Secretary and appeals filed by an appli-
15 cant.".

16 (b) APPLICATION.—

17 (1) IN GENERAL.—Except as provided in para-
18 graph (2), the amendment made by subsection (a)
19 shall apply with respect to any appeal initiated or
20 filed before, on, or after the date of enactment of
21 this Act.

22 (2) LIMITATION.—Subsection (a) of section 319
23 of the Coastal Zone Management Act of 1972 (as
24 amended by subsection (a)) shall not apply with re-

1 spect to an appeal initiated or filed before the date
2 of enactment of this Act.
3 (c) CLOSURE OF RECORD FOR APPEAL FILED BE-
4 FORE DATE OF ENACTMENT.—Notwithstanding section
5 319(b)(1) of the Coastal Zone Management Act of 1972
6 (as amended by this section), in the case of an appeal of
7 a consistency determination under section 307 of that Act
8 initiated or filed before the date of enactment of this Act,
9 the Secretary of Commerce shall receive no more filings
10 on the appeal and the administrative record regarding the
11 appeal shall be closed not later than 120 days after the
12 date of enactment of this Act.

13 **SEC. 2014. REIMBURSEMENT FOR COSTS OF NEPA ANAL-**
14 **YSES, DOCUMENTATION, AND STUDIES.**

15 (a) IN GENERAL.—The Mineral Leasing Act is
16 amended by inserting after section 37 (30 U.S.C. 193)
17 the following:

18 ''REIMBURSEMENT FOR COSTS OF CERTAIN ANALYSES,
19 DOCUMENTATION, AND STUDIES

20 ''SEC. 38. (a) IN GENERAL.—The Secretary of the
21 Interior shall issue regulations under which the Secretary
22 shall reimburse a person that is a lessee, operator, oper-
23 ating rights owner, or applicant for any lease under this
24 Act for reasonable amounts paid by the person for prepa-
25 ration for the Secretary by a contractor or other person
26 selected by the Secretary of any project-level analysis, doc-

1 umentation, or related study required pursuant to the Na-
2 tional Environmental Policy Act of 1969 (42 U.S.C. 4321
3 et seq.) with respect to the lease.

4 ''(b) CONDITIONS.—The Secretary may provide reim-
5 bursement under subsection (a) only if—

6 ''(1) adequate funding to enable the Secretary
7 to timely prepare the analysis, documentation, or re-
8 lated study is not appropriated;

9 ''(2) the person paid the costs voluntarily;

10 ''(3) the person maintains records of its costs
11 in accordance with regulations issued by the Sec-
12 retary;

13 ''(4) the reimbursement is in the form of a re-
14 duction in the Federal share of the royalty required
15 to be paid for the lease for which the analysis, docu-
16 mentation, or related study is conducted, and is
17 agreed to by the Secretary and the person reim-
18 bursed prior to commencing the analysis, docu-
19 mentation, or related study; and

20 ''(5) the agreement required under paragraph
21 (4) contains provisions—

22 ''(A) reducing royalties owed on lease pro-
23 duction based on market prices;

1 "(B) stipulating an automatic termination
2 of the royalty reduction upon recovery of docu-
3 mented costs; and
4 "(C) providing a process by which the les-
5 see may seek reimbursement for circumstances
6 in which production from the specified lease is
7 not possible.".
8 (b) APPLICATION.—The amendment made by this
9 section shall apply with respect to an analysis, documenta-
10 tion, or a related study conducted on or after the date
11 of enactment of this Act for any lease entered into before,
12 on, or after the date of enactment of this Act.
13 (c) DEADLINE FOR REGULATIONS.—The Secretary
14 shall issue regulations implementing the amendment made
15 by this section by not later than 1 year after the date
16 of enactment of this Act.
17 **SEC. 2015. GAS HYDRATE PRODUCTION INCENTIVE.**
18 (a) PURPOSE.—The purpose of this section is to pro-
19 mote natural gas production from the abundant natural
20 gas hydrate resources on the outer Continental Shelf and
21 Federal lands in Alaska by providing royalty incentives.
22 (b) SUSPENSION OF ROYALTIES.—
23 (1) IN GENERAL.—The Secretary of the Inte-
24 rior shall grant royalty relief in accordance with this
25 section for natural gas produced from gas hydrate

1 resources under any lease that is an eligible lease
2 under paragraph (2).
3 (2) ELIGIBLE LEASES.—A lease shall be an eli-
4 gible lease for purposes of this section if—
5 (A) it is issued under the Outer Conti-
6 nental Shelf Lands Act (43 U.S.C. 1331 et
7 seq.), or is an oil and gas lease issued for on-
8 shore Federal lands in Alaska;
9 (B) it is issued prior to January 1, 2016;
10 and
11 (C) production under the lease of natural
12 gas from the gas hydrate resources commences
13 prior to January 1, 2018.
14 (3) AMOUNT OF RELIEF.—The Secretary shall
15 grant royalty relief under this section as a suspen-
16 sion volume of at least 50 billion cubic feet of nat-
17 ural gas produced from gas hydrate resources per 9
18 square mile leased tract. Such relief shall be in addi-
19 tion to any other royalty relief under any other pro-
20 vision applicable to the lease that does not specifi-
21 cally grant a gas hydrate production incentive. The
22 minimum suspension volume under this section for
23 leased tracts that are smaller or larger than nine
24 square miles shall be adjusted on a proportional
25 basis.

1 (4) 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 el-
5 igible lease issued before, on, or after the date of enact-
6 ment of this Act.
7 (d) RULEMAKINGS.—The Secretary shall complete
8 any rulemakings implementing this section within 1 year
9 after the date of enactment of this Act.
10 (e) GAS HYDRATE RESOURCES DEFINED.—In this
11 section, the term ''gas hydrate resources'' includes both
12 the natural gas content of gas hydrates within the hydrate
13 stability zone and free natural gas trapped by and beneath
14 the hydrate stability zone.

15 **SEC. 2016. ONSHORE DEEP GAS PRODUCTION INCENTIVE.**

16 (a) PURPOSE.—The purpose of this section is to pro-
17 mote natural gas production from the abundant onshore
18 deep gas resources on Federal lands by providing royalty
19 incentives.
20 (b) SUSPENSION OF ROYALTIES.—
21 (1) IN GENERAL.—The Secretary shall grant
22 royalty relief in accordance with this section for nat-
23 ural gas produced from deep wells spudded after the
24 date of enactment of this Act under any onshore
25 Federal oil and gas lease.

1 (2) AMOUNT OF RELIEF.—The Secretary shall
2 grant royalty relief under this section as a suspen-
3 sion volume determined by the Secretary in an
4 amount necessary to maximize production of natural
5 gas volumes. The maximum suspension volume shall
6 be 50 billion cubic feet of natural gas per lease.
7 Such royalty suspension volume shall be applied be-
8 ginning with the first dollar of royalty obligation for
9 production on or after the date of enactment of this
10 Act.

11 (3) LIMITATION.—The Secretary may place lim-
12 itations on the suspension of royalty relief granted
13 based on market price.

14 (c) APPLICATION.—This section shall apply to any
15 onshore Federal oil and gas lease issued before, on, or
16 after the date of enactment of this Act.

17 (d) RULEMAKINGS.—

18 (1) REQUIREMENT.—The Secretary shall com-
19 plete any rulemakings implementing this section
20 within 1 year after the date of enactment of this
21 Act.

22 (2) DEFINITION OF DEEP WELL.—Such regula-
23 tions shall include a definition of the term ''deep
24 well'' for purposes of this section.

1 **SEC. 2017. ENHANCED OIL AND NATURAL GAS PRODUCTION**
2 **INCENTIVE.**

3 (a) FINDINGS.—Congress finds the following:
4 (1) Approximately two-thirds of the original oil
5 in place in the United States remains unproduced.
6 (2) Enhanced oil and natural gas production
7 from the sequestering of carbon dioxide and other
8 appropriate gases has the potential to increase oil
9 and natural gas production in the United States by
10 2 million barrels of oil equivalent per day, or more.
11 (3) Collection of carbon dioxide and other ap-
12 propriate gases from industrial facilities could pro-
13 vide a significant source of these gases that could be
14 permanently sequestered into oil and natural gas
15 fields.
16 (4) Such collection could be made economic by
17 providing production incentives to oil and natural
18 gas lessees.
19 (5) Providing production incentives for en-
20 hanced oil and natural gas production would pro-
21 mote significant advances in emissions control and
22 capture technology.
23 (6) Capturing and productively using industrial
24 emissions of carbon dioxide would help reduce the
25 carbon intensity of the economy.

1 (7) Enhanced production of oil and natural gas
2 lessens the potential for environmental impacts when
3 compared with development of new oil and natural
4 gas fields because the infrastructure, such as wells,
5 pipelines, and platforms, is generally already in
6 place.
7 (b) PURPOSE.—The purpose of this section is—
8 (1) to promote the capturing, transportation,
9 and injection of produced carbon dioxide, natural
10 carbon dioxide, and other appropriate gases for se-
11 questration into oil and gas fields; and
12 (2) to promote oil and natural gas production
13 from the abundant resources on the outer Conti-
14 nental Shelf and onshore Federal lands by enhanc-
15 ing recovery of oil or natural gas (or both).
16 (c) SUSPENSION OF ROYALTIES.—
17 (1) IN GENERAL.—The Secretary of the Inte-
18 rior shall grant a royalty relief in accordance with
19 this section for production of oil or natural gas (or
20 both) from lands subject to an eligible lease into
21 which the lessee injects carbon dioxide, or other ap-
22 propriate gas or other matter approved by the Sec-
23 retary, for the purpose of enhancing recovery of oil
24 or natural gas (or both) from the eligible lease.

(2) ELIGIBLE LEASES.—A lease shall be an eligible lease for purposes of this section if it is a lease for production of oil or gas (or both) from Federal outer Continental Shelf or onshore lands that the Secretary determines may contain a volume of oil or natural gas that would not likely be produced without royalty relief under this subsection.

(3) AMOUNT OF RELIEF.—The Secretary shall grant royalty relief under this section as a suspension volume determined by the Secretary in an amount necessary to maximize production of oil and natural gas volumes. The maximum suspension volume shall be 50 billion cubic feet of natural gas, or equivalent oil volume on a Btu basis, or a combination thereof, per eligible lease.

(4) LIMITATION.—The Secretary may place limitations on the suspension of royalty relief granted based on market price.

(d) APPLICATION.—This section shall apply to any eligible lease issued before, on, or after the date of enactment of this Act.

(e) RULEMAKINGS.—The Secretary shall complete any rulemakings implementing this provision within 1 year after the date of enactment of this Act.

1 **SEC. 2018. OIL SHALE.**

2 (a) FINDING.—Congress finds that oil shale re-
3 sources located within the United States—

4 (1) total almost 2 trillion barrels of oil in place;
5 and

6 (2) are a strategically important domestic re-
7 source that should be developed on an accelerated
8 basis to reduce our growing reliance on politically
9 and economically unstable sources of foreign oil im-
10 ports.

11 (b) REQUIREMENT TO DEVELOP OIL SHALE LEAS-
12 ING PROGRAM.—The Secretary of the Interior shall de-
13 velop a Federal commercial oil shale leasing program as
14 soon as practicable and publish a final regulation imple-
15 menting such program by not later than December 31,
16 2006.

17 (c) COMMENCEMENT OF LEASE SALES.—The Sec-
18 retary shall hold the first oil shale lease sale under such
19 program within 180 days after publishing the final regula-
20 tion.

21 (d) REPORT.—Within 90 days after the date of en-
22 actment of this Act, the Secretary shall report to the Com-
23 mittee on Resources of the House of Representatives and
24 the Committee on Energy and Natural Resources of the
25 Senate on-

26 (1) the interim actions necessary to—

1 (A) develop the program under subsection
2 (b);
3 (B) promulgate the final regulation under
4 subsection (b); and
5 (C) conduct the first lease sale under the
6 program under subsection (b); and
7 (2) a schedule for completing such actions.
8 (e) OIL SHALE LAND EXCHANGES.—
9 (1) REQUIREMENT.—The Secretary shall iden-
10 tify and pursue to completion oil shale land ex-
11 changes, on a value-for-value basis, that will allow
12 qualified oil shale developers to have early access to
13 currently owned Federal oil shale lands and to com-
14 mence commercial oil shale development.
15 (2) APPLICABLE LAW.—The Secretary shall
16 conduct land exchanges under this subsection in ac-
17 cordance with the Federal Land Policy Management
18 Act of 1976 (43 U.S.C. 1701 et seq.) and the Fed-
19 eral Land Exchange Facilitation Act of 1988 (43
20 U.S.C. 1701 note).

21 **SEC. 2019. USE OF INFORMATION ABOUT OIL AND GAS PUB-**
22 **LIC CHALLENGES.**

23 (a) FINDINGS.—Congress finds the following:
24 (1) The Government Accountability Office (in
25 this section referred to as the "GAO"), in report

1 GAO–05–124, found that the Bureau of Land Man-
2 agement does not systematically gather and use na-
3 tionwide information on public challenges to manage
4 its oil and gas program.

5 (2) The GAO found that this failure prevents
6 the Director of the Bureau from assessing the im-
7 pact of public challenges on the workload of the Bu-
8 reau of Land Management State offices and elimi-
9 nates the ability of the Director to make appropriate
10 staffing and funding resource allocation decisions.

11 (b) REQUIREMENT.—The Secretary of the Interior
12 and the Secretary of Agriculture shall systematically col-
13 lect and use nationwide information on public challenges
14 to manage the oil and gas programs of the bureaus within
15 their departments. The Secretaries shall gather such infor-
16 mation at the planning, leasing, exploration, and develop-
17 ment stages, and shall maintain such information elec-
18 tronically with current data.

19 Subtitle B—Access to Federal Land

20 SEC. 2021. OFFICE OF FEDERAL ENERGY PROJECT COORDI-
21 NATION.

22 (a) ESTABLISHMENT.—The President shall establish
23 the Office of Federal Energy Project Coordination (re-
24 ferred to in this section as the ''Office'') within the Execu-
25 tive Office of the President in the same manner and with

1 the same mission as the White House Energy Projects
2 Task Force established by Executive Order No. 13212 (42
3 U.S.C. 13201 note).
4 (b) STAFFING.—The Office shall be staffed by func-
5 tional experts from relevant Federal agencies on a non-
6 reimbursable basis to carry out the mission of the Office.
7 (c) REPORT.—The Office shall transmit an annual
8 report to Congress that describes the activities put in place
9 to coordinate and expedite Federal decisions on energy
10 projects. The report shall list accomplishments in improv-
11 ing the Federal decisionmaking process and shall include
12 any additional recommendations or systemic changes
13 needed to establish a more effective and efficient Federal
14 permitting process.

15 **SEC. 2022. FEDERAL ONSHORE OIL AND GAS LEASING AND**
16 **PERMITTING PRACTICES.**

17 (a) REVIEW OF ONSHORE OIL AND GAS LEASING
18 PRACTICES.—
19 (1) IN GENERAL.—The Secretary of the Inte-
20 rior, in consultation with the Secretary of Agri-
21 culture with respect to National Forest System lands
22 under the jurisdiction of the Department of Agri-
23 culture, shall perform an internal review of current
24 Federal onshore oil and gas leasing and permitting
25 practices.

1 (2) INCLUSIONS.—The review shall include the
2 process for—
3 (A) accepting or rejecting offers to lease;
4 (B) administrative appeals of decisions or
5 orders of officers or employees of the Bureau of
6 Land Management with respect to a Federal oil
7 or gas lease;
8 (C) considering surface use plans of oper-
9 ation, including the timeframes in which the
10 plans are considered, and any recommendations
11 for improving and expediting the process; and
12 (D) identifying stipulations to address site-
13 specific concerns and conditions, including those
14 stipulations relating to the environment and re-
15 source use conflicts.
16 (b) REPORT.—Not later than 180 days after the date
17 of enactment of this Act, the Secretary of the Interior and
18 the Secretary of Agriculture shall transmit a report to
19 Congress that describes—
20 (1) actions taken under section 3 of Executive
21 Order No. 13212 (42 U.S.C. 13201 note); and
22 (2) actions taken or any plans to improve the
23 Federal onshore oil and gas leasing program.

1 **SEC. 2023. MANAGEMENT OF FEDERAL OIL AND GAS LEAS-**
2 **ING PROGRAMS.**

3 (a) TIMELY ACTION ON LEASES AND PERMITS.—To
4 ensure timely action on oil and gas leases and applications
5 for permits to drill on land otherwise available for leasing,
6 the Secretary of the Interior (in this section referred to
7 as the ''Secretary'') shall—

8 (1) ensure expeditious compliance with section
9 102(2)(C) of the National Environmental Policy Act
10 of 1969 (42 U.S.C. 4332(2)(C));

11 (2) improve consultation and coordination with
12 the States and the public; and

13 (3) improve the collection, storage, and retrieval
14 of information relating to the leasing activities.

15 (b) BEST MANAGEMENT PRACTICES.—

16 (1) IN GENERAL.—Not later than 18 months
17 after the date of enactment of this Act, the Sec-
18 retary shall develop and implement best manage-
19 ment practices to—

20 (A) improve the administration of the on-
21 shore oil and gas leasing program under the
22 Mineral Leasing Act (30 U.S.C. 181 et seq.);
23 and

24 (B) ensure timely action on oil and gas
25 leases and applications for permits to drill on
26 lands otherwise available for leasing.

1 (2) CONSIDERATIONS.—In developing the best
2 management practices under paragraph (1), the Sec-
3 retary shall consider any recommendations from the
4 review under section 2022.
5 (3) REGULATIONS.—Not later than 180 days
6 after the development of best management practices
7 under paragraph (1), the Secretary shall publish, for
8 public comment, proposed regulations that set forth
9 specific timeframes for processing leases and appli-
10 cations in accordance with the practices, including
11 deadlines for—
12 (A) approving or disapproving resource
13 management plans and related documents, lease
14 applications, and surface use plans; and
15 (B) related administrative appeals.
16 (c) IMPROVED ENFORCEMENT.—The Secretary shall
17 improve inspection and enforcement of oil and gas activi-
18 ties, including enforcement of terms and conditions in per-
19 mits to drill.
20 (d) AUTHORIZATION OF APPROPRIATIONS.—In addi-
21 tion to amounts authorized to be appropriated to carry
22 out section 17 of the Mineral Leasing Act (30 U.S.C.
23 226), there are authorized to be appropriated to the Sec-
24 retary for each of fiscal years 2006 through 2009—

1 (1) $40,000,000 to carry out subsections (a)
2 and (b); and
3 (2) $20,000,000 to carry out subsection (c).
4 **SEC. 2024. CONSULTATION REGARDING OIL AND GAS LEAS-**
5 **ING ON PUBLIC LAND.**
6 (a) IN GENERAL.—Not later than 180 days after the
7 date of enactment of this Act, the Secretary of the Interior
8 and the Secretary of Agriculture shall enter into a memo-
9 randum of understanding regarding oil and gas leasing
10 on—
11 (1) public lands under the jurisdiction of the
12 Secretary of the Interior; and
13 (2) National Forest System lands under the ju-
14 risdiction of the Secretary of Agriculture.
15 (b) CONTENTS.—The memorandum of understanding
16 shall include provisions that—
17 (1) establish administrative procedures and
18 lines of authority that ensure timely processing of oil
19 and gas lease applications, surface use plans of oper-
20 ation, and applications for permits to drill, including
21 steps for processing surface use plans and applica-
22 tions for permits to drill consistent with the
23 timelines established by the amendment made by
24 section 2028;

1 (2) eliminate duplication of effort by providing
2 for coordination of planning and environmental com-
3 pliance efforts; and
4 (3) ensure that lease stipulations are—
5 (A) applied consistently;
6 (B) coordinated between agencies; and
7 (C) only as restrictive as necessary to pro-
8 tect the resource for which the stipulations are
9 applied.
10 (c) DATA RETRIEVAL SYSTEM.—
11 (1) IN GENERAL.—Not later than 1 year after
12 the date of enactment of this Act, the Secretary of
13 the Interior and the Secretary of Agriculture shall
14 establish a joint data retrieval system that is capable
15 of—
16 (A) tracking applications and formal re-
17 quests made in accordance with procedures of
18 the Federal onshore oil and gas leasing pro-
19 gram; and
20 (B) providing information regarding the
21 status of the applications and requests within
22 the Department of the Interior and the Depart-
23 ment of Agriculture.
24 (2) RESOURCE MAPPING.—Not later than 2
25 years after the date of enactment of this Act, the

1 Secretary of the Interior and the Secretary of Agri-
2 culture shall establish a joint Geographic Informa-
3 tion System mapping system for use in—
4 (A) tracking surface resource values to aid
5 in resource management; and
6 (B) processing surface use plans of oper-
7 ation and applications for permits to drill.

8 **SEC. 2025. ESTIMATES OF OIL AND GAS RESOURCES UN-**
9 **DERLYING ONSHORE FEDERAL LAND.**

10 (a) ASSESSMENT.—Section 604 of the Energy Act of
11 2000 (42 U.S.C. 6217) is amended—
12 (1) in subsection (a)—
13 (A) in paragraph (1)—
14 (i) by striking ''reserve''; and
15 (ii) by striking ''and'' after the semi-
16 colon; and
17 (B) by striking paragraph (2) and insert-
18 ing the following:
19 ''(2) the extent and nature of any restrictions
20 or impediments to the development of the resources,
21 including—
22 ''(A) impediments to the timely granting of
23 leases;
24 ''(B) post-lease restrictions, impediments,
25 or delays on development for conditions of ap-

1 proval, applications for permits to drill, or proc-
2 essing of environmental permits; and
3 ‘‘(C) permits or restrictions associated with
4 transporting the resources for entry into com-
5 merce; and
6 ‘‘(3) the quantity of resources not produced or
7 introduced into commerce because of the restric-
8 tions.’’;
9 (2) in subsection (b)—
10 (A) by striking ‘‘reserve’’ and inserting
11 ‘‘resource’’; and
12 (B) by striking ‘‘publically’’ and inserting
13 ‘‘publicly’’; and
14 (3) by striking subsection (d) and inserting the
15 following:
16 ‘‘(d) ASSESSMENTS.—Using the inventory, the Sec-
17 retary of Energy shall make periodic assessments of eco-
18 nomically recoverable resources accounting for a range of
19 parameters such as current costs, commodity prices, tech-
20 nology, and regulations.’’.
21 (b) METHODOLOGY.—The Secretary of the Interior
22 shall use the same assessment methodology across all geo-
23 logical provinces, areas, and regions in preparing and
24 issuing national geological assessments to ensure accurate
25 comparisons of geological resources.

1 **SEC. 2026. PILOT PROJECT TO IMPROVE FEDERAL PERMIT**
2 **COORDINATION.**

3 (a) ESTABLISHMENT.—The Secretary of the Interior
4 (in this section referred to as the ''Secretary'') shall estab-
5 lish a Federal Permit Streamlining Pilot Project (in this
6 section referred to as the ''Pilot Project'').

7 (b) MEMORANDUM OF UNDERSTANDING.—

8 (1) IN GENERAL.—Not later than 90 days after
9 the date of enactment of this Act, the Secretary
10 shall enter into a memorandum of understanding
11 with the Secretary of Agriculture, the Administrator
12 of the Environmental Protection Agency, and the
13 Chief of Engineers of the Army Corps of Engineers
14 for purposes of this section.

15 (2) STATE PARTICIPATION.—The Secretary
16 may request that the Governors of Wyoming, Mon-
17 tana, Colorado, Utah, and New Mexico be signato-
18 ries to the memorandum of understanding.

19 (c) DESIGNATION OF QUALIFIED STAFF.—

20 (1) IN GENERAL.—Not later than 30 days after
21 the date of the signing of the memorandum of un-
22 derstanding under subsection (b), all Federal signa-
23 tory parties shall assign to each of the field offices
24 identified in subsection (d), on a nonreimbursable
25 basis, an employee who has expertise in the regu-
26 latory issues relating to the office in which the em-

1 ployee is employed, including, as applicable, par-
2 ticular expertise in—
3 (A) the consultations and the preparation
4 of biological opinions under section 7 of the En-
5 dangered Species Act of 1973 (16 U.S.C.
6 1536);
7 (B) permits under section 404 of Federal
8 Water Pollution Control Act (33 U.S.C. 1344);
9 (C) regulatory matters under the Clean Air
10 Act (42 U.S.C. 7401 et seq.);
11 (D) planning under the National Forest
12 Management Act of 1976 (16 U.S.C. 472a et
13 seq.); and
14 (E) the preparation of analyses under the
15 National Environmental Policy Act of 1969 (42
16 U.S.C. 4321 et seq.).
17 (2) DUTIES.—Each employee assigned under
18 paragraph (1) shall—
19 (A) not later than 90 days after the date
20 of assignment, report to the Bureau of Land
21 Management Field Managers in the office to
22 which the employee is assigned;
23 (B) be responsible for all issues relating to
24 the jurisdiction of the home office or agency of
25 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
9 affects—
10 (1) the operation of any Federal or State law;
11 or
12 (2) any delegation of authority made by the
13 head of a Federal agency whose employees are par-
14 ticipating in the Pilot Project.

15 **SEC. 2027. 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 application is complete; or

3 ''(B) notify the applicant that information is missing and specify any information that is required to be submitted for the application to be complete.

7 ''(2) ISSUANCE OR DEFERRAL.—Not later than 30 days after the applicant for a permit has submitted 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 specifies any steps that the applicant could take for the permit to be issued.

15 ''(3) REQUIREMENTS FOR DEFERRED APPLICATIONS.—

17 ''(A) IN GENERAL.—If the Secretary provides notice under paragraph (2)(B)(ii), the applicant shall have a period of 2 years from the date of receipt of the notice in which to complete all requirements specified by the Secretary, including providing information needed for compliance with the National Environmental 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. 2028. 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. 2029. 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
24 established—
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 ignation of a corridor under this section, the center-
11 line, width, and compatible uses of a corridor shall
12 be specified.

13 **SEC. 2030. 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
25 address—

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. 2031. 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. 2032. 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. 2033. 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

(2) to increase the level of responsibility of the Secretary of Energy with respect to any responsibility borne by the Secretary of Energy before that date.

Subtitle D—Miscellaneous Provisions

SEC. 2051. SPLIT-ESTATE FEDERAL OIL AND GAS LEASING AND DEVELOPMENT PRACTICES.

(a) REVIEW.—In consultation with affected private surface owners, oil and gas industry, and other interested parties, the Secretary of the Interior shall undertake a review of the current policies and practices with respect to management of Federal subsurface oil and gas development activities and their effects on the privately owned surface. This review shall include—

(1) a comparison of the rights and responsibilities under existing mineral and land law for the owner of a Federal mineral lease, the private surface owners and the Department;

(2) a comparison of the surface owner consent provisions in section 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1304) concerning surface mining of Federal coal deposits 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(c)).

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 royal-
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 **SEC. 2055. LIMITATION ON REQUIRED REVIEW UNDER**
14 **NEPA.**

15 (a) LIMITATION ON REVIEW.—Action by the Sec-
16 retary of the Interior in managing the public lands with
17 respect to any of the activities described in subsection (b)
18 shall not be subject to review under section 102(2)(C) the
19 National Environmental Policy Act of 1969 (42 U.S.C.
20 4332(2)(C)), if the activity is conducted for the purpose
21 of exploration or development of a domestic Federal en-
22 ergy source.

23 (b) ACTIVITIES DESCRIBED.—The activities referred
24 to in subsection (a) are the following:

1 (1) Geophysical exploration that does not re-
2 quire road building.
3 (2) Individual surface disturbances of less than
4 5 acres.
5 (3) Drilling an oil or gas well at a location or
6 well pad site at which drilling has occurred pre-
7 viously.
8 (4) Drilling an oil or gas well within a devel-
9 oped field for which an approved land use plan or
10 any environmental document prepared pursuant to
11 the National Environmental Policy Act of 1969 ana-
12 lyzed such drilling as a reasonably foreseeable activ-
13 ity.
14 (5) Disposal of water produced from an oil or
15 gas well, if the disposal is in compliance with a per-
16 mit issued under the Federal Water Pollution Con-
17 trol Act.
18 (6) Placement of a pipeline in an approved
19 right-of-way corridor.
20 (7) Maintenance of a minor activity, other than
21 any construction or major renovation of a building
22 or facility.

1 # TITLE XXI—COAL—RESOURCES

2 **SEC. 2101. SHORT TITLE.**

3 This title may be cited as the ''Coal Leasing Amend-
4 ments Act of 2005''.

5 **SEC. 2102. LEASE MODIFICATIONS FOR CONTIGUOUS COAL**
6 **LANDS OR COAL DEPOSITS.**

7 Section 3 of the Mineral Leasing Act (30 U.S.C. 203)
8 is amended in the first sentence by striking ''such lease,''
9 and all that follows through the end of the sentence and
10 inserting ''such lease.''.

11 **SEC. 2103. APPROVAL OF LOGICAL MINING UNITS.**

12 Section 2(d)(2) of the Mineral Leasing Act (30
13 U.S.C. 202a(2)) is amended—

14 (1) by inserting ''(A)'' after ''(2)''; and

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

16 ''(B) The Secretary may establish a period of more
17 than 40 years if the Secretary determines that the longer
18 period—

19 ''(i) will ensure the maximum economic recovery
20 of a coal deposit; or

21 ''(ii) the longer period is in the interest of the
22 orderly, efficient, or economic development of a coal
23 resource.''.

1 **SEC. 2104. PAYMENT OF ADVANCE ROYALTIES UNDER COAL**
2 **LEASES.**

3 (a) IN GENERAL.—Section 7(b) of the Mineral Leas-
4 ing Act (30 U.S.C. 207(b)) is amended to read as follows:

5 ''(b)(1) Each lease shall be subjected to the condition
6 of diligent development and continued operation of the
7 mine or mines, except where operations under the lease
8 are interrupted by strikes, the elements, or casualties not
9 attributable to the lessee.

10 ''(2)(A) The Secretary of the Interior, upon deter-
11 mining that the public interest will be served thereby, may
12 suspend the condition of continued operation upon the
13 payment of advance royalties.

14 ''(B) Such advance royalties shall be computed—

15 ''(i) based on—

16 ''(I) the average price in the spot market
17 for sales of comparable coal from the same re-
18 gion during the last month of each applicable
19 continued operation year; or

20 ''(II) in the absence of a spot market for
21 comparable coal from the same region, by using
22 a comparable method established by the Sec-
23 retary of the Interior to capture the commercial
24 value of coal; and

25 ''(ii) based on commercial quantities, as defined
26 by regulation by the Secretary of the Interior.

1 “(C) The aggregate number of years during the ini-
2 tial and any extended term of any lease for which advance
3 royalties may be accepted in lieu of the condition of contin-
4 ued operation shall not exceed 20.

5 “(3) The amount of any production royalty paid for
6 any year shall be reduced (but not below zero) by the
7 amount of any advance royalties paid under such lease to
8 the extent that such advance royalties have not been used
9 to reduce production royalties for a prior year.

10 “(4) This subsection shall be applicable to any lease
11 or logical mining unit in existence on the date of the enact-
12 ment of this paragraph or issued or approved after such
13 date.

14 “(5) Nothing in this subsection shall be construed to
15 affect the requirement contained in the second sentence
16 of subsection (a) relating to commencement of production
17 at the end of 10 years.”.

18 (b) AUTHORITY TO WAIVE, SUSPEND, OR REDUCE
19 ADVANCE ROYALTIES.—Section 39 of the Mineral Leas-
20 ing Act (30 U.S.C. 209) is amended by striking the last
21 sentence.

1 **SEC. 2105. ELIMINATION OF DEADLINE FOR SUBMISSION**
2 **OF COAL LEASE OPERATION AND RECLAMA-**
3 **TION PLAN.**

4 Section 7(c) of the Mineral Leasing Act (30 U.S.C.
5 207(c)) is amended by striking ''and not later than three
6 years after a lease is issued,''.

7 **SEC. 2106. AMENDMENT RELATING TO FINANCIAL ASSUR-**
8 **ANCES WITH RESPECT TO BONUS BIDS.**

9 Section 2(a) of the Mineral Leasing Act (30 U.S.C.
10 201(a)) is amended by adding at the end the following:
11 ''(4)(A) The Secretary shall not require a surety bond
12 or any other financial assurance to guarantee payment of
13 deferred bonus bid installments with respect to any coal
14 lease issued on a cash bonus bid to a lessee or successor
15 in interest having a history of a timely payment of noncon-
16 tested coal royalties and advanced coal royalties in lieu
17 of production (where applicable) and bonus bid installment
18 payments.

19 ''(B) The Secretary may waive any requirement that
20 a lessee provide a surety bond or other financial assurance
21 for a coal lease issued before the date of the enactment
22 of the Energy Policy Act of 2005 only if the Secretary
23 determines that the lessee has a history of making timely
24 payments referred to in subparagraph (A).

25 ''(5) Notwithstanding any other provision of law, if
26 the lessee under a coal lease fails to pay any installment

1 of a deferred cash bonus bid within 10 days after the Sec-
2 retary provides written notice that payment of the install-
3 ment is past due—
4 "(A) the lease shall automatically terminate;
5 and
6 "(B) any bonus payments already made to the
7 United States with respect to the lease shall not be
8 returned to the lessee or credited in any future lease
9 sale.".

10 **SEC. 2107. INVENTORY REQUIREMENT.**

11 (a) REVIEW OF ASSESSMENTS.—
12 (1) IN GENERAL.—The Secretary of the Inte-
13 rior, in consultation with the Secretary of Agri-
14 culture and the Secretary of Energy, shall review
15 coal assessments and other available data to
16 identify—
17 (A) public lands with coal resources;
18 (B) the extent and nature of any restric-
19 tions or impediments to the development of coal
20 resources on public lands identified under para-
21 graph (1); and
22 (C) with respect to areas of such lands for
23 which sufficient data exists, resources of com-
24 pliant coal and supercompliant coal.

1 (2) DEFINITIONS.—For purposes of this
2 subsection—
3 (A) the term ''compliant coal'' means coal
4 that contains not less than 1.0 and not more
5 than 1.2 pounds of sulfur dioxide per million
6 Btu; and
7 (B) the term ''supercompliant coal'' means
8 coal that contains less than 1.0 pounds of sul-
9 fur dioxide per million Btu.
10 (b) COMPLETION AND UPDATING OF THE INVEN-
11 TORY.—The Secretary—
12 (1) shall complete the inventory under sub-
13 section (a) by not later than 2 years after the date
14 of enactment of this Act; and
15 (2) shall update the inventory as the availability
16 of data and developments in technology warrant.
17 (c) REPORT.—The Secretary shall submit to the
18 Committee on Resources of the House of Representatives
19 and to the Committee on Energy and Natural Resources
20 of the Senate and make publicly available—
21 (1) a report containing the inventory under this
22 section, by not later than 2 years after the effective
23 date of this section; and
24 (2) each update of such inventory.

1 **SEC. 2108. APPLICATION OF AMENDMENTS.**

2 The amendments made by this title apply with re-
3 spect to any coal lease issued before, on, or after the date
4 of the enactment of this Act.

5 **SEC. 2109. RESOLUTION OF FEDERAL RESOURCE DEVELOP-**
6 **MENT CONFLICTS IN THE POWDER RIVER**
7 **BASIN.**

8 The Secretary of the Interior shall—

9 (1) undertake a review of existing authorities to
10 resolve conflicts between the development of Federal
11 coal and the development of Federal and non-Fed-
12 eral coalbed methane in the Powder River Basin in
13 Wyoming and Montana; and

14 (2) not later than 6 months after the date of
15 enactment of this Act, report to Congress on alter-
16 natives to resolve these conflicts and an identifica-
17 tion of a preferred alternative with specific legisla-
18 tive language, if any, required to implement the pre-
19 ferred alternative.

20 TITLE XXII—ARCTIC COASTAL 21 PLAIN DOMESTIC ENERGY

22 **SEC. 2201. SHORT TITLE.**

23 This title may be cited as the ''Arctic Coastal Plain
24 Domestic Energy Security Act of 2005''.

25 **SEC. 2202. DEFINITIONS.**

26 In this title:

1 (1) COASTAL PLAIN.—The term ‘‘Coastal
2 Plain’’ means that area identified as such in the
3 map entitled ‘‘Arctic National Wildlife Refuge’’,
4 dated August 1980, as referenced in section 1002(b)
5 of the Alaska National Interest Lands Conservation
6 Act (16 U.S.C. 3142(b)(1)), comprising approxi-
7 mately 1,549,000 acres, and as described in appen-
8 dix I to part 37 of title 50, Code of Federal Regula-
9 tions.

10 (2) SECRETARY.—The term ‘‘Secretary’’, except
11 as otherwise provided, means the Secretary of the
12 Interior or the Secretary's designee.

13 **SEC. 2203. LEASING PROGRAM FOR LANDS WITHIN THE**
14 **COASTAL PLAIN.**

15 (a) IN GENERAL.—The Secretary shall take such ac-
16 tions as are necessary—

17 (1) to establish and implement, in accordance
18 with this Act and acting through the Director of the
19 Bureau of Land Management in consultation with
20 the Director of the United States Fish and Wildlife
21 Service, a competitive oil and gas leasing program
22 under the Mineral Leasing Act (30 U.S.C. 181 et
23 seq.) that will result in an environmentally sound
24 program for the exploration, development, and pro-

1 duction of the oil and gas resources of the Coastal
2 Plain; and
3 (2) to administer the provisions of this title
4 through regulations, lease terms, conditions, restric-
5 tions, prohibitions, stipulations, and other provisions
6 that ensure the oil and gas exploration, development,
7 and production activities on the Coastal Plain will
8 result in no significant adverse effect on fish and
9 wildlife, their habitat, subsistence resources, and the
10 environment, and including, in furtherance of this
11 goal, by requiring the application of the best com-
12 mercially available technology for oil and gas explo-
13 ration, development, and production to all explo-
14 ration, development, and production operations
15 under this title in a manner that ensures the receipt
16 of fair market value by the public for the mineral re-
17 sources to be leased.
18 (b) REPEAL.—
19 (1) REPEAL.—Section 1003 of the Alaska Na-
20 tional Interest Lands Conservation Act (16 U.S.C.
21 3143) is repealed.
22 (2) CLERICAL AMENDMENT.—The table of con-
23 tents in section 1 of such Act is amended by striking
24 the item relating to section 1003.

(c) COMPLIANCE WITH REQUIREMENTS UNDER CERTAIN OTHER LAWS.—

(1) COMPATIBILITY.—For purposes of the National Wildlife Refuge System Administration Act of 1966, the oil and gas leasing program and activities authorized by this section in the Coastal Plain are deemed to be compatible with the purposes for which the Arctic National Wildlife Refuge was established, and that no further findings or decisions are required to implement this determination.

(2) ADEQUACY OF THE DEPARTMENT OF THE INTERIOR'S LEGISLATIVE ENVIRONMENTAL IMPACT STATEMENT.—The ''Final Legislative Environmental Impact Statement'' (April 1987) on the Coastal Plain prepared pursuant to section 1002 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3142) and section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is deemed to satisfy the requirements under the National Environmental Policy Act of 1969 that apply with respect to prelease activities, including actions authorized to be taken by the Secretary to develop and promulgate the regulations for the establishment of a leasing program authorized by this title before the conduct of the first lease sale.

1 (3) COMPLIANCE WITH NEPA FOR OTHER AC-
2 TIONS.—Before conducting the first lease sale under
3 this title, the Secretary shall prepare an environ-
4 mental impact statement under the National Envi-
5 ronmental Policy Act of 1969 with respect to the ac-
6 tions authorized by this title that are not referred to
7 in paragraph (2). Notwithstanding any other law,
8 the Secretary is not required to identify nonleasing
9 alternative courses of action or to analyze the envi-
10 ronmental effects of such courses of action. The Sec-
11 retary shall only identify a preferred action for such
12 leasing and a single leasing alternative, and analyze
13 the environmental effects and potential mitigation
14 measures for those two alternatives. The identifica-
15 tion of the preferred action and related analysis for
16 the first lease sale under this title shall be completed
17 within 18 months after the date of enactment of this
18 Act. The Secretary shall only consider public com-
19 ments that specifically address the Secretary's pre-
20 ferred action and that are filed within 20 days after
21 publication of an environmental analysis. Notwith-
22 standing any other law, compliance with this para-
23 graph is deemed to satisfy all requirements for the
24 analysis and consideration of the environmental ef-
25 fects of proposed leasing under this title.

1 (d) RELATIONSHIP TO STATE AND LOCAL AUTHOR-
2 ITY.—Nothing in this title shall be considered to expand
3 or limit State and local regulatory authority.
4 (e) SPECIAL AREAS.—
5 (1) IN GENERAL.—The Secretary, after con-
6 sultation with the State of Alaska, the city of
7 Kaktovik, and the North Slope Borough, may des-
8 ignate up to a total of 45,000 acres of the Coastal
9 Plain as a Special Area if the Secretary determines
10 that the Special Area is of such unique character
11 and interest so as to require special management
12 and regulatory protection. The Secretary shall des-
13 ignate as such a Special Area the Sadlerochit Spring
14 area, comprising approximately 4,000 acres as de-
15 picted on the map referred to in section 2202(1).
16 (2) MANAGEMENT.—Each such Special Area
17 shall be managed so as to protect and preserve the
18 area's unique and diverse character including its
19 fish, wildlife, and subsistence resource values.
20 (3) EXCLUSION FROM LEASING OR SURFACE
21 OCCUPANCY.—The Secretary may exclude any Spe-
22 cial Area from leasing. If the Secretary leases a Spe-
23 cial Area, or any part thereof, for purposes of oil
24 and gas exploration, development, production, and

1 related activities, there shall be no surface occu-
2 pancy of the lands comprising the Special Area.
3 (4) DIRECTIONAL DRILLING.—Notwithstanding
4 the other provisions of this subsection, the Secretary
5 may lease all or a portion of a Special Area under
6 terms that permit the use of horizontal drilling tech-
7 nology from sites on leases located outside the area.
8 (f) LIMITATION ON CLOSED AREAS.—The Sec-
9 retary's sole authority to close lands within the Coastal
10 Plain to oil and gas leasing and to exploration, develop-
11 ment, and production is that set forth in this title.
12 (g) REGULATIONS.—
13 (1) IN GENERAL.—The Secretary shall pre-
14 scribe such regulations as may be necessary to carry
15 out this title, including rules and regulations relating
16 to protection of the fish and wildlife, their habitat,
17 subsistence resources, and environment of the Coast-
18 al Plain, by no later than 15 months after the date
19 of enactment of this Act.
20 (2) REVISION OF REGULATIONS.—The Sec-
21 retary shall periodically review and, if appropriate,
22 revise the rules and regulations issued under sub-
23 section (a) to reflect any significant biological, envi-
24 ronmental, or engineering data that come to the Sec-
25 retary's attention.

1 **SEC. 2204. LEASE SALES.**

2 (a) IN GENERAL.—Lands may be leased pursuant to
3 this title to any person qualified to obtain a lease for de-
4 posits of oil and gas under the Mineral Leasing Act (30
5 U.S.C. 181 et seq.).

6 (b) PROCEDURES.—The Secretary shall, by regula-
7 tion, establish procedures for—

8 (1) receipt and consideration of sealed nomina-
9 tions for any area in the Coastal Plain for inclusion
10 in, or exclusion (as provided in subsection (c)) from,
11 a lease sale;

12 (2) the holding of lease sales after such nomina-
13 tion process; and

14 (3) public notice of and comment on designa-
15 tion of areas to be included in, or excluded from, a
16 lease sale.

17 (c) LEASE SALE BIDS.—Bidding for leases under
18 this title shall be by sealed competitive cash bonus bids.

19 (d) ACREAGE MINIMUM IN FIRST SALE.—In the first
20 lease sale under this title, the Secretary shall offer for
21 lease those tracts the Secretary considers to have the
22 greatest potential for the discovery of hydrocarbons, tak-
23 ing into consideration nominations received pursuant to
24 subsection (b)(1), but in no case less than 200,000 acres.

25 (e) TIMING OF LEASE SALES.—The Secretary
26 shall—

1 (1) conduct the first lease sale under this title
2 within 22 months after the date of the enactment of
3 this Act; and
4 (2) conduct additional sales so long as sufficient
5 interest in development exists to warrant, in the Sec-
6 retary's judgment, the conduct of such sales.

7 **SEC. 2205. GRANT OF LEASES BY THE SECRETARY.**

8 (a) IN GENERAL.—The Secretary may grant to the
9 highest responsible qualified bidder in a lease sale con-
10 ducted pursuant to section 2204 any lands to be leased
11 on the Coastal Plain upon payment by the lessee of such
12 bonus as may be accepted by the Secretary.

13 (b) SUBSEQUENT TRANSFERS.—No lease issued
14 under this title may be sold, exchanged, assigned, sublet,
15 or otherwise transferred except with the approval of the
16 Secretary. Prior to any such approval the Secretary shall
17 consult with, and give due consideration to the views of,
18 the Attorney General.

19 **SEC. 2206. LEASE TERMS AND CONDITIONS.**

20 (a) IN GENERAL.—An oil or gas lease issued pursu-
21 ant to this title shall—
22 (1) provide for the payment of a royalty of not
23 less than 12½ percent in amount or value of the
24 production removed or sold from the lease, as deter-

1 mined by the Secretary under the regulations appli-
2 cable to other Federal oil and gas leases;

3 (2) provide that the Secretary may close, on a
4 seasonal basis, portions of the Coastal Plain to ex-
5 ploratory drilling activities as necessary to protect
6 caribou calving areas and other species of fish and
7 wildlife;

8 (3) require that the lessee of lands within the
9 Coastal Plain shall be fully responsible and liable for
10 the reclamation of lands within the Coastal Plain
11 and any other Federal lands that are adversely af-
12 fected in connection with exploration, development,
13 production, or transportation activities conducted
14 under the lease and within the Coastal Plain by the
15 lessee or by any of the subcontractors or agents of
16 the lessee;

17 (4) provide that the lessee may not delegate or
18 convey, by contract or otherwise, the reclamation re-
19 sponsibility and liability to another person without
20 the express written approval of the Secretary;

21 (5) provide that the standard of reclamation for
22 lands required to be reclaimed under this title shall
23 be, as nearly as practicable, a condition capable of
24 supporting the uses which the lands were capable of
25 supporting prior to any exploration, development, or

1 production activities, or upon application by the les-
2 see, to a higher or better use as approved by the
3 Secretary;
4 (6) contain terms and conditions relating to
5 protection of fish and wildlife, their habitat, and the
6 environment as required pursuant to section
7 2203(a)(2);
8 (7) provide that the lessee, its agents, and its
9 contractors use best efforts to provide a fair share,
10 as determined by the level of obligation previously
11 agreed to in the 1974 agreement implementing sec-
12 tion 29 of the Federal Agreement and Grant of
13 Right of Way for the Operation of the Trans-Alaska
14 Pipeline, of employment and contracting for Alaska
15 Natives and Alaska Native Corporations from
16 throughout the State;
17 (8) prohibit the export of oil produced under
18 the lease; and
19 (9) contain such other provisions as the Sec-
20 retary determines necessary to ensure compliance
21 with the provisions of this title and the regulations
22 issued under this title.
23 (b) PROJECT LABOR AGREEMENTS.—The Secretary,
24 as a term and condition of each lease under this title and
25 in recognizing the Government's proprietary interest in

1 labor stability and in the ability of construction labor and
2 management to meet the particular needs and conditions
3 of projects to be developed under the leases issued pursu-
4 ant to this title and the special concerns of the parties
5 to such leases, shall require that the lessee and its agents
6 and contractors negotiate to obtain a project labor agree-
7 ment for the employment of laborers and mechanics on
8 production, maintenance, and construction under the
9 lease.

10 **SEC. 2207. COASTAL PLAIN ENVIRONMENTAL PROTECTION.**

11 (a) NO SIGNIFICANT ADVERSE EFFECT STANDARD
12 TO GOVERN AUTHORIZED COASTAL PLAIN ACTIVITIES.—
13 The Secretary shall, consistent with the requirements of
14 section 2203, administer the provisions of this title
15 through regulations, lease terms, conditions, restrictions,
16 prohibitions, stipulations, and other provisions that—

17 (1) ensure the oil and gas exploration, develop-
18 ment, and production activities on the Coastal Plain
19 will result in no significant adverse effect on fish
20 and wildlife, their habitat, and the environment;

21 (2) require the application of the best commer-
22 cially available technology for oil and gas explo-
23 ration, development, and production on all new ex-
24 ploration, development, and production operations;
25 and

1 (3) ensure that the maximum amount of sur-
2 face acreage covered by production and support fa-
3 cilities, including airstrips and any areas covered by
4 gravel berms or piers for support of pipelines, does
5 not exceed 2,000 acres on the Coastal Plain.
6 (b) SITE-SPECIFIC ASSESSMENT AND MITIGATION.—
7 The Secretary shall also require, with respect to any pro-
8 posed drilling and related activities, that—
9 (1) a site-specific analysis be made of the prob-
10 able effects, if any, that the drilling or related activi-
11 ties will have on fish and wildlife, their habitat, and
12 the environment;
13 (2) a plan be implemented to avoid, minimize,
14 and mitigate (in that order and to the extent prac-
15 ticable) any significant adverse effect identified
16 under paragraph (1); and
17 (3) the development of the plan shall occur
18 after consultation with the agency or agencies hav-
19 ing jurisdiction over matters mitigated by the plan.
20 (c) REGULATIONS TO PROTECT COASTAL PLAIN
21 FISH AND WILDLIFE RESOURCES, SUBSISTENCE USERS,
22 AND THE ENVIRONMENT.—Before implementing the leas-
23 ing program authorized by this title, the Secretary shall
24 prepare and promulgate regulations, lease terms, condi-
25 tions, restrictions, prohibitions, stipulations, and other

1 measures designed to ensure that the activities undertaken
2 on the Coastal Plain under this title are conducted in a
3 manner consistent with the purposes and environmental
4 requirements of this title.

5 (d) COMPLIANCE WITH FEDERAL AND STATE ENVI-
6 RONMENTAL LAWS AND OTHER REQUIREMENTS.—The
7 proposed regulations, lease terms, conditions, restrictions,
8 prohibitions, and stipulations for the leasing program
9 under this title shall require compliance with all applicable
10 provisions of Federal and State environmental law and
11 shall also require the following:

12 (1) Standards at least as effective as the safety
13 and environmental mitigation measures set forth in
14 items 1 through 29 at pages 167 through 169 of the
15 ''Final Legislative Environmental Impact State-
16 ment'' (April 1987) on the Coastal Plain.

17 (2) Seasonal limitations on exploration, develop-
18 ment, and related activities, where necessary, to
19 avoid significant adverse effects during periods of
20 concentrated fish and wildlife breeding, denning,
21 nesting, spawning, and migration.

22 (3) That exploration activities, except for sur-
23 face geological studies, be limited to the period be-
24 tween approximately November 1 and May 1 each
25 year and that exploration activities shall be sup-

1 ported, if necessary, by ice roads, winter trails with
2 adequate snow cover, ice pads, ice airstrips, and air
3 transport methods, except that such exploration ac-
4 tivities may occur at other times, if the Secretary
5 finds that such exploration will have no significant
6 adverse effect on the fish and wildlife, their habitat,
7 and the environment of the Coastal Plain.

8 (4) Design safety and construction standards
9 for all pipelines and any access and service roads,
10 that—

11 (A) minimize, to the maximum extent pos-
12 sible, adverse effects upon the passage of mi-
13 gratory species such as caribou; and

14 (B) minimize adverse effects upon the flow
15 of surface water by requiring the use of cul-
16 verts, bridges, and other structural devices.

17 (5) Prohibitions on general public access and
18 use on all pipeline access and service roads.

19 (6) Stringent reclamation and rehabilitation re-
20 quirements, consistent with the standards set forth
21 in this title, requiring the removal from the Coastal
22 Plain of all oil and gas development and production
23 facilities, structures, and equipment upon completion
24 of oil and gas production operations, except that the
25 Secretary may exempt from the requirements of this

1 paragraph those facilities, structures, or equipment
2 that the Secretary determines would assist in the
3 management of the Arctic National Wildlife Refuge
4 and that are donated to the United States for that
5 purpose.

6 (7) Appropriate prohibitions or restrictions on
7 access by all modes of transportation.

8 (8) Appropriate prohibitions or restrictions on
9 sand and gravel extraction.

10 (9) Consolidation of facility siting.

11 (10) Appropriate prohibitions or restrictions on
12 use of explosives.

13 (11) Avoidance, to the extent practicable, of
14 springs, streams, and river system; the protection of
15 natural surface drainage patterns, wetlands, and ri-
16 parian habitats; and the regulation of methods or
17 techniques for developing or transporting adequate
18 supplies of water for exploratory drilling.

19 (12) Avoidance or reduction of air traffic-re-
20 lated disturbance to fish and wildlife.

21 (13) Treatment and disposal of hazardous and
22 toxic wastes, solid wastes, reserve pit fluids, drilling
23 muds and cuttings, and domestic wastewater, includ-
24 ing an annual waste management report, a haz-
25 ardous materials tracking system, and a prohibition

1 on chlorinated solvents, in accordance with applica-
2 ble Federal and State environmental law.

3 (14) Fuel storage and oil spill contingency plan-
4 ning.

5 (15) Research, monitoring, and reporting re-
6 quirements.

7 (16) Field crew environmental briefings.

8 (17) Avoidance of significant adverse effects
9 upon subsistence hunting, fishing, and trapping by
10 subsistence users.

11 (18) Compliance with applicable air and water
12 quality standards.

13 (19) Appropriate seasonal and safety zone des-
14 ignations around well sites, within which subsistence
15 hunting and trapping shall be limited.

16 (20) Reasonable stipulations for protection of
17 cultural and archeological resources.

18 (21) All other protective environmental stipula-
19 tions, restrictions, terms, and conditions deemed
20 necessary by the Secretary.

21 (e) CONSIDERATIONS.—In preparing and promul-
22 gating regulations, lease terms, conditions, restrictions,
23 prohibitions, and stipulations under this section, the Sec-
24 retary shall consider the following:

1 (1) The stipulations and conditions that govern
2 the National Petroleum Reserve-Alaska leasing pro-
3 gram, as set forth in the 1999 Northeast National
4 Petroleum Reserve-Alaska Final Integrated Activity
5 Plan/Environmental Impact Statement.

6 (2) The environmental protection standards
7 that governed the initial Coastal Plain seismic explo-
8 ration program under parts 37.31 to 37.33 of title
9 50, Code of Federal Regulations.

10 (3) The land use stipulations for exploratory
11 drilling on the KIC-ASRC private lands that are set
12 forth in Appendix 2 of the August 9, 1983, agree-
13 ment between Arctic Slope Regional Corporation and
14 the United States.

15 (f) FACILITY CONSOLIDATION PLANNING.—

16 (1) IN GENERAL.—The Secretary shall, after
17 providing for public notice and comment, prepare
18 and update periodically a plan to govern, guide, and
19 direct the siting and construction of facilities for the
20 exploration, development, production, and transpor-
21 tation of Coastal Plain oil and gas resources.

22 (2) OBJECTIVES.—The plan shall have the fol-
23 lowing objectives:

24 (A) Avoiding unnecessary duplication of fa-
25 cilities and activities.

1 (B) Encouraging consolidation of common
2 facilities and activities.
3 (C) Locating or confining facilities and ac-
4 tivities to areas that will minimize impact on
5 fish and wildlife, their habitat, and the environ-
6 ment.
7 (D) Utilizing existing facilities wherever
8 practicable.
9 (E) Enhancing compatibility between wild-
10 life values and development activities.
11 (g) ACCESS TO PUBLIC LANDS.—The Secretary
12 shall—
13 (1) manage public lands in the Coastal Plain
14 subject to subsections (a) and (b) of section 811 of
15 the Alaska National Interest Lands Conservation
16 Act (16 U.S.C. 3121); and
17 (2) ensure that local residents shall have rea-
18 sonable access to public lands in the Coastal Plain
19 for traditional uses.
20 **SEC. 2208. EXPEDITED JUDICIAL REVIEW.**
21 (a) FILING OF COMPLAINT.—
22 (1) DEADLINE.—Subject to paragraph (2), any
23 complaint seeking judicial review of any provision of
24 this title or any action of the Secretary under this

1 title shall be filed in any appropriate district court
2 of the United States—
3 (A) except as provided in subparagraph
4 (B), within the 90-day period beginning on the
5 date of the action being challenged; or
6 (B) in the case of a complaint based solely
7 on grounds arising after such period, within 90
8 days after the complainant knew or reasonably
9 should have known of the grounds for the com-
10 plaint.
11 (2) VENUE.—Any complaint seeking judicial re-
12 view of an action of the Secretary under this title
13 may be filed only in the United States Court of Ap-
14 peals for the District of Columbia.
15 (3) LIMITATION ON SCOPE OF CERTAIN RE-
16 VIEW.—Judicial review of a Secretarial decision to
17 conduct a lease sale under this title, including the
18 environmental analysis thereof, shall be limited to
19 whether the Secretary has complied with the terms
20 of this title and shall be based upon the administra-
21 tive record of that decision. The Secretary's identi-
22 fication of a preferred course of action to enable
23 leasing to proceed and the Secretary's analysis of
24 environmental effects under this title shall be pre-

1 sumed to be correct unless shown otherwise by clear
2 and convincing evidence to the contrary.
3 (b) LIMITATION ON OTHER REVIEW.—Actions of the
4 Secretary with respect to which review could have been
5 obtained under this section shall not be subject to judicial
6 review in any civil or criminal proceeding for enforcement.

7 **SEC. 2209. FEDERAL AND STATE DISTRIBUTION OF REVE-**
8 **NUES.**

9 (a) IN GENERAL.—Notwithstanding any other provi-
10 sion of law, of the amount of adjusted bonus, rental, and
11 royalty revenues from oil and gas leasing and operations
12 authorized under this title—
13 (1) 50 percent shall be paid to the State of
14 Alaska; and
15 (2) except as provided in section 2212(d) the
16 balance shall be deposited into the Treasury as mis-
17 cellaneous receipts.
18 (b) PAYMENTS TO ALASKA.—Payments to the State
19 of Alaska under this section shall be made semiannually.
20 (c) USE OF BONUS PAYMENTS FOR LOW-INCOME
21 HOME ENERGY ASSISTANCE.—Amounts that are received
22 by the United States as bonuses for leases under this title
23 and deposited into the Treasury under subsection (a)(2)
24 may be appropriated to the Secretary of the Health and
25 Human Services, in addition to amounts otherwise avail-

able, to provide assistance under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.).

SEC. 2210. RIGHTS-OF-WAY ACROSS THE COASTAL PLAIN.

(a) EXEMPTION.—Title XI of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3161 et seq.) shall not apply to the issuance by the Secretary under section 28 of the Mineral Leasing Act (30 U.S.C. 185) of rights-of-way and easements across the Coastal Plain for the transportation of oil and gas.

(b) TERMS AND CONDITIONS.—The Secretary shall include in any right-of-way or easement referred to in subsection (a) such terms and conditions as may be necessary to ensure that transportation of oil and gas does not result in a significant adverse effect on the fish and wildlife, subsistence resources, their habitat, and the environment of the Coastal Plain, including requirements that facilities be sited or designed so as to avoid unnecessary duplication of roads and pipelines.

(c) REGULATIONS.—The Secretary shall include in regulations under section 2203(g) provisions granting rights-of-way and easements described in subsection (a) of this section.

SEC. 2211. CONVEYANCE.

In order to maximize Federal revenues by removing clouds on title to lands and clarifying land ownership pat-

1 terns within the Coastal Plain, the Secretary, notwith-
2 standing the provisions of section 1302(h)(2) of the Alas-
3 ka National Interest Lands Conservation Act (16 U.S.C.
4 3192(h)(2)), shall convey—

5 (1) to the Kaktovik Inupiat Corporation the
6 surface estate of the lands described in paragraph 1
7 of Public Land Order 6959, to the extent necessary
8 to fulfill the Corporation's entitlement under section
9 12 of the Alaska Native Claims Settlement Act (43
10 U.S.C. 1611) in accordance with the terms and con-
11 ditions of the Agreement between the Department of
12 the Interior, the United States Fish and Wildlife
13 Service, the Bureau of Land Management, and the
14 Kaktovik Inupiat Corporation effective January 22,
15 1993; and

16 (2) to the Arctic Slope Regional Corporation
17 the remaining subsurface estate to which it is enti-
18 tled pursuant to the August 9, 1983, agreement be-
19 tween the Arctic Slope Regional Corporation and the
20 United States of America.

21 **SEC. 2212. LOCAL GOVERNMENT IMPACT AID AND COMMU-**
22 **NITY SERVICE ASSISTANCE.**

23 (a) FINANCIAL ASSISTANCE AUTHORIZED.—

24 (1) IN GENERAL.—The Secretary may use
25 amounts available from the Coastal Plain Local Gov-

1 ernment Impact Aid Assistance Fund established by
2 subsection (d) to provide timely financial assistance
3 to entities that are eligible under paragraph (2) and
4 that are directly impacted by the exploration for or
5 production of oil and gas on the Coastal Plain under
6 this title.

7 (2) ELIGIBLE ENTITIES.—The North Slope
8 Borough, Kaktovik, and other boroughs, municipal
9 subdivisions, villages, and any other community or-
10 ganized under Alaska State law shall be eligible for
11 financial assistance under this section.

12 (b) USE OF ASSISTANCE.—Financial assistance
13 under this section may be used only for—

14 (1) planning for mitigation of the potential ef-
15 fects of oil and gas exploration and development on
16 environmental, social, cultural, recreational and sub-
17 sistence values;

18 (2) implementing mitigation plans and main-
19 taining mitigation projects;

20 (3) developing, carrying out, and maintaining
21 projects and programs that provide new or expanded
22 public facilities and services to address needs and
23 problems associated with such effects, including fire-
24 fighting, police, water, waste treatment, medivac,
25 and medical services; and

1 (4) establishment of a coordination office, by
2 the North Slope Borough, in the City of Kaktovik,
3 which shall—
4 (A) coordinate with and advise developers
5 on local conditions, impact, and history of the
6 areas utilized for development; and
7 (B) provide to the Committee on Resources
8 of the Senate and the Committee on Energy
9 and Resources of the Senate an annual report
10 on the status of coordination between devel-
11 opers and the communities affected by develop-
12 ment.
13 (c) APPLICATION.—
14 (1) IN GENERAL.—Any community that is eligi-
15 ble for assistance under this section may submit an
16 application for such assistance to the Secretary, in
17 such form and under such procedures as the Sec-
18 retary may prescribe by regulation.
19 (2) NORTH SLOPE BOROUGH COMMUNITIES.—A
20 community located in the North Slope Borough may
21 apply for assistance under this section either directly
22 to the Secretary or through the North Slope Bor-
23 ough.
24 (3) APPLICATION ASSISTANCE.—The Secretary
25 shall work closely with and assist the North Slope

1 Borough and other communities eligible for assist-
2 ance under this section in developing and submitting
3 applications for assistance under this section.

4 (d) ESTABLISHMENT OF FUND.—

5 (1) IN GENERAL.—There is established in the
6 Treasury the Coastal Plain Local Government Im-
7 pact Aid Assistance Fund.

8 (2) USE.—Amounts in the fund may be used
9 only for providing financial assistance under this
10 section.

11 (3) DEPOSITS.—Subject to paragraph (4), there
12 shall be deposited into the fund amounts received by
13 the United States as revenues derived from rents,
14 bonuses, and royalties under on leases and lease
15 sales authorized under this title.

16 (4) LIMITATION ON DEPOSITS.—The total
17 amount in the fund may not exceed $11,000,000.

18 (5) INVESTMENT OF BALANCES.—The Sec-
19 retary of the Treasury shall invest amounts in the
20 fund in interest bearing government securities.

21 (e) AUTHORIZATION OF APPROPRIATIONS.—To pro-
22 vide financial assistance under this section there is author-
23 ized to be appropriated to the Secretary from the Coastal
24 Plain Local Government Impact Aid Assistance Fund
25 $5,000,000 for each fiscal year.

TITLE XXIII—SET AMERICA FREE (SAFE)

SEC. 2301. SHORT TITLE.

This title may be cited as the ''Set America Free Act of 2005'' or the ''SAFE Act''.

SEC. 2302. FINDINGS.

Congress finds the following:

(1) The three contiguous North American countries of Canada, Mexico, and the United States share many economic, environmental, and security interests, including being among each others' largest trading partners, similar interests in clean air and clean water, concern about infiltration of terrorists from nations that host terrorist organizations, and interdependent economic systems.

(2) North American energy self-sufficiency is consistent with the shared interests of the three contiguous North American countries and should be achieved through methods that recognize and respect the sovereignty of each of the three contiguous North American countries.

(3) The Energy Information Administration (EIA), in its April 2004 International Energy Outlook, projects that world energy consumption will increase by 54 percent from 2001 to 2025 and that

1 world oil consumption will rise from 77 million bar-
2 rels per day (Mmbbl/d) in 2001 to 121 Mmbbl/d in
3 2025.

4 (4) In the same report, EIA projects that, with-
5 out a change in governmental policy, the United
6 States oil consumption will rise by 44.4 percent from
7 19.6 Mmbbl/d (7.15 billion barrels per year (Bbbl/
8 y)) in 2001 to 28.3 Mmbbl/d (10.33 Bbbl/y) in
9 2025, and that the oil consumption of the three con-
10 tiguous North American countries of Canada, Mex-
11 ico, and the United States (in this title referred to
12 as the ''three contiguous North American coun-
13 tries'') will rise by 47.2 percent from 23.5 Mmbbl/
14 d (8.58 Bbbl/y) in 2001 (30.5 percent of world con-
15 sumption) to 34.6 Mmbbl/d (12.6 Bbbl/y) in 2025
16 (28.6 percent of world consumption).

17 (5) EIA projects that, without a change in gov-
18 ernmental policy, oil production in the three contig-
19 uous North American countries will rise by 18.8 per-
20 cent from 15.4 Mmbbl/d (5.6 Bbbl/y) in 2001 (19.4
21 percent of world production) to 18.3 Mmbbl/d (6.7
22 Bbbl/y) in 2025 (14.5 percent of world production).

23 (6) EIA projects that, without a change in gov-
24 ernmental policy, the three contiguous North Amer-
25 ican countries contain 492.7 Bbbls of oil resources

1 (16.8 percent of total world oil resources) (not in-
2 cluding unconventional oil resources such as United
3 States oil shale or the overwhelming majority of Ca-
4 nadian oil sands) at the base case oil price, which
5 represents sufficient oil to fully supply the needs of
6 the three contiguous North American countries for
7 57.4 years based on 2001 oil consumption and 39.1
8 years based on projected 2025 oil consumption, re-
9 sulting in an average of approximately 48 years of
10 full supply.

11 (7) In the same report, EIA projects that, with-
12 out a change in governmental policy, the United
13 States natural gas consumption will rise by 38.9
14 percent from 22.6 trillion cubic feet per year (Tcf/
15 y) in 2001 to 31.4 Tcf/y in 2025, and that the nat-
16 ural gas consumption of the three contiguous North
17 American countries will rise by 48.0 percent from
18 26.9 Tcf/y in 2001 (29.3 percent of world consump-
19 tion) to 39.8 Tcf/y in 2025 (26.3 percent of world
20 consumption).

21 (8) EIA projects that, without a change in gov-
22 ernmental policy, natural gas production in the three
23 contiguous North American countries will rise by
24 21.7 percent from 27.6 Tcf/y in 2001 (30.3 percent
25 of world production) to 33.6 Tcf/y in 2025 (22.3

1 percent of world production), not including Alaskan
2 gas through the natural gas pipeline, gas from gas
3 hydrates, nor expanded coal gasification. The United
4 States Geological Survey estimates that natural gas
5 hydrate resources in-place total 169,000 Tcf in Alas-
6 ka and its surrounding waters, and approximately
7 150,000 Tcf off the lower-48 Atlantic, Pacific, and
8 Gulf of Mexico coastlines.

9 (9) The terrorist attacks in the United States
10 on September 11, 2001, and the subsequent expan-
11 sion of terrorist organizations in regions outside of
12 North America in areas that are major suppliers of
13 oil, and potential suppliers of liquified natural gas,
14 to the United States have significantly increased the
15 national security and homeland security risks to the
16 United States of relying upon oil and natural gas
17 supply sources located outside of the three contig-
18 uous North American countries. The United States
19 imports 60 percent of our oil supplies–the highest in
20 history. After Canada and Mexico, the largest oil
21 suppliers to the United States are Saudi Arabia,
22 Venezuela, Nigeria, Iraq, and Algeria all of which
23 suffer from significant instability.

24 (10) According to published scientific, technical,
25 and economic reports, the three contiguous North

1 American countries have the resource base and tech-
2 nical ability to increase production of oil by at least
3 15 Mmbbl/d by 2025 and 20 Mmbbl/d by 2030 even
4 before increases in coal liquifaction, biofuels, gas-to-
5 liquids, and other methods of creating liquid sub-
6 stitutes for crude oil and crude oil products.

7 (11) This increase in North American oil pro-
8 duction would be derived from a variety of resources
9 including, among others—

10 (A) the United States oil shale resource
11 base (2 trillion barrels of oil in place out of 2.6
12 trillion in the world) believed to be capable of
13 eventually producing 10 Mmbbl/d for more than
14 100 years;

15 (B) the Canadian Alberta oil sands re-
16 source base (1.7 trillion barrels of oil in place),
17 also believed to be capable of eventually pro-
18 ducing 10 Mmbbl/d for more than 100 years;

19 (C) the United States heavy oil resource
20 base (80 billion barrels of oil in place);

21 (D) the remaining 400 billion barrels of
22 conventional oil in place in the United States of
23 which 60 billion barrels are potentially produc-
24 ible with advanced CO2 enhanced oil recovery
25 technology;

1 (E) the United States oil sands resource
2 base of 54 billion barrels of oil in place;
3 (F) the Arctic National Wildlife Refuge
4 Coastal Plain area (ANWR) with a mean tech-
5 nically recoverable resource of more than 10 bil-
6 lion barrels of oil;
7 (G) the National Petroleum Reserve-Alas-
8 ka (NPR-A) with a mean technically recover-
9 able resource of 9.3 billion barrels of oil;
10 (H) the 12–18 billion barrels of oil likely
11 to be producible in the Canadian Atlantic off-
12 shore;
13 (I) the extensive resources of the Canadian
14 Arctic onshore and offshore;
15 (J) the extensive resources in the Alaskan
16 Arctic offshore and the outer Continental Shelf
17 offshore the lower-48 United States;
18 (K) other extensive oil resources in Canada
19 and the United States; and
20 (L) the extensive oil resources of Mexico.
21 (12) In addition to being the ''Saudi Arabia'' of
22 oil shale with at least 75 percent of the world's oil
23 shale resource base, the United States is also the
24 ''Saudi Arabia'' of coal. The EIA estimates that
25 total economically recoverable reserves of coal

1 around the world are current consumption levels.
2 EIA estimates that the economically recoverable coal
3 reserves of the United States, at 25 percent of total
4 world reserves, are the largest in the world. Total
5 United States coal resources are vastly larger than
6 the 270 billion short tons of economically recoverable
7 reserves, and with new technology much more could
8 economically be made available to supply our energy
9 needs. World consumption of coal in 2001 was 5.26
10 billion short tons and is projected to grow to 7.57
11 billion short tons in 2025. 70 percent of the in-
12 creased world consumption is projected to be attrib-
13 utable to China and India. United States consump-
14 tion of coal in 2001 was 1.06 billion short tons and
15 is projected to grow to 1.57 billion short tons in
16 2025.

17 (13) Growth in world oil consumption has been
18 outstripping growth in world production of conven-
19 tional oil resources for several primary reasons, in-
20 cluding that conventional oil production in most oil
21 producing countries has peaked and is now declin-
22 ing, and developing nations such as China and India
23 are greatly accelerating their consumption of crude
24 oil.

1 (14) The recent increases in world oil prices are
2 caused by the faster growth in demand over supply
3 and this trend is likely to continue because the re-
4 maining conventional oil is more difficult and expen-
5 sive to find and produce, and frequently not reason-
6 ably available.

7 (15) The National Intelligence Council, an advi-
8 sor to the Central Intelligence Agency, found in its
9 report, ''Mapping the Global Future,'' NIC 2004–
10 13, December 2004, that ''Continued limited access
11 of the international oil companies to major fields
12 could restrain this investment necessary for supply
13 to meet demand, however, and many of the areas—
14 the Caspian Sea, Venezuela, West Africa, and South
15 China Sea—that are being counted on to provide in-
16 creased output involve substantial political or eco-
17 nomic risk. Traditional suppliers in the Middle East
18 are also increasingly unstable. Thus sharper de-
19 mand-driven competition for resources, perhaps ac-
20 companied by a major disruption of oil supplies, is
21 among the key uncertainties. China and India, which
22 lack adequate domestic energy resources, will have
23 to ensure continued access to outside suppliers; thus,
24 the need for energy will be a major factor in shaping

1 their foreign and defense policies, including expand-
2 ing naval power''.
3 (16) Because the price of crude oil is set on a
4 world market basis, the excess of world demand over
5 supply will continue to drive up oil prices to levels
6 potentially several times those of today unless all na-
7 tions capable of producing significant quantities of
8 incremental oil respond by ensuring such production
9 is developed and available for consumption on an ex-
10 pedited basis.
11 (17) The eventual, long-term solution is to
12 drastically reduce the world's reliance on oil as the
13 primary fuel for transportation (40 percent of the
14 United States consumption of oil is to power light
15 motor vehicles).
16 (18) North America, while maximizing the pro-
17 duction of oil, must use the next 40 years as a tran-
18 sition period to a more sustainable energy model.
19 (19) The United States also has large renew-
20 able energy resource potential including wind, geo-
21 thermal, solar, biomass, ocean thermal, waves and
22 currents, and hydroelectric. The EIA's July 2004 re-
23 port, ''Renewable Energy Trends 2003'', found that
24 renewable energy provided 6 percent of the Nation's
25 energy supply in 2003. The largest renewable energy

1 source was biomass with 47 percent of the renew-
2 ables total energy output, followed closely by hydro-
3 electric with 45 percent, then geothermal with 5 per-
4 cent, wind with 2 percent, and solar with 1 percent.
5 Technology is rapidly advancing, positioning renew-
6 able energy to provide an increasing share of our en-
7 ergy supply in the residential, commercial, indus-
8 trial, transportation, and electric power sectors. The
9 United States public lands and waters comprise 2.25
10 billion acres, large portions of which may be avail-
11 able to rapidly expand this clean and renewable al-
12 ternative to fossil energy resources. These lands
13 should be reviewed for their potential contribution to
14 our Nation's domestic energy security.

15 (20) The United States has the strongest envi-
16 ronmental safeguards in the world, and our stand-
17 ards, science, and technology have proven that the
18 United States can produce energy in an environ-
19 mentally benign manner, particularly when com-
20 pared with the lesser environmental standards in
21 most foreign oil producing countries.

22 (21) The 1999 Clinton Administration report,
23 ''Environmental Benefits of Advanced Oil and Gas
24 Exploration and Production Technology,'' highlights
25 the technological achievements of the United States

1 oil and gas industry. The report noted, ''public
2 awareness of the significant and impressive environ-
3 mental benefits from new exploration and production
4 (E&P) technology advances remains limited . . ..
5 We believe it is important to tell this remarkable
6 story of environmental progress in E&P technology.
7 Greater awareness of the industry's achievements in
8 environmental protection will provide the context for
9 effective policy, and for informed decision making by
10 both the private and public sectors.''.

11 (22) Many Americans believe the myth that
12 spills from oil and natural gas exploration and pro-
13 duction are the leading cause of oil pollution in the
14 oceans and the Nation's rivers and streams. The re-
15 ality is that, to the contrary, in 2002 the National
16 Academy of Sciences found that offshore oil and nat-
17 ural gas exploration and production account for a
18 total of only 2 percent of the oil in the North Amer-
19 ican marine environment; natural sources such as oil
20 seeps account for 63 percent of such oil; industrial
21 and municipal discharges, including urban runoff,
22 account for 22 percent of such oil; atmospheric pol-
23 lution accounts for 8 percent of such oil; marine
24 transportation accounts for 3 percent of such oil;

1 and recreational vessels account for 2 percent of
2 such oil.

3 (23) Various national security organizations
4 and experts have warned the United States of the
5 escalating risks to our national security of relying on
6 transoceanic oil imports from unstable regions of the
7 world for a significant part of our oil supplies, and
8 they have urged the Nation to reduce its dependence
9 on oil.

10 (24) Polls consistently have found that a major-
11 ity of individuals in the United States strongly sup-
12 port reducing our reliance on foreign energy sources.

13 (25) A recent report on ''Energy and National
14 Security'' issued by Sandia National Laboratories,
15 SAND2003–3287, September 2003, found that our
16 national security is threatened by our continued reli-
17 ance on vast quantities of oil from unstable foreign
18 sources. The report found that supply disruptions,
19 caused by terrorists or otherwise, could immediately
20 remove many millions of barrels of oil per day from
21 the world supply, and noted that the EIA has esti-
22 mated that for every one million bbl/d of oil supply
23 disrupted, world oil prices might increase $3–$5 per
24 barrel. Sandia found six solution options,
25 including—

1 (A) maintenance of strategic reserves;
2 (B) support of foreign government regimes
3 likely to maintain production;
4 (C) military deterrence, protection, or
5 intervention to secure production sources and
6 facilities;
7 (D) diversification of production sources;
8 (E) reduction of oil intensity through con-
9 servation or through more efficient energy use;
10 and
11 (F) development and deployment of alter-
12 natives to oil (or gas).
13 Sandia noted "that none of these measures seems
14 likely to emerge from business-as-usual market proc-
15 esses. Thus implementation of these measures will
16 usually require public policy decisions. In the case of
17 the first three, they would be foreign and military
18 policy decisions; in the case of the latter three, they
19 would be legal, regulatory, or governmental subsidy
20 decisions.". Sandia mentioned oil shale and tar
21 sands as potential diversified sources of oil supplies,
22 and hydrogen, coal, renewables, nuclear fission, and
23 methane hydrates as alternatives to oil.
24 (26) President Clinton concluded, on February
25 16, 1995, under section 232 of the Trade Expansion

1 Act of 1962, that ''* * * the nation's growing reli-
2 ance on imports of crude oil and refined petroleum
3 products threaten the nation's security because they
4 increase U.S. vulnerability to oil supply interrup-
5 tions.''. In 1994 crude oil imports were 7.051 million
6 barrels per day. On March 24, 2000, President Clin-
7 ton, upon further review under section 232, found,
8 ''I have reviewed and approved the findings of your
9 investigative report * * * that imports of crude oil
10 threaten to impair the national security.''. Between
11 the two statements by President Clinton, United
12 States crude oil imports increased 21.6 percent to
13 8.581 million barrels per day in 1999.
14 (27) Economists have found that while OPEC
15 is an important source of oil price increases, the
16 United States government is also partly to blame be-
17 cause overly burdensome government regulations on
18 domestic energy exploration, production, and sales
19 have supported OPEC's monopoly power and re-
20 stricted competition from American energy compa-
21 nies, in addition to making expansive highly prospec-
22 tive areas off-limits to leasing and production.
23 (28) In addition to jeopardizing our national
24 and energy security, importing the majority of our
25 oil also injures our economic security. The United

1 States imported approximately 4.7 billion barrels of
2 oil in 2004, of which 1.4 billion barrels were from
3 Canada and Mexico. Imported energy creates very
4 few jobs in the United States and makes only a very
5 minor contribution to our Gross Domestic Product
6 (GDP). If we substitute North American production
7 for the remaining 3.3 billion barrels of imports per
8 year, at $40 per barrel the new production would
9 sell for $132 billion. A widely used commercial eco-
10 nomics model projects that GDP would increase by
11 $336 billion, creating 1,667,160 jobs, each with an
12 average total annual compensation of $50,356. Fur-
13 ther, such activity is projected to generate approxi-
14 mately $22 billion in indirect business taxes, includ-
15 ing sales, excise, and severance taxes. At a one-
16 eighth royalty, total royalty payments to mineral
17 rights owners would approximate $16.5 billion per
18 year. Further, our imported energy represents more
19 than 25 percent of our international trade deficit.
20 American production could eliminate two-thirds of
21 the 25 percent, strengthening our economy.

22 **SEC. 2303. PURPOSE.**

23 The purpose of this title is to establish a United
24 States commission to make recommendations for a coordi-
25 nated and comprehensive North American energy policy

1 that will achieve energy self-sufficiency by 2025 within the
2 three contiguous North American nation area of Canada,
3 Mexico, and the United States.

4 **SEC. 2304. UNITED STATES COMMISSION ON NORTH AMER-**
5 **ICAN ENERGY FREEDOM.**

6 (a) ESTABLISHMENT.—There is hereby established
7 the United States Commission on North American Energy
8 Freedom (in this title referred to as the ''Commission'').
9 The Federal Advisory Committee Act (5 U.S.C. App.), ex-
10 cept sections 3, 7, and 12, does not apply to the Commis-
11 sion.

12 (b) MEMBERSHIP.—

13 (1) APPOINTMENT.—The Commission shall be
14 composed of 16 members appointed by the President
15 from among individuals described in paragraph (2)
16 who are knowledgeable on energy issues, including
17 oil and gas exploration and production, crude oil re-
18 fining, oil and gas pipelines, electricity production
19 and transmission, coal, unconventional hydrocarbon
20 resources, fuel cells, motor vehicle power systems,
21 nuclear energy, renewable energy, biofuels, energy
22 efficiency, and energy conservation. The membership
23 of the Commission shall be balanced by area of ex-
24 pertise to the extent consistent with maintaining the
25 highest level of expertise on the Commission. Mem-

1 bers of the Commission may be citizens of Canada,
2 Mexico, or the United States, and the President
3 shall ensure that citizens of all three nations are ap-
4 pointed to the Commission.

5 (2) NOMINATIONS.—The President shall ap-
6 point the members of the Commission within 60
7 days after the effective date of this Act, including in-
8 dividuals nominated as follows:

9 (A) Four members shall be appointed from
10 amongst individuals independently determined
11 by the President to be qualified for appoint-
12 ment.

13 (B) Four members shall be appointed from
14 a list of eight individuals who shall be nomi-
15 nated by the majority leader of the Senate in
16 consultation with the chairman of the Com-
17 mittee on Energy and Natural Resources of the
18 Senate.

19 (C) Four members shall be appointed from
20 a list of eight individuals who shall be nomi-
21 nated by the Speaker of the House of Rep-
22 resentatives in consultation with the chairmen
23 of the Committees on Energy and Commerce
24 and Resources of the House of Representatives.

1 (D) Two members shall be appointed from
2 a list of four individuals who shall be nominated
3 by the minority leader of the Senate in con-
4 sultation with the ranking Member of the Com-
5 mittee on Energy and Natural Resources of the
6 Senate.
7 (E) Two members shall be appointed from
8 a list of four individuals who shall be nominated
9 by the minority leader of the House in consulta-
10 tion with the ranking Members of the Commit-
11 tees on Energy and Commerce and Resources
12 of the House of Representatives.
13 (3) CHAIRMAN.—The chairman of the Commis-
14 sion shall be selected by the President. The chair-
15 man of the Commission shall be responsible for—
16 (A) the assignment of duties and respon-
17 sibilities among staff personnel and their con-
18 tinuing supervision; and
19 (B) the use and expenditure of funds avail-
20 able to the Commission.
21 (4) VACANCIES.—Any vacancy on the Commis-
22 sion shall be filled in the same manner as the origi-
23 nal incumbent was appointed.
24 (c) RESOURCES.—In carrying out its functions under
25 this section, the Commission—

1 (1) is authorized to secure directly from any
2 Federal agency or department any information it
3 deems necessary to carry out its functions under this
4 Act, and each such agency or department is author-
5 ized to cooperate with the Commission and, to the
6 extent permitted by law, to furnish such information
7 (other than information described in section
8 552(b)(1)(A) of title 5, United States Code) to the
9 Commission, upon the request of the Commission;
10 (2) may enter into contracts, subject to the
11 availability of appropriations for contracting, and
12 employ such staff experts and consultants as may be
13 necessary to carry out the duties of the Commission,
14 as provided by section 3109 of title 5, United States
15 Code; and
16 (3) shall establish a multidisciplinary science
17 and technical advisory panel of experts in the field
18 of energy to assist the Commission in preparing its
19 report, including ensuring that the scientific and
20 technical information considered by the Commission
21 is based on the best scientific and technical informa-
22 tion available.
23 (d) STAFFING.—The chairman of the Commission
24 may, without regard to the civil service laws and regula-
25 tions, appoint and terminate an executive director and

1 such other additional personnel as may be necessary for
2 the Commission to perform its duties. The executive direc-
3 tor shall be compensated at a rate not to exceed the rate
4 payable for Level IV of the Executive Schedule under
5 chapter 5136 of title 5, United States Code. The chairman
6 shall select staff from among qualified citizens of Canada,
7 Mexico, and the United States of America.

8 (e) MEETINGS.—

9 (1) ADMINISTRATION.—All meetings of the
10 Commission shall be open to the public, except that
11 a meeting or any portion of it may be closed to the
12 public if it concerns matters or information de-
13 scribed in section 552b(c) of title 5, United States
14 Code. Interested persons shall be permitted to ap-
15 pear at open meetings and present oral or written
16 statements on the subject matter of the meeting.
17 The Commission may administer oaths or affirma-
18 tions to any person appearing before it.

19 (2) NOTICE; MINUTES; PUBLIC AVAILABILITY
20 OF DOCUMENTS.—

21 (A) NOTICE.—All open meetings of the
22 Commission shall be preceded by timely public
23 notice in the Federal Register of the time,
24 place, and subject of the meeting.

1 (B) MINUTES.—Minutes of each meeting
2 shall be kept and shall contain a record of the
3 people present, a description of the discussion
4 that occurred, and copies of all statements filed.
5 Subject to section 552 of title 5, United States
6 Code, the minutes and records of all meetings
7 and other documents that were made available
8 to or prepared for the Commission shall be
9 available for public inspection and copying at a
10 single location in the offices of the Commission.
11 (3) INITIAL MEETING.—The Commission shall
12 hold its first meeting within 30 days after all 16
13 members have been appointed.
14 (f) REPORT.—Within 12 months after the effective
15 date of this Act, the Commission shall submit to Congress
16 and the President a final report of its findings and rec-
17 ommendations regarding North American energy freedom.
18 (g) ADMINISTRATIVE PROCEDURE FOR REPORT AND
19 REVIEW.—Chapter 5 and chapter 7 of title 5, United
20 States Code, do not apply to the preparation, review, or
21 submission of the report required by subsection (f).
22 (h) TERMINATION.—The Commission shall cease to
23 exist 90 days after the date on which it submits its final
24 report.

1 (i) AUTHORIZATION OF APPROPRIATIONS.—There is
2 authorized to be appropriated to carry out this chapter
3 a total of $10,000,000 for the 2 fiscal-year period begin-
4 ning with fiscal year 2005, such sums to remain available
5 until expended.

6 **SEC. 2305. NORTH AMERICAN ENERGY FREEDOM POLICY.**

7 Within 90 days after receiving and considering the
8 report and recommendations of the Commission under sec-
9 tion 2304, the President shall submit to Congress a state-
10 ment of proposals to implement or respond to the Commis-
11 sion's recommendations for a coordinated, comprehensive,
12 and long-range national policy to achieve North American
13 energy freedom by 2025.

14 TITLE XXIV—GRAND CANYON 15 HYDROGEN-POWERED TRANS- 16 PORTATION DEMONSTRATION

17 **SEC. 2401. SHORT TITLE.**

18 This title may be cited as the ''Grand Canyon Hydro-
19 gen-Powered Transportation Demonstration Act of 2005''.

20 **SEC. 2402. DEFINITIONS.**

21 For purposes of this title, the term—
22 (1) ''Departments'' means the Department of
23 Energy jointly with the Department of the Interior;
24 and

1 (2) ''Secretaries'' means the Secretary of En-
2 ergy jointly with the Secretary of the Interior.

3 **SEC. 2403. FINDINGS.**

4 The Congress finds that—

5 (1) there is a need for a research and develop-
6 ment program to support and foster the develop-
7 ment, demonstration, and deployment of emerging
8 hydrogen-based transportation technologies suitable
9 for use in sensitive resource areas;

10 (2) partnerships between the Department of
11 Energy, the Department of the Interior, Native
12 American Tribes, and United States industry to de-
13 velop hydrogen-based energy technologies can pro-
14 vide significant benefits to our Nation, including en-
15 hancing our environmental stewardship, reducing
16 our dependence on foreign oil, increasing our energy
17 security, as well as creating jobs for United States
18 workers and improving the competitive position of
19 the United States in the global economy; and

20 (3) when technologically and economically fea-
21 sible, the implementation of clean, silent or nearly
22 silent, hydrogen-based transportation technologies
23 would further resource stewardship and experiential
24 goals in sensitive resource areas including units of

1 the National Park System, such as Grand Canyon
2 National Park.

3 **SEC. 2404. RESEARCH, DEVELOPMENT, AND DEMONSTRA-**
4 **TION PROGRAM.**

5 (a) IN GENERAL.—The Secretaries shall jointly es-
6 tablish and carry out a research and development pro-
7 gram, in partnership with the private sector, relating to
8 hydrogen-based transportation technologies suitable for
9 operations in sensitive resource areas such as national
10 parks. The Secretaries, in partnership with the private
11 sector, shall conduct a demonstration of hydrogen-based
12 public transportation technology at Grand Canyon Na-
13 tional Park within three years after the date of enactment
14 of this Act. At his discretion, the Secretary of Energy may
15 choose to extend existing Department of Energy hydrogen-
16 related vehicle research and development programs in
17 order to meet the objectives and requirements of this title.
18 The Secretaries shall provide preference to tribal entities
19 in the establishment of the research and development pro-
20 gram.

21 (b) OBJECTIVE.—The objective of the program shall
22 be to research, develop, and demonstrate, in cooperation
23 with affected and related industries, a hydrogen-based al-
24 ternative public transportation system suitable for oper-

1 ations within Grand Canyon National Park, that meets
2 the following standards:
3 (1) Silent or near-silent operation.
4 (2) Low, ultra low, or zero emission of pollut-
5 ants.
6 (3) Reliability.
7 (4) Safe conveyance of passengers and operator.
8 (c) PARTNERSHIP.—In order to accomplish the objec-
9 tive set forth in subsection (b), the Secretaries shall estab-
10 lish a partnership among the Departments, manufactur-
11 ers, other affected or related industries, Native American
12 Tribes, and the National Park Service shuttle operators
13 and tour operators authorized to provide services in Grand
14 Canyon National Park.

15 **SEC. 2405. REPORTS TO CONGRESS.**

16 One year after the date of enactment of this Act, and
17 annually thereafter for the duration of the program, the
18 Secretaries shall submit a report to the Committees on
19 Appropriations, Resources, and Energy and Commerce of
20 the House of Representatives and the Committees on Ap-
21 propriations and Energy and Natural Resources of the
22 Senate describing the ongoing activities of the Secretaries
23 and the Departments relating to the program authorized
24 under this title and, to the extent practicable, the activities
25 planned for the coming fiscal year.

1 **SEC. 2406. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated to the Secre-
3 taries to carry out this title, in addition to any amounts
4 made available for these or related purposes under other
5 Acts, $400,000 per year for three consecutive fiscal years
6 beginning with the full fiscal year following the date of
7 enactment of this Act.

8 TITLE XXV—ADDITIONAL
9 PROVISIONS

10 **SEC. 2501. LIMITATION ON RENT AND OTHER CHARGES**
11 **WITH RESPECT TO WIND ENERGY DEVELOP-**
12 **MENT PROJECTS ON PUBLIC LANDS.**

13 (a) IN GENERAL.—The Secretary of the Interior may
14 not impose rent and other charges, excluding for the cost
15 of processing rights-of-way, with respect to any wind en-
16 ergy development project on public lands that, in the ag-
17 gregate, exceed 50 percent of the maximum amount of
18 rent that could be charged with respect to that project
19 under the terms of Bureau of Land Management Instruc-
20 tion Memorandum No. 2003–020, dated October 16,
21 2002.

22 (b) TERMINATION.—Subsection (a) shall not apply
23 after the earlier of—

24 (1) the date on which the Secretary of the Inte-
25 rior determines there exists at least 10,000
26 megawatts of electricity generating capacity from

1 non-hydropower renewable energy resources on pub-
2 lic lands; or
3 (2) the end of the 10-year period beginning on
4 the date of the enactment of this Act.
5 (c) STATE SHARE NOT AFFECTED.—This section
6 shall not affect any State share of rent and other charges
7 with respect to any wind energy development project on
8 public lands.

Passed the House of Representatives April 21, 2005.

Attest:

Clerk.