

Union Calendar No. 90

111TH CONGRESS
1ST SESSION

H. R. 2454

[Report No. 111–137, Part I]

To create clean energy jobs, achieve energy independence, reduce global warming pollution and transition to a clean energy economy.

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2009

Mr. WAXMAN (for himself and Mr. MARKEY of Massachusetts) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Foreign Affairs, Financial Services, Education and Labor, Science and Technology, Transportation and Infrastructure, Natural Resources, Agriculture, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

JUNE 5, 2009

Reported from the Committee on Energy and Commerce with an amendment
[Strike out all after the enacting clause and insert the part printed in *italic*]

JUNE 5, 2009

The Committees on Education and Labor and Foreign Affairs discharged

JUNE 5, 2009

Referral to the Committees on Financial Services, Science and Technology, Transportation and Infrastructure, Natural Resources, Agriculture, and Ways and Means extended for a period ending not later than June 19, 2009

JUNE 19, 2009

The Committees on Financial Services, Science and Technology, Transportation and Infrastructure, Natural Resources, Agriculture, and Ways and Means discharged; committed to the Committee of the Whole House on the State of the Union and ordered to the printed

A BILL

To create clean energy jobs, achieve energy independence, reduce global warming pollution and transition to a clean energy economy.

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

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

4 (a) *SHORT TITLE.*—*This Act may be cited as the*
 5 *“American Clean Energy and Security Act of 2009”.*

6 (b) *TABLE OF CONTENTS.*—*The table of contents for*
 7 *this Act is as follows:*

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

Sec. 3. International participation.

TITLE I—CLEAN ENERGY

Subtitle A—Combined Efficiency and Renewable Electricity Standard

Sec. 101. Combined efficiency and renewable electricity standard.

Sec. 102. Clarifying State authority to adopt renewable energy incentives.

Subtitle B—Carbon Capture and Sequestration

Sec. 111. National strategy.

Sec. 112. Regulations for geologic sequestration sites.

“Sec. 813. Geologic sequestration sites.

Sec. 113. Studies and reports.

Sec. 114. Carbon capture and sequestration demonstration and early deployment program.

Sec. 115. Commercial deployment of carbon capture and sequestration technologies.

“Sec. 786. Commercial deployment of carbon capture and sequestration technologies.

Sec. 116. Performance standards for coal-fueled power plants.

“Sec. 812. Performance standards for new coal-fired power plants.

Subtitle C—Clean Transportation

- Sec. 121. Electric vehicle infrastructure.*
- Sec. 122. Large-scale vehicle electrification program.*
- Sec. 123. Plug-in electric drive vehicle manufacturing.*
- Sec. 124. Investment in clean vehicles.*
- Sec. 125. Advanced technology vehicle manufacturing incentive loans.*
- Sec. 126. Amendment to renewable fuels standard.*
- Sec. 127. Open fuel standard.*
- Sec. 128. Temporary Vehicle Trade-in Program.*
- Sec. 129. Diesel emissions reduction.*
- Sec. 130. Loan guarantees for projects to construct renewable fuel pipelines.*

Subtitle D—State Energy and Environment Development Accounts

- Sec. 131. Establishment of SEED Accounts.*
- Sec. 132. Support of State renewable energy and energy efficiency programs.*

Subtitle E—Smart Grid Advancement

- Sec. 141. Definitions.*
- Sec. 142. Assessment of Smart Grid cost effectiveness in products.*
- Sec. 143. Inclusions of Smart Grid capability on appliance ENERGY GUIDE labels.*
- Sec. 144. Smart Grid peak demand reduction goals.*
- Sec. 145. Reauthorization of energy efficiency public information program to include Smart Grid information.*
- Sec. 146. Inclusion of Smart Grid features in appliance rebate program.*

Subtitle F—Transmission Planning

- Sec. 151. Transmission planning.*
- Sec. 152. Net metering for Federal agencies.*
- Sec. 153. Support for qualified advanced electric transmission manufacturing plants, qualified high efficiency transmission property, and qualified advanced electric transmission property.*

Subtitle G—Technical Corrections to Energy Laws

- Sec. 161. Technical corrections to Energy Independence and Security Act of 2007.*
- Sec. 162. Technical corrections to Energy Policy Act of 2005.*

Subtitle H—Energy and Efficiency Centers

- Sec. 171. Clean Energy Innovation Centers.*
- Sec. 172. Building Assessment Centers.*
- Sec. 173. Centers for Energy and Environmental Knowledge and Outreach.*

Subtitle I—Nuclear and Advanced Technologies

- Sec. 181. Revisions to loan guarantee program authority.*
- Sec. 182. Purpose.*
- Sec. 183. Definitions.*
- Sec. 184. Clean Energy Investment Fund.*
- Sec. 185. Energy technology deployment goals.*
- Sec. 186. Clean Energy Deployment Administration.*
- Sec. 187. Direct support.*
- Sec. 188. Federal credit authority.*

Sec. 189. General provisions.

Subtitle J—Miscellaneous

Sec. 191. Study of ocean renewable energy and transmission planning and siting.

Sec. 192. Clean technology business competition grant program.

Sec. 193. National Bioenergy Partnership.

Sec. 194. Office of Consumer Advocacy.

TITLE II—ENERGY EFFICIENCY

Subtitle A—Building Energy Efficiency Programs

Sec. 201. Greater energy efficiency in building codes.

Sec. 202. Building retrofit program.

Sec. 203. Energy efficient manufactured homes.

Sec. 204. Building energy performance labeling program.

Sec. 205. Tree planting programs.

Sec. 206. Energy efficiency for data center buildings.

Subtitle B—Lighting and Appliance Energy Efficiency Programs

Sec. 211. Lighting efficiency standards.

Sec. 212. Other appliance efficiency standards.

Sec. 213. Appliance efficiency determinations and procedures.

Sec. 214. Best-in-Class Appliances Deployment Program.

Sec. 215. WaterSense.

Sec. 216. Federal procurement of water efficient products.

Sec. 217. Water efficient product rebate programs.

Sec. 218. Certified stoves program.

Sec. 219. Energy Star standards.

Subtitle C—Transportation Efficiency

Sec. 221. Emissions standards.

“PART B—MOBILE SOURCES

“Sec. 821. Greenhouse gas emission standards for mobile sources.

Sec. 222. Greenhouse gas emissions reductions through transportation efficiency.

“PART D—PLANNING REQUIREMENTS

“Sec. 841. Greenhouse gas emissions reductions through transportation efficiency.

Sec. 223. SmartWay transportation efficiency program.

“Sec. 822. SmartWay transportation efficiency program.

Sec. 224. State vehicle fleets.

Subtitle D—Industrial Energy Efficiency Programs

Sec. 241. Industrial plant energy efficiency standards.

Sec. 242. Electric and thermal waste energy recovery award program.

Sec. 243. Clarifying election of waste heat recovery financial incentives.

Sec. 244. Motor market assessment and commercial awareness program.

Sec. 245. Motor efficiency rebate program.

*Subtitle E—Improvements in Energy Savings Performance Contracting**Sec. 251. Energy savings performance contracts.**Subtitle F—Public Institutions**Sec. 261. Public institutions.**Sec. 262. Community energy efficiency flexibility.**Sec. 263. Small community joint participation.**Sec. 264. Low income community energy efficiency program.**Subtitle G—Miscellaneous**Sec. 271. Energy efficient information and communications technologies.**Sec. 272. National energy efficiency goals.**Sec. 273. Affiliated island energy independence team.**Sec. 274. Product carbon disclosure program.***TITLE III—REDUCING GLOBAL WARMING POLLUTION***Sec. 301. Short title.**Subtitle A—Reducing Global Warming Pollution**Sec. 311. Reducing global warming pollution.***“TITLE VII—GLOBAL WARMING POLLUTION REDUCTION PROGRAM****“PART A—GLOBAL WARMING POLLUTION REDUCTION GOALS AND TARGETS***“Sec. 701. Findings and purpose.**“Sec. 702. Economy-wide reduction goals.**“Sec. 703. Reduction targets for specified sources.**“Sec. 704. Supplemental pollution reductions.**“Sec. 705. Review and program recommendations.**“Sec. 706. National Academy review.**“Sec. 707. Presidential response and recommendations.***“PART B—DESIGNATION AND REGISTRATION OF GREENHOUSE GASES***“Sec. 711. Designation of greenhouse gases.**“Sec. 712. Carbon dioxide equivalent value of greenhouse gases.**“Sec. 713. Greenhouse gas registry.***“PART C—PROGRAM RULES***“Sec. 721. Emission allowances.**“Sec. 722. Prohibition of excess emissions.**“Sec. 723. Penalty for noncompliance.**“Sec. 724. Trading.**“Sec. 725. Banking and borrowing.**“Sec. 726. Strategic reserve.**“Sec. 727. Permits.**“Sec. 728. International emission allowances.***“PART D—OFFSETS***“Sec. 731. Offsets Integrity Advisory Board.**“Sec. 732. Establishment of offsets program.*

- “Sec. 733. *Eligible project types.*
- “Sec. 734. *Requirements for offset projects.*
- “Sec. 735. *Approval of offset projects.*
- “Sec. 736. *Verification of offset projects.*
- “Sec. 737. *Issuance of offset credits.*
- “Sec. 738. *Audits.*
- “Sec. 739. *Program review and revision.*
- “Sec. 740. *Early offset supply.*
- “Sec. 741. *Environmental considerations.*
- “Sec. 742. *Trading.*
- “Sec. 743. *International offset credits.*

*“PART E—SUPPLEMENTAL EMISSIONS REDUCTIONS FROM REDUCED
DEFORESTATION*

- “Sec. 751. *Definitions.*
- “Sec. 752. *Findings.*
- “Sec. 753. *Supplemental emissions reductions through reduced deforestation.*
- “Sec. 754. *Requirements for international deforestation reduction program.*
- “Sec. 755. *Reports and reviews.*
- “Sec. 756. *Legal effect of part.*
- Sec. 312. *Definitions.*
- “Sec. 700. *Definitions.*

Subtitle B—Disposition of Allowances

- Sec. 321. *Disposition of allowances for global warming pollution reduction program.*

“PART H—DISPOSITION OF ALLOWANCES

- “Sec. 781. *Allocation of allowances for supplemental reductions.*
- “Sec. 782. *Allocation of emission allowances.*
- “Sec. 783. *Electricity consumers.*
- “Sec. 784. *Natural gas consumers.*
- “Sec. 785. *Home heating oil and propane consumers.*
- “Sec. 787. *Allocations to refineries.*
- “Sec. 788. **【SECTION RESERVED】.**
- “Sec. 789. *Climate change consumer refunds.*
- “Sec. 790. *Exchange for State-issued allowances.*
- “Sec. 791. *Auction procedures.*
- “Sec. 792. *Auctioning allowances for other entities.*
- “Sec. 793. *Establishment of funds.*
- “Sec. 794. *Oversight of allocations.*

Subtitle C—Additional Greenhouse Gas Standards

- Sec. 331. *Greenhouse gas standards.*

“TITLE VIII—ADDITIONAL GREENHOUSE GAS STANDARDS

- “Sec. 801. *Definitions.*

“PART A—STATIONARY SOURCE STANDARDS

- “Sec. 811. *Standards of performance.*

*“PART C—EXEMPTIONS FROM OTHER PROGRAMS**“Sec. 831. Criteria pollutants.**“Sec. 832. International air pollution.**“Sec. 833. Hazardous air pollutants.**“Sec. 834. New source review.**“Sec. 835. Title V permits.**Sec. 332. HFC Regulation.**Sec. 333. Black carbon.**“PART E—BLACK CARBON**“Sec. 851. Black carbon.**Sec. 334. States.**Sec. 335. State programs.**“PART F—MISCELLANEOUS**“Sec. 861. State programs.**“Sec. 862. Grants for support of air pollution control programs.**Sec. 336. Enforcement.**Sec. 337. Conforming amendments.**Sec. 338. Davis-Bacon compliance.**Subtitle D—Carbon Market Assurance**Sec. 341. Carbon market assurance.**Subtitle E—Additional Market Assurance**Sec. 351. Regulation of certain transactions in derivatives involving energy commodities.**Sec. 352. No effect on authority of the Federal Energy Regulatory Commission.**Sec. 353. Inspector General of the Commodity Futures Trading Commission.**Sec. 354. Settlement and clearing through registered derivatives clearing organizations.**Sec. 355. Limitation on eligibility to purchase a credit default swap.**Sec. 356. Transaction fees.**Sec. 357. No effect on authority of the Federal Trade Commission.**Sec. 358. Regulation of carbon derivatives markets.**Sec. 359. Cease-and-desist authority.**TITLE IV—TRANSITIONING TO A CLEAN ENERGY ECONOMY**Subtitle A—Ensuring Real Reductions in Industrial Emissions**Sec. 401. Ensuring real reductions in industrial emissions.**“PART F—ENSURING REAL REDUCTIONS IN INDUSTRIAL EMISSIONS**“Sec. 761. Purposes.**“Sec. 762. International negotiations.**“Sec. 763. Definitions.**“SUBPART 1—EMISSION ALLOWANCE REBATE PROGRAM**“Sec. 764. Eligible industrial sectors.**“Sec. 765. Distribution of emission allowance rebates.*

“SUBPART 2—INTERNATIONAL RESERVE ALLOWANCE PROGRAM

“Sec. 766. *International reserve allowance program.*

“SUBPART 3—PRESIDENTIAL DETERMINATION

“Sec. 767. *Presidential reports and determinations.*

Subtitle B—Green Jobs and Worker Transition

PART 1—GREEN JOBS

Sec. 421. Clean energy curriculum development grants.

Sec. 422. Increased funding for energy worker training program.

PART 2—CLIMATE CHANGE WORKER ADJUSTMENT ASSISTANCE

Sec. 425. Petitions, eligibility requirements, and determinations.

Sec. 426. Program benefits.

Sec. 427. General provisions.

Subtitle C—Consumer Assistance

Sec. 431. Energy tax credit.

Sec. 432. Energy refund program for low-income consumers.

Subtitle D—Exporting Clean Technology

Sec. 441. Findings and purposes.

Sec. 442. Definitions.

Sec. 443. Governance.

Sec. 444. Determination of eligible countries.

Sec. 445. Qualifying activities.

Sec. 446. Assistance.

Subtitle E—Adapting to Climate Change

PART 1—DOMESTIC ADAPTATION

SUBPART A—NATIONAL CLIMATE CHANGE ADAPTATION PROGRAM

Sec. 451. National Climate Change Adaptation Program.

Sec. 452. Climate services.

Sec. 453. State programs to build resilience to climate change impacts.

SUBPART B—PUBLIC HEALTH AND CLIMATE CHANGE

Sec. 461. Sense of Congress on public health and climate change.

Sec. 462. Relationship to other laws.

Sec. 463. National strategic action plan.

Sec. 464. Advisory board.

Sec. 465. Reports.

Sec. 466. Definitions.

Sec. 467. Climate Change Health Protection and Promotion Fund.

SUBPART C—NATURAL RESOURCE ADAPTATION

Sec. 471. Purposes.

Sec. 472. Natural resources climate change adaptation policy.

Sec. 473. Definitions.

Sec. 474. Council on Environmental Quality.
Sec. 475. Natural Resources Climate Change Adaptation Panel.
Sec. 476. Natural Resources Climate Change Adaptation Strategy.
Sec. 477. Natural resources adaptation science and information.
Sec. 478. Federal natural resource agency adaptation plans.
Sec. 479. State natural resources adaptation plans.
Sec. 480. Natural Resources Climate Change Adaptation Fund.
Sec. 481. National Wildlife Habitat and Corridors Information Program.
Sec. 482. Additional provisions regarding Indian tribes.

PART 2—INTERNATIONAL CLIMATE CHANGE ADAPTATION PROGRAM

Sec. 491. Findings and purposes.
Sec. 492. Definitions.
Sec. 493. International Climate Change Adaptation Program.
Sec. 494. Distribution of allowances.
Sec. 495. Bilateral assistance.

1 SEC. 2. DEFINITIONS.

2 For purposes of this Act:

3 (1) ADMINISTRATOR.—The term “Adminis-
4 trator” means the Administrator of the Environ-
5 mental Protection Agency.

6 (2) STATE.—The term “State” has the meaning
7 given that term in section 302 of the Clean Air Act.

8 SEC. 3. INTERNATIONAL PARTICIPATION.

9 The Administrator, in consultation with the Depart-
10 ment of State and the United States Trade Representative,
11 shall annually prepare and certify a report to the Congress
12 regarding whether China and India have adopted green-
13 house gas emissions standards at least as strict as those
14 standards required under this Act. If the Administrator de-
15 termines that China and India have not adopted greenhouse
16 gas emissions standards at least as stringent as those set
17 forth in this Act, the Administrator shall notify each Mem-

1 *ber of Congress of his determination, and shall release his*
 2 *determination to the media.*

3 **TITLE I—CLEAN ENERGY**
 4 **Subtitle A—Combined Efficiency**
 5 **and Renewable Electricity**
 6 **Standard**

7 **SEC. 101. COMBINED EFFICIENCY AND RENEWABLE ELEC-**
 8 **TRICITY STANDARD.**

9 *(a) IN GENERAL.—Title VI of the Public Utility Regu-*
 10 *latory Policies Act of 1978 (16 U.S.C. 2601 and following)*
 11 *is amended by adding at the end the following:*

12 **“SEC. 610. COMBINED EFFICIENCY AND RENEWABLE ELEC-**
 13 **TRICITY STANDARD.**

14 *“(a) DEFINITIONS.—For purposes of this section:*

15 *“(1) CHP SAVINGS.—The term ‘CHP savings’*
 16 *means—*

17 *“(A) CHP system savings from a combined*
 18 *heat and power system that commences operation*
 19 *after the date of enactment of this section; and*

20 *“(B) the increase in CHP system savings*
 21 *from, at any time after the date of the enactment*
 22 *of this section, upgrading, replacing, expanding,*
 23 *or increasing the utilization of a combined heat*
 24 *and power system that commenced operation on*
 25 *or before the date of enactment of this section.*

1 “(2) *CHP SYSTEM SAVINGS.*—*The term ‘CHP*
2 *system savings’ means the electric output, and the*
3 *electricity saved due to the mechanical output, of a*
4 *combined heat and power system, adjusted to reflect*
5 *any increase in fuel consumption by that system as*
6 *compared to the fuel that would have been required to*
7 *produce an equivalent useful thermal energy output*
8 *in a separate thermal-only system.*

9 “(3) *COMBINED HEAT AND POWER SYSTEM.*—*The*
10 *term ‘combined heat and power system’ means a sys-*
11 *tem that uses the same energy source both for the gen-*
12 *eration of electrical or mechanical power and the pro-*
13 *duction of steam or another form of useful thermal*
14 *energy, provided that—*

15 “(A) *the system meets such requirements re-*
16 *lating to efficiency and other operating charac-*
17 *teristics as the Commission may promulgate by*
18 *regulation; and*

19 “(B) *the net sales of electricity by the facil-*
20 *ity to customers not consuming the thermal out-*
21 *put from that facility will not exceed 50 percent*
22 *of total annual electric generation by the facility.*

23 “(4) *CUSTOMER FACILITY SAVINGS.*—*The term*
24 *‘customer facility savings’ means a reduction in end-*
25 *use electricity consumption (including recycled energy*

1 *savings) at a facility of an end-use consumer of elec-*
2 *tricity served by a retail electric supplier, as com-*
3 *pared to—*

4 *“(A) in the case of a new facility, consump-*
5 *tion at a reference facility of average efficiency;*

6 *“(B) in the case of an existing facility, con-*
7 *sumption at such facility during a base period,*
8 *except as provided in subparagraphs (C) and*
9 *(D);*

10 *“(C) in the case of new equipment that re-*
11 *places existing equipment with remaining useful*
12 *life, the projected consumption of the existing*
13 *equipment for the remaining useful life of such*
14 *equipment, and thereafter, consumption of new*
15 *equipment of average efficiency of the same*
16 *equipment type; and*

17 *“(D) in the case of new equipment that re-*
18 *places existing equipment at the end of the useful*
19 *life of the existing equipment, consumption by*
20 *new equipment of average efficiency of the same*
21 *equipment type.*

22 *“(5) DISTRIBUTED RENEWABLE GENERATION FA-*
23 *CILITY.—The term ‘distributed renewable generation*
24 *facility’ means a facility that—*

25 *“(A) generates renewable electricity;*

1 “(B) primarily serves 1 or more electricity
2 consumers at or near the facility site; and

3 “(C) is no greater than—

4 “(i) 2 megawatts in capacity; or

5 “(ii) 4 megawatts in capacity, in the
6 case of a facility that is placed in service
7 after the date of enactment of this section
8 and generates electricity from a renewable
9 energy resource other than by means of com-
10 bustion.

11 “(6) *ELECTRICITY SAVINGS*.—The term ‘elec-
12 tricity savings’ means reductions in electricity con-
13 sumption, relative to business-as-usual projections,
14 achieved through measures implemented after the date
15 of enactment of this section, limited to—

16 “(A) customer facility savings of electricity,
17 adjusted to reflect any associated increase in fuel
18 consumption at the facility;

19 “(B) reductions in distribution system
20 losses of electricity achieved by a retail electricity
21 distributor, as compared to losses attributable to
22 new or replacement distribution system equip-
23 ment of average efficiency;

24 “(C) CHP savings; and

25 “(D) fuel cell savings.

1 “(7) *FEDERAL LAND.*—*The term ‘Federal land’*
2 *means land owned by the United States, other than*
3 *land held in trust for an Indian or Indian tribe.*

4 “(8) *FEDERAL RENEWABLE ELECTRICITY CRED-*
5 *IT.*—*The term ‘Federal renewable electricity credit’*
6 *means a credit, representing one megawatt hour of re-*
7 *newable electricity, issued pursuant to subsection (e).*

8 “(9) *FUEL CELL.*—*The term ‘fuel cell’ means a*
9 *device that directly converts the chemical energy of a*
10 *fuel and an oxidant into electricity by electrochemical*
11 *processes occurring at separate electrodes in the de-*
12 *vice.*

13 “(10) *FUEL CELL SAVINGS.*—*The term ‘fuel cell*
14 *savings’ means the electricity saved by a fuel cell that*
15 *is installed after the date of enactment of this section,*
16 *or by upgrading a fuel cell that commenced operation*
17 *on or before the date of enactment of this section, as*
18 *a result of the greater efficiency with which the fuel*
19 *cell transforms fuel into electricity as compared with*
20 *sources of electricity delivered through the grid, pro-*
21 *vided that—*

22 “(A) *the fuel cell meets such requirements*
23 *relating to efficiency and other operating charac-*
24 *teristics as the Commission may promulgate by*
25 *regulation; and*

1 “(B) the net sales of electricity from the fuel
2 cell to customers not consuming the thermal out-
3 put from the fuel cell, if any, do not exceed 50
4 percent of the total annual electricity generation
5 by the fuel cell.

6 “(11) *HIGH CONSERVATION PRIORITY LAND.*—
7 The term ‘high conservation priority land’ means
8 land that is not Federal land and is—

9 “(A) globally or State ranked as critically
10 imperiled or imperiled under a State Natural
11 Heritage Program; or

12 “(B) old-growth or late-successional forest,
13 as identified by the office of the relevant State
14 Forester or relevant State agency with regulatory
15 jurisdiction over forestry activities.

16 “(12) *OTHER QUALIFYING ENERGY RESOURCE.*—
17 The term ‘other qualifying energy resource’ means
18 any of the following:

19 “(A) Landfill gas.

20 “(B) Wastewater treatment gas.

21 “(C) Coal mine methane used to generate
22 electricity at or near the mine mouth.

23 “(D) Qualified waste-to-energy.

24 “(13) *QUALIFIED HYDROPOWER.*—The term
25 ‘qualified hydropower’ means—

1 “(A) energy produced from increased effi-
2 ciency achieved, or additions of capacity made,
3 on or after January 1, 1992, at a hydroelectric
4 facility that was placed in service before that
5 date and does not include additional energy gen-
6 erated as a result of operational changes not di-
7 rectly associated with efficiency improvements or
8 capacity additions; or

9 “(B) energy produced from generating ca-
10 pacity added to a dam on or after January 1,
11 1992, provided that the Commission certifies
12 that—

13 “(i) the dam was placed in service be-
14 fore the date of the enactment of this section
15 and was operated for flood control, naviga-
16 tion, or water supply purposes and was not
17 producing hydroelectric power prior to the
18 addition of such capacity;

19 “(ii) the hydroelectric project installed
20 on the dam is licensed (or is exempt from
21 licensing) by the Commission and is in
22 compliance with the terms and conditions of
23 the license or exemption, and with other ap-
24 plicable legal requirements for the protec-

1 *tion of environmental quality, including*
2 *applicable fish passage requirements; and*

3 *“(iii) the hydroelectric project installed*
4 *on the dam is operated so that the water*
5 *surface elevation at any given location and*
6 *time that would have occurred in the ab-*
7 *sence of the hydroelectric project is main-*
8 *tained, subject to any license or exemption*
9 *requirements that require changes in water*
10 *surface elevation for the purpose of improv-*
11 *ing the environmental quality of the affected*
12 *waterway.*

13 *“(14) QUALIFIED WASTE-TO-ENERGY.—The term*
14 *‘qualified waste-to-energy’ means energy from the*
15 *combustion of municipal solid waste or construction,*
16 *demolition, or disaster debris, or from the gasification*
17 *or pyrolization of such waste or debris and the com-*
18 *bustion of the resulting gas at the same facility, pro-*
19 *vided that—*

20 *“(A) such term shall include only the energy*
21 *derived from the non-fossil biogenic portion of*
22 *such waste or debris;*

23 *“(B) the Commission determines, with the*
24 *concurrence of the Administrator of the Environ-*
25 *mental Protection Agency, that the total lifecycle*

1 *greenhouse gas emissions attributable to the gen-*
2 *eration of electricity from such waste or debris*
3 *are lower than those attributable to the likely al-*
4 *ternative method of disposing of such waste or*
5 *debris; and*

6 “(C) *the owner or operator of the facility*
7 *generating electricity from such energy provides*
8 *to the Commission, on an annual basis—*

9 “(i) *a certification that the facility is*
10 *in compliance with all applicable State and*
11 *Federal environmental permits;*

12 “(ii) *in the case of a facility that com-*
13 *menced operation before the date of enact-*
14 *ment of this section, a certification that the*
15 *facility meets emissions standards promul-*
16 *gated under sections 112 or 129 of the Clean*
17 *Air Act (42 U.S.C. 7412 or 7429) that*
18 *apply as of the date of enactment of this*
19 *section to new facilities within the relevant*
20 *source category; and*

21 “(iii) *in the case of the combustion,*
22 *pyrolization, or gasification of municipal*
23 *solid waste, a certification that each local*
24 *government unit from which such waste*
25 *originates operates, participates in the oper-*

1 *ation of, contracts for, or otherwise provides*
2 *for, recycling services for its residents.*

3 “(15) *RECYCLED ENERGY SAVINGS.*—*The term*
4 *‘recycled energy savings’ means a reduction in elec-*
5 *tricity consumption that results from a modification*
6 *of an industrial or commercial system that com-*
7 *menced operation before the date of enactment of this*
8 *section, in order to recapture electrical, mechanical,*
9 *or thermal energy that would otherwise be wasted.*

10 “(16) *RENEWABLE BIOMASS.*—*The term ‘renew-*
11 *able biomass’ means any of the following:*

12 “(A) *Plant material, including waste mate-*
13 *rial, harvested or collected from actively man-*
14 *aged agricultural land that was in cultivation,*
15 *cleared, or fallow and nonforested on January 1,*
16 *2009.*

17 “(B) *Plant material, including waste mate-*
18 *rial, harvested or collected from pastureland that*
19 *was nonforested on January 1, 2009.*

20 “(C) *Nonhazardous vegetative matter de-*
21 *ived from waste, including separated yard*
22 *waste, landscape right-of-way trimmings, con-*
23 *struction and demolition debris or food waste*
24 *(but not municipal solid waste, recyclable waste*

1 *paper, painted, treated or pressurized wood, or*
2 *wood contaminated with plastic or metals).*

3 “(D) *Animal waste or animal byproducts,*
4 *including products of animal waste digesters.*

5 “(E) *Algae.*

6 “(F) *Trees, brush, slash, residues, or any*
7 *other vegetative matter removed from within 600*
8 *feet of any building, campground, or route des-*
9 *ignated for evacuation by a public official with*
10 *responsibility for emergency preparedness, or*
11 *from within 300 feet of a paved road, electric*
12 *transmission line, utility tower, or water supply*
13 *line.*

14 “(G) *Residues from or byproducts of milled*
15 *logs.*

16 “(H) *Any of the following removed from for-*
17 *ested land that is not Federal and is not high*
18 *conservation priority land:*

19 “(i) *Trees, brush, slash, residues, inter-*
20 *planted energy crops, or any other vegeta-*
21 *tive matter removed from an actively man-*
22 *aged tree plantation established—*

23 “(I) *prior to January 1, 2009; or*

1 “(II) on land that, as of January
2 1, 2009, was cultivated or fallow and
3 non-forested.

4 “(ii) Trees, logging residue, thinnings,
5 cull trees, pulpwood, and brush removed
6 from naturally-regenerated forests or other
7 non-plantation forests, including for the
8 purposes of hazardous fuel reduction or pre-
9 ventative treatment for reducing or con-
10 taining insect or disease infestation.

11 “(iii) Logging residue, thinnings, cull
12 trees, pulpwood, brush and species that are
13 non-native and noxious, from stands that
14 were planted and managed after January 1,
15 2009, to restore or maintain native forest
16 types.

17 “(iv) Dead or severely damaged trees
18 removed within 5 years of fire, blowdown,
19 or other natural disaster, and badly infested
20 trees.

21 “(I) Materials, pre-commercial thinnings,
22 or removed invasive species from National Forest
23 System land and public lands (as defined in sec-
24 tion 103 of the Federal Land Policy and Man-
25 agement Act of 1976 (43 U.S.C. 1702)), includ-

1 *ing those that are byproducts of preventive treat-*
2 *ments (such as trees, wood, brush, thinnings,*
3 *chips, and slash), that are removed as part of a*
4 *federally recognized timber sale, or that are re-*
5 *moved to reduce hazardous fuels, to reduce or*
6 *contain disease or insect infestation, or to restore*
7 *ecosystem health, and that are—*

8 *“(i) not from components of the Na-*
9 *tional Wilderness Preservation System, Wil-*
10 *derness Study Areas, Inventoried Roadless*
11 *Areas, old growth or mature forest stands,*
12 *components of the National Landscape Con-*
13 *servation System, National Monuments, Na-*
14 *tional Conservation Areas, Designated*
15 *Primitive Areas, or Wild and Scenic Rivers*
16 *corridors;*

17 *“(ii) harvested in environmentally sus-*
18 *tainable quantities, as determined by the*
19 *appropriate Federal land manager; and*

20 *“(iii) harvested in accordance with*
21 *Federal and State law and applicable land*
22 *management plans.*

23 *“(17) RENEWABLE ELECTRICITY.—The term ‘re-*
24 *newable electricity’ means electricity generated (in-*

1 *cluding by means of a fuel cell) from a renewable en-*
2 *ergy resource or other qualifying energy resources.*

3 “(18) *RENEWABLE ENERGY RESOURCE.*—*The*
4 *term ‘renewable energy resource’ means each of the*
5 *following:*

6 “(A) *Wind energy.*

7 “(B) *Solar energy.*

8 “(C) *Geothermal energy.*

9 “(D) *Renewable biomass.*

10 “(E) *Biogas derived exclusively from renew-*
11 *able biomass.*

12 “(F) *Biofuels derived exclusively from re-*
13 *newable biomass.*

14 “(G) *Qualified hydropower.*

15 “(H) *Marine and hydrokinetic renewable*
16 *energy, as that term is defined in section 632 of*
17 *the Energy Independence and Security Act of*
18 *2007 (42 U.S.C. 17211).*

19 “(19) *RETAIL ELECTRIC SUPPLIER.*—

20 “(A) *IN GENERAL.*—*The term ‘retail electric*
21 *supplier’ means, for any given year, an electric*
22 *utility that sold not less than 4,000,000 mega-*
23 *watt hours of electric energy to electric con-*
24 *sumers for purposes other than resale during the*
25 *preceding calendar year.*

1 “(B) *INCLUSIONS AND LIMITATIONS.*—For
2 purposes of determining whether an electric util-
3 ity qualifies as a retail electric supplier under
4 subparagraph (A)—

5 “(i) the sales of any affiliate of an elec-
6 tric utility to electric consumers, other than
7 sales to the affiliate’s lessees or tenants, for
8 purposes other than resale shall be consid-
9 ered to be sales of such electric utility; and

10 “(ii) sales by any electric utility to an
11 affiliate, lessee, or tenant of such electric
12 utility shall not be treated as sales to elec-
13 tric consumers.

14 “(C) *AFFILIATE.*—For purposes of this
15 paragraph, the term ‘affiliate’ when used in rela-
16 tion to a person, means another person that di-
17 rectly or indirectly owns or controls, is owned or
18 controlled by, or is under common ownership or
19 control with, such person, as determined under
20 regulations promulgated by the Commission.

21 “(20) *RETAIL ELECTRIC SUPPLIER’S BASE*
22 *AMOUNT.*—The term ‘retail electric supplier’s base
23 amount’ means the total amount of electric energy
24 sold by the retail electric supplier, expressed in mega-
25 watt hours, to electric customers for purposes other

1 *than resale during the relevant calendar year, exclud-*
2 *ing—*

3 *“(A) electricity generated by a hydroelectric*
4 *facility that is not qualified hydropower;*

5 *“(B) electricity generated by a nuclear gen-*
6 *erating unit placed in service after the date of*
7 *enactment of this section; and*

8 *“(C) the proportion of electricity generated*
9 *by a fossil-fueled generating unit that is equal to*
10 *the proportion of greenhouse gases produced by*
11 *such unit that are captured and geologically se-*
12 *questered.*

13 *“(21) RETIRE AND RETIREMENT.—The terms ‘re-*
14 *tire’ and ‘retirement’ with respect to a Federal renew-*
15 *able electricity credit, means to disqualify such credit*
16 *for any subsequent use under this section, regardless*
17 *of whether the use is a sale, transfer, exchange, or sub-*
18 *mission in satisfaction of a compliance obligation.*

19 *“(22) THIRD-PARTY EFFICIENCY PROVIDER.—*
20 *The term ‘third-party efficiency provider’ means any*
21 *retailer, building owner, energy service company, fi-*
22 *nancial institution or other commercial, industrial or*
23 *nonprofit entity that is capable of providing elec-*
24 *tricity savings in accordance with the requirements of*
25 *this section.*

1 “(23) *TOTAL ANNUAL ELECTRICITY SAVINGS.*—

2 *The term ‘total annual electricity savings’ means elec-*
3 *tricity savings during a specified calendar year from*
4 *measures that were placed into service since the date*
5 *of the enactment of this section, taking into account*
6 *verified measure lifetimes or verified annual savings*
7 *attrition rates, as determined in accordance with such*
8 *regulations as the Commission may promulgate and*
9 *measured in megawatt hours.*

10 “(b) *ANNUAL COMPLIANCE OBLIGATION.*—

11 “(1) *IN GENERAL.*—*For each of calendar years*
12 *2012 through 2039, not later than March 31 of the*
13 *following calendar year, each retail electric supplier*
14 *shall submit to the Commission an amount of Federal*
15 *renewable electricity credits and demonstrated total*
16 *annual electricity savings that, in the aggregate, is*
17 *equal to such retail electric supplier’s annual com-*
18 *bined target as set forth in subsection (d), except as*
19 *otherwise provided in subsection (g).*

20 “(2) *DEMONSTRATION OF SAVINGS.*—*For pur-*
21 *poses of this subsection, submission of demonstrated*
22 *total annual electricity savings means submission of*
23 *a report that demonstrates, in accordance with the re-*
24 *quirements of subsection (f), the total annual elec-*

1 *tricity savings achieved by the retail electric supplier*
2 *within the relevant compliance year.*

3 “(3) *RENEWABLE ELECTRICITY CREDITS POR-*
4 *TION.—Except as provided in paragraph (4), each re-*
5 *tail electric supplier must submit Federal renewable*
6 *electricity credits equal to at least three quarters of*
7 *the retail electric supplier’s annual combined target.*

8 “(4) *STATE PETITION.—*

9 “(A) *IN GENERAL.—Upon written request*
10 *from the Governor of any State (including, for*
11 *purposes of this paragraph, the Mayor of the*
12 *District of Columbia), the Commission shall in-*
13 *crease, to not more than two fifths, the propor-*
14 *tion of the annual combined targets of retail elec-*
15 *tric suppliers located within such State that may*
16 *be met through submission of demonstrated total*
17 *annual electricity savings, provided that such in-*
18 *crease shall be effective only with regard to the*
19 *portion of a retail electric supplier’s annual*
20 *combined target that is attributable to electricity*
21 *sales within such State.*

22 “(B) *CONTENTS.—A Governor’s request*
23 *under this paragraph shall include an expla-*
24 *nation of the Governor’s rationale for deter-*
25 *mining, after consultation with the relevant*

1 *State regulatory authority and other retail elec-*
2 *tricity ratemaking authorities within the State,*
3 *to make such request. The request shall specify*
4 *the maximum proportion of annual combined*
5 *targets (not more than two fifths) that can be*
6 *met through demonstrated total annual elec-*
7 *tricity savings, and the period for which such*
8 *proportion shall be effective.*

9 “(C) *REVISION.*—*The Governor of any State*
10 *may, after consultation with the relevant State*
11 *regulatory authority and other retail electricity*
12 *ratemaking authorities within the State, submit*
13 *a written request for revocation or revision of a*
14 *previous request submitted under this paragraph.*
15 *The Commission shall grant such request, pro-*
16 *vided that—*

17 “(i) *any revocation or revision shall*
18 *not apply to the combined annual target for*
19 *any year that is any earlier than 2 cal-*
20 *endar years after the calendar year in*
21 *which such request is submitted, so as to*
22 *provide retail electric suppliers with ade-*
23 *quate notice of such change; and*

24 “(ii) *any revision shall meet the re-*
25 *quirements of subparagraph (A).*

1 “(c) *ESTABLISHMENT OF PROGRAM.*—Not later than
2 1 year after the date of enactment of this section, the Com-
3 mission shall promulgate regulations to implement and en-
4 force the requirements of this section. In promulgating such
5 regulations, the Commission shall, to the extent prac-
6 ticable—

7 “(1) preserve the integrity, and incorporate best
8 practices, of existing State renewable electricity and
9 energy efficiency programs;

10 “(2) rely upon existing and emerging State or
11 regional tracking systems that issue and track non-
12 Federal renewable electricity credits; and

13 “(3) cooperate with the States to facilitate co-
14 ordination between State and Federal renewable elec-
15 tricity and energy efficiency programs and to mini-
16 mize administrative burdens and costs to retail elec-
17 tric suppliers.

18 “(d) *ANNUAL COMPLIANCE REQUIREMENT.*—

19 “(1) *ANNUAL COMBINED TARGETS.*—For each of
20 calendar years 2012 through 2039, a retail electric
21 supplier’s annual combined target shall be the prod-
22 uct of—

23 “(A) the required annual percentage for
24 such year, as set forth in paragraph (2); and

1 “(B) the retail electric supplier’s base
2 amount for such year.

3 “(2) *REQUIRED ANNUAL PERCENTAGE.*—For
4 each of calendar years 2012 through 2039, the re-
5 quired annual percentage shall be as follows:

“Calendar year	Required annual percentage
2012	6.0
2013	6.0
2014	9.5
2015	9.5
2016	13.0
2017	13.0
2018	16.5
2019	16.5
2020	20.0
2021 through 2039	20.0

6 “(e) *FEDERAL RENEWABLE ELECTRICITY CREDITS.*—

7 “(1) *IN GENERAL.*—The regulations promulgated
8 under this section shall include provisions governing
9 the issuance, tracking, and verification of Federal re-
10 newable electricity credits. Except as provided in
11 paragraphs (2), (3), and (4) of this subsection, the
12 Commission shall issue to each generator of renewable
13 electricity, 1 Federal renewable electricity credit for
14 each megawatt hour of renewable electricity generated
15 by such generator after December 31, 2011. The Com-
16 mission shall assign a unique serial number to each
17 Federal renewable electricity credit.

18 “(2) *GENERATION FROM CERTAIN STATE RENEW-*
19 *ABLE ELECTRICITY PROGRAMS.*—Where renewable

1 *electricity is generated with the support of payments*
2 *from a retail electric supplier pursuant to a State re-*
3 *newable electricity program (whether through State*
4 *alternative compliance payments or through pay-*
5 *ments to a State renewable electricity procurement*
6 *fund or entity), the Commission shall issue Federal*
7 *renewable electricity credits to such retail electric sup-*
8 *plier for the proportion of the relevant renewable elec-*
9 *tricity generation that is attributable to the retail*
10 *electric supplier's payments, as determined pursuant*
11 *to regulations issued by the Commission. For any re-*
12 *maining portion of the relevant renewable electricity*
13 *generation, the Commission shall issue Federal renew-*
14 *able electricity credits to the generator, as provided in*
15 *paragraph (1), except that in no event shall more*
16 *than 1 Federal renewable electricity credit be issued*
17 *for the same megawatt hour of electricity. In deter-*
18 *mining how Federal renewable electricity credits will*
19 *be apportioned among retail electric suppliers and*
20 *generators in such circumstances, the Commission*
21 *shall consider information and guidance furnished by*
22 *the relevant State or States.*

23 “(3) *CERTAIN POWER SALES CONTRACTS.*—*When*
24 *a generator has sold renewable electricity to a retail*
25 *electric supplier under a contract for power from a*

1 *facility placed in service before the date of enactment*
2 *of this section, and the contract does not provide for*
3 *the determination of ownership of the Federal renew-*
4 *able electricity credits associated with such genera-*
5 *tion, the Commission shall issue such Federal renew-*
6 *able electricity credits to the retail electric supplier*
7 *for the duration of the contract.*

8 “(4) *CREDIT MULTIPLIER FOR DISTRIBUTED RE-*
9 *NEWABLE GENERATION.—*

10 “(A) *IN GENERAL.—Except as provided in*
11 *subparagraph (B), the Commission shall issue 3*
12 *Federal renewable electricity credits for each*
13 *megawatt hour of renewable electricity generated*
14 *by a distributed renewable generation facility.*

15 “(B) *ADJUSTMENT.—Except as provided in*
16 *subparagraph (C), not later than January 1,*
17 *2014, and not less frequently than every 4 years*
18 *thereafter, the Commission shall review the effect*
19 *of this paragraph and shall, as necessary, reduce*
20 *the number of Federal renewable electricity cred-*
21 *its per megawatt hour issued under this para-*
22 *graph for any given energy source or technology,*
23 *but not below 1, to ensure that such number is*
24 *no higher than the Commission determines is*
25 *necessary to make distributed renewable genera-*

1 *tion facilities using such source or technology*
2 *cost competitive with other sources of renewable*
3 *electricity generation.*

4 “(C) *FACILITIES PLACED IN SERVICE AFTER*
5 *ENACTMENT.—For any distributed renewable*
6 *generation facility placed in service after the*
7 *date of enactment of this section, subparagraph*
8 *(B) shall not apply for the first 10 years after*
9 *the date on which the facility is placed in serv-*
10 *ice. For each year during such 10-year period,*
11 *the Commission shall issue to the facility the*
12 *same number of Federal renewable electricity*
13 *credits per megawatt hour as are issued to that*
14 *facility in the year in which such facility is*
15 *placed in service. After such 10-year period, the*
16 *Commission shall issue Federal renewable elec-*
17 *tricity credits to the facility in accordance with*
18 *the current multiplier as determined pursuant to*
19 *subparagraph (B).*

20 “(5) *CREDITS BASED ON QUALIFIED HYDRO-*
21 *POWER.—For purposes of this subsection, the number*
22 *of Federal renewable electricity credits issued for*
23 *qualified hydropower shall be calculated—*

24 *“(A) based solely on the increase in average*
25 *annual generation directly resulting from the ef-*

1 *efficiency improvements or capacity additions de-*
2 *scribed in subsection (a)(13)(A); and*

3 *“(B) using the same water flow information*
4 *used to determine a historic average annual gen-*
5 *eration baseline for the hydroelectric facility, as*
6 *certified by the Commission.*

7 *“(6) GENERATION FROM MIXED RENEWABLE AND*
8 *NONRENEWABLE RESOURCES.—If electricity is gen-*
9 *erated using both a renewable energy resource or other*
10 *qualifying energy resource and an energy source that*
11 *is not a renewable energy resource or other qualifying*
12 *energy resource (as, for example, in the case of co-fir-*
13 *ing of renewable biomass and fossil fuel), the Commis-*
14 *sion shall issue Federal renewable electricity credits*
15 *based on the proportion of the electricity that is at-*
16 *tributable to the renewable energy resource or other*
17 *qualifying energy resource.*

18 *“(7) PROHIBITION AGAINST DOUBLE-COUNT-*
19 *ING.—Except as provided in paragraph (4) of this*
20 *subsection, the Commission shall ensure that no more*
21 *than 1 Federal renewable electricity credit will be*
22 *issued for any megawatt hour of renewable electricity*
23 *and that no Federal renewable electricity credit will*
24 *be used more than once for compliance with this sec-*
25 *tion.*

1 “(8) *TRADING.*—*The lawful holder of a Federal*
2 *renewable electricity credit may sell, exchange, trans-*
3 *fer, submit for compliance in accordance with sub-*
4 *section (b), or submit such credit for retirement by the*
5 *Commission.*

6 “(9) *BANKING.*—*A Federal renewable electricity*
7 *credit may be submitted in satisfaction of the compli-*
8 *ance obligation set forth in subsection (b) for the com-*
9 *pliance year in which the credit was issued or for any*
10 *of the 3 immediately subsequent compliance years.*
11 *The Commission shall retire any Federal renewable*
12 *electricity credit that has not been retired by April 2*
13 *of the calendar year that is 3 years after the calendar*
14 *year in which the credit was issued.*

15 “(10) *RETIREMENT.*—*The Commission shall re-*
16 *tire a Federal renewable electricity credit imme-*
17 *diately upon submission by the lawful holder of such*
18 *credit, whether in satisfaction of a compliance obliga-*
19 *tion under subsection (b) or on some other basis.*

20 “(f) *ELECTRICITY SAVINGS.*—

21 “(1) *STANDARDS FOR MEASUREMENT OF SAV-*
22 *INGS.*—*As part of the regulations promulgated under*
23 *this section, the Commission shall prescribe standards*
24 *and protocols for defining and measuring electricity*
25 *savings and total annual electricity savings that can*

1 *be counted towards the compliance obligation set forth*
2 *in subsection (b). Such protocols and standards shall,*
3 *at minimum—*

4 *“(A) specify the types of energy efficiency*
5 *and energy conservation measures that can be*
6 *counted;*

7 *“(B) require that energy consumption esti-*
8 *mates for customer facilities or portions of facili-*
9 *ties in the applicable base and current years be*
10 *adjusted, as appropriate, to account for changes*
11 *in weather, level of production, and building*
12 *area;*

13 *“(C) account for the useful life of measures;*

14 *“(D) include deemed savings values for spe-*
15 *cific, commonly used measures;*

16 *“(E) allow for savings from a program to*
17 *be estimated based on extrapolation from a rep-*
18 *resentative sample of participating customers;*

19 *“(F) include procedures for counting CHP*
20 *savings, recycled energy savings, and fuel cell*
21 *savings;*

22 *“(G) include procedures for counting elec-*
23 *tricity savings achieved by solar water heating*
24 *and solar light pipe technology that has the ca-*

1 *pability to provide measureable data on the*
2 *amount of megawatt-hours displaced;*

3 “(H) *avoid double-counting of savings used*
4 *for compliance with this section, including sav-*
5 *ings that are transferred pursuant to paragraph*
6 *(3);*

7 “(I) *ensure that, except as provided in sub-*
8 *paragraph (K), the retail electric supplier claim-*
9 *ing the savings played a significant role in*
10 *achieving the savings (including through the ac-*
11 *tivities of a designated agent of the supplier or*
12 *through the purchase of transferred savings);*

13 “(J) *include savings from programs admin-*
14 *istered by a retail electric supplier (or a retail*
15 *electricity distributor that is not a retail electric*
16 *supplier) that are funded by State, Federal, or*
17 *other sources;*

18 “(K) *in any State in which the State regu-*
19 *latory authority has designated 1 or more enti-*
20 *ties to administer electric ratepayer-funded effi-*
21 *ciency programs approved by such State regu-*
22 *latory authority, provide that electricity savings*
23 *achieved through such programs shall be distrib-*
24 *uted equitably among retail electric suppliers in*

1 *accordance with the direction of the relevant*
2 *State regulatory authority; and*

3 “(L) *exclude savings achieved as a result of*
4 *compliance with mandatory appliance and*
5 *equipment efficiency standards or building codes.*

6 “(2) *STANDARDS FOR THIRD-PARTY*
7 *VERIFICATION OF SAVINGS.—The regulations promul-*
8 *gated under this section shall establish procedures and*
9 *standards requiring third-party verification of all re-*
10 *ported electricity savings, including requirements for*
11 *accreditation of third-party verifiers to ensure that*
12 *such verifiers are professionally qualified and have no*
13 *conflicts of interest.*

14 “(3) *TRANSFERS OF SAVINGS.—*

15 “(A) *BILATERAL CONTRACTS FOR SAVINGS*
16 *TRANSFERS.—Subject to the limitations of this*
17 *paragraph, a retail electric supplier may use*
18 *electricity savings transferred, pursuant to a bi-*
19 *lateral contract, from another retail electric sup-*
20 *plier, an owner of an electric distribution facil-*
21 *ity that is not a retail electric supplier, a State,*
22 *or a third-party efficiency provider to meet the*
23 *applicable compliance obligation under sub-*
24 *section (b).*

1 “(B) *REQUIREMENTS.*—*Electricity savings*
2 *transferred and used for compliance pursuant to*
3 *this paragraph shall be—*

4 “(i) *measured and verified in accord-*
5 *ance with the procedures specified under*
6 *this subsection;*

7 “(ii) *reported in accordance with para-*
8 *graph (4) of this subsection; and*

9 “(iii) *achieved within the same State*
10 *as is served by the retail electric supplier.*

11 “(C) *REGULATORY APPROVAL.*—*Nothing in*
12 *this paragraph shall limit or affect the authority*
13 *of a State regulatory authority to require a re-*
14 *tail electric supplier that is regulated by such*
15 *authority to obtain such authority’s authoriza-*
16 *tion or approval of a contract for transfer of sav-*
17 *ings under this paragraph.*

18 “(4) *REPORTING SAVINGS.*—

19 “(A) *REQUIREMENTS.*—*The regulations*
20 *promulgated under this section shall establish re-*
21 *quirements governing the submission of reports*
22 *to demonstrate, in accordance with the protocols*
23 *and standards for measurement and third-party*
24 *verification established under this subsection, the*

1 *total annual electricity savings achieved by a re-*
2 *tail electric supplier within the relevant year.*

3 “(B) *REVIEW AND APPROVAL.*—*The Com-*
4 *mission shall review each report submitted to the*
5 *Commission by a retail electric supplier and*
6 *shall exclude any electricity savings that have*
7 *not been adequately demonstrated in accordance*
8 *with the requirements of this subsection.*

9 “(5) *STATE ADMINISTRATION.*—

10 “(A) *DELEGATION OF AUTHORITY.*—*Upon*
11 *receipt of an application from the Governor of a*
12 *State (including, for purposes of this subsection,*
13 *the Mayor of the District of Columbia), the Com-*
14 *mission may delegate to the State the authority*
15 *to review and verify reported electricity savings*
16 *for purposes of determining demonstrated total*
17 *annual electricity savings that may be counted*
18 *towards a retail electric supplier’s compliance*
19 *obligation under subsection (b). The Commission*
20 *shall make a substantive determination approv-*
21 *ing or disapproving a State application under*
22 *this subparagraph, after notice and comment,*
23 *within 180 days of receipt of a complete applica-*
24 *tion.*

1 “(B) *ALTERNATIVE MEASUREMENT AND*
2 *VERIFICATION PROCEDURES AND STANDARDS.—*
3 *As part of an application submitted under sub-*
4 *paragraph (A), a State may request to use alter-*
5 *native measurement and verification procedures*
6 *and standards to those specified in paragraphs*
7 *(1) and (2), provided the State demonstrates that*
8 *such alternative procedures and standards pro-*
9 *vide a level of accuracy of measurement and*
10 *verification at least equivalent to the Federal*
11 *procedures and standards promulgated under*
12 *paragraphs (1) and (2).*

13 “(C) *REVIEW OF STATE IMPLEMENTA-*
14 *TION.—The Commission shall, not less frequently*
15 *than once every 4 years, review each State’s im-*
16 *plementation of delegated authority under this*
17 *paragraph to ensure conformance with the re-*
18 *quirements of this section. The Commission may,*
19 *at any time, revoke the delegation of authority*
20 *under this section upon a finding that the State*
21 *is not implementing its delegated responsibilities*
22 *in conformity with this paragraph. As a condi-*
23 *tion of maintaining its delegated authority*
24 *under this paragraph, the Commission may re-*
25 *quire a State to submit a revised application*

1 *under subparagraph (A) if the Commission*
2 *has—*

3 “(i) *promulgated new or substantially*
4 *revised measurement and verification proce-*
5 *dures and standards under this subsection;*
6 *or*

7 “(ii) *otherwise substantially revised the*
8 *program established under this section.*

9 “(g) *ALTERNATIVE COMPLIANCE PAYMENTS.—*

10 “(1) *IN GENERAL.—A retail electric supplier*
11 *may satisfy the requirements of subsection (b) in*
12 *whole or in part by submitting in accordance with*
13 *this subsection, in lieu of each Federal renewable elec-*
14 *tricity credit or megawatt hour of demonstrated total*
15 *annual electricity savings that would otherwise be*
16 *due, a payment equal to \$25, adjusted for inflation*
17 *on January 1 of each year following calendar year*
18 *2009, in accordance with such regulations as the*
19 *Commission may promulgate.*

20 “(2) *PAYMENT TO STATE FUNDS.—Except as oth-*
21 *erwise provided in this paragraph, payments made*
22 *under this subsection shall be made directly to the*
23 *State or States in which the retail electric supplier is*
24 *located, in proportion to the portion of the retail elec-*
25 *tric supplier’s base amount that is sold within each*

1 *relevant State, provided that such payments are de-*
2 *posited directly into a fund in the State treasury es-*
3 *tablished for this purpose and that the State uses such*
4 *funds in accordance with paragraphs (3) and (4). If*
5 *the Commission determines at any time that a State*
6 *is in substantial noncompliance with paragraph (3)*
7 *or (4), the Commission shall direct that any future*
8 *alternative compliance payments that would other-*
9 *wise be paid to such State under this subsection shall*
10 *instead be paid to the Commission and deposited in*
11 *the United States Treasury.*

12 *“(3) STATE USE OF FUNDS.—As a condition of*
13 *continued receipt of alternative compliance payments*
14 *pursuant to this subsection, a State shall use such*
15 *payments exclusively for the purposes of—*

16 *“(A) deploying technologies that generate*
17 *electricity from renewable energy resources; or*

18 *“(B) implementing cost-effective energy effi-*
19 *ciency programs to achieve electricity savings.*

20 *“(4) REPORTING.—As a condition of continued*
21 *receipt of alternative compliance payments pursuant*
22 *to this subsection, a State shall, within 12 months of*
23 *receipt of any such payments and at 12-month inter-*
24 *vals thereafter until such payments are expended, pro-*
25 *vide a report to the Commission, in accordance with*

1 *such regulations as the Commission may prescribe,*
2 *giving a full accounting of the use of such payments,*
3 *including a detailed description of the activities fund-*
4 *ed thereby.*

5 “(h) *INFORMATION COLLECTION.—The Commission*
6 *may require any retail electric supplier, renewable elec-*
7 *tricity generator, or such other entities as the Commission*
8 *deems appropriate, to provide any information the Com-*
9 *mission determines appropriate to carry out this section.*
10 *Failure to submit such information or submission of false*
11 *or misleading information under this subsection shall be a*
12 *violation of this section.*

13 “(i) *ENFORCEMENT AND JUDICIAL REVIEW.—*

14 “(1) *FAILURE TO SUBMIT CREDITS OR DEM-*
15 *ONSTRATE SAVINGS.—If any person fails to comply*
16 *with the requirements of subsection (b) or (g), such*
17 *person shall be liable to pay to the Commission a*
18 *civil penalty equal to the product of—*

19 “(A) *double the alternative compliance pay-*
20 *ment calculated under subsection (g)(1), and*

21 “(B) *the aggregate quantity of Federal re-*
22 *newable electricity credits, total annual elec-*
23 *tricity savings, or equivalent alternative compli-*
24 *ance payments that the person failed to submit*

1 *in violation of the requirements of subsections (b)*
2 *and (g).*

3 “(2) *ENFORCEMENT.*—*The Commission shall as-*
4 *sess a civil penalty under paragraph (1) in accord-*
5 *ance with the procedures described in section 31(d) of*
6 *the Federal Power Act (16 U.S.C. 823b(d)).*

7 “(3) *VIOLATION OF REQUIREMENT OF REGULA-*
8 *TIONS OR ORDERS.*—*Any person who violates, or fails*
9 *or refuses to comply with, any requirement of a regu-*
10 *lation promulgated or order issued under this section*
11 *shall be subject to a civil penalty under section*
12 *316A(b) of the Federal Power Act (16 U.S.C. 8250-*
13 *1). Such penalty shall be assessed by the Commission*
14 *in the same manner as in the case of a violation re-*
15 *ferred to in section 316A(b) of such Act.*

16 “(j) *JUDICIAL REVIEW.*—*Any person aggrieved by a*
17 *final action taken by the Commission under this section,*
18 *other than the assessment of a civil penalty under sub-*
19 *section (i), may use the procedures for review described in*
20 *section 313 of the Federal Power Act (16 U.S.C. 825l). For*
21 *purposes of this paragraph, references to an order in section*
22 *313 of such Act shall be deemed to refer also to all other*
23 *final actions of the Commission under this section other*
24 *than the assessment of a civil penalty under subsection (i).*

1 “(k) SAVINGS PROVISIONS.—Nothing in this section
2 shall—

3 “(1) diminish or qualify any authority of a
4 State or political subdivision of a State to—

5 “(A) adopt or enforce any law or regulation
6 respecting renewable electricity or energy effi-
7 ciency, including any law or regulation estab-
8 lishing requirements more stringent than those
9 established by this section, provided that no such
10 law or regulation may relieve any person of any
11 requirement otherwise applicable under this sec-
12 tion; or

13 “(B) regulate the acquisition and disposi-
14 tion of Federal renewable electricity credits by
15 retail electric suppliers within the jurisdiction of
16 such State or political subdivision, including the
17 authority to require such retail electric supplier
18 to acquire and submit to the Secretary for retire-
19 ment Federal renewable electricity credits in ex-
20 cess of those submitted under this section; or

21 “(2) affect the application of, or the responsi-
22 bility for compliance with, any other provision of law
23 or regulation, including environmental and licensing
24 requirements.

1 “(l) *SUNSET.*—*This section expires on December 31,*
2 *2040.*”.

3 (b) *CONFORMING AMENDMENT.*—*The table of contents*
4 *set forth in section 1(b) of the Public Utility Regulatory*
5 *Policies Act of 1978 (16 U.S.C. 2601 and following) is*
6 *amended by inserting after the item relating to section 609*
7 *the following:*

 “*Sec. 610. Combined efficiency and renewable electricity standard.*”.

8 ***SEC. 102. CLARIFYING STATE AUTHORITY TO ADOPT RE-***
9 ***NEWABLE ENERGY INCENTIVES.***

10 *Section 210 of the Public Utility Regulatory Policies*
11 *Act of 1978 is amended by adding at the end thereof:*

12 “(o) *CLARIFICATION OF STATE AUTHORITY TO ADOPT*
13 *RENEWABLE ENERGY INCENTIVES.*—*Notwithstanding any*
14 *other provision of this Act or the Federal Power Act, a State*
15 *legislature or regulatory authority may set the rates for a*
16 *sale of electric energy by a facility generating electric en-*
17 *ergy from renewable energy sources pursuant to a State-*
18 *approved production incentive program under which the fa-*
19 *cility voluntarily sells electric energy. For purposes of this*
20 *subsection, ‘State-approved production incentive program’*
21 *means a requirement imposed pursuant to State law, or*
22 *by a State regulatory authority acting within its authority*
23 *under State law, that an electric utility purchase renewable*
24 *energy (as defined in section 609 of this Act) at a specified*
25 *rate.*”.

1 **Subtitle B—Carbon Capture and**
2 **Sequestration**

3 **SEC. 111. NATIONAL STRATEGY.**

4 (a) *IN GENERAL.*—Not later than 1 year after the date
5 of enactment of this Act, the Administrator, in consultation
6 with the Secretary of Energy and the heads of such other
7 relevant Federal agencies as the President may designate,
8 shall submit to Congress a report setting forth a unified
9 and comprehensive strategy to address the key legal, regu-
10 latory and other barriers to the commercial-scale deploy-
11 ment of carbon capture and sequestration.

12 (b) *BARRIERS.*— The report under this section shall—

13 (1) *identify those regulatory, legal, and other*
14 *gaps and barriers that could be addressed by a Fed-*
15 *eral agency using existing statutory authority, those,*
16 *if any, that require Federal legislation, and those that*
17 *would be best addressed at the State or regional level;*

18 (2) *identify regulatory implementation chal-*
19 *lenges, including those related to approval of State*
20 *programs and delegation of authority for permitting;*
21 *and*

22 (3) *recommend rulemakings, Federal legislation,*
23 *or other actions that should be taken to further evalu-*
24 *ate and address such barriers.*

1 **SEC. 112. REGULATIONS FOR GEOLOGIC SEQUESTRATION**
2 **SITES.**

3 (a) *COORDINATED CERTIFICATION AND PERMITTING*
4 *PROCESS.*—*Title VIII of the Clean Air Act, as added by*
5 *section 331 of this Act, is amended by adding after section*
6 *812 (as added by section 116 of this Act) the following:*

7 **“SEC. 813. GEOLOGIC SEQUESTRATION SITES.**

8 “(a) *COORDINATED PROCESS.*—*The Administrator*
9 *shall establish a coordinated approach to certifying and*
10 *permitting geologic sequestration, taking into consideration*
11 *all relevant statutory authorities. In establishing such ap-*
12 *proach, the Administrator shall—*

13 “(1) *take into account, and reduce redundancy*
14 *with, the requirements of section 1421 of the Safe*
15 *Drinking Water Act (42 U.S.C. 300h), as amended by*
16 *section 112(b) of the American Clean Energy and Se-*
17 *curity Act of 2009, including the rulemaking for geo-*
18 *logic sequestration wells described at 73 Fed. Reg.*
19 *43491-541 (July 25, 2008); and*

20 “(2) *to the extent practicable, reduce the burden*
21 *on certified entities and implementing authorities.*

22 “(b) *REGULATIONS.*—*Not later than 2 years after the*
23 *date of enactment of this title, the Administrator shall pro-*
24 *mulgate regulations to protect human health and the envi-*
25 *ronment by minimizing the risk of escape to the atmosphere*

1 *of carbon dioxide injected for purposes of geologic sequestra-*
2 *tion.*

3 “(c) *REQUIREMENTS.*—*The regulations under sub-*
4 *section (b) shall include—*

5 “(1) *a process to obtain certification for geologic*
6 *sequestration under this section; and*

7 “(2) *requirements for—*

8 “(A) *monitoring, record keeping, and re-*
9 *porting for emissions associated with injection*
10 *into, and escape from, geologic sequestration*
11 *sites, taking into account any requirements or*
12 *protocols developed under section 713;*

13 “(B) *public participation in the certifi-*
14 *cation process that maximizes transparency;*

15 “(C) *the sharing of data between States, In-*
16 *dian tribes, and the Environmental Protection*
17 *Agency; and*

18 “(D) *other elements or safeguards necessary*
19 *to achieve the purpose set forth in subsection (b).*

20 “(d) *REPORT.*—*Not later than 2 years after the pro-*
21 *mulgation of regulations under subsection (b), and at 3-*
22 *year intervals thereafter, the Administrator shall deliver to*
23 *the Committee on Energy and Commerce of the House of*
24 *Representatives and the Committee on Environment and*
25 *Public Works of the Senate a report on geologic sequestra-*

1 *tion in the United States, and, to the extent relevant, other*
2 *countries in North America. Such report shall include—*

3 “(1) *data regarding injection, emissions to the*
4 *atmosphere, if any, and performance of active and*
5 *closed geologic sequestration sites, including those*
6 *where enhanced hydrocarbon recovery operations*
7 *occur;*

8 “(2) *an evaluation of the performance of relevant*
9 *Federal environmental regulations and programs in*
10 *ensuring environmentally protective geologic seques-*
11 *tration practices;*

12 “(3) *recommendations on how such programs*
13 *and regulations should be improved or made more ef-*
14 *fective; and*

15 “(4) *other relevant information.*”.

16 **(b) SAFE DRINKING WATER ACT STANDARDS.**—*Sec-*
17 *tion 1421 of the Safe Drinking Water Act (42 U.S.C. 300h)*
18 *is amended by inserting after subsection (d) the following:*

19 **“(e) CARBON DIOXIDE GEOLOGIC SEQUESTRATION**
20 **WELLS.**—

21 **“(1) IN GENERAL.**—*Not later than 1 year after*
22 *the date of enactment of this subsection, the Adminis-*
23 *trator shall promulgate regulations under subsection*
24 *(a) for carbon dioxide geologic sequestration wells.*

1 “(2) *FINANCIAL RESPONSIBILITY.*—*The regula-*
2 *tions referred to in paragraph (1) shall include re-*
3 *quirements for maintaining evidence of financial re-*
4 *sponsibility, including financial responsibility for*
5 *emergency and remedial response, well plugging, site*
6 *closure, and post-injection site care. Financial re-*
7 *sponsibility may be established for carbon dioxide*
8 *geologic sequestration wells in accordance with regu-*
9 *lations promulgated by the Administrator by any one,*
10 *or any combination, of the following: insurance, guar-*
11 *antee, trust, standby trust, surety bond, letter of cred-*
12 *it, qualification as a self-insurer, or any other method*
13 *satisfactory to the Administrator.”.*

14 **SEC. 113. STUDIES AND REPORTS.**

15 *(a) STUDY OF LEGAL FRAMEWORK FOR GEOLOGIC SE-*
16 *QUESTRATION SITES.—*

17 *(1) ESTABLISHMENT OF TASK FORCE.*—*As soon*
18 *as practicable, but not later than 6 months after the*
19 *date of enactment of this Act, the Administrator shall*
20 *establish a task force to be composed of an equal num-*
21 *ber of subject matter experts, nongovernmental orga-*
22 *nizations with expertise in environmental policy, aca-*
23 *demie experts with expertise in environmental law,*
24 *State officials with environmental expertise, rep-*

1 *representatives of State Attorneys General, and members*
2 *of the private sector, to conduct a study of—*

3 *(A) existing Federal environmental statutes,*
4 *State environmental statutes, and State common*
5 *law that apply to geologic sequestration sites for*
6 *carbon dioxide, including the ability of such laws*
7 *to serve as risk management tools;*

8 *(B) the existing statutory framework, in-*
9 *cluding Federal and State laws, that apply to*
10 *harm and damage to the environment or public*
11 *health at closed sites where carbon dioxide injec-*
12 *tion has been used for enhanced hydrocarbon re-*
13 *covery;*

14 *(C) the statutory framework, environmental*
15 *health and safety considerations, implementation*
16 *issues, and financial implications of potential*
17 *models for Federal, State, or private sector as-*
18 *sumption of liabilities and financial responsibil-*
19 *ities with respect to closed geologic sequestration*
20 *sites;*

21 *(D) private sector mechanisms, including*
22 *insurance and bonding, that may be available to*
23 *manage environmental, health and safety risk*
24 *from closed geologic sequestration sites; and*

1 (E) *the subsurface mineral rights, water*
2 *rights, or property rights issues associated with*
3 *geologic sequestration of carbon dioxide.*

4 (2) *REPORT.—Not later than 18 months after the*
5 *date of enactment of this Act, the task force estab-*
6 *lished under paragraph (1) shall submit to Congress*
7 *a report describing the results of the study conducted*
8 *under that paragraph including any consensus rec-*
9 *ommendations of the task force.*

10 (b) *ENVIRONMENTAL STATUTES.—*

11 (1) *STUDY.—The Administrator shall conduct a*
12 *study examining how, and under what circumstances,*
13 *the environmental statutes for which the Environ-*
14 *mental Protection Agency has responsibility would*
15 *apply to carbon dioxide injection and geologic seques-*
16 *tration activities.*

17 (2) *REPORT.—Not later than 1 year after the*
18 *date of enactment of this Act, the Administrator shall*
19 *submit to Congress a report describing the results of*
20 *the study conducted under paragraph (1).*

21 **SEC. 114. CARBON CAPTURE AND SEQUESTRATION DEM-**
22 **ONSTRATION AND EARLY DEPLOYMENT PRO-**
23 **GRAM.**

24 (a) *DEFINITIONS.—For purposes of this section:*

1 (1) *SECRETARY.*—The term “Secretary” means
2 the Secretary of Energy.

3 (2) *DISTRIBUTION UTILITY.*—The term “dis-
4 tribution utility” means an entity that distributes
5 electricity directly to retail consumers under a legal,
6 regulatory, or contractual obligation to do so.

7 (3) *ELECTRIC UTILITY.*—The term “electric util-
8 ity” has the meaning provided by section 3(22) of the
9 Federal Power Act (16 U.S.C. 796(22)).

10 (4) *FOSSIL FUEL-BASED ELECTRICITY.*—The
11 term “fossil fuel-based electricity” means electricity
12 that is produced from the combustion of fossil fuels.

13 (5) *FOSSIL FUEL.*—The term “fossil fuel” means
14 coal, petroleum, natural gas or any derivative of coal,
15 petroleum, or natural gas.

16 (6) *CORPORATION.*—The term “Corporation”
17 means the Carbon Storage Research Corporation es-
18 tablished in accordance with this section.

19 (7) *QUALIFIED INDUSTRY ORGANIZATION.*—The
20 term “qualified industry organization” means the
21 Edison Electric Institute, the American Public Power
22 Association, the National Rural Electric Cooperative
23 Association, a successor organization of such organi-
24 zations, or a group of owners or operators of distribu-
25 tion utilities delivering fossil fuel-based electricity

1 *who collectively represent at least 20 percent of the*
2 *volume of fossil fuel-based electricity delivered by dis-*
3 *tribution utilities to consumers in the United States.*

4 (8) *RETAIL CONSUMER.*—*The term “retail con-*
5 *sumer” means an end-user of electricity.*

6 (b) *CARBON STORAGE RESEARCH CORPORATION.*—

7 (1) *ESTABLISHMENT.*—

8 (A) *REFERENDUM.*—*Qualified industry or-*
9 *ganizations may conduct, at their own expense,*
10 *a referendum among the owners or operators of*
11 *distribution utilities delivering fossil fuel-based*
12 *electricity for the creation of a Carbon Storage*
13 *Research Corporation. Such referendum shall be*
14 *conducted by an independent auditing firm*
15 *agreed to by the qualified industry organiza-*
16 *tions. Voting rights in such referendum shall be*
17 *based on the quantity of fossil fuel-based elec-*
18 *tricity delivered to consumers in the previous*
19 *calendar year or other representative period as*
20 *determined by the Secretary pursuant to sub-*
21 *section (f). Upon approval of those persons rep-*
22 *resenting two-thirds of the total quantity of fossil*
23 *fuel-based electricity delivered to retail con-*
24 *sumers, the Corporation shall be established un-*
25 *less opposed by the State regulatory authorities*

1 *pursuant to subparagraph (B). All distribution*
2 *utilities voting in the referendum shall certify to*
3 *the independent auditing firm the quantity of*
4 *fossil fuel-based electricity represented by their*
5 *vote.*

6 *(B) STATE REGULATORY AUTHORITIES.—*

7 *Upon its own motion or the petition of a quali-*
8 *fied industry organization, each State regulatory*
9 *authority shall consider its support or opposition*
10 *to the creation of the Corporation under sub-*
11 *paragraph (A). State regulatory authorities may*
12 *notify the independent auditing firm referred to*
13 *in subparagraph (A) of their views on the cre-*
14 *ation of the Corporation within 180 days after*
15 *the date of enactment of this Act. If 40 percent*
16 *or more of the State regulatory authorities sub-*
17 *mit to the independent auditing firm written no-*
18 *tices of opposition, the Corporation shall not be*
19 *established notwithstanding the approval of the*
20 *qualified industry organizations as provided in*
21 *subparagraph (A).*

22 *(2) TERMINATION.—The Corporation shall be au-*
23 *thorized to collect assessments and conduct operations*
24 *pursuant to this section for a 10-year period from the*
25 *date 6 months after the date of enactment of this Act.*

1 *After such 10-year period, the Corporation is no*
2 *longer authorized to collect assessments and shall be*
3 *dissolved on the date 15 years after such date of en-*
4 *actment, unless the period is extended by an Act of*
5 *Congress.*

6 (3) *GOVERNANCE.—The Corporation shall oper-*
7 *ate as a division or affiliate of the Electric Power Re-*
8 *search Institute (referred to in this section as*
9 *“EPRI”) and be managed by a Board of not more*
10 *than 15 voting members responsible for its operations,*
11 *including compliance with this section. EPRI, in con-*
12 *sultation with the Edison Electric Institute, the*
13 *American Public Power Association and the National*
14 *Rural Electric Cooperative Association shall appoint*
15 *the Board members under clauses (i), (ii), and (iii)*
16 *of subparagraph (A) from among candidates rec-*
17 *ommended by those organizations. At least a majority*
18 *of the Board members appointed by EPRI shall be*
19 *representatives of distribution utilities subject to as-*
20 *sessments under subsection (d).*

21 (A) *MEMBERS.—The Board shall include at*
22 *least one representative of each of the following:*

23 (i) *Investor-owned utilities.*

24 (ii) *Utilities owned by a State agency*
25 *or a municipality.*

1 (iii) *Rural electric cooperatives.*

2 (iv) *Fossil fuel producers.*

3 (v) *Nonprofit environmental organiza-*
4 *tions.*

5 (vi) *Independent generators or whole-*
6 *sale power providers.*

7 (vii) *Consumer groups.*

8 (B) *NONVOTING MEMBERS.*—*The Board*
9 *shall also include as additional nonvoting Mem-*
10 *bers the Secretary of Energy or his designee and*
11 *2 representatives of State regulatory authorities*
12 *as defined in section 3(17) of the Public Utility*
13 *Regulatory Policies Act of 1978 (16 U.S.C.*
14 *2602(17)), each designated by the National Asso-*
15 *ciation of State Regulatory Utility Commis-*
16 *sioners from States that are not within the same*
17 *transmission interconnection.*

18 (4) *COMPENSATION.*—*Corporation Board mem-*
19 *bers shall receive no compensation for their services,*
20 *nor shall Corporation Board members be reimbursed*
21 *for expenses relating to their service.*

22 (5) *TERMS.*—*Corporation Board members shall*
23 *serve terms of 4 years and may serve not more than*
24 *2 full consecutive terms. Members filling unexpired*
25 *terms may serve not more than a total of 8 consecu-*

1 *tive years. Former members of the Corporation Board*
2 *may be reappointed to the Corporation Board if they*
3 *have not been members for a period of 2 years. Initial*
4 *appointments to the Corporation Board shall be for*
5 *terms of 1, 2, 3, and 4 years, staggered to provide for*
6 *the selection of 3 members each year.*

7 (6) *STATUS OF CORPORATION.—The Corporation*
8 *shall not be considered to be an agency, department,*
9 *or instrumentality of the United States, and no offi-*
10 *cer or director or employee of the Corporation shall*
11 *be considered to be an officer or employee of the*
12 *United States Government, for purposes of title 5 or*
13 *title 31 of the United States Code, or for any other*
14 *purpose, and no funds of the Corporation shall be*
15 *treated as public money for purposes of chapter 33 of*
16 *title 31, United States Code, or for any other purpose.*

17 (c) *FUNCTIONS AND ADMINISTRATION OF THE COR-*
18 *PORATION.—*

19 (1) *IN GENERAL.—The Corporation shall estab-*
20 *lish and administer a program to accelerate the com-*
21 *mercial availability of carbon dioxide capture and*
22 *storage technologies and methods, including tech-*
23 *nologies which capture and store, or capture and con-*
24 *vert, carbon dioxide. Under such program competi-*
25 *tively awarded grants, contracts, and financial assist-*

1 *ance shall be provided and entered into with eligible*
2 *entities. Except as provided in paragraph (8), the*
3 *Corporation shall use all funds derived from assess-*
4 *ments under subsection (d) to issue grants and con-*
5 *tracts to eligible entities.*

6 (2) *PURPOSE.*—*The purposes of the grants, con-*
7 *tracts, and assistance under this subsection shall be to*
8 *support commercial-scale demonstrations of carbon*
9 *capture or storage technology projects capable of ad-*
10 *vancing the technologies to commercial readiness.*
11 *Such projects should encompass a range of different*
12 *coal and other fossil fuel varieties, be geographically*
13 *diverse, involve diverse storage media, and employ*
14 *capture or storage, or capture and conversion, tech-*
15 *nologies potentially suitable either for new or for ret-*
16 *rofit applications. The Corporation shall seek, to the*
17 *extent feasible, to support at least 5 commercial-scale*
18 *demonstration projects integrating carbon capture*
19 *and sequestration or conversion technologies.*

20 (3) *ELIGIBLE ENTITIES.*—*Entities eligible for*
21 *grants, contracts or assistance under this subsection*
22 *may include distribution utilities, electric utilities*
23 *and other private entities, academic institutions, na-*
24 *tional laboratories, Federal research agencies, State*
25 *research agencies, nonprofit organizations, or consor-*

1 *tiums of 2 or more entities. Pilot-scale and similar*
2 *small-scale projects are not eligible for support by the*
3 *Corporation. Owners or developers of projects sup-*
4 *ported by the Corporation shall, where appropriate,*
5 *share in the costs of such projects.*

6 (4) *GRANTS FOR EARLY MOVERS.—Fifty percent*
7 *of the funds raised under this section shall be pro-*
8 *vided in the form of grants to electric utilities that*
9 *had, prior to the award of any grant under this sec-*
10 *tion, committed resources to deploy a large scale elec-*
11 *tricity generation unit with integrated carbon capture*
12 *and sequestration or conversion applied to a substan-*
13 *tial portion of the unit’s carbon dioxide emissions.*
14 *Grant funds shall be provided to defray costs incurred*
15 *by such electricity utilities for at least 5 such elec-*
16 *tricity generation units.*

17 (5) *ADMINISTRATION.—The members of the*
18 *Board of Directors of the Corporation shall elect a*
19 *Chairman and other officers as necessary, may estab-*
20 *lish committees and subcommittees of the Corpora-*
21 *tion, and shall adopt rules and bylaws for the conduct*
22 *of business and the implementation of this section.*
23 *The Board shall appoint an Executive Director and*
24 *professional support staff who may be employees of*
25 *the Electric Power Research Institute (EPRI). After*

1 *consultation with the Technical Advisory Committee*
2 *established under subsection (j), the Secretary, and*
3 *the Director of the National Energy Technology Lab-*
4 *oratory to obtain advice and recommendations on*
5 *plans, programs, and project selection criteria, the*
6 *Board shall establish priorities for grants, contracts,*
7 *and assistance; publish requests for proposals for*
8 *grants, contracts, and assistance; and award grants,*
9 *contracts, and assistance competitively, on the basis*
10 *of merit, after the establishment of procedures that*
11 *provide for scientific peer review by the Technical Ad-*
12 *visory Committee. The Board shall give preference to*
13 *applications that reflect the best overall value and*
14 *prospect for achieving the purposes of the section, such*
15 *as those which demonstrate an integrated approach*
16 *for capture and storage or capture and conversion*
17 *technologies. The Board members shall not participate*
18 *in making grants or awards to entities with whom*
19 *they are affiliated.*

20 (6) *USES OF GRANTS, CONTRACTS, AND ASSIST-*
21 *ANCE.—A grant, contract, or other assistance pro-*
22 *vided under this subsection may be used to purchase*
23 *carbon dioxide when needed to conduct tests of carbon*
24 *dioxide storage sites, in the case of established projects*
25 *that are storing carbon dioxide emissions, or for other*

1 *purposes consistent with the purposes of this section.*
2 *The Corporation shall make publicly available at no*
3 *cost information learned as a result of projects which*
4 *it supports financially.*

5 (7) *INTELLECTUAL PROPERTY.*—*The Board shall*
6 *establish policies regarding the ownership of intellec-*
7 *tual property developed as a result of Corporation*
8 *grants and other forms of technology support. Such*
9 *policies shall encourage individual ingenuity and in-*
10 *vention.*

11 (8) *ADMINISTRATIVE EXPENSES.*—*Up to 5 per-*
12 *cent of the funds collected in any fiscal year under*
13 *subsection (d) may be used for the administrative ex-*
14 *penses of operating the Corporation (not including*
15 *costs incurred in the determination and collection of*
16 *the assessments pursuant to subsection (d)).*

17 (9) *PROGRAMS AND BUDGET.*—*Before August 1*
18 *each year, the Corporation, after consulting with the*
19 *Technical Advisory Committee and the Secretary and*
20 *the Director of the Department's National Energy*
21 *Technology Laboratory and other interested parties to*
22 *obtain advice and recommendations, shall publish for*
23 *public review and comment its proposed plans, pro-*
24 *grams, project selection criteria, and projects to be*
25 *funded by the Corporation for the next calendar year.*

1 *The Corporation shall also publish for public review*
2 *and comment a budget plan for the next calendar*
3 *year, including the probable costs of all programs,*
4 *projects, and contracts and a recommended rate of as-*
5 *essment sufficient to cover such costs. The Secretary*
6 *may recommend programs and activities the Sec-*
7 *retary considers appropriate. The Corporation shall*
8 *include in the first publication it issues under this*
9 *paragraph a strategic plan or roadmap for the*
10 *achievement of the purposes of the Corporation, as set*
11 *forth in paragraph (2).*

12 *(10) RECORDS; AUDITS.—The Corporation shall*
13 *keep minutes, books, and records that clearly reflect*
14 *all of the acts and transactions of the Corporation*
15 *and make public such information. The books of the*
16 *Corporation shall be audited by a certified public ac-*
17 *countant at least once each fiscal year and at such*
18 *other times as the Corporation may designate. Copies*
19 *of each audit shall be provided to the Congress, all*
20 *Corporation board members, all qualified industry or-*
21 *ganizations, each State regulatory authority and,*
22 *upon request, to other members of the industry. If the*
23 *audit determines that the Corporation’s practices fail*
24 *to meet generally accepted accounting principles the*
25 *assessment collection authority of the Corporation*

1 *under subsection (d) shall be suspended until a cer-*
2 *tified public accountant renders a subsequent opinion*
3 *that the failure has been corrected. The Corporation*
4 *shall make its books and records available for review*
5 *by the Secretary or the Comptroller General of the*
6 *United States.*

7 (11) *PUBLIC ACCESS.—The Corporation Board’s*
8 *meetings shall be open to the public and shall occur*
9 *after at least 30 days advance public notice. Meetings*
10 *of the Board of Directors may be closed to the public*
11 *where the agenda of such meetings includes only con-*
12 *fidential matters pertaining to project selection, the*
13 *award of grants or contracts, personnel matters, or*
14 *the receipt of legal advice. The minutes of all meetings*
15 *of the Corporation shall be made available to and*
16 *readily accessible by the public.*

17 (12) *ANNUAL REPORT.—Each year the Corpora-*
18 *tion shall prepare and make publicly available a re-*
19 *port which includes an identification and description*
20 *of all programs and projects undertaken by the Cor-*
21 *poration during the previous year. The report shall*
22 *also detail the allocation or planned allocation of Cor-*
23 *poration resources for each such program and project.*
24 *The Corporation shall provide its annual report to*
25 *the Congress, the Secretary, each State regulatory au-*

1 *thority, and upon request to the public. The Secretary*
 2 *shall, not less than 60 days after receiving such re-*
 3 *port, provide to the President and Congress a report*
 4 *assessing the progress of the Corporation in meeting*
 5 *the objectives of this section.*

6 *(d) ASSESSMENTS.—*

7 *(1) AMOUNT.—(A) In all calendar years fol-*
 8 *lowing its establishment, the Corporation shall collect*
 9 *an assessment on distribution utilities for all fossil*
 10 *fuel-based electricity delivered directly to retail con-*
 11 *sumers (as determined under subsection (f)). The as-*
 12 *sessments shall reflect the relative carbon dioxide*
 13 *emission rates of different fossil fuel-based electricity,*
 14 *and initially shall be not less than the following*
 15 *amounts for coal, natural gas, and oil:*

<i>Fuel type</i>	<i>Rate of assessment per kilowatt hour</i>
<i>Coal</i>	<i>\$0.00043</i>
<i>Natural Gas</i>	<i>\$0.00022</i>
<i>Oil</i>	<i>\$0.00032.</i>

16 *(B) The Corporation is authorized to adjust the*
 17 *assessments on fossil fuel-based electricity to reflect*
 18 *changes in the expected quantities of such electricity*
 19 *from different fuel types, such that the assessments*
 20 *generate not less than \$1.0 billion and not more than*
 21 *\$1.1 billion annually. The Corporation is authorized*

1 to supplement assessments through additional finan-
2 cial commitments.

3 (2) *INVESTMENT OF FUNDS.*—Pending disburse-
4 ment pursuant to a program, plan, or project, the
5 Corporation may invest funds collected through as-
6 sessments under this subsection, and any other funds
7 received by the Corporation, only in obligations of the
8 United States or any agency thereof, in general obli-
9 gations of any State or any political subdivision
10 thereof, in any interest-bearing account or certificate
11 of deposit of a bank that is a member of the Federal
12 Reserve System, or in obligations fully guaranteed as
13 to principal and interest by the United States.

14 (3) *REVERSION OF UNUSED FUNDS.*—If the Cor-
15 poration does not disburse, dedicate or assign 75 per-
16 cent or more of the available proceeds of the assessed
17 fees in any calendar year 7 or more years following
18 its establishment, due to an absence of qualified
19 projects or similar circumstances, it shall reimburse
20 the remaining undedicated or unassigned balance of
21 such fees, less administrative and other expenses au-
22 thorized by this section, to the distribution utilities
23 upon which such fees were assessed, in proportion to
24 their collected assessments.

25 (e) *ERCOT.*—

1 (1) *ASSESSMENT, COLLECTION, AND REMIT-*
2 *TANCE.—(A) Notwithstanding any other provision of*
3 *this section, within ERCOT, the assessment provided*
4 *for in subsection (d) shall be—*

5 *(i) levied directly on qualified scheduling*
6 *entities, or their successor entities;*

7 *(ii) charged consistent with other charges*
8 *imposed on qualified scheduling entities as a fee*
9 *on energy used by the load-serving entities; and*

10 *(iii) collected and remitted by ERCOT to*
11 *the Corporation in the amounts and in the same*
12 *manner as set forth in subsection (d).*

13 (B) *The assessment amounts referred to in sub-*
14 *paragraph (A) shall be—*

15 *(i) determined by the amount and types of*
16 *fossil fuel-based electricity delivered directly to*
17 *all retail customers in the prior calendar year*
18 *beginning with the year ending immediately*
19 *prior to the period described in subsection (b)(2);*
20 *and*

21 *(ii) take into account the number of renew-*
22 *able energy credits retired by the load-serving en-*
23 *tities represented by a qualified scheduling entity*
24 *within the prior calendar year.*

1 (2) *ADMINISTRATION EXPENSES.*—Up to 1 per-
2 cent of the funds collected in any fiscal year by
3 *ERCOT* under the provisions of this subsection may
4 be used for the administrative expenses incurred in
5 the determination, collection and remittance of the as-
6 sessments to the Corporation.

7 (3) *AUDIT.*—*ERCOT* shall provide a copy of its
8 annual audit pertaining to the administration of the
9 provisions of this subsection to the Corporation.

10 (4) *DEFINITIONS.*—For the purposes of this sub-
11 section:

12 (A) The term “*ERCOT*” means the *Electric*
13 *Reliability Council of Texas*.

14 (B) The term “load-serving entities” has the
15 meaning adopted by *ERCOT* Protocols and in
16 effect on the date of enactment of this Act.

17 (C) The term “qualified scheduling entities”
18 has the meaning adopted by *ERCOT* Protocols
19 and in effect on the date of enactment of this
20 Act.

21 (D) The term “renewable energy credit” has
22 the meaning as promulgated and adopted by the
23 *Public Utility Commission of Texas* pursuant to
24 section 39.904(b) of the *Public Utility Regu-*

1 *latory Act of 1999, and in effect on the date of*
2 *enactment of this Act.*

3 *(f) DETERMINATION OF FOSSIL FUEL-BASED ELEC-*
4 *TRICITY DELIVERIES.—*

5 *(1) FINDINGS.—The Congress finds that:*

6 *(A) The assessments under subsection (d)*
7 *are to be collected based on the amount of fossil*
8 *fuel-based electricity delivered by each distribu-*
9 *tion utility.*

10 *(B) Since many distribution utilities pur-*
11 *chase all or part of their retail consumer’s elec-*
12 *tricity needs from other entities, it may not be*
13 *practical to determine the precise fuel mix for*
14 *the power sold by each individual distribution*
15 *utility.*

16 *(C) It may be necessary to use average*
17 *data, often on a regional basis with reference to*
18 *Regional Transmission Organization (“RTO”)*
19 *or NERC regions, to make the determinations*
20 *necessary for making assessments.*

21 *(2) DOE PROPOSED RULE.—The Secretary, act-*
22 *ing in close consultation with the Energy Information*
23 *Administration, shall issue for notice and comment a*
24 *proposed rule to determine the level of fossil fuel elec-*
25 *tricity delivered to retail customers by each distribu-*

1 *tion utility in the United States during the most re-*
2 *cent calendar year or other period determined to be*
3 *most appropriate. Such proposed rule shall balance*
4 *the need to be efficient, reasonably precise, and time-*
5 *ly, taking into account the nature and cost of data*
6 *currently available and the nature of markets and*
7 *regulation in effect in various regions of the country.*
8 *Different methodologies may be applied in different*
9 *regions if appropriate to obtain the best balance of*
10 *such factors.*

11 (3) *FINAL RULE.*—*Within 6 months after the*
12 *date of enactment of this Act, and after opportunity*
13 *for comment, the Secretary shall issue a final rule*
14 *under this subsection for determining the level and*
15 *type of fossil fuel-based electricity delivered to retail*
16 *customers by each distribution utility in the United*
17 *States during the appropriate period. In issuing such*
18 *rule, the Secretary may consider opportunities and*
19 *costs to develop new data sources in the future and*
20 *issue recommendations for the Energy Information*
21 *Administration or other entities to collect such data.*
22 *After notice and opportunity for comment the Sec-*
23 *retary may, by rule, subsequently update and modify*
24 *the methodology for making such determinations.*

1 (4) *ANNUAL DETERMINATIONS.*—Pursuant to the
2 *final rule issued under paragraph (3), the Secretary*
3 *shall make annual determinations of the amounts and*
4 *types for each such utility and publish such deter-*
5 *minations in the Federal Register. Such determina-*
6 *tions shall be used to conduct the referendum under*
7 *subsection (b) and by the Corporation in applying*
8 *any assessment under this subsection.*

9 (5) *REHEARING AND JUDICIAL REVIEW.*—The
10 *owner or operator of any distribution utility that be-*
11 *lieves that the Secretary has misapplied the method-*
12 *ology in the final rule in determining the amount*
13 *and types of fossil fuel electricity delivered by such*
14 *distribution utility may seek rehearing of such deter-*
15 *mination within 30 days of publication of the deter-*
16 *mination in the Federal Register. The Secretary shall*
17 *decide such rehearing petitions within 30 days. The*
18 *Secretary's determinations following rehearing shall*
19 *be final and subject to judicial review in the United*
20 *States Court of Appeals for the District of Columbia.*

21 (g) *COMPLIANCE WITH CORPORATION ASSESS-*
22 *MENTS.*—The Corporation may bring an action in the ap-
23 *propriate court of the United States to compel compliance*
24 *with an assessment levied by the Corporation under this*
25 *section. A successful action for compliance under this sub-*

1 *section may also require payment by the defendant of the*
2 *costs incurred by the Corporation in bringing such action.*

3 *(h) MIDCOURSE REVIEW.—Not later than 5 years fol-*
4 *lowing establishment of the Corporation, the Comptroller*
5 *General of the United States shall prepare an analysis, and*
6 *report to Congress, assessing the Corporation’s activities,*
7 *including project selection and methods of disbursement of*
8 *assessed fees, impacts on the prospects for commercializa-*
9 *tion of carbon capture and storage technologies, adequacy*
10 *of funding, and administration of funds. The report shall*
11 *also make such recommendations as may be appropriate in*
12 *each of these areas. The Corporation shall reimburse the*
13 *Government Accountability Office for the costs associated*
14 *with performing this midcourse review.*

15 *(i) RECOVERY OF COSTS.—*

16 *(1) IN GENERAL.—A distribution utility whose*
17 *transmission, delivery, or sales of electric energy are*
18 *subject to any form of rate regulation shall not be de-*
19 *nied the opportunity to recover the full amount of the*
20 *prudently incurred costs associated with complying*
21 *with this section, consistent with applicable State or*
22 *Federal law.*

23 *(2) RATEPAYER REBATES.—Regulatory authori-*
24 *ties that approve cost recovery pursuant to paragraph*
25 *(1) may order rebates to ratepayers to the extent that*

1 *distribution utilities are reimbursed undedicated or*
2 *unassigned balances pursuant to subsection (d)(3).*

3 *(j) TECHNICAL ADVISORY COMMITTEE.—*

4 *(1) ESTABLISHMENT.—There is established an*
5 *advisory committee, to be known as the “Technical*
6 *Advisory Committee”.*

7 *(2) MEMBERSHIP.—The Technical Advisory*
8 *Committee shall be comprised of not less than 7 mem-*
9 *bers appointed by the Board from among academic*
10 *institutions, national laboratories, independent re-*
11 *search institutions, and other qualified institutions.*
12 *No member of the Committee shall be affiliated with*
13 *EPRI or with any organization having members serv-*
14 *ing on the Board. At least one member of the Com-*
15 *mittee shall be appointed from among officers or em-*
16 *ployees of the Department of Energy recommended to*
17 *the Board by the Secretary of Energy.*

18 *(3) CHAIRPERSON AND VICE CHAIRPERSON.—The*
19 *Board shall designate one member of the Technical*
20 *Advisory Committee to serve as Chairperson of the*
21 *Committee and one to serve as Vice Chairperson of*
22 *the Committee.*

23 *(4) COMPENSATION.—The Board shall provide*
24 *compensation to members of the Technical Advisory*
25 *Committee for travel and other incidental expenses*

1 *and such other compensation as the Board determines*
2 *to be necessary.*

3 (5) *PURPOSE.—The Technical Advisory Com-*
4 *mittee shall provide independent assessments and*
5 *technical evaluations, as well as make non-binding*
6 *recommendations to the Board, concerning Corpora-*
7 *tion activities, including but not limited to the fol-*
8 *lowing:*

9 (A) *Reviewing and evaluating the Corpora-*
10 *tion’s plans and budgets described in subsection*
11 *(c)(9), as well as any other appropriate areas,*
12 *which could include approaches to prioritizing*
13 *technologies, appropriateness of engineering tech-*
14 *niques, monitoring and verification technologies*
15 *for storage, geological site selection, and cost con-*
16 *trol measures.*

17 (B) *Making annual non-binding rec-*
18 *ommendations to the Board concerning any of*
19 *the matters referred to in subparagraph (A), as*
20 *well as what types of investments, scientific re-*
21 *search, or engineering practices would best fur-*
22 *ther the goals of the Corporation.*

23 (6) *PUBLIC AVAILABILITY.—All reports, evalua-*
24 *tions, and other materials of the Technical Advisory*
25 *Committee shall be made available to the public by*

1 *mercial deployment of carbon capture and sequestration*
2 *technologies in both electric power generation and indus-*
3 *trial operations.*

4 “(b) *ELIGIBILITY CRITERIA.—To be eligible to receive*
5 *emission allowances under this section, the owner or oper-*
6 *ator of a project must—*

7 “(1) *implement carbon capture and sequestration*
8 *technology—*

9 “(A) *at an electric generating unit that—*

10 “(i) *has a nameplate capacity of 200*
11 *megawatts or more;*

12 “(ii) *in the case of a retrofit applica-*
13 *tion, applies the carbon capture and seques-*
14 *tration technology to the flue gas from at*
15 *least 200 megawatts of the total nameplate*
16 *generating capacity of the unit, provided*
17 *that clause (i) shall apply without excep-*
18 *tion;*

19 “(iii) *derives at least 50 percent of its*
20 *annual fuel input from coal, petroleum*
21 *coke, or any combination of these 2 fuels;*
22 *and*

23 “(iv) *upon implementation of capture*
24 *and sequestration technology, will achieve*
25 *an emission limit that is at least a 50 per-*

1 *cent reduction in emissions of the carbon*
2 *dioxide produced by—*

3 “(I) *the unit, measured on an an-*
4 *nual basis, determined in accordance*
5 *with section 812(b)(2); or*

6 “(II) *in the case of retrofit appli-*
7 *cations under clause (ii), the treated*
8 *portion of flue gas from the unit, meas-*
9 *ured on an annual basis, determined*
10 *in accordance with section 812(b)(2);*

11 *or*

12 “(B) *at an industrial source that—*

13 “(i) *absent carbon capture and seques-*
14 *tration, would emit greater than 50,000*
15 *tons per year of carbon dioxide;*

16 “(ii) *upon implementation, will*
17 *achieve an emission limit that is at least a*
18 *50 percent reduction in emissions of the*
19 *carbon dioxide produced by the emission*
20 *point, measured on an annual basis, deter-*
21 *mined in accordance with section 812(b)(2);*

22 *and*

23 “(iii) *does not produce a liquid trans-*
24 *portation fuel from a solid fossil-based feed-*
25 *stock;*

1 “(2) geologically sequester carbon dioxide at a
2 site that meets all applicable permitting and certifi-
3 cation requirements for geologic sequestration, or,
4 pursuant to such requirements as the Administrator
5 may prescribe by regulation, convert captured carbon
6 dioxide to a stable form that will safely and perma-
7 nently sequester such carbon dioxide;

8 “(3) meet all other applicable State and Federal
9 permitting requirements; and

10 “(4) be located in the United States.

11 “(c) PHASE I DISTRIBUTION TO ELECTRIC GENER-
12 ATING UNITS.—

13 “(1) APPLICATION.—This subsection shall apply
14 only to projects at the first 6 gigawatts of electric gen-
15 erating units, measured in cumulative generating ca-
16 pacity of such units.

17 “(2) DISTRIBUTION.—The Administrator shall
18 distribute emission allowances allocated under section
19 782(f) to the owner or operator of each eligible project
20 at an electric generating unit in a quantity equal to
21 the quotient obtained by dividing—

22 “(A) the product obtained by multiplying—

23 “(i) the number of metric tons of car-
24 bon dioxide emissions avoided through cap-
25 ture and sequestration of emissions by the

1 *project, as determined pursuant to such*
2 *methodology as the Administrator shall pre-*
3 *scribe by regulation; and*

4 “(i) *a bonus allowance value, pursu-*
5 *ant to paragraph (3); by*

6 “(B) *the average fair market value of an*
7 *emission allowance during the preceding year.*

8 “(3) *BONUS ALLOWANCE VALUES.—*

9 “(A) *For a generating unit achieving the*
10 *capture and sequestration of 85 percent or more*
11 *of the carbon dioxide that otherwise would be*
12 *emitted by such unit, the bonus allowance value*
13 *shall be \$90.*

14 “(B) *The Administrator shall by regulation*
15 *establish a bonus allowance value for each rate*
16 *of lower capture and sequestration achieved by a*
17 *generating unit, from a minimum of \$50 per ton*
18 *for a 50 percent rate and varying directly with*
19 *increasing rates of capture and sequestration up*
20 *to \$90 per ton for an 85 percent rate.*

21 “(C) *For a generating unit that achieves the*
22 *capture and sequestration of at least 50 percent*
23 *of the carbon dioxide that otherwise would be*
24 *emitted by such unit by not later than January*
25 *1, 2017, the otherwise applicable bonus allow-*

1 *ance value under this paragraph shall be in-*
2 *creased by \$10, provided that the owner of such*
3 *unit notifies the Administrator of its intent to*
4 *achieve such rate of capture and sequestration by*
5 *not later than January 1, 2012.*

6 *“(D) For a carbon capture and sequestra-*
7 *tion project sequestering in a geological forma-*
8 *tion for purposes of enhanced hydrocarbon recov-*
9 *ery, the Administrator shall, by regulation, re-*
10 *duce the applicable bonus allowance value under*
11 *this paragraph to reflect the lower net cost of the*
12 *project when compared to sequestration into geo-*
13 *logical formations solely for purposes of seques-*
14 *tration.*

15 *“(E) All monetary values in this section*
16 *shall be adjusted annually for inflation.*

17 *“(d) PHASE II DISTRIBUTION TO ELECTRIC GENER-*
18 *ATING UNITS.—*

19 *“(1) APPLICATION.—This subsection shall apply*
20 *only to the distribution of emission allowances to car-*
21 *bon capture and sequestration projects at electric gen-*
22 *erating units after the capacity threshold identified in*
23 *subsection (c)(1) is reached.*

24 *“(2) REGULATIONS.—Not later than 2 years*
25 *prior to the date on which the capacity threshold*

1 *identified in subsection (c)(1) is projected to be*
2 *reached, the Administrator shall promulgate regula-*
3 *tions to govern the distribution of emission allowances*
4 *to the owners or operators of eligible projects under*
5 *this subsection.*

6 *“(3) REVERSE AUCTIONS.—*

7 *“(A) IN GENERAL.—Except as provided in*
8 *paragraph (4), the regulations promulgated*
9 *under paragraph (2) shall provide for the dis-*
10 *tribution of emission allowances to the owners or*
11 *operators of eligible projects under this sub-*
12 *section through reverse auctions, which shall be*
13 *held no less frequently than once each calendar*
14 *year. The Administrator may establish a sepa-*
15 *rate auction for each of no more than 5 different*
16 *project categories, defined on the basis of coal*
17 *type, capture technology, geological formation*
18 *type, new unit versus retrofit application, such*
19 *other factors as the Administrator may prescribe,*
20 *or any combination thereof. The Administrator*
21 *may establish appropriate minimum rates of*
22 *capture and sequestration in implementing this*
23 *paragraph.*

24 *“(B) AUCTION PROCESS.—At each reverse*
25 *auction—*

1 “(i) the Administrator shall solicit bids
2 from eligible projects;

3 “(ii) eligible projects participating in
4 the auction shall submit a bid including the
5 desired level of carbon dioxide sequestration
6 incentive per ton and the estimated quan-
7 tity of carbon dioxide that the project will
8 permanently sequester over 10 years; and

9 “(iii) the Administrator shall select
10 bids, within each auction, for the sequestra-
11 tion amount submitted, beginning with the
12 eligible project submitting the bid for the
13 lowest level of sequestration incentive on a
14 per ton basis and meeting such other re-
15 quirements as the Administrator may speci-
16 fy, until the amount of funds available for
17 the reverse auction is committed.

18 “(C) FORM OF DISTRIBUTION.—The Admin-
19 istrator shall provide deployment incentives to
20 the owners or operators of eligible projects se-
21 lected through a reverse auction under this para-
22 graph pursuant to a formula equivalent to that
23 described in subsection (c)(2), except that the in-
24 centive level that is bid by the entity shall be
25 substituted for the bonus allowance value.

1 “(4) *ALTERNATIVE DISTRIBUTION METHOD.*—

2 “(A) *IN GENERAL.*—*If the Administrator*
3 *determines that reverse auctions would not pro-*
4 *vide for efficient and cost-effective commercial*
5 *deployment of carbon capture and sequestration*
6 *technologies, the Administrator may instead,*
7 *through regulations promulgated under para-*
8 *graph (2) or (5), prescribe a schedule for the*
9 *award of bonus allowances to the owners or oper-*
10 *ators of eligible projects under this subsection, in*
11 *accordance with the requirements of this para-*
12 *graph.*

13 “(B) *MULTIPLE TRANCHES.*—*The Adminis-*
14 *trator shall divide emission allowances available*
15 *for distribution to the owners or operators of eli-*
16 *gible projects into a series of tranches, each sup-*
17 *porting the deployment of a specified quantity of*
18 *cumulative electric generating capacity utilizing*
19 *carbon capture and sequestration technology,*
20 *each of which shall not be greater than 6*
21 *gigawatts.*

22 “(C) *METHOD OF DISTRIBUTION.*—*The Ad-*
23 *ministrator shall distribute emission allowances*
24 *within each tranche, on a first-come, first-served*
25 *basis—*

1 “(i) based on the date of full-scale op-
2 eration of capture and sequestration tech-
3 nology; and

4 “(ii) pursuant to a formula, similar to
5 that set forth in subsection (c)(2) (except
6 that the Administrator shall prescribe bonus
7 allowance values different than those set
8 forth in subsection (c)(2)), establishing the
9 number of allowances to be distributed per
10 ton of carbon dioxide sequestered by the
11 project.

12 “(D) REQUIREMENTS.—For each tranche
13 established pursuant to subparagraph (A), the
14 Administrator shall establish a schedule for dis-
15 tributing emission allowances that—

16 “(i) is based on a sliding scale that
17 provides higher bonus allowance values for
18 projects achieving higher rates of capture
19 and sequestration;

20 “(ii) for each capture and sequestra-
21 tion rate, establishes a bonus allowance
22 value that is lower than that established for
23 such rate in the previous tranche (or, in the
24 case of the first tranche, than that estab-

1 *lished for such rate under subsection (c)(3));*
2 *and*

3 *“(iii) may establish different bonus al-*
4 *lowance levels for no more than 5 different*
5 *project categories, defined by coal type, cap-*
6 *ture technology, geological formation type,*
7 *new unit versus retrofit application, such*
8 *other factors as the Administrator may pre-*
9 *scribe, or any combination thereof.*

10 *“(E) CRITERIA FOR ESTABLISHING BONUS*
11 *ALLOWANCE VALUES.—In setting bonus allow-*
12 *ance values under this paragraph, the Adminis-*
13 *trator shall seek to cover no more than the rea-*
14 *sonable incremental capital and operating costs*
15 *of a project that are attributable to implementa-*
16 *tion of carbon capture, transportation, and se-*
17 *questration technologies, taking into account—*

18 *“(i) the reduced cost of compliance*
19 *with section 722 of this Act;*

20 *“(ii) the reduced cost associated with*
21 *sequestering in a geological formation for*
22 *purposes of enhanced hydrocarbon recovery*
23 *when compared to sequestration into geo-*
24 *logical formations solely for purposes of se-*
25 *questration;*

1 “(iii) the relevant factors defining the
2 project category; and

3 “(iv) such other factors as the Admin-
4 istrator determines are appropriate.

5 “(5) REVISION OF REGULATIONS.—The Adminis-
6 trator shall review, and as appropriate revise, the ap-
7 plicable regulations under this subsection no less fre-
8 quently than every 8 years.

9 “(e) LIMITS FOR CERTAIN ELECTRIC GENERATING
10 UNITS.—

11 “(1) DEFINITIONS.—For purposes of this sub-
12 section, the terms ‘covered EGU’ and ‘initially per-
13 mitted’ shall have the meaning given those terms in
14 section 812 of this Act.

15 “(2) COVERED EGUS INITIALLY PERMITTED
16 FROM 2009 THROUGH 2014.—For a covered EGU that
17 is initially permitted on or after January 1, 2009,
18 and before January 1, 2015, the Administrator shall
19 reduce the quantity of emission allowances that the
20 owner or operator of such covered EGU would other-
21 wise be eligible to receive under this section as follows:

22 “(A) In the case of a unit commencing oper-
23 ation on or before January 1, 2019, if the date
24 in clause (ii)(I) is earlier than the date in clause
25 (ii)(II), by the product of—

1 “(i) 20 percent; and

2 “(ii) the number of years, if any, that
3 have elapsed between—

4 “(I) the earlier of January 1,
5 2020, or the date that is 5 years after
6 the commencement of operation of such
7 covered EGU; and

8 “(II) the first year that such cov-
9 ered EGU achieves (and thereafter
10 maintains) an emission limit that is
11 at least a 50 percent reduction in
12 emissions of the carbon dioxide pro-
13 duced by the unit, measured on an an-
14 nual basis, as determined in accord-
15 ance with section 812(b)(2).

16 “(B) In the case of a unit commencing op-
17 eration after January 1, 2019, by the product
18 of—

19 “(i) 20 percent; and

20 “(ii) the number of years between—

21 “(I) the commencement of oper-
22 ation of such covered EGU; and

23 “(II) the first year that such cov-
24 ered EGU achieves (and thereafter
25 maintains) an emission limit that is

1 at least a 50 percent reduction in
2 emissions of the carbon dioxide pro-
3 duced by the unit, measured on an an-
4 nual basis, as determined in accord-
5 ance with section 812(b)(2).

6 “(3) COVERED EGUS INITIALLY PERMITTED
7 FROM 2015 THROUGH 2019.—The owner or operator of
8 a covered EGU that is initially permitted on or after
9 January 1, 2015, and before January 1, 2020, shall
10 be ineligible to receive emission allowances pursuant
11 to this section if such unit, upon commencement of
12 operations (and thereafter), does not achieve and
13 maintain an emission limit that is at least a 50 per-
14 cent reduction in emissions of the carbon dioxide pro-
15 duced by the unit, measured on an annual basis, as
16 determined in accordance with section 812(b)(2).

17 “(f) INDUSTRIAL SOURCES.—

18 “(1) ALLOWANCES.—The Administrator may
19 distribute not more than 15 percent of the allowances
20 allocated under section 782(a) for any vintage year to
21 the owners or operators of eligible industrial sources
22 to support the commercial-scale deployment of carbon
23 capture and sequestration technologies at such
24 sources.

1 “(2) *DISTRIBUTION.*—*The Administrator shall,*
2 *by regulation, prescribe requirements for the distribu-*
3 *tion of emission allowances to the owners or operators*
4 *of industrial sources under this subsection, based on*
5 *a bonus allowance formula that awards allowances to*
6 *qualifying projects on the basis of tons of carbon diox-*
7 *ide captured and permanently sequestered. The Ad-*
8 *ministrator may provide for the distribution of emis-*
9 *sion allowances pursuant to—*

10 “(A) *a reverse auction method, similar to*
11 *that described under subsection (d)(3), including*
12 *the use of separate auctions for different project*
13 *categories; or*

14 “(B) *an incentive schedule, similar to that*
15 *described under subsection (d)(4), which shall en-*
16 *sure that incentives are set so as to satisfy the*
17 *requirement described in subsection (d)(4)(E).*

18 “(3) *REVISION OF REGULATIONS.*—*The Adminis-*
19 *trator shall review, and as appropriate revise, the ap-*
20 *plicable regulations under this subsection no less fre-*
21 *quently than every 8 years.*

22 “(g) *LIMITATIONS.*—*Allowances may be distributed*
23 *under this section only for tons of carbon dioxide emissions*
24 *that have already been captured and sequestered. A quali-*
25 *fying project may receive annual emission allowances under*

1 *this section only for the first 10 years of operation. No*
2 *greater than 72 gigawatts of total cumulative generating*
3 *capacity (including industrial applications, measured by*
4 *such equivalent metric as the Administrator may designate)*
5 *may receive emission allowances under this section. Upon*
6 *reaching the limit described in the preceding sentence, any*
7 *emission allowances that are allocated for carbon capture*
8 *and sequestration deployment under section 782(f) and are*
9 *not yet obligated under this section shall be treated as allow-*
10 *ances not designated for distribution for purposes of section*
11 *782(r).*

12 “(h) *EXHAUSTION OF ACCOUNT AND ANNUAL ROLL-*
13 *OVER OF SURPLUS ALLOWANCES.—*

14 “(1) *In distributing bonus allowances under this*
15 *subsection, the Administrator shall ensure that quali-*
16 *fying projects receiving allowances receive distribu-*
17 *tions for 10 years.*

18 “(2) *If the Administrator determines that the al-*
19 *lowances allocated under section 782(f) with a vintage*
20 *year that matches the year of distribution will be ex-*
21 *hausted once the estimated full 10-year distributions*
22 *will be provided to current eligible participants, the*
23 *Administrator shall provide to new eligible projects*
24 *allowances from vintage years after the year of the*
25 *distribution.*

1 “(i) *RETROFIT APPLICATIONS.*—(1) *In calculating*
2 *bonus allowance values for retrofit applications eligible*
3 *under subsections (b)(1)(A)(ii) and (b)(1)(A)(iv)(II), the*
4 *Administrator shall apply the required capture rates with*
5 *respect to the treated portion of flue gas from the unit.*

6 “(2) *No additional projects shall be eligible for allow-*
7 *ances under subsections (b)(1)(A)(ii) and (b)(1)(A)(iv)(II)*
8 *as of such time as the Administrator reports, pursuant to*
9 *section 812(d), that carbon capture and sequestration ret-*
10 *rofit projects at electric generating units that are eligible*
11 *for allowances under this section have been applied, in the*
12 *aggregate, to the flue gas generated by 1 gigawatt of total*
13 *cumulative generating capacity.*

14 “(j) *DAVIS-BACON COMPLIANCE.*—*All laborers and*
15 *mechanics employed on projects funded directly by or as-*
16 *sisted in whole or in part by this section through the use*
17 *of bonus allowances shall be paid wages at rates not less*
18 *than those prevailing on projects of a character similar in*
19 *the locality as determined by the Secretary of Labor in ac-*
20 *cordance with subchapter IV, chapter 31, part A of subtitle*
21 *II of title 40, United States Code. With respect to the labor*
22 *standards specified in this section, the Secretary of Labor*
23 *shall have the authority and functions set forth in Reorga-*
24 *nization Plan Numbered 14 of 1950 (64 Stat. 1267; 5*

1 *U.S.C. App.) and section 3145 of title 40, United States*
2 *Code.”.*

3 **SEC. 116. PERFORMANCE STANDARDS FOR COAL-FUELED**
4 **POWER PLANTS.**

5 *(a) IN GENERAL.—Title VIII of the Clean Air Act (as*
6 *added by section 331 of this Act) is amended by adding*
7 *the following new section after section 811:*

8 **“SEC. 812. PERFORMANCE STANDARDS FOR NEW COAL-**
9 **FIRED POWER PLANTS.**

10 *“(a) DEFINITIONS.—For purposes of this section:*

11 *“(1) COVERED EGU.—The term ‘covered EGU’*
12 *means a utility unit that is required to have a permit*
13 *under section 503(a) and is authorized under state or*
14 *federal law to derive at least 30 percent of its annual*
15 *heat input from coal, petroleum coke, or any com-*
16 *bination of these fuels.*

17 *“(2) INITIALLY PERMITTED.—The term ‘initially*
18 *permitted’ means that the owner or operator has re-*
19 *ceived a Clean Air Act preconstruction approval or*
20 *permit, for the covered EGU as a new (not a modi-*
21 *fied) source, but administrative review or appeal of*
22 *such approval or permit has not been exhausted. A*
23 *subsequent modification of any such approval or per-*
24 *mits, ongoing administrative or court review, ap-*
25 *peals, or challenges, or the existence or tolling of any*

1 *time to pursue further review, appeals, or challenges*
2 *shall not affect the date on which a covered EGU is*
3 *considered to be initially permitted under this para-*
4 *graph.*

5 “(b) *STANDARDS.—(1) A covered EGU that is initially*
6 *permitted on or after January 1, 2020, shall achieve an*
7 *emission limit that is a 65 percent reduction in emissions*
8 *of the carbon dioxide produced by the unit, as measured*
9 *on an annual basis, or meet such more stringent standard*
10 *as the Administrator may establish pursuant to subsection*
11 *(c).*

12 “(2) *A covered EGU that is initially permitted after*
13 *January 1, 2009, and before January 1, 2020, shall, by*
14 *the applicable compliance date established under this para-*
15 *graph, achieve an emission limit that is a 50 percent reduc-*
16 *tion in emissions of the carbon dioxide produced by the*
17 *unit, as measured on an annual basis. Compliance with*
18 *the requirement set forth in this paragraph shall be required*
19 *by the earliest of the following:*

20 “(A) *Four years after the date the Administrator*
21 *has published pursuant to subsection (d) a report that*
22 *there are in commercial operation in the United*
23 *States electric generating units or other stationary*
24 *sources equipped with carbon capture and sequestra-*
25 *tion technology that, in the aggregate—*

1 “(i) have a total of at least 4 gigawatts of
2 nameplate generating capacity of which—

3 “(I) at least 3 gigawatts must be elec-
4 tric generating units; and

5 “(II) up to 1 gigawatt may be indus-
6 trial applications, for which capture and se-
7 questration of 3 million tons of carbon diox-
8 ide per year on an aggregate annualized
9 basis shall be considered equivalent to 1
10 gigawatt;

11 “(ii) include at least 2 electric generating
12 units, each with a nameplate generating capac-
13 ity of 250 megawatts or greater, that capture,
14 inject, and sequester carbon dioxide into geologic
15 formations other than oil and gas fields; and

16 “(iii) are capturing and sequestering in the
17 aggregate at least 12 million tons of carbon diox-
18 ide per year, calculated on an aggregate
19 annualized basis.

20 “(B) January 1, 2025.

21 “(3) If the deadline for compliance with paragraph (2)
22 is January 1, 2025, the Administrator may extend the
23 deadline for compliance by a covered EGU by up to 18
24 months if the Administrator makes a determination, based
25 on a showing by the owner or operator of the unit, that

1 *it will be technically infeasible for the unit to meet the*
2 *standard by the deadline. The owner or operator must sub-*
3 *mit a request for such an extension by no later than Janu-*
4 *ary 1, 2022, and the Administrator shall provide for public*
5 *notice and comment on the extension request.*

6 “(c) *REVIEW AND REVISION OF STANDARDS.—Not*
7 *later than 2025 and at 5-year intervals thereafter, the Ad-*
8 *ministrator shall review the standards for new covered*
9 *EGUs under this section and shall, by rule, reduce the max-*
10 *imum carbon dioxide emission rate for new covered EGUs*
11 *to a rate which reflects the degree of emission limitation*
12 *achievable through the application of the best system of*
13 *emission reduction which (taking into account the cost of*
14 *achieving such reduction and any nonair quality health*
15 *and environmental impact and energy requirements) the*
16 *Administrator determines has been adequately dem-*
17 *onstrated.*

18 “(d) *REPORTS.—Not later than the date 18 months*
19 *after the date of enactment of this title and semiannually*
20 *thereafter, the Administrator shall publish a report on the*
21 *nameplate capacity of units (determined pursuant to sub-*
22 *section (b)(2)(A)) in commercial operation in the United*
23 *States equipped with carbon capture and sequestration*
24 *technology, including the information described in sub-*
25 *section (b)(2)(A) (including the cumulative generating ca-*

1 *capacity to which carbon capture and sequestration retrofit*
 2 *projects meeting the criteria described in section*
 3 *786(b)(1)(A)(ii) and (b)(1)(A)(iv)(II) has been applied and*
 4 *the quantities of carbon dioxide captured and sequestered*
 5 *by such projects).*

6 “(e) *REGULATIONS.*—*Not later than 2 years after the*
 7 *date of enactment of this title, the Administrator shall pro-*
 8 *mulgate regulations to carry out the requirements of this*
 9 *section.*”.

10 ***Subtitle C—Clean Transportation***

11 ***SEC. 121. ELECTRIC VEHICLE INFRASTRUCTURE.***

12 “(a) *AMENDMENT OF PURPA.*—*Section 111(d) of the*
 13 *Public Utility Regulatory Policies Act of 1978 (16 U.S.C.*
 14 *2621(d)) is amended by adding at the end the following:*

15 “(20) *PLUG-IN ELECTRIC DRIVE VEHICLE INFRA-*
 16 *STRUCTURE.*—

17 “(A) *UTILITY PLAN FOR INFRASTRUC-*
 18 *TURE.*—*Each electric utility shall develop a plan*
 19 *to support the use of plug-in electric drive vehi-*
 20 *cles, including heavy-duty hybrid electric vehi-*
 21 *cles. The plan may provide for deployment of*
 22 *electrical charging stations in public or private*
 23 *locations, including street parking, parking ga-*
 24 *rages, parking lots, homes, gas stations, and*

1 highway rest stops. Any such plan may also in-
2 clude—

3 “(i) battery exchange, fast charging in-
4 frastructure and other services;

5 “(ii) triggers for infrastructure deploy-
6 ment based upon market penetration of
7 plug-in electric drive vehicles; and

8 “(iii) such other elements as the State
9 determines necessary to support plug-in
10 electric drive vehicles.

11 Each plan under this paragraph shall provide
12 for the deployment of the charging infrastructure
13 or other infrastructure necessary to adequately
14 support the use of plug-in electric drive vehicles.

15 “(B) SUPPORT REQUIREMENTS.—Each
16 State regulatory authority (in the case of each
17 electric utility for which it has ratemaking au-
18 thority) and each utility (in the case of a non-
19 regulated utility) shall—

20 “(i) require that charging infrastruc-
21 ture deployed is interoperable with products
22 of all auto manufacturers to the extent pos-
23 sible; and

24 “(ii) consider adopting minimum re-
25 quirements for deployment of electrical

1 *charging infrastructure and other appro-*
2 *priate requirements necessary to support the*
3 *use of plug-in electric drive vehicles.*

4 “(C) *COST RECOVERY.*—*Each State regu-*
5 *latory authority (in the case of each electric util-*
6 *ity for which it has ratemaking authority) and*
7 *each utility (in the case of a nonregulated util-*
8 *ity) shall consider whether, and to what extent,*
9 *to allow cost recovery for plans and implementa-*
10 *tion of plans.*

11 “(D) *SMART GRID INTEGRATION.*—*The*
12 *State regulatory authority (in the case of each*
13 *electric utility for which it has ratemaking au-*
14 *thority) and each utility (in the case of a non-*
15 *regulated utility) shall, in accordance with regu-*
16 *lations issued by the Federal Energy Regulatory*
17 *Commission pursuant to section 1305(d) of the*
18 *Energy Independence and Security Act of*
19 *2007—*

20 “(i) *establish any appropriate proto-*
21 *cols and standards for integrating plug-in*
22 *electric drive vehicles into an electrical dis-*
23 *tribution system, including Smart Grid sys-*
24 *tems and devices as described in title XIII*

1 *of the Energy Independence and Security*
2 *Act of 2007;*

3 “(ii) include, to the extent feasible, the
4 ability for each plug-in electric drive vehicle
5 to be identified individually and to be asso-
6 ciated with its owner’s electric utility ac-
7 count, regardless of the location that the ve-
8 hicle is plugged in, for purposes of appro-
9 priate billing for any electricity required to
10 charge the vehicle’s batteries as well as any
11 crediting for electricity provided to the elec-
12 tric utility from the vehicle’s batteries; and

13 “(iii) review the determination made
14 in response to section 1252 of the Energy
15 Policy Act of 2005 in light of this section,
16 including whether time-of-use pricing
17 should be employed to enable the use of
18 plug-in electric drive vehicles to contribute
19 to meeting peak-load and ancillary service
20 power needs.”.

21 (b) COMPLIANCE.—

22 (1) TIME LIMITATIONS.—Section 112(b) of the
23 *Public Utility Regulatory Policies Act of 1978 (16*
24 *U.S.C. 2622(b)) is amended by adding the following*
25 *at the end thereof:*

1 “(7)(A) Not later than 3 years after the date of enact-
2 ment of this paragraph, each State regulatory authority
3 (with respect to each electric utility for which it has rate-
4 making authority) and each nonregulated utility shall com-
5 mence the consideration referred to in section 111, or set
6 a hearing date for consideration, with respect to the stand-
7 ard established by paragraph (20) of section 111(d).

8 “(B) Not later than 4 years after the date of enactment
9 of the this paragraph, each State regulatory authority (with
10 respect to each electric utility for which it has ratemaking
11 authority), and each nonregulated electric utility, shall
12 complete the consideration, and shall make the determina-
13 tion, referred to in section 111 with respect to the standard
14 established by paragraph (20) of section 111(d).”.

15 (2) *FAILURE TO COMPLY.*—Section 112(c) of the
16 *Public Utility Regulatory Policies Act of 1978* (16
17 *U.S.C. 2622(c)*) is amended by adding the following
18 at the end: “In the case of the standards established
19 by paragraph (20) of section 111(d), the reference
20 contained in this subsection to the date of enactment
21 of this Act shall be deemed to be a reference to the
22 date of enactment of such paragraph.”.

23 (3) *PRIOR STATE ACTIONS.*—Section 112(d) of
24 *the Public Utility Regulatory Policies Act of 1978* (16

1 (4) *to demonstrate protocols and standards that*
2 *facilitate vehicle integration into the grid; and*

3 (5) *to investigate differences in each region and*
4 *regulatory environment regarding best practices in*
5 *implementing vehicle electrification.*

6 (c) *APPLICATIONS.—Any State, Indian tribe, or local*
7 *government (or group of State, Indian tribe, or local gov-*
8 *ernments) may apply to the Secretary of Energy for finan-*
9 *cial assistance in furthering the regional deployment and*
10 *integration into the electricity grid of plug-in electric drive*
11 *vehicles. Such applications may be jointly sponsored by*
12 *electric utilities, automobile manufacturers, technology pro-*
13 *viders, car sharing companies or organizations, or other*
14 *persons or entities.*

15 (d) *USE OF FUNDS.—Pursuant to applications re-*
16 *ceived under subsection (c), the Secretary may make finan-*
17 *cial assistance available to any applicant or joint sponsor*
18 *of the application to be used for any of the following:*

19 (1) *Assisting persons located in the regional de-*
20 *ployment area, including fleet owners, in the purchase*
21 *of new plug-in electric drive vehicles by offsetting in*
22 *whole or in part the incremental cost of such vehicles*
23 *above the cost of comparable conventionally fueled ve-*
24 *hicles.*

1 (2) *Supporting the use of plug-in electric drive*
2 *vehicles by funding projects for the deployment of any*
3 *of the following:*

4 (A) *Electrical charging infrastructure for*
5 *plug-in electric drive vehicles, including battery*
6 *exchange, fast charging infrastructure, and other*
7 *services, in public or private locations, including*
8 *street parking, parking garages, parking lots,*
9 *homes, gas stations, and highway rest stops.*

10 (B) *Smart Grid equipment and infrastruc-*
11 *ture, as described in title XIII of the Energy*
12 *Independence and Security Act of 2007, to facili-*
13 *tate the charging and integration of plug-in elec-*
14 *tric drive vehicles.*

15 (3) *Such other projects as the Secretary deter-*
16 *mines appropriate to support the large-scale deploy-*
17 *ment of plug-in electric drive vehicles in regional de-*
18 *ployment areas.*

19 (e) *PROGRAM REQUIREMENTS.—The Secretary, in*
20 *consultation with the Administrator and the Secretary of*
21 *Transportation, shall determine design elements and re-*
22 *quirements of the program established pursuant to sub-*
23 *section (a), including—*

24 (1) *the type of financial mechanism with which*
25 *to provide financial assistance;*

1 *ence and Security Act of 2007, that are developed and pro-*
2 *duced in the United States.*

3 (b) *FINANCIAL ASSISTANCE.*—*The Secretary of Energy*
4 *may provide financial assistance to an automobile manu-*
5 *facturer under the program established pursuant to sub-*
6 *section (a) for—*

7 (1) *the reconstruction or retooling of facilities for*
8 *the manufacture of plug-in electric drive vehicles that*
9 *are developed and produced in the United States; and*

10 (2) *if appropriate, the purchase of domestically*
11 *produced vehicle batteries to be used in the manufac-*
12 *ture of vehicles manufactured pursuant to paragraph*
13 *(1).*

14 (c) *COORDINATION WITH REGIONAL DEPLOYMENT.*—
15 *The Secretary may provide financial assistance under sub-*
16 *section (b) in conjunction with the award of financial as-*
17 *sistance under the large scale vehicle electrification program*
18 *established pursuant to section 122 of this Act.*

19 (d) *PROGRAM REQUIREMENTS.*—*The Secretary shall*
20 *determine design elements and requirements of the program*
21 *established pursuant to subsection (a), including—*

22 (1) *the type of financial mechanism with which*
23 *to provide financial assistance;*

1 (2) *criteria, in addition to the criteria described*
2 *under subsection (e), for evaluating applications for*
3 *financial assistance; and*

4 (3) *reporting requirements for automobile manu-*
5 *facturers that receive financial assistance under this*
6 *section.*

7 (e) *CRITERIA.—In selecting recipients of financial as-*
8 *sistance from among applicant automobile manufacturers,*
9 *the Secretary shall give preference to proposals that—*

10 (1) *are most likely to be successful; and*

11 (2) *are located in local markets that have the*
12 *greatest need for the facility.*

13 (f) *REPORTS.—The Secretary shall annually submit to*
14 *Congress a report on the program established pursuant to*
15 *this section.*

16 (g) *AUTHORIZATION OF APPROPRIATIONS.—There are*
17 *authorized to be appropriated such sums as are necessary*
18 *to carry out this section.*

19 **SEC. 124. INVESTMENT IN CLEAN VEHICLES.**

20 (a) *DEFINITIONS.—In this section:*

21 (1) *ADVANCED TECHNOLOGY VEHICLES AND*
22 *QUALIFYING COMPONENTS.—The terms “advanced*
23 *technology vehicles” and “qualifying components”*
24 *shall have the definition of such terms in section 136*
25 *of the Energy Independence and Security Act of 2007,*

1 *except that for purposes of this section, the average*
2 *base year as described in such section 136(a)(1)(C)*
3 *shall be the following:*

4 (A) *In each of the years 2012 through 2016,*
5 *model year 2009.*

6 (B) *In 2017, the Administrator shall, not-*
7 *withstanding such section 136(a)(1)(C), deter-*
8 *mine an appropriate baseline based on techno-*
9 *logical and economic feasibility.*

10 (2) *PLUG-IN ELECTRIC DRIVE VEHICLE.—The*
11 *term “plug-in electric drive vehicle” shall have the*
12 *definition of such term in section 131 of the Energy*
13 *Independence and Security Act of 2007.*

14 (b) *DISTRIBUTION OF ALLOWANCES.—The Adminis-*
15 *trator shall, in accordance with this section, distribute*
16 *emission allowances allocated pursuant to section 782(i) of*
17 *the Clean Air Act not later than September 30 of 2012 and*
18 *each calendar year thereafter through 2025.*

19 (c) *PLUG-IN ELECTRIC DRIVE VEHICLE MANUFAC-*
20 *TURING AND DEPLOYMENT.—*

21 (1) *IN GENERAL.—The Administrator shall, at*
22 *the direction of the Secretary of Energy, provide*
23 *emission allowances allocated pursuant to section*
24 *782(i) to applicants, joint sponsors and automobile*

1 *manufacturers pursuant to sections 122 and 123 of*
2 *this Act.*

3 (2) *ANNUAL AMOUNT.*—*In each of the years 2012*
4 *through 2017, one-quarter of the portion of the emis-*
5 *sion allowances allocated pursuant to section 782(i)*
6 *of the Clean Air Act shall be available to carry out*
7 *paragraph (1) such that—*

8 (A) *one-eighth of the portion shall be avail-*
9 *able to carry out section 122; and,*

10 (B) *one-eighth of the portion shall be avail-*
11 *able to carry out section 123.*

12 (3) *PREFERENCE.*—*In directing the provision of*
13 *emission allowances under this subsection to carry*
14 *out section 122, the Secretary shall give preference to*
15 *applications under section 122(c) that are jointly*
16 *sponsored by one or more automobile manufacturers.*

17 (4) *MULTI-YEAR COMMITMENTS.*—*The Adminis-*
18 *trator shall commit to providing emission allowances*
19 *to an applicant, joint sponsor, or automobile manu-*
20 *facturer for up to five consecutive years if—*

21 (A) *an application under section 122 or*
22 *123 of this Act requests a multi-year commit-*
23 *ment;*

1 (B) such application meets the criteria for
2 support established by the Secretary of Energy
3 under sections 122 or 123 of this Act;

4 (C) the Administrator confirms to the Sec-
5 retary that emission allowances will be available
6 for a multi-year commitment;

7 (D) the Secretary of Energy determines that
8 a multi-year commitment for such application
9 will advance the goals of section 122 or 123; and

10 (E) the Secretary of Energy directs the Ad-
11 ministrator to make a multi-year commitment.

12 (5) *INSUFFICIENT APPLICATIONS.*—If, in any
13 year, emission allowances available under paragraph
14 (2) cannot be provided because of insufficient num-
15 bers of submitted applications that meet the criteria
16 for support established by the Secretary of Energy
17 under sections 122 or 123 of this Act, the remaining
18 emission allowances shall be distributed according to
19 subsection (d).

20 (d) *ADVANCED TECHNOLOGY VEHICLES.*—

21 (1) *IN GENERAL.*—The Administrator shall, at
22 the direction of the Secretary of Energy, provide any
23 emission allowances allocated pursuant to section
24 782(i) of the Clean Air Act that are not provided
25 under subsection (c) to automobile manufacturers and

1 component suppliers to pay not more than 30 percent
2 of the cost of—

3 (A) reequipping, expanding, or establishing
4 a manufacturing facility in the United States to
5 produce—

6 (i) qualifying advanced technology ve-
7 hicles; or

8 (ii) qualifying components; and

9 (B) engineering integration performed in
10 the United States of qualifying vehicles and
11 qualifying components.

12 (2) *PREFERENCE.*—In directing the provision of
13 emission allowances under this subsection during the
14 years 2012 through 2017, the Secretary shall give
15 preference to applications for projects that save the
16 maximum number of gallons of fuel.

17 **SEC. 125. ADVANCED TECHNOLOGY VEHICLE MANUFAC-**
18 **TURING INCENTIVE LOANS.**

19 Section 136(d)(1) of the Energy Independence and Se-
20 curity Act of 2007 (42 U.S.C. 17013(d)(1)) is amended by
21 striking “\$25,000,000,000” and inserting
22 “\$50,000,000,000”.

1 **SEC. 126. AMENDMENT TO RENEWABLE FUELS STANDARD.**

2 (a) *DEFINITION OF RENEWABLE BIOMASS.*—Section
3 211(o)(1)(I) of the Clean Air Act (42 U.S.C. 7545(o)) is
4 amended to read as follows:

5 “(I) *RENEWABLE BIOMASS.*—The term ‘re-
6 newable biomass’ means any of the following:

7 “(i) *Plant material, including waste*
8 *material, harvested or collected from ac-*
9 *tively managed agricultural land that was*
10 *in cultivation, cleared, or fallow and non-*
11 *forested on January 1, 2009.*

12 “(ii) *Plant material, including waste*
13 *material, harvested or collected from*
14 *pastureland that was nonforested on Janu-*
15 *ary 1, 2009.*

16 “(iii) *Nonhazardous vegetative matter*
17 *derived from waste, including separated*
18 *yard waste, landscape right-of-way trim-*
19 *mings, construction and demolition debris*
20 *or food waste (but not recyclable waste*
21 *paper, painted, treated or pressurized wood,*
22 *or wood contaminated with plastic or met-*
23 *als).*

24 “(iv) *Animal waste or animal byprod-*
25 *ucts, including products of animal waste di-*
26 *gesters.*

1 “(v) *Algae.*

2 “(vi) *Trees, brush, slash, residues, or*
3 *any other vegetative matter removed from*
4 *within 600 feet of any building, camp-*
5 *ground, or route designated for evacuation*
6 *by a public official with responsibility for*
7 *emergency preparedness, or from within 300*
8 *feet of a paved road, electric transmission*
9 *line, utility tower, or water supply line.*

10 “(vii) *Residues from or byproducts of*
11 *milled logs.*

12 “(viii) *Any of the following removed*
13 *from forested land that is not Federal and*
14 *is not high conservation priority land:*

15 “(I) *Trees, brush, slash, residues,*
16 *interplanted energy crops, or any other*
17 *vegetative matter removed from an ac-*
18 *tively managed tree plantation estab-*
19 *lished—*

20 “(aa) *prior to January 1,*
21 *2009; or*

22 “(bb) *on land that, as of*
23 *January 1, 2009, was cultivated*
24 *or fallow and non-forested.*

1 “(II) *Trees, logging residue,*
2 *thinnings, cull trees, pulpwood, and*
3 *brush removed from naturally-regen-*
4 *erated forests or other non-plantation*
5 *forests, including for the purposes of*
6 *hazardous fuel reduction or preventa-*
7 *tive treatment for reducing or con-*
8 *taining insect or disease infestation.*

9 “(III) *Logging residue, thinnings,*
10 *cull trees, pulpwood, brush and species*
11 *that are non-native and noxious, from*
12 *stands that were planted and managed*
13 *after January 1, 2009, to restore or*
14 *maintain native forest types.*

15 “(IV) *Dead or severely damaged*
16 *trees removed within 5 years of fire,*
17 *blowdown, or other natural disaster,*
18 *and badly infested trees.*

19 “(ix) *Materials, pre-commercial*
20 *thinnings, or removed invasive species from*
21 *National Forest System land and public*
22 *lands (as defined in section 103 of the Fed-*
23 *eral Land Policy and Management Act of*
24 *1976 (43 U.S.C. 1702)), including those*
25 *that are byproducts of preventive treatments*

1 *(such as trees, wood, brush, thinnings,*
2 *chips, and slash), that are removed as part*
3 *of a federally recognized timber sale, or that*
4 *are removed to reduce hazardous fuels, to re-*
5 *duce or contain disease or insect infestation,*
6 *or to restore ecosystem health, and that*
7 *are—*

8 *“(I) not from components of the*
9 *National Wilderness Preservation Sys-*
10 *tem, Wilderness Study Areas, Inven-*
11 *toried Roadless Areas, old growth or*
12 *mature forest stands, components of the*
13 *National Landscape Conservation Sys-*
14 *tem, National Monuments, National*
15 *Conservation Areas, Designated Primi-*
16 *tive Areas, or Wild and Scenic Rivers*
17 *corridors;*

18 *“(II) harvested in environ-*
19 *mentally sustainable quantities, as de-*
20 *termined by the appropriate Federal*
21 *land manager; and*

22 *“(III) harvested in accordance*
23 *with Federal and State law and appli-*
24 *cable land management plans.”.*

1 (b) *DEFINITION OF HIGH CONSERVATION PRIORITY*
 2 *LAND.*—Section 211(o)(1) of the Clean Air Act (42 U.S.C.
 3 7545(o)) is amended by inserting the following at the end
 4 thereof:

5 “(M) *HIGH CONSERVATION PRIORITY*
 6 *LAND.*—The term ‘high conservation priority
 7 land’ means land that is not Federal land and
 8 is—

9 “(i) globally or State ranked as criti-
 10 cally imperiled or imperiled under a State
 11 Natural Heritage Program; or

12 “(ii) old-growth or late-successional
 13 forest, as identified by the office of the State
 14 Forester or relevant State agency with regu-
 15 latory jurisdiction over forestry activities.”.

16 **SEC. 127. OPEN FUEL STANDARD.**

17 (a) *FINDINGS.*—The Congress finds that—

18 (1) the status of oil as a strategic commodity,
 19 which derives from its domination of the transpor-
 20 tation sector, presents a clear and present danger to
 21 the United States;

22 (2) in a prior era, when salt was a strategic
 23 commodity, salt mines conferred national power and
 24 wars were fought over the control of such mines;

1 (3) *technology, in the form of electricity and re-*
2 *frigeration, decisively ended salt's monopoly of meat*
3 *preservation and greatly reduced its strategic impor-*
4 *tance;*

5 (4) *fuel competition and consumer choice would*
6 *similarly serve to end oil's monopoly in the transpor-*
7 *tation sector and strip oil of its strategic status;*

8 (5) *the current closed fuel market has allowed a*
9 *cartel of petroleum exporting countries to inflate fuel*
10 *prices, effectively imposing a harmful tax on the econ-*
11 *omy of the United States;*

12 (6) *much of the inflated petroleum revenues the*
13 *oil cartel earns at the expense of the people of the*
14 *United States are used for purposes antithetical to the*
15 *interests of the United States and its allies;*

16 (7) *alcohol fuels, including ethanol and meth-*
17 *anol, could potentially provide significant supplies of*
18 *additional fuels that could be produced in the United*
19 *States and in many other countries in the Western*
20 *Hemisphere that are friendly to the United States;*

21 (8) *alcohol fuels can only play a major role in*
22 *securing the energy independence of the United States*
23 *if a substantial portion of vehicles in the United*
24 *States are capable of operating on such fuels;*

1 (9) *it is not in the best interest of United States*
2 *consumers or the United States Government to be con-*
3 *strained to depend solely upon petroleum resources for*
4 *vehicle fuels if alcohol fuels are potentially available;*

5 (10) *existing technology, in the form of flexible*
6 *fuel vehicles, allows internal combustion engine cars*
7 *and trucks to be produced at little or no additional*
8 *cost, which are capable of operating on conventional*
9 *gasoline, alcohol fuels, or any combination of such*
10 *fuels, as availability or cost advantage dictates, pro-*
11 *viding a platform on which fuels can compete;*

12 (11) *the necessary distribution system for such*
13 *alcohol fuels will not be developed in the United*
14 *States until a substantial fraction of the vehicles in*
15 *the United States are capable of operating on such*
16 *fuels;*

17 (12) *the establishment of such a vehicle fleet and*
18 *distribution system would provide a large market that*
19 *would mobilize private resources to substantially ad-*
20 *vance the technology and expand the production of al-*
21 *cohol fuels in the United States and abroad;*

22 (13) *the United States has an urgent national*
23 *security interest to develop alcohol fuels technology,*
24 *production, and distribution systems as rapidly as*
25 *possible;*

1 (14) *new cars sold in the United States that are*
2 *equipped with an internal combustion engine should*
3 *allow for fuel competition by being flexible fuel vehi-*
4 *cles, and new diesel cars should be capable of oper-*
5 *ating on biodiesel; and*

6 (15) *such an open fuel standard would help to*
7 *protect the United States economy from high and*
8 *volatile oil prices and from the threats caused by glob-*
9 *al instability, terrorism, and natural disaster.*

10 (b) *OPEN FUEL STANDARD FOR TRANSPORTATION.—*

11 (1) *Chapter 329 of title 49, United States Code, is amended*
12 *by adding at the end the following:*

13 **“§ 32920. Open fuel standard for transportation**

14 “(a) *DEFINITIONS.—In this section:*

15 “(1) *E85.—The term ‘E85’ means a fuel mixture*
16 *containing 85 percent ethanol and 15 percent gasoline*
17 *by volume.*

18 “(2) *FLEXIBLE FUEL AUTOMOBILE.—The term*
19 *‘flexible fuel automobile’ means an automobile that*
20 *has been warranted by its manufacturer to operate on*
21 *gasoline, E85, and M85.*

22 “(3) *FUEL CHOICE-ENABLING AUTOMOBILE.—*
23 *The term ‘fuel choice-enabling automobile’ means—*

24 “(A) *a flexible fuel automobile; or*

1 “(B) an automobile that has been war-
2 ranted by its manufacturer to operate on bio-
3 diesel.

4 “(4) *LIGHT-DUTY AUTOMOBILE.*—The term
5 ‘light-duty automobile’ means—

6 “(A) a passenger automobile; or

7 “(B) a non-passenger automobile.

8 “(5) *LIGHT-DUTY AUTOMOBILE MANUFAC-*
9 *TURER’S ANNUAL COVERED INVENTORY.*—The term
10 ‘light-duty automobile manufacturer’s annual covered
11 inventory’ means the number of light-duty auto-
12 mobiles powered by an internal combustion engine
13 that a manufacturer, during a given calendar year,
14 manufactures in the United States or imports from
15 outside of the United States for sale in the United
16 States.

17 “(6) *M85.*—The term ‘M85’ means a fuel mixture
18 containing 85 percent methanol and 15 percent gaso-
19 line by volume.

20 “(b) *OPEN FUEL STANDARD FOR TRANSPORTATION.*—

21 “(1) *IN GENERAL.*—The Secretary may promul-
22 gate regulations to require each light-duty automobile
23 manufacturer’s annual covered inventory to be com-
24 prised of a minimum percentage of fuel-choice ena-
25 bling automobiles, with sufficient lead time, if the

1 *Secretary, in coordination with the Secretary of En-*
2 *ergy and the Administrator of the Environmental*
3 *Protection Agency, determines such requirement is a*
4 *cost-effective way to achieve the Nation’s energy inde-*
5 *pendence and environmental objectives. The cost-effec-*
6 *tive determination shall consider the future avail-*
7 *ability of both alternative fuel supply and infrastruc-*
8 *ture to deliver the alternative fuel to the fuel-choice*
9 *enabling vehicles.*

10 *“(2) TEMPORARY EXEMPTION FROM REQUIRE-*
11 *MENTS.—*

12 *“(A) APPLICATION.—A manufacturer may*
13 *request an exemption from the requirement de-*
14 *scribed in paragraph (1) by submitting an ap-*
15 *plication to the Secretary, at such time, in such*
16 *manner, and containing such information as the*
17 *Secretary may require by regulation. Each such*
18 *application shall specify the models, lines, and*
19 *types of automobiles affected.*

20 *“(B) EVALUATION.—After evaluating an*
21 *application received from a manufacturer, the*
22 *Secretary may at any time, under such terms*
23 *and conditions, and to such extent as the Sec-*
24 *retary considers appropriate, temporarily ex-*
25 *empt, or renew the exemption of, a light-duty*

1 *automobile from the requirement described in*
2 *paragraph (1) if the Secretary determines that*
3 *unavoidable events not under the control of the*
4 *manufacturer prevent the manufacturer of such*
5 *automobile from meeting its required production*
6 *volume of fuel choice-enabling automobiles, in-*
7 *cluding—*

8 *“(i) a disruption in the supply of any*
9 *component required for compliance with the*
10 *regulations;*

11 *“(ii) a disruption in the use and in-*
12 *stallation by the manufacturer of such com-*
13 *ponent; or*

14 *“(iii) application to plug-in electric*
15 *drive vehicles causing such vehicles to fail to*
16 *meet State air quality requirements.*

17 *“(C) CONSOLIDATION.—The Secretary may*
18 *consolidate applications received from multiple*
19 *manufacturers under subparagraph (A) if they*
20 *are of a similar nature.*

21 *“(D) CONDITIONS.—Any exemption granted*
22 *under subparagraph (B) shall be conditioned*
23 *upon the manufacturer’s commitment to recall*
24 *the exempted automobiles for installation of the*
25 *omitted components within a reasonable time*

1 *proposed by the manufacturer and approved by*
 2 *the Secretary after such components become*
 3 *available in sufficient quantities to satisfy both*
 4 *anticipated production and recall volume re-*
 5 *quirements.*

6 “(E) NOTICE.—*The Secretary shall publish*
 7 *in the Federal Register—*

8 “(i) *notice of each application received*
 9 *from a manufacturer;*

10 “(ii) *notice of each decision to grant or*
 11 *deny a temporary exemption; and*

12 “(iii) *the reasons for granting or deny-*
 13 *ing such exemptions.”.*

14 (2) *The table of contents in chapter 329 of such title*
 15 *is amended adding at the end the following:*

 “32920. *Open fuel standard for transportation.*”.

16 **SEC. 128. TEMPORARY VEHICLE TRADE-IN PROGRAM.**

17 (a) *ESTABLISHMENT.—There is established in the Na-*
 18 *tional Highway Traffic Safety Administration a program*
 19 *to be known as the “Cash for Clunkers Temporary Vehicle*
 20 *Trade-in Program” through which the Secretary, in accord-*
 21 *ance with this section and the regulations promulgated*
 22 *under subsection (d), shall—*

23 (1) *authorize the issuance of an electronic vouch-*
 24 *er, subject to the specifications set forth in subsection*
 25 *(c), to offset the purchase price or lease price for a*

1 *qualifying lease of a new fuel efficient automobile*
2 *upon the surrender of an eligible trade-in vehicle to*
3 *a dealer participating in the Program;*

4 *(2) certify dealers for participation in the Pro-*
5 *gram and require that all certified dealers—*

6 *(A) accept vouchers as provided in this sec-*
7 *tion as partial payment or down payment for*
8 *the purchase or qualifying lease of any new fuel*
9 *efficient automobile offered for sale or lease by*
10 *that dealer; and*

11 *(B) in accordance with subsection (c)(2),*
12 *dispose of each eligible trade-in vehicle surren-*
13 *dered to the dealer under the Program;*

14 *(3) in consultation with the Secretary of the*
15 *Treasury, make payments to dealers for vouchers ac-*
16 *cepted by such dealers prior to April 1, 2010, in ac-*
17 *cordance with the regulations issued under subsection*
18 *(d);*

19 *(4) in consultation with the Secretary of the*
20 *Treasury, provide for the payment of rebates to per-*
21 *sons who qualify for a rebate under subsection (c)(3);*
22 *and*

23 *(5) in consultation with the Secretary of the*
24 *Treasury and the Inspector General of the Depart-*
25 *ment of Transportation, establish and provide for the*

1 *enforcement of measures to prevent and penalize*
2 *fraud under the Program.*

3 (b) *QUALIFICATIONS FOR AND VALUE OF VOUCH-*
4 *ERS.—A voucher issued under the Program shall have a*
5 *value that may be applied to offset the purchase price or*
6 *lease price for a qualifying lease of a new fuel efficient auto-*
7 *mobile as follows:*

8 (1) *\$3,500 VALUE.—The voucher may be used to*
9 *offset the purchase price or lease price of the new fuel*
10 *efficient automobile by \$3,500 if—*

11 (A) *the new fuel efficient automobile is a*
12 *passenger automobile and the combined fuel*
13 *economy value of such automobile is at least 4*
14 *miles per gallon higher than the combined fuel*
15 *economy value of the eligible trade-in vehicle;*

16 (B) *the new fuel efficient automobile is a*
17 *category 1 truck and the combined fuel economy*
18 *value of such truck is at least 2 miles per gallon*
19 *higher than the combined fuel economy value of*
20 *the eligible trade-in vehicle;*

21 (C) *the new fuel efficient automobile is a*
22 *category 2 truck that has a combined fuel econ-*
23 *omy value of at least 15 miles per gallon and—*

24 (i) *the eligible trade-in vehicle is a cat-*
25 *egory 2 truck and the combined fuel econ-*

1 *omy value of the new fuel efficient auto-*
2 *mobile is at least 1 mile per gallon higher*
3 *than the combined fuel economy value of the*
4 *eligible trade-in vehicle; or*

5 *(ii) the eligible trade-in vehicle is a*
6 *category 3 truck of model year 2001 or ear-*
7 *lier; or*

8 *(D) the new fuel efficient automobile is a*
9 *category 3 truck and the eligible trade-in vehicle*
10 *is a category 3 truck of model year of 2001 or*
11 *earlier and is of similar size or larger than the*
12 *new fuel efficient automobile as determined in a*
13 *manner prescribed by the Secretary.*

14 *(2) \$4,500 VALUE.—The voucher may be used to*
15 *offset the purchase price or lease price of the new fuel*
16 *efficient automobile by \$4,500 if—*

17 *(A) the new fuel efficient automobile is a*
18 *passenger automobile and the combined fuel*
19 *economy value of such automobile is at least 10*
20 *miles per gallon higher than the combined fuel*
21 *economy value of the eligible trade-in vehicle;*

22 *(B) the new fuel efficient automobile is a*
23 *category 1 truck and the combined fuel economy*
24 *value of such truck is at least 5 miles per gallon*

1 *higher than the combined fuel economy value of*
2 *the eligible trade-in vehicle; or*

3 (C) *the new fuel efficient automobile is a*
4 *category 2 truck that has a combined fuel econ-*
5 *omy value of at least 15 miles per gallon and the*
6 *combined fuel economy value of such truck is at*
7 *least 2 miles per gallon higher than the combined*
8 *fuel economy value of the eligible trade-in vehicle*
9 *and the eligible trade-in vehicle is a category 2*
10 *truck.*

11 (c) *PROGRAM SPECIFICATIONS.—*

12 (1) *LIMITATIONS.—*

13 (A) *GENERAL PERIOD OF ELIGIBILITY.—A*
14 *voucher issued under the Program shall be used*
15 *only for the purchase or qualifying lease of new*
16 *fuel efficient automobiles that occur between*
17 *March 30, 2009, and March 31, 2010.*

18 (B) *NUMBER OF VOUCHERS PER PERSON*
19 *AND PER TRADE-IN VEHICLE.—Not more than 1*
20 *voucher may be issued for a single person and*
21 *not more than 1 voucher may be issued for the*
22 *joint registered owners of a single eligible trade-*
23 *in vehicle.*

24 (C) *NO COMBINATION OF VOUCHERS.—Only*
25 *1 voucher issued under the Program may be ap-*

1 *plied toward the purchase or qualifying lease of*
2 *a single new fuel efficient automobile.*

3 *(D) CAP ON FUNDS FOR CATEGORY 3*
4 *TRUCKS.—Not more than 7.5 percent of the total*
5 *funds made available for the Program shall be*
6 *used for vouchers for the purchase or qualifying*
7 *lease of category 3 trucks.*

8 *(E) COMBINATION WITH OTHER INCENTIVES*
9 *PERMITTED.—The availability or use of a Fed-*
10 *eral, State, or local incentive or a State-issued*
11 *voucher for the purchase or lease of a new fuel*
12 *efficient automobile shall not limit the value or*
13 *issuance of a voucher under the Program to any*
14 *person otherwise eligible to receive such a vouch-*
15 *er.*

16 *(F) NO ADDITIONAL FEES.—A dealer par-*
17 *ticipating in the program may not charge a per-*
18 *son purchasing or leasing a new fuel efficient*
19 *automobile any additional fees associated with*
20 *the use of a voucher under the Program.*

21 *(G) NUMBER AND AMOUNT.—The total*
22 *number and value of vouchers issued under the*
23 *Program may not exceed the amounts appro-*
24 *priated for such purpose.*

1 (2) *DISPOSITION OF ELIGIBLE TRADE-IN VEHI-*
2 *CLES.—*

3 (A) *IN GENERAL.—For each eligible trade-*
4 *in vehicle, the title of which is transferred to a*
5 *dealer under the Program, the dealer shall certify*
6 *to the Secretary, in such manner as the Sec-*
7 *retary shall prescribe by rule, that the vehicle,*
8 *including the engine and drive train—*

9 (i) *will be crushed or shredded within*
10 *such period and in such manner as the Sec-*
11 *retary prescribes, or will be transferred to*
12 *an entity that will ensure that the vehicle*
13 *will be crushed or shredded within such pe-*
14 *riod and in such manner as the Secretary*
15 *prescribes; and*

16 (ii) *has not been, and will not be, sold,*
17 *leased, exchanged, or otherwise disposed of*
18 *for use as an automobile in the United*
19 *States or in any other country, or has been*
20 *or will be transferred, in such manner as*
21 *the Secretary prescribes, to an entity that*
22 *will ensure that the vehicle has not been,*
23 *and will not be, sold, leased, exchanged, or*
24 *otherwise disposed of for use as an auto-*

1 *mobile in the United States or in any other*
2 *country.*

3 (B) *SAVINGS PROVISION.*—*Nothing in sub-*
4 *paragraph (A) may be construed to preclude a*
5 *person who dismantles or disposes of the vehicle*
6 *from—*

7 (i) *selling any parts of the disposed ve-*
8 *hicle other than the engine block and drive*
9 *train (unless the engine or drive train has*
10 *been crushed or shredded); or*

11 (ii) *retaining the proceeds from such*
12 *sale.*

13 (C) *COORDINATION.*—*The Secretary shall*
14 *coordinate with the Attorney General to ensure*
15 *that the National Motor Vehicle Title Informa-*
16 *tion System and other publicly accessible and*
17 *commercially available systems are appro-*
18 *priately updated to reflect the crushing or shred-*
19 *ding of vehicles under this section and appro-*
20 *priate re-classification of the vehicles' titles.*

21 (3) *ELIGIBLE PURCHASES OR LEASES PRIOR TO*
22 *DATE OF ENACTMENT.*—*A person who purchased or*
23 *leased a new fuel efficient vehicle after March 30,*
24 *2009, and before the date of enactment of this section*
25 *is eligible for a cash rebate equivalent to the amount*

1 described in subsection (b)(1) if the person provides
2 proof satisfactory to the Secretary that—

3 (A) the person was the registered owner of
4 an eligible trade-in vehicle; and

5 (B) such vehicle has been disposed of in ac-
6 cordance with clauses (i) and (ii) of paragraph
7 (2)(A).

8 (d) *REGULATIONS.*—Notwithstanding the requirements
9 of section 553 of title 5, United States Code, the Secretary
10 shall promulgate final regulations to implement the Pro-
11 gram not later than 30 days after the date of the enactment
12 of this section. Such regulations shall—

13 (1) provide for a means of certifying dealers for
14 participation in the program;

15 (2) establish procedures for the reimbursement of
16 dealers participating in the Program to be made
17 through electronic transfer of funds for both the
18 amount of the vouchers and any reasonable adminis-
19 trative costs incurred by the dealer as soon as prac-
20 ticable but no longer than 10 days after the submis-
21 sion of a voucher for the new fuel efficient automobile
22 to the Secretary;

23 (3) prohibit a dealer from using the voucher to
24 offset any other rebate or discount offered by that

1 dealer or the manufacturer of the new fuel efficient
2 automobile;

3 (4) require dealers to disclose to the person trad-
4 ing in an eligible trade in vehicle the best estimate of
5 the scrappage value of such vehicle and to permit the
6 dealer to retain \$50 of any amounts paid to the deal-
7 er for scrappage of the automobile as payment for
8 any administrative costs to the dealer associated with
9 participation in the Program;

10 (5) establish a process by which persons who
11 qualify for a rebate under subsection (c)(3) may
12 apply for such rebate;

13 (6) consistent with subsection (c)(2), establish re-
14 quirements and procedures for the disposal of eligible
15 trade-in vehicles and provide such information as
16 may be necessary to entities engaged in such disposal
17 to ensure that such vehicles are disposed of in accord-
18 ance with such requirements and procedures, includ-
19 ing—

20 (A) requirements for the removal and ap-
21 propriate disposition of refrigerants, antifreeze,
22 lead products, mercury switches, and such other
23 toxic or hazardous vehicle components prior to
24 the crushing or shredding of an eligible trade-in
25 vehicle, in accordance with rules established by

1 *the Secretary in consultation with the Adminis-*
2 *trator, and in accordance with other applicable*
3 *Federal or State requirements; and*

4 *(B) a mechanism for dealers to certify to*
5 *the Secretary that eligible trade-in vehicles are*
6 *disposed of, or transferred to an entity that will*
7 *ensure that the vehicle is disposed of, in accord-*
8 *ance with such requirements and procedures and*
9 *to submit the vehicle identification numbers of*
10 *the vehicles disposed of and the new fuel efficient*
11 *automobile purchased with each voucher;*

12 *(7) consistent with subsection (c)(2), establish re-*
13 *quirements and procedures for the disposal of eligible*
14 *trade-in vehicles and provide such information as*
15 *may be necessary to entities engaged in such disposal*
16 *to ensure that such vehicles are disposed of in accord-*
17 *ance with such requirements and procedures; and*

18 *(8) provide for the enforcement of the penalties*
19 *described in subsection (e).*

20 *(e) ANTI-FRAUD PROVISIONS.—*

21 *(1) VIOLATION.—It shall be unlawful for any*
22 *person to violate any provision under this section or*
23 *any regulations issued pursuant to subsection (d).*

24 *(2) PENALTIES.—Any person who commits a*
25 *violation described in paragraph (1) shall be liable to*

1 *the United States Government for a civil penalty of*
2 *not more than \$25,000 for each violation.*

3 *(f) INFORMATION TO CONSUMERS AND DEALERS.—Not*
4 *later than 30 days after the date of enactment of this sec-*
5 *tion, and promptly upon the update of any relevant infor-*
6 *mation, the Secretary shall make available on an Internet*
7 *website and through other means determined by the Sec-*
8 *retary information about the Program, including—*

9 *(1) how to determine if a vehicle is an eligible*
10 *trade-in vehicle;*

11 *(2) how to participate in the Program, including*
12 *how to determine participating dealers; and*

13 *(3) a comprehensive list, by make and model, of*
14 *new fuel efficient automobiles meeting the require-*
15 *ments of the Program.*

16 *Once such information is available, the Secretary shall con-*
17 *duct a public awareness campaign to inform consumers*
18 *about the Program and where to obtain additional informa-*
19 *tion.*

20 *(g) RECORDKEEPING AND REPORT.—*

21 *(1) DATABASE.—The Secretary shall maintain a*
22 *database of the vehicle identification numbers of all*
23 *new fuel efficient vehicles purchased or leased and all*
24 *eligible trade-in vehicles disposed of under the Pro-*
25 *gram.*

1 (2) *REPORT.*—*Not later than June 30, 2010, the*
2 *Secretary shall submit a report to the Committee on*
3 *Energy and Commerce of the House of Representa-*
4 *tives and the Committee on Commerce, Science, and*
5 *Transportation of the Senate describing the efficacy of*
6 *the Program, including—*

7 (A) *a description of program results, in-*
8 *cluding—*

9 (i) *the total number and amount of*
10 *vouchers issued for purchase or lease of new*
11 *fuel efficient automobiles by manufacturer*
12 *(including aggregate information con-*
13 *cerning the make, model, model year) and*
14 *category of automobile;*

15 (ii) *aggregate information regarding*
16 *the make, model, model year, and manufac-*
17 *turing location of vehicles traded in under*
18 *the Program; and*

19 (iii) *the location of sale or lease;*

20 (B) *an estimate of the overall increase in*
21 *fuel efficiency in terms of miles per gallon, total*
22 *annual oil savings, and total annual greenhouse*
23 *gas reductions, as a result of the Program; and*

24 (C) *an estimate of the overall economic and*
25 *employment effects of the Program.*

1 (h) *DEFINITIONS.—As used in this section—*

2 (1) *the term “passenger automobile” means a*
3 *passenger automobile, as defined in section*
4 *32901(a)(18) of title 49, United States Code, that has*
5 *a combined fuel economy value of at least 22 miles*
6 *per gallon;*

7 (2) *the term “category 1 truck” means a nonpas-*
8 *senger automobile, as defined in section 32901(a)(17)*
9 *of title 49, United States Code, that has a combined*
10 *fuel economy value of at least 18 miles per gallon, ex-*
11 *cept that such term does not include a category 2*
12 *truck;*

13 (3) *the term “category 2 truck” means a large*
14 *van or a large pickup, as categorized by the Secretary*
15 *using the method used by the Environmental Protec-*
16 *tion Agency and described in the report entitled*
17 *“Light-Duty Automotive Technology and Fuel Econ-*
18 *omy Trends: 1975 through 2008”;*

19 (4) *the term “category 3 truck” means a work*
20 *truck, as defined in section 32901(a)(19) of title 49,*
21 *United States Code;*

22 (5) *the term “combined fuel economy value”*
23 *means—*

24 (A) *with respect to a new fuel efficient auto-*
25 *mobile, the number, expressed in miles per gal-*

1 lon, centered below the words “Combined Fuel
2 Economy” on the label required to be affixed or
3 caused to be affixed on a new automobile pursu-
4 ant to subpart D of part 600 of title 40 Code of
5 Federal Regulations;

6 (B) with respect to an eligible trade-in vehi-
7 cle, the equivalent of the number described in
8 subparagraph (A), and posted under the words
9 “Estimated New EPA MPG” and above the word
10 “Combined” for vehicles of model year 1984
11 through 2007, or posted under the words “New
12 EPA MPG” and above the word “Combined” for
13 vehicles of model year 2008 or later on the
14 fueleconomy.gov website of the Environmental
15 Protection Agency for the make, model, and year
16 of such vehicle; or

17 (C) with respect to an eligible trade-in vehi-
18 cle manufactured between model years 1978
19 through 1984, the equivalent of the number de-
20 scribed in subparagraph (A) as determined by
21 the Secretary (and posted on the website of the
22 National Highway Traffic Safety Administra-
23 tion) using data maintained by the Environ-
24 mental Protection Agency for the make, model,
25 and year of such vehicle;

1 (6) *the term “dealer” means a person licensed by*
2 *a State who engages in the sale of new automobiles*
3 *to ultimate purchasers;*

4 (7) *the term “eligible trade-in vehicle” means an*
5 *automobile or a work truck (as such terms are defined*
6 *in section 32901(a) of title 49, United States Code)*
7 *that, at the time it is presented for trade-in under*
8 *this section—*

9 (A) *is in drivable condition;*

10 (B) *has been continuously insured con-*
11 *sistent with the applicable State law and reg-*
12 *istered to the same owner for a period of not less*
13 *than 1 year immediately prior to such trade-in;*
14 *and*

15 (C) *has a combined fuel economy value of*
16 *18 miles per gallon or less;*

17 (8) *the term “new fuel efficient automobile”*
18 *means an automobile described in paragraph (1), (2),*
19 *(3), or (4)—*

20 (A) *the equitable or legal title of which has*
21 *not been transferred to any person other than the*
22 *ultimate purchaser;*

23 (B) *that carries a manufacturer’s suggested*
24 *retail price of \$45,000 or less;*

25 (C) *that—*

1 (i) for new fuel efficient automobiles
2 weighing up to 8,500 pounds, is certified to
3 applicable standards under section 86.1811-
4 04 of title 40, Code of Federal Regulations;
5 or

6 (ii) for category 3 trucks, is certified to
7 the applicable vehicle or engine standards
8 under section 86.1816-08, 86-007-11, or
9 86.008-10 of title 40, Code of Federal Regu-
10 lations; and

11 (D) that has the combined fuel economy
12 value of—

13 (i) 22 miles per gallon for a passenger
14 automobile;

15 (ii) 18 miles per gallon for a category
16 1 truck; and

17 (iii) 15 miles per gallon for a category
18 2 truck;

19 (9) the term “Program” means the Cash for
20 Clunkers Temporary Vehicle Trade-in Program estab-
21 lished by this section;

22 (10) the term “qualifying lease” means a lease of
23 an automobile for a period of not less than 5 years;

24 (11) the term “scrappage value” means the
25 amount received by the dealer for a vehicle upon

1 *transferring title of such vehicle to the person respon-*
2 *sible for ensuring the dismantling and destroying the*
3 *vehicle;*

4 (12) *the term “Secretary” means the Secretary of*
5 *Transportation acting through the National Highway*
6 *Traffic Safety Administration;*

7 (13) *the term “ultimate purchaser” means, with*
8 *respect to any new automobile, the first person who*
9 *in good faith purchases such automobile for purposes*
10 *other than resale; and*

11 (14) *the term “vehicle identification number”*
12 *means the 17 character number used by the auto-*
13 *mobile industry to identify individual automobiles.*

14 (i) *AUTHORIZATION OF APPROPRIATIONS.—There is*
15 *authorized to be appropriated to the Secretary*
16 *\$4,000,000,000 to carry out this section.*

17 **SEC. 129. DIESEL EMISSIONS REDUCTION.**

18 *Subtitle G of title VII of the Energy Policy Act of 2005*
19 *(42 U.S.C. 16131 et seq.) is amended—*

20 (1) *in the matter preceding clause (i) in section*
21 *791(3)(B), by inserting “in any State” after “non-*
22 *profit organization or institution”;*

23 (2) *in section 791(9), by striking “The term*
24 *‘State’ includes the District of Columbia.” and insert-*
25 *ing “The term ‘State’ includes the District of Colum-*

1 *bia, American Samoa, Guam, the Commonwealth of*
2 *the Northern Mariana Islands, Puerto Rico, and the*
3 *Virgin Islands.”; and*

4 *(3) in section 793(c)—*

5 *(A) in paragraph (2)(A), by striking “51*
6 *States” and inserting “56 States”;*

7 *(B) in paragraph (2)(A), by striking “1.96*
8 *percent” and inserting “1.785 percent”;*

9 *(C) in paragraph (2)(B), by striking “51*
10 *States” and inserting “56 States”; and*

11 *(D) in paragraph (2)(B), by amending*
12 *clause (ii) to read as follows:*

13 *“(ii) the amount of funds remaining*
14 *after each State described in paragraph (1)*
15 *receives the 1.785-percent allocation under*
16 *this paragraph.”.*

17 **SEC. 130. LOAN GUARANTEES FOR PROJECTS TO CON-**
18 **STRUCT RENEWABLE FUEL PIPELINES.**

19 *(a) DEFINITIONS.—Section 1701 of the Energy Policy*
20 *Act of 2005 (42 U.S.C. 16511) is amended by adding at*
21 *the end the following:*

22 *“(6) RENEWABLE FUEL.—The term ‘renewable*
23 *fuel’ has the meaning given the term in section*
24 *211(o)(1) of the Clean Air Act (42 U.S.C. 7545(o)(1)),*

1 *except that the term shall include all ethanol and bio-*
 2 *diesel.*

3 “(7) *RENEWABLE FUEL PIPELINE.*—*The term*
 4 *‘renewable fuel pipeline’ means a common carrier*
 5 *pipeline for transporting renewable fuel.”.*

6 (b) *RENEWABLE FUEL PIPELINE ELIGIBILITY.*—*Sec-*
 7 *tion 1703(b) the Energy Policy Act of 2005 (42 U.S.C.*
 8 *16513) is amended by adding at the end the following:*

9 “(11) *Renewable fuel pipelines.”.*

10 ***Subtitle D—State Energy and***
 11 ***Environment Development Accounts***

12 ***SEC. 131. ESTABLISHMENT OF SEED ACCOUNTS.***

13 (a) *DEFINITIONS.*—*In this section:*

14 (1) *SEED ACCOUNT.*—*The term “SEED Ac-*
 15 *count” means a State Energy and Environment De-*
 16 *velopment Account established pursuant to this sec-*
 17 *tion.*

18 (2) *STATE ENERGY OFFICE.*—*The term “State*
 19 *Energy Office” means a State entity eligible for*
 20 *grants under part D of title III of the Energy Policy*
 21 *and Conservation Act (42 U.S.C. 6321 et seq.).*

22 (b) *ESTABLISHMENT OF PROGRAM.*—*The Adminis-*
 23 *trator shall establish a program under which a State,*
 24 *through its State Energy Office or other State agency des-*

1 *ignated by the State, may operate a State Energy and En-*
2 *vironment Development Account.*

3 (c) *PURPOSE.*—*The purpose of each SEED Account is*
4 *to serve as a common State-level repository for managing*
5 *and accounting for emission allowances provided to States*
6 *designated for renewable energy and energy efficiency pur-*
7 *poses.*

8 (d) *REGULATIONS.*—*Not later than one year after the*
9 *date of enactment of this Act, the Administrator shall pro-*
10 *mulgate regulations to carry out this section, including reg-*
11 *ulations—*

12 (1) *to ensure that each State operates its SEED*
13 *Account and any subaccounts thereof efficiently and*
14 *in accordance with this Act and applicable State and*
15 *Federal laws;*

16 (2) *to prevent waste, fraud, and abuse;*

17 (3) *to indicate the emission allowances that may*
18 *be deposited in a State’s SEED Account pending dis-*
19 *tribution or use;*

20 (4) *to indicate the programs and objectives au-*
21 *thorized by Federal law for which emission allow-*
22 *ances in a SEED Account may be distributed or*
23 *used;*

1 (5) to identify the forms of financial assistance
2 and incentives that States may provide through dis-
3 tribution or use of SEED Accounts; and

4 (6) to prescribe the form and content of reports
5 that the States are required to submit under this sec-
6 tion on the use of SEED Accounts.

7 (e) OPERATION.—

8 (1) DEPOSITS.—

9 (A) IN GENERAL.—In the allowance track-
10 ing system established pursuant to section 724(d)
11 of the Clean Air Act, the Administrator shall es-
12 tablish a SEED Account for each State and
13 place in it the allowances allocated pursuant to
14 section 782(g) of the Clean Air Act to be distrib-
15 uted to States pursuant to sections 132 and 201
16 of this Act.

17 (B) FINANCIAL ACCOUNT.—A State may
18 create a financial account associated with its
19 SEED Account to deposit, retain, and manage
20 any proceeds of any sale of any allowance pro-
21 vided pursuant to this Act pending expenditure
22 or disbursement of those proceeds for purposes
23 permitted under this section. The funds in such
24 an account shall not be commingled with other
25 funds not derived from the sale of allowances

1 *provided to the State; however, loans made by*
2 *the State from such funds pursuant to para-*
3 *graph (2)(C)(i) may be repaid into such a finan-*
4 *cial account, including any interest charged.*

5 (2) *WITHDRAWALS.—*

6 (A) *IN GENERAL.—All allowances distrib-*
7 *uted pursuant to sections 132 and 201, including*
8 *the proceeds of any sale of such allowances, shall*
9 *support renewable energy and energy efficiency*
10 *programs authorized or approved by the Federal*
11 *Government.*

12 (B) *DEDICATED ALLOWANCES.—Allowances*
13 *distributed pursuant to sections 132 and 201*
14 *that are required by law to be used for specific*
15 *purposes for a specified period shall be used ac-*
16 *ording to those requirements during that period.*

17 (C) *UNDEDICATED ALLOWANCES.—To the*
18 *extent that allowances distributed pursuant to*
19 *sections 132 and 201 are not required by law to*
20 *be used for specific purposes for a specified pe-*
21 *riod as described in subparagraph (B), such al-*
22 *lowances or the proceeds of their sale may be*
23 *used for any of the following purposes:*

24 (i) *LOANS.—Loans of allowances, or*
25 *the proceeds from the sale of allowances,*

1 *may be provided, interest on commercial*
2 *loans may be subsidized at an interest rate*
3 *as low as zero, and other credit support*
4 *may be provided to support programs au-*
5 *thorized to use SEED Account allowance*
6 *value or any other renewable energy or en-*
7 *ergy efficiency purpose authorized or ap-*
8 *proved by the Federal Government.*

9 *(ii) GRANTS.—Grants of allowances or*
10 *the proceeds of their sale may be provided*
11 *to support programs authorized to use*
12 *SEED Account allowance value or any*
13 *other renewable energy or energy efficiency*
14 *purpose authorized or approved by the Fed-*
15 *eral Government.*

16 *(iii) OTHER FORMS OF SUPPORT.—Al-*
17 *lowances or the proceeds of the sale of allow-*
18 *ances may be provided for other forms of*
19 *support for programs authorized to use*
20 *SEED Account allowance value or any*
21 *other renewable energy or energy efficiency*
22 *purpose authorized or approved by the Fed-*
23 *eral Government.*

24 *(iv) ADMINISTRATIVE COSTS.—Except*
25 *to the extent provided in Federal law au-*

1 *thorizing or allocating allowances deposited*
2 *in a SEED Account, not more than 5 per-*
3 *cent of the allowance value in a SEED Ac-*
4 *count in any year may be used to cover ad-*
5 *ministrative expenses of the SEED Account.*

6 *(D) SUBACCOUNTS.—A State may request*
7 *that the Administrator establish accounts for*
8 *local governments that request such subaccounts*
9 *to hold allowances distributed to local govern-*
10 *ments for renewable energy or energy efficiency*
11 *programs authorized or approved by the Federal*
12 *Government.*

13 *(E) INTENDED USE PLANS.—*

14 *(i) IN GENERAL.—After providing for*
15 *public review and comment, each State ad-*
16 *ministering a SEED Account shall annu-*
17 *ally prepare a plan that identifies the in-*
18 *tended uses of the allowances or proceeds*
19 *from the sale of allowances in its SEED Ac-*
20 *count.*

21 *(ii) CONTENTS.—An intended use plan*
22 *shall include—*

23 *(I) a list of the projects or pro-*
24 *grams for which withdrawals from the*
25 *SEED Account are intended in the*

1 *next fiscal year that begins after the*
2 *date of the plan, including a descrip-*
3 *tion of each project;*

4 *(II) the relationship of each of the*
5 *projects or programs to an identified*
6 *Federal purpose authorized by this Act,*
7 *or any other Federal statute;*

8 *(III) the expected terms of use of*
9 *allowance value to provide assistance;*

10 *(IV) the criteria and methods es-*
11 *tablished for the distribution of allow-*
12 *ances or allowance value;*

13 *(V) a description of the equivalent*
14 *financial value and status of the*
15 *SEED Account; and*

16 *(VI) a statement of the mid-term*
17 *and long-term goals of the State for use*
18 *of its SEED Account.*

19 (3) *ACCOUNTABILITY AND TRANSPARENCY.—*

20 *(A) CONTROLS AND PROCEDURES.—Any*
21 *State that has a SEED Account shall establish*
22 *fiscal controls and recordkeeping and accounting*
23 *procedures for the SEED Account sufficient to*
24 *ensure proper accounting during appropriate ac-*
25 *counting periods for distributions into the*

1 *SEED Account, transfers from the SEED Ac-*
2 *count, and SEED Account balances, including*
3 *any related financial accounts. Such controls*
4 *and procedures shall conform to generally accept-*
5 *ed government accounting principles. Any State*
6 *that has a SEED Account shall retain records*
7 *for a period of at least 5 years.*

8 *(B) AUDITS.—Any State that has a SEED*
9 *Account shall have an annual audit conducted of*
10 *the SEED Account by an independent public ac-*
11 *countant in accordance with generally accepted*
12 *auditing standards, and shall transmit the re-*
13 *sults of that audit to the Administrator.*

14 *(C) STATE REPORT.—Each State admin-*
15 *istering a SEED Account shall make publicly*
16 *available and submit to the Administrator a re-*
17 *port every 2 years on its activities related to its*
18 *SEED Account.*

19 *(D) PUBLIC INFORMATION.—Any—*

20 *(i) controls and procedures established*
21 *under subparagraph (A); and*

22 *(ii) information obtained through au-*
23 *ditions conducted under subparagraph (B), ex-*
24 *cept to the extent that it would be protected*
25 *from disclosure, if it were information held*

1 by the Federal Government, under section
2 552(b) of title 5, United States Code,
3 shall be made publicly available.

4 (E) OTHER PROTECTIONS.—The Adminis-
5 trator shall require such additional procedures
6 and protections as are necessary to ensure that
7 any State that has a SEED Account will operate
8 the SEED Account in an accountable and trans-
9 parent manner.

10 (f) REQUIREMENTS FOR ELIGIBILITY.—A State’s eligi-
11 bility to receive allowances in its SEED Account shall de-
12 pend on that State’s compliance with the requirements of
13 this Act (and the amendments made by this Act).

14 (g) AUTHORIZATION OF APPROPRIATIONS.—There are
15 authorized to be appropriated to the Administrator such
16 sums as may be necessary for SEED Account operations.

17 **SEC. 132. SUPPORT OF STATE RENEWABLE ENERGY AND**
18 **ENERGY EFFICIENCY PROGRAMS.**

19 (a) DEFINITIONS.—For purposes of this section:

20 (1) COST-EFFECTIVE.—The term “cost-effective”,
21 with respect to an energy efficiency program, means
22 that the program meets the Total Resource Cost Test,
23 which requires that the net present value of economic
24 benefits over the life of the program or measure, in-
25 cluding avoided supply and delivery costs and de-

1 ferred or avoided investments, is greater than the net
2 present value of the economic costs over the life of the
3 program, including program costs and incremental
4 costs borne by the energy consumer.

5 (2) *RENEWABLE ENERGY RESOURCE.*—The term
6 “renewable energy resource” shall have the meaning
7 given that term in section 610 of the Public Utility
8 Regulatory Policies Act of 1978 (as added by section
9 101 of this Act).

10 (b) *DISTRIBUTION AMONG STATES.*—For each vintage
11 year from 2012 through 2050, the Administrator shall, in
12 accordance with this section, distribute emission allowances
13 allocated pursuant to section 782(g)(1) of the Clean Air Act
14 not later than September 30 of the year preceding the vin-
15 tage year. The Administrator shall distribute the emission
16 allowances to States for renewable energy and energy effi-
17 ciency programs to be deposited in and administered
18 through the State Energy and Environment Development
19 (SEED) Accounts established pursuant to section 131. The
20 Administrator shall distribute allowances among the States
21 under this section each year in accordance with the fol-
22 lowing formula:

23 (1) One third of the allowances shall be divided
24 equally among the States.

1 (2) *One third of the allowances shall be distrib-*
2 *uted ratably among the States based on the popu-*
3 *lation of each State, as contained in the most recent*
4 *reliable census data available from the Bureau of the*
5 *Census, Department of Commerce, for all States at*
6 *the time the Administrator calculates the formula for*
7 *distribution.*

8 (3) *One third of the allowances for shall be dis-*
9 *tributed ratably among the States on the basis of the*
10 *energy consumption of each State as contained in the*
11 *most recent State Energy Data Report available from*
12 *the Energy Information Administration (or such al-*
13 *ternative reliable source as the Administrator may*
14 *designate).*

15 (c) *USES.—The allowances distributed to each State*
16 *pursuant to this section shall be used exclusively for the*
17 *purposes listed in this subsection, as set forth below:*

18 (1) *Not less than 12.5 percent shall be distributed*
19 *by the State to units of local government within such*
20 *State to be used exclusively to support the energy effi-*
21 *ciency and renewable energy purposes listed in para-*
22 *graphs (2), (3), and (4).*

23 (2) *Not less than 15 percent shall be used exclu-*
24 *sively for the following energy efficiency purposes:*

1 (A) *Implementation and enforcement of*
2 *building codes adopted in compliance with sec-*
3 *tion 201.*

4 (B) *Implementation of the energy efficient*
5 *manufactured homes program established pursu-*
6 *ant to section 203.*

7 (C) *Implementation of the building energy*
8 *performance labeling program established pursu-*
9 *ant to section 204.*

10 (D) *Enabling the development of a Smart*
11 *Grid (as described in section 1301 of the Energy*
12 *Independence and Security Act of 2007 (42*
13 *U.S.C. 17381)) for State, local government, and*
14 *other public buildings and facilities, including*
15 *integration of renewable energy resources and*
16 *distributed generation, demand response, de-*
17 *mand side management, and systems analysis.*

18 (E) *Transportation planning pursuant to*
19 *section 841 of the Clean Air Act.*

20 (F) *Low-income community energy effi-*
21 *ciency programs that are consistent with the*
22 *grant program established under section 264 of*
23 *this Act.*

24 (G) *Other cost-effective energy efficiency*
25 *programs for end-use consumers of electricity,*

1 *natural gas, home heating oil, or propane, in-*
2 *cluding, where appropriate, programs or mecha-*
3 *nisms administered by local governments and*
4 *entities other than the State.*

5 *(3) Not less than 5 percent shall be used exclu-*
6 *sively for implementation of the Retrofit for Energy*
7 *and Environmental Performance (REEP) program*
8 *established pursuant to section 202.*

9 *(4) Not less than 20 percent shall be used exclu-*
10 *sively for capital grants, tax credits, production in-*
11 *centives, loans, loan guarantees, forgivable loans, and*
12 *interest rate buy-downs for—*

13 *(A) re-equipping, expanding, or establishing*
14 *a manufacturing facility that receives certifi-*
15 *cation from the Secretary of Energy pursuant to*
16 *section 1302 of the American Recovery and Re-*
17 *investment Act of 2009 for the production of—*

18 *(i) property designed to be used to*
19 *produce energy from renewable energy*
20 *sources; and*

21 *(ii) electricity storage systems;*

22 *(B) deployment of technologies to generate*
23 *electricity from renewable energy sources; and*

24 *(C) deployment of facilities or equipment,*
25 *such as solar panels, to generate electricity or*

1 *thermal energy from renewable energy resources*
2 *in and on buildings in an urban environment.*

3 (5) *The remaining 47.5 percent shall be used ex-*
4 *clusively for any of the purposes described in sub-*
5 *paragraphs (A) through (F) of paragraph (2) and in*
6 *paragraphs (3) and (4), provided that each State re-*
7 *ceiving emission allowances under this section shall*
8 *use not less than 1 percent of such allowances for the*
9 *purpose described in paragraph (2)(F).*

10 (d) *REPORTING.—Each State receiving emission al-*
11 *lowances under this section shall include in its biennial re-*
12 *ports required under section 131, in accordance with such*
13 *requirements as the Administrator may prescribe—*

14 (1) *a list of entities receiving allowances or al-*
15 *lowance value under this section;*

16 (2) *the amount and nature of allowances or al-*
17 *lowance value received by each recipient;*

18 (3) *the specific purposes for which such allow-*
19 *ances or allowance value was conveyed;*

20 (4) *the amount of energy savings, emission re-*
21 *ductions, renewable energy deployment, or new or re-*
22 *tooled manufacturing capacity resulting from such al-*
23 *lowances or allowance value; and*

1 (5) *an assessment of the cost-effectiveness of any*
2 *energy efficiency program supported under subsection*
3 *(c)(2)(F).*

4 (e) *ENFORCEMENT.*—*If the Administrator determines*
5 *that a State is not in compliance with this section, the Ad-*
6 *ministrator may withhold up to twice the number of allow-*
7 *ances that the State failed to use in accordance with the*
8 *requirements of this section, that such State would otherwise*
9 *be eligible to receive under this section in later years. Allow-*
10 *ances withheld pursuant to this subsection shall be distrib-*
11 *uted among the remaining States in accordance with the*
12 *requirements of subsection (b).*

13 ***Subtitle E—Smart Grid***
14 ***Advancement***

15 **SEC. 141. DEFINITIONS.**

16 *For purposes of this subtitle:*

17 (1) *The term “applicable baseline” means the av-*
18 *erage of the highest three annual peak demands a*
19 *load-serving entity has experienced during the 5 years*
20 *immediately prior to the date of enactment of this*
21 *Act.*

22 (2) *The term “Commission” means Federal En-*
23 *ergy Regulatory Commission.*

24 (3) *The term “load-serving entity” means an en-*
25 *tity that provides electricity directly to retail con-*

1 *sumers with the responsibility to assure power quality*
2 *and reliability, including such entities that are inves-*
3 *tor-owned, publicly owned, owned by rural electric co-*
4 *operatives, or other entities.*

5 *(4) The term “peak demand” means the highest*
6 *point of electricity demand, net of any distributed*
7 *electricity generation or storage from sources on the*
8 *load-serving entity’s customers’ premises, during any*
9 *hour on the system of a load serving entity during a*
10 *calendar year, expressed in Megawatts (MW), or more*
11 *than one such high point as a function of seasonal de-*
12 *mand changes.*

13 *(5) The term “peak demand reduction” means*
14 *the reduction in annual peak demand as compared to*
15 *a previous baseline year or period, expressed in*
16 *Megawatts (MW), whether accomplished by dimin-*
17 *ishing the end-use requirements for electricity or by*
18 *use of locally stored or generated electricity to meet*
19 *those requirements from distributed resources on the*
20 *load-serving entity’s customers’ premises and without*
21 *use of high-voltage transmission.*

22 *(6) The term “peak demand reduction plan”*
23 *means a plan developed by or for a load-serving enti-*
24 *ty that it will implement to meet its peak demand re-*
25 *duction goals.*

1 *tified by the assessment in subsection (a) in the following*
2 *optimal circumstances:*

3 (A) *The products possessed Smart Grid capa-*
4 *bility and interoperability that is tested and proven*
5 *reliable.*

6 (B) *The products were utilized in an electricity*
7 *utility service area which had Smart Grid capability*
8 *and offered customers rate or program incentives to*
9 *use the products.*

10 (C) *The utility's rates reflected national average*
11 *costs, including average peak and valley seasonal and*
12 *daily electricity costs.*

13 (D) *Consumers using such products took full ad-*
14 *vantage of such capability.*

15 (E) *The utility avoided incremental investments*
16 *and rate increases related to such savings.*

17 (2) *The analysis under paragraph (1) shall be consid-*
18 *ered the "best case" Smart Grid analysis. On the basis of*
19 *such an analysis for each product, the Secretary and the*
20 *Administrator shall determine whether the installation of*
21 *Smart Grid capability for such a product would be cost*
22 *effective. For purposes of this paragraph, the term "cost ef-*
23 *fective" means that the cumulative savings from using the*
24 *product under the best case Smart Grid circumstances for*
25 *a period of one-half of the product's expected useful life will*

1 *be greater than the incremental cost of the Smart Grid fea-*
2 *tures included in the product.*

3 *(3) To the extent that including Smart Grid capability*
4 *in any products analyzed under paragraph (2) is found to*
5 *be cost effective in the best case, the Secretary and the Ad-*
6 *ministrator shall, not later than 3 years after the date of*
7 *enactment of this Act take each of the following actions:*

8 *(A) Inform the manufacturer of such product of*
9 *such finding of cost effectiveness.*

10 *(B) Assess the potential contributions the devel-*
11 *opment and use of products with Smart Grid tech-*
12 *nologies bring to reducing peak demand and pro-*
13 *moting grid stability.*

14 *(C) Assess the potential national energy savings*
15 *and electricity cost savings that could be realized if*
16 *Smart Grid potential were installed in the relevant*
17 *products reviewed by the Energy Star program.*

18 *(D) Assess and identify options for providing*
19 *consumers information on products with Smart Grid*
20 *capabilities, including the necessary conditions for*
21 *cost-effective savings.*

22 *(E) Submit a report to Congress summarizing*
23 *the results of the assessment for each class of products,*
24 *and presenting the potential energy and greenhouse*

1 *gas savings that could result if Smart Grid capability*
2 *were installed and utilized on such products.*

3 **SEC. 143. INCLUSIONS OF SMART GRID CAPABILITY ON AP-**
4 **PLIANCE ENERGY GUIDE LABELS.**

5 *Section 324(a)(2) of the Energy Policy and Conserva-*
6 *tion Act (42 U.S.C. 6294(a)(2)) is amended by adding the*
7 *following at the end:*

8 “(J)(i) *Not later than 3 years after the date*
9 *of enactment of this subparagraph, the Federal*
10 *Trade Commission shall initiate a rulemaking to*
11 *consider making a special note in a prominent*
12 *manner on any ENERGY GUIDE label for any*
13 *product actually including Smart Grid capa-*
14 *bility that—*

15 “(I) *Smart Grid capability is a feature*
16 *of that product;*

17 “(II) *the use and value of that feature*
18 *depended on the Smart Grid capability of*
19 *the utility system in which the product was*
20 *installed and the active utilization of that*
21 *feature by the customer; and*

22 “(III) *on a utility system with Smart*
23 *Grid capability, the use of the product’s*
24 *Smart Grid capability could reduce the cus-*
25 *tomer’s cost of the product’s annual oper-*

1 *ation by an estimated dollar amount range*
2 *representing the result of incremental en-*
3 *ergy and electricity cost savings that would*
4 *result from the customer taking full advan-*
5 *tage of such Smart Grid capability.*

6 *“(i) Not later than 3 years after the date*
7 *of enactment of this subparagraph, the Commis-*
8 *sion shall complete the rulemaking initiated*
9 *under clause (i).”.*

10 **SEC. 144. SMART GRID PEAK DEMAND REDUCTION GOALS.**

11 *(a) GOALS.—Not later than one year after the date of*
12 *enactment of this Act, load-serving entities, or, at their op-*
13 *tion, States with respect to load-serving entities that they*
14 *regulate, shall determine and publish peak demand reduc-*
15 *tion goals for any load-serving entities that have an appli-*
16 *cable baseline in excess of 250 megawatts.*

17 *(b) BASELINES.—(1) The Commission, in consultation*
18 *with the Secretary and the Administrator, shall develop and*
19 *publish, after an opportunity for public comment, a meth-*
20 *odology to provide for adjustments or normalization to a*
21 *load-serving entity’s applicable baseline over time to reflect*
22 *changes in the number of customers served, weather condi-*
23 *tions, general economic conditions, and any other appro-*
24 *priate factors external to peak demand management, as de-*
25 *termined by the Commission.*

1 (2) *The Commission shall support load-serving entities*
2 *(including any load-serving entities with an applicable*
3 *baseline of less than 250 megawatts that volunteer to par-*
4 *ticipate in achieving the purposes of this section) in deter-*
5 *mining their applicable baselines, and in developing their*
6 *peak demand reduction goals.*

7 (3) *The Secretary, in consultation with the Commis-*
8 *sion, the Administrator, and the North American Electric*
9 *Reliability Corporation, shall develop a system and rules*
10 *for measurement and verification of demand reductions.*

11 (c) *PEAK DEMAND REDUCTION GOALS.—(1) Peak de-*
12 *mand reduction goals may be established for an individual*
13 *load-serving entity, or, at the determination of a State or*
14 *regional entity, by that State or regional entity for a larger*
15 *region that shares a common system peak demand and for*
16 *which peak demand reduction measures would offer re-*
17 *gional benefit.*

18 (2) *A State or regional entity establishing peak de-*
19 *mand reduction goals shall cooperate, as necessary and ap-*
20 *propriate, with the Commission, the Secretary, State regu-*
21 *latory commissions, State energy offices, the North Amer-*
22 *ican Electric Reliability Corporation, and other relevant*
23 *authorities.*

24 (3) *In determining the applicable peak demand reduc-*
25 *tion goals, States and other jurisdictional entities may uti-*

1 *lize the results of the 2009 National Demand Response Po-*
2 *tential Assessment, as authorized by section 571 of the Na-*
3 *tional Energy Conservation Policy Act (42 U.S.C. 8279).*

4 (4) *The applicable peak demand reduction goals shall*
5 *provide that—*

6 (A) *load-serving entities will reduce or mitigate*
7 *peak demand by a minimum percentage amount from*
8 *the applicable baseline to a lower peak demand dur-*
9 *ing calendar year 2012;*

10 (B) *load-serving entities will reduce or mitigate*
11 *peak demand by a minimum percentage greater*
12 *amount from the applicable baseline to a lower peak*
13 *demand during calendar year 2015; and*

14 (C) *the minimum percentage reductions estab-*
15 *lished as peak demand reduction goals shall be the*
16 *maximum reductions that are realistically achievable*
17 *with an aggressive effort to deploy Smart Grid and*
18 *peak demand reduction technologies and methods, in-*
19 *cluding but not limited to those listed in subsection*
20 *(d).*

21 (d) *PLAN.—Each load-serving entity shall prepare a*
22 *peak demand reduction plan that demonstrates its ability*
23 *to meet each applicable goal by any or a combination of*
24 *the following options:*

1 (1) *Direct reduction in megawatts of peak de-*
2 *mand through energy efficiency measures (including*
3 *efficient transmission wire technologies which signifi-*
4 *cantly reduce line loss compared to traditional wire*
5 *technology) with reliable and continued application*
6 *during peak demand periods.*

7 (2) *Demonstration that an amount of megawatts*
8 *equal to a stated portion of the applicable goal is con-*
9 *tractually committed to be available for peak reduc-*
10 *tion through one or more of the following:*

11 (A) *Megawatts enrolled in demand response*
12 *programs.*

13 (B) *Megawatts subject to the ability of a*
14 *load-serving entity to call on demand response*
15 *programs, smart appliances, smart electricity*
16 *storage devices, distributed generation resources*
17 *on the entity's customers' premises, or other*
18 *measures directly capable of actively,*
19 *controllably, reliably, and dynamically reducing*
20 *peak demand ("dynamic peak management con-*
21 *trol").*

22 (C) *Megawatts available from distributed*
23 *dynamic electricity storage under agreement*
24 *with the owner of that storage.*

1 (D) Megawatts committed from dispatchable
2 distributed generation demonstrated to be reli-
3 able under peak period conditions and in com-
4 pliance with air quality regulations.

5 (E) Megawatts available from smart appli-
6 ances and equipment with Smart Grid capa-
7 bility available for direct control by the utility
8 through agreement with the customer owning the
9 appliances or equipment.

10 (F) Megawatts from a demonstrated and as-
11 sured minimum of distributed solar electric gen-
12 eration capacity in instances where peak period
13 and peak demand conditions are directly related
14 to solar radiation and accompanying heat.

15 (3) If any of the methods listed in subparagraph
16 (C), (D), or (E) of paragraph (2) are relied upon to
17 meet its peak demand reduction goals, the load-serv-
18 ing entity must demonstrate this capability by oper-
19 ating a test during the applicable calendar year.

20 (4) Nothing in this section shall require the pub-
21 lication in peak demand reduction goals or in any
22 peak demand reduction plan of any information that
23 is confidential for competitive or other reasons or that
24 identifies individual customers.

1 (e) *EXISTING AUTHORITY AND REQUIREMENTS.*—
2 *Nothing in this section diminishes or supersedes any au-*
3 *thority of a State or political subdivision of a State to*
4 *adopt or enforce any law or regulation respecting peak de-*
5 *mand management, demand response, distributed storage,*
6 *use of distributed generation, or the regulation of load-serv-*
7 *ing entities. The Commission, in consultation with States*
8 *having such peak management, demand response and dis-*
9 *tributed storage programs, shall to the maximum extent*
10 *practicable, facilitate coordination between the Federal pro-*
11 *gram and such State programs.*

12 (f) *RELIEF.*—*The Commission may, for good cause,*
13 *grant relief to load-serving entities from the requirements*
14 *of this section.*

15 (g) *OTHER LAWS.*—*Except as provided in subsections*
16 *(e) and (f), no law or regulation shall relieve any person*
17 *of any requirement otherwise applicable under this section.*

18 (h) *COMPLIANCE.*—(1) *The Commission shall within*
19 *one year after the date of enactment of this Act establish*
20 *a public website where the Commission will provide infor-*
21 *mation and data demonstrating compliance by States, re-*
22 *gional entities, and load-serving entities with this section,*
23 *including the success of load-serving entities in meeting ap-*
24 *plicable peak demand reduction goals.*

1 (2) *The Commission shall, by April 1 of each year be-*
2 *ginning in 2012, provide a report to Congress on compli-*
3 *ance with this section and success in meeting applicable*
4 *peak demand reduction goals and, as appropriate, shall*
5 *make recommendations as to how to increase peak demand*
6 *reduction efforts.*

7 (3) *The Commission shall note in each such report any*
8 *State, political subdivision of a State, or load-serving entity*
9 *that has failed to comply with this section, or is not a part*
10 *of any region or group of load-serving entities serving a*
11 *region that has complied with this section.*

12 (4) *The Commission shall have and exercise the au-*
13 *thority to take reasonable steps to modify the process of es-*
14 *tablishing peak demand reduction goals and to accept ad-*
15 *justments to them as appropriate when sought by load-serv-*
16 *ing entities.*

17 (i) *ASSISTANCE TO STATES AND FUNDING.—*

18 (1) *ASSISTANCE TO STATES.—Any costs incurred*
19 *by States for activities undertaken pursuant to this*
20 *section shall be supported by the use of emission al-*
21 *lowances allocated to the States' SEED Accounts pur-*
22 *suant to section 132 of this Act. To the extent that a*
23 *State provides allowances to local governments within*
24 *the State to implement this program, that shall be*
25 *deemed a distribution of such allowances to units of*

1 *local government pursuant to subsection (c)(1) of that*
2 *section.*

3 (2) *FUNDING.*—*There are authorized to be ap-*
4 *propriated such sums as may be necessary to the*
5 *Commission, the Secretary, and the Administrator to*
6 *carry out the provisions of this section.*

7 **SEC. 145. REAUTHORIZATION OF ENERGY EFFICIENCY PUB-**
8 **LIC INFORMATION PROGRAM TO INCLUDE**
9 **SMART GRID INFORMATION.**

10 (a) *IN GENERAL.*—*Section 134 of the Energy Policy*
11 *Act of 2005 (42 U.S.C. 15832) is amended as follows:*

12 (1) *By amending the section heading to read as*
13 *follows: “**ENERGY EFFICIENCY AND SMART GRID***
14 ***PUBLIC INFORMATION INITIATIVE”.***

15 (2) *In paragraph (1) of subsection (a) by strik-*
16 *ing “reduce energy consumption during the 4-year pe-*
17 *riod beginning on the date of enactment of this Act”*
18 *and inserting “increase energy efficiency and to*
19 *adopt Smart Grid technology and practices”.*

20 (3) *In paragraph (2) of subsection (a) by strik-*
21 *ing “benefits to consumers of reducing” and inserting*
22 *“economic and environmental benefits to consumers*
23 *and the United States of optimizing”.*

24 (4) *In subsection (a) by inserting at the begin-*
25 *ning of paragraph (3) “the effect of energy efficiency*

1 *and Smart Grid capability in reducing energy and*
2 *electricity prices throughout the economy, together*
3 *with”.*

4 (5) *In subsection (a)(4) by redesignating sub-*
5 *paragraph (D) as (E), by striking “and” at the end*
6 *of subparagraph (C), and by inserting after subpara-*
7 *graph (C) the following:*

8 *“(D) purchasing and utilizing equipment*
9 *that includes Smart Grid features and capa-*
10 *bility; and”.*

11 (6) *In subsection (c), by striking “Not later than*
12 *July 1, 2009,” and inserting, “For each year when*
13 *appropriations pursuant to the authorization in this*
14 *section exceed \$10,000,000,”.*

15 (7) *In subsection (d) by striking “2010” and in-*
16 *serting “2020”.*

17 (8) *In subsection (e) by striking “2010” and in-*
18 *serting “2020”.*

19 (b) *TABLE OF CONTENTS.—The item relating to sec-*
20 *tion 134 in the table of contents for the Energy Policy Act*
21 *of 2005 (42 U.S.C. 15801 and following) is amended to read*
22 *as follows:*

“Sec. 134. Energy efficiency and Smart Grid public information initiative.”.

1 **SEC. 146. INCLUSION OF SMART GRID FEATURES IN APPLI-**
2 **ANCE REBATE PROGRAM.**

3 (a) *AMENDMENTS.*—Section 124 of the Energy Policy
4 Act of 2005 (42 U.S.C. 15821) is amended as follows:

5 (1) *By amending the section heading to read as*
6 *follows: “**ENERGY EFFICIENT AND SMART APPLI-***
7 ***ANCE REBATE PROGRAM.**”.*

8 (2) *By redesignating paragraphs (4) and (5) of*
9 *subsection (a) as paragraphs (5) and (6), respectively,*
10 *and inserting after paragraph (3) the following:*

11 “(4) *SMART APPLIANCE.*—*The term ‘smart ap-*
12 *pliance’ means a product that the Administrator of*
13 *the Environmental Protection Agency or the Sec-*
14 *retary of Energy has determined qualifies for such a*
15 *designation in the Energy Star program pursuant to*
16 *section 142 of the American Clean Energy and Secu-*
17 *rity Act of 2009, or that the Secretary or the Admin-*
18 *istrator has separately determined includes the rel-*
19 *evant Smart Grid capabilities listed in section 1301*
20 *of the Energy Independence and Security Act of 2007*
21 *(15 U.S.C. 17381).”.*

22 (3) *In subsection (b)(1) by inserting “and*
23 *smart” after “efficient” and by inserting after “prod-*
24 *ucts” the first place it appears “, including products*
25 *designated as being smart appliances”.*

1 (4) *In subsection (b)(3), by inserting “the ad-*
2 *ministration of” after “carry out”.*

3 (5) *In subsection (d), by inserting “the adminis-*
4 *tration of” after “carrying out” and by inserting “,*
5 *and up to 100 percent of the value of the rebates pro-*
6 *vided pursuant to this section” before the period at*
7 *the end.*

8 (6) *In subsection (e)(3), by inserting “, with sep-*
9 *arate consideration as applicable if the product is*
10 *also a smart appliance,” after “Energy Star product”*
11 *the first place it appears and by inserting “or smart*
12 *appliance” before the period at the end.*

13 (7) *In subsection (f), by striking “\$50,000,000”*
14 *through the period at the end and inserting*
15 *“\$100,000,000 for each fiscal year from 2010 through*
16 *2015.”.*

17 (b) *TABLE OF CONTENTS.—The item relating to sec-*
18 *tion 124 in the table of contents for the Energy Policy Act*
19 *of 2005 (42 U.S.C. 15801 and following) is amended to read*
20 *as follows:*

“Sec. 124. Energy efficient and smart appliance rebate program.”.

21 ***Subtitle F—Transmission Planning***

22 ***SEC. 151. TRANSMISSION PLANNING.***

23 *Part II of the Federal Power Act (16 U.S.C. 824 et*
24 *seq.) is amended by adding after section 216 the following*
25 *new section:*

1 **“SEC. 216A. TRANSMISSION PLANNING.**2 “(a) *FEDERAL POLICY.*—

3 “(1) *OBJECTIVES.*—*It is the policy of the United*
4 *States that regional electric grid planning should fa-*
5 *facilitate the deployment of renewable and other zero-*
6 *carbon energy sources for generating electricity to re-*
7 *duce greenhouse gas emissions while ensuring reli-*
8 *ability, reducing congestion, ensuring cyber-security,*
9 *and providing for cost-effective electricity services*
10 *throughout the United States.*

11 “(2) *OPTIONS.*—*In addition to the policy under*
12 *paragraph (1), it is the policy of the United States*
13 *that regional electric grid planning to meet these ob-*
14 *jectives should take into account all significant de-*
15 *mand-side and supply-side options, including energy*
16 *efficiency, distributed generation, renewable energy*
17 *and zero-carbon electricity generation technologies,*
18 *smart-grid technologies and practices, demand re-*
19 *sponse, electricity storage, voltage regulation tech-*
20 *nologies, high capacity conductors with at least 25*
21 *percent greater efficiency than traditional ACSR*
22 *(aluminum stranded conductors steel reinforced) con-*
23 *ductors, superconductor technologies, underground*
24 *transmission technologies, and new conventional elec-*
25 *tric transmission capacity and corridors.*

26 “(b) *PLANNING.*—

1 “(1) *PLANNING PRINCIPLES.*—Not later than 1
2 *year after the date of enactment of this section, the*
3 *Commission shall adopt, after notice and opportunity*
4 *for comment, national electricity grid planning prin-*
5 *ciples derived from the Federal policy established*
6 *under subsection (a) to be applied in ongoing and fu-*
7 *ture transmission planning that may implicate inter-*
8 *state transmission of electricity.*

9 “(2) *REGIONAL PLANNING ENTITIES.*—Not later
10 *than 3 months after the date of adoption by the Com-*
11 *mission of national electricity grid planning prin-*
12 *ciples pursuant to paragraph (1), entities that con-*
13 *duct or may conduct transmission planning pursuant*
14 *to State or Federal law or regulation, including*
15 *States, entities designated by States, public utility*
16 *transmission providers, operators and owners, re-*
17 *gional organizations, and electric utilities, and that*
18 *are willing to incorporate the national electricity grid*
19 *planning principles adopted by the Commission in*
20 *their electric grid planning, shall identify themselves*
21 *and the regions for which they propose to develop*
22 *plans to the Commission.*

23 “(3) *COORDINATION OF REGIONAL PLANNING EN-*
24 *TITIES.*—The Commission shall encourage regional
25 *planning entities described under paragraph (2) to*

1 *cooperate and coordinate across regions and to har-*
2 *monize regional electric grid planning with planning*
3 *in adjacent or overlapping jurisdictions to the max-*
4 *imum extent feasible. The Commission shall work*
5 *with States, public utilities transmission providers,*
6 *load-serving entities, transmission operators, and*
7 *other organizations to resolve any conflict or competi-*
8 *tion among proposed planning entities in order to*
9 *build consensus and promote the Federal policy estab-*
10 *lished under subsection (a). The Commission shall*
11 *seek to ensure that planning that is consistent with*
12 *the national electricity grid planning principles*
13 *adopted pursuant to paragraph (1) is conducted in*
14 *all regions of the United States and the territories.*

15 “(4) *RELATION TO EXISTING PLANNING POL-*
16 *ICY.—In implementing the Federal policy established*
17 *under subsection (a), the Commission shall—*

18 “(A) *incorporate any ongoing planning ef-*
19 *forts undertaken pursuant to section 217; and*

20 “(B) *consult with and invite the participa-*
21 *tion of the Secretary of Energy in relationship*
22 *to the Secretary’s duties pursuant to section 216.*

23 “(5) *ASSISTANCE.—*

24 “(A) *IN GENERAL.—The Commission shall*
25 *provide support to and participate in the re-*

1 *regional grid planning processes conducted by re-*
2 *gional planning entities. The Commission may*
3 *provide planning resources and assistance as re-*
4 *quired or as requested by regional planning enti-*
5 *ties, including system data, cost information,*
6 *system analysis, technical expertise, modeling*
7 *support, dispute resolution services, and other*
8 *assistance to regional planning entities, as ap-*
9 *propriate.*

10 “(B) *AUTHORIZATION.—There are author-*
11 *ized to be appropriated such sums as may be*
12 *necessary to carry out this paragraph.*

13 “(6) *CONFLICT RESOLUTION.—In the event that*
14 *regional grid plans conflict, the Commission shall as-*
15 *assist the regional planning entities in resolving such*
16 *conflicts in order to achieve the objectives of the Fed-*
17 *eral policy established under subsection (a).*

18 “(7) *SUBMISSION OF PLANS.—The Commission*
19 *shall require regional planning entities to submit ini-*
20 *tial regional electric grid plans to the Commission*
21 *not later than 18 months after the date the Commis-*
22 *sion promulgates national electricity grid planning*
23 *principles pursuant to paragraph (1). Regional elec-*
24 *tric grid plans should, in general, be developed from*
25 *sub-regional requirements and plans, including plan-*

1 *ning input reflecting individual utility service areas.*
2 *Regional plans may then in turn be combined into*
3 *larger regional plans, up to interconnection-wide and*
4 *national plans, as appropriate and necessary as de-*
5 *termined by the Commission. The Commission shall*
6 *review such plans for consistency with the national*
7 *grid planning principles and may return a plan to*
8 *one or more planning entities for further consider-*
9 *ation, along with the Commission’s own recommenda-*
10 *tions for resolution of any conflict or for improve-*
11 *ment. To the extent practicable, all plans submitted*
12 *to the Commission shall be public documents and*
13 *available on the Commission’s website.*

14 “(8) *MULTI-REGIONAL MEETINGS.*—*As regional*
15 *grid plans are submitted to the Commission, the Com-*
16 *mission may convene multi-regional meetings to dis-*
17 *cuss regional grid plan consistency and integration,*
18 *including requirements for multi-regional projects,*
19 *and to resolve any conflicts that emerge from such*
20 *multi-regional projects. The Commission shall provide*
21 *its recommendations for eliminating any inter-re-*
22 *gional conflicts.*

23 “(9) *REPORT TO CONGRESS.*—*Not later than 3*
24 *years after the date of enactment of this section, the*
25 *Commission shall provide a report to Congress con-*

1 *taining the results of the regional grid planning proc-*
2 *ess, including summaries of the adopted regional*
3 *plans. The Commission shall provide an electronic*
4 *version of its report on its website with links to all*
5 *regional and sub-regional plans taken into account.*
6 *The Commission shall note and provide its rec-*
7 *ommended resolution for any conflicts not resolved*
8 *during the planning process. The Commission shall*
9 *make any recommendations to Congress on the appro-*
10 *prate Federal role or support required to address the*
11 *needs of the electric grid, including recommendations*
12 *for addressing any needs that are beyond the reach of*
13 *existing State and Federal authority.”.*

14 **SEC. 152. NET METERING FOR FEDERAL AGENCIES.**

15 *(a) STANDARD.—Subsection (b) of section 113 of the*
16 *Public Utility Regulatory Policies Act of 1978 (16 U.S.C.*
17 *2623) is amended by adding the following new paragraph*
18 *at the end thereof:*

19 *“(6) NET METERING FOR FEDERAL AGENCIES.—*
20 *Each electric utility shall offer to arrange (either di-*
21 *rectly or through a third party) to make interconnec-*
22 *tion and net metering available to Federal Govern-*
23 *ment agencies, offices, or facilities in accordance with*
24 *the requirements of section 115(j). The standard*
25 *under this paragraph shall apply only to electric util-*

1 *ities that sold over 4,000,000 megawatt hours of elec-*
2 *tricity in the preceding year to the ultimate con-*
3 *sumers thereof. In the case of a standard under this*
4 *paragraph, a period of 1 year after the date of the en-*
5 *actment of this section shall be substituted for the 2-*
6 *year period referred to in other provisions of this sec-*
7 *tion.”.*

8 *(b) SPECIAL RULES.—Section 115 of the Public Util-*
9 *ity Regulatory Policies Act of 1978 (16 U.S.C. 2625) is*
10 *amended by adding the following new subsection at the end*
11 *thereof:*

12 *“(j) NET METERING FOR FEDERAL AGENCIES.—(1)*
13 *The standard under paragraph (6) of section 113(b) shall*
14 *require that rates and charges and contract terms and con-*
15 *ditions for the sale of electric energy to the Federal Govern-*
16 *ment or agency shall be the same as the rates and charges*
17 *and contract terms and conditions that would be applicable*
18 *if the agency did not own or operate a qualified generation*
19 *unit and use a net metering system.*

20 *“(2)(A) The standard under paragraph (6) of section*
21 *113(b) shall require that each electric utility shall arrange*
22 *to provide to the Government office or agency that qualifies*
23 *for net metering an electrical energy meter capable of net*
24 *metering and measuring, to the maximum extent prac-*
25 *ticable, the flow of electricity to or from the customer, using*

1 *a single meter and single register, the cost of which shall*
2 *be recovered from the customer.*

3 “(B) *In a case in which it is not practicable to provide*
4 *a meter under subparagraph (A), the utility (either directly*
5 *or through a third party) shall, at the expense of the utility*
6 *install 1 or more of those electric energy meters.*

7 “(3)(A) *The standard under paragraph (6) of section*
8 *113(b) shall require that each electric utility shall calculate*
9 *the electric energy consumption for the Government office*
10 *or agency using a net metering system that meets the re-*
11 *quirements of this subsection and paragraph (6) of section*
12 *113(b) and shall measure the net electricity produced or*
13 *consumed during the billing period using the metering in-*
14 *stalled in accordance with this paragraph.*

15 “(B) *If the electricity supplied by the retail electric*
16 *supplier exceeds the electricity generated by the Government*
17 *office or agency during the billing period, the Government*
18 *office or agency shall be billed for the net electric energy*
19 *supplied by the retail electric supplier in accordance with*
20 *normal billing practices.*

21 “(C) *If electric energy generated by the Government*
22 *office or agency exceeds the electric energy supplied by the*
23 *retail electric supplier during the billing period, the Gov-*
24 *ernment office or agency shall be billed for the appropriate*
25 *customer charges for that billing period and credited for*

1 *the excess electric energy generated during the billing pe-*
2 *riod, with the credit appearing as a kilowatt-hour credit*
3 *on the bill for the following billing period.*

4 “(D) *Any kilowatt-hour credits provided to the Gov-*
5 *ernment office or agency as provided in this subsection shall*
6 *be applied to the Government office or agency electric en-*
7 *ergy consumption on the following billing period bill (except*
8 *for a billing period that ends in the next calendar year).*
9 *At the beginning of each calendar year, any unused kilo-*
10 *watt-hour credits remaining from the preceding year will*
11 *carry over to the new year.*

12 “(4) *The standard under paragraph (6) of section*
13 *113(b) shall require that each electric utility shall offer a*
14 *meter and retail billing arrangement that has time-differen-*
15 *tiated rates. The kilowatt-hour credit shall be based on the*
16 *ratio representing the difference in retail rates for each*
17 *time-of-use rate, or the credits shall be reflected on the bill*
18 *of the Government office or agency as a monetary credit*
19 *reflecting retail rates at the time of generation of the electric*
20 *energy by the customer-generator.*

21 “(5) *The standard under paragraph (6) of section*
22 *113(b) shall require that the qualified generation unit,*
23 *interconnection standards, and net metering system used by*
24 *the Government office or agency shall meet all applicable*
25 *safety and performance and reliability standards estab-*

1 *lished by the National Electrical Code, the Institute of Elec-*
2 *trical and Electronics Engineers, Underwriters Labora-*
3 *tories, and the American National Standards Institute.*

4 “(6) *The standard under paragraph (6) of section*
5 *113(b) shall require that electric utilities shall not make ad-*
6 *ditional charges, including standby charges, for equipment*
7 *or services for safety or performance that are in addition*
8 *to those necessary to meet the other standards and require-*
9 *ments of this subsection and paragraph (6) of section*
10 *113(b).*

11 “(7) *For purposes of this subsection and paragraph (6)*
12 *of section 113(b):*

13 “(A) *The term ‘Government’ means any office,*
14 *facility, or agency of the Federal Government.*

15 “(B) *The term ‘customer-generator’ means the*
16 *owner or operator of a electricity generation unit.*

17 “(C) *The term ‘electric generation unit’ means*
18 *any renewable electric generation unit that is owned,*
19 *operated, or sited on a Federal Government facility.*

20 “(D) *The term ‘net metering’ means the process*
21 *of—*

22 “(i) *measuring the difference between the*
23 *electricity supplied to a customer-generator and*
24 *the electricity generated by the customer-gener-*
25 *ator that is delivered to a utility at the same*

1 *point of interconnection during an applicable*
2 *billing period; and*

3 “(i) *providing an energy credit to the cus-*
4 *tomers-generator in the form of a kilowatt-hour*
5 *credit for each kilowatt-hour of electricity pro-*
6 *duced by the customer-generator from an electric*
7 *generation unit.”.*

8 (c) *SAVINGS PROVISION.—If this section or a portion*
9 *of this section is determined to be invalid or unenforceable,*
10 *that shall not affect the validity or enforceability of any*
11 *other provision of this Act.*

12 **SEC. 153. SUPPORT FOR QUALIFIED ADVANCED ELECTRIC**
13 **TRANSMISSION MANUFACTURING PLANTS,**
14 **QUALIFIED HIGH EFFICIENCY TRANSMISSION**
15 **PROPERTY, AND QUALIFIED ADVANCED ELEC-**
16 **TRIC TRANSMISSION PROPERTY.**

17 (a) *LOAN GUARANTEES PRIOR TO SEPTEMBER 30,*
18 *2011.—Section 1705(a) of the Energy Policy Act of 2005*
19 *(42 U.S.C. 16515(a)), as added by section 406 of the Amer-*
20 *ican Recovery and Reinvestment Act of 2009 (Public Law*
21 *109-58; 119 Stat. 594) is amended by adding the following*
22 *new paragraph at the end thereof:*

23 “(5) *The development, construction, acquisition,*
24 *retrofitting, or engineering integration of a qualified*
25 *advanced electric transmission manufacturing plant*

1 *or the construction of a qualified high efficiency*
2 *transmission property or a qualified advanced electric*
3 *transmission property (whether by construction of*
4 *new facilities or the modification of existing facili-*
5 *ties). For purposes of this paragraph:*

6 *“(A) The term ‘qualified advanced electric*
7 *transmission property’ means any high voltage*
8 *electric transmission cable, related substation,*
9 *converter station, or other integrated facility*
10 *that—*

11 *“(i) utilizes advanced ultra low resist-*
12 *ance superconductive material or other ad-*
13 *vanced technology that has been determined*
14 *by the Secretary of Energy as—*

15 *“(I) reasonably likely to become*
16 *commercially viable within 10 years*
17 *after the date of enactment of this*
18 *paragraph;*

19 *“(II) capable of reliably transmit-*
20 *ting at least 5 gigawatts of high-volt-*
21 *age electric energy for distances greater*
22 *than 300 miles with energy losses not*
23 *exceeding 3 percent of the total power*
24 *transported; and*

1 “(III) not creating an electro-
2 magnetic field;

3 “(ii) has been determined by an appro-
4 priate energy regulatory body, upon appli-
5 cation, to be in the public interest and
6 thereby eligible for inclusion in regulated
7 rates; and

8 “(iii) can be located safely and eco-
9 nomically in a permanent underground
10 right of way not to exceed 25 feet in width.

11 The term ‘qualified advanced electric trans-
12 mission property’ shall not include any property
13 placed in service after December 31, 2016.

14 “(B)(i) The term ‘qualified high efficiency
15 transmission property’ means any high voltage
16 overhead electric transmission line, related sub-
17 station, or other integrated facility that—

18 “(I) utilizes advanced conductor core
19 technology that—

20 “(aa) has been determined by the
21 Secretary of Energy as reasonably like-
22 ly to become commercially viable with-
23 in 10 years after the date of enactment
24 of this paragraph;

1 “(bb) is suitable for use on trans-
2 mission lines up to 765kV; and

3 “(cc) exhibits power losses at least
4 30 percent lower than that of trans-
5 mission lines using conventional
6 ‘ACSR’ conductors;

7 “(II) has been determined by an ap-
8 propriate energy regulatory body, upon ap-
9 plication, to be in the public interest and
10 thereby eligible for inclusion in regulated
11 rates; and

12 “(III) can be located safely and eco-
13 nomically in a right of way not to exceed
14 that used by conventional ‘ACSR’ conduc-
15 tors; and

16 “(ii) The term ‘qualified high efficiency
17 transmission property’ shall not include any
18 property placed in service after December 31,
19 2016.

20 “(C) The term ‘qualified advanced electric
21 transmission manufacturing plant’ means any
22 industrial facility located in the United States
23 which can be equipped, re-equipped, expanded,
24 or established to produce in whole or in part

1 *qualified advanced electric transmission prop-*
2 *erty.*”.

3 **(b) ADDITIONAL LOAN GUARANTEE AUTHORITY.**—*Sec-*
4 *tion 1703 of the Energy Policy Act of 2005 (42 U.S.C.*
5 *16513) is amended by adding the following new paragraph*
6 *at the end of subsection (b):*

7 “(12) *The development, construction, acquisition,*
8 *retrofitting, or engineering integration of a qualified*
9 *advanced electric transmission manufacturing plant*
10 *or the construction of a qualified advanced electric*
11 *transmission property (whether by construction of*
12 *new facilities or the modification of existing facili-*
13 *ties). For purposes of this paragraph, the terms*
14 *‘qualified advanced electric transmission property’*
15 *and ‘qualified advanced electric transmission manu-*
16 *facturing plant’ have the meanings provided by sec-*
17 *tion 1705(a)(5).”.*

18 **(c) GRANTS.**—*The Secretary of Energy is authorized*
19 *to provide grants for up to 50 percent of costs incurred in*
20 *connection with the development, construction, acquisition*
21 *of components for, or engineering of a qualified advanced*
22 *electric transmission property defined in paragraph (5) of*
23 *section 1705(a) of the Energy Policy Act of 2005 (42 U.S.C.*
24 *16515(a)). Such grants may only be made to the first*
25 *project which qualifies under that paragraph. There are au-*

1 *thorized to be appropriated for purposes of this subsection*
2 *not more than \$100,000,000 for fiscal year 2010. The*
3 *United States shall take no equity or other ownership inter-*
4 *est in the qualified advanced electric transmission manufac-*
5 *turing plant or qualified advanced electric transmission*
6 *property for which funding is provided under this sub-*
7 *section.*

8 ***Subtitle G—Technical Corrections***
9 ***to Energy Laws***

10 ***SEC. 161. TECHNICAL CORRECTIONS TO ENERGY INDE-***
11 ***PENDENCE AND SECURITY ACT OF 2007.***

12 *(a) TITLE III—ENERGY SAVINGS THROUGH IM-*
13 *PROVED STANDARDS FOR APPLIANCE AND LIGHTING.—(1)*
14 *Section 325(u) of the Energy Policy and Conservation Act*
15 *(42 U.S.C. 6295(u)) (as amended by section 301(c) of the*
16 *Energy Independence and Security Act of 2007 (121 Stat.*
17 *1550)) is amended—*

18 *(A) by redesignating paragraph (7) as*
19 *paragraph (4); and*

20 *(B) in paragraph (4) (as so redesignated),*
21 *by striking “supplies is” and inserting “supply*
22 *is”.*

23 *(2) Section 302 of the Energy Independence and Secu-*
24 *rity Act of 2007 (121 Stat. 1551)) is amended—*

1 (A) in subsection (a), by striking “end of the
2 paragraph” and inserting “end of subparagraph
3 (A)”; and

4 (B) in subsection (b), by striking “6313(a)” and
5 inserting “6314(a)”.

6 (3) Section 343(a)(1) of the Energy Policy and Con-
7 servation Act (42 U.S.C. 6313(a)(1)) (as amended by sec-
8 tion 302(b) of the Energy Independence and Security Act
9 of 2007 (121 Stat. 1551)) is amended—

10 (A) by striking “TEST PROCEDURES” and all
11 that follows through “At least once” and inserting
12 “TEST PROCEDURES.—At least once”; and

13 (B) by redesignating clauses (i) and (ii) as sub-
14 paragraphs (A) and (B), respectively (and by moving
15 the margins of such subparagraphs 2 ems to the left).

16 (4) Section 342(a)(6) of the Energy Policy and Con-
17 servation Act (42 U.S.C. 6313(a)(6)) (as amended by sec-
18 tion 305(b)(2) of the Energy Independence and Security Act
19 of 2007 (121 Stat. 1554)) is amended—

20 (A) in subparagraph (B)—

21 (i) by striking “If the Secretary” and in-
22 serting the following:

23 “(i) IN GENERAL.—If the Secretary”;

24 (ii) by striking “clause (ii)(II)” and insert-
25 ing “subparagraph (A)(ii)(II)”;

1 *(iii) by striking “clause (i)” and inserting*
2 *“subparagraph (A)(i)”;* and

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

4 *“(i) FACTORS.—In determining*
5 *whether a standard is economically justified*
6 *for the purposes of subparagraph*
7 *(A)(ii)(II), the Secretary shall, after receiv-*
8 *ing views and comments furnished with re-*
9 *spect to the proposed standard, determine*
10 *whether the benefits of the standard exceed*
11 *the burden of the proposed standard by, to*
12 *the maximum extent practicable, consid-*
13 *ering—*

14 *“(I) the economic impact of the*
15 *standard on the manufacturers and on*
16 *the consumers of the products subject to*
17 *the standard;*

18 *“(II) the savings in operating*
19 *costs throughout the estimated average*
20 *life of the product in the type (or class)*
21 *compared to any increase in the price*
22 *of, or in the initial charges for, or*
23 *maintenance expenses of, the products*
24 *that are likely to result from the impo-*
25 *sition of the standard;*

1 “(III) the total projected quantity
2 of energy savings likely to result di-
3 rectly from the imposition of the stand-
4 ard;

5 “(IV) any lessening of the utility
6 or the performance of the products like-
7 ly to result from the imposition of the
8 standard;

9 “(V) the impact of any lessening
10 of competition, as determined in writ-
11 ing by the Attorney General, that is
12 likely to result from the imposition of
13 the standard;

14 “(VI) the need for national energy
15 conservation; and

16 “(VII) other factors the Secretary
17 considers relevant.

18 “(iii) ADMINISTRATION.—

19 “(I) ENERGY USE AND EFFI-
20 CIENCY.—The Secretary may not pre-
21 scribe any amended standard under
22 this paragraph that increases the max-
23 imum allowable energy use, or de-
24 creases the minimum required energy
25 efficiency, of a covered product.

1 “(II) *UNAVAILABILITY.*—

2 “(aa) *IN GENERAL.*—*The*
3 *Secretary may not prescribe an*
4 *amended standard under this sub-*
5 *paragraph if the Secretary finds*
6 *(and publishes the finding) that*
7 *interested persons have established*
8 *by a preponderance of the evi-*
9 *dence that a standard is likely to*
10 *result in the unavailability in the*
11 *United States in any product*
12 *type (or class) of performance*
13 *characteristics (including reli-*
14 *ability, features, sizes, capacities,*
15 *and volumes) that are substan-*
16 *tially the same as those generally*
17 *available in the United States at*
18 *the time of the finding of the Sec-*
19 *retary.*

20 “(bb) *OTHER TYPES OR*
21 *CLASSES.*—*The failure of some*
22 *types (or classes) to meet the cri-*
23 *terion established under this sub-*
24 *clause shall not affect the deter-*
25 *mination of the Secretary on*

1 *whether to prescribe a standard*
2 *for the other types or classes.”;*
3 *and*

4 *(B) in subparagraph (C)(iv), by striking “An*
5 *amendment prescribed under this subsection” and in-*
6 *serting “Notwithstanding subparagraph (D), an*
7 *amendment prescribed under this subparagraph”.*

8 *(5) Section 342(a)(6)(B)(iii) of the Energy Policy and*
9 *Conservation Act (as added by section 306(c) of the Energy*
10 *Independence and Security Act of 2007) is transferred and*
11 *redesignated as clause (vi) of section 342(a)(6)(C) of the*
12 *Energy Policy and Conservation Act (as amended by sec-*
13 *tion 305(b)(2) of the Energy Independence and Security Act*
14 *of 2007).*

15 *(6) Section 340 of the Energy Policy and Conservation*
16 *Act (42 U.S.C. 6311) (as amended by sections 312(a)(2)*
17 *and 314(a) of the Energy Independence and Security Act*
18 *of 2007 (121 Stat. 1564, 1569)) is amended by redesign-*
19 *ating paragraphs (22) and (23) (as added by section*
20 *314(a) of that Act) as paragraphs (23) and (24), respec-*
21 *tively.*

22 *(7) Section 345 of the Energy Policy and Conservation*
23 *Act (42 U.S.C. 6316) (as amended by section 312(e) of the*
24 *Energy Independence and Security Act of 2007 (121 Stat.*
25 *1567)) is amended—*

1 (A) by striking “subparagraphs (B) through
2 (G)” each place it appears and inserting “subpara-
3 graphs (B), (C), (D), (I), (J), and (K)”;

4 (B) by striking “part A” each place it appears
5 and inserting “part B”; and

6 (C) in subsection (h)(3), by striking “section
7 342(f)(3)” and inserting “section 342(f)(4)”.

8 (8) Section 340(13) of the Energy Policy and Con-
9 servation Act (42 U.S.C. 6311(13)) (as amended by section
10 313(a) of the Energy Independence and Security Act of
11 2007 (121 Stat. 1568)) is amended—

12 (A) by striking subparagraphs (A) and (B) and
13 inserting the following:

14 “(A) IN GENERAL.—The term ‘electric
15 motor’ means any motor that is—

16 “(i) a general purpose T-frame, single-
17 speed, foot-mounting, polyphase squirrel-
18 cage induction motor of the National Elec-
19 trical Manufacturers Association, Design A
20 and B, continuous rated, operating on 230/
21 460 volts and constant 60 Hertz line power
22 as defined in NEMA Standards Publication
23 MG1-1987; or

24 “(ii) a motor incorporating the design
25 elements described in clause (i), but is con-

1 *figured to incorporate one or more of the*
2 *following variations—*

3 “(I) *U-frame motor;*

4 “(II) *NEMA Design C motor;*

5 “(III) *close-coupled pump motor;*

6 “(IV) *footless motor;*

7 “(V) *vertical solid shaft normal*
8 *thrust motor (as tested in a horizontal*
9 *configuration);*

10 “(VI) *8-pole motor; or*

11 “(VII) *poly-phase motor with a*
12 *voltage rating of not more than 600*
13 *volts (other than 230 volts or 460 volts,*
14 *or both, or can be operated on 230*
15 *volts or 460 volts, or both).”;* and

16 (B) *by redesignating subparagraphs (C) through*
17 *(I) as subparagraphs (B) through (H), respectively.*

18 (9)(A) *Section 342(b) of the Energy Policy and Con-*
19 *servation Act (42 U.S.C. 6313(b)) is amended—*

20 (i) *in paragraph (1), by striking “paragraph (2)” and*
21 *inserting “paragraph (3)”;*

22 (ii) *by redesignating paragraphs (2) and (3) as para-*
23 *graphs (3) and (4);*

24 (iii) *by inserting after paragraph (1) the following:*

1 “(2) *STANDARDS EFFECTIVE BEGINNING DECEM-*
2 *BER 19, 2010.—*

3 “(A) *IN GENERAL.—Except for definite pur-*
4 *pose motors, special purpose motors, and those*
5 *motors exempted by the Secretary under para-*
6 *graph (3) and except as provided for in subpara-*
7 *graphs (B), (C), and (D), each electric motor*
8 *manufactured with power ratings from 1 to 200*
9 *horsepower (alone or as a component of another*
10 *piece of equipment) on or after December 19,*
11 *2010, shall have a nominal full load efficiency of*
12 *not less than the nominal full load efficiency de-*
13 *scribed in NEMA MG-1 (2006) Table 12-12.*

14 “(B) *FIRE PUMP ELECTRIC MOTORS.—Ex-*
15 *cept for those motors exempted by the Secretary*
16 *under paragraph (3), each fire pump electric*
17 *motor manufactured with power ratings from 1*
18 *to 200 horsepower (alone or as a component of*
19 *another piece of equipment) on or after December*
20 *19, 2010, shall have a nominal full load effi-*
21 *ciency that is not less than the nominal full load*
22 *efficiency described in NEMA MG-1 (2006)*
23 *Table 12-11.*

24 “(C) *NEMA DESIGN B ELECTRIC MO-*
25 *TORS.—Except for those motors exempted by the*

1 Secretary under paragraph (3), each NEMA De-
2 sign B electric motor with power ratings of more
3 than 200 horsepower, but not greater than 500
4 horsepower, manufactured (alone or as a compo-
5 nent of another piece of equipment) on or after
6 December 19, 2010, shall have a nominal full
7 load efficiency of not less than the nominal full
8 load efficiency described in NEMA MG-1 (2006)
9 Table 12-11.

10 “(D) MOTORS INCORPORATING CERTAIN DE-
11 SIGN ELEMENTS.—Except for those motors ex-
12 empted by the Secretary under paragraph (3),
13 each electric motor described in section
14 340(13)(A)(ii) manufactured with power ratings
15 from 1 to 200 horsepower (alone or as a compo-
16 nent of another piece of equipment) on or after
17 December 19, 2010, shall have a nominal full
18 load efficiency of not less than the nominal full
19 load efficiency described in NEMA MG-1 (2006)
20 Table 12-11.”; and

21 (iv) in paragraph (3) (as redesignated by clause (ii)),
22 by striking “paragraph (1)” each place it appears in sub-
23 paragraphs (A) and (D) and inserting “paragraphs (1) and
24 (2)”.

1 (B) *Section 313 of the Energy Independence and Security Act of 2007 (121 Stat. 1568) is repealed.*

3 (C) *The amendments made by—*

4 (i) *subparagraph (A) shall take effect on December 19, 2010; and*

6 (ii) *subparagraph (B) shall take effect on December 19, 2007.*

8 (10) *Section 321(30)(D)(i)(III) of the Energy Policy and Conservation Act (42 U.S.C. 6291(30)(D)(i)(III)) (as amended by section 321(a)(1)(A) of the Energy Independence and Security Act of 2007 (121 Stat. 1574)) is amended by inserting before the semicolon the following: “or, in the case of a modified spectrum lamp, not less than 232 lumens and not more than 1,950 lumens”.*

15 (11) *Section 321(30)(T) of the Energy Policy and Conservation Act (42 U.S.C. 6291(30)(T) (as amended by section 321(a)(1)(B) of the Energy Independence and Security Act of 2007 (121 Stat. 1574)) is amended—*

19 (A) *in clause (i)—*

20 (i) *by striking the comma after “household appliance” and inserting “and”; and*

22 (ii) *by striking “and is sold at retail,”; and*

23 (B) *in clause (ii), by inserting “when sold at retail,” before “is designated”.*

1 (12) Section 325 of the Energy Policy and Conserva-
 2 tion Act (42 U.S.C. 6295) (as amended by sections
 3 321(a)(3)(A) and 322(b) of the Energy Independence and
 4 Security Act of 2007 (121 Stat. 1577, 1588)) is amended
 5 by striking subsection (i) and inserting the following:

6 “(i) GENERAL SERVICE FLUORESCENT LAMPS, GEN-
 7 ERAL SERVICE INCANDESCENT LAMPS, INTERMEDIATE
 8 BASE INCANDESCENT LAMPS, CANDELABRA BASE INCAN-
 9 DESCENT LAMPS, AND INCANDESCENT REFLECTOR
 10 LAMPS.—

11 “(1) ENERGY EFFICIENCY STANDARDS.—

12 “(A) IN GENERAL.—Each of the following
 13 general service fluorescent lamps, general service
 14 incandescent lamps, intermediate base incandes-
 15 cent lamps, candelabra base incandescent lamps,
 16 and incandescent reflector lamps manufactured
 17 after the effective date specified in the tables list-
 18 ed in this subparagraph shall meet or exceed the
 19 following lamp efficacy, new maximum wattage,
 20 and CRI standards:

“FLUORESCENT LAMPS

Lamp Type	Nominal Lamp Wattage	Minimum CRI	Minimum Average Lamp Efficacy (LPW)	Effective Date (Period of Months)
4-foot medium bi-pin	>35 W	69	75.0	36
.....	≤35 W	45	75.0	36
2-foot U-shaped	>35 W	69	68.0	36
.....	≤35 W	45	64.0	36
8-foot slimline	65 W	69	80.0	18
.....	≤65 W	45	80.0	18
8-foot high output	>100 W	69	80.0	18
.....	≤100 W	45	80.0	18

“INCANDESCENT REFLECTOR LAMPS

<i>Nominal Lamp Wattage</i>	<i>Minimum Average Lamp Efficacy (LPW)</i>	<i>Effective Date (Period of Months)</i>
40–50	10.5	36
51–66	11.0	36
67–85	12.5	36
86–115	14.0	36
116–155	14.5	36
156–205	15.0	36

“GENERAL SERVICE INCANDESCENT LAMPS

<i>Rated Lumen Ranges</i>	<i>Maximum Rated Wattage</i>	<i>Minimum Rated Life-time</i>	<i>Effective Date</i>
1490–2600	72	1,000 hrs	1/1/2012
1050–1489	53	1,000 hrs	1/1/2013
750–1049	43	1,000 hrs	1/1/2014
310–749	29	1,000 hrs	1/1/2014

“MODIFIED SPECTRUM GENERAL SERVICE INCANDESCENT LAMPS

<i>Rated Lumen Ranges</i>	<i>Maximum Rated Wattage</i>	<i>Minimum Rated Life-time</i>	<i>Effective Date</i>
1118–1950	72	1,000 hrs	1/1/2012
788–1117	53	1,000 hrs	1/1/2013
563–787	43	1,000 hrs	1/1/2014
232–562	29	1,000 hrs	1/1/2014

1 “(B) APPLICATION.—

2 “*(i) APPLICATION CRITERIA.—This*

3 *subparagraph applies to each lamp that—*

4 “*(I) is intended for a general*

5 *service or general illumination appli-*

6 *cation (whether incandescent or not);*

7 “*(II) has a medium screw base or*

8 *any other screw base not defined in*

9 *ANSI C81.61–2006;*

1 “(III) is capable of being operated
2 at a voltage at least partially within
3 the range of 110 to 130 volts; and

4 “(IV) is manufactured or im-
5 ported after December 31, 2011.

6 “(ii) REQUIREMENT.—For purposes of
7 this paragraph, each lamp described in
8 clause (i) shall have a color rendering index
9 that is greater than or equal to—

10 “(I) 80 for nonmodified spectrum

11 lamps; or

12 “(II) 75 for modified spectrum

13 lamps.

14 “(C) CANDELABRA INCANDESCENT LAMPS
15 AND INTERMEDIATE BASE INCANDESCENT
16 LAMPS.—

17 “(i) CANDELABRA BASE INCANDESCENT
18 LAMPS.—Effective beginning January 1,
19 2012, a candelabra base incandescent lamp
20 shall not exceed 60 rated watts.

21 “(ii) INTERMEDIATE BASE INCANDES-
22 CENT LAMPS.—Effective beginning January
23 1, 2012, an intermediate base incandescent
24 lamp shall not exceed 40 rated watts.

25 “(D) EXEMPTIONS.—

1 “(i) *STATUTORY EXEMPTIONS.*—*The*
2 *standards specified in subparagraph (A)*
3 *shall not apply to the following types of in-*
4 *candescent reflector lamps:*

5 “(I) *Lamps rated at 50 watts or*
6 *less that are ER30, BR30, BR40, or*
7 *ER40 lamps.*

8 “(II) *Lamps rated at 65 watts*
9 *that are BR30, BR40, or ER40 lamps.*

10 “(III) *R20 incandescent reflector*
11 *lamps rated 45 watts or less.*

12 “(ii) *ADMINISTRATIVE EXEMPTIONS.*—

13 “(I) *PETITION.*—*Any person may*
14 *petition the Secretary for an exemption*
15 *for a type of general service lamp from*
16 *the requirements of this subsection.*

17 “(II) *CRITERIA.*—*The Secretary*
18 *may grant an exemption under sub-*
19 *clause (I) only to the extent that the*
20 *Secretary finds, after a hearing and*
21 *opportunity for public comment, that*
22 *it is not technically feasible to serve a*
23 *specialized lighting application (such*
24 *as a military, medical, public safety,*
25 *or certified historic lighting applica-*

1 tion) using a lamp that meets the re-
2 quirements of this subsection.

3 “(III) *ADDITIONAL CRITERION.*—

4 *To grant an exemption for a product*
5 *under this clause, the Secretary shall*
6 *include, as an additional criterion,*
7 *that the exempted product is unlikely*
8 *to be used in a general service lighting*
9 *application.*

10 “(E) *EXTENSION OF COVERAGE.*—

11 “(i) *PETITION.*—*Any person may peti-*
12 *tion the Secretary to establish standards for*
13 *lamp shapes or bases that are excluded from*
14 *the definition of general service lamps.*

15 “(ii) *INCREASED SALES OF EXEMPTED*
16 *LAMPS.*—*The petition shall include evidence*
17 *that the availability or sales of exempted in-*
18 *candescent lamps have increased signifi-*
19 *cantly since the date on which the stand-*
20 *ards on general service incandescent lamps*
21 *were established.*

22 “(iii) *CRITERIA.*—*The Secretary shall*
23 *grant a petition under clause (i) if the Sec-*
24 *retary finds that—*

1 “(I) the petition presents evidence
2 that demonstrates that commercial
3 availability or sales of exempted incan-
4 descent lamp types have increased sig-
5 nificantly since the standards on gen-
6 eral service lamps were established and
7 likely are being widely used in general
8 lighting applications; and

9 “(II) significant energy savings
10 could be achieved by covering exempted
11 products, as determined by the Sec-
12 retary based in part on sales data pro-
13 vided to the Secretary from manufac-
14 turers and importers.

15 “(iv) NO PRESUMPTION.—The grant of
16 a petition under this subparagraph shall
17 create no presumption with respect to the
18 determination of the Secretary with respect
19 to any criteria under a rulemaking con-
20 ducted under this section.

21 “(v) EXPEDITED PROCEEDING.—If the
22 Secretary grants a petition for a lamp
23 shape or base under this subparagraph, the
24 Secretary shall—

1 “(I) conduct a rulemaking to de-
2 termine standards for the exempted
3 lamp shape or base; and

4 “(II) complete the rulemaking not
5 later than 18 months after the date on
6 which notice is provided granting the
7 petition.

8 “(F) *EFFECTIVE DATES.*—

9 “(i) *IN GENERAL.*—In this paragraph,
10 except as otherwise provided in a table con-
11 tained in subparagraph (A) or in clause
12 (ii), the term ‘effective date’ means the last
13 day of the month specified in the table that
14 follows October 24, 1992.

15 “(ii) *SPECIAL EFFECTIVE DATES.*—

16 “(I) *ER, BR, AND BPAR LAMPS.*—
17 The standards specified in subpara-
18 graph (A) shall apply with respect to
19 *ER* incandescent reflector lamps, *BR*
20 incandescent reflector lamps, *BPAR*
21 incandescent reflector lamps, and simi-
22 lar bulb shapes on and after January
23 1, 2008, or the date that is 180 days
24 after the date of enactment of the En-

1 *ergy Independence and Security Act of*
2 *2007.*

3 “(II) *LAMPS BETWEEN 2.25–2.75*
4 *INCHES IN DIAMETER.—The standards*
5 *specified in subparagraph (A) shall*
6 *apply with respect to incandescent re-*
7 *flector lamps with a diameter of more*
8 *than 2.25 inches, but not more than*
9 *2.75 inches, on and after the later of*
10 *January 1, 2008, or the date that is*
11 *180 days after the date of enactment of*
12 *the Energy Independence and Security*
13 *Act of 2007.*

14 “(2) *COMPLIANCE WITH EXISTING LAW.—Not-*
15 *withstanding section 332(a)(5) and section 332(b), it*
16 *shall not be unlawful for a manufacturer to sell a*
17 *lamp that is in compliance with the law at the time*
18 *the lamp was manufactured.*

19 “(3) *RULEMAKING BEFORE OCTOBER 24, 1995.—*

20 “(A) *IN GENERAL.—Not later than 36*
21 *months after October 24, 1992, the Secretary*
22 *shall initiate a rulemaking procedure and shall*
23 *publish a final rule not later than the end of the*
24 *54-month period beginning on October 24, 1992,*

1 to determine whether the standards established
2 under paragraph (1) should be amended.

3 “(B) ADMINISTRATION.—The rule shall con-
4 tain the amendment, if any, and provide that
5 the amendment shall apply to products manufac-
6 tured on or after the 36-month period beginning
7 on the date on which the final rule is published.

8 “(4) RULEMAKING BEFORE OCTOBER 24, 2000.—

9 “(A) IN GENERAL.—Not later than 8 years
10 after October 24, 1992, the Secretary shall ini-
11 tiate a rulemaking procedure and shall publish
12 a final rule not later than 9 years and 6 months
13 after October 24, 1992, to determine whether the
14 standards in effect for fluorescent lamps and in-
15 candescent lamps should be amended.

16 “(B) ADMINISTRATION.—The rule shall con-
17 tain the amendment, if any, and provide that
18 the amendment shall apply to products manufac-
19 tured on or after the 36-month period beginning
20 on the date on which the final rule is published.

21 “(5) RULEMAKING FOR ADDITIONAL GENERAL
22 SERVICE FLUORESCENT LAMPS.—

23 “(A) IN GENERAL.—Not later than the end
24 of the 24-month period beginning on the date la-

1 *belong requirements under section 324(a)(2)(C)*
2 *become effective, the Secretary shall—*

3 “(i) *initiate a rulemaking procedure to*
4 *determine whether the standards in effect*
5 *for fluorescent lamps and incandescent*
6 *lamps should be amended so that the stand-*
7 *ards would be applicable to additional gen-*
8 *eral service fluorescent lamps; and*

9 “(ii) *publish, not later than 18 months*
10 *after initiating the rulemaking, a final rule*
11 *including the amended standards, if any.*

12 “(B) *ADMINISTRATION.—The rule shall pro-*
13 *vide that the amendment shall apply to products*
14 *manufactured after a date which is 36 months*
15 *after the date on which the rule is published.*

16 “(6) *STANDARDS FOR GENERAL SERVICE*
17 *LAMPS.—*

18 “(A) *RULEMAKING BEFORE JANUARY 1,*
19 *2014.—*

20 “(i) *IN GENERAL.—Not later than Jan-*
21 *uary 1, 2014, the Secretary shall initiate a*
22 *rulemaking procedure to determine wheth-*
23 *er—*

24 “(I) *standards in effect for general*
25 *service lamps should be amended; and*

1 “(II) *the exclusions for certain incandescent lamps should be maintained or discontinued based, in part, on excluded lamp sales collected by the Secretary from manufacturers.*

2 “(ii) *SCOPE.—The rulemaking—*

3 “(I) *shall not be limited to incandescent lamp technologies; and*

4 “(II) *shall include consideration of a minimum standard of 45 lumens per watt for general service lamps.*

5 “(iii) *AMENDED STANDARDS.—If the Secretary determines that the standards in effect for general service lamps should be amended, the Secretary shall publish a final rule not later than January 1, 2017, with an effective date that is not earlier than 3 years after the date on which the final rule is published.*

6 “(iv) *PHASED-IN EFFECTIVE DATES.—The Secretary shall consider phased-in effective dates under this subparagraph after considering—*

7 “(I) *the impact of any amendment on manufacturers, retiring and*

1 *repurposing existing equipment,*
2 *stranded investments, labor contracts,*
3 *workers, and raw materials; and*

4 *“(II) the time needed to work with*
5 *retailers and lighting designers to re-*
6 *verse sales and marketing strategies.*

7 *“(v) BACKSTOP REQUIREMENT.—If the*
8 *Secretary fails to complete a rulemaking in*
9 *accordance with clauses (i) through (iv) or*
10 *if the final rule does not produce savings*
11 *that are greater than or equal to the savings*
12 *from a minimum efficacy standard of 45*
13 *lumens per watt, effective beginning Janu-*
14 *ary 1, 2020, the Secretary shall prohibit the*
15 *manufacture of any general service lamp*
16 *that does not meet a minimum efficacy*
17 *standard of 45 lumens per watt.*

18 *“(vi) STATE PREEMPTION.—Neither*
19 *section 327(c) nor any other provision of*
20 *law shall preclude California or Nevada*
21 *from adopting, effective beginning on or*
22 *after January 1, 2018—*

23 *“(I) a final rule adopted by the*
24 *Secretary in accordance with clauses*
25 *(i) through (iv);*

1 “(II) if a final rule described in
2 subclause (I) has not been adopted, the
3 backstop requirement under clause (v);
4 or

5 “(III) in the case of California, if
6 a final rule described in subclause (I)
7 has not been adopted, any California
8 regulations relating to these covered
9 products adopted pursuant to State
10 statute in effect as of the date of enact-
11 ment of the Energy Independence and
12 Security Act of 2007.

13 “(B) RULEMAKING BEFORE JANUARY 1,
14 2020.—

15 “(i) IN GENERAL.—Not later than Jan-
16 uary 1, 2020, the Secretary shall initiate a
17 rulemaking procedure to determine wheth-
18 er—

19 “(I) standards in effect for general
20 service lamps should be amended; and

21 “(II) the exclusions for certain in-
22 candescent lamps should be maintained
23 or discontinued based, in part, on ex-
24 cluded lamp sales data collected by the
25 Secretary from manufacturers.

1 “(ii) *SCOPE.*—*The rulemaking shall*
2 *not be limited to incandescent lamp tech-*
3 *nologies.*

4 “(iii) *AMENDED STANDARDS.*—*If the*
5 *Secretary determines that the standards in*
6 *effect for general service lamps should be*
7 *amended, the Secretary shall publish a final*
8 *rule not later than January 1, 2022, with*
9 *an effective date that is not earlier than 3*
10 *years after the date on which the final rule*
11 *is published.*

12 “(iv) *PHASED-IN EFFECTIVE DATES.*—
13 *The Secretary shall consider phased-in effec-*
14 *tive dates under this subparagraph after*
15 *considering—*

16 “(I) *the impact of any amend-*
17 *ment on manufacturers, retiring and*
18 *repurposing existing equipment,*
19 *stranded investments, labor contracts,*
20 *workers, and raw materials; and*

21 “(II) *the time needed to work with*
22 *retailers and lighting designers to re-*
23 *visе sales and marketing strategies.*

24 “(7) *FEDERAL ACTIONS.*—

25 “(A) *COMMENTS OF SECRETARY.*—

1 “(i) *IN GENERAL.*—*With respect to any*
2 *lamp to which standards are applicable*
3 *under this subsection or any lamp specified*
4 *in section 346, the Secretary shall inform*
5 *any Federal entity proposing actions that*
6 *would adversely impact the energy con-*
7 *sumption or energy efficiency of the lamp of*
8 *the energy conservation consequences of the*
9 *action.*

10 “(ii) *CONSIDERATION.*—*The Federal*
11 *entity shall carefully consider the comments*
12 *of the Secretary.*

13 “(B) *AMENDMENT OF STANDARDS.*—*Not-*
14 *withstanding section 325(n)(1), the Secretary*
15 *shall not be prohibited from amending any*
16 *standard, by rule, to permit increased energy use*
17 *or to decrease the minimum required energy effi-*
18 *ciency of any lamp to which standards are ap-*
19 *plicable under this subsection if the action is*
20 *warranted as a result of other Federal action*
21 *(including restrictions on materials or processes)*
22 *that would have the effect of either increasing the*
23 *energy use or decreasing the energy efficiency of*
24 *the product.*

25 “(8) *COMPLIANCE.*—

1 “(A) *IN GENERAL.*—Not later than the date
2 on which standards established pursuant to this
3 subsection become effective, or, with respect to
4 high-intensity discharge lamps covered under
5 section 346, the effective date of standards estab-
6 lished pursuant to that section, each manufac-
7 turer of a product to which the standards are
8 applicable shall file with the Secretary a labora-
9 tory report certifying compliance with the appli-
10 cable standard for each lamp type.

11 “(B) *CONTENTS.*—The report shall include
12 the lumen output and wattage consumption for
13 each lamp type as an average of measurements
14 taken over the preceding 12-month period.

15 “(C) *OTHER LAMP TYPES.*—With respect to
16 lamp types that are not manufactured during
17 the 12-month period preceding the date on which
18 the standards become effective, the report shall—

19 “(i) be filed with the Secretary not
20 later than the date that is 12 months after
21 the date on which manufacturing is com-
22 menced; and

23 “(ii) include the lumen output and
24 wattage consumption for each such lamp

1 *type as an average of measurements taken*
2 *during the 12-month period.”.*

3 (13) *Section 325(l)(4)(A) of the Energy Policy and*
4 *Conservation Act (42 U.S.C. 6295(l)(4)(A)) (as amended by*
5 *section 321(a)(3)(B) of the Energy Independence and Secu-*
6 *rity Act of 2007 (121 Stat. 1581)) is amended by striking*
7 *“only”.*

8 (14) *Section 327(b)(1)(B) of the Energy Policy and*
9 *Conservation Act (42 U.S.C. 6297(b)(1)(B)) (as amended*
10 *by section 321(d)(3) of the Energy Independence and Secu-*
11 *rity Act of 2007 (121 Stat. 1585)) is amended—*

12 (A) *in clause (i), by inserting “and” after the*
13 *semicolon at the end;*

14 (B) *in clause (ii), by striking “; and” and in-*
15 *serting a period; and*

16 (C) *by striking clause (iii).*

17 (15) *Section 321(e) of the Energy Independence and*
18 *Security Act of 2007 (121 Stat. 1586) is amended—*

19 (A) *in the matter preceding paragraph (1), by*
20 *striking “is amended” and inserting “(as amended by*
21 *section 306(b)) is amended”; and*

22 (B) *by striking paragraphs (1) and (2) and in-*
23 *serting the following:*

24 (1) *in paragraph (5), by striking ‘or’ after the*
25 *semicolon at the end;*

1 “(2) in paragraph (6), by striking the period at
2 the end and inserting ‘; or’; and”.

3 (16) Section 332(a) of the Energy Policy and Con-
4 servation Act (42 U.S.C. 6302(a)) (as amended by section
5 321(e) of the Energy Independence and Security Act of
6 2007 (121 Stat. 1586)) is amended by redesignating the sec-
7 ond paragraph (6) as paragraph (7).

8 (17) Section 321(30)(C)(ii) of the Energy Policy and
9 Conservation Act (42 U.S.C. 6291(30)(C)(ii)) (as amended
10 by section 322(a)(1)(B) of the Energy Independence and Se-
11 curity Act of 2007 (121 Stat. 1587)) is amended by insert-
12 ing a period after “40 watts or higher”.

13 (18) Section 322(b) of the Energy Independence and
14 Security Act of 2007 (121 Stat. 1588)) is amended by strik-
15 ing “6995(i)” and inserting “6295(i)”.

16 (19) Section 327(c) of the Energy Policy and Con-
17 servation Act (42 U.S.C. 6297(c)) (as amended by sections
18 324(f) of the Energy Independence and Security Act of 2007
19 (121 Stat. 1594)) is amended—

20 (A) in paragraph (6), by striking “or” after the
21 semicolon at the end;

22 (B) in paragraph (8)(B), by striking “and” after
23 the semicolon at the end;

24 (C) in paragraph (9)—

1 *(i) by striking “except that—” and all that*
2 *follows through “if the Secretary fails to issue”*
3 *and inserting “except that if the Secretary fails*
4 *to issue”;*

5 *(ii) by redesignating clauses (i) and (ii) as*
6 *subparagraphs (A) and (B), respectively (and by*
7 *moving the margins of such subparagraphs 2*
8 *ems to the left); and*

9 *(iii) by striking the period at the end and*
10 *inserting a semicolon; and*

11 *(D) by adding at the end the following:*

12 *“(10) is a regulation for general service lamps*
13 *that conforms with Federal standards and effective*
14 *dates;*

15 *“(11) is an energy efficiency standard for gen-*
16 *eral service lamps enacted into law by the State of*
17 *Nevada prior to December 19, 2007, if the State has*
18 *not adopted the Federal standards and effective dates*
19 *pursuant to subsection (b)(1)(B)(ii); or”.*

20 *(20) Section 325(b) of the Energy Independence and*
21 *Security Act of 2007 (121 Stat. 1596)) is amended by strik-*
22 *ing “6924(c)” and inserting “6294(c)”.*

23 ***(b) TITLE IV—ENERGY SAVINGS IN BUILDINGS AND***
24 ***INDUSTRY.—(1) Section 401 of the Energy Independence***
25 ***and Security Act of 2007 (42 U.S.C. 17061) is amended—***

1 (A) in paragraph (2), by striking “484” and in-
2 serting “494”; and

3 (B) in paragraph (13), by striking “Agency”
4 and inserting “Administration”.

5 (2) Section 422 of the Energy Conservation and Pro-
6 duction Act (42 U.S.C. 6872) (as amended by section
7 411(a) of the Energy Independence and Security Act of
8 2007 (121 Stat. 1600)) is amended by striking 1 of the 2
9 periods at the end of paragraph (5).

10 (3) Section 305(a)(3)(D)(i) of the Energy Conserva-
11 tion and Production Act (42 U.S.C. 6834(a)(3)(D)(i)) (as
12 amended by section 433(a) of the Energy Independence and
13 Security Act of 2007 (121 Stat. 1612)) is amended—

14 (A) in subclause (I)—

15 (i) by striking “in fiscal year 2003 (as
16 measured by Commercial Buildings Energy Con-
17 sumption Survey or Residential Energy Con-
18 sumption Survey data from the Energy Informa-
19 tion Agency” and inserting “as measured by the
20 calendar year 2003 Commercial Buildings En-
21 ergy Consumption Survey or the calendar year
22 2005 Residential Energy Consumption Survey
23 data from the Energy Information Administra-
24 tion”; and

1 (ii) in the table at the end, by striking
2 **“Fiscal Year”** and inserting **“Calendar**
3 **Year”**; and

4 (B) in subclause (II)—

5 (i) by striking “(II) Upon petition” and in-
6 serting the following:

7 “(II) DOWNWARD ADJUSTMENT OF
8 NUMERIC REQUIREMENT.—

9 “(aa) IN GENERAL.—On pe-
10 tition”; and

11 (ii) by striking the last sentence and insert-
12 ing the following:

13 “(bb) EXCEPTIONS TO RE-
14 QUIREMENT FOR CONCURRENCE
15 OF SECRETARY.—

16 “(AA) IN GENERAL.—
17 The requirement to petition
18 and obtain the concurrence of
19 the Secretary under this sub-
20 clause shall not apply to any
21 Federal building with respect
22 to which the Administrator
23 of General Services is re-
24 quired to transmit a pro-
25 spectus to Congress under

1 *section 3307 of title 40,*
2 *United States Code, or to*
3 *any other Federal building*
4 *designed, constructed, or ren-*
5 *ovated by the Administrator*
6 *if the Administrator certifies,*
7 *in writing, that meeting the*
8 *applicable numeric require-*
9 *ment under subclause (I)*
10 *with respect to the Federal*
11 *building would be technically*
12 *impracticable in light of the*
13 *specific functional needs for*
14 *the building.*

15 “(BB) *ADJUSTMENT.—*
16 *In the case of a building de-*
17 *scribed in subitem (AA), the*
18 *Administrator may adjust*
19 *the applicable numeric re-*
20 *quirement of subclause (I)*
21 *downward with respect to the*
22 *building.”.*

23 *(4) Section 436(c)(3) of the Energy Independence and*
24 *Security Act of 2007 (42 U.S.C. 17092(c)(3)) is amended*
25 *by striking “474” and inserting “494”.*

1 (5) *Section 440 of the Energy Independence and Secu-*
2 *rity Act of 2007 (42 U.S.C. 17096) is amended by striking*
3 *“and 482”.*

4 (6) *Section 373(c) of the Energy Policy and Conserva-*
5 *tion Act (42 U.S.C. 6343(c)) (as amended by section 451(a)*
6 *of the Energy Independence and Security Act of 2007 (121*
7 *Stat. 1628)) is amended by striking “Administrator” and*
8 *inserting “Secretary”.*

9 (c) *DATE OF ENACTMENT.*—*Section 1302 of the En-*
10 *ergy Independence and Security Act of 2007 (42 U.S.C.*
11 *17382) is amended in the first sentence by striking “enact-*
12 *ment” and inserting “the date of enactment of this Act”.*

13 (d) *REFERENCE.*—*Section 1306(c)(3) of the Energy*
14 *Independence and Security Act of 2007 (42 U.S.C.*
15 *17386(c)(3)) is amended by striking “section 1307 (para-*
16 *graph (17) of section 111(d) of the Public Utility Regu-*
17 *latory Policies Act of 1978)” and inserting “paragraph (19)*
18 *of section 111(d) of the Public Utility Regulatory Policies*
19 *Act of 1978 (16 U.S.C. 2621(d))”.*

20 (e) *EFFECTIVE DATE.*—*This section and the amend-*
21 *ments made by this section take effect as if included in the*
22 *Energy Independence and Security Act of 2007 (Public*
23 *Law 110–140; 121 Stat. 1492).*

1 **SEC. 162. TECHNICAL CORRECTIONS TO ENERGY POLICY**

2 **ACT OF 2005.**

3 (a) *TITLE I—ENERGY EFFICIENCY.*—Section
4 325(g)(8)(C)(ii) of the *Energy Policy and Conservation Act*
5 (42 U.S.C. 6295(g)(8)(C)(ii)) (as added by section
6 135(c)(2)(B) of the *Energy Policy Act of 2005*) is amended
7 by striking “20°F” and inserting “–20°F”.

8 (b) *EFFECTIVE DATE.*—This section and the amend-
9 ments made by this section take effect as if included in the
10 *Energy Policy Act of 2005* (Public Law 109–58; 119 Stat.
11 594).

12 ***Subtitle H—Energy and Efficiency***
13 ***Centers***

14 **SEC. 171. CLEAN ENERGY INNOVATION CENTERS.**

15 (a) *PURPOSE.*—The Secretary shall carry out a pro-
16 gram to establish Clean Energy Innovation Centers to en-
17 hance the Nation’s economic, environmental, and energy se-
18 curity by promoting commercial deployment of clean, in-
19 digenous energy alternatives to oil and other fossil fuels,
20 reducing greenhouse gas emissions, and ensuring that the
21 United States maintains a technological lead in developing
22 and deploying state-of-the-art energy technologies. To
23 achieve these purposes the program shall—

24 (1) leverage the expertise and resources of the
25 university and private research communities, indus-
26 try, venture capital, national laboratories, and other

1 *participants in energy innovation to support cross-*
2 *disciplinary research and development in areas not*
3 *being served by the private sector in order to develop*
4 *and transfer innovative clean energy technologies into*
5 *the marketplace;*

6 *(2) expand the knowledge base and human cap-*
7 *ital necessary to transition to a low-carbon economy;*
8 *and*

9 *(3) promote regional economic development by*
10 *cultivating clusters of clean energy technology firms,*
11 *private research organizations, suppliers, and other*
12 *complementary groups and businesses.*

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

14 *(1) ALLOWANCE.—The term “allowance” means*
15 *an emission allowance established under section 721*
16 *of the Clean Air Act.*

17 *(2) CENTER.—The term “Center” means a Clean*
18 *Energy Innovation Center established in accordance*
19 *with this section.*

20 *(3) CLEAN ENERGY TECHNOLOGY.—The term*
21 *“clean energy technology” means a technology that—*

22 *(A) produces energy from solar, wind, geo-*
23 *thermal, biomass, tidal, wave, ocean, and other*
24 *renewable energy resources (as such term is de-*

1 *fined in section 610 of the Public Utility Regu-*
2 *latory Policies Act of 1978);*

3 *(B) more efficiently transmits, distributes,*
4 *or stores energy;*

5 *(C) enhances energy efficiency for buildings*
6 *and industry, including combined heat and*
7 *power;*

8 *(D) enables the development of a Smart*
9 *Grid (as described in section 1301 of the Energy*
10 *Independence and Security Act of 2007 (42*
11 *U.S.C. 17381)), including integration of renew-*
12 *able energy resources and distributed generation,*
13 *demand response, demand side management, and*
14 *systems analysis;*

15 *(E) produces an advanced or sustainable*
16 *material with energy or energy efficiency appli-*
17 *cations;*

18 *(F) enhances water security through im-*
19 *proved water management, conservation, dis-*
20 *tribution, and end use applications; or*

21 *(G) improves energy efficiency for transpor-*
22 *tation, including electric vehicles.*

23 *(4) CLUSTER.—The term “cluster” means a con-*
24 *centration of firms directly involved in the research,*
25 *development, finance, and commercialization of clean*

1 *energy technologies whose geographic proximity facili-*
2 *tates utilization and sharing of skilled human re-*
3 *sources, infrastructure, research facilities, educational*
4 *and training institutions, venture capital, and input*
5 *suppliers.*

6 (5) *PROJECT.*—*The term “project” means an ac-*
7 *tivity with respect to which a Center provides support*
8 *under subsection (e).*

9 (6) *QUALIFYING ENTITY.*—*The term “qualifying*
10 *entity” means each of the following:*

11 (A) *A research university.*

12 (B) *A State institution with a focus on the*
13 *advancement of clean energy technologies.*

14 (C) *A nongovernmental organization with*
15 *research or commercialization expertise in clean*
16 *energy technology development.*

17 (7) *SECRETARY.*—*The term “Secretary” means*
18 *the Secretary of Energy.*

19 (8) *TECHNOLOGY FOCUS.*—*The term “technology*
20 *focus” means the unique technology area in which a*
21 *Center will specialize, and may include solar elec-*
22 *tricity, fuels from solar energy, batteries and energy*
23 *storage, electricity grid systems and devices, energy*
24 *efficient building systems and design, advanced mate-*

1 *rials, modeling and simulation, and other clean en-*
2 *ergy technology areas designated by the Secretary.*

3 (9) *TRANSLATIONAL RESEARCH.*—*The term*
4 *“translational research” means clean energy tech-*
5 *nology research to coordinate basic or applied re-*
6 *search with technical and commercial applications to*
7 *enable promising discoveries or inventions to attract*
8 *investment sufficient for market penetration and dif-*
9 *fusion.*

10 (c) *ROLE OF THE SECRETARY.*—*The Secretary shall—*

11 (1) *have ultimate responsibility for, and over-*
12 *sight of, all aspects of the program under this section;*

13 (2) *provide for the distribution of allowances to*
14 *consortia for the establishment of 8 Centers pursuant*
15 *to this section, with each Center designated a unique*
16 *technology focus area;*

17 (3) *coordinate the innovation activities of Cen-*
18 *ters with those occurring through other Department of*
19 *Energy entities, including the National Laboratories,*
20 *the Advanced Research Projects Agency—Energy, and*
21 *Energy Frontier Research Centers, and within indus-*
22 *try, and to avoid duplication of research, by annu-*
23 *ally—*

1 (A) *issuing guidance regarding national en-*
2 *ergy research and development priorities and*
3 *strategic objectives; and*

4 (B) *convening a conference of staff of the*
5 *Department of Energy and representatives from*
6 *such other entities to share research results, pro-*
7 *gram plans, and opportunities for collaboration.*

8 (d) *CONSORTIUM.—A consortium shall be eligible to re-*
9 *ceive allowances to support the establishment of a Center*
10 *under this section if—*

11 (1) *it is composed of—*

12 (A) *2 research universities with a combined*
13 *annual research budget of \$500,000,000; and*

14 (B) *no fewer than 1 additional qualifying*
15 *entity;*

16 (2) *its members have established a binding agree-*
17 *ment that documents—*

18 (A) *the structure of the partnership agree-*
19 *ment;*

20 (B) *the governance and management struc-*
21 *ture to enable cost-effective implementation of the*
22 *program;*

23 (C) *an intellectual property management*
24 *policy;*

1 (D) a conflicts of interest policy consistent
2 with subsection (e)(4);

3 (E) an accounting structure that meets the
4 requirements of the Department and can be au-
5 dited under subsection (f)(3); and

6 (F) that it has an Advisory Board con-
7 sistent with subsection (e)(3);

8 (3) it receives financial contributions from
9 States, consortium participants, or other non-Federal
10 sources, to be used pursuant to subsection (e)(2);

11 (4) it is part of an existing cluster or dem-
12 onstrates high potential to develop a new cluster; and

13 (5) it operates as a nonprofit organization.

14 (e) *CLEAN ENERGY INNOVATION CENTERS.*—

15 (1) *ROLE.*—Centers shall provide support to ac-
16 tivities leading to commercial deployment of clean en-
17 ergy technologies pursuant to the purposes of this sec-
18 tion through issuance of awards to projects managed
19 by qualifying entities and other entities meeting the
20 Center’s project criteria, including national labora-
21 tories. Each Center shall—

22 (A) develop and publish for public review
23 and comment proposed plans, programs, and
24 project selection criteria;

1 (B) submit an annual report to the Sec-
2 retary summarizing the Center's activities, orga-
3 nizational expenditures, and Board members,
4 which shall include a certification of compliance
5 with conflict of interest policies and a descrip-
6 tion of each project in the research portfolio;

7 (C) establish policies—

8 (i) regarding intellectual property de-
9 veloped as a result of Center awards and
10 other forms of technology support that en-
11 courage individual ingenuity and invention
12 while speeding knowledge transfer and fa-
13 cilitating the establishment of rapid com-
14 mercialization pathways;

15 (ii) to prevent resources provided to the
16 Center from being used to displace private
17 sector investment likely to otherwise occur,
18 including investment from private sector
19 entities which are members of the consor-
20 tium;

21 (iii) to facilitate the participation of
22 private investment firms or other private
23 entities that invest in clean energy tech-
24 nologies to perform due diligence on award
25 proposals, to participate in the award re-

1 *view process, and to provide guidance to*
2 *projects supported by the Center; and*

3 *(iv) to facilitate the participation of*
4 *entrepreneurs with a demonstrated history*
5 *of commercializing clean energy tech-*
6 *nologies;*

7 *(D) oversee project solicitations, review pro-*
8 *posed projects, and select projects for awards;*
9 *and*

10 *(E) monitor project implementation.*

11 *(2) USE AND DISTRIBUTION OF AWARDS BY CEN-*
12 *TERS.—A Center shall allocate awards and other sup-*
13 *port for—*

14 *(A) clean energy technology projects con-*
15 *ducting translational research and related activi-*
16 *ties, at least 40 percent of which shall be utilized*
17 *for projects related to the Center’s technology*
18 *focus; and*

19 *(B) administrative expenses, which may*
20 *constitute no more than 10 percent of the award.*

21 *(3) ADVISORY BOARDS.—*

22 *(A) IN GENERAL.—Each Center shall estab-*
23 *lish an Advisory Board whose members shall*
24 *have extensive and relevant scientific, technical,*
25 *industry, financial, or research management ex-*

1 *pertise. The Advisory Board shall review the*
2 *Center's proposed plans, programs, project selec-*
3 *tion criteria, and projects and shall ensure that*
4 *projects selected for awards meet the conflict of*
5 *interest policies of the Center. Advisory Board*
6 *members other than those representing consor-*
7 *tium members shall serve for no more than three*
8 *years and must comply with conflict of interest*
9 *provisions.*

10 *(B) MEMBERS.—Each Advisory Board shall*
11 *consist of—*

12 *(i) 5 members selected by the consor-*
13 *tium's research universities;*

14 *(ii) 2 members selected by the consor-*
15 *tium's other qualifying entities; and*

16 *(iii) 2 members selected at large by*
17 *other Board members to represent the entre-*
18 *preneur and venture capital communities.*

19 *Individuals appointed under clause (iii) shall*
20 *not be State or Federal employees or affiliated*
21 *with the consortium's qualified entities.*

22 *(C) NONVOTING MEMBERS.—The Board*
23 *shall also include 1 nonvoting member appointed*
24 *by the Secretary.*

1 (D) *COMPENSATION.*—*Members of an Advisory Board may receive reimbursement for travel expenses and a reasonable stipend.*

2
3
4 (4) *CONFLICT OF INTEREST.*—

5 (A) *PROCEDURES.*—*Centers shall establish procedures to ensure that employees or consortia designees for Center activities who are in decisionmaking capacities shall—*

6
7
8
9 (i) *disclose any financial interests in, or financial relationships with, applicants for or recipients of awards under paragraph (1), including those of his or her spouse or minor child, unless such relationships or interests would be considered to be remote or inconsequential; and*

10
11
12
13
14
15
16 (ii) *recuse himself or herself from any funding decision for projects in which he or she has a personal financial interest.*

17
18
19 (B) *DISQUALIFICATION AND REVOCATION.*—
20 *The Secretary may disqualify an application or revoke allowances distributed to the Center or awards provided under paragraph (1), if cognizant officials of the Center fail to comply with procedures required under subparagraph (A).*

1 (f) *DISTRIBUTION OF ALLOWANCES TO CLEAN ENERGY*
2 *INNOVATION CENTERS.*—

3 (1) *SELECTION AND SCHEDULE.*—*Allowances to*
4 *support the establishment of a Center shall be distrib-*
5 *uted through a competitive process. Not later than*
6 *120 days after the date of enactment of this Act, the*
7 *Secretary shall solicit proposals from eligible con-*
8 *sortia to establish Centers, which shall be submitted*
9 *not later than 180 days after the date of enactment*
10 *of this Act. The Secretary shall select the program*
11 *consortia not later than 270 days after the date of en-*
12 *actment of this Act pursuant to subsection (d). The*
13 *Secretary shall award 3 grants for the establishment*
14 *of 3 Centers to be located on the campus of 1890 Land*
15 *Grant Institution (as defined in section 2 of the Agri-*
16 *cultural Research, Extension, and Education Reform*
17 *Act of 1998 (7 U.S.C. 7061)).*

18 (2) *TERM AND USE OF ALLOWANCES.*—*Allow-*
19 *ances distributed to Centers shall be used to provide*
20 *awards pursuant to subsection (e)(1). The amount of*
21 *allowances distributed to support the establishment of*
22 *a Center under this section shall not be less than 10*
23 *and not more than 30 percent of the allowances allo-*
24 *cated under section 782(h) of the Clean Air Act, each*
25 *year for a 6 year period. Centers shall be eligible to*

1 *compete for additional allowance distribution after*
2 *the expiration of the initial period. Centers shall es-*
3 *tablish award periods for individual awards. The*
4 *transfer of allowances to a Center shall occur at the*
5 *start of each calendar year.*

6 (3) *AUDIT.—Each Center shall conduct an an-*
7 *nuual audit to determine the extent to which allow-*
8 *ances distributed to the Center, and awards under*
9 *subsection (e) have been utilized in a manner con-*
10 *sistent with this section. The auditor shall transmit*
11 *a report of the results of the audit to the Secretary*
12 *and to the Government Accountability Office. The*
13 *Secretary shall include such report in the annual re-*
14 *port to Congress, along with a plan to remedy any*
15 *deficiencies cited in the report. The Government Ac-*
16 *countability Office may review such audits as appro-*
17 *priate and shall have full access to the books, records,*
18 *and personnel of the Center to ensure that allowances*
19 *distributed to the Center, and awards made under*
20 *subsection (e), have been utilized in a manner con-*
21 *sistent with this section.*

22 **SEC. 172. BUILDING ASSESSMENT CENTERS.**

23 (a) *IN GENERAL.—The Secretary of Energy (in this*
24 *section referred to as the “Secretary”) shall provide funding*

1 *to institutions of higher education for Building Assessment*

2 *Centers to—*

3 (1) *identify opportunities for optimizing energy*
4 *efficiency and environmental performance in existing*
5 *buildings;*

6 (2) *promote high-efficiency building construction*
7 *techniques and materials options;*

8 (3) *promote applications of emerging concepts*
9 *and technologies in commercial and institutional*
10 *buildings;*

11 (4) *train engineers, architects, building sci-*
12 *entists, and building technicians in energy-efficient*
13 *design and operation;*

14 (5) *assist local community colleges, trade schools,*
15 *registered apprenticeship programs and other accred-*
16 *ited training programs in training building techni-*
17 *cians;*

18 (6) *promote research and development for the use*
19 *of alternative energy sources to supply heat and*
20 *power, for buildings, particularly energy-intensive*
21 *buildings; and*

22 (7) *coordinate with and assist State-accredited*
23 *technical training centers and community colleges,*
24 *while ensuring appropriate services to all regions of*
25 *the United States.*

1 (b) *COORDINATION WITH REGIONAL CENTERS FOR*
2 *ENERGY AND ENVIRONMENTAL KNOWLEDGE AND OUT-*
3 *REACH.*—*A Building Assessment Center may serve as a*
4 *Center for Energy and Environmental Knowledge and Out-*
5 *reach established pursuant to section 173.*

6 (c) *COORDINATION AND DUPLICATION.*—*The Secretary*
7 *shall coordinate efforts under this section with other pro-*
8 *grams of the Department of Energy and other Federal agen-*
9 *cies to avoid duplication of effort.*

10 (d) *AUTHORIZATION OF APPROPRIATIONS.*—*There are*
11 *authorized to be appropriated to the Secretary to carry out*
12 *this section \$50,000,000 for fiscal year 2010 and each fiscal*
13 *year thereafter.*

14 **SEC. 173. CENTERS FOR ENERGY AND ENVIRONMENTAL**
15 **KNOWLEDGE AND OUTREACH.**

16 (a) *REGIONAL CENTERS FOR ENERGY AND ENVIRON-*
17 *MENTAL KNOWLEDGE AND OUTREACH.*—

18 (1) *ESTABLISHMENT.*—*The Secretary shall estab-*
19 *lish not more than 10 regional Centers for Energy*
20 *and Environmental Knowledge and Outreach at in-*
21 *stitutions of higher education to coordinate with and*
22 *advise industrial research and assessment centers,*
23 *Building Assessment Centers, and Clean Energy Ap-*
24 *plication Centers located in the region of such Center*

1 *for Energy and Environmental Knowledge and Out-*
2 *reach.*

3 (2) *TECHNICAL ASSISTANCE PROGRAMS.—Each*
4 *Center for Energy and Environmental Knowledge*
5 *and Outreach shall consist of at least one, new or ex-*
6 *isting, high performing, of the following:*

7 (A) *An industrial research and assessment*
8 *center.*

9 (B) *A Clean Energy Application Center.*

10 (C) *A Building Assessment Center.*

11 (3) *SELECTION CRITERIA.—The Secretary shall*
12 *select Centers for Energy and Environmental Knowl-*
13 *edge and Outreach through a competitive process,*
14 *based on the following:*

15 (A) *Identification of the highest performing*
16 *industrial research and assessment centers, Clean*
17 *Energy Application Centers, and Building As-*
18 *essment Centers.*

19 (B) *The degree to which an institution of*
20 *higher education maintains credibility among*
21 *regional private sector organizations such as*
22 *trade associations, engineering associations, and*
23 *environmental organizations.*

24 (C) *The degree to which an institution of*
25 *higher education is providing or has provided*

1 *technical assistance, academic leadership, and*
2 *market leadership in the energy arena in a man-*
3 *ner that is consistent with the areas of focus of*
4 *industrial research and assessment centers, Clean*
5 *Energy Application Centers, and Building As-*
6 *essment Centers.*

7 *(D) The presence of an additional indus-*
8 *trial research and assessment center, Clean En-*
9 *ergy Application Center, or Building Assessment*
10 *Center at the institution of higher education.*

11 *(4) GEOGRAPHIC DIVERSITY.—In selecting Cen-*
12 *ters for Energy and Environmental Knowledge and*
13 *Outreach under this subsection, the Secretary shall*
14 *ensure such Centers are distributed geographically in*
15 *a relatively uniform manner to ensure all regions of*
16 *the Nation are represented.*

17 *(5) REGIONAL LEADERSHIP.—Each Center for*
18 *Energy and Environmental Knowledge and Outreach*
19 *shall, to the extent possible, provide leadership to all*
20 *other industrial research and assessment centers,*
21 *Clean Energy Application Centers, and Building As-*
22 *essment Centers located in the Center's geographic re-*
23 *gion, as determined by the Secretary. Such leadership*
24 *shall include—*

1 (A) *developing regional goals specific to the*
2 *purview of the industrial research and assess-*
3 *ment centers, Clean Energy Application Centers,*
4 *and Building Assessment Centers programs;*

5 (B) *developing regionally specific technical*
6 *resources; and*

7 (C) *outreach to interested parties in the re-*
8 *gion to inform them of the information, re-*
9 *sources, and services available through the associ-*
10 *ated industrial research and assessment centers,*
11 *Clean Energy Application Centers, and Building*
12 *Assessment Centers.*

13 (6) *FURTHER COORDINATION.—To increase the*
14 *value and capabilities of the regionally associated in-*
15 *dustrial research and assessment centers, Clean En-*
16 *ergy Application Centers, and Building Assessment*
17 *Centers programs, Centers for Energy and Environ-*
18 *mental Knowledge and Outreach shall—*

19 (A) *coordinate with Manufacturing Exten-*
20 *sion Partnership Centers of the National Insti-*
21 *tute of Science and Technology;*

22 (B) *coordinate with the relevant programs*
23 *in the Department of Energy, including the*
24 *Building Technology Program and Industrial*
25 *Technologies Program;*

1 (C) increase partnerships with the National
2 Laboratories of the Department of Energy to le-
3 verage the expertise and technologies of the Na-
4 tional Laboratories to achieve the goals of the in-
5 dustrial research and assessment centers, Clean
6 Energy Application Centers, and Building As-
7 sessment Centers;

8 (D) work with relevant municipal, county,
9 and State economic development entities to lever-
10 age relevant financial incentives for capital in-
11 vestment and other policy tools for the protection
12 and growth of local business and industry;

13 (E) partner with local professional and pri-
14 vate trade associations and business development
15 interests to leverage existing knowledge of local
16 business challenges and opportunities;

17 (F) work with energy utilities and other ad-
18 ministrators of publicly funded energy programs
19 to leverage existing energy efficiency and clean
20 energy programs;

21 (G) identify opportunities for reducing
22 greenhouse gas emissions; and

23 (H) promote sustainable business practices
24 for those served by the industrial research and

1 *assessment centers, Clean Energy Application*
2 *Centers, and Building Assessment Centers.*

3 (7) *WORKFORCE TRAINING.—*

4 (A) *IN GENERAL.—The Secretary shall re-*
5 *quire each Center for Energy and Environ-*
6 *mental Knowledge and Outreach to establish or*
7 *maintain an internship program for the region*
8 *of such Center, designed to encourage students*
9 *who perform energy assessments to continue*
10 *working with a particular company, building, or*
11 *facility to help implement the recommendations*
12 *contained in any such assessment provided to*
13 *such company, building, or facility. Each Center*
14 *for Energy and Environmental Knowledge and*
15 *Outreach shall act as internship coordinator to*
16 *help match students to available opportunities.*

17 (B) *FEDERAL SHARE.—The Federal share*
18 *of the cost of carrying out internship programs*
19 *described under subparagraph (A) shall be 50*
20 *percent.*

21 (C) *FUNDING.—Subject to the availability*
22 *of appropriations, of the funds made available to*
23 *carry out this subsection, the Secretary shall use*
24 *to carry out this paragraph not less than*

1 \$5,000,000 for fiscal year 2010 and each fiscal
2 year thereafter.

3 (8) *SMALL BUSINESS LOANS.*—*The Administrator of the Small Business Administration shall, to*
4 *the maximum practicable, expedite consideration of*
5 *applications from eligible small business concerns for*
6 *loans under the Small Business Act (15 U.S.C. 631*
7 *et seq.) for loans to implement recommendations of*
8 *any industrial research and assessment center, Clean*
9 *Energy Application Center, or Building Assessment*
10 *Center.*

12 (9) *DEFINITIONS.*—*In this subsection:*

13 (A) *INDUSTRIAL RESEARCH AND ASSESS-*
14 *MENT CENTER.*—*The term “industrial research*
15 *and assessment center” means a center estab-*
16 *lished or maintained pursuant to section 452(e)*
17 *of the Energy Independence and Security Act of*
18 *2007 (42 U.S.C. 17111(e)).*

19 (B) *CLEAN ENERGY APPLICATION CEN-*
20 *TER.*—*The term “Clean Energy Application*
21 *Center” means a center redesignated and de-*
22 *scribed section under section 375 of the Energy*
23 *Policy and Conservation Act (42 U.S.C. 6345).*

24 (C) *BUILDING ASSESSMENT CENTER.*—*The*
25 *term “Building Assessment Center” means an*

1 *institution of higher education-based center es-*
2 *tablished pursuant to section 172.*

3 (D) *SECRETARY.*—*The term “Secretary”*
4 *means the Secretary of Energy.*

5 (10) *FUNDING.*—*There are authorized to be ap-*
6 *propriated to the Secretary to carry out this sub-*
7 *section \$10,000,000 for fiscal year 2010 and each fis-*
8 *cal year thereafter. Subject to the availability of ap-*
9 *propriations, of the funds made available to carry out*
10 *this subsection, the Secretary shall provide to each*
11 *Center for Energy and Environmental Knowledge*
12 *and Outreach not less than \$500,000 for fiscal year*
13 *2010 and each fiscal year thereafter.*

14 (b) *INTEGRATION OF OTHER TECHNICAL ASSISTANCE*
15 *PROGRAMS.*—

16 (1) *CLEAN ENERGY APPLICATION CENTERS.*—
17 *Section 375 of the Energy Policy and Conservation*
18 *Act (42 U.S.C. 6345) is amended—*

19 (A) *by redesignating subsection (f) as sub-*
20 *section (g); and*

21 (B) *by adding after subsection (e) the fol-*
22 *lowing new subsection:*

23 “(f) *COORDINATION WITH CENTERS FOR ENERGY AND*
24 *ENVIRONMENTAL KNOWLEDGE AND OUTREACH.*—*A Clean*
25 *Energy Application Center may serve as a Center for En-*

1 *ergy and Environmental Knowledge and Outreach estab-*
2 *lished pursuant to section 173 of the American Clean En-*
3 *ergy and Security Act of 2009.”.*

4 (2) *INDUSTRIAL RESEARCH AND ASSESSMENT*
5 *CENTERS.—Section 452(e) of the Energy Independ-*
6 *ence and Security Act of 2007 (42 U.S.C. 17111(e))*
7 *is amended—*

8 (A) *by striking “The Secretary” and all*
9 *that follows through “shall be—” and inserting*
10 *the following:*

11 “(1) *IN GENERAL.—The Secretary shall provide*
12 *funding to institution of higher education-based in-*
13 *dustrial research and assessment centers, whose pur-*
14 *poses shall be—”;*

15 (B) *by redesignating paragraphs (1)*
16 *through (5) as subparagraphs (A) through (E),*
17 *respectively (and by moving the margins of such*
18 *subparagraphs 2 ems to the right); and*

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

21 “(2) *COORDINATION WITH CENTERS FOR ENERGY*
22 *AND ENVIRONMENTAL KNOWLEDGE AND OUTREACH.—*
23 *An industrial research and assessment center may*
24 *serve as a Center for Energy and Environmental*
25 *Knowledge and Outreach established pursuant to sec-*

1 *tion 173 of the American Clean Energy and Security*
2 *Act of 2009.”.*

3 (c) *ADDITIONAL FUNDING FOR CLEAN ENERGY APPLI-*
4 *CATION CENTERS.*—*Subsection (g) of section 375 of the En-*
5 *ergy Policy and Conservation Act (42 U.S.C. 6345(f)), as*
6 *redesignated by subsection (b)(1) of this section, is amended*
7 *by striking “\$10,000,000 for each of fiscal years 2008*
8 *through 2012” and inserting “\$30,000,000 for fiscal year*
9 *2010 and each fiscal year thereafter”.*

10 ***Subtitle I—Nuclear and Advanced***
11 ***Technologies***

12 ***SEC. 181. REVISIONS TO LOAN GUARANTEE PROGRAM AU-***
13 ***THORITY.***

14 (a) *DEFINITION OF CONDITIONAL COMMITMENT.*—*Sec-*
15 *tion 1701 of the Energy Policy Act of 2005 (42 U.S.C.*
16 *16511), as amended by section 130(a) of this Act, is amend-*
17 *ed by adding after paragraph (7) the following:*

18 “(8) *CONDITIONAL COMMITMENT.*—*The term*
19 *‘conditional commitment’ means a final term sheet*
20 *negotiated between the Secretary and a project spon-*
21 *sor or sponsors, which term sheet shall be binding on*
22 *both parties and become a final loan guarantee agree-*
23 *ment if all conditions precedent established in the*
24 *term sheet, which shall include the acquisition of all*
25 *necessary permits and licenses, are satisfied.”.*

1 (b) *SPECIFIC APPROPRIATION OR CONTRIBUTION.*—
2 Section 1702 of the Energy Policy Act of 2005 (42 U.S.C.
3 16512) is amended by striking subsection (b) and inserting
4 the following:

5 “(b) *SPECIFIC APPROPRIATION OR CONTRIBUTION.*—

6 “(1) *IN GENERAL.*—No guarantee shall be made
7 unless—

8 “(A) an appropriation for the cost has been
9 made;

10 “(B) the Secretary has received from the
11 borrower a payment in full for the cost of the ob-
12 ligation and deposited the payment into the
13 Treasury; or

14 “(C) a combination of appropriations or
15 payments from the borrower has been made suffi-
16 cient to cover the cost of the obligation.

17 “(2) *LIMITATION.*—The source of payments re-
18 ceived from a borrower under paragraph (1)(B) shall
19 not be a loan or other debt obligation that is made
20 or guaranteed by the Federal Government.”.

21 (c) *FEES.*—Section 1702(h) of the Energy Policy Act
22 of 2005 (42 U.S.C. 16512(h)) is amended by striking para-
23 graph (2) and inserting the following:

24 “(2) *AVAILABILITY.*—Fees collected under this
25 subsection shall—

1 “(A) be deposited by the Secretary into a
2 special fund in the Treasury to be known as the
3 ‘Incentives For Innovative Technologies Fund’;
4 and

5 “(B) remain available to the Secretary for
6 expenditure, without further appropriation or
7 fiscal year limitation, for administrative ex-
8 penses incurred in carrying out this title.”.

9 (d) *WAGE RATE REQUIREMENTS*.—Section 1702 of the
10 *Energy Policy Act of 2005 (42 U.S.C. 16512)* is amended
11 by adding at the end the following new subsection:

12 “(k) *WAGE RATE REQUIREMENTS*.—No loan guar-
13 antee shall be made under this title unless the borrower has
14 provided to the Secretary reasonable assurances that all la-
15 borers and mechanics employed by contractors and sub-
16 contractors in the performance of construction work fi-
17 nanced in whole or in part by the guaranteed loan will
18 be paid wages at rates not less than those prevailing on
19 projects of a character similar to the contract work in the
20 civil subdivision of the State in which the contract work
21 is to be performed as determined by the Secretary of Labor
22 in accordance with subchapter IV of chapter 31 of part A
23 of subtitle II of title 40, United States Code. With respect
24 to the labor standards specified in this subsection, the Sec-
25 retary of Labor shall have the authority and functions set

1 *forth in Reorganization Plan Numbered 14 of 1950 (64*
2 *Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40,*
3 *United States Code.”.*

4 **SEC. 182. PURPOSE.**

5 *The purpose of sections 183 through 189 of this subtitle*
6 *is to promote the domestic development and deployment of*
7 *clean energy technologies required for the 21st century*
8 *through the establishment of a self-sustaining Clean Energy*
9 *Deployment Administration that will provide for an attrac-*
10 *tive investment environment through partnership with and*
11 *support of the private capital market in order to promote*
12 *access to affordable financing for accelerated and wide-*
13 *spread deployment of—*

14 *(1) clean energy technologies;*

15 *(2) advanced or enabling energy infrastructure*
16 *technologies;*

17 *(3) energy efficiency technologies in residential,*
18 *commercial, and industrial applications, including*
19 *end-use efficiency in buildings; and*

20 *(4) manufacturing technologies for any of the*
21 *technologies or applications described in this section.*

22 **SEC. 183. DEFINITIONS.**

23 *In this subtitle:*

1 (1) *ADMINISTRATION.*—*The term “Administration” means the Clean Energy Deployment Administration established by section 186.*

4 (2) *ADVISORY COUNCIL.*—*The term “Advisory Council” means the Energy Technology Advisory Council of the Administration.*

7 (3) *BREAKTHROUGH TECHNOLOGY.*—*The term “breakthrough technology” means a clean energy technology that—*

10 (A) *presents a significant opportunity to advance the goals developed under section 185, as assessed under the methodology established by the Advisory Council; but*

14 (B) *has generally not been considered a commercially ready technology as a result of high perceived technology risk or other similar factors.*

18 (4) *CLEAN ENERGY TECHNOLOGY.*—*The term “clean energy technology” means a technology related to the production, use, transmission, storage, control, or conservation of energy—*

22 (A) *that will contribute to a stabilization of atmospheric greenhouse gas concentrations thorough reduction, avoidance, or sequestration of energy-related emissions and—*

1 (i) reduce the need for additional en-
2 ergy supplies by using existing energy sup-
3 plies with greater efficiency or by transmit-
4 ting, distributing, or transporting energy
5 with greater effectiveness through the infra-
6 structure of the United States; or

7 (ii) diversify the sources of energy sup-
8 ply of the United States to strengthen en-
9 ergy security and to increase supplies with
10 a favorable balance of environmental effects
11 if the entire technology system is considered;
12 and

13 (B) for which, as determined by the Admin-
14 istrator, insufficient commercial lending is
15 available to allow for widespread deployment.

16 (5) *COST*.—The term “cost” has the meaning
17 given the term in section 502 of the Federal Credit
18 Reform Act of 1990 (2 U.S.C. 661a).

19 (6) *DIRECT LOAN*.—The term “direct loan” has
20 the meaning given the term in section 502 of the Fed-
21 eral Credit Reform Act of 1990 (2 U.S.C. 661a).

22 (7) *FUND*.—The term “Fund” means the Clean
23 Energy Investment Fund established by section
24 184(a).

1 (8) *LOAN GUARANTEE.*—*The term “loan guar-*
2 *antee” has the meaning given the term in section 502*
3 *of the Federal Credit Reform Act of 1990 (2 U.S.C.*
4 *661a).*

5 (9) *NATIONAL LABORATORY.*—*The term “Na-*
6 *tional Laboratory” has the meaning given the term in*
7 *section 2 of the Energy Policy Act of 2005 (42 U.S.C.*
8 *15801).*

9 (10) *SECRETARY.*—*The term “Secretary” means*
10 *the Secretary of Energy.*

11 (11) *STATE.*—*The term “State” means—*

12 (A) *a State;*

13 (B) *the District of Columbia;*

14 (C) *the Commonwealth of Puerto Rico; and*

15 (D) *any other territory or possession of the*

16 *United States.*

17 (12) *TECHNOLOGY RISK.*—*The term “technology*
18 *risk” means the risks during construction or oper-*
19 *ation associated with the design, development, and de-*
20 *ployment of clean energy technologies (including the*
21 *cost, schedule, performance, reliability and mainte-*
22 *nance, and accounting for the perceived risk), from*
23 *the perspective of commercial lenders, that may be in-*
24 *creased as a result of the absence of adequate histor-*

1 ical construction, operating, or performance data
2 from commercial applications of the technology.

3 **SEC. 184. CLEAN ENERGY INVESTMENT FUND.**

4 (a) *ESTABLISHMENT.*—There is established in the
5 Treasury of the United States a revolving fund, to be known
6 as the “Clean Energy Investment Fund”, consisting of—

7 (1) such amounts as are deposited in the Fund
8 under this subtitle; and

9 (2) such sums as may be appropriated to supple-
10 ment the Fund.

11 (b) *AUTHORIZATION OF APPROPRIATIONS.*—There are
12 authorized to be appropriated to the Fund such sums as
13 are necessary to carry out this subtitle.

14 (c) *EXPENDITURES FROM FUND.*—

15 (1) *IN GENERAL.*—Amounts in the Fund shall be
16 available to the Administrator of the Administration
17 for obligation without fiscal year limitation, to re-
18 main available until expended.

19 (2) *ADMINISTRATIVE EXPENSES.*—

20 (A) *FEEES.*—Fees collected for administra-
21 tive expenses shall be available without limita-
22 tion to cover applicable expenses.

23 (B) *FUND.*—To the extent that administra-
24 tive expenses are not reimbursed through fees, an
25 amount not to exceed 1.5 percent of the amounts

1 *in the Fund as of the beginning of each fiscal*
2 *year shall be available to pay the administrative*
3 *expenses for the fiscal year necessary to carry*
4 *out this subtitle.*

5 *(d) TRANSFERS OF AMOUNTS.—*

6 (1) *IN GENERAL.—The amounts required to be*
7 *transferred to the Fund under this section shall be*
8 *transferred at least monthly from the general fund of*
9 *the Treasury to the Fund on the basis of estimates*
10 *made by the Secretary of the Treasury.*

11 (2) *ADJUSTMENTS.—Proper adjustment shall be*
12 *made in amounts subsequently transferred to the ex-*
13 *tent prior estimates were in excess of or less than the*
14 *amounts required to be transferred.*

15 **SEC. 185. ENERGY TECHNOLOGY DEPLOYMENT GOALS.**

16 (a) *GOALS.—Not later than 1 year after the date of*
17 *enactment of this Act, the Secretary, after consultation with*
18 *the Advisory Council, shall develop and publish for review*
19 *and comment in the Federal Register near-, medium-, and*
20 *long-term goals (including numerical performance targets*
21 *at appropriate intervals to measure progress toward those*
22 *goals) for the deployment of clean energy technologies*
23 *through the credit support programs established by section*
24 *187 to promote—*

1 (1) *sufficient electric generating capacity using*
2 *clean energy technologies to meet the energy needs of*
3 *the United States;*

4 (2) *clean energy technologies in vehicles and fuels*
5 *that will substantially reduce the reliance of the*
6 *United States on foreign sources of energy and insu-*
7 *late consumers from the volatility of world energy*
8 *markets;*

9 (3) *a domestic commercialization and manufac-*
10 *turing capacity that will establish the United States*
11 *as a world leader in clean energy technologies across*
12 *multiple sectors;*

13 (4) *installation of sufficient infrastructure to*
14 *allow for the cost-effective deployment of clean energy*
15 *technologies appropriate to each region of the United*
16 *States;*

17 (5) *the transformation of the building stock of*
18 *the United States to zero net energy consumption;*

19 (6) *the recovery, use, and prevention of waste en-*
20 *ergy;*

21 (7) *domestic manufacturing of clean energy tech-*
22 *nologies on a scale that is sufficient to achieve price*
23 *parity with conventional energy sources;*

24 (8) *domestic production of commodities and ma-*
25 *terials (such as steel, chemicals, polymers, and ce-*

1 *ment) using clean energy technologies so that the*
2 *United States will become a world leader in environ-*
3 *mentally sustainable production of the commodities*
4 *and materials;*

5 *(9) a robust, efficient, and interactive electricity*
6 *transmission grid that will allow for the incorpora-*
7 *tion of clean energy technologies, distributed genera-*
8 *tion, and demand-response in each regional electric*
9 *grid;*

10 *(10) sufficient availability of financial products*
11 *to allow owners and users of residential, retail, com-*
12 *mercial, and industrial buildings to make energy effi-*
13 *ciency and distributed generation technology invest-*
14 *ments with reasonable payback periods; and*

15 *(11) such other goals as the Secretary, in con-*
16 *sultation with the Advisory Council, determines to be*
17 *consistent with the purpose stated in section 182.*

18 *(b) REVISIONS.—The Secretary shall revise the goals*
19 *established under subsection (a), from time to time as ap-*
20 *propriate, to account for advances in technology and*
21 *changes in energy policy.*

22 **SEC. 186. CLEAN ENERGY DEPLOYMENT ADMINISTRATION.**

23 *(a) ESTABLISHMENT.—*

24 *(1) IN GENERAL.—There is established in the De-*
25 *partment of Energy an administration to be known*

1 *as the Clean Energy Deployment Administration,*
2 *under the direction of the Administrator of the Ad-*
3 *ministration and the Board of Directors.*

4 (2) *STATUS.—*

5 (A) *IN GENERAL.—The Administration (in-*
6 *cluding officers, employees, and agents of the Ad-*
7 *ministration) shall not be responsible to, or sub-*
8 *ject to the authority, direction, or control of, any*
9 *other officer, employee, or agent of the Depart-*
10 *ment of Energy other than the Secretary, acting*
11 *through the Administrator of the Administra-*
12 *tion.*

13 (B) *EXEMPTION FROM REORGANIZATION.—*
14 *The Administration shall be exempt from the re-*
15 *organization authority provided under section*
16 *643 of the Department of Energy Reorganization*
17 *Act (42 U.S.C. 7253).*

18 (C) *INSPECTOR GENERAL.—Section 12 of*
19 *the Inspector General Act of 1978 (5 U.S.C.*
20 *App.) is amended—*

21 (i) *in paragraph (1), by inserting “the*
22 *Administrator of the Clean Energy Deploy-*
23 *ment Administration;” after “Export-Im-*
24 *port Bank;”; and*

1 (ii) in paragraph (2), by inserting
2 “the Clean Energy Deployment Administra-
3 tion,” after “Export-Import Bank,”.

4 (3) OFFICES.—

5 (A) PRINCIPAL OFFICE.—The Administra-
6 tion shall—

7 (i) maintain the principal office of the
8 Administration in the District of Columbia;
9 and

10 (ii) for purposes of venue in civil ac-
11 tions, be considered to be a resident of the
12 District of Columbia.

13 (B) OTHER OFFICES.—The Administration
14 may establish other offices in such other places
15 as the Administration considers necessary or ap-
16 propriate for the conduct of the business of the
17 Administration.

18 (b) ADMINISTRATOR.—

19 (1) IN GENERAL.—The Administrator of the Ad-
20 ministration shall be—

21 (A) appointed by the President, with the
22 advice and consent of the Senate, for a 5-year
23 term; and

24 (B) compensated at the annual rate of basic
25 pay prescribed for level II of the Executive

1 *Schedule under section 5313 of title 5, United*
2 *States Code.*

3 (2) *DUTIES.*—*The Administrator of the Admin-*
4 *istration shall—*

5 (A) *serve as the Chief Executive Officer of*
6 *the Administration and Chairman of the Board;*

7 (B) *ensure that—*

8 (i) *the Administration operates in a*
9 *safe and sound manner, including mainte-*
10 *nance of adequate capital and internal con-*
11 *trols (consistent with section 404 of the Sar-*
12 *banes-Oxley Act of 2002 (15 U.S.C. 7262));*

13 (ii) *the operations and activities of the*
14 *Administration foster liquid, efficient, com-*
15 *petitive, and resilient energy and energy ef-*
16 *iciency finance markets;*

17 (iii) *the Administration carries out the*
18 *purpose stated in section 182 only through*
19 *activities that are authorized under and*
20 *consistent with sections 182 through 189;*
21 *and*

22 (iv) *the activities of the Administra-*
23 *tion and the manner in which the Adminis-*
24 *tration is operated are consistent with the*
25 *public interest;*

1 (C) develop policies and procedures for the
2 Administration that will—

3 (i) promote a self-sustaining portfolio
4 of investments that will maximize the value
5 of investments to effectively promote clean
6 energy technologies;

7 (ii) promote transparency and open-
8 ness in Administration operations;

9 (iii) afford the Administration with
10 sufficient flexibility to meet the purpose
11 stated in section 182; and

12 (iv) provide for the efficient processing
13 of applications; and

14 (D) with the concurrence of the Board, set
15 expected loss reserves for the support provided by
16 the Administration consistent with section
17 187(c).

18 (c) BOARD OF DIRECTORS.—

19 (1) IN GENERAL.—The Board of Directors of the
20 Administration shall consist of—

21 (A) the Secretary or the designee of the Sec-
22 retary, who shall serve as an *ex-officio* voting
23 member of the Board of Directors;

1 (B) *the Administrator of the Administra-*
2 *tion, who shall serve as the Chairman of the*
3 *Board of Directors; and*

4 (C) *7 additional members who shall—*

5 (i) *be appointed by the President, with*
6 *the advice and consent of the Senate, for*
7 *staggered 5-year terms; and*

8 (ii) *have experience in banking, finan-*
9 *cial services, technology assessment, energy*
10 *regulation, or risk management, including*
11 *individuals with substantial experience in*
12 *the development of energy projects, the elec-*
13 *tricity generation sector, the transportation*
14 *sector, the manufacturing sector, and the*
15 *energy efficiency sector.*

16 (2) *DUTIES.—The Board of Directors shall—*

17 (A) *oversee the operations of the Adminis-*
18 *tration and ensure industry best practices are*
19 *followed in all financial transactions involving*
20 *the Administration;*

21 (B) *consult with the Administrator of the*
22 *Administration on the general policies and pro-*
23 *cedures of the Administration to ensure the in-*
24 *terests of the taxpayers are protected;*

1 (C) ensure the portfolio of investments are
2 consistent with purpose stated in section 182 and
3 with the long-term financial stability of the Ad-
4 ministration;

5 (D) ensure that the operations and activi-
6 ties of the Administration are consistent with the
7 development of a robust private sector that can
8 provide commercial loans or financing products;
9 and

10 (E) not serve on a full-time basis, except
11 that the Board of Directors shall meet at least
12 quarterly to review, as appropriate, applications
13 for credit support and set policies and proce-
14 dures as necessary.

15 No member of the Board shall take part in any re-
16 view or decision of any project as to which that mem-
17 ber or member's immediate family has a financial or
18 other interest.

19 (3) REMOVAL.—An appointed member of the
20 Board of Directors may be removed from office by the
21 President for good cause.

22 (4) VACANCIES.—An appointed seat on the
23 Board of Directors that becomes vacant shall be filled
24 by appointment by the President, but only for the un-
25 expired portion of the term of the vacating member.

1 (5) *COMPENSATION OF MEMBERS.*—An ap-
2 pointed member of the Board of Directors shall be
3 compensated at a rate equal to the daily equivalent
4 of the annual rate of basic pay prescribed for level III
5 of the Executive Schedule under section 5314 of title
6 5, United States Code, for each day (including travel
7 time) during which the member is engaged in the per-
8 formance of the duties of the Board of Directors.

9 (d) *ENERGY TECHNOLOGY ADVISORY COUNCIL.*—

10 (1) *IN GENERAL.*—The Administration shall
11 have an Energy Technology Advisory Council con-
12 sisting of—

13 (A) 5 members selected by the Secretary;

14 and

15 (B) 3 members selected by the Board of Di-
16 rectors of the Administration.

17 (2) *QUALIFICATIONS.*—The members of the Advi-
18 sory Council shall—

19 (A) have relevant scientific expertise; and

20 (B) in the case of the members selected by
21 the Secretary under paragraph (1)(A), include
22 representatives of—

23 (i) the academic community;

24 (ii) the private research community;

25 (iii) National Laboratories;

1 (iv) the technology or project develop-
2 ment community; and

3 (v) the commercial energy financing
4 and operations sector.

5 (3) *DUTIES.*—*The Advisory Council shall—*

6 (A) *develop and publish for comment in the*
7 *Federal Register a methodology for assessment of*
8 *clean energy technologies that will allow the Ad-*
9 *ministration to evaluate projects based on the*
10 *progress likely to be achieved per-dollar invested*
11 *in maximizing the attributes of the definition of*
12 *clean energy technology, taking into account the*
13 *extent to which support for a clean energy tech-*
14 *nology is likely to accrue subsequent benefits that*
15 *are attributable to a commercial scale deploy-*
16 *ment taking place earlier than that which other-*
17 *wise would have occurred without the support;*
18 *and*

19 (B) *advise on the technological approaches*
20 *that should be supported by the Administration*
21 *to meet the technology deployment goals estab-*
22 *lished by the Secretary pursuant to section 185.*

23 (4) *TERM.*—

24 (A) *IN GENERAL.*—*Members of the Advisory*
25 *Council shall have 5-year staggered terms, as de-*

1 *terminated by the Secretary and the Administrator*
2 *of the Administration.*

3 *(B) REAPPOINTMENT.—A member of the*
4 *Advisory Council may be reappointed.*

5 *(5) COMPENSATION.—A member of the Advisory*
6 *Council, who is not otherwise compensated as a Fed-*
7 *eral employee, shall be compensated at a rate equal*
8 *to the daily equivalent of the annual rate of basic pay*
9 *prescribed for level IV of the Executive Schedule*
10 *under section 5315 of title 5, United States Code, for*
11 *each day (including travel time) during which the*
12 *member is engaged in the performance of the duties*
13 *of the Advisory Council.*

14 *(e) STAFF.—*

15 *(1) IN GENERAL.—The Administrator of the Ad-*
16 *ministration, in consultation with the Board of Di-*
17 *rectors, may—*

18 *(A) appoint and terminate such officers, at-*
19 *torneys, employees, and agents as are necessary*
20 *to carry out this subtitle; and*

21 *(B) vest those personnel with such powers*
22 *and duties as the Administrator of the Adminis-*
23 *tration may determine.*

24 *(2) DIRECT HIRE AUTHORITY.—*

1 (A) *IN GENERAL.*—Notwithstanding section
2 3304 and sections 3309 through 3318 of title 5,
3 United States Code, the Administrator of the Ad-
4 ministration may, on a determination that there
5 is a severe shortage of candidates or a critical
6 hiring need for particular positions, recruit and
7 directly appoint highly qualified critical per-
8 sonnel with specialized knowledge important to
9 the function of the Administration into the com-
10 petitive service.

11 (B) *EXCEPTION.*—The authority granted
12 under subparagraph (A) shall not apply to posi-
13 tions in the excepted service or the Senior Execu-
14 tive Service.

15 (C) *REQUIREMENTS.*—In exercising the au-
16 thority granted under subparagraph (A), the Ad-
17 ministrator of the Administration shall ensure
18 that any action taken by the Administrator of
19 the Administration—

20 (i) is consistent with the merit prin-
21 ciples of section 2301 of title 5, United
22 States Code; and

23 (ii) complies with the public notice re-
24 quirements of section 3327 of title 5, United
25 States Code.

1 (D) *TERMINATION OF EFFECTIVENESS.*—

2 *The authority provided by this paragraph termi-*
3 *nates effective on the date that is 2 years after*
4 *the date of enactment of this Act.*

5 (3) *CRITICAL PAY AUTHORITY.*—

6 (A) *IN GENERAL.*—*Notwithstanding section*
7 *5377 of title 5, United States Code, and without*
8 *regard to the provisions of that title governing*
9 *appointments in the competitive service or the*
10 *Senior Executive Service and chapters 51 and 53*
11 *of that title (relating to classification and pay*
12 *rates), the Administrator of the Administration*
13 *may establish, fix the compensation of, and ap-*
14 *point individuals to critical positions needed to*
15 *carry out the functions of the Administration, if*
16 *the Administrator of the Administration certifies*
17 *that—*

18 (i) *the positions require expertise of an*
19 *extremely high level in a financial, tech-*
20 *nical, or scientific field;*

21 (ii) *the Administration would not suc-*
22 *cessfully accomplish an important mission*
23 *without such an individual; and*

1 (iii) *exercise of the authority is nec-*
2 *essary to recruit an individual who is ex-*
3 *ceptionally well qualified for the position.*

4 (B) *LIMITATIONS.—The authority granted*
5 *under subparagraph (A) shall be subject to the*
6 *following conditions:*

7 (i) *The number of critical positions au-*
8 *thorized by subparagraph (A) may not ex-*
9 *ceed 20 at any 1 time in the Administra-*
10 *tion.*

11 (ii) *The term of an appointment under*
12 *subparagraph (A) may not exceed 4 years.*

13 (iii) *An individual appointed under*
14 *subparagraph (A) may not have been an*
15 *Administration employee at any time dur-*
16 *ing the 2-year period preceding the date of*
17 *appointment.*

18 (iv) *Total annual compensation for*
19 *any individual appointed under subpara-*
20 *graph (A) may not exceed the highest total*
21 *annual compensation payable at the rate*
22 *determined under section 104 of title 3,*
23 *United States Code.*

24 (v) *An individual appointed under*
25 *subparagraph (A) may not be considered to*

1 *be an employee for purposes of subchapter*
2 *II of chapter 75 of title 5, United States*
3 *Code.*

4 (C) *NOTIFICATION.*—*Each year, the Admin-*
5 *istrator of the Administration shall submit to*
6 *Congress a notification that lists each individual*
7 *appointed under this paragraph.*

8 **SEC. 187. DIRECT SUPPORT.**

9 (a) *IN GENERAL.*—*The Administration may issue di-*
10 *rect loans, letters of credit, and loan guarantees to deploy*
11 *clean energy technologies if the Administrator of the Ad-*
12 *ministration has determined that deployment of the tech-*
13 *nologies would benefit or be accelerated by the support.*

14 (b) *ELIGIBILITY CRITERIA.*—*In carrying out this sec-*
15 *tion and awarding credit support to projects, the Adminis-*
16 *trator of the Administration shall account for—*

17 (1) *how the technology rates based on an evalua-*
18 *tion methodology established by the Advisory Council;*

19 (2) *how the project fits with the goals established*
20 *under section 185; and*

21 (3) *the potential for the applicant to successfully*
22 *complete the project.*

23 (c) *RISK.*—

24 (1) *EXPECTED LOAN LOSS RESERVE.*—*The Ad-*
25 *ministrator of the Administration shall establish an*

1 *expected loan loss reserve to account for estimated*
2 *losses attributable to activities under this section that*
3 *is consistent with the purposes of—*

4 *(A) developing breakthrough technologies to*
5 *the point at which technology risk is largely*
6 *mitigated;*

7 *(B) achieving widespread deployment and*
8 *advancing the commercial viability of clean en-*
9 *ergy technologies; and*

10 *(C) advancing the goals established under*
11 *section 185.*

12 *(2) INITIAL EXPECTED LOAN LOSS RESERVE.—*

13 *Until such time as the Administrator of the Adminis-*
14 *tration determines sufficient data exist to establish an*
15 *expected loan loss reserve that is appropriate, the Ad-*
16 *ministrator of the Administration shall consider es-*
17 *tablishing an initial rate of 10 percent for the port-*
18 *folio of investments under this subtitle.*

19 *(3) PORTFOLIO INVESTMENT APPROACH.—The*
20 *Administration shall—*

21 *(A) use a portfolio investment approach to*
22 *mitigate risk and diversify investments across*
23 *technologies and ensure that no particular tech-*
24 *nology is provided more than 30 percent of the*
25 *financial support available;*

1 (B) to the maximum extent practicable and
2 consistent with long-term self-sufficiency, weigh
3 the portfolio of investments in projects to ad-
4 vance the goals established under section 185;

5 (C) consistent with the expected loan loss re-
6 serve established under this subsection, the pur-
7 pose stated in section 182, and section
8 186(b)(2)(B), provide the maximum practicable
9 percentage of support to promote breakthrough
10 technologies; and

11 (D) give the highest priority to investments
12 that promote technologies that will achieve the
13 maximum greenhouse gas emission reductions
14 within a reasonable period of time per dollar in-
15 vested and the earliest reductions in greenhouse
16 gas emissions.

17 (4) LOSS RATE REVIEW.—

18 (A) IN GENERAL.—The Board of Directors
19 shall review on an annual basis the loss rates of
20 the portfolio to determine the adequacy of the re-
21 serves.

22 (B) REPORT.—Not later than 90 days after
23 the date of the initiation of the review, the Ad-
24 ministrator of the Administration shall submit
25 to the Committee on Energy and Natural Re-

1 *sources of the Senate and the Committee on En-*
2 *ergy and Commerce of the House of Representa-*
3 *tives a report describing the results of the review*
4 *and any recommended policy changes.*

5 (5) *FEDERAL COST SHARE.*—*A loan guarantee*
6 *by the Administration shall not exceed an amount*
7 *equal to 80 percent of the project cost of the facility*
8 *that is the subject of the guarantee, as estimated at*
9 *the time at which the guarantee is issued.*

10 (d) *APPLICATION REVIEW.*—

11 (1) *IN GENERAL.*—*To the maximum extent prac-*
12 *ticable and consistent with sound business practices,*
13 *the Administration shall seek to consolidate reviews of*
14 *applications for credit support under this subtitle*
15 *such that final decisions on applications can gen-*
16 *erally be issued not later than 180 days after the date*
17 *of submission of a completed application.*

18 (2) *ENVIRONMENTAL REVIEW.*—*In carrying out*
19 *this subtitle, the Administration shall, to the max-*
20 *imum extent practicable—*

21 (A) *avoid duplicating efforts that have al-*
22 *ready been undertaken by other agencies (includ-*
23 *ing State agencies acting under Federal pro-*
24 *grams); and*

1 (B) *with the advice of the Council on Envi-*
2 *ronmental Quality and any other applicable*
3 *agencies, use the administrative records of simi-*
4 *lar reviews conducted throughout the executive*
5 *branch to develop the most expeditious review*
6 *process practicable.*

7 (e) *WAGE RATE REQUIREMENTS.—*

8 (1) *IN GENERAL.—No credit support shall be*
9 *issued under this section unless the borrower has pro-*
10 *vided to the Administrator of the Administration rea-*
11 *sonable assurances that all laborers and mechanics*
12 *employed by contractors and subcontractors in the*
13 *performance of construction work financed in whole*
14 *or in part by the Administration will be paid wages*
15 *at rates not less than those prevailing on projects of*
16 *a character similar to the contract work in the civil*
17 *subdivision of the State in which the contract work is*
18 *to be performed as determined by the Secretary of*
19 *Labor in accordance with subchapter IV of chapter 31*
20 *of part A of subtitle II of title 40, United States Code.*

21 (2) *LABOR STANDARDS.—With respect to the*
22 *labor standards specified in this subsection, the Sec-*
23 *retary of Labor shall have the authority and functions*
24 *set forth in Reorganization Plan Numbered 14 of*

1 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145
2 of title 40, United States Code.

3 **SEC. 188. FEDERAL CREDIT AUTHORITY.**

4 (a) *PAYMENTS OF LIABILITIES.*—

5 (1) *IN GENERAL.*—Any payment made to dis-
6 charge liabilities arising from agreements under this
7 subtitle shall be paid out of the Fund or the associ-
8 ated credit account, as appropriate.

9 (2) *SECURITY.*—The full faith and credit of the
10 United States is pledged to the payment of all obliga-
11 tions entered into by the Administration pursuant to
12 this subtitle.

13 (b) *FEES.*—

14 (1) *IN GENERAL.*—Consistent with achieving the
15 purpose stated in section 182, the Administrator of
16 the Administration shall charge fees or collect com-
17 pensation generally in accordance with commercial
18 rates.

19 (2) *AVAILABILITY OF FEES.*—All fees collected by
20 the Administration may be retained by the Adminis-
21 tration and placed in the Fund and may remain
22 available to the Administration, without further ap-
23 propriation or fiscal year limitation, for use in car-
24 rying out the purpose stated in section 182.

1 (3) *BREAKTHROUGH TECHNOLOGIES.*—*The Ad-*
2 *ministration shall charge the minimum amount in*
3 *fees or compensation practicable for breakthrough*
4 *technologies, consistent with the long-term viability of*
5 *the Administration, unless the Administration first*
6 *determines that a higher charge will not impede the*
7 *development of the technology.*

8 (4) *ALTERNATIVE FEE ARRANGEMENTS.*—*The*
9 *Administration may use such alternative arrange-*
10 *ments (such as profit participation, contingent fees,*
11 *and other valuable contingent interests) as the Ad-*
12 *ministration considers appropriate to compensate the*
13 *Administration for the expenses of the Administration*
14 *and the risk inherent in the support of the Adminis-*
15 *tration.*

16 (c) *COST TRANSFER AUTHORITY.*—*Amounts collected*
17 *by the Administration for the cost of a loan or loan guar-*
18 *antee shall be transferred by the Administration to the re-*
19 *spective credit accounts.*

20 **SEC. 189. GENERAL PROVISIONS.**

21 (a) *IMMUNITY FROM IMPAIRMENT, LIMITATION, OR*
22 *RESTRICTION.*—

23 (1) *IN GENERAL.*—*All rights and remedies of the*
24 *Administration (including any rights and remedies of*
25 *the Administration on, under, or with respect to any*

1 mortgage or any obligation secured by a mortgage)
2 shall be immune from impairment, limitation, or re-
3 striction by or under—

4 (A) any law (other than a law enacted by
5 Congress expressly in limitation of this para-
6 graph) that becomes effective after the acquisition
7 by the Administration of the subject or property
8 on, under, or with respect to which the right or
9 remedy arises or exists or would so arise or exist
10 in the absence of the law; or

11 (B) any administrative or other action that
12 becomes effective after the acquisition.

13 (2) *STATE LAW.*—The Administrator of the Ad-
14 ministration may conduct the business of the Admin-
15 istration without regard to any qualification or law
16 of any State relating to incorporation.

17 (b) *USE OF OTHER AGENCIES.*—With the consent of
18 a department, establishment, or instrumentality (including
19 any field office), the Administration may—

20 (1) use and act through any department, estab-
21 lishment, or instrumentality; and

22 (2) use, and pay compensation for, information,
23 services, facilities, and personnel of the department,
24 establishment, or instrumentality.

1 (c) *PROCUREMENT.*—*The Administrator of the Admin-*
2 *istration shall be the senior procurement officer for the Ad-*
3 *ministration for purposes of section 16(a) of the Office of*
4 *Federal Procurement Policy Act (41 U.S.C. 414(a)).*

5 (d) *FINANCIAL MATTERS.*—

6 (1) *INVESTMENTS.*—*Funds of the Administration*
7 *may be invested in such investments as the Board of*
8 *Directors may prescribe.*

9 (2) *FISCAL AGENTS.*—*Any Federal Reserve bank*
10 *or any bank as to which at the time of the designa-*
11 *tion of the bank by the Administrator of the Adminis-*
12 *tration there is outstanding a designation by the Sec-*
13 *retary of the Treasury as a general or other deposi-*
14 *tory of public money, may be designated by the Ad-*
15 *ministrator of the Administration as a depositary or*
16 *custodian or as a fiscal or other agent of the Adminis-*
17 *tration.*

18 (e) *JURISDICTION.*—*Notwithstanding section 1349 of*
19 *title 28, United States Code, or any other provision of*
20 *law—*

21 (1) *the Administration shall be considered a cor-*
22 *poration covered by sections 1345 and 1442 of title*
23 *28, United States Code;*

24 (2) *all civil actions to which the Administration*
25 *is a party shall be considered to arise under the laws*

1 of the United States, and the district courts of the
2 United States shall have original jurisdiction of all
3 such actions, without regard to amount or value; and

4 (3) any civil or other action, case or controversy
5 in a court of a State, or in any court other than a
6 district court of the United States, to which the Ad-
7 ministration is a party may at any time before trial
8 be removed by the Administration, without the giving
9 of any bond or security and by following any proce-
10 dure for removal of causes in effect at the time of the
11 removal—

12 (A) to the district court of the United States
13 for the district and division embracing the place
14 in which the same is pending; or

15 (B) if there is no such district court, to the
16 district court of the United States for the district
17 in which the principal office of the Administra-
18 tion is located.

19 (f) *PERIODIC REPORTS.*—Not later than 1 year after
20 commencement of operation of the Administration and at
21 least biannually thereafter, the Administrator of the Ad-
22 ministration shall submit to the Committee on Energy and
23 Natural Resources of the Senate and the Committee on En-
24 ergy and Commerce of the House of Representatives a report
25 that includes a description of—

1 (1) *the technologies supported by activities of the*
2 *Administration and how the activities advance the*
3 *purpose stated in section 182; and*

4 (2) *the performance of the Administration on*
5 *meeting the goals established under section 185.*

6 (g) *AUDITS BY THE COMPTROLLER GENERAL.—*

7 (1) *IN GENERAL.—The programs, activities, re-*
8 *ceipts, expenditures, and financial transactions of the*
9 *Administration shall be subject to audit by the Comp-*
10 *troller General of the United States under such rules*
11 *and regulations as may be prescribed by the Comp-*
12 *troller General.*

13 (2) *ACCESS.—The representatives of the Govern-*
14 *ment Accountability Office shall—*

15 (A) *have access to the personnel and to all*
16 *books, accounts, documents, records (including*
17 *electronic records), reports, files, and all other*
18 *papers, automated data, things, or property be-*
19 *longing to, under the control of, or in use by the*
20 *Administration, or any agent, representative, at-*
21 *torney, advisor, or consultant retained by the*
22 *Administration, and necessary to facilitate the*
23 *audit;*

1 (B) be afforded full facilities for verifying
2 transactions with the balances or securities held
3 by depositories, fiscal agents, and custodians;

4 (C) be authorized to obtain and duplicate
5 any such books, accounts, documents, records,
6 working papers, automated data and files, or
7 other information relevant to the audit without
8 cost to the Comptroller General; and

9 (D) have the right of access of the Comptroller General to such information pursuant to
10 section 716(c) of title 31, United States Code.

11 (3) ASSISTANCE AND COST.—

12 (A) IN GENERAL.—For the purpose of conducting an audit under this subsection, the
13 Comptroller General may, in the discretion of
14 the Comptroller General, employ by contract,
15 without regard to section 3709 of the Revised
16 Statutes (41 U.S.C. 5), professional services of
17 firms and organizations of certified public accountants for temporary periods or for special
18 purposes.
19

20 (B) REIMBURSEMENT.—

21 (i) IN GENERAL.—On the request of the
22 Comptroller General, the Administration
23 shall reimburse the Government Account-
24
25

1 *ability Office for the full cost of any audit*
2 *conducted by the Comptroller General under*
3 *this subsection.*

4 *(ii) CREDITING.—Such reimbursements*
5 *shall—*

6 *(I) be credited to the appropria-*
7 *tion account entitled “Salaries and*
8 *Expenses, Government Accountability*
9 *Office” at the time at which the pay-*
10 *ment is received; and*

11 *(II) remain available until ex-*
12 *pended.*

13 *(h) ANNUAL INDEPENDENT AUDITS.—*

14 *(1) IN GENERAL.—The Administrator of the Ad-*
15 *ministration shall—*

16 *(A) have an annual independent audit*
17 *made of the financial statements of the Adminis-*
18 *tration by an independent public accountant in*
19 *accordance with generally accepted auditing*
20 *standards; and*

21 *(B) submit to the Secretary the results of*
22 *the audit.*

23 *(2) CONTENT.—In conducting an audit under*
24 *this subsection, the independent public accountant*

1 shall determine and report on whether the financial
2 statements of the Administration—

3 (A) are presented fairly in accordance with
4 generally accepted accounting principles; and

5 (B) comply with any disclosure require-
6 ments imposed under this subtitle.

7 (i) *FINANCIAL REPORTS.*—

8 (1) *IN GENERAL.*—The Administrator of the Ad-
9 ministration shall submit to the Secretary annual
10 and quarterly reports of the financial condition and
11 operations of the Administration, which shall be in
12 such form, contain such information, and be sub-
13 mitted on such dates as the Secretary shall require.

14 (2) *CONTENTS OF ANNUAL REPORTS.*—Each an-
15 nual report shall include—

16 (A) financial statements prepared in ac-
17 cordance with generally accepted accounting
18 principles;

19 (B) any supplemental information or alter-
20 native presentation that the Secretary may re-
21 quire; and

22 (C) an assessment (as of the end of the most
23 recent fiscal year of the Administration), signed
24 by the chief executive officer and chief accounting
25 or financial officer of the Administration, of—

1 (i) the effectiveness of the internal con-
2 trol structure and procedures of the Admin-
3 istration; and

4 (ii) the compliance of the Administra-
5 tion with applicable safety and soundness
6 laws.

7 (3) *SPECIAL REPORTS.*—The Secretary may re-
8 quire the Administrator of the Administration to sub-
9 mit other reports on the condition (including finan-
10 cial condition), management, activities, or operations
11 of the Administration, as the Secretary considers ap-
12 propriate.

13 (4) *ACCURACY.*—Each report of financial condi-
14 tion shall contain a declaration by the Administrator
15 of the Administration or any other officer designated
16 by the Board of Directors of the Administration to
17 make the declaration, that the report is true and cor-
18 rect to the best of the knowledge and belief of the offi-
19 cer.

20 (5) *AVAILABILITY OF REPORTS.*—Reports re-
21 quired under this section shall be published and made
22 publicly available as soon as is practicable after re-
23 ceipt by the Secretary.

24 (j) *SCOPE AND TERMINATION OF AUTHORITY.*—

1 (1) *NEW OBLIGATIONS.*—*The Administrator of*
 2 *the Administration shall not initiate any new obliga-*
 3 *tions under this subtitle on or after January 1, 2029.*

4 (2) *REVERSION TO SECRETARY.*—*The authorities*
 5 *and obligations of the Administration shall revert to*
 6 *the Secretary on January 1, 2029.*

7 ***Subtitle J—Miscellaneous***

8 ***SEC. 191. STUDY OF OCEAN RENEWABLE ENERGY AND*** 9 ***TRANSMISSION PLANNING AND SITING.***

10 (a) *DEFINITIONS.*—*In this section:*

11 (1) *MARINE SPATIAL PLAN.*—*The term “marine*
 12 *spatial plan” means the analysis and allocation of*
 13 *ocean space for various uses to achieve ecological, eco-*
 14 *nomic, and social objectives, based on the principle of*
 15 *ecosystem-based management.*

16 (2) *MARINE SPATIAL PLANNING.*—*The term “ma-*
 17 *rine spatial planning” means the process of devel-*
 18 *oping a marine spatial plan.*

19 (3) *ECOSYSTEM-BASED MANAGEMENT.*—*The term*
 20 *“ecosystem-based management” means a management*
 21 *approach that ensures the future ecological and eco-*
 22 *nomic sustainability of natural resources by—*

23 (A) *accounting for all ecosystem inter-*
 24 *actions and direct, indirect, and cumulative im-*
 25 *pacts of human activities on the ecosystem;*

1 (B) *emphasizing protection of ecosystem*
2 *structure, functions, patterns, and processes; and*

3 (C) *maintaining ecosystems in a healthy*
4 *and resilient condition.*

5 (4) *OFFSHORE RENEWABLE ENERGY.*—*The term*
6 *“offshore renewable energy” means energy generated*
7 *from offshore wind or offshore hydrokinetic (wave,*
8 *tidal, ocean current, and tidal-current) energy tech-*
9 *nologies.*

10 (5) *OFFSHORE RENEWABLE ENERGY FACILITY.*—
11 *The term “offshore renewable energy facility” means*
12 *a facility that generates offshore renewable energy or*
13 *any offshore transmission line associated with such*
14 *facility.*

15 (b) *STUDY.*—

16 (1) *IN GENERAL.*—*As soon as practicable after*
17 *the date of enactment of this section, the Federal En-*
18 *ergy Regulatory Commission, the Secretary of the In-*
19 *terior, and the National Oceanic and Atmospheric*
20 *Administration, in consultation with the Council on*
21 *Environmental Quality and, as appropriate, coastal*
22 *States, regional organizations of coastal States, and*
23 *relevant nongovernmental organizations, shall jointly*
24 *conduct a study of the potential for marine spatial*
25 *planning to facilitate the development of offshore re-*

1 *newable energy facilities in a manner that protects*
2 *and maintains coastal and marine ecosystem health.*

3 (2) *REQUIREMENTS.*—*The study under para-*
4 *graph (1) shall include—*

5 (A) *identification of the steps involved in*
6 *regional marine spatial planning for the siting*
7 *of offshore renewable energy facilities;*

8 (B) *a recommended approach for the devel-*
9 *opment of regional marine spatial plans for the*
10 *siting of offshore renewable energy facilities that*
11 *provides for—*

12 (i) *the participation of relevant Fed-*
13 *eral agencies and State governments;*

14 (ii) *coordination, to the maximum ex-*
15 *tent practicable, with any marine spatial*
16 *planning undertaken by States;*

17 (iii) *public input; and*

18 (iv) *the periodic revision of such plans*
19 *as necessary to account for significant new*
20 *information and ensure achievement of plan*
21 *objectives;*

22 (C) *identification of required elements of*
23 *such regional marine spatial plans, including*
24 *rules that Federal agencies shall apply to appli-*
25 *cations for any authorizations required under*

1 *existing Federal law to construct or operate off-*
2 *shore renewable energy facilities within areas*
3 *covered by such plans;*

4 *(D) an assessment of the adequacy of exist-*
5 *ing data, including baseline environmental data,*
6 *to support such marine spatial planning and*
7 *identification of gaps in such data and the stud-*
8 *ies needed to fill such gaps;*

9 *(E) an assessment of the resources required*
10 *to carry out such marine spatial planning;*

11 *(F) recommended mechanisms for the for-*
12 *mal adoption and implementation of regional*
13 *marine spatial plans for the development of off-*
14 *shore renewable energy facilities by relevant Fed-*
15 *eral agencies;*

16 *(G) identification of any additional author-*
17 *ity relevant Federal agencies would need to*
18 *adopt and implement regional marine spatial*
19 *plans for the development of offshore renewable*
20 *energy facilities; and*

21 *(H) such other recommendations as appro-*
22 *priate.*

23 *(3) REPORT.—Not later than 6 months after the*
24 *date of enactment of this section, the Federal Energy*
25 *Regulatory Commission, the Secretary of the Interior,*

1 *and the National Oceanic and Atmospheric Adminis-*
2 *tration shall jointly publish the findings and rec-*
3 *ommendations of the study conducted pursuant to this*
4 *subsection and shall accept public comment for at*
5 *least 30 days after such publication. Following con-*
6 *sideration of any public comments, and not later*
7 *than 8 months after the date of enactment of this sec-*
8 *tion, the Federal Energy Regulatory Commission, the*
9 *Secretary of the Interior, and the National Oceanic*
10 *and Atmospheric Administration shall jointly submit*
11 *to Congress and the Council on Environmental Qual-*
12 *ity the findings and recommendations of the study*
13 *conducted pursuant to this subsection.*

14 *(c) ASSESSMENT OF REPORT.—*

15 *(1) IN GENERAL.—Not later than 4 months after*
16 *the date of submission of the report required under*
17 *subsection (b)(3), the Council on Environmental*
18 *Quality shall assess the recommendations of such re-*
19 *port, issue a written determination as to whether the*
20 *recommended approach to marine spatial planning*
21 *should be implemented, and transmit such written de-*
22 *termination to the relevant Federal agencies and Con-*
23 *gress.*

24 *(2) COORDINATION FOR RECOMMENDED AP-*
25 *PROACH.—If the Council on Environmental Quality*

1 *determines that the recommended approach to marine*
2 *spatial planning should be implemented, the relevant*
3 *Federal agencies shall implement such approach and*
4 *complete the development of marine spatial plans*
5 *pursuant to that approach no later than 18 months*
6 *after the written determination required by para-*
7 *graph (1), and the Council on Environmental Quality*
8 *shall coordinate such implementation. At the time of*
9 *the written determination required by paragraph (1),*
10 *the Council on Environmental Quality shall notify*
11 *Congress if the relevant Federal agencies lack author-*
12 *ity to carry out any aspect of the recommended ap-*
13 *proach.*

14 (3) *ALTERNATIVE APPROACH.—If the Council on*
15 *Environmental Quality determines that the rec-*
16 *ommended approach to marine spatial planning*
17 *should not be implemented, the Council on Environ-*
18 *mental Quality shall formulate an alternative ap-*
19 *proach and submit such alternative approach to the*
20 *relevant Federal agencies and Congress at the time of*
21 *the written determination required by paragraph (1).*

22 (d) *RELATIONSHIP TO EXISTING LAW.—Nothing in*
23 *this section shall affect or be construed to affect any law,*
24 *regulation, or memoranda of understanding governing the*
25 *development of offshore renewable energy facilities in effect*

1 *prior to the implementation of the recommended or alter-*
2 *native approach pursuant to subsection (c).*

3 *(e) AUTHORIZATION.—There are authorized to be ap-*
4 *propriated such sums as may be necessary to carry out this*
5 *section.*

6 **SEC. 192. CLEAN TECHNOLOGY BUSINESS COMPETITION**
7 **GRANT PROGRAM.**

8 *(a) IN GENERAL.—The Secretary of Energy is author-*
9 *ized to provide grants to organizations to conduct business*
10 *competitions that provide incentives, training, and*
11 *mentorship to entrepreneurs and early stage start-up com-*
12 *panies throughout the United States to meet high priority*
13 *economic, environmental, and energy security goals in*
14 *areas to include energy efficiency, renewable energy, air*
15 *quality, water quality and conservation, transportation,*
16 *smart grid, green building, and waste management. Such*
17 *competitions shall have the purpose of accelerating the de-*
18 *velopment and deployment of clean technology businesses*
19 *and green jobs; stimulating green economic development;*
20 *providing business training and mentoring to early stage*
21 *clean technology companies; and strengthening the competi-*
22 *tiveness of United States clean technology industry in world*
23 *trade markets. Priority shall be given to business competi-*
24 *tions that are private sector led, encourage regional and*
25 *interregional cooperation, and can demonstrate market-*

1 *driven practices and show the creation of cost-effective green*
2 *jobs through an annual publication of competition activities*
3 *and directory of companies.*

4 (b) *ELIGIBILITY.*—*An organization eligible for a grant*
5 *under subsection (a) is—*

6 (1) *any organization described in section*
7 *501(c)(3) of the Internal Revenue Code of 1986 and*
8 *exempt from tax under section 501(a) of such Code;*
9 *and*

10 (2) *any sponsored entity of an organization de-*
11 *scribed in paragraph (1) that is operated as a non-*
12 *profit entity.*

13 (c) *PRIORITY.*—*In making grants under this section,*
14 *the Secretary shall give priority to those organizations that*
15 *can demonstrate broad funding support from private and*
16 *other non-Federal funding sources to leverage Federal in-*
17 *vestment.*

18 (d) *AUTHORIZATION OF APPROPRIATIONS.*—*For the*
19 *purpose of carrying out this section, there are authorized*
20 *to be appropriated \$20,000,000.*

21 **SEC. 193. NATIONAL BIOENERGY PARTNERSHIP.**

22 (a) *IN GENERAL.*—*The Secretary of Energy shall es-*
23 *tablish a National Bioenergy Partnership to provide coordi-*
24 *nation among programs of State governments, the Federal*
25 *Government, and the private sector that support the institu-*

1 *tional and physical infrastructure necessary to promote the*
2 *deployment of sustainable biomass fuels and bioenergy tech-*
3 *nologies for the United States.*

4 **(b) PROGRAM.**—*The National Bioenergy Partnership*
5 *shall consist of five regions, to be administered by the*
6 *CONEG Policy Research Center, the Council of Great Lakes*
7 *Governors, the Southern States Energy Board, the Western*
8 *Governors Association, and the Pacific Regional Biomass*
9 *Energy Partnership led by the Washington State Univer-*
10 *sity Energy Program.*

11 **(c) AUTHORIZATION OF APPROPRIATIONS.**—*There are*
12 *authorized to be appropriated for each of fiscal years 2010*
13 *through 2014 to carry out this section—*

14 **(1)** *\$5,000,000, to be allocated among the 5 re-*
15 *gions described in subsection (b) on the basis of the*
16 *number of States in each region, for distribution*
17 *among the member States of that region based on pro-*
18 *cedures developed by the member States of the region;*
19 *and*

20 **(2)** *\$2,500,000, to be allocated equally among the*
21 *5 regions described in subsection (b) for region-wide*
22 *activities, including technical assistance and regional*
23 *studies and coordination.*

24 **SEC. 194. OFFICE OF CONSUMER ADVOCACY.**

25 **(a) OFFICE.**—

1 (1) *ESTABLISHMENT.*—*There is an Office of*
2 *Consumer Advocacy established within the Commis-*
3 *sion to serve as an advocate for the public interest.*

4 (2) *DIRECTOR.*—*The Office shall be headed by a*
5 *Director to be appointed by the President, who is ad-*
6 *mitted to the Federal Bar, with experience in public*
7 *utility proceedings, and by and with the advice and*
8 *consent of the Senate.*

9 (3) *DUTIES.*—*The Office may—*

10 (A) *represent, and appeal on behalf of, en-*
11 *ergy customers on matters concerning rates or*
12 *service of public utilities and natural gas compa-*
13 *nies under the jurisdiction of the Commission—*

14 (i) *at hearings of the Commission;*

15 (ii) *in judicial proceedings in the*
16 *courts of the United States; and*

17 (iii) *at hearings or proceedings of other*
18 *Federal regulatory agencies and commis-*
19 *sions;*

20 (B) *monitor and review energy customer*
21 *complaints and grievances on matters concerning*
22 *rates or service of public utilities and natural*
23 *gas companies under the jurisdiction of the Com-*
24 *mission;*

1 (C) investigate independently, or within the
2 context of formal proceedings, the services pro-
3 vided by, the rates charged by, and the valuation
4 of the properties of, public utilities and natural
5 gas companies under the jurisdiction of the Com-
6 mission;

7 (D) develop means, such as public dissemi-
8 nation of information, consultative services, and
9 technical assistance, to ensure, to the maximum
10 extent practicable, that the interests of energy
11 consumers are adequately represented in the
12 course of any hearing or proceeding described in
13 subparagraph (A);

14 (E) collect data concerning rates or service
15 of public utilities and natural gas companies
16 under the jurisdiction of the Commission; and

17 (F) prepare and issue reports and rec-
18 ommendations.

19 (4) COMPENSATION AND POWERS.—The Director
20 may—

21 (A) employ and fix the compensation of
22 such staff personnel as is deemed necessary; and

23 (B) procure temporary and intermittent
24 services as needed.

1 (5) *ACCESS TO INFORMATION.*—*Each depart-*
2 *ment, agency, and instrumentality of the Federal*
3 *Government is authorized and directed to furnish to*
4 *the Director such reports and other information as he*
5 *deems necessary to carry out his functions under this*
6 *section.*

7 (b) *CONSUMER ADVOCACY ADVISORY COMMITTEE.*—

8 (1) *ESTABLISHMENT.*—*The Director shall estab-*
9 *lish an advisory committee to be known as Consumer*
10 *Advocacy Advisory Committee (in this section re-*
11 *ferred to as the “Advisory Committee”) to review*
12 *rates, services, and disputes and to make rec-*
13 *ommendations to the Director.*

14 (2) *COMPOSITION.*—*The Director shall appoint 5*
15 *members to the Advisory Committee including—*

16 (A) *2 individuals representing State Utility*
17 *Consumer Advocates; and*

18 (B) *1 individual, from a nongovernmental*
19 *organization, representing consumers.*

20 (3) *MEETINGS.*—*The Advisory Committee shall*
21 *meet at such frequency as may be required to carry*
22 *out its duties.*

23 (4) *REPORTS.*—*The Director shall provide for*
24 *publication of recommendations of the Advisory Com-*
25 *mittee on the public website established for the Office.*

1 (5) *DURATION.*—*Notwithstanding any other pro-*
2 *vision of law, the Advisory Committee shall continue*
3 *in operation during the period in which the Office ex-*
4 *ists.*

5 (6) *APPLICATION OF FACA.*—*Except as otherwise*
6 *specifically provided, the Advisory Committee shall be*
7 *subject to the Federal Advisory Committee Act.*

8 (c) *DEFINITIONS.*—

9 (1) *COMMISSION.*—*The term “Commission”*
10 *means the Federal Energy Regulatory Commission.*

11 (2) *ENERGY CUSTOMER.*—*The term “energy cus-*
12 *tomer” means a residential customer or a small com-*
13 *mercial customer that receives products or services*
14 *from a public utility or natural gas company under*
15 *the jurisdiction of the Commission.*

16 (3) *NATURAL GAS COMPANY.*—*The term “natural*
17 *gas company” has the meaning given the term in sec-*
18 *tion 2 of the Natural Gas Act (15 U.S.C. 717a), as*
19 *modified by section 601(a) of the Natural Gas Policy*
20 *Act of 1978 (15 U.S.C. 3431(a)).*

21 (4) *OFFICE.*—*The term “Office” means the Office*
22 *of Consumer Advocacy established by subsection*
23 *(a)(1).*

1 (5) *PUBLIC UTILITY*.—The term “public utility”
2 has the meaning given the term in section 201(e) of
3 the Federal Power Act (16 U.S.C. 824(e)).

4 (6) *SMALL COMMERCIAL CUSTOMER*.—The term
5 “small commercial customer” means a commercial
6 customer that has a peak demand of not more than
7 1,000 kilowatts per hour.

8 (d) *AUTHORIZATION OF APPROPRIATIONS*.—There are
9 authorized such sums as necessary to carry out this section.

10 (e) *SAVINGS CLAUSE*.—Nothing in this section affects
11 the rights or obligations of State Utility Consumer Advo-
12 cates.

13 ***TITLE II—ENERGY EFFICIENCY***
14 ***Subtitle A—Building Energy***
15 ***Efficiency Programs***

16 ***SEC. 201. GREATER ENERGY EFFICIENCY IN BUILDING***
17 ***CODES.***

18 Section 304 of the Energy Conservation and Produc-
19 tion Act (42 U.S.C. 6833) is amended to read as follows:

20 ***“SEC. 304. GREATER ENERGY EFFICIENCY IN BUILDING***
21 ***CODES.***

22 ***“(a) ENERGY EFFICIENCY TARGETS.—***

23 ***“(1) IN GENERAL.—Except as provided in para-***
24 ***graph (2) or (3), the national building code energy ef-***
25 ***iciency target for the national average percentage***

1 *improvement of a building’s energy performance when*
2 *built to a code meeting the target shall be—*

3 *“(A) effective on the date of enactment of*
4 *the American Clean Energy and Security Act of*
5 *2009, 30 percent reduction in energy use relative*
6 *to a comparable building constructed in compli-*
7 *ance with the baseline code;*

8 *“(B) effective January 1, 2014, for residen-*
9 *tial buildings, and January 1, 2015, for com-*
10 *mercial buildings, 50 percent reduction in en-*
11 *ergy use relative to the baseline code; and*

12 *“(C) effective January 1, 2017, for residen-*
13 *tial buildings, and January 1, 2018, for com-*
14 *mercial buildings, and every 3 years thereafter,*
15 *respectively, through January 1, 2029, and Jan-*
16 *uary 1, 2030, 5 percent additional reduction in*
17 *energy use relative to the baseline code.*

18 *“(2) CONSENSUS-BASED CODES.—If on any effec-*
19 *tive date specified in paragraph (1)(A), (B), or (C)*
20 *a successor code to the baseline codes provides for*
21 *greater reduction in energy use than is required*
22 *under paragraph (1), the overall percentage reduction*
23 *in energy use provided by that successor code shall be*
24 *the national building code energy efficiency target.*

1 “(3) *TARGETS ESTABLISHED BY SECRETARY.—*
2 *The Secretary may by rule establish a national build-*
3 *ing code energy efficiency target for residential or*
4 *commercial buildings achieving greater reductions in*
5 *energy use than the targets prescribed in paragraph*
6 *(1) or (2) if the Secretary determines that such great-*
7 *er reductions in energy use can be achieved with a*
8 *code that is life cycle cost-justified and technically*
9 *feasible. The Secretary may by rule establish a na-*
10 *tional building code energy efficiency target for resi-*
11 *dential or commercial buildings achieving a reduction*
12 *in energy use that is greater than zero but less than*
13 *the targets prescribed in paragraph (1) or (2) if the*
14 *Secretary determines that such lesser target is the*
15 *maximum reduction in energy use that can be*
16 *achieved through a code that is life cycle cost-justified*
17 *and technically feasible.*

18 “(4) *ADDITIONAL REDUCTIONS IN ENERGY*
19 *USE.—Effective on January 1, 2033, and once every*
20 *3 years thereafter, the Secretary shall determine, after*
21 *notice and opportunity for comment, whether further*
22 *energy efficiency building code improvements for resi-*
23 *dential or commercial buildings, respectively, are life*
24 *cycle cost-justified and technically feasible, and shall*

1 *establish updated national building code energy effi-*
2 *ciency targets that meet such criteria.*

3 “(5) *ZERO-NET-ENERGY BUILDINGS.*—*In setting*
4 *targets under this subsection, the Secretary shall con-*
5 *sider ways to support the deployment of distributed*
6 *renewable energy technology, and shall seek to achieve*
7 *the goal of zero-net-energy commercial buildings es-*
8 *tablished in section 422 of the Energy Independence*
9 *and Security Act of 2007 (42 U.S.C. 17082).*

10 “(6) *BASELINE CODE.*—*For purposes of this sec-*
11 *tion, the term ‘baseline code’ means—*

12 “(A) *for residential buildings, the 2006*
13 *International Energy Conservation Code (IECC)*
14 *published by the International Code Council;*
15 *and*

16 “(B) *for commercial buildings, the code*
17 *published in ASHRAE Standard 90.1-2004.*

18 “(7) *CONSULTATION.*—*In establishing the targets*
19 *required by this section, the Secretary shall consult*
20 *with the Director of the National Institute of Stand-*
21 *ards and Technology.*

22 “(b) *NATIONAL ENERGY EFFICIENCY BUILDING*
23 *CODES.*—

24 “(1) *REQUIREMENT.*—

1 “(A) *IN GENERAL.*—*There shall be estab-*
2 *lished national energy efficiency building codes*
3 *under this subsection, for residential and com-*
4 *mercial buildings, sufficient to meet each of the*
5 *national building code energy efficiency targets*
6 *established under subsection (a), not later than*
7 *the date that is one year after the deadline for*
8 *establishment of each such target.*

9 “(B) *EXISTING CODE.*—*If the Secretary*
10 *finds prior to the date one year after the dead-*
11 *line for establishing a target that one or more*
12 *energy efficiency building codes published by a*
13 *recognized consensus-based code development or-*
14 *ganization meet or exceed the established target,*
15 *the Secretary shall select the code that meets the*
16 *target with the highest efficiency in the most*
17 *cost-effective manner, and such code shall be the*
18 *national energy efficiency building code.*

19 “(C) *REQUIREMENT TO ESTABLISH CODE.*—
20 *If the Secretary does not make a finding under*
21 *subparagraph (B), the national energy efficiency*
22 *building code shall be established by rule by the*
23 *Secretary under paragraph (2).*

24 “(2) *ESTABLISHMENT BY SECRETARY.*—

1 “(A) *PROCEDURE.*—*In order to establish a*
2 *national energy efficiency building code as re-*
3 *quired under paragraph (1)(C), the Secretary*
4 *shall—*

5 “(i) *not later than six months prior to*
6 *the effective date for each target, review ex-*
7 *isting and proposed codes published or*
8 *under review by recognized consensus-based*
9 *code development organizations;*

10 “(ii) *determine the percentage of en-*
11 *ergy efficiency improvements that are or*
12 *would be achieved in such published or pro-*
13 *posed code versions relative to the target;*

14 “(iii) *propose improvements to such*
15 *published or proposed code versions suffi-*
16 *cient to meet or exceed the target; and*

17 “(iv) *unless a finding is made under*
18 *paragraph (1)(B) with respect to a code*
19 *published by a recognized consensus-based*
20 *code development organization, adopt a code*
21 *that meets or exceeds the relevant national*
22 *building code energy efficiency target by not*
23 *later than one year after the effective date*
24 *of such target.*

1 “(B) *CALCULATIONS.*—*Each code estab-*
2 *lished by the Secretary under this paragraph*
3 *shall be set at the maximum level the Secretary*
4 *determines is life cycle cost-justified and tech-*
5 *nically feasible, in accordance with the following:*

6 “(i) *SAVINGS CALCULATIONS.*—*Cal-*
7 *culations of energy savings shall take into*
8 *account the typical lifetimes of different*
9 *products, measures, and system configura-*
10 *tions.*

11 “(ii) *COST-EFFECTIVENESS CALCULA-*
12 *TIONS.*—*Calculations of life cycle cost-effec-*
13 *tiveness shall be based on life cycle cost*
14 *methods and procedures under section 544*
15 *of the National Energy Conservation Policy*
16 *Act (42 U.S.C. 8254), but shall incorporate*
17 *to the extent feasible externalities such as*
18 *impacts on climate change and on peak en-*
19 *ergy demand that are not already incor-*
20 *porated in assumed energy costs.*

21 “(C) *CONSIDERATIONS.*—*In developing a*
22 *national energy efficiency building code under*
23 *this paragraph, the Secretary shall consider—*

24 “(i) *for residential codes—*

1 “(I) residential building stand-
2 ards published or proposed by
3 ASHRAE;

4 “(II) residential building codes
5 published or proposed in the Inter-
6 national Energy Conservation Code
7 (IECC);

8 “(III) data from the Residential
9 Energy Services Network (RESNET)
10 on compliance measures utilized by
11 consumers to qualify for the residential
12 energy efficiency tax credits established
13 under the Energy Policy Act of 2005;

14 “(IV) data and information from
15 the Department of Energy’s Building
16 America Program;

17 “(V) data and information from
18 the Energy Star New Homes program;

19 “(VI) data and information from
20 the New Building Institute and simi-
21 lar organizations; and

22 “(VII) standards for practices and
23 materials to achieve cool roofs in resi-
24 dential buildings, taking into consider-
25 ation reduced air conditioning energy

1 *use as a function of cool roofs, the po-*
2 *tential reduction in global warming*
3 *from increased solar reflectance from*
4 *buildings, and cool roofs criteria in*
5 *State and local building codes and in*
6 *national and local voluntary pro-*
7 *grams; and*

8 “(ii) for commercial codes—

9 “(I) commercial building stand-
10 ards proposed by ASHRAE;

11 “(II) commercial building codes
12 proposed in the International Energy
13 Conservation Code (IECC);

14 “(III) the Core Performance Cri-
15 teria published by the New Buildings
16 Institute;

17 “(IV) data and information devel-
18 oped by the Director of the Commercial
19 High-Performance Green Building Of-
20 fice of the Department of Energy and
21 any public-private partnerships estab-
22 lished under that Office;

23 “(V) data and information from
24 the Energy Star for Buildings pro-
25 gram;

1 “(VI) data and information from
2 the New Building Institute, RESNET,
3 and similar organizations; and

4 “(VII) standards for practices and
5 materials to achieve cool roofs in com-
6 mercial buildings, taking into consid-
7 eration reduced air conditioning en-
8 ergy use as a function of cool roofs, the
9 potential reduction in global warming
10 from increased solar reflectance from
11 buildings, and cool roofs criteria in
12 State and local building codes and in
13 national and local voluntary pro-
14 grams.

15 “(D) CONSULTATION.—In establishing any
16 national energy efficiency building code required
17 by this section, the Secretary shall consult with
18 the Director of the National Institute of Stand-
19 ards and Technology.

20 “(3) CONSENSUS STANDARD ASSISTANCE.—(A)
21 To support the development of consensus standards
22 that may provide the basis for national energy effi-
23 ciency building codes, minimize duplication of effort,
24 encourage progress through consensus, and facilitate
25 the development of greater building efficiency, the Sec-

1 *retary shall provide assistance to recognized con-*
2 *sensus-based code development organizations to de-*
3 *velop, and where the relevant code has been adopted*
4 *as the national code, disseminate consensus based en-*
5 *ergy efficiency building codes as provided in this*
6 *paragraph.*

7 *“(B) Upon a finding by the Secretary that a*
8 *code developed by such an organization meets a target*
9 *established under subsection (a), the Secretary shall—*

10 *“(i) send notice of the Secretary’s finding to*
11 *all duly authorized or appointed State and local*
12 *code agencies; and*

13 *“(ii) provide sufficient support to such an*
14 *organization to make the code available on the*
15 *Internet, or to accomplish distribution of such*
16 *code to all such State and local code agencies at*
17 *no cost to the State and local code agencies.*

18 *“(C) The Secretary may contract with such an*
19 *organization and with other organizations with ex-*
20 *pertise on codes to provide training for State and*
21 *local code officials and building inspectors in the im-*
22 *plementation and enforcement of such code.*

23 *“(D) The Secretary may provide grants and*
24 *other support to such an organization to—*

1 “(i) develop appropriate refinements to such
2 code; and

3 “(ii) support analysis of options for im-
4 provements in the code to meet the next scheduled
5 target.

6 “(4) *CODE DEVELOPED BY SECRETARY.*—If the
7 Secretary establishes a national energy efficiency
8 building code under paragraph (2), the Secretary
9 shall—

10 “(A) to the extent that such code is based on
11 a prior code developed by a recognized consensus-
12 based code development organization, negotiate
13 and provide appropriate compensation to such
14 organization for the use of the code materials
15 that remain in the code established by the Sec-
16 retary; and

17 “(B) disseminate the national energy effi-
18 ciency building codes to State and local code offi-
19 cials, and support training and provide guid-
20 ance and technical assistance to such officials as
21 appropriate.

22 “(c) *STATE ADOPTION OF ENERGY EFFICIENCY*
23 *BUILDING CODES.*—

24 “(1) *REQUIREMENT.*—Not later than 1 year
25 after a national energy efficiency building code for

1 *residential or commercial buildings is established or*
2 *revised under subsection (b), each State—*

3 *“(A) shall—*

4 *“(i) review and update the provisions*
5 *of its building code regarding energy effi-*
6 *ciency to meet or exceed the target met in*
7 *the new national code, to achieve equivalent*
8 *or greater energy savings;*

9 *“(ii) document, where local govern-*
10 *ments establish building codes, that local*
11 *governments representing not less than 80*
12 *percent of the State’s urban population have*
13 *adopted the new national code, or have*
14 *adopted local codes that meet or exceed the*
15 *target met in the new national code to*
16 *achieve equivalent or greater energy sav-*
17 *ings; or*

18 *“(iii) adopt the new national code; and*

19 *“(B) shall provide a certification to the Sec-*
20 *retary demonstrating that energy efficiency*
21 *building code provisions that apply throughout*
22 *the State meet or exceed the target met by the*
23 *new national code, to achieve equivalent or*
24 *greater energy savings.*

25 *“(2) CONFIRMATION.—*

1 “(A) *REQUIREMENT.*—Not later than 90
2 days after a State certification is provided under
3 paragraph (1)(B), the Secretary shall determine
4 whether the State’s energy efficiency building
5 code provisions meet the requirements of this
6 subsection.

7 “(B) *ACCEPTANCE BY SECRETARY.*—If the
8 Secretary determines under subparagraph (A)
9 that the State’s energy efficiency building code or
10 codes meet the requirements of this subsection,
11 the Secretary shall accept the certification.

12 “(C) *DEFICIENCY NOTICE.*—If the Secretary
13 determines under subparagraph (A) that the
14 State’s building code or codes do not meet the re-
15 quirements of this subsection, the Secretary shall
16 identify the deficiency in meeting the national
17 building code energy efficiency target, and, to the
18 extent possible, indicate areas where further im-
19 provement in the State’s code provisions would
20 allow the deficiency to be eliminated.

21 “(D) *REVISION OF CODE AND RECERTIFI-*
22 *CATION.*—A State may revise its code or codes
23 and submit a recertification under paragraph
24 (1)(B) to the Secretary at any time.

1 “(3) *COMPLIANT CODE.*—*For the purposes of*
2 *meeting the target described in subsection (a)(1)(A)*
3 *for residential buildings, a State that adopts the code*
4 *represented in California’s Title 24-2009 by the date*
5 *two years after the date of enactment of the American*
6 *Clean Energy and Security Act of 2009 shall be con-*
7 *sidered to have met the requirements of this subsection*
8 *for the applicable period.*

9 “(d) *APPLICATION OF NATIONAL CODE TO STATE AND*
10 *LOCAL JURISDICTIONS.*—

11 “(1) *IN GENERAL.*—*Upon the expiration of 1*
12 *year after a national energy efficiency building code*
13 *is established under subsection (b), in any jurisdic-*
14 *tion where the State has not had a certification relat-*
15 *ing to that code accepted by the Secretary under sub-*
16 *section (c)(2)(B), and the local government has not*
17 *had a certification relating to that code accepted by*
18 *the Secretary under subsection (e)(6)(B), the national*
19 *code shall become the applicable energy efficiency*
20 *building code for such jurisdiction.*

21 “(2) *STATE LEGISLATIVE ADOPTION.*—*In a State*
22 *in which the relevant building energy code is adopted*
23 *legislatively, the deadline in paragraph (1) shall not*
24 *be earlier than 1 year after the first day that the leg-*

1 *islature meets following establishment of a national*
2 *energy efficiency building code.*

3 “(3) *VIOLATIONS.—Violations of this section*
4 *shall be defined as follows:*

5 “(A) *If the building is subject to the re-*
6 *quirements of a State energy efficiency building*
7 *code with respect to which a certification has*
8 *been accepted by the Secretary under subsection*
9 *(c)(2)(B) or a local energy efficiency building*
10 *code with respect to which a certification has*
11 *been accepted by the Secretary pursuant to sub-*
12 *section (e)(6)(B), a violation shall be determined*
13 *pursuant to the relevant provisions of the State*
14 *or local code.*

15 “(B) *If the building is subject to the re-*
16 *quirements of a national energy efficiency build-*
17 *ing code adopted under subsection (c)(1)(A)(i) or*
18 *made applicable under paragraph (1) of this*
19 *subsection, a violation shall be defined by the*
20 *Secretary pursuant to subsection (g).*

21 “(e) *STATE ENFORCEMENT OF ENERGY EFFICIENCY*
22 *BUILDING CODES.—*

23 “(1) *IN GENERAL.—Each State, or where appli-*
24 *cable under State law each local government, shall*
25 *implement and enforce applicable State or local codes*

1 *with respect to which a certification was accepted by*
2 *the Secretary under subsection (c)(2)(B) or paragraph*
3 *(6)(B) of this subsection, or the national energy effi-*
4 *ciency building codes, as provided in this subsection.*

5 “(2) *STATE CERTIFICATION.*—*Not later than 2*
6 *years after the date of a certification under subsection*
7 *(c)(1) or the establishment of a national energy effi-*
8 *ciency building code under subsection (b), each State*
9 *shall certify that it has—*

10 “(A) *achieved compliance with—*

11 “(i) *State codes, or, as provided under*
12 *State law, local codes, with respect to which*
13 *a certification was accepted by the Sec-*
14 *retary under subsection (c)(2)(B); or*

15 “(ii) *the national energy efficiency*
16 *building code, as applicable; or*

17 “(B) *for any certification submitted within*
18 *7 years after the date of enactment of the Amer-*
19 *ican Clean Energy and Security Act of 2009,*
20 *made significant progress toward achieving such*
21 *compliance.*

22 “(3) *ACHIEVING COMPLIANCE.*—*A State shall be*
23 *considered to achieve compliance with a code de-*
24 *scribed in paragraph (2)(A) if at least 90 percent of*
25 *new and substantially renovated building space in*

1 *that State in the preceding year upon inspection*
2 *meets the requirements of the code. A certification*
3 *under paragraph (2) shall include documentation of*
4 *the rate of compliance based on—*

5 *“(A) independent inspections of a random*
6 *sample of the new and substantially renovated*
7 *buildings covered by the code in the preceding*
8 *year; or*

9 *“(B) an alternative method that yields an*
10 *accurate measure of compliance as determined*
11 *by the Secretary.*

12 *“(4) SIGNIFICANT PROGRESS.—A State shall be*
13 *considered to have made significant progress toward*
14 *achieving compliance with a code described in para-*
15 *graph (2)(A) if—*

16 *“(A) the State has developed a plan, includ-*
17 *ing for hiring enforcement staff, providing train-*
18 *ing, providing manuals and checklists, and in-*
19 *stituting enforcement programs, designed to*
20 *achieve full compliance within 5 years after the*
21 *date of the adoption of the code;*

22 *“(B) the State is taking significant, timely,*
23 *and measurable action to implement that plan;*

24 *“(C) the State has not reduced its expendi-*
25 *tures for code enforcement; and*

1 “(D) at least 50 percent of new and sub-
2 stantially renovated building space in the State
3 in the preceding year upon inspection meets the
4 requirements of the code.

5 “(5) SECRETARY’S DETERMINATION.—Not later
6 than 90 days after a State certification under para-
7 graph (2), the Secretary shall determine whether the
8 State has demonstrated that it has complied with the
9 requirements of this subsection, including accurate
10 measurement of compliance, or that it has made sig-
11 nificant progress toward compliance. If such deter-
12 mination is positive, the Secretary shall accept the
13 certification. If the determination is negative, the Sec-
14 retary shall identify the areas of deficiency.

15 “(6) OUT OF COMPLIANCE.—

16 “(A) IN GENERAL.—Any State for which
17 the Secretary has not accepted a certification
18 under paragraph (5) by a deadline established
19 under this subsection is out of compliance with
20 this section.

21 “(B) LOCAL COMPLIANCE.—In any State
22 that is out of compliance with this section as
23 provided in subparagraph (A), a local govern-
24 ment may be in compliance with this section by

1 *meeting all certification requirements applicable*
2 *to the State.*

3 “(C) *NONCOMPLIANCE.*—*Any State that is*
4 *not in compliance with this section, as provided*
5 *in subparagraph (A), shall, until the State re-*
6 *gains such compliance, be ineligible to receive—*

7 “(i) *emission allowances pursuant to*
8 *subsection (h)(1);*

9 “(ii) *Federal funding in excess of that*
10 *State’s share (calculated according to the al-*
11 *location formula in section 363 of the En-*
12 *ergy Policy and Conservation Act (42*
13 *U.S.C. 6323)) of \$125,000,000 each year;*
14 *and*

15 “(iii) *for—*

16 “(I) *the first year for which the*
17 *State is out of compliance, 25 percent*
18 *of any additional funding or other*
19 *items of monetary value otherwise pro-*
20 *vided under the American Clean En-*
21 *ergy and Security Act of 2009;*

22 “(II) *the second year for which*
23 *the State is out of compliance, 50 per-*
24 *cent of any additional funding or other*
25 *items of monetary value otherwise pro-*

1 *vided under the American Clean En-*
2 *ergy and Security Act of 2009;*

3 *“(III) the third year for which the*
4 *State is out of compliance, 75 percent*
5 *of any additional funding or other*
6 *items of monetary value otherwise pro-*
7 *vided under the American Clean En-*
8 *ergy and Security Act of 2009; and*

9 *“(IV) the fourth and subsequent*
10 *years for which the State is out of com-*
11 *pliance, 100 percent of any additional*
12 *funding or other items of monetary*
13 *value otherwise provided under the*
14 *American Clean Energy and Security*
15 *Act of 2009.*

16 *“(f) FEDERAL ENFORCEMENT.—Where a State fails*
17 *and local governments in that State also fail to enforce the*
18 *applicable State or national energy efficiency building*
19 *codes, the Secretary shall enforce such codes, as follows:*

20 *“(1) The Secretary shall establish, by rule, with-*
21 *in 2 years after the date of enactment of the Amer-*
22 *ican Clean Energy and Security Act of 2009, an en-*
23 *ergy efficiency building code enforcement capability.*

24 *“(2) Such enforcement capability shall be de-*
25 *signed to achieve 90 percent compliance with such*

1 *code in any State within 1 year after the date of the*
2 *Secretary's determination that such State is out of*
3 *compliance with this section.*

4 *“(3) The Secretary may set and collect reason-*
5 *able inspection fees to cover the costs of inspections re-*
6 *quired for such enforcement. Revenue from fees col-*
7 *lected shall be available to the Secretary to carry out*
8 *the requirements of this section upon appropriation.*

9 *“(g) ENFORCEMENT PROCEDURES.—The Secretary*
10 *shall propose and, not later than three years after the date*
11 *of enactment of the American Clean Energy and Security*
12 *Act of 2009, shall determine and adopt by rule what shall*
13 *constitute violations of the energy efficiency building codes*
14 *to be enforced pursuant to this section, and the penalties*
15 *that shall apply to violators. To the extent that the Sec-*
16 *retary determines that the authority to adopt and impose*
17 *such violations and penalties by rule requires further statu-*
18 *tory authority, the Secretary shall report such determina-*
19 *tion to Congress as soon as such determination is made,*
20 *but not later than one year after the enactment of the Amer-*
21 *ican Clean Energy and Security Act of 2009.*

22 *“(h) FEDERAL SUPPORT.—*

23 *“(1) ALLOWANCE ALLOCATION FOR STATE COM-*
24 *PLIANCE.—For each vintage year from 2012 through*
25 *2050, the Administrator shall distribute allowances*

1 *allocated pursuant to section 782(g)(2) of the Clean*
2 *Air Act to the SEED Account for each State that the*
3 *Secretary identifies as a State from which he has ac-*
4 *cepted the State’s certification under subsection (e)(5)*
5 *for compliance with the then current national energy*
6 *efficiency building codes. Such allowances shall be*
7 *distributed according to a formula established by the*
8 *Secretary as follows:*

9 *“(A) One-fifth in an equal amount to each*
10 *of the 50 States and United States territories.*

11 *“(B) Two-fifths as a function of the relative*
12 *energy use in all buildings in each State in the*
13 *most recent year for which data is available.*

14 *“(C) Two-fifths based on the number of*
15 *building construction starts recorded in each*
16 *State, the number of new building permits ap-*
17 *plied for in each State, or other relevant avail-*
18 *able data indicating building activity in each*
19 *State, in the judgment of the Secretary, for the*
20 *year prior to the year of the distribution.*

21 *“(2) ALLOWANCE ALLOCATION TO LOCAL GOV-*
22 *ERNMENTS.—In the instance that the Secretary cer-*
23 *tifies that one or more local governments are in com-*
24 *pliance with this section pursuant to subsection*
25 *(e)(6)(B), the Administrator shall provide to each*

1 *such local government the portion of the emission al-*
2 *lowances that would have been provided to that State*
3 *as a function of the population of that locality as a*
4 *proportion of the population of that State as a whole.*

5 *“(3) UNALLOCATED ALLOWANCES.—To the extent*
6 *that allowances are not provided to State or local gov-*
7 *ernments for lack of certification in any year, those*
8 *allowances shall be added to the amount provided to*
9 *those States and local governments that are certified*
10 *as eligible in that year.*

11 *“(4) USE OF ALLOWANCES.—Each State or each*
12 *local government shall use such emission allowances*
13 *as it receives pursuant to this section exclusively for*
14 *the purposes of this section, including covering a rea-*
15 *sonable portion of the costs of the development, adop-*
16 *tion, implementation, and enforcement of a State or*
17 *local energy efficiency building code with respect to*
18 *which a certification is accepted by the Secretary*
19 *under subsection (c)(2)(B) or subsection (e)(6)(B), or*
20 *the national energy efficiency building code. In a*
21 *State where local governments provide building code*
22 *enforcement, a minimum of 50 percent of the allow-*
23 *ance value received pursuant to this section shall be*
24 *distributed to local governments as a function of the*
25 *relative populations of such localities.*

1 “(i) *AUTHORIZATION OF APPROPRIATIONS.*—*There are*
2 *authorized to be appropriated to the Secretary of Energy*
3 *\$100,000,000 for each of fiscal years 2010 through 2020 and*
4 *such sums thereafter as may be necessary to support the*
5 *purposes of this section.*

6 “(j) *ANNUAL REPORTS BY SECRETARY.*—*The Sec-*
7 *retary shall annually submit to Congress, and publish in*
8 *the Federal Register, a report on—*

9 “(1) *the status of national building energy effi-*
10 *ciency codes;*

11 “(2) *the status of energy efficiency building code*
12 *adoption and compliance in the States;*

13 “(3) *the implementation of this section; and*

14 “(4) *impacts of past action under this section,*
15 *and potential impacts of further action, on lifetime*
16 *energy use by buildings, including resulting energy*
17 *and cost savings.”.*

18 **SEC. 202. BUILDING RETROFIT PROGRAM.**

19 “(a) *DEFINITIONS.*—*For purposes of this section:*

20 “(1) *NONRESIDENTIAL BUILDING.*—*The term*
21 *“nonresidential building” means a building with a*
22 *primary use or purpose other than residential hous-*
23 *ing, including commercial offices, schools, academic*
24 *and other public and private institutions, nonprofit*
25 *organizations, hospitals, hotels, and houses of wor-*

1 *ship. Such buildings shall include mixed-use prop-*
2 *erties used for both residential and nonresidential*
3 *purposes in which more than half of building floor*
4 *space is nonresidential.*

5 (2) *PERFORMANCE-BASED BUILDING RETROFIT*
6 *PROGRAM.—The term “performance-based building*
7 *retrofit program” means a program that determines*
8 *building energy efficiency success based on actual*
9 *measured savings after a retrofit is complete, as evi-*
10 *denced by energy invoices or evaluation protocols.*

11 (3) *PRESCRIPTIVE BUILDING RETROFIT PRO-*
12 *GRAM.—The term “prescriptive building retrofit pro-*
13 *gram” means a program that projects building ret-*
14 *rofit energy efficiency success based on the known ef-*
15 *fectiveness of measures prescribed to be included in a*
16 *retrofit.*

17 (4) *RECOMMISSIONING; RETROCOMMISSIONING.—*
18 *The terms “recommissioning” and*
19 *“retrocommissioning” have the meaning given those*
20 *terms in section 543(f)(1) of the National Energy*
21 *Conservation Policy Act (42 U.S.C. 8253(f)(1)).*

22 (5) *RESIDENTIAL BUILDING.—The term “resi-*
23 *dential building” means a building whose primary*
24 *use is residential. Such buildings shall include single-*
25 *family homes (both attached and detached), owner-oc-*

1 *cupied units in larger buildings with their own dedi-*
2 *cated space-conditioning systems, and buildings used*
3 *for both residential and nonresidential purposes in*
4 *which more than half of building floor space is resi-*
5 *dential.*

6 (6) *STATE ENERGY PROGRAM.*—*The term “State*
7 *Energy Program” means the program under part D*
8 *of title III of the Energy Policy and Conservation Act*
9 *(42 U.S.C. 6321 et seq.).*

10 (b) *ESTABLISHMENT.*—*The Administrator shall de-*
11 *velop and implement, in consultation with the Secretary*
12 *of Energy, standards for a national energy and environ-*
13 *mental building retrofit policy for single-family and multi-*
14 *family residences. The Administrator shall develop and im-*
15 *plement, in consultation with the Secretary of Energy and*
16 *the Director of Commercial High-Performance Green Build-*
17 *ings, standards for a national energy and environmental*
18 *building retrofit policy for nonresidential buildings. The*
19 *programs to implement the residential and nonresidential*
20 *policies based on the standards developed under this section*
21 *shall together be known as the Retrofit for Energy and En-*
22 *vironmental Performance (REEP) program.*

23 (c) *PURPOSE.*—*The purpose of the REEP program is*
24 *to facilitate the retrofitting of existing buildings across the*
25 *United States to achieve maximum cost-effective energy effi-*

1 *ciency improvements and significant improvements in*
2 *water use and other environmental attributes.*

3 *(d) FEDERAL ADMINISTRATION.—*

4 *(1) EXISTING PROGRAMS.— In creating and op-*
5 *erating the REEP program—*

6 *(A) the Administrator shall make appro-*
7 *priate use of existing programs, including the*
8 *Energy Star program and in particular the En-*
9 *vironmental Protection Agency Energy Star for*
10 *Buildings program; and*

11 *(B) the Secretary of Energy shall make ap-*
12 *propriate use of existing programs, including*
13 *delegating authority to the Director of Commer-*
14 *cial High-Performance Green Buildings ap-*
15 *pointed under section 421 of the Energy Inde-*
16 *pendence and Security Act of 2007 (42 U.S.C.*
17 *17081), who shall designate and provide funding*
18 *to support a high-performance green building*
19 *partnership consortium pursuant to subsection*
20 *(f) of such section to support efforts under this*
21 *section.*

22 *(2) CONSULTATION AND COORDINATION.—The*
23 *Administrator and the Secretary of Energy shall con-*
24 *sult with and coordinate with the Secretary of Hous-*

1 *ing and Urban Development in carrying out the*
2 *REEP program.*

3 (3) *ASSISTANCE.—The Administrator and the*
4 *Secretary of Energy shall provide consultation and*
5 *assistance to State and local agencies for the estab-*
6 *lishment of revolving loan funds, loan guarantees, or*
7 *other forms of financial assistance under this section.*

8 (e) *STATE AND LOCAL ADMINISTRATION.—*

9 (1) *DESIGNATION AND DELEGATION.—A State*
10 *may designate one or more agencies or entities, in-*
11 *cluding those regulated by the State, to carry out the*
12 *purposes of this section, but shall designate one entity*
13 *or individual as the principal point of contact for the*
14 *Administrator regarding the REEP Program. The*
15 *designated State agency, agencies, or entities may del-*
16 *egate performance of appropriate elements of the*
17 *REEP program, upon their request and subject to*
18 *State law, to counties, municipalities, appropriate*
19 *public agencies, and other divisions of local govern-*
20 *ment, as well as to entities regulated by the State. In*
21 *making any such designation or delegation, a State*
22 *shall give priority to entities that administer existing*
23 *comprehensive retrofit programs, including those*
24 *under the supervision of State utility regulators.*
25 *States shall maintain responsibility for meeting the*

1 standards and requirements of the REEP program.
2 In any State that elects not to administer the REEP
3 program, a unit of local government may propose to
4 do so within its jurisdiction, and if the Administrator
5 finds that such local government is capable of admin-
6 istering the program, the Administrator may provide
7 allowances to that local government, prorated accord-
8 ing to the population of the local jurisdiction relative
9 to the population of the State, for purposes of the
10 REEP program.

11 (2) *EMPLOYMENT.*—States and local government
12 entities may administer a REEP program in a man-
13 ner that authorizes public or regulated investor-owned
14 utilities, building auditors and inspectors, contrac-
15 tors, nonprofit organizations, for-profit companies,
16 and other entities to perform audits and retrofit serv-
17 ices under this section. A State may provide incen-
18 tives for retrofits without direct participation by the
19 State or its agents, so long as the resulting savings
20 are measured and verified. A State or local adminis-
21 trator of a REEP program shall seek to ensure that
22 sufficient qualified entities are available to support
23 retrofit activities so that building owners have a com-
24 petitive choice among qualified auditors, raters, con-
25 tractors, and providers of services related to retrofits.

1 *Nothing in this section is intended to preclude or pre-*
2 *empt the right of a building owner to choose the spe-*
3 *cific providers of retrofit services to engage for a ret-*
4 *rofit project in that owner's building.*

5 (3) *EQUAL INCENTIVES FOR EQUAL IMPROVE-*
6 *MENT.—In general, the States should strive to offer*
7 *the same levels of incentives for retrofits that meet the*
8 *same efficiency improvement goals, regardless of*
9 *whether the State, its agency or entity, or the build-*
10 *ing owner has conducted the retrofit achieving the im-*
11 *provement, provided the improvement is measured*
12 *and verified.*

13 (f) *ELEMENTS OF REEP PROGRAM.—The Adminis-*
14 *trator, in consultation with the Secretary of Energy, shall*
15 *establish goals, guidelines, practices, and standards for ac-*
16 *complishing the purpose stated in subsection (c), and shall*
17 *annually review and, as appropriate, revise such goals,*
18 *guidelines, practices, and standards. The program under*
19 *this section shall include the following:*

20 (1) *Residential Energy Services Network*
21 *(RESNET) or Building Performance Institute (BPI)*
22 *analyst certification of residential building energy*
23 *and environment auditors, inspectors, and raters, or*
24 *an equivalent certification system as determined by*
25 *the Administrator.*

1 (2) *BPI certification or licensing by States of*
2 *residential building energy and environmental retrofit*
3 *contractors, or an equivalent certification or licensing*
4 *system as determined by the Administrator.*

5 (3) *Provision of BPI, RESNET, or other appro-*
6 *priate information on equipment and procedures, as*
7 *determined by the Administrator, that contractors can*
8 *use to test the energy and environmental efficiency of*
9 *buildings effectively (such as infrared photography*
10 *and pressurized testing, and tests for water use and*
11 *indoor air quality).*

12 (4) *Provision of clear and effective materials to*
13 *describe the testing and retrofit processes for typical*
14 *buildings.*

15 (5) *Guidelines for offering and managing pre-*
16 *scriptive building retrofit programs and performance-*
17 *based building retrofit programs for residential and*
18 *nonresidential buildings.*

19 (6) *Guidelines for applying recommissioning*
20 *and retrocommissioning principles to improve a*
21 *building's operations and maintenance procedures.*

22 (7) *A requirement that building retrofits con-*
23 *ducted pursuant to a REEP program utilize, espe-*
24 *cially in all air-conditioned buildings, roofing mate-*
25 *rials with high solar energy reflectance, unless inap-*

1 *appropriate due to green roof management, solar energy*
2 *production, or for other reasons identified by the Ad-*
3 *ministrator, in order to reduce energy consumption*
4 *within the building, increase the albedo of the build-*
5 *ing's roof, and decrease the heat island effect in the*
6 *area of the building.*

7 (8) *Determination of energy savings in a per-*
8 *formance-based building retrofit program through—*

9 (A) *for residential buildings, comparison of*
10 *before and after retrofit scores on the Home En-*
11 *ergy Rating System (HERS) Index, where the*
12 *final score is produced by an objective third*
13 *party;*

14 (B) *for nonresidential buildings, Environ-*
15 *mental Protection Agency Portfolio Manager*
16 *benchmarks; or*

17 (C) *for either residential or nonresidential*
18 *buildings, use of an Administrator-approved*
19 *simulation program by a contractor with the ap-*
20 *propriate certification, subject to appropriate*
21 *software standards and verification of at least 15*
22 *percent of all work done, or such other percent-*
23 *age as the Administrator may determine.*

24 (9) *Guidelines for utilizing the Energy Star*
25 *Portfolio Manager, the Home Energy Rating System*

1 *(HERS) rating system, Home Performance with En-*
2 *ergy Star program approvals, and any other tools as-*
3 *sociated with the retrofit program.*

4 (10) *Requirements and guidelines for post-ret-*
5 *rofit inspection and confirmation of work and energy*
6 *savings.*

7 (11) *Detailed descriptions of funding options for*
8 *the benefit of State and local governments, along with*
9 *model forms, accounting aids, agreements, and guides*
10 *to best practices.*

11 (12) *Guidance on opportunities for—*

12 (A) *rating or certifying retrofitted buildings*
13 *as Energy Star buildings, or as green buildings*
14 *under a recognized green building rating system;*

15 (B) *assigning Home Energy Rating System*
16 *(HERS) or similar ratings; and*

17 (C) *completing any applicable building per-*
18 *formance labels.*

19 (13) *Sample materials for publicizing the pro-*
20 *gram to building owners, including public service an-*
21 *nouncements and advertisements.*

22 (14) *Processes for tracking the numbers and loca-*
23 *tions of buildings retrofitted under the REEP pro-*
24 *gram, with information on projected and actual sav-*
25 *ings of energy and its value over time.*

1 (g) *REQUIREMENTS.*—As a condition of receiving al-
2 lowances for the REEP program pursuant to this Act, a
3 State or qualifying local government shall—

4 (1) adopt the standards for training, certifi-
5 cation of contractors, certification of buildings, and
6 post-retrofit inspection as developed by the Adminis-
7 trator for residential and nonresidential buildings, re-
8 spectively, except as necessary to match local condi-
9 tions, needs, efficiency opportunities, or other local
10 factors, or to accord with State laws or regulations,
11 and then only after the Administrator approves such
12 a variance; and

13 (2) establish fiscal controls and accounting pro-
14 cedures (which conform to generally accepted govern-
15 ment accounting principles) sufficient to ensure prop-
16 er accounting during appropriate accounting periods
17 for payments received and disbursements, and for
18 fund balances.

19 The Administrator shall conduct or require each State to
20 have such independent financial audits of REEP-related
21 funding as the Administrator considers necessary or appro-
22 priate to carry out the purposes of this section.

23 (h) *OPTIONS TO SUPPORT REEP PROGRAM.*—The
24 emission allowances provided pursuant to this Act to the
25 States' SEED Accounts shall support the implementation

1 *through State REEP programs of alternate means of cre-*
2 *ating incentives for, or reducing financial barriers to, im-*
3 *proved energy and environmental performance in buildings,*
4 *consistent with this section, including—*

5 (1) *implementing prescriptive building retrofit*
6 *programs and performance-based building retrofit*
7 *programs;*

8 (2) *providing credit enhancement, interest rate*
9 *subsidies, loan guarantees, or other credit support;*

10 (3) *providing initial capital for public revolving*
11 *fund financing of retrofits, with repayments by bene-*
12 *ficiary building owners over time through their tax*
13 *payments, calibrated to create net positive cash flow*
14 *to the building owner;*

15 (4) *providing funds to support utility-operated*
16 *retrofit programs with repayments over time through*
17 *utility rates, calibrated to create net positive cash*
18 *flow to the building owner, and transferable from one*
19 *building owner to the next with the building's utility*
20 *services;*

21 (5) *providing funds to local government pro-*
22 *grams to provide REEP services and financial assist-*
23 *ance; and*

24 (6) *other means proposed by State and local*
25 *agencies, subject to the approval of the Administrator.*

1 (i) *SUPPORT FOR PROGRAM.*—

2 (1) *USE OF ALLOWANCES.*—*Direct Federal sup-*
3 *port for the REEP program is provided through the*
4 *emission allowances allocated to the States' SEED*
5 *Accounts pursuant to section 132 of this Act. To the*
6 *extent that a State provides allowances to local gov-*
7 *ernments within the State to implement elements of*
8 *the REEP Program, that shall be deemed a distribu-*
9 *tion of such allowances to units of local government*
10 *pursuant to subsection (c)(1) of that section.*

11 (2) *INITIAL AWARD LIMITS.*—*Except as provided*
12 *in paragraph (3), State and local REEP programs*
13 *may make per-building direct expenditures for ret-*
14 *rofit improvements, or their equivalent in indirect or*
15 *other forms of financial support, from funds derived*
16 *from the sale of allowances received directly from the*
17 *Administrator in amounts not to exceed the following:*

18 (A) *RESIDENTIAL BUILDING PROGRAM.*—

19 (i) *AWARDS.*—*For residential build-*
20 *ings—*

21 (I) *support for a free or low-cost*
22 *detailed building energy audit that*
23 *prescribes, as part of a energy-reducing*
24 *measures sufficient to achieve at least a*
25 *20 percent reduction in energy use, by*

1 *providing an incentive equal to the*
2 *documented cost of such audit, but not*
3 *more than \$200, in addition to any*
4 *earned by achieving a 20 percent or*
5 *greater efficiency improvement;*

6 *(II) a total of \$1,000 for a com-*
7 *bination of measures, prescribed in an*
8 *audit conducted under subclause (I),*
9 *designed to reduce energy consumption*
10 *by more than 10 percent, and \$2,000*
11 *for a combination of measures pre-*
12 *scribed in such an audit, designed to*
13 *reduce energy consumption by more*
14 *than 20 percent;*

15 *(III) \$3,000 for demonstrated sav-*
16 *ings of 20 percent, pursuant to a per-*
17 *formance-based building retrofit pro-*
18 *gram; and*

19 *(IV) \$1,000 for each additional 5*
20 *percentage points of energy savings*
21 *achieved beyond savings for which*
22 *funding is provided under subclause*
23 *(II) or (III).*

24 *Funding shall not be provided under clauses*
25 *(II) and (III) for the same energy savings.*

1 (ii) *MAXIMUM PERCENTAGE.*—Awards
2 under clause (i) shall not exceed 50 percent
3 of retrofit costs for each building. For build-
4 ings with multiple residential units, awards
5 under clause (i) shall not be greater than 50
6 percent of the total cost of retrofitting the
7 building, prorated among individual resi-
8 dential units on the basis of relative costs of
9 the retrofit.

10 (iii) *ADDITIONAL AWARDS.*—Addi-
11 tional awards may be provided for purposes
12 of increasing energy efficiency, for buildings
13 achieving at least 20 percent energy savings
14 using funding provided under clause (i), in
15 the form of grants of not more than \$600
16 for measures projected or measured (using
17 an appropriate method approved by the Ad-
18 ministrator) to achieve at least 35 percent
19 potable water savings through equipment or
20 systems with an estimated service life of not
21 less than seven years, and not more than an
22 additional \$20 may be provided for each
23 additional one percent of such savings, up
24 to a maximum total grant of \$1,200.

1 (B) NONRESIDENTIAL BUILDING PRO-
2 GRAM.—

3 (i) AWARDS.—*For nonresidential*
4 *buildings—*

5 (I) *support for a free or low-cost*
6 *detailed building energy audit that*
7 *prescribes, as part of a energy-reducing*
8 *measures sufficient to achieve at least a*
9 *20 percent reduction in energy use, by*
10 *providing an incentive equal to the*
11 *documented cost of such audit, but not*
12 *more than \$500, in addition to any*
13 *award earned by achieving a 20 per-*
14 *cent or greater efficiency improvement;*

15 (II) *\$0.15 per square foot of ret-*
16 *rofit area for demonstrated energy use*
17 *reductions from 20 percent to 30 per-*
18 *cent;*

19 (III) *\$0.75 per square foot for*
20 *demonstrated energy use reductions*
21 *from 30 percent to 40 percent;*

22 (IV) *\$1.60 per square foot for*
23 *demonstrated energy use reductions*
24 *from 40 percent to 50 percent; and*

1 (V) \$2.50 per square foot for dem-
2 onstrated energy use reductions exceed-
3 ing 50 percent.

4 (ii) MAXIMUM PERCENTAGE.—
5 Amounts provided under subclauses (II)
6 through (V) of clause (i) combined shall not
7 exceed 50 percent of the total retrofit cost of
8 a building. In nonresidential buildings with
9 multiple units, such awards shall be pro-
10 rated among individual units on the basis
11 of relative costs of the retrofit.

12 (iii) ADDITIONAL AWARDS.—Addi-
13 tional awards may be provided, for build-
14 ings achieving at least 20 percent energy
15 savings using funding provided under
16 clause (i), as follows:

17 (I) WATER.—For purposes of in-
18 creasing energy efficiency, grants may
19 be made for whole building potable
20 water use reduction (using an appro-
21 priate method approved by the Sec-
22 retary of Energy) for up to 50 percent
23 of the total retrofit cost, including
24 amounts up to—

1 (aa) \$24.00 per thousand
2 gallons per year of potable water
3 savings of 40 percent or more;

4 (bb) \$27.00 per thousand gal-
5 lons per year of potable water sav-
6 ings of 50 percent or more; and

7 (cc) \$30.00 per thousand gal-
8 lons per year of potable water sav-
9 ings of 60 percent or more.

10 (II) ENVIRONMENTAL IMPROVE-
11 MENTS.—Additional awards of up to
12 \$1,000 may be granted for the inclu-
13 sion of other environmental attributes
14 that the Secretary, in consultation
15 with the Administrator, identifies as
16 contributing to energy efficiency. Such
17 attributes may include, but are not
18 limited to waste diversion and the use
19 of environmentally preferable materials
20 (including salvaged, renewable, or re-
21 cycled materials, and materials with
22 no or low-VOC content). The Adminis-
23 trator may recommend that States de-
24 velop such standards as are necessary
25 to account for local or regional condi-

1 *tions that may affect the feasibility or*
2 *availability of identified resources and*
3 *attributes.*

4 *(iv) INDOOR AIR QUALITY MINIMUM.—*

5 *Nonresidential buildings receiving incen-*
6 *tives under this section must satisfy at a*
7 *minimum the most recent version of*
8 *ASHRAE Standard 62.1 for ventilation, or*
9 *the equivalent as determined by the Admin-*
10 *istrator. A State may issue a waiver from*
11 *this requirement to a building project on a*
12 *showing that such compliance is infeasible*
13 *due to the physical constraints of the build-*
14 *ing's existing ventilation system, or such*
15 *other limitations as may be specified by the*
16 *Administrator.*

17 *(C) HISTORIC BUILDINGS.—Notwith-*

18 *standing subparagraphs (A) and (B), a building*
19 *in or eligible for the National Register of His-*
20 *toric Places shall be eligible for awards under*
21 *this paragraph in amounts up to 120 percent of*
22 *the amounts set forth in subparagraphs (A) and*
23 *(B).*

24 *(D) SUPPLEMENTAL SUPPORT.—State and*

25 *local governments may supplement the per-build-*

1 *ing expenditures under this paragraph with*
2 *funding from other sources.*

3 (3) *ADJUSTMENT.—The Administrator may ad-*
4 *just the specific dollar limits funded by the sale of al-*
5 *lowances pursuant to paragraph (2) in years subse-*
6 *quent to the second year after the date of enactment*
7 *of this Act, and every 2 years thereafter, as the Ad-*
8 *ministrator determines necessary to achieve optimum*
9 *cost-effectiveness and to maximize incentives to*
10 *achieve energy efficiency within the total building*
11 *award amounts provided in that paragraph, and*
12 *shall publish and hold constant such revised limits for*
13 *at least 2 years.*

14 (j) *REPORT TO CONGRESS.—The Administrator shall*
15 *conduct an annual assessment of the achievements of the*
16 *REEP program in each State, shall prepare an annual re-*
17 *port of such achievements and any recommendations for*
18 *program modifications, and shall provide such report to*
19 *Congress at the end of each fiscal year during which fund-*
20 *ing or other resources were made available to the States for*
21 *the REEP Program.*

22 (k) *OTHER SOURCES OF FEDERAL SUPPORT.—*

23 (1) *ADDITIONAL STATE ENERGY PROGRAM*
24 *FUNDS.—Any Federal funding provided to a State*
25 *Energy Program that is not required to be expended*

1 for a different federally designated purpose may be
2 used to support a REEP program.

3 (2) *PROGRAM ADMINISTRATION.*—*State Energy*
4 *Offices or designated State agencies may expend up*
5 *to 10 percent of available allowance value provided*
6 *under this section for program administration.*

7 (3) *AUTHORIZATION OF APPROPRIATIONS.*—
8 *There are authorized to be appropriated for the pur-*
9 *poses of this section, for each of fiscal years 2010,*
10 *2011, 2012, and 2013—*

11 (A) *\$50,000,000 to the Administrator for*
12 *program administration costs; and*

13 (B) *\$20,000,000 to the Secretary of Energy*
14 *for program administration costs.*

15 **SEC. 203. ENERGY EFFICIENT MANUFACTURED HOMES.**

16 (a) *DEFINITIONS.*—*In this section:*

17 (1) *MANUFACTURED HOME.*—*The term “manu-*
18 *factured home” has the meaning given such term in*
19 *section 603 of the National Manufactured Housing*
20 *Construction and Safety Standards Act of 1974 (42*
21 *U.S.C. 5402).*

22 (2) *ENERGY STAR QUALIFIED MANUFACTURED*
23 *HOME.*—*The term “Energy Star qualified manufac-*
24 *tured home” means a manufactured home that has*
25 *been designed, produced, and installed in accordance*

1 with Energy Star's guidelines by an Energy Star cer-
2 tified plant.

3 (b) *PURPOSE.*—The purpose of this section is to assist
4 low-income households residing in manufactured homes
5 constructed prior to 1976 to save energy and energy expend-
6 itures by providing support toward the purchase of new En-
7 ergy Star qualified manufactured homes.

8 (c) *STATE IMPLEMENTATION OF PROGRAM.*—

9 (1) *MANUFACTURED HOME REPLACEMENT PRO-*
10 *GRAM.*—Any State may provide to the owner of a
11 manufactured home constructed prior to 1976 a re-
12 bate to use toward the purchase of a new Energy Star
13 qualified manufactured home pursuant to this section.

14 (2) *USE OF ALLOWANCES.*—Direct Federal sup-
15 port for the program established in this section is pro-
16 vided through the emission allowances allocated to the
17 States' SEED Accounts pursuant to section 132 of
18 this Act. To the extent that a State provides allow-
19 ances to local governments within the State to imple-
20 ment this program, that shall be deemed a distribu-
21 tion of such allowances to units of local government
22 pursuant to subsection (c)(1) of that section.

23 (3) *REBATES.*—

24 (A) *PRIMARY RESIDENCE REQUIREMENT.*—

25 A rebate described under paragraph (1) may

1 *only be made to an owner of a manufactured*
2 *home constructed prior to 1976 that is used on*
3 *a year-round basis as a primary residence.*

4 (B) *DISMANTLING AND REPLACEMENT.*—A
5 *rebate described under paragraph (1) may be*
6 *made only if the manufactured home constructed*
7 *prior to 1976 will be—*

8 (i) *rendered unusable for human habi-*
9 *tation (including appropriate recycling);*
10 *and*

11 (ii) *replaced, in the same general loca-*
12 *tion, as determined by the applicable State*
13 *agency, with an Energy Star qualified*
14 *manufactured home.*

15 (C) *SINGLE REBATE.*—A rebate described
16 *under paragraph (1) may not be provided to any*
17 *owner of a manufactured home constructed prior*
18 *to 1976 that was or is a member of a household*
19 *for which any other member of the household was*
20 *provided a rebate pursuant to this section.*

21 (D) *ELIGIBLE HOUSEHOLDS.*—To be eligi-
22 *ble to receive a rebate described under paragraph*
23 *(1), an owner of a manufactured home con-*
24 *structed prior to 1976 shall demonstrate to the*
25 *applicable State agency that the total income of*

1 *all members the owner's household does not ex-*
2 *ceed 200 percent of the Federal poverty level for*
3 *income in the applicable area.*

4 *(E) ADVANCE AVAILABILITY.—A rebate may*
5 *be provided under this section in a manner to*
6 *facilitate the purchase of a new Energy Star*
7 *qualified manufactured home.*

8 *(4) REBATE LIMITATION.—Rebates provided by*
9 *States under this section shall not exceed \$7,500 per*
10 *manufactured home from any value derived from the*
11 *use of emission allowances provided to the State pur-*
12 *suant to section 132.*

13 *(5) USE OF STATE FUNDS.—A State providing*
14 *rebates under this section may supplement the*
15 *amount of such rebates under paragraph (4) by any*
16 *additional amount is from State funds and other*
17 *sources, including private donations or grants from*
18 *charitable organizations.*

19 *(6) COORDINATION WITH SIMILAR PROGRAMS.—*

20 *(A) STATE PROGRAMS.—A State conducting*
21 *an existing program that has the purpose of re-*
22 *placing manufactured homes constructed prior to*
23 *1976 with Energy Star qualified manufactured*
24 *homes, may use allowance value provided under*
25 *section 782 of the Clean Air Act to support such*

1 a program, provided such funding does not ex-
2 ceed the rebate limitation amount under para-
3 graph (4).

4 (B) *FEDERAL PROGRAMS.*—*The Secretary of*
5 *Energy shall coordinate with and seek to achieve*
6 *the purpose of this section through similar Fed-*
7 *eral programs including—*

8 (i) *the Weatherization Assistance Pro-*
9 *gram under part A of title IV of the Energy*
10 *Conservation and Production Act (42*
11 *U.S.C. 6861 et seq.); and*

12 (ii) *the program under part D of title*
13 *III of the Energy Policy and Conservation*
14 *Act (42 U.S.C. 6321 et seq.).*

15 (C) *COORDINATION WITH OTHER STATE*
16 *AGENCIES.*—*A State agency using allowance*
17 *value to administer the program under this sec-*
18 *tion may coordinate its efforts, and share funds*
19 *for administration, with other State agencies in-*
20 *volved in low-income housing programs.*

21 (7) *ADMINISTRATIVE EXPENSES.*—*A State using*
22 *allowance value under this section may expend not*
23 *more than 10 percent of such value for administrative*
24 *expenses related to this program.*

1 **SEC. 204. BUILDING ENERGY PERFORMANCE LABELING**
2 **PROGRAM.**

3 (a) *ESTABLISHMENT.*—

4 (1) *PURPOSE.*—*The Administrator shall estab-*
5 *lish a building energy performance labeling program*
6 *with broad applicability to the residential and com-*
7 *mercial markets to enable and encourage knowledge*
8 *about building energy performance by owners and oc-*
9 *cupants and to inform efforts to reduce energy con-*
10 *sumption nationwide.*

11 (2) *COMPONENTS.*—*In developing such program,*
12 *the Administrator shall—*

13 (A) *consider existing programs, such as En-*
14 *vironmental Protection Agency's Energy Star*
15 *program, the Home Energy Rating System*
16 *(HERS) Index, and programs at the Depart-*
17 *ment of Energy;*

18 (B) *support the development of model per-*
19 *formance labels for residential and commercial*
20 *buildings; and*

21 (C) *utilize incentives and other means to*
22 *spur use of energy performance labeling of public*
23 *and private sector buildings nationwide.*

24 (b) *DATA ASSESSMENT FOR BUILDING ENERGY PER-*
25 *FORMANCE.*—

1 (1) *INITIAL REPORT.*—Not later than 90 days
2 after the date of enactment of this Act, the Adminis-
3 trator shall provide to Congress, as well as to the Sec-
4 retary of Energy and the Office of Management and
5 Budget, a report identifying—

6 (A) all principal building types for which
7 statistically significant energy performance data
8 exists to serve as the basis of measurement proto-
9 cols and labeling requirements for achieved
10 building energy performance; and

11 (B) those building types for which addi-
12 tional data are required to enable the develop-
13 ment of such protocols and requirements.

14 (2) *ADDITIONAL REPORTS.*—Additional updated
15 reports shall be provided under this subsection as
16 often as The Administrator considers practicable, but
17 not less than every 2 years.

18 (c) *BUILDING DATA ACQUISITION.*—

19 (1) *RESOURCE REQUIREMENTS.*—For all prin-
20 cipal building types identified under subsection (b),
21 the Secretary of Energy, not later than 90 days after
22 a report by the Administrator under subsection (b),
23 shall provide to Congress, the Administrator, and the
24 Office of Management and Budget a statement of ad-
25 ditional resources needed, if any, to fully develop the

1 *relevant data, as well as the anticipated timeline for*
2 *data development.*

3 (2) *CONSULTATION.—The Secretary of Energy*
4 *shall consult with the Administrator concerning the*
5 *Administrator’s ability to use data series for these ad-*
6 *ditional building types to support the achieved per-*
7 *formance component in the labeling program.*

8 (3) *IMPROVEMENTS TO BUILDING ENERGY CON-*
9 *SUMPTION DATABASES.—*

10 (A) *COMMERCIAL DATABASE.—The Sec-*
11 *retary of Energy shall support improvements to*
12 *the Commercial Buildings Energy Consumption*
13 *Survey (CBECS) as authorized by section 205(k)*
14 *of the Department of Energy Organization Act*
15 *(42 U.S.C. 7135(k))—*

16 (i) *to enable complete and robust data*
17 *for the actual energy performance of prin-*
18 *cipal building types currently covered by*
19 *survey;*

20 (ii) *to cover additional building types*
21 *as identified by the Administrator under*
22 *subsection (b)(1)(B), to enable the develop-*
23 *ment of achieved performance measurement*
24 *protocols are developed for at least 90 per-*
25 *cent of all major commercial building types*

1 *within 5 years after the date of enactment*
2 *of this Act; and*

3 (iii) *to include third-party audits of*
4 *random data samplings to ensure the qual-*
5 *ity and accuracy of survey information.*

6 (B) *RESIDENTIAL DATABASES.—The Ad-*
7 *ministrator, in consultation with the Energy In-*
8 *formation Administration and the Secretary of*
9 *Energy, shall support improvements to the Resi-*
10 *dential Energy Consumption Survey (RECS) as*
11 *authorized by section 205(k) of the Department*
12 *of Energy Organization Act (42 U.S.C. 7135(k)),*
13 *or such other residential energy performance*
14 *databases as the Administrator considers appro-*
15 *priate, to aid the development of achieved per-*
16 *formance measurement protocols for residential*
17 *building energy use for at least 90 percent of the*
18 *residential market within 5 years after the date*
19 *of enactment of this Act.*

20 (C) *CONSULTATION.—The Secretary of En-*
21 *ergy and the Administrator shall consult with*
22 *public, private, and nonprofit sector representa-*
23 *tives from the building industry and real estate*
24 *industry to assist in the evaluation and im-*

1 *provement of building energy performance data-*
2 *bases and labeling programs.*

3 *(d) IDENTIFICATION OF MEASUREMENT PROTOCOLS*
4 *FOR ACHIEVED PERFORMANCE.—*

5 *(1) PROPOSED PROTOCOLS AND REQUIRE-*
6 *MENTS.—At the earliest practicable date, but not later*
7 *than 1 year after identifying a building type under*
8 *subsection (b)(1)(A), the Administrator shall propose*
9 *a measurement protocol for that building type and a*
10 *requirement detailing how to use that protocol in*
11 *completing applicable commercial or residential per-*
12 *formance labels created pursuant to this section.*

13 *(2) FINAL RULE.—After providing for notice and*
14 *comment, the Administrator shall publish a final rule*
15 *containing a measurement protocol and the cor-*
16 *responding requirements for applying that protocol.*
17 *Such a rule—*

18 *(A) shall define the minimum period for*
19 *measurement of energy use by buildings of that*
20 *type and other details for determining achieved*
21 *performance, to include leased buildings or parts*
22 *thereof;*

23 *(B) shall identify necessary data collection*
24 *and record retention requirements; and*

1 (C) may specify transition rules and ex-
2 emptions for classes of buildings within the
3 building type.

4 (e) *PROCEDURES FOR EVALUATING DESIGNED PER-*
5 *FORMANCE.*—*The Administrator shall develop protocols for*
6 *evaluating the designed performance of individual building*
7 *types. The Administrator may conduct such feasibility*
8 *studies and demonstration projects as are necessary to*
9 *evaluate the sufficiency of proposed protocols for designed*
10 *performance.*

11 (f) *CREATION OF BUILDING ENERGY PERFORMANCE*
12 *LABELING PROGRAM.*—

13 (1) *MODEL LABEL.*—*Not later than 1 year after*
14 *the date of enactment of this Act, the Administrator*
15 *shall propose a model building energy label that pro-*
16 *vides a format—*

17 (A) *to display achieved performance and de-*
18 *signed performance data;*

19 (B) *that may be tailored for residential and*
20 *commercial buildings, and for single-occupancy*
21 *and multitenanted buildings; and*

22 (C) *to display other appropriate elements*
23 *identified during the development of measure-*
24 *ment protocols under subsections (d) and (e).*

1 (2) *INCLUSIONS.*—*Nothing in this section shall*
2 *require the inclusion on such a label of designed per-*
3 *formance data where impracticable or not cost effec-*
4 *tive, or to preclude the display of both achieved per-*
5 *formance and designed performance data for a par-*
6 *ticular building where both such measures are avail-*
7 *able, practicable, and cost effective.*

8 (3) *EXISTING PROGRAMS.*—*In developing the*
9 *model label, the Administrator shall consider existing*
10 *programs, including—*

11 (A) *the Environmental Protection Agency's*
12 *Energy Star Portfolio Manager program and the*
13 *California HERS II Program Custom Approach*
14 *for the achieved performance component of the*
15 *label;*

16 (B) *the Home Energy Rating System*
17 *(HERS) Index system for the designed perform-*
18 *ance component of the label; and*

19 (C) *other Federal and State programs, in-*
20 *cluding the Department of Energy's related pro-*
21 *grams on building technologies and those of the*
22 *Federal Energy Management Program.*

23 (4) *FINAL RULE.*—*After providing for notice and*
24 *comment, the Administrator shall publish a final rule*

1 *containing the label applicable to covered building*
2 *types.*

3 *(g) DEMONSTRATION PROJECTS FOR LABELING PRO-*
4 *GRAM.—*

5 *(1) IN GENERAL.—The Administrator shall con-*
6 *duct building energy performance labeling demonstra-*
7 *tion projects for different building types—*

8 *(A) to ensure the sufficiency of the current*
9 *Commercial Buildings Energy Consumption*
10 *Survey and other data to serve as the basis for*
11 *new measurement protocols for the achieved per-*
12 *formance component of the building energy per-*
13 *formance labeling program;*

14 *(B) to inform the development of measure-*
15 *ment protocols for building types not currently*
16 *covered by the Commercial Buildings Energy*
17 *Consumption Survey; and*

18 *(C) to identify any additional information*
19 *that needs to be developed to ensure effective use*
20 *of the model label.*

21 *(2) PARTICIPATION.—Such demonstration*
22 *projects shall include participation of—*

23 *(A) buildings from diverse geographical and*
24 *climate regions;*

1 (B) buildings in both urban and rural
2 areas;

3 (C) single-family residential buildings;

4 (D) multihousing residential buildings with
5 more than 50 units, including at least one
6 project that provides affordable housing to indi-
7 viduals of diverse incomes;

8 (E) single-occupant commercial buildings
9 larger than 30,000 square feet;

10 (F) multitenanted commercial buildings
11 larger than 50,000 square feet; and

12 (G) buildings from both the public and pri-
13 vate sectors.

14 (3) *PRIORITY.*—Priority in the selection of dem-
15 onstration projects shall be given to projects that fa-
16 cilitate large-scale implementation of the labeling pro-
17 gram for samples of buildings across neighborhoods,
18 geographic regions, cities, or States.

19 (4) *FINDINGS.*—The Administrator shall report
20 any findings from demonstration projects under this
21 subsection, including an identification of any areas of
22 needed data improvement, to the Department of Ener-
23 gy’s Energy Information Administration and Build-
24 ing Technologies Program.

1 (5) *COORDINATION.*—*The Administrator and the*
2 *Secretary of Energy shall coordinate demonstration*
3 *projects undertaken pursuant to this subsection with*
4 *those undertaken as part of the Zero-Net-Energy*
5 *Commercial Buildings Initiative adopted under sec-*
6 *tion 422 of the Energy Independence and Security*
7 *Act of 2007 (42 U.S.C. 17082).*

8 *(h) IMPLEMENTATION OF LABELING PROGRAM.*—

9 (1) *IN GENERAL.*—*The Administrator, in con-*
10 *sultation with the Secretary of Energy, shall work*
11 *with all State Energy Offices established pursuant to*
12 *part D of title III of the Energy Policy and Con-*
13 *servation Act (42 U.S.C. 6321 et seq.) or other State*
14 *authorities as necessary for the purpose of imple-*
15 *menting the labeling program established under this*
16 *section for commercial and residential buildings.*

17 (2) *OUTREACH TO LOCAL AUTHORITIES.*—*The*
18 *Administrator shall, acting in consultation and co-*
19 *ordination with the respective States, encourage use of*
20 *the labeling program by counties and other localities*
21 *to broaden access to information about building en-*
22 *ergy use, for example, through disclosure of building*
23 *label contents in tax, title, and other records those lo-*
24 *calities maintain. For this purpose, the Adminis-*
25 *trator shall develop an electronic version of the label*

1 *and information that can be readily transmitted and*
2 *read in widely-available computer programs but is*
3 *protected from unauthorized manipulation.*

4 (3) *MEANS OF IMPLEMENTATION.—In adopting*
5 *the model labeling program established under this sec-*
6 *tion, a State shall seek to ensure that labeled informa-*
7 *tion be made accessible to the public in a manner so*
8 *that owners, lenders, tenants, occupants, or other rel-*
9 *evant parties can utilize it. Such accessibility may be*
10 *accomplished through—*

11 (A) *preparation, and public disclosure of*
12 *the label through filing with tax and title records*
13 *at the time of—*

14 (i) *a building audit conducted with*
15 *support from Federal or State funds;*

16 (ii) *a building energy-efficiency retrofit*
17 *conducted in response to such an audit;*

18 (iii) *a final inspection of major ren-*
19 *ovations or additions made to a building in*
20 *accordance with a building permit issued*
21 *by a local government entity;*

22 (iv) *a sale that is recorded for title and*
23 *tax purposes consistent with paragraph (8);*

24 (v) *a new lien recorded on the property*
25 *for more than a set percentage of the as-*

1 *essed value of the property, if that lien re-*
2 *fects public financial assistance for energy-*
3 *related improvements to that building; or*

4 *(vi) a change in ownership or oper-*
5 *ation of the building for purposes of utility*
6 *billing; or*

7 *(B) other appropriate means.*

8 (4) *STATE IMPLEMENTATION OF PROGRAM.—*

9 *(A) ELIGIBILITY.—A State may become eli-*
10 *gible to utilize allowance value to implement this*
11 *program by—*

12 *(i) adopting by statute or regulation a*
13 *requirement that buildings be assessed and*
14 *labeled, consistent with the labeling require-*
15 *ments of the program established under this*
16 *section; or*

17 *(ii) adopting a plan to implement a*
18 *model labeling program consistent with this*
19 *section within one year of enactment of this*
20 *Act, including the establishment of that pro-*
21 *gram within 3 years after the date of enact-*
22 *ment of this Act, and demonstrating contin-*
23 *uous progress under that plan.*

24 *(B) USE OF ALLOWANCES.—Direct Federal*
25 *support for the program established in this sec-*

1 tion is provided through the emission allowances
2 allocated to the States' SEED Accounts pursuant
3 to section 132 of this Act. To the extent that a
4 State provides allowances to local governments
5 within the State to implement this program, that
6 shall be deemed a distribution of such allowances
7 to units of local government pursuant to sub-
8 section (c)(1) of that section.

9 (5) *GUIDANCE.*—The Administrator may create
10 or identify model programs and resources to provide
11 guidance to offer to States and localities for creating
12 labeling programs consistent with the model program
13 established under this section.

14 (6) *PROGRESS REPORT.*—The Administrator, in
15 consultation with the Secretary of Energy, shall pro-
16 vide a progress report to Congress not later than 3
17 years after the date of enactment of this Act that—

18 (A) evaluates the effectiveness of efforts to
19 advance use of the model labeling program by
20 States and localities;

21 (B) recommends any legislative changes
22 necessary to broaden the use of the model label-
23 ing program; and

24 (C) identifies any changes to broaden the
25 use of the model labeling program that the Ad-

1 *ministrator has made or intends to make that do*
2 *not require additional legislative authority.*

3 (7) *STATE INFORMATION.—The Administrator*
4 *may require States to report to the Administrator in-*
5 *formation that the Administrator requires to provide*
6 *the report required under paragraph (6).*

7 (8) *PREVENTION OF DISRUPTION OF SALES*
8 *TRANSACTIONS.—No State shall implement a new la-*
9 *beling program pursuant to this section in a manner*
10 *that requires the labeling of a building to occur after*
11 *a contract has been executed for the sale of that build-*
12 *ing and before the sales transaction is completed.*

13 (i) *IMPLEMENTATION OF LABELING PROGRAM IN FED-*
14 *ERAL BUILDINGS.—*

15 (1) *USE OF LABELING PROGRAM.—The Secretary*
16 *of Energy and the Administrator shall use the label-*
17 *ing program established under this section to evaluate*
18 *energy performance in the facilities of the Department*
19 *of Energy and the Environmental Protection Agency,*
20 *respectively, to the extent practicable, and shall en-*
21 *courage and support implementation efforts in other*
22 *Federal agencies.*

23 (2) *ANNUAL PROGRESS REPORT.—The Secretary*
24 *of Energy and Administrator shall provide an annual*
25 *progress report to Congress and the Office of Manage-*

1 *ment and Budget detailing efforts to implement this*
2 *subsection, as well as any best practices or needed re-*
3 *sources identified as a result of such efforts.*

4 *(j) PUBLIC OUTREACH.—The Secretary of Energy and*
5 *the Administrator, in consultation with nonprofit and in-*
6 *dustry stakeholders with specialized expertise, and in con-*
7 *junction with other energy efficiency public awareness ef-*
8 *forts, shall establish a business and consumer education*
9 *program to increase awareness about the importance of*
10 *building energy efficiency and to facilitate widespread use*
11 *of the labeling program established under this section.*

12 *(k) DEFINITIONS.—In this section:*

13 *(1) BUILDING TYPE.—The term “building type”*
14 *means a grouping of buildings as identified by their*
15 *principal building activities, or as grouped by their*
16 *use, including office buildings, laboratories, libraries,*
17 *data centers, retail establishments, hotels, warehouses,*
18 *and educational buildings.*

19 *(2) MEASUREMENT PROTOCOL.—The term*
20 *“measurement protocol” means the methodology, pre-*
21 *scribed by the Administrator, for defining a bench-*
22 *mark for building energy performance for a specific*
23 *building type and for measuring that performance*
24 *against the benchmark.*

1 (3) *ACHIEVED PERFORMANCE.*—*The term*
2 *“achieved performance” means the actual energy con-*
3 *sumption of a building as compared to a baseline*
4 *building of the same type and size, determined by ac-*
5 *tual consumption data normalized for appropriate*
6 *variables.*

7 (4) *DESIGNED PERFORMANCE.*—*The term “de-*
8 *signed performance” means the energy consumption*
9 *performance a building would achieve if operated con-*
10 *sistent with its design intent for building energy use,*
11 *utilizing a standardized set of operational conditions*
12 *informed by data collected or confirmed during an*
13 *energy audit.*

14 (1) *AUTHORIZATION OF APPROPRIATIONS.*—*There are*
15 *authorized to be appropriated—*

16 (1) *to the Administrator \$50,000,000 for imple-*
17 *mentation of this section for each fiscal year from*
18 *2010 through 2020; and*

19 (2) *to the Secretary of Energy \$20,000,000 for*
20 *implementation of this section for fiscal year 2010*
21 *and \$10,000,000 for fiscal years 2011 through 2020.*

22 **SEC. 205. TREE PLANTING PROGRAMS.**

23 (a) *FINDINGS.*—*The Congress finds that—*

24 (1) *the utility sector is the largest single source*
25 *of greenhouse gas emissions in the United States*

1 *today, producing approximately one-third of the*
2 *country's emissions;*

3 *(2) heating and cooling homes accounts for near-*
4 *ly 60 percent of residential electricity usage in the*
5 *United States;*

6 *(3) shade trees planted in strategic locations can*
7 *reduce residential cooling costs by as much as 30 per-*
8 *cent;*

9 *(4) shade trees have significant clean-air benefits*
10 *associated with them;*

11 *(5) every 100 healthy large trees removes about*
12 *300 pounds of air pollution (including particulate*
13 *matter and ozone) and about 15 tons of carbon diox-*
14 *ide from the air each year;*

15 *(6) tree cover on private property and on newly-*
16 *developed land has declined since the 1970s, even*
17 *while emissions from transportation and industry*
18 *have been rising; and*

19 *(7) in over a dozen test cities across the United*
20 *States, increasing urban tree cover has generated be-*
21 *tween two and five dollars in savings for every dollar*
22 *invested in such tree planting.*

23 *(b) DEFINITIONS.—As used in this section:*

24 *(1) The term “Secretary” refers to the Secretary*
25 *of Energy.*

1 (2) *The term “retail power provider” means any*
2 *entity authorized under applicable State or Federal*
3 *law to generate, distribute, or provide retail elec-*
4 *tricity, natural gas, or fuel oil service.*

5 (3) *The term “tree-planting organization” means*
6 *any nonprofit or not-for-profit group which exists, in*
7 *whole or in part, to—*

8 (A) *expand urban and residential tree*
9 *cover;*

10 (B) *distribute trees for planting;*

11 (C) *increase awareness of the environmental*
12 *and energy-related benefits of trees;*

13 (D) *educate the public about proper tree*
14 *planting, care, and maintenance strategies; or*

15 (E) *carry out any combination of the fore-*
16 *going activities.*

17 (4) *The term “tree-siting guidelines” means a*
18 *comprehensive list of science-based measurements out-*
19 *lining the species and minimum distance required be-*
20 *tween trees planted pursuant to this section, in addi-*
21 *tion to the minimum required distance to be main-*
22 *tained between such trees and—*

23 (A) *building foundations;*

24 (B) *air conditioning units;*

25 (C) *driveways and walkways;*

- 1 (D) property fences;
- 2 (E) preexisting utility infrastructure;
- 3 (F) septic systems;
- 4 (G) swimming pools; and
- 5 (H) other infrastructure as deemed appro-
- 6 priate.

7 (5) The terms “small office”, “small office build-

8 ings”, and “small office settings” means nonresiden-

9 tial buildings or structures zoned for business pur-

10 poses that are 20,000 square feet or less in total area.

11 (c) *PURPOSES.*—The purpose of this section is to estab-

12 lish a grant program to assist retail power providers with

13 the establishment and operation of targeted tree-planting

14 programs in residential and small office settings, for the

15 following purposes:

16 (1) Reducing the peak-load demand for elec-

17 tricity from residences and small office buildings dur-

18 ing the summer months through direct shading of

19 buildings provided by strategically planted trees.

20 (2) Reducing wintertime demand for energy

21 from residences and small office buildings by blocking

22 cold winds from reaching such structures, which low-

23 ers interior temperatures and drives heating demand.

24 (3) Protecting public health by removing harm-

25 ful pollution from the air.

1 (4) *Utilizing the natural photosynthetic and*
2 *transpiration process of trees to lower ambient tem-*
3 *peratures and absorb carbon dioxide, thus mitigating*
4 *the effects of climate change.*

5 (5) *Lowering electric bills for residential and*
6 *small office ratepayers by limiting electricity con-*
7 *sumption without reducing benefits.*

8 (6) *Relieving financial and demand pressure on*
9 *retail power providers that stems from large peak-*
10 *load energy demand.*

11 (7) *Protecting water quality and public health*
12 *by reducing stormwater runoff and keeping harmful*
13 *pollutants from entering waterways.*

14 (8) *Ensuring that trees are planted in locations*
15 *that limit the amount of public money needed to*
16 *maintain public and electric infrastructure.*

17 (d) *GENERAL AUTHORITY.—*

18 (1) *ASSISTANCE.—The Secretary is authorized to*
19 *provide financial, technical, and related assistance to*
20 *retail power providers to assist with the establishment*
21 *of new, or continued operation of existing, targeted*
22 *tree-planting programs for residences and small office*
23 *buildings.*

24 (2) *PUBLIC RECOGNITION INITIATIVE.—In car-*
25 *rying out the authority provided under this section,*

1 *the Secretary shall also create a national public rec-*
2 *ognition initiative to encourage participation in tree-*
3 *planting programs by retail power providers.*

4 (3) *ELIGIBILITY.*—*Only those programs which*
5 *utilize targeted, strategic tree-siting guidelines to*
6 *plant trees in relation to building location, sunlight,*
7 *and prevailing wind direction shall be eligible for as-*
8 *sistance under this section.*

9 (4) *REQUIREMENTS.*—*In order to qualify for as-*
10 *sistance under this section, a tree-planting program*
11 *shall meet each of the following requirements:*

12 (A) *The program shall provide free or dis-*
13 *counted shade-providing or wind-reducing trees*
14 *to residential and small office consumers inter-*
15 *ested in lowering their home energy costs.*

16 (B) *The program shall optimize the elec-*
17 *tricity-consumption reduction benefit of each tree*
18 *by planting in strategic locations around a given*
19 *residence or small office.*

20 (C) *The program shall either—*

21 (i) *provide maximum amounts of*
22 *shade during summer intervals when resi-*
23 *dences and small offices are exposed to the*
24 *most sun intensity; or*

1 (ii) provide maximum amounts of
2 wind protection during fall and winter in-
3 tervals when residences and small offices are
4 exposed to the most wind intensity.

5 (D) The program shall use the best available
6 science to create tree siting guidelines which dic-
7 tate where the optimum tree species are best
8 planted in locations that achieve maximum re-
9 ductions in consumer energy demand while caus-
10 ing the least disruption to public infrastructure,
11 considering overhead and underground facilities.

12 (E) The program shall receive certification
13 from the Secretary that it is designed to achieve
14 the goals set forth in subparagraphs (A) through
15 (D). In designating criteria for such certifi-
16 cation, the Secretary shall collaborate with the
17 United States Forest Service's Urban and Com-
18 munity Forestry Program to ensure that certifi-
19 cation requirements are consistent with such
20 above goals.

21 (5) *NEW PROGRAM FUNDING SHARE.*—The Sec-
22 retary shall ensure that no less than 30 percent of the
23 funds made available under this section are distrib-
24 uted to retail power providers which—

1 (A) have not previously established or oper-
2 ated qualified tree-planting programs; or

3 (B) are operating qualified tree-planting
4 programs which were established no more than
5 three years prior to the date of enactment of this
6 section.

7 (e) *AGREEMENTS BETWEEN ELECTRICITY PROVIDERS*
8 *AND TREE-PLANTING ORGANIZATIONS.*—

9 (1) *GRANT AUTHORIZATION.*—*In providing as-*
10 *sistance under this section, the Secretary is author-*
11 *ized to award grants only to retail power providers*
12 *that have entered into binding legal agreements with*
13 *nonprofit tree-planting organizations.*

14 (2) *CONDITIONS OF AGREEMENT.*—*Those agree-*
15 *ments between retail power providers and tree-plant-*
16 *ing organizations shall set forth conditions under*
17 *which nonprofit tree-planting organizations shall pro-*
18 *vide targeted tree-planting programs which may re-*
19 *quire these organizations to—*

20 (A) *participate in local technical advisory*
21 *committees responsible for drafting general tree-*
22 *siting guidelines and choosing the most effective*
23 *species of trees to plant in given locations;*

1 (B) coordinate volunteer recruitment to as-
2 sist with the physical act of planting trees in
3 residential locations;

4 (C) undertake public awareness campaigns
5 to educate local residents about the benefits, cost
6 savings, and availability of free shade trees;

7 (D) establish education and information
8 campaigns to encourage recipients to maintain
9 their shade trees over the long term;

10 (E) serve as the point of contact for existing
11 and potential residential participants who have
12 questions or concerns regarding the tree-planting
13 program;

14 (F) require tree recipients to sign agree-
15 ments committing to voluntary stewardship and
16 care of provided trees;

17 (G) monitor and report on the survival,
18 growth, overall health, and estimated energy sav-
19 ings of provided trees up until the end of their
20 establishment period which shall be no less than
21 five years; and

22 (H) ensure that trees planted near existing
23 power lines will not interfere with energized elec-
24 tricity distribution lines when mature, and that
25 no new trees will be planted under or adjacent

1 to high-voltage electric transmission lines with-
2 out prior consultation with the applicable retail
3 power provider receiving assistance under this
4 section.

5 (3) *LACK OF NONPROFIT ORGANIZATION.*—If
6 qualified nonprofit or not-for-profit tree planting or-
7 ganizations do not exist or operate within areas
8 served by retail power providers applying for assist-
9 ance under this section, the requirements of this sec-
10 tion shall apply to binding legal agreements entered
11 into by such retail power providers and one of the fol-
12 lowing entities:

13 (A) *Local municipal governments with ju-*
14 *risdiction over the urban or suburban forest.*

15 (B) *The State Forester for the State in*
16 *which the tree planting program will operate.*

17 (C) *The United States Forest Service’s*
18 *Urban and Community Forestry representative*
19 *for the State in which the tree-planting program*
20 *will operate.*

21 (D) *A landscaping services company that*
22 *is—*

23 (i) *identified in consultation with a*
24 *national or State nonprofit or not-for-profit*
25 *tree-planting organization;*

1 (ii) licensed to operate in the State in
2 which the tree-planting program will oper-
3 ate; and

4 (iii) a business as defined by the
5 United States Census Bureau's 2007 North
6 American Industry Classification System
7 Code 561730.

8 (f) *TECHNICAL ADVISORY COMMITTEES.*—

9 (1) *DESCRIPTION.*—In order to qualify for as-
10 sistance under this section, the retail power provider
11 shall establish and consult with a local technical advi-
12 sory committee which shall provide advice and con-
13 sultation to the program, and may—

14 (A) design and adopt an approved plant
15 list that emphasizes the use of hardy,
16 noninvasive tree species and, where geographi-
17 cally appropriate, the use of native, or site-
18 adapted, or low water-use shade trees;

19 (B) design and adopt planting, installation,
20 and maintenance specifications and create a
21 process for inspection and quality control;

22 (C) ensure that tree recipients are educated
23 to care for and maintain their trees over the long
24 term;

1 (D) help the public become more engaged
2 and educated in the planting and care of shade
3 trees;

4 (E) prioritize which sites receive trees, giv-
5 ing preference to locations with the most poten-
6 tial for energy conservation and secondary pref-
7 erence to areas where the average annual income
8 is below the regional median; and

9 (F) assist with monitoring and collection of
10 data on tree health, tree survival, and energy
11 conservation benefits generated under this sec-
12 tion.

13 (2) *COMPENSATION.*—Individuals serving on
14 local technical advisory committees shall not receive
15 compensation for their service.

16 (3) *COMPOSITION.*—Local technical advisory
17 committees shall be composed of representatives from
18 public, private, and nongovernmental agencies with
19 expertise in demand-side energy efficiency manage-
20 ment, urban forestry, or arboriculture, and shall be
21 composed of the following:

22 (A) Up to 4 persons, but no less than one
23 person, representing the retail power provider re-
24 ceiving assistance under this section.

1 (B) Up to 4 persons, but no less than one
2 person, representing the local tree-planting orga-
3 nization which will partner with the retail
4 power provider to carry out this section.

5 (C) Up to 3 persons representing local non-
6 profit conservation or environmental organiza-
7 tions. Preference shall be given to those entities
8 which are organized under section 501(c)(3) of
9 the Internal Revenue Code of 1986, and which
10 have demonstrated expertise engaging the public
11 in energy conservation, energy efficiency, or
12 green building practices or a combination there-
13 of, such that no single organization is rep-
14 resented by more than one individual under this
15 paragraph.

16 (D) Up to 2 persons representing a local af-
17 fordable housing agency, affordable housing
18 builder, or community development corporation.

19 (E) Up to 3, but no less than one, persons
20 representing local city or county government for
21 each municipality where a shade tree-planting
22 program will take place; at least one of these rep-
23 resentatives shall be the city or county forester,
24 city or county arborist, or functional equivalent.

1 (F) *Up to one person representing the local*
2 *government agency responsible for management*
3 *of roads, sewers, and infrastructure, including*
4 *but not limited to public works departments,*
5 *transportation agencies, or equivalents.*

6 (G) *Up to 3 persons representing the nurs-*
7 *ery and landscaping industry.*

8 (H) *Up to 3 persons representing the re-*
9 *search community or academia with expertise in*
10 *natural resources or energy management issues.*

11 (4) *CHAIRPERSON.—Each local technical advi-*
12 *sory committee shall elect a chairperson to preside*
13 *over Committee meetings, act as a liaison to govern-*
14 *mental and other outside entities, and direct the gen-*
15 *eral operation of the committee; only committee rep-*
16 *resentatives from paragraph (3)(A) or paragraph*
17 *(3)(B) of this subsection shall be eligible to act as*
18 *local technical advisory committee chairpersons.*

19 (5) *CREDENTIALS.—At least one of the members*
20 *of each local technical advisory committee shall be*
21 *certified with one or more of the following credentials:*
22 *International Society of Arboriculture; Certified*
23 *Arborist, ISA; Certified Arborist Municipal Spe-*
24 *cialist, ISA; Certified Arborist Utility Specialist,*
25 *ISA; Board Certified Master Arborist; or Registered*

1 *Landscape Architect recommended by the American*
2 *Society of Landscape Architects.*

3 *(g) COST-SHARE PROGRAM.—*

4 *(1) FEDERAL SHARE.—The Federal share of sup-*
5 *port for projects funded under this section shall not*
6 *exceed 50 percent of the cost of such project and shall*
7 *be provided on a matching basis.*

8 *(2) NON-FEDERAL SHARE.—The non-Federal*
9 *share of such costs may be paid or contributed by any*
10 *governmental or nongovernmental entity other than*
11 *from funds derived directly or indirectly from an*
12 *agency or instrumentality of the United States.*

13 *(h) RULEMAKING.—*

14 *(1) RULEMAKING PERIOD.—The Secretary shall*
15 *be authorized to solicit comments and initiate a rule-*
16 *making period that shall last no more than 6 months*
17 *after the date of enactment of this section.*

18 *(2) COMPETITIVE GRANT RULE.—At the conclu-*
19 *sion of the rulemaking period under paragraph (1),*
20 *the Secretary shall promulgate a rule governing a*
21 *public, competitive grants process through which re-*
22 *tail power providers may apply for Federal support*
23 *under this section.*

24 *(i) NONDUPLICITY.—Nothing in this section shall be*
25 *construed to supersede, duplicate, cancel, or negate the pro-*

1 *grams or authorities provided under section 9 of the Cooper-*
2 *ative Forestry Assistance Act of 1978 (92 Stat. 369; Public*
3 *Law 95–313; 16 U.S.C. 2105).*

4 (j) *AUTHORIZATION OF APPROPRIATIONS.—There are*
5 *hereby authorized to be appropriated such sums as may be*
6 *necessary for the implementation of this section.*

7 **SEC. 206. ENERGY EFFICIENCY FOR DATA CENTER BUILD-**
8 **INGS.**

9 *Section 453(c)(1) of the Energy Independence and Se-*
10 *curity Act of 2007 (42 U.S.C. 17112(c)(1)) is amended by*
11 *inserting “but not later than 2 years after the date of enact-*
12 *ment of this Act” after “described in subsection (b)”.*

13 **Subtitle B—Lighting and Appliance**
14 **Energy Efficiency Programs**

15 **SEC. 211. LIGHTING EFFICIENCY STANDARDS.**

16 (a) *OUTDOOR LIGHTING.—*

17 (1) *DEFINITIONS.—*

18 (A) *Section 340(1) of the Energy Policy*
19 *and Conservation Act (42 U.S.C. 6311(1)) is*
20 *amended by striking subparagraph (L) and in-*
21 *serting the following:*

22 “(L) *Outdoor luminaires.*

23 “(M) *Outdoor high light output lamps.*

1 “(N) Any other type of industrial equip-
2 ment which the Secretary classifies as covered
3 equipment under section 341(b).”.

4 (B) Section 340 of the Energy Policy and
5 Conservation Act (42 U.S.C. 6311) is amended
6 as adding at the end the following:

7 “(25) The term ‘luminaire’ means a complete
8 lighting unit consisting of one or more light sources
9 and ballast(s), together with parts designed to dis-
10 tribute the light, to position and protect such lamps,
11 and to connect such light sources to the power supply.

12 “(26) The term ‘outdoor luminaire’ means a lu-
13 minaire that is listed as suitable for wet locations
14 pursuant to Underwriters Laboratories Inc. standard
15 UL 1598 and is labeled as ‘Suitable for Wet Loca-
16 tions’ consistent with section 410.4(A) of the National
17 Electrical Code 2005, or is designed for roadway illu-
18 mination and meets the requirements of Addendum A
19 for IESNA TM-15-07: Backlight, Uplight, and Glare
20 (BUG) Ratings, except for—

21 “(A) luminaires designed for outdoor video
22 display images that cannot be used in general
23 lighting applications;

24 “(B) portable luminaires designed for use at
25 construction sites;

1 “(C) luminaires designed for continuous
2 immersion in swimming pools and other water
3 features;

4 “(D) seasonal luminaires incorporating
5 solely individual lamps rated at 10 watts or less;

6 “(E) luminaires designed to be used in
7 emergency conditions that incorporate a means
8 of charging a battery and a device to switch the
9 power supply to emergency lighting loads auto-
10 matically upon failure of the normal power sup-
11 ply;

12 “(F) components used for repair of installed
13 luminaries and that meet the requirements of
14 section 342(h);

15 “(G) a luminaire utilizing an electrode-less
16 fluorescent lamp as the light source;

17 “(H) decorative gas lighting systems;

18 “(I) luminaires designed explicitly for light-
19 ing for theatrical purposes, including perform-
20 ance, stage, film production, and video produc-
21 tion;

22 “(J) luminaires designed as theme elements
23 in theme/amusement parks and that cannot be
24 used in most general lighting applications;

1 “(K) luminaires designed explicitly for ve-
2 hicular roadway tunnels designed to comply
3 with ANSI/IESNA RP-22-05;

4 “(L) luminaires designed explicitly for haz-
5 ardous locations meeting UL Standard 844;

6 “(M) searchlights;

7 “(N) luminaires that are designed to be re-
8 cessed into a building, and that cannot be used
9 in most general lighting applications;

10 “(O) a luminaire rated only for residential
11 applications utilizing a light source or sources
12 regulated under the amendments made by section
13 321 of the Energy Independence and Security
14 Act of 2007 and with a light output no greater
15 than 2,600 lumens;

16 “(P) a residential pole-mounted luminaire
17 that is not rated for commercial use utilizing a
18 light source or sources meeting the efficiency re-
19 quirements of section 231 of the Energy Inde-
20 pendence and Security Act of 2007 and mounted
21 on a post or pole not taller than 10.5 feet above
22 ground and with a light output not greater than
23 2,600 lumens;

1 “(Q) a residential fixture with E12 (Can-
2 delabra) bases that is rated for not more than
3 300 watts total; or

4 “(R) a residential fixture with medium
5 screw bases that is rated for not more than 145
6 watts.

7 “(27) The term ‘outdoor high light outputlamp’
8 means a lamp that—

9 “(A) has a rated lumen output not less than
10 2601 lumens;

11 “(B) is capable of being operated at a volt-
12 age not less than 110 volts and not greater than
13 300 volts, or driven at a constant current of 6.6
14 amperes;

15 “(C) is not a Parabolic Aluminized Reflec-
16 tor lamp; and

17 “(D) is not a J-type double-ended (T-3)
18 halogen quartz lamp, utilizing R-7S bases, that
19 is manufactured before January 1, 2015.

20 “(28) The term ‘outdoor lighting control’ means
21 a device incorporated in a luminaire that receives a
22 signal, from either a sensor (such as an occupancy
23 sensor, motion sensor, or daylight sensor) or an input
24 signal (including analog or digital signals commu-

1 *nicated through wired or wireless technology), and*
2 *can adjust the light level according to the signal.”.*

3 (2) *STANDARDS.— Section 342 of the Energy*
4 *Policy and Conservation Act (42 U.S.C. 6313) is*
5 *amended by adding at the end the following:*

6 *“(g) OUTDOOR LUMINAIRES.—*

7 *“(1) Each outdoor luminaire manufactured on*
8 *or after January 1, 2011, shall—*

9 *“(A) have an initial luminaire efficacy of*
10 *at least 50 lumens per watt; and*

11 *“(B) be designed to use a light source with*
12 *a lumen maintenance, calculated as mean rated*
13 *lumens divided by initial lumens, of at least 0.6.*

14 *“(2) Each outdoor luminaire manufactured on*
15 *or after January 1, 2013, shall—*

16 *“(A) have an initial luminaire efficacy of*
17 *at least 70 lumens per watt; and*

18 *“(B) be designed to use a light source with*
19 *a lumen maintenance, calculated as mean rated*
20 *lumens divided by initial lumens, of at least 0.6.*

21 *“(3) Each outdoor luminaire manufactured on*
22 *or after January 1, 2015, shall—*

23 *“(A) have an initial luminaire efficacy of*
24 *at least 80 lumens per watt; and*

1 “(B) be designed to use a light source with
2 a lumen maintenance, calculated as mean rated
3 lumens divided by initial lumens, of at least
4 0.65.

5 “(4) In addition to the requirements of para-
6 graphs (1) through (3), each outdoor luminaire man-
7 ufactured on or after January 1, 2011, shall have the
8 capability of producing at least two different light
9 levels, including 100 percent and 60 percent of full
10 lamp output as tested with the maximum rated lamp
11 per UL1598 or the manufacturer’s maximum speci-
12 fied for the luminaire under test.

13 “(5)(A) Not later than January 1, 2017, the Sec-
14 retary shall issue a final rule amending the applica-
15 ble standards established in paragraphs (3) and (4)
16 if technologically feasible and economically justified.

17 “(B) A final rule issued under subparagraph (A)
18 shall establish efficiency standards at the maximum
19 level that is technically feasible and economically jus-
20 tified, as provided in subsections (o) and (p) of sec-
21 tion 325. The Secretary may also, in such rule-
22 making, amend or discontinue the product exclusions
23 listed in section 340(26)(A) through (P), or amend
24 the lumen maintenance requirements in paragraph

1 (3) if the Secretary determines that such amendments
2 are consistent with the purposes of this Act.

3 “(C) If the Secretary issues a final rule under
4 subparagraph (A) establishing amended standards,
5 the final rule shall provide that the amended stand-
6 ards apply to products manufactured on or after Jan-
7 uary 1, 2020, or one year after the date on which the
8 final amended standard is published, whichever is
9 later.

10 “(h) *OUTDOOR HIGH LIGHT OUTPUT LAMPS.*—Each
11 outdoor high light output lamp manufactured on or after
12 January 1, 2012, shall have a lighting efficiency of at least
13 45 lumens per watt.”.

14 (3) *TEST PROCEDURES.*— Section 343(a) of the
15 *Energy Policy and Conservation Act* (42 U.S.C.
16 6314(a)) is amended by adding at the end the fol-
17 lowing:

18 “(10) *OUTDOOR LIGHTING.*—

19 “(A) With respect to outdoor luminaires
20 and outdoor high light output lamps, the test
21 procedures shall be based upon the test proce-
22 dures specified in illuminating engineering soci-
23 ety procedures LM-79 as of March 1, 2009, and
24 LM-31, and/or other appropriate consensus test
25 procedures developed by the Illuminating Engi-

1 *neering Society or other appropriate consensus*
2 *standards bodies.*

3 “(B) *If illuminating engineering society*
4 *procedure LM—79 is amended, the Secretary*
5 *shall amend the test procedures established in*
6 *subparagraph (A) as necessary to be consistent*
7 *with the amended LM—79 test procedure, unless*
8 *the Secretary determines, by rule, published in*
9 *the Federal Register and supported by clear and*
10 *convincing evidence, that to do so would not*
11 *meet the requirements for test procedures under*
12 *paragraph (2).*

13 “(C) *The Secretary may revise the test pro-*
14 *cedures for outdoor luminaires or outdoor high*
15 *light output lamps by rule consistent with para-*
16 *graph (2), and may incorporate as appropriate*
17 *consensus test procedures developed by the Illu-*
18 *minating Engineering Society or other appro-*
19 *priate consensus standards bodies.”.*

20 (4) *PREEMPTION.— Section 345 of the Energy*
21 *Policy and Conservation Act (42 U.S.C. 6316) is*
22 *amended by adding at the end the following:*

23 “(i)(1) *Except as provided in paragraph (2), section*
24 *327 shall apply to outdoor luminaires to the same extent*

1 *and in the same manner as the section applies under part*
2 *B.*

3 “(2) *Any State standard that is adopted on or before*
4 *January 1, 2015, pursuant to a statutory requirement to*
5 *adopt efficiency standards for reducing outdoor lighting en-*
6 *ergy use enacted prior to January 31, 2008, shall not be*
7 *preempted.”.*

8 (5) *ENERGY EFFICIENCY STANDARDS FOR CER-*
9 *TAIN LUMINAIRES.—Not later than 1 year after the*
10 *date of enactment of this Act, the Secretary of Energy*
11 *shall, in consultation with the National Electrical*
12 *Manufacturers Association, collect data for United*
13 *States sales of luminaires described in section*
14 *340(26)(H) and (M) of the Energy Policy and Con-*
15 *servation Act, to determine the historical growth rate.*
16 *If the Secretary finds that the growth in market share*
17 *of such luminaires exceeds twice the year to year rate*
18 *of the average of the previous three years, then the*
19 *Secretary shall within 12 months initiate a rule-*
20 *making to determine if such exclusion should be*
21 *eliminated, if substitute products exist that perform*
22 *more efficiently and fulfill the performance functions*
23 *of these luminaires.*

24 (b) *PORTABLE LIGHTING.—*

25 (1) *PORTABLE LIGHT FIXTURES.—*

1 (A) *DEFINITIONS.*—Section 321 of the *En-*
2 *ergy Policy and Conservation Act (42 U.S.C.*
3 *6291) is amended by adding at the end the fol-*
4 *lowing:*

5 “(67) *ART WORK LIGHT FIXTURE.*—The term
6 ‘art work light fixture’ means a light fixture designed
7 only to be mounted directly to an art work and for
8 the purpose of illuminating that art work.

9 “(68) *LED LIGHT ENGINE.*—The term ‘LED
10 light engine’ or ‘LED light engine with integral heat
11 sink’ means a subsystem of an LED light fixture
12 that—

13 “(A) includes 1 or more LED components,
14 including—

15 “(i) an LED driver power source with
16 electrical and mechanical interfaces; and

17 “(ii) an integral heat sink to provide
18 thermal dissipation; and

19 “(B) may be designed to accept additional
20 components that provide aesthetic, optical, and
21 environmental control.

22 “(69) *LED LIGHT FIXTURE.*—The term ‘LED
23 light fixture’ means a complete lighting unit con-
24 sisting of—

1 “(A) *an LED light source with 1 or more*
2 *LED lamps or LED light engines; and*

3 “(B) *parts—*

4 “(i) *to distribute the light;*

5 “(ii) *to position and protect the light*
6 *source; and*

7 “(iii) *to connect the light source to*
8 *electrical power.*

9 “(70) *LIGHT FIXTURE.—The term ‘light fixture’*
10 *means a product designed to provide light that in-*
11 *cludes—*

12 “(A) *at least 1 lamp socket; and*

13 “(B) *parts—*

14 “(i) *to distribute the light;*

15 “(ii) *position and protect 1 or more*
16 *lamps; and*

17 “(iii) *to connect 1 or more lamps to a*
18 *power supply.*

19 “(71) *PORTABLE LIGHT FIXTURE.—*

20 “(A) *IN GENERAL.—The term ‘portable light*
21 *fixture’ means a light fixture that has a flexible*
22 *cord and an attachment plug for connection to*
23 *a nominal 120-volt circuit that—*

24 “(i) *allows the user to relocate the*
25 *product without any rewiring; and*

1 “(ii) typically can be controlled with a
2 switch located on the product or the power
3 cord of the product.

4 “(B) *EXCLUSIONS.*—The term ‘portable
5 light fixture’ does not include—

6 “(i) direct plug-in night lights, sun or
7 heat lamps, medical or dental lights, port-
8 able electric hand lamps, signs or commer-
9 cial advertising displays, photographic
10 lamps, germicidal lamps, or light fixtures
11 for marine use or for use in hazardous loca-
12 tions (as those terms are defined in ANSI/
13 NFPA 70 of the National Electrical Code);
14 or

15 “(ii) decorative lighting strings, deco-
16 rative lighting outfits, or electric candles or
17 candelabra without lamp shades that are
18 covered by Underwriter Laboratories (UL)
19 standard 588, ‘Seasonal and Holiday Deco-
20 rative Products’.”.

21 (B) *COVERAGE.*—

22 (i) *IN GENERAL.*—Section 322(a) of the
23 Energy Policy and Conservation Act (42
24 U.S.C. 6292(a)) is amended—

1 (I) by redesignating paragraph
2 (20) as paragraph (24); and

3 (II) by inserting after paragraph
4 (19) the following:

5 “(20) Portable light fixtures.”.

6 (ii) CONFORMING AMENDMENTS.—Sec-
7 tion 325(l) of the Energy Policy and Con-
8 servation Act (42 U.S.C. 6295(l)) is amend-
9 ed by striking “paragraph (19)” each place
10 it appears in paragraphs (1) and (2) and
11 inserting “paragraph (24)”.

12 (C) TEST PROCEDURES.—Section 323(b) of
13 the Energy Policy and Conservation Act (42
14 U.S.C. 6293(b)) is amended by adding at the end
15 the following:

16 “(19) LED FIXTURES AND LED LIGHT EN-
17 GINES.—Test procedures for LED fixtures and LED
18 light engines shall be based on Illuminating Engi-
19 neering Society of North America (IESNA) test proce-
20 dure LM-79, Approved Method for Electrical and
21 Photometric Testing of Solid-State Lighting Devices,
22 and IESNA-approved test procedure for testing LED
23 light engines.”.

1 (D) *STANDARDS*.—Section 325 of the *En-*
2 *ergy Policy and Conservation Act* (42 U.S.C.
3 6295) is amended—

4 (i) by redesignating subsection (ii) as
5 subsection (oo);

6 (ii) in subsection (oo)(2), as redesign-
7 *ated in clause (i) of this subparagraph, by*
8 *striking “(hh)” each place it appears and*
9 *inserting “(mm)”*; and

10 (iii) by inserting after subsection (hh)
11 *the following:*

12 “(ii) *PORTABLE LIGHT FIXTURES*.—

13 “(1) *IN GENERAL*.—Subject to paragraphs (2)
14 *and (3), portable light fixtures manufactured on or*
15 *after January 1, 2012, shall meet 1 or more of the fol-*
16 *lowing requirements:*

17 “(A) *Be a fluorescent light fixture that*
18 *meets the requirements of the Energy Star Pro-*
19 *gram for Residential Light Fixtures, Version 4.2.*

20 “(B) *Be equipped with only 1 or more GU-*
21 *24 line-voltage sockets, not be rated for use with*
22 *incandescent lamps of any type (as defined in*
23 *ANSI standards), and meet the requirements of*
24 *version 4.2 of the Energy Star program for resi-*
25 *dential light fixtures.*

1 “(C) *Be an LED light fixture or a light fix-*
2 *ture with an LED light engine and comply with*
3 *the following minimum requirements:*

4 “(i) *Minimum light output: 200*
5 *lumens (initial).*

6 “(ii) *Minimum LED light engine effi-*
7 *cacy: 40 lumens/watt installed in fixtures*
8 *that meet the minimum light fixture effi-*
9 *cacy of 29 lumens/watt or, alternatively, a*
10 *minimum LED light engine efficacy of 60*
11 *lumens/watt for fixtures that do not meet*
12 *the minimum light fixture efficacy of 29*
13 *lumens/watt.*

14 “(iii) *All portable fixtures shall have a*
15 *minimum LED light fixture efficacy of 29*
16 *lumens/watt and a minimum LED light en-*
17 *gine efficacy of 60 lumens/watt by January*
18 *1, 2016.*

19 “(iv) *Color Correlated Temperature*
20 *(CCT): 2700K through 4000K.*

21 “(v) *Minimum Color Rendering Index*
22 *(CRI): 75.*

23 “(vi) *Power factor equal to or greater*
24 *than 0.70.*

1 “(vii) *Portable luminaries that have*
2 *internal power supplies shall have zero*
3 *standby power when the luminaire is*
4 *turned off.*

5 “(viii) *LED light sources shall deliver*
6 *at least 70 percent of initial lumens for at*
7 *least 25,000 hours.*

8 “(D)(i) *Be equipped with an ANSI-des-*
9 *ignated E12, E17, or E26 screw-based socket and*
10 *be prepackaged and sold together with 1 screw-*
11 *based compact fluorescent lamp or screw-based*
12 *LED lamp for each screw-based socket on the*
13 *portable light fixture.*

14 “(i) *The compact fluorescent or LED*
15 *lamps prepackaged with the light fixture shall be*
16 *fully compatible with any light fixture controls*
17 *incorporated into the light fixture (for example,*
18 *light fixtures with dimmers shall be packed with*
19 *dimmable lamps).*

20 “(iii) *Compact fluorescent lamps pre-*
21 *packaged with light fixtures shall meet the re-*
22 *quirements of the Energy Star Program for*
23 *CFLs Version 4.0.*

1 “(iv) *Screw-based LED lamps shall comply*
2 *with the minimum requirements described in*
3 *subparagraph (C).*

4 “(E) *Be equipped with 1 or more single-*
5 *ended, non-screw based halogen lamp sockets*
6 *(line or low voltage), a dimmer control or high-*
7 *low control, and be rated for a maximum of 100*
8 *watts.*

9 “(2) *REVIEW.—*

10 “(A) *REVIEW.—The Secretary shall review*
11 *the criteria and standards established under*
12 *paragraph (1) to determine if revised standards*
13 *are technologically feasible and economically jus-*
14 *tified.*

15 “(B) *COMPONENTS.—The review shall in-*
16 *clude consideration of—*

17 “(i) *whether a separate compliance*
18 *procedure is still needed for halogen fixtures*
19 *described in subparagraph (E) and, if nec-*
20 *essary, what an appropriate standard for*
21 *halogen fixtures shall be;*

22 “(ii) *whether the specific technical cri-*
23 *teria described in subparagraphs (A), (C),*
24 *and (D)(iii) should be modified; and*

1 “(iii) which fixtures should be exempt-
2 ed from the light fixture efficacy standard
3 as of January 1, 2016, because the fixtures
4 are primarily decorative in nature (as de-
5 fined by the Secretary) and, even if exempt-
6 ed, are likely to be sold in limited quan-
7 tities.

8 “(C) *TIMING.*—

9 “(i) *DETERMINATION.*—Not later than
10 January 1, 2014, the Secretary shall pub-
11 lish amended standards, or a determination
12 that no amended standards are justified,
13 under this subsection.

14 “(ii) *STANDARDS.*—Any standards
15 under this paragraph shall take effect on
16 January 1, 2016.

17 “(3) *ART WORK LIGHT FIXTURES.*—Art work
18 light fixtures manufactured on or after January 1,
19 2012, shall—

20 “(A) comply with paragraph (1); or

21 “(B)(i) contain only ANSI-designated E12
22 screw-based line-voltage sockets;

23 “(i) have not more than 3 sockets;

24 “(iii) be controlled with an integral high/
25 low switch;

1 “(iv) be rated for not more than 25 watts
2 if fitted with 1 socket; and

3 “(v) be rated for not more than 15 watts
4 per socket if fitted with 2 or 3 sockets.

5 “(4) *EXCEPTION FROM PREEMPTION.*—Notwith-
6 standing section 327, Federal preemption shall not
7 apply to a regulation concerning portable light fix-
8 tures adopted by the California Energy Commission
9 on or before January 1, 2014.”.

10 (2) *GU-24 BASE LAMPS.*—

11 (A) *DEFINITIONS.*—Section 321 of the *En-*
12 *ergy Policy and Conservation Act* (42 U.S.C.
13 6291) (as amended by paragraph (1)(A)) is
14 amended by adding at the end the following:

15 “(72) *GU-24.*—The term ‘GU-24’ means the des-
16 ignation of a lamp socket, based on a coding system
17 by the *International Electrotechnical Commission*,
18 under which—

19 “(A) ‘G’ indicates a holder and socket type
20 with 2 or more projecting contacts, such as pins
21 or posts;

22 “(B) ‘U’ distinguishes between lamp and
23 holder designs of similar type that are not inter-
24 changeable due to electrical or mechanical re-
25 quirements; and

1 “(C) 24 indicates the distance in millime-
2 ters between the electrical contact posts.

3 “(73) GU-24 ADAPTOR.—

4 “(A) IN GENERAL.—The term ‘GU-24
5 Adaptor’ means a 1-piece device, pig-tail, wiring
6 harness, or other such socket or base attachment
7 that—

8 “(i) connects to a GU-24 socket on 1
9 end and provides a different type of socket
10 or connection on the other end; and

11 “(ii) does not alter the voltage.

12 “(B) EXCLUSION.—The term ‘GU-24 Adap-
13 tor’ does not include a fluorescent ballast with a
14 GU-24 base.

15 “(74) GU-24 BASE LAMP.—‘GU-24 base lamp’
16 means a light bulb designed to fit in a GU-24 sock-
17 et.”.

18 (B) STANDARDS.—Section 325 of the En-
19 ergy Policy and Conservation Act (42 U.S.C.
20 6295) (as amended by paragraph (1)(D)) is
21 amended by inserting after subsection (ii) the
22 following:

23 “(jj) GU-24 BASE LAMPS.—

24 “(1) IN GENERAL.—A GU-24 base lamp shall
25 not be an incandescent lamp as defined by ANSI.

1 “(2) *GU-24 ADAPTORS.*—*GU-24 adaptors shall*
2 *not adapt a GU-24 socket to any other line voltage*
3 *socket.*”.

4 (3) *STANDARDS FOR CERTAIN INCANDESCENT*
5 *REFLECTOR LAMPS.*—*Section 325(i) of the Energy*
6 *Policy and Conservation Act (42 U.S.C. 6295(i)), as*
7 *amended by section 161(a)(12) of this Act, is amend-*
8 *ed by adding at the end the following:*

9 “(9) *CERTAIN INCANDESCENT REFLECTOR*
10 *LAMPS.*—(A) *No later than 12 months after enact-*
11 *ment of this paragraph, the Secretary shall publish a*
12 *final rule establishing standards for incandescent re-*
13 *flector lamp types described in paragraph (1)(D).*
14 *Such standards shall be effective on July 1, 2013.*

15 “(B) *Any rulemaking for incandescent reflector*
16 *lamps completed after enactment of this section shall*
17 *consider standards for all incandescent reflector*
18 *lamps, inclusive of those specified in paragraph*
19 *(1)(C).*

20 “(10) *REFLECTOR LAMPS.*—*No later than Janu-*
21 *ary 1, 2015, the Secretary shall publish a final rule*
22 *establishing and amending standards for reflector*
23 *lamps, including incandescent reflector lamps. Such*
24 *standards shall be effective no sooner than three years*
25 *after publication of the final rule. Such rulemaking*

1 *shall consider incandescent and nonincandescent tech-*
2 *nologies. Such rulemaking shall consider a new met-*
3 *ric other than lumens-per-watt based on the photo-*
4 *metric distribution of light from such lamps.”.*

5 **SEC. 212. OTHER APPLIANCE EFFICIENCY STANDARDS.**

6 *(a) STANDARDS FOR WATER DISPENSERS, HOT FOOD*
7 *HOLDING CABINETS, AND PORTABLE ELECTRIC SPAS.—*

8 *(1) DEFINITIONS.—Section 321 of the Energy*
9 *Policy and Conservation Act (42 U.S.C. 6291), as*
10 *amended by section 211 of this Act, is further amend-*
11 *ed by adding at the end the following:*

12 *“(75) The term ‘water dispenser’ means a fac-*
13 *tory-made assembly that mechanically cools and heats*
14 *potable water and that dispenses the cooled or heated*
15 *water by integral or remote means.*

16 *“(76) The term ‘bottle-type water dispenser’*
17 *means a drinking water dispenser designed for dis-*
18 *persing both hot and cold water that uses a removable*
19 *bottle or container as the source of potable water.*

20 *“(77) The term ‘commercial hot food holding*
21 *cabinet’ means a heated, fully-enclosed compartment*
22 *with one or more solid or glass doors that is designed*
23 *to maintain the temperature of hot food that has been*
24 *cooked in a separate appliance. Such term does not*
25 *include heated glass merchandizing cabinets, drawer*

1 *warmers, commercial hot food holding cabinets with*
2 *interior volumes of less than 8 cubic feet, or cook-and-*
3 *hold appliances.*

4 “(78) *The term ‘portable electric spa’ means a*
5 *factory-built electric spa or hot tub, supplied with*
6 *equipment for heating and circulating water.”.*

7 (2) *COVERAGE.*—*Section 322(a) of the Energy*
8 *Policy and Conservation Act (42 U.S.C. 6292(a)), as*
9 *amended by section 211(b)(1)(B) of this Act, is fur-*
10 *ther amended by inserting after paragraph (20) the*
11 *following new paragraphs:*

12 “(21) *Bottle type water dispensers.*

13 “(22) *Commercial hot food holding cabinets.*

14 “(23) *Portable electric spas.”.*

15 (3) *TEST PROCEDURES.*—*Section 323(b) of the*
16 *Energy Policy and Conservation Act (42 U.S.C.*
17 *6293(b)), as amended by section 211(b)(1)(C) of this*
18 *Act, is further amended by adding at the end the fol-*
19 *lowing:*

20 “(20) *BOTTLE TYPE WATER DISPENSERS.*—*Test*
21 *procedures for bottle type water dispensers shall be*
22 *based on ‘Energy Star Program Requirements for*
23 *Bottled Water Coolers version 1.1’ published by the*
24 *Environmental Protection Agency. Units with an in-*

1 *tegral, automatic timer shall not be tested using sec-*
2 *tion 4D, ‘Timer Usage,’ of the test criteria.*

3 *“(21) COMMERCIAL HOT FOOD HOLDING CABI-*
4 *NETS.—Test procedures for commercial hot food hold-*
5 *ing cabinets shall be based on the test procedures de-*
6 *scribed in ANSI/ASTM F2140–01 (Test for idle en-*
7 *ergy rate-dry test). Interior volume shall be based on*
8 *the method shown in the Environmental Protection*
9 *Agency’s ‘Energy Star Program Requirements for*
10 *Commercial Hot Food Holding Cabinets’ as in effect*
11 *on August 15, 2003.*

12 *“(22) PORTABLE ELECTRIC SPAS.—Test proce-*
13 *dures for portable electric spas shall be based on the*
14 *test method for portable electric spas contained in sec-*
15 *tion 1604, title 20, California Code of Regulations as*
16 *amended on December 3, 2008. When the American*
17 *National Standards Institute publishes a test proce-*
18 *dure for portable electric spas, the Secretary shall re-*
19 *vis the Department of Energy’s procedure.”.*

20 *(4) STANDARDS.—Section 325 of the Energy Pol-*
21 *icy and Conservation Act (42 U.S.C. 6295), as*
22 *amended by section 211 of this Act, is further amend-*
23 *ed by adding after subsection (jj) the following:*

24 *“(kk) BOTTLE TYPE WATER DISPENSERS.—Effective*
25 *January 1, 2012, bottle-type water dispensers designed for*

1 *dispensing both hot and cold water shall not have standby*
2 *energy consumption greater than 1.2 kilowatt-hours per*
3 *day.*

4 “(ll) *COMMERCIAL HOT FOOD HOLDING CABINETS.—*
5 *Effective January 1, 2012, commercial hot food holding*
6 *cabinets with interior volumes of 8 cubic feet or greater*
7 *shall have a maximum idle energy rate of 40 watts per*
8 *cubic foot of interior volume.*

9 “(mm) *PORTABLE ELECTRIC SPAS.—Effective Janu-*
10 *ary 1, 2012, portable electric spas shall not have a normal-*
11 *ized standby power greater than $5(V^{2/3})$ Watts where V =the*
12 *fill volume in gallons.*

13 “(nn) *REVISIONS.—The Secretary of Energy shall con-*
14 *sider revisions to the standards in subsections (kk), (ll), and*
15 *(mm) in accordance with subsection (o) and publish a final*
16 *rule no later than January 1, 2013 establishing such revised*
17 *standards, or make a finding that no revisions are tech-*
18 *nically feasible and economically justified. Any such revised*
19 *standards shall take effect January 1, 2016.”.*

20 “(b) *COMMERCIAL FURNACE EFFICIENCY STAND-*
21 *ARDS.—Section 342(a) of the Energy Policy and Conserva-*
22 *tion Act (42 U.S.C. 6312(a)) is amended by inserting after*
23 *paragraph (10) the following new paragraph:*

24 “(11) *WARM AIR FURNACES.—Each warm air*
25 *furnace with an input rating of 225,000 Btu per hour*

1 *or more and manufactured after January 1, 2011,*
2 *shall meet the following standard levels:*

3 *“(A) GAS-FIRED UNITS.—*

4 *“(i) Minimum thermal efficiency of 80*
5 *percent.*

6 *“(ii) Include an interrupted or inter-*
7 *mittent ignition device.*

8 *“(iii) Have jacket losses not exceeding*
9 *0.75 percent of the input rating.*

10 *“(iv) Have either power venting or a*
11 *flue damper.*

12 *“(B) OIL-FIRED UNITS.—*

13 *“(i) Minimum thermal efficiency of 81*
14 *percent.*

15 *“(ii) Have jacket losses not exceeding*
16 *0.75 percent of the input rating.*

17 *“(iii) Have either power venting or a*
18 *flue damper.”.*

19 **SEC. 213. APPLIANCE EFFICIENCY DETERMINATIONS AND**
20 **PROCEDURES.**

21 *(a) DEFINITION OF ENERGY CONSERVATION STAND-*
22 *ARD.—Section 321(6) of the Energy Policy and Conserva-*
23 *tion Act (42 U.S.C. 6291(6)) is amended to read as follows:*

24 *“(6) ENERGY CONSERVATION STANDARD.—*

1 “(A) *IN GENERAL.*—*The term ‘energy con-*
2 *serva-*
3 *tion standard’ means 1 or more perform-*
4 *ance standards that—*

5 “(i) *for covered products (excluding*
6 *clothes washers, dishwashers, showerheads,*
7 *faucets, water closets, and urinals), pre-*
8 *scribe a minimum level of energy efficiency*
9 *or a maximum quantity of energy use, de-*
10 *termined in accordance with test procedures*
11 *prescribed under section 323;*

12 “(ii) *for showerheads, faucets, water*
13 *closets, and urinals, prescribe a minimum*
14 *level of water efficiency or a maximum*
15 *quantity of water use, determined in ac-*
16 *cordance with test procedures prescribed*
17 *under section 323; and*

18 “(iii) *for clothes washers and dish-*
19 *washers—*

20 “(I) *prescribe a minimum level of*
21 *energy efficiency or a maximum quan-*
22 *tity of energy use, determined in ac-*
23 *cordance with test procedures pre-*
24 *scribed under section 323; and*

25 “(II) *may include a minimum*
level of water efficiency or a maximum

1 *quantity of water use, determined in*
2 *accordance with those test procedures.*

3 “(B) *INCLUSIONS.*—*The term ‘energy con-*
4 *servation standard’ includes—*

5 “*(i) 1 or more design requirements, if*
6 *the requirements were established—*

7 “*(I) on or before the date of enact-*
8 *ment of this subclause;*

9 “*(II) as part of a direct final rule*
10 *under section 325(p)(4); or*

11 “*(III) as part of a final rule pub-*
12 *lished on or after January 1, 2012,*
13 *and*

14 “*(ii) any other requirements that the*
15 *Secretary may prescribe under section*
16 *325(r).*

17 “(C) *EXCLUSION.*—*The term ‘energy con-*
18 *servation standard’ does not include a perform-*
19 *ance standard for a component of a finished cov-*
20 *ered product, unless regulation of the component*
21 *is specifically authorized or established pursuant*
22 *to this title.”.*

23 (b) *ADOPTING CONSENSUS TEST PROCEDURES AND*
24 *TEST PROCEDURES IN USE ELSEWHERE.*—*Section 323(b)*
25 *of the Energy Policy and Conservation Act (42 U.S.C.*

1 6293(b)), as amended by sections 211 and 212 of this Act,
2 is further amended by adding the following new paragraph
3 after paragraph (22):

4 “(23) *CONSENSUS AND ALTERNATE TEST PROCE-*
5 *DURES.—*

6 “(A) *RECEIPT OF JOINT RECOMMENDATION*
7 *OR ALTERNATE TESTING PROCEDURE.—On re-*
8 *ceipt of—*

9 “(i) *a statement that is submitted*
10 *jointly by interested persons that are fairly*
11 *representative of relevant points of view (in-*
12 *cluding representatives of manufacturers of*
13 *covered products, States, and efficiency ad-*
14 *vocates), as determined by the Secretary,*
15 *and contains recommendations with respect*
16 *to the testing procedure for a covered prod-*
17 *uct; or*

18 “(ii) *a submission of a testing proce-*
19 *dure currently in use for a covered product*
20 *by a State, nation, or group of nations—*

21 “(I) *if the Secretary determines*
22 *that the recommended testing proce-*
23 *dure contained in the statement or sub-*
24 *mission is in accordance with sub-*
25 *section (b)(3), the Secretary may issue*

1 a final rule that establishes an energy
2 or water conservation testing procedure
3 that is published simultaneously with
4 a notice of proposed rulemaking that
5 proposes a new or amended energy or
6 water conservation testing procedure
7 that is identical to the testing proce-
8 dure established in the final rule to es-
9 tablish the recommended testing proce-
10 dure (referred to in this paragraph as
11 a ‘direct final rule’); or

12 “(II) if the Secretary determines
13 that a direct final rule cannot be
14 issued based on the statement or sub-
15 mission, the Secretary shall publish a
16 notice of the determination, together
17 with an explanation of the reasons for
18 the determination.

19 “(B) PUBLIC COMMENT.—The Secretary
20 shall solicit public comment for a period of at
21 least 110 days with respect to each direct final
22 rule issued by the Secretary under subparagraph
23 (A)(i)(I).

24 “(C) WITHDRAWAL OF DIRECT FINAL
25 RULES.—

1 “(i) *IN GENERAL.*—Not later than 120
2 *days after the date on which a direct final*
3 *rule issued under subparagraph (A)(ii)(I) is*
4 *published in the Federal Register, the Sec-*
5 *retary shall withdraw the direct final rule*
6 *if—*

7 “(I) *the Secretary receives 1 or*
8 *more adverse public comments relating*
9 *to the direct final rule under subpara-*
10 *graph (B) or any alternative joint rec-*
11 *ommendation; and*

12 “(II) *based on the rulemaking*
13 *record relating to the direct final rule,*
14 *the Secretary determines that such ad-*
15 *verse public comments or alternative*
16 *joint recommendation may provide a*
17 *reasonable basis for withdrawing the*
18 *direct final rule under paragraph (3)*
19 *or any other applicable law.*

20 “(ii) *ACTION ON WITHDRAWAL.*—On
21 *withdrawal of a direct final rule under*
22 *clause (i), the Secretary shall—*

23 “(I) *proceed with the notice of*
24 *proposed rulemaking published simul-*
25 *taneously with the direct final rule as*

1 described in subparagraph (A)(ii)(I);
2 and

3 “(II) publish in the Federal Reg-
4 ister the reasons why the direct final
5 rule was withdrawn.

6 “(iii) TREATMENT OF WITHDRAWN DI-
7 RECT FINAL RULES.—A direct final rule
8 that is withdrawn under clause (i) shall not
9 be considered to be a final rule for purposes
10 of subsection (b).

11 “(D) EFFECT OF PARAGRAPH.—Nothing in
12 this paragraph authorizes the Secretary to issue
13 a direct final rule based solely on receipt of more
14 than 1 statement containing recommended test
15 procedures relating to the direct final rule.”.

16 (c) UPDATING TELEVISION TEST METHODS.—Section
17 323(b) of the Energy Policy and Conservation Act (42
18 U.S.C. 6293(b)), as amended by sections 211 and 212 of
19 this Act, and subsection (b) of this section, is further amend-
20 ed by adding at the end the following new paragraph:

21 “(24) TELEVISIONS.—(A) On the date of enact-
22 ment of this paragraph, Appendix H to Subpart B of
23 Part 430 of the United States Code of Federal Regu-
24 lations, ‘Uniform Test Method for Measuring the En-
25 ergy Consumption of Television Sets’, is repealed.

1 “(B) No later than 12 months after the date of
2 enactment of this paragraph the Secretary shall pub-
3 lish in the Federal Register a final rule prescribing
4 a new test method for televisions.”.

5 (d) CRITERIA FOR PRESCRIBING NEW OR AMENDED
6 STANDARDS.—(1) Section 325(o)(2)(B)(i) of the Energy
7 Policy and Conservation Act (42 U.S.C. 6295(o)(2)(B)(i))
8 is amended as follows:

9 (A) By striking “and” at the end of subclause
10 (VI).

11 (B) By redesignating subclause (VII) as sub-
12 clause (XI).

13 (C) By inserting the following new subclauses
14 after subclause (VI):

15 “(VII) the estimated value of the carbon dioxide
16 and other emission reductions that will be achieved by
17 virtue of the higher energy efficiency of the covered
18 products resulting from the imposition of the stand-
19 ard;

20 “(VIII) the estimated impact of standards for a
21 particular product on average consumer energy
22 prices;

23 “(IX) the increased energy efficiency that may be
24 attributable to the installation of Smart Grid tech-

1 *nologies or capabilities in the covered products, if ap-*
2 *plicable in the determination of the Secretary;*

3 *“(X) the availability in the United States or in*
4 *other nations of examples or prototypes of covered*
5 *products that achieve significantly higher efficiency*
6 *standards for energy or for water; and”.*

7 *(2) Section 325(o)(2)(B)(iii) of such Act is amended*
8 *as follows:*

9 *(A) By striking “three” and inserting “5”.*

10 *(B) By inserting after the first sentence the fol-*
11 *lowing “For products with an average expected useful*
12 *life of less than 5 years, such rebuttable presumption*
13 *shall be determined utilizing 75 percent of the prod-*
14 *uct’s average expected useful life as a multiplier in-*
15 *stead of 5.”.*

16 *(C) By striking the last sentence and inserting*
17 *the following: “Such a presumption may be rebutted*
18 *only if the Secretary finds, based on clear, con-*
19 *vincing, and reliable evidence, that—*

20 *“(I) such standard level would cause serious and*
21 *unavoidable hardship to the average consumer of the*
22 *product, or to manufacturers supplying a significant*
23 *portion of the market for the product, that substan-*
24 *tially outweighs the standard level’s benefits;*

1 “(II) *the standard and implementing regulations*
2 *cannot be designed to avoid or mitigate the hardship*
3 *identified under subclause (I), through the adoption of*
4 *regional standards consistent with paragraph (6) of*
5 *this subsection, or other reasonable means consistent*
6 *with this part;*

7 “(III) *the same or substantially similar hardship*
8 *would not occur under a standard adopted in the ab-*
9 *sence of the presumption, but that otherwise meets the*
10 *requirements of this section; and*

11 “(IV) *the hardship cannot be avoided or miti-*
12 *gated pursuant the procedures specified in section 504*
13 *of the Department of Energy Organization Act (42*
14 *U.S.C. 7194).*

15 *A determination by the Secretary that the criteria trig-*
16 *gering such presumption are not met, or that the criterion*
17 *for rebutting the presumption are met shall not be taken*
18 *into consideration in the Secretary’s determination of*
19 *whether a standard is economically justified.”.*

20 (e) *OBTAINING APPLIANCE INFORMATION FROM MANU-*
21 *FACTURERS.—Section 326(d) of the Energy Policy and*
22 *Conservation Act (42 U.S.C. 6295(d)) is amended to read*
23 *as follows:*

24 “(d) *INFORMATION REQUIREMENTS.—(1) For pur-*
25 *poses of carrying out this part, the Secretary shall publish*

1 *proposed regulations not later than one year after the date*
2 *of enactment of the American Clean Energy and Security*
3 *Act of 2009, and after receiving public comment, final regu-*
4 *lations not later than 18 months from such date of enact-*
5 *ment under this part or other provision of law administered*
6 *by the Secretary, which shall require each manufacturer of*
7 *a covered product to submit information or reports to the*
8 *Secretary on an annual basis in a form adopted by the*
9 *Secretary. Such reports shall include information or data*
10 *with respect to—*

11 “(A) *the manufacturers’ compliance with all re-*
12 *quirements applicable pursuant to this part;*

13 “(B) *the economic impact of any proposed en-*
14 *ergy conservation standard;*

15 “(C) *the manufacturers’ annual shipments of*
16 *each class or category of covered products, organized,*
17 *to the maximum extent practicable, by—*

18 “(i) *energy efficiency, energy use, and, if*
19 *applicable, water use;*

20 “(ii) *the presence or absence of such effi-*
21 *ciency related or energy consuming operational*
22 *characteristics or components as the Secretary*
23 *determines are relevant for the purposes of car-*
24 *rying out this part; and*

1 “(iii) the State or regional location of sale,
2 for covered products for which the Secretary may
3 adopt regional standards; and

4 “(D) such other categories of information as the
5 Secretary deems relevant to carry out this part, in-
6 cluding such other information as may be necessary
7 to establish and revise test procedures, labeling rules,
8 and energy conservation standards and to insure
9 compliance with the requirements of this part.

10 “(2) In adopting regulations under this subsection, the
11 Secretary shall consider existing public sources of informa-
12 tion, including nationally recognized certification pro-
13 grams of trade associations.

14 “(3) The Secretary shall exercise authority under this
15 section in a manner designed to minimize unnecessary bur-
16 dens on manufacturers of covered products.

17 “(4) To the extent that they do not conflict with the
18 duties of the Secretary in carrying out this part, the provi-
19 sions of section 11(d) of the Energy Supply and Environ-
20 mental Coordination Act of 1974 (15 U.S.C. 796(d)) shall
21 apply with respect to information obtained under this sub-
22 section to the same extent and in the same manner as they
23 apply with respect to other energy information obtained
24 under such section.”.

1 (f) *STATE WAIVER.*—Section 327(c) of the *Energy Pol-*
2 *icy and Conservation Act* (42 U.S.C. 6297(c)), as amended
3 *by section 161(a)(19) of this Act, is further amended by*
4 *adding at the end the following:*

5 “(12) *is a regulation concerning standards for*
6 *hot food holding cabinets, drinking water dispensers*
7 *and portable electric spas adopted by the California*
8 *Energy Commission on or before January 1, 2013.”.*

9 (g) *WAIVER OF FEDERAL PREEMPTION.*—Paragraph
10 (1) of section 327(d) of the *Energy Policy and Conservation*
11 *Act* (42 U.S.C. 6297(d)) *is amended as follows:*

12 (1) *In subparagraph (A) by striking “State regu-*
13 *lation” each place it appears and inserting “State*
14 *statute or regulation”.*

15 (2) *In subparagraph (B) by adding at the end*
16 *the following new sentence: “In making such a find-*
17 *ing, the Secretary may not reject a petition for fail-*
18 *ure of the petitioning State or river basin commission*
19 *to produce confidential information maintained by*
20 *any manufacturer or distributor, or group or associa-*
21 *tion of manufacturers or distributors, and which the*
22 *petitioning party does not have the legal right to ob-*
23 *tain.”.*

1 (3) *In clause (ii) of subparagraph (C) by strik-*
2 *ing “costs” each place it appears and inserting “esti-*
3 *mated costs”.*

4 (4) *In subparagraph (C) by striking “within the*
5 *context of the State’s energy plan and forecast, and,”.*

6 (h) *INCLUSION OF CARBON OUTPUT ON APPLIANCE*
7 *“ENERGYGUIDE” LABELS.—(1) Section 324(a)(2) of the*
8 *Energy Policy and Conservation Act (42 U.S.C.*
9 *6294(a)(2)) is amended by adding the following at the end:*

10 *“(I)(i) Not later than 90 days after the date of enact-*
11 *ment of this subparagraph, the Commission shall initiate*
12 *a rulemaking to implement the additional labeling require-*
13 *ments specified in subsection (c)(1)(C) of this section with*
14 *an effective date for the revised labeling requirement not*
15 *later than 12 months from issuance of the final rule.*

16 *“(ii) Not later than 24 months after the date of enact-*
17 *ment of this subparagraph, the Commission shall complete*
18 *the rulemaking initiated under clause (i).*

19 *“(iii) Not later than 90 days after issuance of the final*
20 *rule as provided in this subparagraph, the Secretary shall*
21 *issue calculation methods required to effectuate the labeling*
22 *requirements specified in subsection (c)(1)(C) of this sec-*
23 *tion.”.*

24 (2) *Section 324(c)(1) of the Energy Policy and Con-*
25 *servation Act (42 U.S.C. 6294(c)(1)) is amended—*

1 (A) by striking “and” at the end of subpara-
2 graph (A);

3 (B) by striking the period at the end of subpara-
4 graph (B) and inserting a semicolon; and

5 (C) by adding at the end the following new sub-
6 paragraphs:

7 “(C) for products or groups of products pro-
8 viding a comparable function (including the group of
9 products comprising the heating function of heat
10 pumps and furnaces) among covered products listed
11 in paragraphs (3), (4), (5), (8), (9), (10), and (11)
12 of section 322(a) of this part, and others designated
13 by the Secretary, the estimated total annual atmos-
14 pheric carbon dioxide emissions (or their equivalent
15 in other greenhouse gases) associated with, or caused
16 by, the product, calculated utilizing—

17 “(i) national average energy use for the
18 product including energy consumed at the point
19 of end use based on test procedures developed
20 under section 323 of this part;

21 “(ii) national average energy consumed or
22 lost in the production, generation, transpor-
23 tation, storage, and distribution of energy to the
24 point of end use; and

1 “(iii) any direct emissions of greenhouse
2 gases from the product during normal use;

3 “(D) in determining the national average
4 energy consumption and total annual atmos-
5 pheric carbon dioxide emissions, the Secretary
6 shall utilize Federal Government sources, includ-
7 ing the Energy Information Administration An-
8 nual Energy Review, the Environmental Protec-
9 tion Agency eGRID data base, Environmental
10 Protection Agency AP-42 Emission Factors as
11 amended, and other sources determined to be ap-
12 propriate by the Secretary; and

13 “(E) information presenting, for each prod-
14 uct (or group of products providing the com-
15 parable function) identified in section (c)(1)(C)
16 of this section, the estimated annual carbon diox-
17 ide emissions calculated within the range of
18 emissions calculated for all models of the product
19 or group according to its function, including
20 those models consuming fuels and those models
21 not consuming fuels.”.

22 (i) *PERMITTING STATES TO SEEK INJUNCTIVE EN-*
23 *FORCEMENT.*—(1) *Section 334 of the Energy Policy and*
24 *Conservation Act (42 U.S.C. 6304) is amended to read as*
25 *follows:*

1 **“SEC. 334. JURISDICTION AND VENUE.**

2 “(a) *JURISDICTION.*—*The United States district courts*
3 *shall have jurisdiction to restrain—*

4 “(1) *any violation of section 332; and*

5 “(2) *any person from distributing in commerce*
6 *any covered product which does not comply with an*
7 *applicable rule under section 324 or 325.*

8 “(b) *AUTHORITY.*—*Any action referred to in sub-*
9 *section (a) shall be brought by the Commission or by the*
10 *attorney general of a State in the name of the State, except*
11 *that—*

12 “(1) *any such action to restrain any violation of*
13 *section 332(a)(3) which relates to requirements pre-*
14 *scribed by the Secretary or any violation of section*
15 *332(a)(4) which relates to request of the Secretary*
16 *under section 326(b)(2) shall be brought by the Sec-*
17 *retary; and*

18 “(2) *any violation of section 332(a)(5) or*
19 *332(a)(7) shall be brought by the Secretary or by the*
20 *attorney general of a State in the name of the State.*

21 “(c) *VENUE AND SERVICE OF PROCESS.*—*Any such ac-*
22 *tion may be brought in the United States district court for*
23 *a district wherein any act, omission, or transaction consti-*
24 *tuting the violation occurred, or in such court of the district*
25 *wherein the defendant is found or transacts business. In*
26 *any action under this section, process may be served on a*

1 *defendant in any other district in which the defendant re-*
2 *sides or may be found.”.*

3 (2) *The item relating to section 334 in the table of*
4 *contents for such Act is amended to read as follows:*
5 *“Sec. 334. Jurisdiction and venue.”.*

6 (j) *TREATMENT OF APPLIANCES WITHIN BUILDING*
7 *CODES.—(1) Section 327(f)(3) of the Energy Policy and*
8 *Conservation Act (42 U.S.C. 6297(f)(3)) is amended by*
9 *striking subparagraphs (B) through (G) and inserting the*
10 *following:*

11 *“(B) The code meets at least one of the following*
12 *requirements:*

13 *“(i) The code does not require that the cov-*
14 *ered product have an energy efficiency exceed-*
15 *ing—*

16 *“(I) the applicable energy conservation*
17 *standard established in or prescribed under*
18 *section 325;*

19 *“(II) the level required by a regulation*
20 *of that State for which the Secretary has*
21 *issued a rule granting a waiver under sub-*
22 *section (d) of this section; or*

23 *“(III) the required level established in*
24 *the International Energy Conservation Code*
25 *or in a standard of the American Society of*
Heating, Refrigerating and Air-Conditi-

1 *tioning Engineers, or by the Secretary pur-*
2 *suant to section 304 of the Energy Con-*
3 *servation and Production Act.*

4 *“(ii) If the code uses one or more baseline*
5 *building designs against which all submitted*
6 *building designs are to be evaluated and such*
7 *baseline building designs contain a covered prod-*
8 *uct subject to an energy conservation standard*
9 *established in or prescribed under section 325,*
10 *the baseline building designs are based on an ef-*
11 *iciency level for such covered product which*
12 *meets but does not exceed one of the levels speci-*
13 *fied in clause (i).*

14 *“(iii) If the code sets forth one or more op-*
15 *tional combinations of items which meet the en-*
16 *ergy consumption or conservation objective, in at*
17 *least one combination that the State has found*
18 *to be reasonably achievable using commercially*
19 *available technologies the efficiency of the covered*
20 *product meets but does not exceed one of the lev-*
21 *els specified in clause (i).*

22 *“(C) The credit to the energy consumption or*
23 *conservation objective allowed by the code for install-*
24 *ing covered products having energy efficiencies exceed-*
25 *ing one of the levels specified in subparagraph (B)(i)*

1 *is on a one-for-one equivalent energy use or equiva-*
2 *lent energy cost basis, taking into account the typical*
3 *lifetime of the product.*

4 *“(D) The energy consumption or conservation*
5 *objective is specified in terms of an estimated total*
6 *consumption of energy (which may be calculated from*
7 *energy loss- or gain-based codes) utilizing an equiva-*
8 *lent amount of energy (which may be specified in*
9 *units of energy or its equivalent cost) and equivalent*
10 *lifetimes.*

11 *“(E) The estimated energy use of any covered*
12 *product permitted or required in the code, or used in*
13 *calculating the objective, is determined using the ap-*
14 *plicable test procedures prescribed under section 323,*
15 *except that the State may permit the estimated energy*
16 *use calculation to be adjusted to reflect the conditions*
17 *of the areas where the code is being applied if such*
18 *adjustment is based on the use of the applicable test*
19 *procedures prescribed under section 323 or other tech-*
20 *nically accurate documented procedure.”.*

21 *(2) Section 327(f)(4)(B) of the Energy Policy*
22 *and Conservation Act (42 U.S.C. 6297(f)(4)(B)) is*
23 *amended to read as follows:*

24 *“(B) If a building code requires the installation of cov-*
25 *ered products with efficiencies exceeding the levels and re-*

1 *quirements specified in paragraph (3)(B), such requirement*
2 *of the building code shall not be applicable unless the Sec-*
3 *retary has granted a waiver for such requirement under*
4 *subsection (d) of this section.”.*

5 **SEC. 214. BEST-IN-CLASS APPLIANCES DEPLOYMENT PRO-**
6 **GRAM.**

7 *(a) IN GENERAL.—Not later than 1 year after the date*
8 *of enactment of this Act, the Secretary of Energy, in con-*
9 *sultation with the Administrator, shall establish a program*
10 *to be known as the “Best-in-Class Appliances Deployment*
11 *Program” to—*

12 *(1) provide bonus payments to retailers or dis-*
13 *tributors under subsection (c) for sales of best-in-class*
14 *high-efficiency household appliance models, high-effi-*
15 *ciency installed building equipment, and high-effi-*
16 *ciency consumer electronics, with the goal of reducing*
17 *life-cycle costs for consumers, encouraging innovation,*
18 *and maximizing energy savings and public benefit;*

19 *(2) provide bounties under subsection (d) to re-*
20 *tailers for the replacement, retirement, and recycling*
21 *of old, inefficient, and environmentally harmful prod-*
22 *ucts; and*

23 *(3) provide premium awards under subsection*
24 *(e) to manufacturers for developing and producing*
25 *new Superefficient Best-in-Class Products.*

1 (b) *DESIGNATION OF BEST-IN-CLASS PRODUCT MOD-*
2 *ELS.—*

3 (1) *IN GENERAL.—The Secretary of Energy shall*
4 *designate product models of appliances, equipment, or*
5 *electronics as Best-in-Class Product models. The Sec-*
6 *retary shall publicly announce the Best-in-Class*
7 *Product models designated under this subsection. The*
8 *Secretary shall define product classes broadly and, ex-*
9 *cept as provided in paragraph (2), shall designate as*
10 *Best-in-Class Product models no more than the most*
11 *efficient 10 percent of the commercially available*
12 *product models in a class that demonstrate, as a*
13 *group, a distinctly greater energy efficiency than the*
14 *average energy efficiency of that class of appliances,*
15 *equipment, or electronics. In designating models, the*
16 *Secretary shall—*

17 (A) *identify commercially available models*
18 *in the relevant class of products;*

19 (B) *identify the subgroup of those models*
20 *that share the distinctly higher energy-efficiency*
21 *characteristics that warrant designation as best-*
22 *in-class; and*

23 (C) *add other models in that class to the list*
24 *of Best-in-Class Product models as they dem-*
25 *onstrate their ability to meet the higher-effi-*

1 *ciency characteristics on which the designation*
2 *was made.*

3 (2) *PERCENTAGE EXCEPTION.—If there are fewer*
4 *than 10 product models in a class of products, the*
5 *Secretary may designate one or more of such models*
6 *as Best-in-Class Products.*

7 (3) *REVIEW OF BEST-IN-CLASS STANDARDS.—*
8 *The Secretary shall review annually the product-spe-*
9 *cific criteria for designating, and the product models*
10 *that qualify as, Best-in-Class Products and, after no-*
11 *tice and a 30-day comment period, make upwards ad-*
12 *justments in the efficiency criteria as necessary to*
13 *maintain an appropriate ratio of such product mod-*
14 *els to the total number of product models in the prod-*
15 *uct class.*

16 (c) *BONUSES FOR SALES OF BEST-IN-CLASS PROD-*
17 *UCTS.—*

18 (1) *IN GENERAL.—The Secretary of Energy shall*
19 *make bonus payments to retailers or, as provided in*
20 *paragraph (5)(B), distributors for the sale of Best-in-*
21 *Class Products.*

22 (2) *BONUS PROGRAM.—The Secretary shall—*

23 (A) *publicly announce the availability and*
24 *amount of the bonus to be paid for each sale of*

1 *a Best-in-Class Product of a model designated*
2 *under subsection (b); and*

3 *(B) make bonus payments in at least that*
4 *amount for each Best-in-Class Product of that*
5 *model sold during the 3-year period beginning*
6 *on the date the model is designated under sub-*
7 *section (b).*

8 *(3) UPGRADE OF BEST-IN-CLASS PRODUCT ELIGI-*
9 *BILITY.—In conducting a review under subsection*
10 *(b)(3), the Secretary shall—*

11 *(A) consider designating as a Best-in-Class*
12 *Product model a Superefficient Best-in-Class*
13 *Product model that has been designated pursuant*
14 *to subsection (e);*

15 *(B) announce any change in the bonus pay-*
16 *ment as necessary to increase the market share*
17 *of Best-in-Class Product models;*

18 *(C) list models that will be eligible for bo-*
19 *nuses in the new amount; and*

20 *(D) continue paying bonus payments at the*
21 *original level, for the sale of any models that*
22 *previously qualified as Best-in-Class Products*
23 *but do not qualify at the new level, for the re-*
24 *mainder of the 3-year period announced with the*
25 *original designation.*

1 (4) *SIZE OF INDIVIDUAL BONUS PAYMENTS.—(A)*

2 *The size of each bonus payment under this subsection*
3 *shall be the product of—*

4 *(i) an amount determined by the Sec-*
5 *retary; and*

6 *(ii) the difference in energy consump-*
7 *tion between the Best-in-Class Product and*
8 *the average product in the product class.*

9 *(B) The Secretary shall determine the amount*
10 *under subparagraph (A)(i) for each product type, in*
11 *consultation with State and utility efficiency pro-*
12 *gram administrators as well as the Administrator,*
13 *based on estimates of the amount of bonus payment*
14 *that would provide significant incentive to increase*
15 *the market share of Best-in-Class Products.*

16 (5) *ELIGIBLE BONUS RECIPIENT.—(A) The Sec-*
17 *retary shall ensure that not more than 1 bonus pay-*
18 *ment is provided under this subsection for each Best-*
19 *in-Class Product.*

20 *(B) The Secretary may make distributors eligible*
21 *to receive bonus payments under this subsection for*
22 *sales that are not to the final end-user, to the extent*
23 *that the Secretary determines that for a particular*
24 *product category distributors are well situated to in-*
25 *crease sales of Best-in-Class Products.*

1 (d) *BOUNTIES FOR REPLACEMENT, RETIREMENT, AND*
2 *RECYCLING OF EXISTING LOW-EFFICIENCY PRODUCTS.*—

3 (1) *IN GENERAL.*—*The Secretary of Energy shall*
4 *make bounty payments to retailers for the replace-*
5 *ment, retirement, and recycling of older operating*
6 *low-efficiency products that might otherwise continue*
7 *in operation.*

8 (2) *BOUNTIES.*—*Bounties shall be payable upon*
9 *documentation that the sale of a Best-in-Class Prod-*
10 *uct was accompanied by the replacement, retirement,*
11 *and recycling of—*

12 (A) *an inefficient but still-functioning prod-*
13 *uct; or*

14 (B) *a nonfunctioning product containing a*
15 *refrigerant,*

16 *by the consumer to whom the Best-in-Class Product*
17 *was sold.*

18 (3) *AMOUNT.*—

19 (A) *FUNCTIONING PRODUCTS.*—*The bounty*
20 *payment payable under this subsection for a*
21 *product described in paragraph (2)(A) shall be*
22 *based on the difference between the estimated en-*
23 *ergy use of the product replaced and the energy*
24 *use of an average new product in the product*

1 *class, over the estimated remaining lifetime of*
2 *the product that was replaced.*

3 (B) *NONFUNCTIONING PRODUCTS CON-*
4 *TAINING REFRIGERANTS.—The bounty payment*
5 *payable under this subsection for a product de-*
6 *scribed in paragraph (2)(B) shall be in the*
7 *amount that the Secretary of Energy, in con-*
8 *sultation with the Administrator, determines is*
9 *sufficient to promote the recycling of such prod-*
10 *ucts, up to the amount of bounty for a com-*
11 *parable product described in paragraph (2)(A).*

12 (4) *RETIREMENT.—The Secretary shall ensure*
13 *that no product for which a bounty is paid under this*
14 *subsection is returned to active service, but that it is*
15 *instead destroyed, and recycled to the extent feasible.*

16 (5) *RECYCLING APPLIANCES CONTAINING RE-*
17 *FRIGERANTS.—Exclusively for the purpose of imple-*
18 *menting the bounty payment program for products*
19 *containing a refrigerant under this section, the Ad-*
20 *ministrator shall establish standards for environ-*
21 *mentally responsible methods of recycling and dis-*
22 *posal of refrigerant-containing appliances that, at a*
23 *minimum, meet the requirements set by the Respon-*
24 *sible Appliance Disposal (RAD) Program for refriger-*
25 *erant disposal. The Secretary shall ensure that such*

1 standards are met before a bounty payment is made
2 under this subsection for a product containing a re-
3 frigerant. Nothing in this section shall be interpreted
4 to alter the requirements of section 608 of the Clean
5 Air Act or to relieve any person from complying with
6 those requirements.

7 (e) *PREMIUM AWARDS FOR DEVELOPMENT AND PRO-*
8 *DUCTION OF SUPEREFFICIENT BEST-IN-CLASS PROD-*
9 *UCTS.—*

10 (1) *IN GENERAL.—(A) The Secretary of Energy*
11 *shall provide premium awards to manufacturers for*
12 *the development and production of Superefficient*
13 *Best-in-Class Products. The Secretary shall set and*
14 *periodically revise standards for eligibility of prod-*
15 *ucts for designation as a Superefficient Best-in-Class*
16 *Product.*

17 (B) *The Secretary may establish a standard for*
18 *a Superefficient Best-in-Class Product even if no*
19 *product meeting that standard exists, if the Secretary*
20 *has reasonable grounds to conclude that a mass-pro-*
21 *ducible product could be made to meet that standard.*

22 (C) *The Secretary may also establish a Super-*
23 *efficient Best-in-Class Product standard that is met*
24 *by one or more existing Best-in-Class Product models,*
25 *if those product models have distinct energy efficiency*

1 *attributes and performance characteristics that make*
2 *them significantly better than other product models*
3 *qualifying as best-in-class. The Secretary may not*
4 *designate as Superefficient Best-in-Class Products*
5 *under this subparagraph models that represent more*
6 *than 10 percent of the currently qualifying Best-in-*
7 *Class Product models.*

8 (2) *PREMIUM AWARDS.—(A) The premium*
9 *award payment provided to a manufacturer under*
10 *this subsection shall be in addition to any bonus pay-*
11 *ments made under subsection (c).*

12 (B) *The amount of the premium award paid per*
13 *unit of Superefficient Best-in-Class Products sold to*
14 *retailers or distributors shall be the product of—*

15 (i) *an amount determined by the Secretary;*

16 *and*

17 (ii) *the difference in energy consumption be-*
18 *tween the Superefficient Best-in-Class Product*
19 *and the average product in the product class.*

20 (C) *The Secretary shall determine the amount*
21 *under subparagraph (B)(i) for each product type, in*
22 *consultation with State and utility efficiency pro-*
23 *gram administrators as well as the Administrator,*
24 *based on consideration of the present value to the Na-*
25 *tion of the energy (and water or other resources or in-*

1 *puts) saved over the useful life of the product. The*
2 *Secretary may also take into consideration the meth-*
3 *ods used to increase sales of qualifying products in*
4 *determining such amount.*

5 *(D) The Secretary may adjust the value de-*
6 *scribed in subparagraph (C) upward or downward as*
7 *appropriate, including based on the effect of the pre-*
8 *mium awards on the sales of products in different*
9 *classes that may be affected by the program under*
10 *this subsection.*

11 *(E) Premium award payments shall be applied*
12 *to sales of any Superefficient Best-in-Class Product*
13 *for the first 3 years after designation as a Supereffi-*
14 *cient Best-in-Class Product.*

15 *(3) COORDINATION OF INCENTIVES.—No product*
16 *for which Federal tax credit is received under section*
17 *45M of the Internal Revenue Code of 1986 shall be eli-*
18 *gible to receive premium award payments pursuant*
19 *to this subsection.*

20 *(f) REPORTING.—The Secretary of Energy shall re-*
21 *quire, as a condition of receiving a bonus, bounty, or pre-*
22 *mium award under this section, that a report containing*
23 *the following documentation be provided:*

24 *(1) For retailers and distributors, the number of*
25 *units sold within each product type, and model-spe-*

1 *cific wholesale purchase prices and retail sale prices,*
2 *on a monthly basis.*

3 (2) *For manufacturers, model-specific energy*
4 *consumption data.*

5 (3) *For manufacturers, on an immediate basis,*
6 *information concerning any product design or func-*
7 *tion changes that affect the energy consumption of the*
8 *unit.*

9 (4) *The methods used to increase the sales of*
10 *qualifying products.*

11 (g) *MONITORING AND VERIFICATION PROTOCOLS.—*
12 *The Secretary of Energy shall establish monitoring and*
13 *verification protocols for energy consumption tests for each*
14 *product model and for sales of energy-efficient models.*

15 (h) *DISCLOSURE.—The Secretary of Energy may re-*
16 *quire that retailers and distributors disclose publicly and*
17 *to consumers their participation in the program under this*
18 *section.*

19 (i) *COST-EFFECTIVENESS REQUIREMENT.—*

20 (1) *REQUIREMENT.—The Secretary of Energy*
21 *shall make cost-effectiveness a top priority in design-*
22 *ing the program under, and administering, this sec-*
23 *tion, except that the cost-effectiveness of providing*
24 *premium awards to manufacturers under subsection*
25 *(e), in aggregate, may be lower by this measure than*

1 *that of the bonuses and bounties to retailers and dis-*
2 *tributors under subsections (c) and (d).*

3 (2) *DEFINITIONS.—In this subsection:*

4 (A) *COST-EFFECTIVENESS.—The term “cost-*
5 *effectiveness” means a measure of aggregate sav-*
6 *ings in the cost of energy over the lifetime of a*
7 *product in relation to the cost to the Secretary*
8 *of the bonuses, bounties, and premium awards*
9 *provided under this section for a product.*

10 (B) *SAVINGS.—The term “savings” means*
11 *the cumulative megawatt-hours of electricity or*
12 *million British thermal units of other fuels saved*
13 *by a product during the projected useful life of*
14 *the product, in comparison to projected energy*
15 *consumption of the average product in the same*
16 *class, taking into consideration the impact of*
17 *any documented measures to replace, retire, and*
18 *recycle low-efficiency products at the time of*
19 *purchase of highly-efficient substitutes.*

20 (j) *DEFINITIONS.—In this section—*

21 (1) *the term “distributor” mean an individual,*
22 *organization, or company that sells products in mul-*
23 *tiiple lots and not directly to end-users;*

1 (2) *the term “retailer” means an individual, or-*
2 *ganization, or company that sells products directly to*
3 *end-users; and*

4 (3) *the term “Superefficient Best-in-Class Prod-*
5 *uct” means a product that—*

6 (A) *can be mass produced; and*

7 (B) *achieves the highest level of efficiency*
8 *that the Secretary of Energy finds can, given the*
9 *current state of technology, be produced and sold*
10 *commercially to mass-market consumers.*

11 (k) *AUTHORIZATION OF APPROPRIATIONS.—There are*
12 *authorized to be appropriated \$300,000,000 for each of the*
13 *fiscal years 2010 through 2014 to the Secretary of Energy*
14 *for purposes of this section, of which not more than 10 per-*
15 *cent for any fiscal year may be expended on program ad-*
16 *ministration.*

17 **SEC. 215. WATERSENSE.**

18 (a) *IN GENERAL.—There is established within the En-*
19 *vironmental Protection Agency a WaterSense program to*
20 *identify and promote water efficient products, buildings*
21 *and landscapes, and services in order—*

22 (1) *to reduce water use;*

23 (2) *to reduce the strain on water, wastewater,*
24 *and stormwater infrastructure;*

1 (3) to conserve energy used to pump, heat, trans-
2 port, and treat water; and

3 (4) to preserve water resources for future genera-
4 tions,

5 through voluntary labeling of, or other forms of communica-
6 tions about, products, buildings and landscapes, and serv-
7 ices that meet the highest water efficiency and performance
8 standards.

9 (b) DUTIES.—The Administrator shall—

10 (1) promote WaterSense labeled products, build-
11 ings and landscapes, and services in the market place
12 as the preferred technologies and services for—

13 (A) reducing water use; and

14 (B) ensuring product and service perform-
15 ance;

16 (2) work to enhance public awareness of the
17 WaterSense label through public outreach, education,
18 and other means;

19 (3) establish and maintain performance stand-
20 ards so that products, buildings and landscapes, and
21 services labeled with the WaterSense label perform as
22 well or better than their less efficient counterparts;

23 (4) publicize the need for proper installation and
24 maintenance of WaterSense products by a licensed,

1 *and where certification guidelines exist, WaterSense-*
2 *certified professional to ensure optimal performance;*

3 (5) *preserve the integrity of the WaterSense label;*

4 (6) *regularly review and, when appropriate, up-*
5 *date WaterSense criteria for categories of products,*
6 *buildings and landscapes, and services, at least once*
7 *every four years;*

8 (7) *to the extent practical, regularly estimate*
9 *and make available to the public the production and*
10 *relative market shares of WaterSense labeled products,*
11 *buildings and landscapes, and services, at least annu-*
12 *ally;*

13 (8) *to the extent practical, regularly estimate*
14 *and make available to the public the water and en-*
15 *ergy savings attributable to the use of WaterSense la-*
16 *beled products, buildings and landscapes, and serv-*
17 *ices, at least annually;*

18 (9) *solicit comments from interested parties and*
19 *the public prior to establishing or revising a*
20 *WaterSense category, specification, installation cri-*
21 *terion, or other criterion (or prior to effective dates*
22 *for any such category, specification, installation cri-*
23 *terion, or other criterion);*

24 (10) *provide reasonable notice to interested par-*
25 *ties and the public of any changes (including effective*

1 *dates), on the adoption of a new or revised category,*
2 *specification, installation criterion, or other criterion,*
3 *along with—*

4 *(A) an explanation of changes; and*

5 *(B) as appropriate, responses to comments*
6 *submitted by interested parties;*

7 *(11) provide appropriate lead time (as deter-*
8 *mined by the Administrator) prior to the applicable*
9 *effective date for a new or significant revision to a*
10 *category, specification, installation criterion, or other*
11 *criterion, taking into account the timing requirements*
12 *of the manufacturing, marketing, training, and dis-*
13 *tribution process for the specific product, building*
14 *and landscape, or service category addressed; and*

15 *(12) identify and, where appropriate, implement*
16 *other voluntary approaches in commercial, institu-*
17 *tional, residential, municipal, and industrial sectors*
18 *to encourage reuse and recycling technologies, improve*
19 *water efficiency, or lower water use while meeting,*
20 *where applicable, the performance standards estab-*
21 *lished under paragraph (3).*

22 *(c) AUTHORIZATION OF APPROPRIATIONS.—There are*
23 *authorized to be appropriated \$7,500,000 for fiscal year*
24 *2010, \$10,000,000 for fiscal year 2011, \$20,000,000 for fis-*
25 *cal year 2012, and \$50,000,000 for fiscal year 2013 and*

1 *each year thereafter, adjusted for inflation, to carry out this*
2 *section.*

3 **SEC. 216. FEDERAL PROCUREMENT OF WATER EFFICIENT**
4 **PRODUCTS.**

5 (a) *DEFINITIONS.—In this section:*

6 (1) *AGENCY.—The term “agency” has the mean-*
7 *ing given that term in section 7902(a) of title 5,*
8 *United States Code.*

9 (2) *WATERSENSE PRODUCT OR SERVICE.—The*
10 *term “WaterSense product or service” means a prod-*
11 *uct or service that is rated for water efficiency under*
12 *the WaterSense program.*

13 (3) *WATERSENSE PROGRAM.—The term*
14 *“WaterSense program” means the program estab-*
15 *lished by section 215 of this 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 efficiency.*

22 (5) *PRODUCT AND SERVICE.—The terms “prod-*
23 *uct” and “service” do not include any water con-*
24 *suming product or service designed or procured for*
25 *combat or combat-related missions. The terms also ex-*

1 *clude products or services already covered by the Fed-*
2 *eral procurement regulations established under section*
3 *553 of the National Energy Conservation Policy Act*
4 *(42 U.S.C. 8259b).*

5 *(b) PROCUREMENT OF WATER EFFICIENT PROD-*
6 *UCTS.—*

7 *(1) REQUIREMENT.—To meet the requirements of*
8 *an agency for a water consuming product or service,*
9 *the head of the agency shall, except as provided in*
10 *paragraph (2), procure—*

11 *(A) a WaterSense product or service; or*

12 *(B) a FEMP designated product.*

13 *A WaterSense plumbing product should preferably,*
14 *when possible, be installed by a licensed and, when*
15 *WaterSense certification guidelines exist, WaterSense-*
16 *certified plumber or mechanical contractor, and a*
17 *WaterSense irrigation system should preferably, when*
18 *possible, be installed, maintained, and audited by a*
19 *WaterSense-certified irrigation professional to ensure*
20 *optimal performance.*

21 *(2) EXCEPTIONS.—The head of an agency is not*
22 *required to procure a WaterSense product or service*
23 *or FEMP designated product under paragraph (1) if*
24 *the head of the agency finds in writing that—*

1 (A) a WaterSense product or service or
2 FEMP designated product is not cost-effective
3 over the life of the product, taking energy and
4 water cost savings into account; or

5 (B) no WaterSense product or service or
6 FEMP designated product is reasonably avail-
7 able that meets the functional requirements of the
8 agency.

9 (3) *PROCUREMENT PLANNING.*—The head of an
10 agency shall incorporate into the specifications for all
11 procurements involving water consuming products
12 and systems, including guide specifications, project
13 specifications, and construction, renovation, and serv-
14 ices contracts that include provision of water con-
15 suming products and systems, and into the factors for
16 the evaluation of offers received for the procurement,
17 criteria used for rating WaterSense products and
18 services and FEMP designated products. The head of
19 an agency shall consider, to the maximum extent
20 practicable, additional measures for reducing agency
21 water consumption, including water reuse tech-
22 nologies, leak detection and repair, and use of water-
23 less products that perform similar functions to exist-
24 ing water-consuming products.

1 (c) *REGULATIONS.*—Not later than 180 days after the
2 date of enactment of this Act, the Secretary of Energy,
3 working in coordination with the Administrator, shall issue
4 guidelines to carry out this section.

5 **SEC. 217. WATER EFFICIENT PRODUCT REBATE PROGRAMS.**

6 (a) *DEFINITIONS.*—In this section:

7 (1) *ELIGIBLE STATE.*—The term “eligible State”
8 means a State that meets the requirements of sub-
9 section (b).

10 (2) *RESIDENTIAL WATER EFFICIENT PRODUCT*
11 *OR SERVICE.*—The term “residential water efficient
12 product or service” means a product or service for a
13 residence or its landscape that is rated for water effi-
14 ciency and performance—

15 (A) by the WaterSense program, where a
16 WaterSense specification does not exist; or

17 (B) by a State program and approved by
18 the Administrator.

19 Categories of water efficient products and services
20 may include faucets, irrigation technologies and serv-
21 ices, point-of-use water treatment devices, reuse and
22 recycling technologies, toilets, and showerheads.

23 (3) *STATE PROGRAM.*—The term “State pro-
24 gram” means a State program for administering re-
25 bates or vouchers for consumer purchase of water effi-

1 *cient products and services as described in subsection*
2 *(b)(1).*

3 (4) *WATERSENSE PROGRAM.—The term*
4 *“WaterSense program” means the program estab-*
5 *lished by section 215 of this Act.*

6 (b) *ELIGIBLE STATES.—A State shall be eligible to re-*
7 *ceive an allocation under subsection (c) if the State—*

8 (1) *establishes (or has established) a State pro-*
9 *gram to provide rebates or vouchers to residential*
10 *consumers for the purchase of residential water effi-*
11 *cient products or services to replace used products of*
12 *the same type;*

13 (2) *submits an application for the allocation at*
14 *such time, in such form, and containing such infor-*
15 *mation as the Administrator may require; and*

16 (3) *provides assurances satisfactory to the Ad-*
17 *ministrator that the State will use the allocation to*
18 *supplement, but not supplant, funds made available*
19 *to carry out the State program.*

20 (c) *AMOUNT OF ALLOCATIONS.—*

21 (1) *IN GENERAL.—Subject to paragraph (2), for*
22 *each fiscal year, the Administrator shall allocate to*
23 *each eligible State to carry out subsection (d) an*
24 *amount equal to the product obtained by multiplying*
25 *the amount made available under subsection (g) for*

1 *the fiscal year by the ratio that the population of the*
2 *State in the most recent calendar year for which data*
3 *are available bears to the total population of all eligi-*
4 *ble States in that calendar year.*

5 (2) *MINIMUM ALLOCATIONS.—For each fiscal*
6 *year, the amounts allocated under this subsection*
7 *shall be adjusted proportionately so that no eligible*
8 *State is allocated a sum that is less than an amount*
9 *determined by the Administrator.*

10 (d) *USE OF ALLOCATED FUNDS.—Funds allocated to*
11 *a State under subsection (c) may be used to pay up to 50*
12 *percent of the cost of establishing and carrying out a State*
13 *program.*

14 (e) *FIXTURE RECYCLING.—States are encouraged to*
15 *promote or implement fixture recycling programs to man-*
16 *age the disposal of older fixtures replaced due to the rebate*
17 *program under this section.*

18 (f) *ISSUANCE OF REBATES.—Rebates or vouchers may*
19 *be provided to residential consumers that meet the require-*
20 *ments of the State program. The State may issue all rebates*
21 *or vouchers directly to residential consumers or, with ap-*
22 *proval of the Administrator, delegate some or all rebate and*
23 *voucher administration to other organizations including,*
24 *but not limited to, local governments, municipal water au-*
25 *thorities, and water utilities. The amount of a rebate or*

1 *voucher shall be determined by the State, taking into con-*
2 *sideration—*

3 (1) *the amount of the allocation to the State*
4 *under subsection (c);*

5 (2) *the amount of any Federal or State tax in-*
6 *centive available for the purchase of the residential*
7 *water efficient product or service;*

8 (3) *the amount necessary to change consumer be-*
9 *havior to purchase water efficient products and serv-*
10 *ices; and*

11 (4) *the consumer expenditures for onsite prepa-*
12 *ration, assembly, and original installation of the*
13 *product.*

14 (g) *AUTHORIZATION OF APPROPRIATIONS.—There are*
15 *authorized to be appropriated to the Administrator to carry*
16 *out this section \$50,000,000 for each of the fiscal years 2010*
17 *and 2011, \$75,000,000 for fiscal year 2012, \$100,000,000*
18 *for fiscal year 2013, and \$150,000,000 for fiscal year 2014*
19 *and each year thereafter, adjusted for inflation.*

20 **SEC. 218. CERTIFIED STOVES PROGRAM.**

21 (a) *DEFINITIONS.—In this section:*

22 (1) *AGENCY.—The term “Agency” means the En-*
23 *vironmental Protection Agency.*

24 (2) *WOOD STOVE OR PELLETT STOVE.—The term*
25 *“wood stove or pellet stove” means a wood stove, pellet*

1 *stove, or fireplace insert that uses wood or pellets for*
2 *fuel.*

3 (3) *CERTIFIED STOVE.*—*The term “certified*
4 *stove” means a wood stove or pellet stove that meets*
5 *the standards of performance for new residential wood*
6 *heaters under subpart AAA of part 60 of subchapter*
7 *C of chapter I of title 40, Code of Federal Regulations*
8 *(or successor regulations), as certified by the Adminis-*
9 *trator. Pellet stoves and fireplace inserts using pellets*
10 *for fuel that are exempt from testing by the Adminis-*
11 *trator but meet the same standards of performance as*
12 *wood stoves are considered certified for the purposes*
13 *of this section.*

14 (4) *ELIGIBLE ENTITY.*—*The term “eligible enti-*
15 *ty” means—*

16 (A) *a State, a local government, or a feder-*
17 *ally recognized Indian tribe;*

18 (B) *Alaskan Native villages or regional or*
19 *village corporations (as defined in, or established*
20 *under, the Alaskan Native Claims Settlement Act*
21 *(43 U.S.C. 1601 et seq.)); and*

22 (C) *a nonprofit organization or institution*
23 *that—*

24 (i) *represents or provides pollution re-*
25 *duction or educational services relating to*

1 *wood smoke minimization to persons, orga-*
2 *nizations, or communities; or*

3 *(ii) has, as its principal purpose, the*
4 *promotion of air quality or energy effi-*
5 *ciency.*

6 *(b) ESTABLISHMENT.—The Administrator shall estab-*
7 *lish and carry out a program to assist in the replacement*
8 *of wood stoves or pellet stoves that do not meet the standards*
9 *of performance referred to in subsection (a)(4) by—*

10 *(1) requiring that each wood stove or pellet stove*
11 *sold in the United States on and after the date of en-*
12 *actment of this Act meet the standards of performance*
13 *referred to in subsection (a)(4);*

14 *(2) requiring that no wood stove or pellet stove*
15 *replaced under this program is sold or returned to ac-*
16 *tive service, but that it is instead destroyed and recy-*
17 *clad to the maximum extent feasible;*

18 *(3) providing funds to an eligible entity to re-*
19 *place a wood stove or pellet stove that does not meet*
20 *the standards of performance in subsection (a)(4)*
21 *with a certified stove, including funds to pay for—*

22 *(A) installation of a replacement certified*
23 *stove; and*

24 *(B) necessary replacement of or repairs to*
25 *ventilation, flues, chimneys, or other relevant*

1 *items necessary for safe installation of a replace-*
2 *ment certified stove;*

3 *(4) in addition to any funds that may be appro-*
4 *propriated for the program under this subsection, using*
5 *existing Federal, State, and local programs and in-*
6 *centives, to the greatest extent practicable;*

7 *(5) prioritizing the replacement of wood stoves or*
8 *pellet stoves manufactured before July 1, 1990; and*

9 *(6) carrying out such other activities as the Ad-*
10 *ministrator determines appropriate to facilitate the*
11 *replacement of wood stoves or pellet stoves that do not*
12 *meet the standards of performance referred to in sub-*
13 *section (a)(3).*

14 *(c) REGULATIONS.—The Administrator may promul-*
15 *gate such regulations as are necessary to carry out the pro-*
16 *gram established under subsection (b).*

17 *(d) FUNDING.—*

18 *(1) AUTHORIZATION OF APPROPRIATIONS.—*
19 *There are authorized to be appropriated to carry out*
20 *the program under this section \$20,000,000 for the*
21 *period of fiscal years 2010 through 2014.*

22 *(2) DESIGNATED USE.—Of amounts appro-*
23 *priated pursuant to this subsection—*

24 *(A) 25 percent shall be designated for use to*
25 *carry out the program under this section on*

1 *lands held in trust for the benefit of a federally*
2 *recognized Indian tribe;*

3 *(B) 3 percent shall be designated for use to*
4 *carry out the program under this section in*
5 *Alaskan Native villages or regional or village*
6 *corporations (as defined in, or established under,*
7 *the Alaskan Native Claims Settlement Act (43*
8 *U.S.C. 1601 et seq.)); and*

9 *(C) 72 percent shall be designated for use to*
10 *carry out the program under this section nation-*
11 *wide.*

12 (3) *REGULATORY PROGRAMS.—*

13 (A) *IN GENERAL.—No grant or loan pro-*
14 *vided under this section shall be used to fund the*
15 *costs of emissions reductions that are mandated*
16 *under Federal, State, or local law.*

17 (B) *MANDATED.—For purposes of subpara-*
18 *graph (A), voluntary or elective emission reduc-*
19 *tion measures shall not be considered “man-*
20 *dated”, regardless of whether the reductions are*
21 *included in the implementation plan of a State.*

22 (e) *EPA AUTHORITY TO ACCEPT WOOD STOVE OR*
23 *PELLET STOVE REPLACEMENT SUPPLEMENTAL ENVIRON-*
24 *MENTAL PROJECTS.—*

1 (1) *IN GENERAL.*—*The Administrator may ac-*
2 *cept (notwithstanding sections 3302 and 1301 of title*
3 *31, United States Code) wood stove or pellet stove re-*
4 *placement Supplemental Environmental Projects if*
5 *such projects, as part of a settlement of any alleged*
6 *violation of environmental law—*

7 (A) *protect human health or the environ-*
8 *ment;*

9 (B) *are related to the underlying alleged*
10 *violation;*

11 (C) *do not constitute activities that the de-*
12 *fendant would otherwise be legally required to*
13 *perform; and*

14 (D) *do not provide funds for the staff of the*
15 *Agency or for contractors to carry out the Agen-*
16 *cy's internal operations.*

17 (2) *CERTIFICATION.*—*In any settlement agree-*
18 *ment regarding an alleged violation of environmental*
19 *law in which a defendant agrees to perform a wood*
20 *stove or pellet stove replacement Supplemental Envi-*
21 *ronmental Project, the Administrator shall require the*
22 *defendant to include in the settlement documents a*
23 *certification under penalty of law that the defendant*
24 *would have agreed to perform a comparably valued,*
25 *alternative project other than a wood stove or pellet*

1 *stove replacement Supplemental Environmental*
2 *Project if the Administrator were precluded by law*
3 *from accepting a wood stove or pellet stove replace-*
4 *ment Supplemental Environmental Project. A failure*
5 *by the Administrator to include this language in such*
6 *a settlement agreement shall not create a cause of ac-*
7 *tion against the United States under the Clean Air*
8 *Act or any other law or create a basis for overturning*
9 *a settlement agreement entered into by the United*
10 *States.*

11 **SEC. 219. ENERGY STAR STANDARDS.**

12 *(a) ENERGY STAR.—Section 324A(c) of the Energy*
13 *Policy and Conservation Act is amended—*

14 *(1) in paragraph (6)(B), by striking “and” after*
15 *the semicolon at the end;*

16 *(2) in paragraph (7), by striking the period at*
17 *the end and inserting a semicolon; and*

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

19 *“(8) in establishing and revising an Energy Star*
20 *product category, specification, or criterion, require*
21 *inclusion of developmental products planned for sale*
22 *within 2 years in the testing or evaluation of prod-*
23 *ucts proposed for purposes of such establishment or*
24 *revision;*

1 “(9) not later than 18 months after the date of
2 enactment of this paragraph, establish and implement
3 a rating system for products identified as Energy
4 Star products pursuant to this section to provide con-
5 sumers with the most helpful information on the rel-
6 ative energy efficiency of those products, unless the
7 Administrator and the Secretary communicate to
8 Congress that establishing such a system would di-
9 minish the value of the Energy Star brand to con-
10 sumers;

11 “(10)(A) review the Energy Star product criteria
12 for the 10 products in each product category with the
13 greatest energy consumption at least once every 3
14 years; and

15 “(B) based on the review, update and publish the
16 Energy Star product criteria for each such category,
17 as necessary; and

18 “(11) require periodic verification of compliance
19 with the Energy Star product criteria by products
20 identified as Energy Star products pursuant to this
21 section, including—

22 “(A) purchase and testing of products from
23 the market; or

24 “(B) other appropriate testing and compli-
25 ance approaches.”.

1 (b) *AUTHORIZATION OF APPROPRIATIONS.*—*There are*
 2 *authorized to be appropriated to carry out the amendments*
 3 *made by this section \$5,000,000 for fiscal year 2010 and*
 4 *for each fiscal year thereafter.*

5 ***Subtitle C—Transportation***
 6 ***Efficiency***

7 ***SEC. 221. EMISSIONS STANDARDS.***

8 *Title VIII of the Clean Air Act, as added by section*
 9 *331 of this Act, is amended by inserting after part A the*
 10 *following new part:*

11 ***“PART B—MOBILE SOURCES***

12 ***“SEC. 821. GREENHOUSE GAS EMISSION STANDARDS FOR***
 13 ***MOBILE SOURCES.***

14 *“(a) NEW MOTOR VEHICLES AND NEW MOTOR VEHI-*
 15 *CLE ENGINES.—(1) Pursuant to section 202(a)(1), by De-*
 16 *cember 31, 2010, the Administrator shall promulgate stand-*
 17 *ards applicable to emissions of greenhouse gases from new*
 18 *heavy-duty motor vehicles or new heavy-duty motor vehicle*
 19 *engines, excluding such motor vehicles covered by the Tier*
 20 *II standards (as established by the Administrator as of the*
 21 *date of the enactment of this section). The Administrator*
 22 *may revise these standards from time to time.*

23 *“(2) Regulations issued under section 202(a)(1) appli-*
 24 *cable to emissions of greenhouse gases from new heavy-duty*
 25 *motor vehicles or new heavy-duty motor vehicle engines, ex-*

1 *cluding such motor vehicles covered by the Tier II standards*
2 *(as established by the Administrator as of the date of the*
3 *enactment of this section), shall contain standards that re-*
4 *flect the greatest degree of emissions reduction achievable*
5 *through the application of technology which the Adminis-*
6 *trator determines will be available for the model year to*
7 *which such standards apply, giving appropriate consider-*
8 *ation to cost, energy, and safety factors associated with the*
9 *application of such technology. Any such regulations shall*
10 *take effect after such period as the Administrator finds nec-*
11 *essary to permit the development and application of the req-*
12 *uisite technology, and, at a minimum, shall apply for a*
13 *period no less than 3 model years beginning no earlier than*
14 *the model year commencing 4 years after such regulations*
15 *are promulgated.*

16 *“(3) Regulations issued under section 202(a)(1) appli-*
17 *cable to emissions of greenhouse gases from new heavy-duty*
18 *motor vehicles or new heavy-duty motor vehicle engines, ex-*
19 *cluding such motor vehicles covered by the Tier II standards*
20 *(as established by the Administrator as of the date of the*
21 *enactment of this section), shall supersede and satisfy any*
22 *and all of the rulemaking and compliance requirements of*
23 *section 32902(k) of title 49, United States Code.*

24 *“(4) Other than as specifically set forth in paragraph*
25 *(3) of this subsection, nothing in this section shall affect*

1 *or otherwise increase or diminish the authority of the Sec-*
2 *retary of Transportation to adopt regulations to improve*
3 *the overall fuel efficiency of the commercial goods movement*
4 *system.*

5 “(b) *NONROAD VEHICLES AND ENGINES.—(1) Pursu-*
6 *ant to section 213(a)(4) and (5), the Administrator shall*
7 *identify those classes or categories of new nonroad vehicles*
8 *or engines, or combinations of such classes or categories,*
9 *that, in the judgment of the Administrator, both contribute*
10 *significantly to the total emissions of greenhouse gases from*
11 *nonroad engines and vehicles, and provide the greatest po-*
12 *tential for significant and cost-effective reductions in emis-*
13 *sions of greenhouse gases. The Administrator shall promul-*
14 *gate standards applicable to emissions of greenhouse gases*
15 *from these new nonroad engines or vehicles by December*
16 *31, 2012. The Administrator shall also promulgate stand-*
17 *ards applicable to emissions of greenhouse gases for such*
18 *other classes and categories of new nonroad vehicles and en-*
19 *gines as the Administrator determines appropriate and in*
20 *the timeframe the Administrator determines appropriate.*
21 *The Administrator shall base such determination, among*
22 *other factors, on the relative contribution of greenhouse gas*
23 *emissions, and the costs for achieving reductions, from such*
24 *classes or categories of new nonroad engines and vehicles.*

1 *The Administrator may revise these standards from time*
2 *to time.*

3 “(2) *Standards under section 213(a)(4) and (5) appli-*
4 *cable to emissions of greenhouse gases from those classes or*
5 *categories of new nonroad engines or vehicles identified in*
6 *the first sentence of paragraph (1) of this subsection, shall*
7 *achieve the greatest degree of emissions reduction achievable*
8 *based on the application of technology which the Adminis-*
9 *trator determines will be available at the time such stand-*
10 *ards take effect, taking into consideration cost, energy, and*
11 *safety factors associated with the application of such tech-*
12 *nology. Any such regulations shall take effect after such pe-*
13 *riod as the Administrator finds necessary to permit the de-*
14 *velopment and application of the requisite technology.*

15 “(3) *For purposes of this section and standards under*
16 *section 213(a)(4) or (5) applicable to emissions of green-*
17 *house gases, the term ‘nonroad engines and vehicles’ shall*
18 *include non-internal combustion engines and the vehicles*
19 *these engines power (such as electric engines and electric*
20 *vehicles), for those non-internal combustion engines and ve-*
21 *hicles which would be in the same category and have the*
22 *same uses as nonroad engines and vehicles that are powered*
23 *by internal combustion engines.*

24 “(c) *AIRCRAFT AND AIRCRAFT ENGINES.—*

1 “(1) Pursuant to section 231(a), the Adminis-
2 trator shall promulgate standards applicable to emis-
3 sions of greenhouse gases from new aircraft and new
4 engines used in aircraft by December 31, 2012. Not-
5 withstanding any requirement in section 231(a), the
6 Administrator, in consultation with the Adminis-
7 trator of the Federal Aviation Administration, shall
8 also promulgate standards applicable to emissions of
9 greenhouse gases from other classes and categories of
10 aircraft and aircraft engines for such classes and cat-
11 egories as the Administrator determines appropriate
12 and in the timeframe the Administrator determines
13 appropriate. The Administrator may revise these
14 standards from time to time.

15 “(2) Standards under section 231(a) applicable
16 to emissions of greenhouse gases from new aircraft
17 and new engines used in aircraft, and any later revi-
18 sions or additional standards, shall achieve the great-
19 est degree of emissions reduction achievable based on
20 the application of technology which the Administrator
21 determines will be available at the time such stand-
22 ards take effect, taking into consideration cost, en-
23 ergy, and safety factors associated with the applica-
24 tion of such technology. Any such standards shall take
25 effect after such period as the Administrator finds

1 *necessary to permit the development and application*
2 *of the requisite technology.*

3 “(d) *AVERAGING, BANKING, AND TRADING OF EMIS-*
4 *SIONS CREDITS.—In establishing standards applicable to*
5 *emissions of greenhouse gases pursuant to this section and*
6 *sections 202(a), 213(a)(4) and (5), and 231(a), the Admin-*
7 *istrator may establish provisions for averaging, banking,*
8 *and trading of greenhouse gas emissions credits within or*
9 *across classes or categories of motor vehicles and motor vehi-*
10 *cle engines, nonroad vehicles and engines (including marine*
11 *vessels), and aircraft and aircraft engines, to the extent the*
12 *Administrator determines appropriate and considering the*
13 *factors appropriate in setting standards under those sec-*
14 *tions. Such provisions may include reasonable and appro-*
15 *priate provisions concerning generation, banking, trading,*
16 *duration, and use of credits.*

17 “(e) *REPORTS.—The Administrator shall, from time*
18 *to time, submit a report to Congress that projects the*
19 *amount of greenhouse gas emissions from the transportation*
20 *sector, including transportation fuels, for the years 2030*
21 *and 2050, based on the standards adopted under this sec-*
22 *tion.*

23 “(f) *GREENHOUSE GASES.—Notwithstanding the pro-*
24 *visions of section 711, hydrofluorocarbons shall be consid-*
25 *ered a greenhouse gas for purposes of this section.”.*

1 **SEC. 222. GREENHOUSE GAS EMISSIONS REDUCTIONS**
2 **THROUGH TRANSPORTATION EFFICIENCY.**

3 *Title VIII of the Clean Air Act, as added by section*
4 *331 of this Act, is further amended by inserting after part*
5 *C the following new part:*

6 **“PART D—PLANNING REQUIREMENTS**

7 **“SEC. 841. GREENHOUSE GAS EMISSIONS REDUCTIONS**
8 **THROUGH TRANSPORTATION EFFICIENCY.**

9 *“(a) IN GENERAL.—Each State shall—*

10 *“(1) not later than 3 years after the date of en-*
11 *actment of this section, submit to the Administrator*
12 *goals for transportation-related greenhouse gas emis-*
13 *sions reductions, which goals shall be reasonably com-*
14 *mensurate with the targets for overall greenhouse gas*
15 *emissions reduction established by this Act; and*

16 *“(2) as part of each transportation plan or*
17 *transportation improvement program developed under*
18 *title 23 or title 49, United States Code, ensure that*
19 *a plan to achieve such goals, or an updated version*
20 *of such a plan, is submitted to the Administrator and*
21 *to the Secretary of Transportation (in this section re-*
22 *ferred to as the ‘Secretary’) by each metropolitan*
23 *planning organization in the State for an area with*
24 *a population exceeding 200,000.*

25 *“(b) MODELS AND METHODOLOGIES.—*

1 “(1) *IN GENERAL.*—*The Administrator shall pro-*
2 *mulgate regulations to establish standards for use in*
3 *developing goals, plans, and strategies under this sec-*
4 *tion and for monitoring progress toward such goals.*
5 *Such standards shall include—*

6 “(A) *data collection techniques for assessing*
7 *State and regional transportation-related green-*
8 *house gas emissions;*

9 “(B) *methodologies for determining trans-*
10 *portation-related greenhouse gas emissions base-*
11 *lines;*

12 “(C) *models and methodologies for scenario*
13 *analysis; and*

14 “(D) *models and methodologies for esti-*
15 *imating transportation-related greenhouse gas*
16 *emissions reductions from the strategies consid-*
17 *ered under this section.*

18 *Such regulations may approve or improve existing*
19 *models and methodologies*

20 “(2) *TIMING.*—*The Administrator shall—*

21 “(A) *publish proposed regulations under*
22 *paragraph (1) not later than 1 year after the*
23 *date of enactment of this section; and*

1 “(B) promulgate final regulations under
2 paragraph (1) not later than 2 years after such
3 date of enactment.

4 “(3) ASSESSMENT.—At least every 6 years after
5 promulgating final regulations under paragraph (1),
6 the Administrator, in coordination with the Sec-
7 retary, shall assess current and projected progress in
8 reducing transportation-related greenhouse gas emis-
9 sions. The assessment shall examine the contributions
10 to emissions reductions attributable to improvements
11 in vehicle efficiency, greenhouse gas performance of
12 transportation fuels, and increased efficiency in uti-
13 lizing transportation systems.

14 “(c) GREENHOUSE GAS REDUCTION GOALS.—

15 “(1) CONSULTATION.—Each State shall develop
16 the goals referred to in subsection (a)(1)—

17 “(A) in concurrence with State agencies re-
18 sponsible for air quality and transportation;

19 “(B) in consultation with each metropolitan
20 planning organization for an area in the State
21 with a population exceeding 200,000 and appli-
22 cable local air quality and transportation agen-
23 cies; and

24 “(C) with public involvement, including
25 public comment periods and meetings.

1 “(2) *PERIOD.*—The goals referred to in sub-
2 section (a)(1) shall be for 4-, 10-, and 20-year peri-
3 ods.

4 “(3) *TARGETS; DESIGNATED YEAR.*—The goals
5 referred to in subsection (a)(1) shall establish targets
6 to reduce transportation-related greenhouse gas emis-
7 sions in the covered area. The targets shall be de-
8 signed to ensure that the levels of such emissions sta-
9 bilize and decrease after a designated year. The State
10 shall consider designating 2010 as such designated
11 year.

12 “(4) *COVERED AREA.*—The goals referred to in
13 subsection (a)(1)—

14 “(A) shall be established on a statewide
15 basis;

16 “(B) shall be established for each metropoli-
17 tan planning organization in the State for an
18 area with a population exceeding 200,000; and

19 “(C) may be established on a voluntary
20 basis, in accordance with the provisions of this
21 section, for any metropolitan planning organiza-
22 tion not described in subparagraph (B).

23 “(5) *REVISED GOALS.*—Every 4 years, each
24 State shall update and revise, as appropriate, the
25 goals referred to in subsection (a)(1).

1 “(d) *PLANNING.*—A plan submitted under subsection
2 (a)(2) shall—

3 “(1) be based upon the models and methodologies
4 established by the Administrator under subsection (b);

5 “(2) use transportation and land use scenario
6 analysis to address transportation-related greenhouse
7 gas emissions and economic development impacts;
8 and

9 “(3) be developed—

10 “(A) with public involvement, including
11 public comment periods and meetings that pro-
12 vide opportunities for comment from a variety of
13 stakeholders based on age, race, income, and dis-
14 ability;

15 “(B) with regional coordination, including
16 with respect to—

17 “(i) metropolitan planning organiza-
18 tions;

19 “(ii) the localities comprising the met-
20 ropolitan planning organization;

21 “(iii) the State in which the metropoli-
22 tan planning organization is located; and

23 “(iv) air quality, environmental
24 health, and transportation agencies for the
25 State and region involved; and

1 “(C) *in consultation with the State and*
2 *local housing, public health, economic develop-*
3 *ment, land use, environment, and public trans-*
4 *portation agencies.*

5 “(e) *STRATEGIES.—In developing goals under sub-*
6 *section (a)(1) and a plan under subsection (a)(2), the State*
7 *or metropolitan planning organization, as applicable, shall*
8 *consider transportation and land use planning strategies*
9 *to reduce transportation-related greenhouse gas emissions,*
10 *including the following:*

11 “(1) *Efforts to increase or improve public trans-*
12 *portation, including—*

13 “(A) *new public transportation systems, in-*
14 *cluding new commuter rail systems;*

15 “(B) *expansion of existing public transpor-*
16 *tation systems;*

17 “(C) *employer-based subsidies;*

18 “(D) *cleaner locomotive technologies;*

19 “(E) *quality of service improvements, in-*
20 *cluding improved frequency of service; and*

21 “(F) *use of transit buses that are powered*
22 *by alternative fuels.*

23 “(2) *Updates to zoning and other land use regu-*
24 *lations and plans to support development that—*

1 “(A) coordinates transportation and land
2 use planning;

3 “(B) focuses future growth close to existing
4 and planned job centers and public facilities;

5 “(C) uses existing infrastructure;

6 “(D) promotes walking, bicycling, and pub-
7 lic transportation use; and

8 “(E) mixes land uses such as housing, re-
9 tail, and schools.

10 “(3) Implementation of a policy (referred to as
11 a ‘complete streets policy’) that—

12 “(A) ensures adequate accommodation of all
13 users of transportation systems, including pedes-
14 trians, bicyclists, public transportation users,
15 motorists, children, the elderly, and individuals
16 with disabilities; and

17 “(B) adequately addresses the safety and
18 convenience of all users of the transportation sys-
19 tem.

20 “(4) Construction of bicycle and pedestrian in-
21 frastructure facilities, including facilities that im-
22 prove the connections with networks that provide ac-
23 cess to human services, employment, schools, and re-
24 tail.

1 “(5) *Projects to promote telecommuting, flexible*
2 *work schedules, or satellite work centers.*

3 “(6) *Pricing measures, including tolling, conges-*
4 *tion pricing, and pay-as-you-drive insurance.*

5 “(7) *Intermodal freight system strategies, includ-*
6 *ing enhanced rail services, short sea shipping, and*
7 *other strategies.*

8 “(8) *Parking policies.*

9 “(9) *Intercity rail service, including high speed*
10 *rail.*

11 “(10) *Travel demand management projects.*

12 “(11) *Restriction of the use of certain roads, or*
13 *lanes, by vehicles other than passenger buses and*
14 *high-occupancy vehicles.*

15 “(12) *Reduction of vehicle idling, including*
16 *idling associated with freight management, construc-*
17 *tion, transportation, and commuter operations.*

18 “(13) *Policies to encourage the use of retrofit*
19 *technologies and early replacement of vehicles, engines*
20 *and equipment to reduce transportation-related green-*
21 *house gas emissions from existing mobile sources.*

22 “(14) *Other projects that the Administrator finds*
23 *reduce transportation-related greenhouse gas emis-*
24 *sions.*

1 “(f) *PUBLIC AVAILABILITY.*—*The Administrator shall*
2 *publish, including by posting on the Environmental Protec-*
3 *tion Agency’s website—*

4 “(1) *the goals and plans submitted under sub-*
5 *section (a); and*

6 “(2) *for each plan submitted under subsection*
7 *(a)(2), an analysis of the anticipated effects of the*
8 *plan on greenhouse gas emissions and oil consump-*
9 *tion.*

10 “(g) *CERTIFICATION.*—*The Administrator, in con-*
11 *sultation with the Secretary, shall certify a State or metro-*
12 *politan planning organization greenhouse gas reduction*
13 *plan submitted under subsection (a)(2) if the plan’s imple-*
14 *mentation is likely to meet the corresponding greenhouse*
15 *gas reduction goal referred to in subsection (a)(1). If the*
16 *Administrator, in consultation with the Secretary, deter-*
17 *mines that a submitted plan cannot be certified, the State*
18 *or metropolitan planning organization shall revise and re-*
19 *submit the plan within 1 year.*

20 “(h) *ENFORCEMENT.*—*If the Administrator finds that*
21 *a State has failed to submit goals under subsection (a)(1),*
22 *has failed to ensure the submission of a plan under sub-*
23 *section (a)(2), or has failed to submit a revised plan under*
24 *subsection (g), for any area in the State (irrespective of*
25 *whether the area is a nonattainment area), the Adminis-*

1 *trator shall impose a prohibition in accordance with section*
2 *179(b)(1) applicable to the area within 2 years of such a*
3 *finding. The Administrator may not impose a prohibition*
4 *under the preceding sentence, and no action may be brought*
5 *by the Administrator or any other entity alleging a viola-*
6 *tion of this section, based on the content or adequacy of*
7 *a goal or plan submitted under subsection (a)(1) or (a)(2)*
8 *or failure to achieve the goal submitted under subsection*
9 *(a)(1).*

10 “(i) *COMPETITIVE GRANTS.*—

11 “(1) *GRANTS.*—*The Administrator, in consulta-*
12 *tion with the Secretary, may award grants to States*
13 *or metropolitan planning organizations—*

14 “(A) *to support activities related to improv-*
15 *ing data collection, modeling, and monitoring*
16 *systems to assess transportation-related green-*
17 *house gas emissions and the effects of plans, poli-*
18 *cies, and strategies referenced in this section;*

19 “(B) *for the development of goals and plans*
20 *to be submitted under sections (a)(1) or (a)(2);*
21 *and*

22 “(C) *to implement plans certified under*
23 *subsection (g) or elements thereof, provided that*
24 *each project thus funded includes a measurement*

1 *and evaluation component that meets the regula-*
2 *tions promulgated under subsection (b).*

3 “(2) *PRIORITY.*—*In making grants under para-*
4 *graph (1)(C), the Administrator shall give priority to*
5 *applicants based upon—*

6 “(A) *the amount of total greenhouse gas*
7 *emissions to be reduced as a result of implemen-*
8 *tation of a certified plan, within the covered*
9 *area, as determined by methods established under*
10 *subsection (b);*

11 “(B) *the amount of per capita greenhouse*
12 *gas emissions to be reduced as a result of imple-*
13 *mentation of a certified plan, within the covered*
14 *area, as determined by methods established under*
15 *subsection (b);*

16 “(C) *the cost effectiveness, in terms of dol-*
17 *lars per tons of greenhouse gas reductions, to be*
18 *achieved as a result of the implementation of a*
19 *certified plan;*

20 “(D) *the potential for both short- and long-*
21 *term reductions; and*

22 “(E) *such other factors as the Administrator*
23 *determines appropriate.*

1 “(3) *AUTHORIZATION OF APPROPRIATIONS.*—*To*
2 *carry out this subsection, there are authorized to be*
3 *appropriated such sums as may be necessary.*

4 “(j) *DEFINITIONS.*—*In this section:*

5 “(1) *The term ‘metropolitan planning organiza-*
6 *tion’ means a metropolitan planning organization, as*
7 *such term is used in section 176.*

8 “(2) *The term ‘scenario analysis’ means an*
9 *analysis that is conducted by identifying different*
10 *trends and making projections based on those trends*
11 *to develop a range of scenarios and estimates of how*
12 *each scenario could improve access to goods and serv-*
13 *ices, including access to employment, education, and*
14 *health care (especially for elderly and economically*
15 *disadvantaged communities), and could affect rates*
16 *of—*

17 “(A) *vehicle miles traveled;*

18 “(B) *vehicle hours traveled;*

19 “(C) *use of mobile source fuel by type, in-*
20 *cluding electricity; and*

21 “(D) *transportation-related greenhouse gas*
22 *emissions.*

23 “(k) *LAND USE AUTHORITY.*—*Nothing in this section*
24 *may be construed to—*

1 “(1) *infringe upon the existing authority of*
2 *State or local governments to plan or control land*
3 *use; or*

4 “(2) *provide or transfer authority over land use*
5 *to any other entity.*”.

6 **SEC. 223. SMARTWAY TRANSPORTATION EFFICIENCY PRO-**
7 **GRAM.**

8 *Part B of title VIII of the Clean Air Act, as added*
9 *by section 221 of this Act is amended by adding after sec-*
10 *tion 821 the following section:*

11 **“SEC. 822. SMARTWAY TRANSPORTATION EFFICIENCY PRO-**
12 **GRAM.**

13 “(a) *IN GENERAL.—There is established within the*
14 *Environmental Protection Agency a SmartWay Transport*
15 *Program to quantify, demonstrate, and promote the benefits*
16 *of technologies, products, fuels, and operational strategies*
17 *that reduce petroleum consumption, air pollution, and*
18 *greenhouse gas emissions from the mobile source sector.*

19 “(b) *GENERAL DUTIES.—Under the program estab-*
20 *lished under this section, the Administrator shall carry out*
21 *each of the following:*

22 “(1) *Development of measurement protocols to*
23 *evaluate the energy consumption and greenhouse gas*
24 *impacts from technologies and strategies in the mobile*

1 source sector, including those for passenger transport
2 and goods movement.

3 “(2) Development of qualifying thresholds for
4 certifying, verifying, or designating energy-efficient,
5 low-greenhouse gas SmartWay technologies and strat-
6 egies for each mode of passenger transportation and
7 goods movement.

8 “(3) Development of partnership and recognition
9 programs to promote best practices and drive demand
10 for energy-efficient, low-greenhouse gas transportation
11 performance.

12 “(4) Promotion of the availability of, and en-
13 couragement of the adoption of, SmartWay certified
14 or verified technologies and strategies, and publica-
15 tion of the availability of financial incentives, such as
16 assistance from loan programs and other Federal and
17 State incentives.

18 “(c) SMARTWAY TRANSPORT FREIGHT PARTNER-
19 SHIP.—The Administrator shall establish a SmartWay
20 Transport Partnership program with shippers and carriers
21 of goods to promote energy-efficient, low-greenhouse gas
22 transportation. In carrying out such partnership, the Ad-
23 ministrator shall undertake each of the following:

24 “(1) Certification of the energy and greenhouse
25 gas performance of participating freight carriers, in-

1 *cluding those operating rail, trucking, marine, and*
2 *other goods movement operations.*

3 *“(2) Publication of a comprehensive energy and*
4 *greenhouse gas performance index of freight modes*
5 *(including rail, trucking, marine, and other modes of*
6 *transporting goods) and individual freight companies*
7 *so that shippers can choose to deliver their goods more*
8 *efficiently.*

9 *“(3) Development of tools for—*

10 *“(A) carriers to calculate their energy and*
11 *greenhouse gas performance; and*

12 *“(B) shippers to calculate the energy and*
13 *greenhouse gas impacts of moving their products*
14 *and to evaluate the relative impacts from trans-*
15 *porting their goods by different modes and cor-*
16 *porate carriers.*

17 *“(4) Provision of recognition opportunities for*
18 *participating shipper and carrier companies dem-*
19 *onstrating advanced practices and achieving superior*
20 *levels of greenhouse gas performance.*

21 *“(d) IMPROVING FREIGHT GREENHOUSE GAS PER-*
22 *FORMANCE DATABASES.—The Administrator shall, in co-*
23 *ordination with other appropriate agencies, define and col-*
24 *lect data on the physical and operational characteristics of*
25 *the Nation’s truck population, with special emphasis on*

1 *data related to energy efficiency and greenhouse gas per-*
2 *formance to inform the performance index published under*
3 *subsection (c)(2) of this section, and other means of goods*
4 *transport as necessary, at least every 5 years.*

5 “(e) *ESTABLISHMENT OF FINANCING PROGRAM.—The*
6 *Administrator shall establish a SmartWay Financing Pro-*
7 *gram to competitively award funding to eligible entities*
8 *identified by the Administrator in accordance with the pro-*
9 *gram requirements in subsection (g).*

10 “(f) *PURPOSE.—Under the SmartWay Financing Pro-*
11 *gram, eligible entities shall—*

12 “(1) *use funds awarded by the Administrator to*
13 *provide flexible loan and lease terms that increase ap-*
14 *proval rates or lower the costs of loans and leases in*
15 *accordance with guidance developed by the Adminis-*
16 *trator; and*

17 “(2) *make such loans and leases available to*
18 *public and private entities for the purpose of adopt-*
19 *ing low-greenhouse gas technologies or strategies for*
20 *the mobile source sector that are designated by the*
21 *Administrator.*

22 “(g) *PROGRAM REQUIREMENTS.—The Administrator*
23 *shall determine program design elements and requirements,*
24 *including—*

1 “(1) the type of financial mechanism with which
2 to award funding, in the form of grants or contracts;

3 “(2) the designation of eligible entities to receive
4 funding, including State, tribal, and local govern-
5 ments, regional organizations comprised of govern-
6 mental units, nonprofit organizations, or for-profit
7 companies;

8 “(3) criteria for evaluating applications from el-
9 igible entities, including anticipated—

10 “(A) cost-effectiveness of loan or lease pro-
11 gram on a metric-ton-of-greenhouse gas-saved-
12 per-dollar basis;

13 “(B) ability to promote the loan or lease
14 program and associated technologies and strate-
15 gies to the target audience; and

16 “(4) reporting requirements for entities that re-
17 ceive awards, including—

18 “(A) actual cost-effectiveness and greenhouse
19 gas savings from the loan or lease program based
20 on a methodology designated by the Adminis-
21 trator;

22 “(B) the total number of applications and
23 number of approved applications; and

24 “(C) terms granted to loan and lease recipi-
25 ents compared to prevailing market practices.

1 “(h) *AUTHORIZATION OF APPROPRIATIONS.—Such*
2 *sums as necessary are authorized to be appropriated to the*
3 *Administrator to carry out this section.*”.

4 **SEC. 224. STATE VEHICLE FLEETS.**

5 *Section 507(o) of the Energy Policy Act of 1992 (42*
6 *U.S.C. 13257) is amended by adding the following new*
7 *paragraph at the end thereof:*

8 “(3) *The Secretary shall revise the rules under this*
9 *subsection with respect to the types of alternative fueled ve-*
10 *hicles required for compliance with this subsection to ensure*
11 *those rules are consistent with any guidance issued pursu-*
12 *ant to section 303 of this Act.*”.

13 ***Subtitle D—Industrial Energy***
14 ***Efficiency Programs***

15 **SEC. 241. INDUSTRIAL PLANT ENERGY EFFICIENCY STAND-**
16 **ARDS.**

17 *The Secretary of Energy shall continue to support the*
18 *development of the American National Standards Institute*
19 *(ANSI) voluntary industrial plant energy efficiency certifi-*
20 *cation program, pending International Standards Organi-*
21 *zation (ISO) consensus standard 50001, and other related*
22 *ANSI/ISO standards. In addition, the Department shall*
23 *undertake complementary activities through the Depart-*
24 *ment of Energy’s Industry Technologies Program that sup-*
25 *port the voluntary implementation of such standards by*

1 *manufacturing firms. There are authorized to be appro-*
2 *priated to the Secretary such sums as are necessary to carry*
3 *out these activities. The Secretary shall report to Congress*
4 *on the status of standards development and plans for fur-*
5 *ther standards development pursuant to this section by not*
6 *later than 18 months after the date of enactment of this*
7 *Act, and shall prepare a second such report 18 months*
8 *thereafter.*

9 **SEC. 242. ELECTRIC AND THERMAL WASTE ENERGY RECOV-**
10 **ERY AWARD PROGRAM.**

11 *(a) ELECTRIC AND THERMAL WASTE ENERGY RECOV-*
12 *ERY AWARDS.—The Secretary of Energy shall establish a*
13 *program to make monetary awards to the owners and oper-*
14 *ators of new and existing electric energy generation facili-*
15 *ties or thermal energy production facilities using fossil or*
16 *nuclear fuel, to encourage them to use innovative means of*
17 *recovering any thermal energy that is a potentially useful*
18 *byproduct of electric power generation or other processes*
19 *to—*

20 *(1) generate additional electric energy; or*

21 *(2) make sales of thermal energy not used for*
22 *electric generation, in the form of steam, hot water,*
23 *chilled water, or desiccant regeneration, or for other*
24 *commercially valid purposes.*

25 *(b) AMOUNT OF AWARDS.—*

1 (1) *ELIGIBILITY.*—Awards shall be made under
2 subsection (a) only for the use of innovative means
3 that achieve net energy efficiency at the facility con-
4 cerned significantly greater than the current standard
5 technology in use at similar facilities.

6 (2) *AMOUNT.*—The amount of an award made
7 under subsection (a) shall equal an amount up to the
8 value of 25 percent of the energy projected to be recov-
9 ered or generated during the first 5 years of operation
10 of the facility using the innovative energy recovery
11 method, or such lesser amount that the Secretary de-
12 termines to be the minimum amount that can cost-ef-
13 fectively stimulate such innovation.

14 (3) *LIMITATION.*—No person may receive an
15 award under this section if a grant under the waste
16 energy incentive grant program under section 373 of
17 the Energy Policy and Conservation Act (42 U.S.C.
18 6343) is made for the same energy savings resulting
19 from the same innovative method.

20 (c) *REGULATORY STATUS.*—The Secretary of Energy
21 shall—

22 (1) assist State regulatory commissions to iden-
23 tify and make changes in State regulatory programs
24 for electric utilities to provide appropriate regulatory
25 status for thermal energy byproduct businesses of reg-

1 *ulated electric utilities to encourage those utilities to*
2 *enter businesses making the sales referred to in sub-*
3 *section (a)(2); and*

4 *(2) encourage self-regulated utilities to enter*
5 *businesses making the sales referred to in subsection*
6 *(a)(2).*

7 *(d) AUTHORIZATION OF APPROPRIATIONS.—There are*
8 *authorized to be appropriated to the Secretary of Energy*
9 *such sums as are necessary for the purposes of this section.*

10 **SEC. 243. CLARIFYING ELECTION OF WASTE HEAT RECOV-**
11 **ERY FINANCIAL INCENTIVES.**

12 *Section 373(e) of the Energy Policy and Conservation*
13 *Act (42 U.S.C. 6343(e)) is amended—*

14 *(1) by striking “that qualifies for” and inserting*
15 *“who elects to claim”; and*

16 *(2) by inserting “from that project” after “for*
17 *waste heat recovery”.*

18 **SEC. 244. MOTOR MARKET ASSESSMENT AND COMMERCIAL**
19 **AWARENESS PROGRAM.**

20 *(a) FINDINGS.—Congress finds that—*

21 *(1) electric motor systems account for about half*
22 *of the electricity used in the United States;*

23 *(2) electric motor energy use is determined by*
24 *both the efficiency of the motor and the system in*
25 *which the motor operates;*

1 (3) *Federal Government research on motor end*
2 *use and efficiency opportunities is more than a dec-*
3 *ade old; and*

4 (4) *the Census Bureau has discontinued collec-*
5 *tion of data on motor and generator importation,*
6 *manufacture, shipment, and sales.*

7 (b) *DEFINITIONS.—In this section:*

8 (1) *DEPARTMENT.—The term “Department”*
9 *means the Department of Energy.*

10 (2) *INTERESTED PARTIES.—The term “interested*
11 *parties” includes—*

12 (A) *trade associations;*

13 (B) *motor manufacturers;*

14 (C) *motor end users;*

15 (D) *electric utilities; and*

16 (E) *individuals and entities that conduct*
17 *energy efficiency programs.*

18 (3) *SECRETARY.—The term “Secretary” means*
19 *the Secretary of Energy, in consultation with inter-*
20 *ested parties.*

21 (c) *ASSESSMENT.—The Secretary shall conduct an as-*
22 *essment of electric motors and the electric motor market*
23 *in the United States that shall—*

1 (1) *include important subsectors of the industrial*
2 *and commercial electric motor market (as determined*
3 *by the Secretary), including—*

4 (A) *the stock of motors and motor-driven*
5 *equipment;*

6 (B) *efficiency categories of the motor popu-*
7 *lation; and*

8 (C) *motor systems that use drives, servos,*
9 *and other control technologies;*

10 (2) *characterize and estimate the opportunities*
11 *for improvement in the energy efficiency of motor sys-*
12 *tems by market segment, including opportunities*
13 *for—*

14 (A) *expanded use of drives, servos, and*
15 *other control technologies;*

16 (B) *expanded use of process control, pumps,*
17 *compressors, fans or blowers, and material han-*
18 *dling components; and*

19 (C) *substitution of existing motor designs*
20 *with existing and future advanced motor designs,*
21 *including electronically commutated permanent*
22 *magnet, interior permanent magnet, and*
23 *switched reluctance motors; and*

24 (3) *develop an updated profile of motor system*
25 *purchase and maintenance practices, including sur-*

1 *veying the number of companies that have motor pur-*
2 *chase and repair specifications, by company size,*
3 *number of employees, and sales.*

4 *(d) RECOMMENDATIONS; UPDATE.—Based on the as-*
5 *essment conducted under subsection (c), the Secretary*
6 *shall—*

7 *(1) develop—*

8 *(A) recommendations to update the detailed*
9 *motor profile on a periodic basis;*

10 *(B) methods to estimate the energy savings*
11 *and market penetration that is attributable to*
12 *the Save Energy Now Program of the Depart-*
13 *ment; and*

14 *(C) recommendations for the Director of the*
15 *Census Bureau on market surveys that should be*
16 *undertaken in support of the motor system ac-*
17 *tivities of the Department; and*

18 *(2) prepare an update to the Motor Master+*
19 *program of the Department.*

20 *(e) PROGRAM.—Based on the assessment, recommenda-*
21 *tions, and update required under subsections (c) and (d),*
22 *the Secretary shall establish a proactive, national program*
23 *targeted at motor end-users and delivered in cooperation*
24 *with interested parties to increase awareness of—*

1 (1) *the energy and cost-saving opportunities in*
2 *commercial and industrial facilities using higher effi-*
3 *ciency electric motors;*

4 (2) *improvements in motor system procurement*
5 *and management procedures in the selection of higher*
6 *efficiency electric motors and motor-system compo-*
7 *nents, including drives, controls, and driven equip-*
8 *ment; and*

9 (3) *criteria for making decisions for new, re-*
10 *placement, or repair motor and motor system compo-*
11 *nents.*

12 **SEC. 245. MOTOR EFFICIENCY REBATE PROGRAM.**

13 (a) *IN GENERAL.*—*Part C of title III of the Energy*
14 *Policy and Conservation Act (42 U.S.C. 6311 et seq.) is*
15 *amended by adding at the end the following:*

16 **“SEC. 347. MOTOR EFFICIENCY REBATE PROGRAM.**

17 “(a) *ESTABLISHMENT.*—*Not later than January 1,*
18 *2010, in accordance with subsection (b), the Secretary shall*
19 *establish a program to provide rebates for expenditures*
20 *made by entities—*

21 “(1) *for the purchase and installation of a new*
22 *electric motor that has a nominal full load efficiency*
23 *that is not less than the nominal full load efficiency*
24 *as defined in—*

1 “(A) table 12–12 of NEMA Standards Pub-
2 lication MG 1–2006 for random wound motors
3 rated 600 volts or lower; or

4 “(B) table 12–13 of NEMA Standards Pub-
5 lication MG 1–2006 for form wound motors
6 rated 5000 volts or lower; and

7 “(2) to replace an installed motor of the entity
8 the specifications of which are established by the Sec-
9 retary by a date that is not later than 90 days after
10 the date of enactment of this section.

11 “(b) REQUIREMENTS.—

12 “(1) APPLICATION.—To be eligible to receive a
13 rebate under this section, an entity shall submit to the
14 Secretary an application in such form, at such time,
15 and containing such information as the Secretary
16 may require, including—

17 “(A) demonstrated evidence that the entity
18 purchased an electric motor described in sub-
19 section (a)(1) to replace an installed motor de-
20 scribed in subsection (a)(2);

21 “(B) demonstrated evidence that the enti-
22 ty—

23 “(i) removed the installed motor of the
24 entity from service; and

1 “(ii) properly disposed the installed
2 motor of the entity; and

3 “(C) the physical nameplate of the installed
4 motor of the entity.

5 “(2) *AUTHORIZED AMOUNT OF REBATE.*—The
6 Secretary may provide to an entity that meets each
7 requirement under paragraph (1) a rebate the amount
8 of which shall be equal to the product obtained by
9 multiplying—

10 “(A) the nameplate horsepower of the elec-
11 tric motor purchased by the entity in accordance
12 with subsection (a)(1); and

13 “(B) \$25.00.

14 “(3) *PAYMENTS TO DISTRIBUTORS OF QUALI-*
15 *FYING ELECTRIC MOTORS.*—To assist in the payment
16 for expenses relating to processing and motor core dis-
17 posal costs, the Secretary shall provide to the dis-
18 tributor of an electric motor described in subsection
19 (a)(1), the purchaser of which received a rebate under
20 this section, an amount equal to the product obtained
21 by multiplying—

22 “(A) the nameplate horsepower of the elec-
23 tric motor; and

24 “(B) \$5.00.

1 “(c) *AUTHORIZATION OF APPROPRIATIONS.*—*There are*
2 *authorized to be appropriated to carry out this section, to*
3 *remain available until expended—*

4 “(1) \$80,000,000 for fiscal year 2011;

5 “(2) \$75,000,000 for fiscal year 2012;

6 “(3) \$70,000,000 for fiscal year 2013;

7 “(4) \$65,000,000 for fiscal year 2014; and

8 “(5) \$60,000,000 for fiscal year 2015.”.

9 (b) *TABLE OF CONTENTS.*—*The table of contents of the*
10 *Energy Policy and Conservation Act (42 U.S.C. prec. 6201)*
11 *is amended by adding at the end of the items relating to*
12 *part C of title III the following:*

 “*Sec. 347. Motor efficiency rebate program.*”.

13 ***Subtitle E—Improvements in En-***
14 ***ergy Savings Performance Con-***
15 ***tracting***

16 ***SEC. 251. ENERGY SAVINGS PERFORMANCE CONTRACTS.***

17 (a) *COMPETITION REQUIREMENTS FOR TASK OR DE-*
18 *LIVERY ORDERS UNDER ENERGY SAVINGS PERFORMANCE*
19 *CONTRACTS.*—

20 (1) *COMPETITION REQUIREMENTS.*—*Subsection*
21 *(a) of section 801 of the National Energy Conserva-*
22 *tion Policy Act (42 U.S.C. 8287(a)) is amended by*
23 *adding at the end the following paragraph:*

1 “(3)(A) *The head of a Federal agency may issue a task*
2 *or delivery order under an energy savings performance con-*
3 *tract by—*

4 “(i) *notifying all contractors that have received*
5 *an award under such contract that the agency pro-*
6 *poses to discuss energy savings performance services*
7 *for some or all of its facilities, soliciting an expres-*
8 *sion of interest in performing site surveys or inves-*
9 *tigations and feasibility designs and studies and the*
10 *submission of qualifications from such contractors,*
11 *and including in such notice summary information*
12 *concerning energy use for any facilities that the agen-*
13 *cy has specific interest in including in such contract;*

14 “(ii) *reviewing all expressions of interest and*
15 *qualifications submitted pursuant to the notice under*
16 *clause (i);*

17 “(iii) *selecting two or more contractors (from*
18 *among those reviewed under clause (ii)) to conduct*
19 *discussions concerning the contractors’ respective*
20 *qualifications to implement potential energy con-*
21 *servation measures, including requesting references*
22 *demonstrating experience on similar efforts and the*
23 *resulting energy savings of such similar efforts;*

24 “(iv) *selecting and authorizing—*

1 “(I) more than one contractor (from among
2 those selected under clause (iii)) to conduct site
3 surveys, investigations, feasibility designs and
4 studies or similar assessments for the energy sav-
5 ings performance contract services (or for dis-
6 crete portions of such services), for the purpose of
7 allowing each such contractor to submit a firm,
8 fixed-price proposal to implement specific energy
9 conservation measures; or

10 “(II) one contractor (from among those se-
11 lected under clause (iii)) to conduct a site sur-
12 vey, investigation, a feasibility design and study
13 or similar for the purpose of allowing the con-
14 tractor to submit a firm, fixed-price proposal to
15 implement specific energy conservation measures;

16 “(v) negotiating a task or delivery order for en-
17 ergy savings performance contracting services with
18 the contractor or contractors selected under clause (iv)
19 based on the energy conservation measures identified;
20 and

21 “(vi) issuing a task or delivery order for energy
22 savings performance contracting services to such con-
23 tractor or contractors.

24 “(B) The issuance of a task or delivery order for energy
25 savings performance contracting services pursuant to sub-

1 *paragraph (A) is deemed to satisfy the task and delivery*
2 *order competition requirements in section 2304c(d) of title*
3 *10, United States Code, and section 303J(d) of the Federal*
4 *Property and Administrative Services Act of 1949 (41*
5 *U.S.C. 253j(d)).*

6 “(C) *The Secretary may issue guidance as necessary*
7 *to agencies issuing task or delivery orders pursuant to sub-*
8 *paragraph (A).”.*

9 (2) *EFFECTIVE DATE.*—*The amendment made by*
10 *paragraph (1) is inapplicable to task or delivery or-*
11 *ders issued before the date of enactment of this sec-*
12 *tion.*

13 (b) *INCLUSION OF THERMAL RENEWABLE ENERGY.*—
14 *Section 203 of the Energy Policy Act of 2005 (42 U.S.C.*
15 *15852) is amended—*

16 (1) *in subsection (a), by striking “electric”; and*

17 (2) *in subsection (b)(2), by inserting “or ther-*
18 *mal” after “means electric”.*

19 (c) *CREDIT FOR RENEWABLE ENERGY PRODUCED AND*
20 *USED ON SITE.*—*Subsection (c) of section 203 of the Energy*
21 *Policy Act of 2005 (42 U.S.C. 15852) is amended to read*
22 *as follows:*

23 “(c) *CALCULATION.*—*Renewable energy produced at a*
24 *Federal facility, on Federal lands, or on Indian lands (as*
25 *defined in title XXVI of the Energy Policy Act of 1992 (25*

1 *U.S.C. 3501 et seq.)) shall be calculated separately from re-*
2 *newable energy consumed at a Federal facility, and each*
3 *may be used to comply with the consumption requirement*
4 *under subsection (a).”.*

5 *(d) FINANCING FLEXIBILITY.—Section 801(a)(2)(E) of*
6 *the National Energy Conservation Policy Act (42 U.S.C.*
7 *8287(a)(2)(E)) is amended by striking “In” and inserting*
8 *“Notwithstanding any other provision of law, in”.*

9 ***Subtitle F—Public Institutions***

10 ***SEC. 261. PUBLIC INSTITUTIONS.***

11 *Section 399A of the Energy Policy and Conservation*
12 *Act (42 U.S.C. 6371h–1) is amended—*

13 *(1) in subsection (a)(5), by striking “or a des-*
14 *ignee” and inserting “a not-for-profit hospital or not-*
15 *for-profit inpatient health care facility, or a des-*
16 *ignated agent”;*

17 *(2) in subsection (c)(1), by striking subpara-*
18 *graph (C);*

19 *(3) in subsection (f)(3)(A), by striking*
20 *“\$1,000,000” and inserting “\$2,500,000”; and*

21 *(4) in subsection (i)(1), by striking*
22 *“\$250,000,000 for each of fiscal years 2009 through*
23 *2013” and inserting “\$250,000,000 for each of fiscal*
24 *years 2010 through 2015”.*

1 **SEC. 262. COMMUNITY ENERGY EFFICIENCY FLEXIBILITY.**

2 *Section 545(b)(3) of the Energy Independence and Se-*
3 *curity Act of 2007 (42 U.S.C. 17155(b)(3)) is amended—*

4 *(1) by striking “Indian tribe may use” and all*
5 *that follows through “for administrative expenses”*
6 *and inserting “Indian tribe may use for administra-*
7 *tive expenses”;*

8 *(2) by striking subparagraphs (B) and (C);*

9 *(3) by redesignating the remaining clauses (i)*
10 *and (ii) as subparagraphs (A) and (B), respectively*
11 *and adjusting the margin of those subparagraphs ac-*
12 *cordingly; and*

13 *(4) by striking the semicolon at the end and in-*
14 *serting a period.*

15 **SEC. 263. SMALL COMMUNITY JOINT PARTICIPATION.**

16 *(a) Section 541(3)(A) of the Energy Independence and*
17 *Security Act of 2007 is amended in clause (i) by striking*
18 *“and” at the end of subclause (II), in clause (ii) by striking*
19 *the period at the end of subclause (II) and inserting “; or”,*
20 *and by inserting the following new clause (iii):*

21 *“(iii) a group of adjacent, contiguous, or*
22 *geographically proximate units of local govern-*
23 *ment that reach agreement to act jointly for pur-*
24 *poses of this section and that represent a com-*
25 *bined population of not less than 35,000.”.*

1 (b) Section 541(3)(B) of the *Energy Independence and*
2 *Security Act of 2007* is amended in clause (i) by striking
3 “or”, in clause (ii) by striking the period at the end and
4 inserting “; or”, and by inserting the following new clause
5 (iii):

6 “(iii) a group of adjacent, contiguous, or
7 geographically proximate units of local govern-
8 ment that reach agreement to act jointly for pur-
9 poses of this section and that represent a com-
10 bined population of not less than 50,000.”.

11 **SEC. 264. LOW INCOME COMMUNITY ENERGY EFFICIENCY**
12 **PROGRAM.**

13 (a) *IN GENERAL.*—The Secretary of Energy is author-
14 ized to make grants to private, nonprofit, mission-driven
15 community development organizations including commu-
16 nity development corporations and community development
17 financial institutions to provide financing to businesses
18 and projects that improve energy efficiency; identify and
19 develop alternative, renewable, and distributed energy sup-
20 plies; provide technical assistance and promote job and
21 business opportunities for low-income residents; and in-
22 crease energy conservation in low income rural and urban
23 communities.

24 (b) *GRANTS.*—The purpose of such grants is to increase
25 the flow of capital and benefits to low income communities,

1 *minority-owned and woman-owned businesses and entre-*
 2 *preneurs and other projects and activities located in low*
 3 *income communities in order to reduce environmental deg-*
 4 *radation, foster energy conservation and efficiency and cre-*
 5 *ate job and business opportunities for local residents. The*
 6 *Secretary may make grants on a competitive basis for—*

7 (1) *investments that develop alternative, renew-*
 8 *able, and distributed energy supplies;*

9 (2) *capitalizing loan funds that lend to energy*
 10 *efficiency projects and energy conservation programs;*

11 (3) *technical assistance to plan, develop, and*
 12 *manage an energy efficiency financing program; and*

13 (4) *technical and financial assistance to assist*
 14 *small-scale businesses and private entities develop*
 15 *new renewable and distributed sources of power or*
 16 *combined heat and power generation.*

17 (c) *AUTHORIZATION OF APPROPRIATIONS.—For the*
 18 *purposes of this section there is authorized to be appro-*
 19 *priated \$50,000,000 for each of the fiscal years 2010*
 20 *through 2015.*

21 ***Subtitle G—Miscellaneous***

22 ***SEC. 271. ENERGY EFFICIENT INFORMATION AND COMMU-*** 23 ***NICATIONS TECHNOLOGIES.***

24 *Section 543 of the National Energy Conservation Pol-*
 25 *icy Act (42 U.S.C. 8253) is amended to read as follows:*

1 **“SEC. 543. ENERGY EFFICIENT INFORMATION AND COMMU-**
2 **NICATIONS TECHNOLOGIES.**

3 “(a) *IN GENERAL.*—Not later than 1 year after the
4 date of enactment of the American Clean Energy and Secu-
5 rity Act of 2009, each Federal agency shall collaborate with
6 the Director of the Office of Management and Budget (re-
7 ferred to in this section as the ‘Director’) to create an imple-
8 mentation strategy, including best practices and measure-
9 ment and verification techniques, for the purchase and use
10 of energy efficient information and communications tech-
11 nologies and practices. Wherever possible, existing stand-
12 ards, specifications, performance metrics, and best manage-
13 ment practices that have been or are being developed in
14 open collaboration and with broad stakeholder input and
15 review should be incorporated. In addition, agency strate-
16 gies shall be flexible, cost-effective, and based on the specific
17 operating requirements and statutory mission of each agen-
18 cy.

19 “(b) *ENERGY EFFICIENT INFORMATION AND COMMU-*
20 *NICATIONS TECHNOLOGIES.*—In developing an implemen-
21 tation strategy, each agency shall—

22 “(1) consider information and communications
23 technologies and infrastructure, including, but not
24 limited to, advanced metering infrastructure, infor-
25 mation and communications technology services and
26 products, efficient data center strategies, applications

1 *modernization and rationalization, building systems*
2 *energy efficiency, and telework; and*

3 “(2) *ensure that agencies are eligible to realize*
4 *the savings and rewards brought about through in-*
5 *creased efficiencies.*”

6 “(c) *PERFORMANCE GOALS.—Not later than 6 months*
7 *after the date of enactment of the American Clean Energy*
8 *and Security Act of 2009, the Director shall establish per-*
9 *formance goals for evaluating the efforts of the agencies in*
10 *improving the maintenance, purchase and use of energy ef-*
11 *ficiency of information and communications technology*
12 *systems. These performance goals should measure informa-*
13 *tion technology costs over a specific time horizon (3 to 5*
14 *years), providing a complete picture of all costs, including*
15 *energy.*”

16 “(d) *REPORT.—Not later than 18 months after the*
17 *date of enactment of the American Clean Energy and Secu-*
18 *rity Act of 2009, and annually thereafter, the Director shall*
19 *submit a report to Congress on—*

20 “(1) *the progress of each agency in reducing en-*
21 *ergy use through its implementation strategy; and*

22 “(2) *new and emerging technologies that would*
23 *help achieve increased energy efficiency.*”

1 **SEC. 272. NATIONAL ENERGY EFFICIENCY GOALS.**

2 (a) *GOALS.*—*The energy efficiency goals of the United*
3 *States are—*

4 (1) *to achieve an improvement in the overall en-*
5 *ergy productivity of the United States (measured in*
6 *gross domestic product per unit of energy input) of at*
7 *least 2.5 percent per year by the year 2012; and*

8 (2) *to maintain that annual rate of improve-*
9 *ment each year through 2030.*

10 (b) *STRATEGIC PLAN.*—

11 (1) *IN GENERAL.*—*Not later than 1 year after*
12 *the date of enactment of this Act, the Secretary of En-*
13 *ergy (referred to in this section as the “Secretary”),*
14 *in cooperation with the Administrator and the heads*
15 *of other appropriate Federal agencies, shall develop a*
16 *strategic plan to achieve the national goals for im-*
17 *provement in energy productivity established under*
18 *subsection (a).*

19 (2) *PUBLIC INPUT AND COMMENT.*—*The Sec-*
20 *retary shall develop the plan in a manner that pro-*
21 *vides appropriate opportunities for public input and*
22 *comment.*

23 (c) *PLAN CONTENTS.*—*The strategic plan shall—*

24 (1) *identify future regulatory, funding, and pol-*
25 *icy priorities that would assist the United States in*
26 *meeting the national goals;*

1 (2) *include energy savings estimates for each sec-*
2 *tor; and*

3 (3) *include data collection methodologies and*
4 *compilations used to establish baseline and energy*
5 *savings data.*

6 (d) *PLAN UPDATES.—*

7 (1) *IN GENERAL.—The Secretary shall—*

8 (A) *update the strategic plan biennially;*
9 *and*

10 (B) *include the updated strategic plan in*
11 *the national energy policy plan required by sec-*
12 *tion 801 of the Department of Energy Organiza-*
13 *tion Act (42 U.S.C. 7321).*

14 (2) *CONTENTS.—In updating the plan, the Sec-*
15 *retary shall—*

16 (A) *report on progress made toward imple-*
17 *menting efficiency policies to achieve the na-*
18 *tional goals established under subsection (a); and*

19 (B) *verify, to the maximum extent prac-*
20 *ticable, energy savings resulting from the poli-*
21 *cies.*

22 (e) *REPORT TO CONGRESS AND THE PUBLIC.—The*
23 *Secretary shall submit to Congress, and make available to*
24 *the public, the initial strategic plan developed under sub-*
25 *section (b) and each updated plan.*

1 **SEC. 273. AFFILIATED ISLAND ENERGY INDEPENDENCE**

2 **TEAM.**

3 (a) *DEFINITIONS.—In this section:*

4 (1) *AFFILIATED ISLAND.—The term “affiliated*
5 *island” means—*

6 (A) *the Commonwealth of Puerto Rico;*

7 (B) *Guam;*

8 (C) *American Samoa;*

9 (D) *the Commonwealth of the Northern*
10 *Mariana Islands;*

11 (E) *the Federated States of Micronesia;*

12 (F) *the Republic of the Marshall Islands;*

13 (G) *the Republic of Palau; and*

14 (H) *the United States Virgin Islands.*

15 (2) *SECRETARY.—The term “Secretary” means*
16 *the Secretary of Energy (acting through the Assistant*
17 *Secretary of Energy Efficiency and Renewable En-*
18 *ergy), in consultation with the Secretary of the Inte-*
19 *rior and the Secretary of State.*

20 (3) *TEAM.—The term “team” means the team es-*
21 *tablished by the Secretary under subsection (b).*

22 (b) *ESTABLISHMENT.—As soon as practicable after the*
23 *date of enactment of this Act, the Secretary shall assemble*
24 *a team of technical, policy, and financial experts to address*
25 *the energy needs of each affiliated island—*

1 (1) *to reduce the reliance and expenditure of*
2 *each affiliated island on imported fossil fuels;*

3 (2) *to increase the use by each affiliated island*
4 *of indigenous, nonfossil fuel energy sources;*

5 (3) *to improve the performance of the energy in-*
6 *frastructure of the affiliated island through projects—*

7 (A) *to improve the energy efficiency of*
8 *power generation, transmission, and distribu-*
9 *tion; and*

10 (B) *to increase consumer energy efficiency;*

11 (4) *to improve the performance of the energy in-*
12 *frastructure of each affiliated island through enhanced*
13 *planning, education, and training;*

14 (5) *to adopt research-based and public-private*
15 *partnership-based approaches as appropriate;*

16 (6) *to stimulate economic development and job*
17 *creation; and*

18 (7) *to enhance the engagement by the Federal*
19 *Government in international efforts to address island*
20 *energy needs.*

21 (c) *DUTIES OF TEAM.—*

22 (1) *ENERGY ACTION PLANS.—*

23 (A) *IN GENERAL.—In accordance with sub-*
24 *paragraph (B), the team shall provide technical,*
25 *programmatic, and financial assistance to each*

1 *utility of each affiliated island, and the govern-*
2 *ment of each affiliated island, as appropriate, to*
3 *develop and implement an energy Action Plan*
4 *for each affiliated island to reduce the reliance of*
5 *each affiliated island on imported fossil fuels*
6 *through increased efficiency and use of indige-*
7 *nous clean-energy resources.*

8 *(B) REQUIREMENTS.—Each Action Plan*
9 *described in subparagraph (A) for each affiliated*
10 *island shall require and provide for—*

11 *(i) the conduct of 1 or more studies to*
12 *assess opportunities to reduce fossil fuel use*
13 *through—*

14 *(I) the improvement of the energy*
15 *efficiency of the affiliated island; and*

16 *(II) the increased use by the affili-*
17 *ated island of indigenous clean-energy*
18 *resources;*

19 *(ii) the identification and implementa-*
20 *tion of the most cost-effective strategies and*
21 *projects to reduce the dependence of the af-*
22 *filiated island on fossil fuels;*

23 *(iii) the promotion of education and*
24 *training activities to improve the capacity*
25 *of the local utilities of the affiliated island,*

1 *and the government of the affiliated island,*
2 *as appropriate, to plan for, maintain, and*
3 *operate the energy infrastructure of the af-*
4 *filiated island through the use of local or re-*
5 *gional institutions, as appropriate;*

6 *(iv) the coordination of the activities*
7 *described in clause (iii) to leverage the ex-*
8 *pertise and resources of international enti-*
9 *ties, the Department of Energy, the Depart-*
10 *ment of the Interior, and the regional utili-*
11 *ties of the affiliated island;*

12 *(v) the identification, and development,*
13 *as appropriate, of research-based and pri-*
14 *vate-public, partnership approaches to im-*
15 *plement the Action Plan; and*

16 *(vi) any other component that the Sec-*
17 *retary determines to be necessary to reduce*
18 *successfully the use by each affiliated island*
19 *of fossil fuels.*

20 (2) *REPORTS TO SECRETARY.*—*Not later than 1*
21 *year after the date on which the Secretary establishes*
22 *the team and biennially thereafter, the team shall sub-*
23 *mit to the Secretary a report that contains a descrip-*
24 *tion of the progress of each affiliated island in—*

1 (A) implementing the Action Plan of the af-
2 filiated island developed under paragraph
3 (1)(A); and

4 (B) reducing the reliance of the affiliated is-
5 land on fossil fuels.

6 (d) *USE OF REGIONAL UTILITY ORGANIZATIONS.*—To
7 provide expertise to affiliated islands to assist the affiliated
8 islands in meeting the purposes of this section, the Secretary
9 shall consider—

10 (1) including regional utility organizations in
11 the establishment of the team; and

12 (2) providing assistance through regional utility
13 organizations.

14 (e) *ANNUAL REPORTS TO CONGRESS.*—Not later than
15 30 days after the date on which the Secretary receives a
16 report submitted by the team under subsection (c)(2), the
17 Secretary shall submit to the appropriate committees of
18 Congress a report that contains a summary of the report
19 of the team.

20 (f) *AUTHORIZATION OF APPROPRIATIONS.*—There are
21 authorized to be appropriated such sums as are necessary
22 to carry out this section.

23 **SEC. 274. PRODUCT CARBON DISCLOSURE PROGRAM.**

24 (a) *EPA STUDY.*—The Administrator shall conduct a
25 study to determine the feasibility of establishing a national

1 *program for measuring, reporting, publicly disclosing, and*
2 *labeling products or materials sold in the United States for*
3 *their carbon content, and shall, not later than 18 months*
4 *after the date of enactment of this Act, transmit a report*
5 *to Congress which shall include the following:*

6 (1) *A determination of whether a national prod-*
7 *uct carbon disclosure program and labeling program*
8 *would be effective in achieving the intended goals of*
9 *achieving greenhouse gas reductions and an examina-*
10 *tion of existing programs globally and their strengths*
11 *and weaknesses.*

12 (2) *Criteria for identifying and prioritizing sec-*
13 *tors and products and processes that should be covered*
14 *in such program or programs.*

15 (3) *An identification of products, processes, or*
16 *sectors whose inclusion could have a substantial car-*
17 *bon impact (prioritizing industrial products such as*
18 *iron and steel, aluminum, cement, chemicals, and*
19 *paper products, and also including food, beverage, hy-*
20 *giene, cleaning, household cleaners, construction, met-*
21 *als, clothing, semiconductor, and consumer elec-*
22 *tronics).*

23 (4) *Suggested methodology and protocols for*
24 *measuring the carbon content of the products across*

1 *the entire carbon lifecycle of such products for use in*
2 *a carbon disclosure program and labeling program.*

3 *(5) A review of existing greenhouse gas product*
4 *accounting standards, methodologies, and practices*
5 *including the Greenhouse Gas Protocol, ISO 14040/*
6 *44, ISO 14067, and Publically Available Specifica-*
7 *tion 2050, and including a review of the strengths*
8 *and weaknesses of each.*

9 *(6) A survey of secondary databases including*
10 *the Manufacturing Energy Consumption Survey and*
11 *evaluate the quality of data for use in a product car-*
12 *bon disclosure program and product carbon labeling*
13 *program and an identification of gaps in the data*
14 *relative to the potential purposes of a national prod-*
15 *uct carbon disclosure program and product carbon la-*
16 *beling program and development of recommendations*
17 *for addressing these data gaps.*

18 *(7) An assessment of the utility of comparing*
19 *products and the appropriateness of product carbon*
20 *standards.*

21 *(8) An evaluation of the information needed on*
22 *a label for clear and accurate communication, includ-*
23 *ing what pieces of quantitative and qualitative infor-*
24 *mation needs to be disclosed.*

1 (9) *An evaluation of the appropriate boundaries*
2 *of the carbon lifecycle analysis for different sectors*
3 *and products.*

4 (10) *An analysis of whether default values should*
5 *be developed for products whose producer does not*
6 *participate in the program or does not have data to*
7 *support a disclosure or label and determine best ways*
8 *to develop such default values.*

9 (11) *A recommendation of certification and*
10 *verification options necessary to assure the quality of*
11 *the information and avoid greenwashing or the use of*
12 *insubstantial or meaningless environmental claims to*
13 *promote a product.*

14 (12) *An assessment of options for educating con-*
15 *sumers about product carbon content and the product*
16 *carbon disclosure program and product carbon label-*
17 *ing program.*

18 (13) *An analysis of the costs and timelines asso-*
19 *ciated with establishing a national product carbon*
20 *disclosure program and product carbon labeling pro-*
21 *gram, including options for a phased approach. Costs*
22 *should include those for businesses associated with the*
23 *measurement of carbon footprints and those associated*
24 *with creating a product carbon label and managing*

1 *and operating a product carbon labeling program,*
2 *and options for minimizing these costs.*

3 *(14) An evaluation of incentives (such as finan-*
4 *cial incentives, brand reputation, and brand loyalty)*
5 *to determine whether reductions in emissions can be*
6 *accelerated through encouraging more efficient manu-*
7 *facturing or by encouraging preferences for lower-*
8 *emissions products to substitute for higher-emissions*
9 *products whose level of performance is no better.*

10 *(b) DEVELOPMENT OF NATIONAL CARBON DISCLO-*
11 *SURE PROGRAM.—Upon conclusion of the study, and not*
12 *more than 36 months after the date of enactment of this*
13 *Act, the Administrator shall establish a national product*
14 *carbon disclosure program, participation in which shall be*
15 *voluntary, and which may involve a product carbon label*
16 *with broad applicability to the wholesale and consumer*
17 *markets to enable and encourage knowledge about carbon*
18 *content by producers and consumers and to inform efforts*
19 *to reduce energy consumption (carbon dioxide equivalent*
20 *emissions) nationwide. In developing such a program, the*
21 *Administrator shall—*

22 *(1) consider the results of the study conducted*
23 *under subsection (a);*

24 *(2) consider existing and planned programs and*
25 *proposals and measurement standards (including the*

1 *Publicly Available Specification 2050, standards to be*
2 *developed by the World Resource Institute/World*
3 *Business Council for Sustainable Development, the*
4 *International Standards Organization, and the bill*
5 *AB19 pending in the California legislature);*

6 *(3) consider the compatibility of a national*
7 *product carbon disclosure program with existing pro-*
8 *grams;*

9 *(4) utilize incentives and other means to spur*
10 *the adoption of product carbon disclosure and product*
11 *carbon labeling;*

12 *(5) develop protocols and parameters for a prod-*
13 *uct carbon disclosure program, including a method-*
14 *ology and formula for assessing, verifying, and poten-*
15 *tially labeling a product's greenhouse gas content, and*
16 *for data quality requirements to allow for product*
17 *comparison;*

18 *(6) create a means to—*

19 *(A) document best practices;*

20 *(B) ensure clarity and consistency;*

21 *(C) work with suppliers, manufacturers,*
22 *and retailers to encourage participation;*

23 *(D) ensure that protocols are consistent and*
24 *comparable across like products; and*

1 (E) evaluate the effectiveness of the pro-
2 gram;

3 (7) make publicly available information on
4 product carbon content to ensure transparency;

5 (8) provide for public outreach, including a con-
6 sumer education program to increase awareness;

7 (9) develop training and education programs to
8 help businesses learn how to measure and commu-
9 nicate their carbon footprint and easy tools and tem-
10 plates for businesses to use to reduce cost and time to
11 measure their products' carbon lifecycle;

12 (10) consult with the Secretary of Energy, the
13 Secretary of Commerce, the Federal Trade Commis-
14 sion, and other Federal agencies, as necessary;

15 (11) gather input from stakeholders through con-
16 sultations, public workshops or hearings with rep-
17 resentatives of consumer product manufacturers, con-
18 sumer groups, and environmental groups;

19 (12) utilize systems for verification and product
20 certification that will ensure that claims manufactur-
21 ers make about their products are valid;

22 (13) create a process for reviewing the accuracy
23 of product carbon label information and protecting
24 the product carbon label in the case of a change in
25 the product's energy source, supply chain, ingredients,

1 *or other factors, and specify the frequency to which*
2 *data should be updated; and*

3 *(14) develop a standardized, easily understand-*
4 *able carbon label, if appropriate, and create a process*
5 *for responding to inaccuracies and misuses of such a*
6 *label.*

7 *(c) REPORT TO CONGRESS.—Not later than 5 years*
8 *after the program is established pursuant to subsection (b),*
9 *the Administrator shall report to Congress on the effective-*
10 *ness and impact of the program, the level of voluntary par-*
11 *ticipation, and any recommendations for additional meas-*
12 *ures.*

13 *(d) DEFINITIONS.—As used in this section—*

14 *(1) the term “carbon content” means the amount*
15 *of greenhouse gas emissions and their warming im-*
16 *act on the atmosphere expressed in carbon dioxide*
17 *equivalent associated with a product’s value chain;*

18 *(2) the term “carbon footprint” means the level*
19 *of greenhouse gas emissions produced by a particular*
20 *activity, service, or entity; and*

21 *(3) the term “carbon lifecycle” means the green-*
22 *house gas emissions that are released as part of the*
23 *processes of creating, producing, processing or manu-*
24 *facturing, modifying, transporting, distributing, stor-*

1 *ing, using, recycling, or disposing of goods and serv-*
 2 *ices.*

3 *(e) AUTHORIZATION OF APPROPRIATIONS.—There is*
 4 *authorized to be appropriated to the Administrator*
 5 *\$5,000,000 for the study required by subsection (a) and*
 6 *\$25,000,000 for each of fiscal years 2010 through 2025 for*
 7 *the program required under subsection (b).*

8 ***TITLE III—REDUCING GLOBAL***
 9 ***WARMING POLLUTION***

10 ***SEC. 301. SHORT TITLE.***

11 *This title, and sections 112, 116, 221, 222, 223, and*
 12 *401 of this Act, may be cited as the “Safe Climate Act”.*

13 ***Subtitle A—Reducing Global***
 14 ***Warming Pollution***

15 ***SEC. 311. REDUCING GLOBAL WARMING POLLUTION.***

16 *The Clean Air Act (42 U.S.C. and following) is amend-*
 17 *ed by adding after title VI the following new title:*

18 ***“TITLE VII—GLOBAL WARMING***
 19 ***POLLUTION REDUCTION PRO-***
 20 ***GRAM***

21 ***“PART A—GLOBAL WARMING POLLUTION***
 22 ***REDUCTION GOALS AND TARGETS***

23 ***“SEC. 701. FINDINGS AND PURPOSE.***

24 *“(a) FINDINGS.—The Congress finds as follows:*

1 “(1) *Global warming poses a significant threat*
2 *to the national security, economy, public health and*
3 *welfare, and environment of the United States, as well*
4 *as of other nations.*

5 “(2) *Reviews of scientific studies, including by*
6 *the Intergovernmental Panel on Climate Change and*
7 *the National Academy of Sciences, demonstrate that*
8 *global warming is the result of the combined anthro-*
9 *pogenic greenhouse gas emissions from numerous*
10 *sources of all types and sizes. Each increment of emis-*
11 *sion, when combined with other emissions, causes or*
12 *contributes materially to the acceleration and extent*
13 *of global warming and its adverse effects for the life-*
14 *time of such gas in the atmosphere. Accordingly, con-*
15 *trolling emissions in small as well as large amounts*
16 *is essential to prevent, slow the pace of, reduce the*
17 *threats from, and mitigate global warming and its*
18 *adverse effects.*

19 “(3) *Because they induce global warming, green-*
20 *house gas emissions cause or contribute to injuries to*
21 *persons in the United States, including—*

22 “(A) *adverse health effects such as disease*
23 *and loss of life;*

24 “(B) *displacement of human populations;*

1 “(C) damage to property and other interests
2 related to ocean levels, acidification, and ice
3 changes;

4 “(D) severe weather and seasonal changes;

5 “(E) disruption, costs, and losses to busi-
6 ness, trade, employment, farms, subsistence, aes-
7 thetic enjoyment of the environment, recreation,
8 culture, and tourism;

9 “(F) damage to plants, forests, lands, and
10 waters;

11 “(G) harm to wildlife and habitat;

12 “(H) scarcity of water and the decreased
13 abundance of other natural resources;

14 “(I) worsening of tropospheric air pollution;

15 “(J) substantial threats of similar damage;

16 and

17 “(K) other harm.

18 “(4) That many of these effects and risks of fu-
19 ture effects of global warming are widely shared does
20 not minimize the adverse effects individual persons
21 have suffered, will suffer, and are at risk of suffering
22 because of global warming.

23 “(5) That some of the adverse and potentially
24 catastrophic effects of global warming are at risk of
25 occurring and not a certainty does not negate the

1 *harm persons suffer from actions that increase the*
2 *likelihood, extent, and severity of such future impacts.*

3 *“(6) Nations of the world look to the United*
4 *States for leadership in addressing the threat of and*
5 *harm from global warming. Full implementation of*
6 *the Safe Climate Act is critical to engage other na-*
7 *tions in an international effort to mitigate the threat*
8 *of and harm from global warming.*

9 *“(7) Global warming and its adverse effects are*
10 *occurring and are likely to continue and increase in*
11 *magnitude, and to do so at a greater and more harm-*
12 *ful rate, unless the Safe Climate Act is fully imple-*
13 *mented and enforced in an expeditious manner.*

14 *“(b) PURPOSE.—It is the general purpose of the Safe*
15 *Climate Act to help prevent, reduce the pace of, mitigate,*
16 *and remedy global warming and its adverse effects. To ful-*
17 *fill such purpose, it is necessary to—*

18 *“(1) require the timely fulfillment of all govern-*
19 *mental acts and duties, both substantive and proce-*
20 *dural, and the prompt compliance of covered entities*
21 *with the requirements of the Safe Climate Act;*

22 *“(2) establish and maintain an effective, trans-*
23 *parent, and fair market for emission allowances and*
24 *preserve the integrity of the cap on emissions and of*
25 *offset credits;*

1 “(3) advance the production and deployment of
2 clean energy and energy efficiency technologies; and

3 “(4) ensure effective enforcement of the Safe Cli-
4 mate Act by citizens, States, Indian tribes, and all
5 levels of government because each violation of the Safe
6 Climate Act is likely to result in an additional incre-
7 ment of greenhouse gas emission and will slow the
8 pace of implementation of the Safe Climate Act and
9 delay the achievement of the goals set forth in section
10 702, and cause or contribute to global warming and
11 its adverse effects.

12 **“SEC. 702. ECONOMY-WIDE REDUCTION GOALS.**

13 “The goals of the Safe Climate Act are to reduce stead-
14 ily the quantity of United States greenhouse gas emissions
15 such that—

16 “(1) in 2012, the quantity of United States
17 greenhouse gas emissions does not exceed 97 percent
18 of the quantity of United States greenhouse gas emis-
19 sions in 2005;

20 “(2) in 2020, the quantity of United States
21 greenhouse gas emissions does not exceed 80 percent
22 of the quantity of United States greenhouse gas emis-
23 sions in 2005;

24 “(3) in 2030, the quantity of United States
25 greenhouse gas emissions does not exceed 58 percent

1 *of the quantity of United States greenhouse gas emis-*
2 *sions in 2005; and*

3 *“(4) in 2050, the quantity of United States*
4 *greenhouse gas emissions does not exceed 17 percent*
5 *of the quantity of United States greenhouse gas emis-*
6 *sions in 2005.*

7 **“SEC. 703. REDUCTION TARGETS FOR SPECIFIED SOURCES.**

8 *“(a) IN GENERAL.—The regulations issued under sec-*
9 *tion 721 shall cap and reduce annually the greenhouse gas*
10 *emissions of capped sources each calendar year beginning*
11 *in 2012 such that—*

12 *“(1) in 2012, the quantity of greenhouse gas*
13 *emissions from capped sources does not exceed 97 per-*
14 *cent of the quantity of greenhouse gas emissions from*
15 *such sources in 2005;*

16 *“(2) in 2020, the quantity of greenhouse gas*
17 *emissions from capped sources does not exceed 83 per-*
18 *cent of the quantity of greenhouse gas emissions from*
19 *such sources in 2005;*

20 *“(3) in 2030, the quantity of greenhouse gas*
21 *emissions from capped sources does not exceed 58 per-*
22 *cent of the quantity of greenhouse gas emissions from*
23 *such sources in 2005; and*

24 *“(4) in 2050, the quantity of greenhouse gas*
25 *emissions from capped sources does not exceed 17 per-*

1 *cent of the quantity of greenhouse gas emissions from*
2 *such sources in 2005.*

3 “(b) *DEFINITION.*—*For purposes of this section, the*
4 *term ‘greenhouse gas emissions from such sources in 2005’*
5 *means emissions to which section 722 would have applied*
6 *if the requirements of this title for the specified year had*
7 *been in effect for 2005.*

8 **“SEC. 704. SUPPLEMENTAL POLLUTION REDUCTIONS.**

9 “*For the purposes of decreasing the likelihood of cata-*
10 *strophic climate change, preserving tropical forests, build-*
11 *ing capacity to generate offset credits, and facilitating*
12 *international action on global warming, the Administrator*
13 *shall set aside the percentage specified in section 781 of the*
14 *quantity of emission allowances established under section*
15 *721(a) for each year, to be used to achieve a reduction of*
16 *greenhouse gas emissions from deforestation in developing*
17 *countries in accordance with part E. In 2020, activities*
18 *supported under part E shall provide greenhouse gas reduc-*
19 *tions in an amount equal to an additional 10 percentage*
20 *points of reductions from United States greenhouse gas*
21 *emissions in 2005. The Administrator shall distribute these*
22 *allowances with respect to activities in countries that enter*
23 *into and implement agreements or arrangements relating*
24 *to reduced deforestation as described in section 754(a)(2).*

1 **“SEC. 705. REVIEW AND PROGRAM RECOMMENDATIONS.**

2 “(a) *IN GENERAL.*—*The Administrator shall, in con-*
3 *sultation with appropriate Federal agencies, submit to Con-*
4 *gress a report not later than July 1, 2013, and every 4*
5 *years thereafter, that includes—*

6 “(1) *an analysis of key findings based on the lat-*
7 *est scientific information and data relevant to global*
8 *climate change;*

9 “(2) *an analysis of capabilities to monitor and*
10 *verify greenhouse gas reductions on a worldwide*
11 *basis, including for the United States, as required*
12 *under the Safe Climate Act; and*

13 “(3) *an analysis of the status of worldwide*
14 *greenhouse gas reduction efforts, including implemen-*
15 *tation of the Safe Climate Act and other policies, both*
16 *domestic and international, for reducing greenhouse*
17 *gas emissions, preventing dangerous atmospheric con-*
18 *centrations of greenhouse gases, preventing significant*
19 *irreversible consequences of climate change, and re-*
20 *ducing vulnerability to the impacts of climate change.*

21 “(b) *EXCEPTION.*—*Paragraph (3) of subsection (a)*
22 *shall not apply to the first report submitted under such sub-*
23 *section.*

24 “(c) *LATEST SCIENTIFIC INFORMATION.*—*The analysis*
25 *required under subsection (a)(1) shall—*

1 “(1) address existing scientific information and
2 reports, considering, to the greatest extent possible, the
3 most recent assessment report of the Intergovern-
4 mental Panel on Climate Change, reports by the
5 United States Global Change Research Program, the
6 Natural Resources Climate Change Adaptation Panel
7 established under section 475 of the American Clean
8 Energy and Security Act of 2009, and Federal agen-
9 cies, and the European Union’s global temperature
10 data assessment; and

11 “(2) review trends and projections for—

12 “(A) global and country-specific annual
13 emissions of greenhouse gases, and cumulative
14 greenhouse gas emissions produced between 1850
15 and the present, including—

16 “(i) global cumulative emissions of an-
17 thropogenic greenhouse gases;

18 “(ii) global annual emissions of an-
19 thropogenic greenhouse gases; and

20 “(iii) by country, annual total, annual
21 per capita, and cumulative anthropogenic
22 emissions of greenhouse gases for the top 50
23 emitting nations;

24 “(B) significant changes, both globally and
25 by region, in annual net non-anthropogenic

1 *greenhouse gas emissions from natural sources,*
2 *including permafrost, forests, or oceans;*

3 “(C) *global atmospheric concentrations of*
4 *greenhouse gases, expressed in annual concentra-*
5 *tion units as well as carbon dioxide equivalents*
6 *based on 100-year global warming potentials;*

7 “(D) *major climate forcing factors, such as*
8 *aerosols;*

9 “(E) *global average temperature, expressed*
10 *as seasonal and annual averages in land, ocean,*
11 *and land-plus-ocean averages; and*

12 “(F) *sea level rise;*

13 “(3) *assess the current and potential impacts of*
14 *global climate change on—*

15 “(A) *human populations, including impacts*
16 *on public health, economic livelihoods, subsist-*
17 *ence, human infrastructure, and displacement or*
18 *permanent relocation due to flooding, severe*
19 *weather, extended drought, erosion, or other eco-*
20 *system changes;*

21 “(B) *freshwater systems, including water*
22 *resources for human consumption and agri-*
23 *culture and natural and managed ecosystems,*
24 *flood and drought risks, and relative humidity;*

1 “(C) the carbon cycle, including impacts re-
2 lated to the thawing of permafrost, the frequency
3 and intensity of wildfire, and terrestrial and
4 ocean carbon sinks;

5 “(D) ecosystems and animal and plant pop-
6 ulations, including impacts on species abun-
7 dance, phenology, and distribution;

8 “(E) oceans and ocean ecosystems, includ-
9 ing effects on sea level, ocean acidity, ocean tem-
10 peratures, coral reefs, ocean circulation, fisheries,
11 and other indicators of ocean ecosystem health;

12 “(F) the cryosphere, including effects on ice
13 sheet mass balance, mountain glacier mass bal-
14 ance, and sea-ice extent and volume;

15 “(G) changes in the intensity, frequency, or
16 distribution of severe weather events, including
17 precipitation, tropical cyclones, tornadoes, and
18 severe heat waves;

19 “(H) agriculture and forest systems; and

20 “(I) any other indicators the Administrator
21 deems appropriate;

22 “(4) summarize any significant socio-economic
23 impacts of climate change in the United States, in-
24 cluding the territories of the United States, drawing

1 *on work by Federal agencies and the academic lit-*
2 *erature, including impacts on—*

3 *“(A) public health;*

4 *“(B) economic livelihoods and subsistence;*

5 *“(C) displacement or permanent relocation*
6 *due to flooding, severe weather, extended drought,*
7 *or other ecosystem changes;*

8 *“(D) human infrastructure, including coast-*
9 *al infrastructure vulnerability to extreme events*
10 *and sea level rise, river floodplain infrastructure,*
11 *and sewer and water management systems;*

12 *“(E) agriculture and forests, including ef-*
13 *fects on potential growing season, distribution,*
14 *and yield;*

15 *“(F) water resources for human consump-*
16 *tion, agriculture and natural and managed eco-*
17 *systems, flood and drought risks, and relative hu-*
18 *midity;*

19 *“(G) energy supply and use; and*

20 *“(H) transportation;*

21 *“(5) in assessing risks and impacts, use a risk*
22 *management framework, including both qualitative*
23 *and quantitative measures, to assess the observed and*
24 *projected impacts of current and future climate*
25 *change, accounting for—*

1 “(A) both monetized and non-monetized
2 losses;

3 “(B) potential nonlinear, abrupt, or essen-
4 tially irreversible changes in the climate system;

5 “(C) potential nonlinear increases in the
6 cost of impacts;

7 “(D) potential low-probability, high impact
8 events; and

9 “(E) whether impacts are transitory or es-
10 sentially permanent; and

11 “(6) based on the findings of the Administrator
12 under this section, as well as assessments produced by
13 the Intergovernmental Panel on Climate Change, the
14 United States Global Change Research program, and
15 other relevant scientific entities—

16 “(A) describe increased risks to natural sys-
17 tems and society that would result from an in-
18 crease in global average temperature 3.6 degrees
19 Fahrenheit (2 degrees Celsius) above the pre-in-
20 dustrial average or an increase in atmospheric
21 greenhouse gas concentrations above 450 parts
22 per million carbon dioxide equivalent; and

23 “(B) identify and assess—

1 “(i) significant residual risks not
2 avoided by the thresholds described in sub-
3 paragraph (A);

4 “(ii) alternative thresholds or targets
5 that may more effectively limit the risks
6 identified pursuant to clause (i); and

7 “(iii) thresholds above those described
8 in subparagraph (A) which significantly in-
9 crease the risk of certain impacts or render
10 them essentially permanent.

11 “(d) STATUS OF MONITORING AND VERIFICATION CA-
12 PABILITIES TO EVALUATE GREENHOUSE GAS REDUCTION
13 EFFORTS.—The analysis required under subsection (a)(2)
14 shall evaluate the capabilities of the monitoring, reporting,
15 and verification systems used to quantify progress in
16 achieving reductions in greenhouse gas emissions both glob-
17 ally and in the United States (as described in section 702),
18 including—

19 “(1) quantification of emissions and emission re-
20 ductions by entities participating in the cap and
21 trade program under this title;

22 “(2) quantification of emissions and emission re-
23 ductions by entities participating in the offset pro-
24 gram under this title;

1 “(3) quantification of emission and emissions re-
2 ductions by entities regulated by performance stand-
3 ards;

4 “(4) quantification of aggregate net emissions
5 and emissions reductions by the United States; and

6 “(5) quantification of global changes in net emis-
7 sions and in sources and sinks of greenhouse gases.

8 “(e) *STATUS OF GREENHOUSE GAS REDUCTION EF-*
9 *FORTS.*—The analysis required under subsection (a)(3)
10 shall address—

11 “(1) whether the programs under Safe Climate
12 Act and other Federal statutes are resulting in suffi-
13 cient United States greenhouse gas emissions reduc-
14 tions to meet the emissions reduction goals described
15 in section 702, taking into account the use of offsets;
16 and

17 “(2) whether United States actions, taking into
18 account international actions, commitments, and
19 trends, and considering the range of plausible emis-
20 sions scenarios, are sufficient to avoid—

21 “(A) atmospheric greenhouse gas concentra-
22 tions above 450 parts per million carbon dioxide
23 equivalent;

24 “(B) global average surface temperature 3.6
25 degrees Fahrenheit (2 degrees Celsius) above the

1 *pre-industrial average, or such other temperature*
2 *thresholds as the Administrator deems appro-*
3 *priate; and*

4 “(C) *other temperature or greenhouse gas*
5 *thresholds identified pursuant to subsection*
6 *(c)(6)(B).*

7 “(f) *RECOMMENDATIONS.—*

8 “(1) *LATEST SCIENTIFIC INFORMATION.—Based*
9 *on the analysis described in subsection (a)(1), each re-*
10 *port under subsection (a) shall identify actions that*
11 *could be taken to—*

12 “(A) *improve the characterization of*
13 *changes in the earth-climate system and impacts*
14 *of global climate change;*

15 “(B) *better inform decision making and ac-*
16 *tions related to global climate change;*

17 “(C) *mitigate risks to natural and social*
18 *systems; and*

19 “(D) *design policies to better account for*
20 *climate risks.*

21 “(2) *MONITORING, REPORTING AND*
22 *VERIFICATION.—Based on the analysis described in*
23 *subsection (a)(2), each report under subsection (a)*
24 *shall identify key gaps in measurement, reporting,*
25 *and verification capabilities and make recommenda-*

1 *tions to improve the accuracy and reliability of those*
2 *capabilities.*

3 “(3) *STATUS OF GREENHOUSE GAS REDUCTION*
4 *EFFORTS.—Based on the analysis described in sub-*
5 *section (a)(3), taking into account international ac-*
6 *tions, commitments, and trends, and considering the*
7 *range of plausible emissions scenarios, each report*
8 *under subsection (a) shall identify—*

9 “(A) *the quantity of additional reductions*
10 *required to meet the emissions reduction goals in*
11 *section 702;*

12 “(B) *the quantity of additional reductions*
13 *in global greenhouse gas emissions needed to*
14 *avoid the concentration and temperature thresh-*
15 *olds identified in subsection (e); and*

16 “(C) *possible strategies and approaches for*
17 *achieving additional reductions.*

18 “(g) *AUTHORIZATION OF APPROPRIATIONS.—There*
19 *are authorized to be appropriated to carry out this section*
20 *such sums as may be necessary.*

21 **“SEC. 706. NATIONAL ACADEMY REVIEW.**

22 “(a) *IN GENERAL.—Not later than 1 year after the*
23 *date of enactment of this title, the Administrator shall offer*
24 *to enter into a contract with the National Academy of*
25 *Sciences (in this section referred to as the ‘Academy’) under*

1 *which the Academy shall, not later than July 1, 2014, and*
2 *every 4 years thereafter, submit to Congress and the Admin-*
3 *istrator a report that includes—*

4 “(1) *a review of the most recent report and rec-*
5 *ommendations issued under section 705; and*

6 “(2) *an analysis of technologies to achieve reduc-*
7 *tions in greenhouse gas emissions.*

8 “(b) *FAILURE TO ISSUE A REPORT.—In the event that*
9 *the Administrator has not issued all or part of the most*
10 *recent report required under section 705, the Academy shall*
11 *conduct its own review and analysis of the required infor-*
12 *mation.*

13 “(c) *TECHNOLOGICAL INFORMATION.—The analysis*
14 *required under subsection (a)(2) shall—*

15 “(1) *review existing technological information*
16 *and reports, including the most recent reports by the*
17 *Department of Energy, the United States Global*
18 *Change Research Program, the Intergovernmental*
19 *Panel on Climate Change, and the International En-*
20 *ergy Agency and any other relevant information on*
21 *technologies or practices that reduce or limit green-*
22 *house gas emissions;*

23 “(2) *include the participation of technical ex-*
24 *perts from relevant private industry sectors;*

1 “(3) review the current and future projected de-
2 ployment of technologies and practices in the United
3 States that reduce or limit greenhouse gas emissions,
4 including—

5 “(A) technologies for capture and sequestra-
6 tion of greenhouse gases;

7 “(B) technologies to improve energy effi-
8 ciency;

9 “(C) low- or zero-greenhouse gas emitting
10 energy technologies;

11 “(D) low- or zero-greenhouse gas emitting
12 fuels;

13 “(E) biological sequestration practices and
14 technologies; and

15 “(F) any other technologies the Academy
16 deems relevant; and

17 “(4) review and compare the emissions reduction
18 potential, commercial viability, market penetration,
19 investment trends, and deployment of the technologies
20 described in paragraph (3), including—

21 “(A) the need for additional research and
22 development, including publicly funded research
23 and development;

24 “(B) the extent of commercial deployment,
25 including, where appropriate, a comparison to

1 *the cost and level of deployment of conventional*
2 *fossil fuel-fired energy technologies and devices;*
3 *and*

4 “(C) *an evaluation of any substantial tech-*
5 *nological, legal, or market-based barriers to com-*
6 *mercial deployment.*

7 “(d) *RECOMMENDATIONS.—*

8 “(1) *LATEST SCIENTIFIC INFORMATION.—Based*
9 *on the review described in subsection (a)(1), the Acad-*
10 *emy shall identify actions that could be taken to—*

11 “(A) *improve the characterization of*
12 *changes in the earth-climate system and impacts*
13 *of global climate change;*

14 “(B) *better inform decision making and ac-*
15 *tions related to global climate change;*

16 “(C) *mitigate risks to natural and social*
17 *systems;*

18 “(D) *design policies to better account for*
19 *climate risks; and*

20 “(E) *improve the accuracy and reliability*
21 *of capabilities to monitor, report, and verify*
22 *greenhouse gas emissions reduction efforts.*

23 “(2) *TECHNOLOGICAL INFORMATION.—Based on*
24 *the analysis described in subsection (a)(2), the Acad-*
25 *emy shall identify—*

1 “(A) *additional emissions reductions that*
2 *may be possible as a result of technologies de-*
3 *scribed in the analysis;*

4 “(B) *barriers to the deployment of such*
5 *technologies; and*

6 “(C) *actions that could be taken to speed de-*
7 *ployment of such technologies.*

8 “(3) *STATUS OF GREENHOUSE GAS REDUCTION*
9 *EFFORTS.—Based on the review described in sub-*
10 *section (a)(1), the Academy shall identify—*

11 “(A) *the quantity of additional reductions*
12 *required to meet the emissions reduction goals*
13 *described in section 702; and*

14 “(B) *the quantity of additional reductions*
15 *in global greenhouse gas emissions needed to*
16 *avoid the concentration and temperature thresh-*
17 *olds described in section 705(c)(6)(A) or identi-*
18 *fied pursuant to section 705(c)(6)(B).*

19 “(e) *AUTHORIZATION OF APPROPRIATIONS.—There are*
20 *authorized to be appropriated to carry out this section such*
21 *sums as may be necessary.*

22 “**SEC. 707. PRESIDENTIAL RESPONSE AND RECOMMENDA-**
23 **TIONS.**

24 “*Not later than July 1, 2015, and every 4 years there-*
25 *after—*

1 “(4) Sulfur hexafluoride.

2 “(5) Hydrofluorocarbons from a chemical manu-
3 facturing process at an industrial stationary source.

4 “(6) Any perfluorocarbon.

5 “(7) Nitrogen trifluoride.

6 “(8) Any other anthropogenic gas designated as
7 a greenhouse gas by the Administrator under this sec-
8 tion.

9 “(b) DETERMINATION ON ADMINISTRATOR’S INITIA-
10 TIVE.—The Administrator shall, by rule—

11 “(1) determine whether 1 metric ton of another
12 anthropogenic gas makes the same or greater con-
13 tribution to global warming over 100 years as 1 met-
14 ric ton of carbon dioxide;

15 “(2) determine the carbon dioxide equivalent
16 value for each gas with respect to which the Adminis-
17 trator makes an affirmative determination under
18 paragraph (1);

19 “(3) for each gas with respect to which the Ad-
20 ministrator makes an affirmative determination
21 under paragraph (1) and that is used as a substitute
22 for a class I or class II substance under title VI, de-
23 termine the extent to which to regulate that gas under
24 section 619 and specify appropriate compliance obli-
25 gations under section 619;

1 “(4) designate as a greenhouse gas for purposes
2 of this title each gas for which the Administrator
3 makes an affirmative determination under paragraph
4 (1), to the extent that it is not regulated under section
5 619; and

6 “(5) specify the appropriate compliance obliga-
7 tions under this title for each gas designated as a
8 greenhouse gas under paragraph (4).

9 “(c) *PETITIONS TO DESIGNATE A GREENHOUSE*
10 *GAS.*—

11 “(1) *IN GENERAL.*—Any person may petition the
12 Administrator to designate as a greenhouse gas any
13 anthropogenic gas 1 metric ton of which makes the
14 same or greater contribution to global warming over
15 100 years as 1 metric ton of carbon dioxide.

16 “(2) *CONTENTS OF PETITION.*—The petitioner
17 shall provide sufficient data, as specified by rule by
18 the Administrator, to demonstrate that the gas is like-
19 ly to be a greenhouse gas and is likely to be produced,
20 imported, used, or emitted in the United States. To
21 the extent practicable, the petitioner shall also iden-
22 tify producers, importers, distributors, users, and
23 emitters of the gas in the United States.

24 “(3) *REVIEW AND ACTION BY THE ADMINIS-*
25 *TRATOR.*—Not later than 90 days after receipt of a

1 *petition under paragraph (2), the Administrator shall*
2 *determine whether the petition is complete and notify*
3 *the petitioner and the public of the decision.*

4 “(4) *ADDITIONAL INFORMATION.—The Adminis-*
5 *trator may require producers, importers, distributors,*
6 *users, or emitters of the gas to provide information on*
7 *the contribution of the gas to global warming over*
8 *100 years compared to carbon dioxide.*

9 “(5) *TREATMENT OF PETITION.—For any sub-*
10 *stance used as a substitute for a class I or class II*
11 *substance under title VI, the Administrator may elect*
12 *to treat a petition under this subsection as a petition*
13 *to list the substance as a class II, group II substance*
14 *under section 619, and may require the petition to be*
15 *amended to address listing criteria promulgated*
16 *under that section.*

17 “(6) *DETERMINATION.—Not later than 2 years*
18 *after receipt of a complete petition, the Administrator*
19 *shall, after notice and an opportunity for comment—*

20 “(A) *issue and publish in the Federal Reg-*
21 *ister—*

22 “(i) *a determination that 1 metric ton*
23 *of the gas does not make a contribution to*
24 *global warming over 100 years that is equal*

1 to or greater than that made by 1 metric
2 ton of carbon dioxide; and

3 “(ii) an explanation of the decision; or

4 “(B) determine that 1 metric ton of the gas
5 makes a contribution to global warming over 100
6 years that is equal to or greater than that made
7 by 1 metric ton of carbon dioxide, and take the
8 actions described in subsection (b) with respect
9 to such gas.

10 “(7) *GROUNDS FOR DENIAL.*—*The Administrator*
11 *may not deny a petition under this subsection solely*
12 *on the basis of inadequate Environmental Protection*
13 *Agency resources or time for review.*

14 “(d) *SCIENCE ADVISORY BOARD CONSULTATION.*—

15 “(1) *CONSULTATION.*—*The Administrator*
16 *shall—*

17 “(A) *give notice to the Science Advisory*
18 *Board prior to making a determination under*
19 *subsection (b)(1), (c)(6), or (e)(2)(B);*

20 “(B) *consider the written recommendations*
21 *of the Science Advisory Board under paragraph*
22 *(2) regarding the determination; and*

23 “(C) *consult with the Science Advisory*
24 *Board regarding such determination, including*

1 *consultation subsequent to receipt of such written*
2 *recommendations.*

3 “(2) *FORMULATION OF RECOMMENDATIONS.*—

4 *Upon receipt of notice under paragraph (1)(A) re-*
5 *garding a pending determination under subsection*
6 *(b)(1), (c)(6), or (e)(2)(B), the Science Advisory*
7 *Board shall—*

8 “(A) *formulate recommendations regarding*
9 *such determination, subject to a peer review*
10 *process; and*

11 “(B) *submit such recommendations in writ-*
12 *ing to the Administrator.*

13 “(e) *MANUFACTURING AND EMISSION NOTICES.*—

14 “(1) *NOTICE REQUIREMENT.*—

15 “(A) *IN GENERAL.*—*Effective 24 months*
16 *after the date of enactment of this title, no per-*
17 *son may manufacture or introduce into inter-*
18 *state commerce a fluorinated gas, or emit a sig-*
19 *nificant quantity, as determined by the Admin-*
20 *istrator, of any fluorinated gas that is generated*
21 *as a byproduct during the production or use of*
22 *another fluorinated gas, unless—*

23 “(i) *the gas is designated as a green-*
24 *house gas under this section or is an ozone-*

1 *depleting substance listed as a class I or*
2 *class II substance under title VI;*

3 *“(ii) the Administrator has determined*
4 *that 1 metric ton of such gas does not make*
5 *a contribution to global warming that is*
6 *equal to or greater than that made by 1*
7 *metric ton of carbon dioxide; or*

8 *“(iii) the person manufacturing or im-*
9 *porting the gas for distribution into inter-*
10 *state commerce, or emitting the gas, has*
11 *submitted to the Administrator, at least 90*
12 *days before the start of such manufacture,*
13 *introduction into commerce, or emission, a*
14 *notice of such person’s manufacture, intro-*
15 *duction into commerce, or emission of such*
16 *gas, and the Administrator has not deter-*
17 *mined that notice or a substantially similar*
18 *notice is incomplete.*

19 *“(B) ALTERNATIVE COMPLIANCE.—For a*
20 *gas that is a substitute for a class I or class II*
21 *substance under title VI and either has been list-*
22 *ed as acceptable for use under section 612 or is*
23 *currently subject to evaluation under section 612,*
24 *the Administrator may accept the notice and in-*
25 *formation provided pursuant to that section as*

1 *fulfilling the obligation under clause (iii) of sub-*
2 *paragraph (A).*

3 “(2) *REVIEW AND ACTION BY THE ADMINIS-*
4 *TRATOR.—*

5 “(A) *COMPLETENESS.—Not later than 90*
6 *days after receipt of notice under paragraph*
7 *(1)(A)(iii) or (B), the Administrator shall deter-*
8 *mine whether the notice is complete.*

9 “(B) *DETERMINATION.— If the Adminis-*
10 *trator determines that the notice is complete, the*
11 *Administrator shall, after notice and an oppor-*
12 *tunity for comment, not later than 12 months*
13 *after receipt of the notice—*

14 “(i) *issue and publish in the Federal*
15 *Register a determination that 1 metric ton*
16 *of the gas does not make a contribution to*
17 *global warming over 100 years that is equal*
18 *to or greater than that made by 1 metric*
19 *ton of carbon dioxide and an explanation of*
20 *the decision; or*

21 “(ii) *determine that 1 metric ton of the*
22 *gas makes a contribution to global warming*
23 *over 100 years that is equal to or greater*
24 *than that made by 1 metric ton of carbon*

1 dioxide, and take the actions described in
2 subsection (b) with respect to such gas.

3 “(f) *REGULATIONS.*—Not later than one year after the
4 date of enactment of this title, the Administrator shall pro-
5 mulgate regulations to carry out this section. Such regula-
6 tions shall include—

7 “(1) requirements for the contents of a petition
8 submitted under subsection (c);

9 “(2) requirements for the contents of a notice re-
10 quired under subsection (e); and

11 “(3) methods and standards for evaluating the
12 carbon dioxide equivalent value of a gas.

13 “(g) *GASES REGULATED UNDER TITLE VI.*—The Ad-
14 ministrators shall not designate a gas as a greenhouse gas
15 under this section to the extent that the gas is regulated
16 under title VI.

17 “(h) *SAVINGS CLAUSE.*—Nothing in this section shall
18 be interpreted to relieve any person from complying with
19 the requirements of section 612.

20 **“SEC. 712. CARBON DIOXIDE EQUIVALENT VALUE OF**
21 **GREENHOUSE GASES.**

22 “(a) *MEASURE OF QUANTITY OF GREENHOUSE*
23 *GASES.*—Any provision of this title or title VIII that refers
24 to a quantity or percentage of a quantity of greenhouse

1 *gases shall mean the quantity or percentage of the green-*
 2 *house gases expressed in carbon dioxide equivalents.*

3 “(b) *INITIAL VALUE.—Except as provided by the Ad-*
 4 *ministrator under this section or section 711—*

5 “(1) *the carbon dioxide equivalent value of*
 6 *greenhouse gases for purposes of this Act shall be as*
 7 *follows:*

**“CARBON DIOXIDE EQUIVALENT OF 1 TON OF LISTED
GREENHOUSE GASES**

<i>Greenhouse gas (1 metric ton)</i>	<i>Carbon dioxide equivalent (metric tons)</i>
<i>Carbon dioxide</i>	<i>1</i>
<i>Methane</i>	<i>25</i>
<i>Nitrous oxide</i>	<i>298</i>
<i>HFC-23</i>	<i>14,800</i>
<i>HFC-125</i>	<i>3,500</i>
<i>HFC-134a</i>	<i>1,430</i>
<i>HFC-143a</i>	<i>4,470</i>
<i>HFC-152a</i>	<i>124</i>
<i>HFC-227ea</i>	<i>3,220</i>
<i>HFC-236fa</i>	<i>9,810</i>
<i>HFC-4310mee</i>	<i>1,640</i>
<i>CF₄</i>	<i>7,390</i>
<i>C₂F₆</i>	<i>12,200</i>
<i>C₄F₁₀</i>	<i>8,860</i>
<i>C₆F₁₄</i>	<i>9,300</i>
<i>SF₆</i>	<i>22,800</i>
<i>NF₃</i>	<i>17,200</i>

1 ; and

2 “(2) *the carbon dioxide equivalent value for pur-*
3 *poses of this Act for any greenhouse gas not listed in*
4 *the table under paragraph (1) shall be the 100-year*
5 *Global Warming Potentials provided in the Intergov-*
6 *ernmental Panel on Climate Change Fourth Assess-*
7 *ment Report.*

8 “(c) *PERIODIC REVIEW.—*

9 “(1) *Not later than February 1, 2017, and (ex-*
10 *cept as provided in paragraph (3)) not less than*
11 *every 5 years thereafter, the Administrator shall—*

12 “(A) *review and, if appropriate, revise the*
13 *carbon dioxide equivalent values established*
14 *under this section or section 711(b)(2), based on*
15 *a determination of the number of metric tons of*
16 *carbon dioxide that makes the same contribution*
17 *to global warming over 100 years as 1 metric*
18 *ton of each greenhouse gas; and*

19 “(B) *publish in the Federal Register the re-*
20 *sults of that review and any revisions.*

21 “(2) *A revised determination published in the*
22 *Federal Register under paragraph (1)(B) shall take*
23 *effect for greenhouse gas emissions starting on Janu-*
24 *ary 1 of the first calendar year starting at least 9*

1 *months after the date on which the revised determina-*
2 *tion was published.*

3 “(3) *The Administrator may decrease the fre-*
4 *quency of review and revision under paragraph (1) if*
5 *the Administrator determines that such decrease is*
6 *appropriate in order to synchronize such review and*
7 *revision with any similar review process carried out*
8 *pursuant to the United Nations Framework Conven-*
9 *tion on Climate Change, done at New York on May*
10 *9, 1992, or to an agreement negotiated under that*
11 *convention, except that in no event shall the Adminis-*
12 *trator carry out such review and revision any less fre-*
13 *quently than every 10 years.*

14 “(d) *METHODOLOGY.—In setting carbon dioxide equiv-*
15 *alent values, for purposes of this section or section 711, the*
16 *Administrator shall take into account publications by the*
17 *Intergovernmental Panel on Climate Change or a successor*
18 *organization under the auspices of the United Nations En-*
19 *vironmental Programme and the World Meteorological Or-*
20 *ganization.*

21 **“SEC. 713. GREENHOUSE GAS REGISTRY.**

22 “(a) *DEFINITIONS.—For purposes of this section:*

23 “(1) *CLIMATE REGISTRY.—The term ‘Climate*
24 *Registry’ means the greenhouse gas emissions registry*
25 *jointly established and managed by more than 40*

1 *States and Indian tribes in 2007 to collect high-quality*
2 *greenhouse gas emission data from facilities, corporations,*
3 *and other organizations to support various*
4 *greenhouse gas emission reporting and reduction policies*
5 *for the member States and Indian tribes.*

6 “(2) *REPORTING ENTITY.*—*The term ‘reporting*
7 *entity’ means—*

8 “(A) *a covered entity;*

9 “(B) *an entity that—*

10 “(i) *would be a covered entity if it had*
11 *emitted, produced, imported, manufactured,*
12 *or delivered in 2008 or any subsequent year*
13 *more than the applicable threshold level in*
14 *the definition of covered entity in para-*
15 *graph (13) of section 700; and*

16 “(ii) *has emitted, produced, imported,*
17 *manufactured, or delivered in 2008 or any*
18 *subsequent year more than the applicable*
19 *threshold level in the definition of covered*
20 *entity in paragraph (13) of section 700,*
21 *provided that the figure of 25,000 tons of*
22 *carbon dioxide equivalent is read instead as*
23 *10,000 tons of carbon dioxide equivalent*
24 *and the figure of 460,000,000 cubic feet is*
25 *read instead as 184,000,000 cubic feet;*

1 “(C) any other entity that emits a green-
2 house gas, or produces, imports, manufactures,
3 or delivers material whose use results or may re-
4 sult in greenhouse gas emissions if the Adminis-
5 trator determines that reporting under this sec-
6 tion by such entity will help achieve the purposes
7 of this title or title VIII;

8 “(D) any vehicle fleet with emissions of
9 more than 25,000 tons of carbon dioxide equiva-
10 lent on an annual basis, if the Administrator de-
11 termines that the inclusion of such fleet will help
12 achieve the purposes of this title or title VIII; or

13 “(E) any entity that delivers electricity to
14 an energy-intensive facility in an industrial sec-
15 tor that meets the energy or greenhouse gas in-
16 tensity criteria in section 764(b)(2)(A)(i).

17 “(b) REGULATIONS.—

18 “(1) IN GENERAL.—Not later than 6 months
19 after the date of enactment of this title, the Adminis-
20 trator shall issue regulations establishing a Federal
21 greenhouse gas registry. Such regulations shall—

22 “(A) require reporting entities to submit to
23 the Administrator data on—

24 “(i) greenhouse gas emissions in the
25 United States;

1 “(ii) the production and manufacture
2 in the United States, importation into the
3 United States, and, at the discretion of the
4 Administrator, exportation from the United
5 States, of fuels and industrial gases the uses
6 of which result or may result in greenhouse
7 gas emissions;

8 “(iii) deliveries in the United States of
9 natural gas, and any other gas meeting the
10 specifications for commingling with natural
11 gas for purposes of delivery, the combustion
12 of which result or may result in greenhouse
13 gas emissions; and

14 “(iv) the capture and sequestration of
15 greenhouse gases;

16 “(B) require covered entities and, where ap-
17 propriate, other reporting entities to submit to
18 the Administrator data sufficient to ensure com-
19 pliance with or implementation of the require-
20 ments of this title;

21 “(C) require reporting of electricity deliv-
22 ered to industrial sources in energy-intensive in-
23 dustries;

1 “(D) ensure the completeness, consistency,
2 transparency, accuracy, precision, and reli-
3 ability of such data;

4 “(E) take into account the best practices
5 from the most recent Federal, State, tribal, and
6 international protocols for the measurement, ac-
7 counting, reporting, and verification of green-
8 house gas emissions, including protocols from the
9 Climate Registry and other mandatory State or
10 multistate authorized programs;

11 “(F) take into account the latest scientific
12 research;

13 “(G) require that, for covered entities with
14 respect to greenhouse gases to which section 722
15 applies, and, to the extent determined to be ap-
16 propriate by the Administrator, for covered enti-
17 ties with respect to other greenhouse gases and
18 for other reporting entities, submitted data are
19 based on—

20 “(i) continuous monitoring systems for
21 fuel flow or emissions, such as continuous
22 emission monitoring systems;

23 “(ii) alternative systems that are dem-
24 onstrated as providing data with the same
25 precision, reliability, accessibility, and

1 *timeliness, or, to the extent the Adminis-*
2 *trator determines is appropriate for report-*
3 *ing small amounts of emissions, the same*
4 *precision, reliability, and accessibility and*
5 *similar timeliness, as data provided by con-*
6 *tinuous monitoring systems for fuel flow or*
7 *emissions; or*

8 *“(iii) alternative methodologies that*
9 *are demonstrated to provide data with pre-*
10 *cision, reliability, accessibility, and timeli-*
11 *ness, or, to the extent the Administrator de-*
12 *termines is appropriate for reporting small*
13 *amounts of emissions, precision, reliability,*
14 *and accessibility, as similar as is tech-*
15 *nically feasible to that of data generally*
16 *provided by continuous monitoring systems*
17 *for fuel flow or emissions, if the Adminis-*
18 *trator determines that, with respect to a re-*
19 *porting entity, there is no continuous moni-*
20 *toring system or alternative system de-*
21 *scribed in clause (i) or (ii) that is tech-*
22 *nically feasible;*

23 *“(H) require that the Administrator, in de-*
24 *termining the extent to which the requirement to*
25 *use systems or methodologies in accordance with*

1 *subparagraph (G) is appropriate for reporting*
2 *entities other than covered entities or for green-*
3 *house gases to which section 722 does not apply,*
4 *consider the cost of using such systems and meth-*
5 *odologies, and of using other systems and meth-*
6 *odologies that are available and suitable, for*
7 *quantifying the emissions involved in light of the*
8 *purposes of this title, including the goal of col-*
9 *lecting consistent entity-wide data;*

10 *“(I) include methods for minimizing double*
11 *reporting and avoiding irreconcilable double re-*
12 *porting of greenhouse gas emissions;*

13 *“(J) establish measurement protocols for*
14 *carbon capture and sequestration systems, taking*
15 *into consideration the regulations promulgated*
16 *under section 813;*

17 *“(K) require that reporting entities provide*
18 *the data required under this paragraph in re-*
19 *ports submitted electronically to the Adminis-*
20 *trator, in such form and containing such infor-*
21 *mation as may be required by the Adminis-*
22 *trator;*

23 *“(L) include requirements for keeping*
24 *records supporting or related to, and protocols*
25 *for auditing, submitted data;*

1 “(M) establish consistent policies for calcu-
2 lating carbon content and greenhouse gas emis-
3 sions for each type of fossil fuel with respect to
4 which reporting is required;

5 “(N) subsequent to implementation of poli-
6 cies developed under subparagraph (M), provide
7 for immediate dissemination, to States, Indian
8 tribes, and on the Internet, of all data reported
9 under this section as soon as practicable after
10 electronic audit by the Administrator and any
11 resulting correction of data, except that data
12 shall not be disseminated under this subpara-
13 graph if—

14 “(i) its nondissemination is vital to
15 the national security of the United States,
16 as determined by the President; or

17 “(ii) it is confidential business infor-
18 mation that cannot be derived from infor-
19 mation that is otherwise publicly available
20 and that would cause significant calculable
21 competitive harm if published, except
22 that—

23 “(I) data relating to greenhouse
24 gas emissions, including any upstream
25 or verification data from reporting en-

1 *tities, shall not be considered to be con-*
2 *fidential business information; and*

3 *“(II) data that is confidential*
4 *business information shall be provided*
5 *to a State or Indian tribe within*
6 *whose jurisdiction the reporting entity*
7 *is located, if the Administrator deter-*
8 *mines that such State or Indian tribe*
9 *has in effect protections for confiden-*
10 *tial business information that are*
11 *equivalent to protections applicable to*
12 *the Federal Government;*

13 *“(O) prescribe methods by which the Ad-*
14 *ministrator shall, in cases in which satisfactory*
15 *data are not submitted to the Administrator for*
16 *any period of time, estimate emission, produc-*
17 *tion, importation, manufacture, or delivery lev-*
18 *els—*

19 *“(i) for covered entities with respect to*
20 *greenhouse gas emissions, production, im-*
21 *portation, manufacture, or delivery regu-*
22 *lated under this title to ensure that emis-*
23 *sions, production, importation, manufac-*
24 *ture, or deliveries are not underreported,*
25 *and to create a strong incentive for meeting*

1 *data monitoring and reporting require-*
2 *ments—*

3 “(I) *with a conservative estimate*
4 *of the highest emission, production, im-*
5 *portation, manufacture, or delivery*
6 *levels that may have occurred during*
7 *the period for which data are missing;*
8 *or*

9 “(II) *to the extent the Adminis-*
10 *trator considers appropriate, with an*
11 *estimate of such levels assuming the*
12 *unit is emitting, producing, importing,*
13 *manufacturing, or delivering at a*
14 *maximum potential level during the*
15 *period, in order to ensure that such*
16 *levels are not underreported and to cre-*
17 *ate a strong incentive for meeting data*
18 *monitoring and reporting require-*
19 *ments; and*

20 “(ii) *for covered entities with respect to*
21 *greenhouse gas emissions to which section*
22 *722 does not apply and for other reporting*
23 *entities, with a reasonable estimate of the*
24 *emission, production, importation, manu-*
25 *facture, or delivery levels that may have oc-*

1 *curred during the period for which data are*
2 *missing;*

3 “(P) *require the designation of a designated*
4 *representative for each reporting entity;*

5 “(Q) *require an appropriate certification,*
6 *by the designated representative for the reporting*
7 *entity, of accurate and complete accounting of*
8 *greenhouse gas emissions, as determined by the*
9 *Administrator; and*

10 “(R) *include requirements for other data*
11 *necessary for accurate and complete accounting*
12 *of greenhouse gas emissions, as determined by the*
13 *Administrator, including data for quality assur-*
14 *ance of monitoring systems, monitors and other*
15 *measurement devices, and other data needed to*
16 *verify reported emissions, production, importa-*
17 *tion, manufacture, or delivery.*

18 “(2) *TIMING.—*

19 “(A) *CALENDAR YEARS 2007 THROUGH*
20 *2010.—For a base period of calendar years 2007*
21 *through 2010, each reporting entity shall submit*
22 *annual data required under this section to the*
23 *Administrator not later than March 31, 2011.*
24 *The Administrator may waive or modify report-*
25 *ing requirements for calendar years 2007*

1 *through 2010 for categories of reporting entities*
2 *to the extent that the Administrator determines*
3 *that the reporting entities did not keep data or*
4 *records necessary to meet reporting requirements.*
5 *The Administrator may, in addition to or in*
6 *lieu of such requirements, collect information on*
7 *energy consumption and production.*

8 “(B) *SUBSEQUENT CALENDAR YEARS.—For*
9 *calendar year 2011 and each subsequent cal-*
10 *endar year, each reporting entity shall submit*
11 *quarterly data required under this section to the*
12 *Administrator not later than 60 days after the*
13 *end of the applicable quarter, except when the*
14 *data is already being reported to the Adminis-*
15 *trator on an earlier timeframe for another pro-*
16 *gram.*

17 “(3) *WAIVER OF REPORTING REQUIREMENTS.—*
18 *The Administrator may waive reporting requirements*
19 *under this section for specific entities to the extent*
20 *that the Administrator determines that sufficient and*
21 *equally or more reliable verified and timely data are*
22 *available to the Administrator and the public on the*
23 *Internet under other mandatory statutory require-*
24 *ments.*

1 “(c) *LEGAL STATUS OF EMISSION ALLOWANCES.*—

2 “(1) *IN GENERAL.*—*An allowance established by*
3 *the Administrator under this title does not constitute*
4 *a property right.*

5 “(2) *TERMINATION OR LIMITATION.*—*Nothing in*
6 *this Act or any other provision of law shall be con-*
7 *strued to limit or alter the authority of the United*
8 *States, including the Administrator acting pursuant*
9 *to statutory authority, to terminate or limit allow-*
10 *ances or offset credits.*

11 “(3) *OTHER PROVISIONS UNAFFECTED.*—*Except*
12 *as otherwise specified in this Act, nothing in this Act*
13 *relating to allowances or offset credits established or*
14 *issued under this title shall affect the application of*
15 *any other provision of law to a covered entity, or the*
16 *responsibility for a covered entity to comply with any*
17 *such provision of law.*

18 “(d) *SAVINGS PROVISION.*—*Nothing in this part shall*
19 *be construed as requiring a change of any kind in any State*
20 *law regulating electric utility rates and charges, or as af-*
21 *fecting any State law regarding such State regulation, or*
22 *as limiting State regulation (including any prudency re-*
23 *view) under such a State law. Nothing in this part shall*
24 *be construed as modifying the Federal Power Act or as af-*
25 *fecting the authority of the Federal Energy Regulatory*

1 *Commission under that Act. Nothing in this part shall be*
 2 *construed to interfere with or impair any program for com-*
 3 *petitive bidding for power supply in a State in which such*
 4 *program is established.*

5 *“(e) ALLOWANCES FOR EACH CALENDAR YEAR.—*

6 *“(1) IN GENERAL.—Except as provided in para-*
 7 *graph (2), the number of emission allowances estab-*
 8 *lished by the Administrator under subsection (a) for*
 9 *each calendar year shall be as provided in the fol-*
 10 *lowing table:*

“Calendar year	Emission allowances (in mil- lions)
2012	4,627
2013	4,544
2014	5,099
2015	5,003
2016	5,482
2017	5,375
2018	5,269
2019	5,162
2020	5,056
2021	4,903
2022	4,751
2023	4,599
2024	4,446
2025	4,294
2026	4,142

<i>“Calendar year</i>	<i>Emission allowances (in mil- lions)</i>
2027	3,990
2028	3,837
2029	3,685
2030	3,533
2031	3,408
2032	3,283
2033	3,158
2034	3,033
2035	2,908
2036	2,784
2037	2,659
2038	2,534
2039	2,409
2040	2,284
2041	2,159
2042	2,034
2043	1,910
2044	1,785
2045	1,660
2046	1,535
2047	1,410
2048	1,285
2049	1,160
<i>2050 and each year thereafter</i>	1,035

1

“(2) REVISION.—

1 “(A) *IN GENERAL.*—*The Administrator*
2 *may adjust, in accordance with subparagraph*
3 *(B), the number of emission allowances estab-*
4 *lished pursuant to paragraph (1) if, after notice*
5 *and an opportunity for public comment, the Ad-*
6 *ministrator determines that—*

7 “(i) *United States greenhouse gas*
8 *emissions in 2005 were other than 7,206*
9 *million metric tons carbon dioxide equiva-*
10 *lent;*

11 “(ii) *if the requirements of this title for*
12 *2012 had been in effect in 2005, section 722*
13 *would have required emission allowances to*
14 *be held for other than 66.2 percent of*
15 *United States greenhouse gas emissions in*
16 *2005;*

17 “(iii) *if the requirements of this title*
18 *for 2014 had been in effect in 2005, section*
19 *722 would have required emission allow-*
20 *ances to be held for other than 75.7 percent*
21 *of United States greenhouse gas emissions*
22 *in 2005; or*

23 “(iv) *if the requirements of this title*
24 *for 2016 had been in effect in 2005, section*
25 *722 would have required emission allow-*

1 ances to be held for other than 84.5 percent
2 United States greenhouse gas emissions in
3 2005.

4 “(B) ADJUSTMENT FORMULA.—

5 “*(i) IN GENERAL.—If the Adminis-*
6 *trator adjusts under this paragraph the*
7 *number of emission allowances established*
8 *pursuant to paragraph (1), the number of*
9 *emission allowances the Administrator es-*
10 *tablishes for any given calendar year shall*
11 *equal the product of—*

12 “*(I) United States greenhouse gas*
13 *emissions in 2005, expressed in tons of*
14 *carbon dioxide equivalent;*

15 “*(II) the percent of United States*
16 *greenhouse gas emissions in 2005, ex-*
17 *pressed in tons of carbon dioxide equiv-*
18 *alent, that would have been subject to*
19 *section 722 if the requirements of this*
20 *title for the given calendar year had*
21 *been in effect in 2005; and*

22 “*(III) the percentage set forth for*
23 *that calendar year in section 703(a),*
24 *or determined under clause (ii) of this*
25 *subparagraph.*

1 “(ii) *TARGETS.*—*In applying the por-*
2 *tion of the formula in clause (i)(III) of this*
3 *subparagraph, for calendar years for which*
4 *a percentage is not listed in section 703(a),*
5 *the Administrator shall use a uniform an-*
6 *nuual decline in the amount of emissions be-*
7 *tween the years that are specified.*

8 “(iii) *CARBON DIOXIDE EQUIVALENT*
9 *VALUE.*—*If the Administrator adjusts under*
10 *this paragraph the number of emission al-*
11 *lowances established pursuant to paragraph*
12 *(1), the Administrator shall use the carbon*
13 *dioxide equivalent values established pursu-*
14 *ant to section 712.*

15 “(iv) *LIMITATION ON ADJUSTMENT*
16 *TIMING.*—*Once a calendar year has started,*
17 *the Administrator may not adjust the num-*
18 *ber of emission allowances to be established*
19 *for that calendar year.*

20 “(C) *LIMITATION ON ADJUSTMENT AUTHOR-*
21 *ITY.*—*The Administrator may adjust under this*
22 *paragraph the number of emission allowances to*
23 *be established pursuant to paragraph (1) only*
24 *once.*

25 “(f) *COMPENSATORY ALLOWANCE.*—

1 “(1) *IN GENERAL.*—*The regulations promulgated*
2 *under subsection (h) shall provide for the establish-*
3 *ment and distribution of compensatory allowances*
4 *for—*

5 “(A) *the destruction, in 2012 or later, of*
6 *fluorinated gases that are greenhouse gases if—*

7 “(i) *allowances or offset credits were*
8 *retired for their production or importation;*
9 *and*

10 “(ii) *such gases are not required to be*
11 *destroyed under any other provision of law;*

12 “(B) *the nonemissive use, in 2012 or later,*
13 *of petroleum-based or coal-based liquid or gas-*
14 *eous fuel, petroleum coke, natural gas liquid, or*
15 *natural gas as a feedstock, if allowances or offset*
16 *credits were retired for the greenhouse gases that*
17 *would have been emitted from their combustion;*
18 *and*

19 “(C) *the conversionary use, in 2012 or*
20 *later, of fluorinated gases in a manufacturing*
21 *process, including semiconductor research or*
22 *manufacturing, if allowances or offset credits*
23 *were retired for the production or importation of*
24 *such gas.*

25 “(2) *ESTABLISHMENT AND DISTRIBUTION.*—

1 “(A) *IN GENERAL.*—Not later than 90 days
2 after the end of each calendar year, the Adminis-
3 trator shall establish and distribute to the entity
4 taking the actions described in subparagraph
5 (A), (B), or (C) of paragraph (1) a quantity of
6 compensatory allowances equivalent to the num-
7 ber of tons of carbon dioxide equivalent of avoid-
8 ed emissions achieved through such actions. In
9 establishing the quantity of compensatory allow-
10 ances, the Administrator shall take into account
11 the carbon dioxide equivalent value of any green-
12 house gas resulting from such action.

13 “(B) *SOURCE OF ALLOWANCES.*—Compen-
14 satory allowances established under this sub-
15 section shall not be emission allowances estab-
16 lished under subsection (a).

17 “(C) *IDENTIFICATION NUMBERS.*—The Ad-
18 ministrators shall assign to each compensatory
19 allowance established under subparagraph (A) a
20 unique identification number.

21 “(3) *DEFINITIONS.*—For purposes of this sub-
22 section—

23 “(A) the term ‘destruction’ means the con-
24 version of a greenhouse gas by thermal, chemical,

1 *or other means to another gas or set of gases*
2 *with little or no carbon dioxide equivalent value;*

3 “(B) *the term ‘nonemissive use’ means the*
4 *use of fossil fuel as a feedstock in an industrial*
5 *or manufacturing process to the extent that*
6 *greenhouse gases are not emitted from such proc-*
7 *ess, and to the extent that the products of such*
8 *process are not intended for use as, or to be con-*
9 *tained in, a fuel; and*

10 “(C) *the term ‘conversionary use’ means the*
11 *conversion during research or manufacturing of*
12 *a fluorinated gas into another greenhouse gas or*
13 *set of gases with a lower carbon dioxide equiva-*
14 *lent value.*

15 “(4) *FEEDSTOCK EMISSIONS STUDY.—*

16 “(A) *The Administrator may conduct a*
17 *study to determine the extent to which petro-*
18 *leum-based or coal-based liquid or gaseous fuel,*
19 *petroleum coke, natural gas liquid, or natural*
20 *gas are used as feedstocks in manufacturing*
21 *processes to produce products and the greenhouse*
22 *gas emissions resulting from such uses.*

23 “(B) *If as a result of such a study, the Ad-*
24 *ministrator determines that the use of such prod-*
25 *ucts by noncovered sources results in substantial*

1 *emissions of greenhouse gases or their precursors*
2 *and that such emissions have not been ade-*
3 *quately addressed under other requirements of*
4 *this Act, the Administrator may, after notice*
5 *and comment rulemaking, promulgate a regula-*
6 *tion reducing compensatory allowances commen-*
7 *surately if doing so will not result in leakage.*

8 “(g) *FLUORINATED GASES ASSESSMENT.*—No later
9 *than March 31, 2014, the Administrator shall conduct an*
10 *assessment of the regulation of non-HFC fluorinated gases*
11 *under this title to determine whether the most appropriate*
12 *point of regulation is at the gas manufacturer or importer*
13 *level, or at the source of emissions downstream. If the Ad-*
14 *ministrator determines, based on consideration of environ-*
15 *mental effectiveness, cost effectiveness, administrative feasi-*
16 *bility, extent of coverage of emissions, and competitiveness*
17 *considerations, that emissions of non-HFC fluorinated gases*
18 *can best be regulated by designating downstream emission*
19 *sources as covered entities with compliance obligations*
20 *under section 722, the Administrator shall, after notice and*
21 *comment rulemaking, change the definition of covered enti-*
22 *ty with respect to fluorinated gases (other than HFCs) ac-*
23 *cordingly and establish such requirements as are necessary*
24 *to ensure compliance for such entities with the requirements*
25 *of this title.*

1 “(h) *REGULATIONS.*—Not later than 24 months after
2 the date of enactment of this title, the Administrator shall
3 promulgate regulations to carry out the provisions of this
4 title.

5 “**SEC. 722. PROHIBITION OF EXCESS EMISSIONS.**

6 “(a) *PROHIBITION.*—Except as provided in subsection
7 (c), effective January 1, 2012, each covered entity is prohib-
8 ited from emitting greenhouse gases, and having attrib-
9 utable greenhouse gas emissions, in combination, in excess
10 of its allowable emissions level. A covered entity’s allowable
11 emissions level for each calendar year is the number of emis-
12 sion allowances (or credits or other allowances as provided
13 in subsection (d)) it holds as of 12:01 a.m. on April 1 (or
14 a later date established by the Administrator under sub-
15 section (j)) of the following calendar year.

16 “(b) *METHODS OF DEMONSTRATING COMPLIANCE.*—
17 Except as otherwise provided in this section, the owner or
18 operator of a covered entity shall not be considered to be
19 in compliance with the prohibition in subsection (a) unless,
20 as of 12:01 a.m. on April 1 (or a later date established by
21 the Administrator under subsection (j)) of each calendar
22 year starting in 2013, the owner or operator holds a quan-
23 tity of emission allowances (or credits or other allowances
24 as provided in subsection (d)) at least as great as the quan-
25 tity calculated as follows:

1 “(1) *ELECTRICITY SOURCES.*—*For a covered en-*
2 *tity described in section 700(13)(A), 1 emission allow-*
3 *ance for each ton of carbon dioxide equivalent of*
4 *greenhouse gas that such covered entity emitted in the*
5 *previous calendar year, excluding emissions resulting*
6 *from the combustion of—*

7 “(A) *petroleum-based or coal-based liquid*
8 *fuel;*

9 “(B) *natural gas liquid;*

10 “(C) *renewable biomass or gas derived from*
11 *renewable biomass; or*

12 “(D) *petroleum coke or gas derived from pe-*
13 *troleum coke.*

14 “(2) *FUEL PRODUCERS AND IMPORTERS.*—*For a*
15 *covered entity described in section 700(13)(B), 1*
16 *emission allowance for each ton of carbon dioxide*
17 *equivalent of greenhouse gas that would be emitted*
18 *from the combustion of any petroleum-based or coal-*
19 *based liquid fuel, petroleum coke, or natural gas liq-*
20 *uid, produced or imported by such covered entity dur-*
21 *ing the previous calendar year for sale or distribution*
22 *in interstate commerce, assuming no capture and se-*
23 *questration of any greenhouse gas emissions.*

24 “(3) *INDUSTRIAL GAS PRODUCERS AND IMPORT-*
25 *ERS.*—*For a covered entity described in section*

1 700(13)(C), 1 emission allowance for each ton of car-
2 bon dioxide equivalent of fossil fuel-based carbon diox-
3 ide, nitrous oxide, or any other fluorinated gas that
4 is a greenhouse gas (except for nitrogen trifluoride),
5 or any combination thereof, produced or imported by
6 such covered entity during the previous calendar year
7 for sale or distribution in interstate commerce or re-
8 leased as fugitive emissions in the production of
9 fluorinated gas.

10 “(4) NITROGEN TRIFLUORIDE SOURCES.—For a
11 covered entity described in section 700(13)(D), 1
12 emission allowance for each ton of carbon dioxide
13 equivalent of nitrogen trifluoride that such covered
14 entity emitted in the previous calendar year.

15 “(5) GEOLOGICAL SEQUESTRATION SITES.—For
16 a covered entity described in section 700(13)(E), 1
17 emission allowance for each ton of carbon dioxide
18 equivalent of greenhouse gas that such covered entity
19 emitted in the previous calendar year.

20 “(6) INDUSTRIAL STATIONARY SOURCES.—For a
21 covered entity described in section 700(13)(F), (G), or
22 (H), 1 emission allowance for each ton of carbon di-
23 oxide equivalent of greenhouse gas that such covered
24 entity emitted in the previous calendar year, exclud-
25 ing emissions resulting from—

1 “(A) the combustion of petroleum-based or
2 coal-based liquid fuel;

3 “(B) the combustion of natural gas liquid;

4 “(C) the combustion of renewable biomass
5 or gas derived from renewable biomass;

6 “(D) the combustion of petroleum coke or
7 gas derived from petroleum coke; or

8 “(E) the use of any fluorinated gas that is
9 a greenhouse gas purchased for use at that cov-
10 ered entity, except for nitrogen trifluoride.

11 “(7) *INDUSTRIAL FOSSIL FUEL-FIRED COMBUS-*
12 *TION DEVICES.*—For a covered entity described in sec-
13 tion 700(13)(I), 1 emission allowance for each ton of
14 carbon dioxide equivalent of greenhouse gas that the
15 devices emitted in the previous calendar year, exclud-
16 ing emissions resulting from the combustion of—

17 “(A) petroleum-based or coal-based liquid
18 fuel;

19 “(B) natural gas liquid;

20 “(C) renewable biomass or gas derived from
21 renewable biomass; or

22 “(D) petroleum coke or gas derived from pe-
23 troleum coke.

24 “(8) *NATURAL GAS LOCAL DISTRIBUTION COMPA-*
25 *NIES.*—For a covered entity described in section

1 700(13)(J), 1 emission allowance for each ton of car-
2 bon dioxide equivalent of greenhouse gas that would
3 be emitted from the combustion of the natural gas,
4 and any other gas meeting the specifications for com-
5 mingling with natural gas for purposes of delivery,
6 that such entity delivered during the previous cal-
7 endar year to customers that are not covered entities,
8 assuming no capture and sequestration of that green-
9 house gas.

10 “(9) *ALGAE-BASED FUELS.*—Where carbon diox-
11 ide (or another greenhouse gas) is used as an input
12 in the production of algae-based fuels, the Adminis-
13 trator shall ensure that allowances are required to be
14 held either for the carbon dioxide used to grow the
15 algae or for the carbon dioxide emitted from combus-
16 tion of the fuel produced from such algae, but not for
17 both.

18 “(10) *FUGITIVE EMISSIONS.*—The greenhouse gas
19 emissions to which paragraphs (1), (4), (6), and (7)
20 apply shall not include fugitive emissions of green-
21 house gas, except to the extent the Administrator de-
22 termines that data on the carbon dioxide equivalent
23 value of greenhouse gas in the fugitive emissions can
24 be provided with sufficient precision, reliability, ac-
25 cessibility, and timeliness to ensure the integrity of

1 *emission allowances, the allowance tracking system,*
2 *and the cap on emissions.*

3 “(11) *EXPORT EXEMPTION.*—*This section shall*
4 *not apply to any petroleum-based or coal-based liquid*
5 *fuel, petroleum coke, natural gas liquid, fossil fuel-*
6 *based carbon dioxide, nitrous oxide, or fluorinated gas*
7 *that is exported for sale or use.*

8 “(12) *NATURAL GAS LIQUIDS.*—*Notwithstanding*
9 *subsection (a), if the owner or operator of a covered*
10 *entity described in section 700(13)(B) that produces*
11 *natural gas liquids does not take ownership of the liq-*
12 *uids, and is not responsible for the distribution or use*
13 *of the liquids in commerce, the owner of the liquids*
14 *shall be responsible for compliance with this section,*
15 *section 723, and other relevant sections of this title*
16 *with respect to such liquids. In the regulations pro-*
17 *mulgated under section 721, the Administrator shall*
18 *include such provisions with respect to such liquids as*
19 *the Administrator determines are appropriate to de-*
20 *termine and ensure compliance, and to penalize non-*
21 *compliance. In such a case, the owner of the covered*
22 *entity shall provide to the Administrator, in a man-*
23 *ner to be determined by the Administrator, informa-*
24 *tion regarding the quantity and ownership of liquids*
25 *produced at the covered entity.*

1 “(13) *APPLICATION OF MULTIPLE PARAGRAPHS.*—*For a covered entity to which more than 1*
2 *of paragraphs (1) through (8) apply, all applicable*
3 *paragraphs shall apply, except that not more than 1*
4 *emission allowance shall be required for the same*
5 *emission.*

6 “(c) *PHASE-IN OF PROHIBITION.*—

7 “(1) *INDUSTRIAL STATIONARY SOURCES.*—*The*
8 *prohibition under subsection (a) shall first apply to*
9 *a covered entity described in section 700(13)(D), (F),*
10 *(G), (H), or (I), with respect to emissions occurring*
11 *during calendar year 2014.*

12 “(2) *NATURAL GAS LOCAL DISTRIBUTION COMPANIES.*—*The prohibition under subsection (a) shall*
13 *first apply to a covered entity described in section*
14 *700(13)(J) with respect to deliveries occurring during*
15 *calendar year 2016.*

16 “(d) *ADDITIONAL METHODS.*—*In addition to using the*
17 *method of compliance described in subsection (b), a covered*
18 *entity may do the following:*

19 “(1) *OFFSET CREDITS.*—

20 “(A) *IN GENERAL.*—*Covered entities collec-*
21 *tively may, in accordance with this paragraph,*
22 *use offset credits to demonstrate compliance for*
23 *up to a maximum of 2 billion tons of greenhouse*
24 *gas emissions.*

1 gas emissions annually. The ability to dem-
2 onstrate compliance with offset credits shall be
3 divided pro rata among covered entities by al-
4 lowing each covered entity to satisfy a percentage
5 of the number of allowances required to be held
6 under subsection (b) to demonstrate compliance
7 by holding 1 domestic offset credit or 1.25 inter-
8 national offset credits in lieu of an emission al-
9 lowance, except as provided in subparagraph
10 (D).

11 “(B) *APPLICABLE PERCENTAGE.*—The per-
12 centage referred to in subparagraph (A) for a
13 given calendar year shall be determined by di-
14 viding 2 billion by the sum of 2 billion plus the
15 number of emission allowances established under
16 section 721(a) for the previous year, and multi-
17 plying that number by 100. Not more than one
18 half of the applicable percentage under this
19 paragraph may be used by holding domestic off-
20 set credits, and not more than one half of the ap-
21 plicable percentage under this paragraph may be
22 used by holding international offset credits, ex-
23 cept as provided in subparagraph (C).

24 “(C) *MODIFIED PERCENTAGES.*—If the Ad-
25 ministrator determines that domestic offset cred-

1 *its available for use in demonstrating compli-*
2 *ance in any calendar year at domestic offset*
3 *prices generally equal to or less than allowance*
4 *prices, are likely to offset less than 0.9 billion*
5 *tons of greenhouse gas emissions (measured in*
6 *tons of carbon dioxide equivalents), the Adminis-*
7 *trator shall increase the percent of emissions that*
8 *can be offset through the use of international off-*
9 *set credits (and decrease the percent of emissions*
10 *that can be allowed through the use of domestic*
11 *offset credits by the same amount) to reflect the*
12 *amount that 1.0 billion exceeds the number of*
13 *domestic offset credits the Administrator deter-*
14 *mines is available for that year, up to a max-*
15 *imum of 0.5 billion tons of greenhouse gas emis-*
16 *sions.*

17 *“(D) INTERNATIONAL OFFSET CREDITS.—*
18 *Notwithstanding subparagraph (A), to dem-*
19 *onstrate compliance prior to calendar year 2018,*
20 *a covered entity may use 1 international offset*
21 *credit in lieu of an emission allowance up to the*
22 *amount permitted under this paragraph.*

23 *“(E) PRESIDENT’S RECOMMENDATION.—The*
24 *President may make a recommendation to Con-*
25 *gress as to whether the number 2 billion specified*

1 in subparagraphs (A) and (B) should be in-
2 creased or decreased.

3 “(2) *INTERNATIONAL EMISSION ALLOWANCES.*—
4 *To demonstrate compliance, a covered entity may*
5 *hold an international emission allowance in lieu of*
6 *an emission allowance, except as modified under sec-*
7 *tion 728(d).*

8 “(3) *COMPENSATORY ALLOWANCES.*—*To dem-*
9 *onstrate compliance, a covered entity may hold a*
10 *compensatory allowance obtained under section 721(f)*
11 *in lieu of an emission allowance.*

12 “(e) *RETIREMENT OF ALLOWANCES AND CREDITS.*—
13 *As soon as practicable after a deadline established for cov-*
14 *ered entities to demonstrate compliance with this title, the*
15 *Administrator shall retire the quantity of allowances or*
16 *credits required to be held under this title.*

17 “(f) *ALTERNATIVE METRICS.*—*For categories of cov-*
18 *ered entities described in subparagraph (B), (C), (D), (G),*
19 *(H), or (I) of section 700(13), the Administrator may, by*
20 *rule, establish an applicability threshold for inclusion*
21 *under those subparagraphs using an alternative metric and*
22 *level, provided that such metric and level are easier to ad-*
23 *minister and cover the same size and type of sources as*
24 *the threshold defined in such subparagraphs.*

1 “(g) *THRESHOLD REVIEW.*—For each category of cov-
2 ered entities described in subparagraph (B), (C), (D), (G),
3 (H), or (I) of section 700(13), the Administrator shall, in
4 2020 and once every 8 years thereafter, review the carbon
5 dioxide equivalent emission thresholds that are used to de-
6 fine covered entities. After consideration of—

7 “(1) emissions from covered entities in each such
8 category, and from other entities of the same type that
9 emit less than the threshold amount for the category
10 (including emission sources that commence operation
11 after the date of enactment of this title that are not
12 covered entities); and

13 “(2) whether greater greenhouse gas emission re-
14 ductions can be cost-effectively achieved by lowering
15 the applicable threshold,

16 the Administrator may by rule lower such threshold to not
17 less than 10,000 tons of carbon dioxide equivalent emis-
18 sions. In determining the cost effectiveness of potential re-
19 ductions from lowering the threshold for covered entities, the
20 Administrator shall consider alternative regulatory green-
21 house gas programs, including setting standards under
22 other titles of this Act.

23 “(h) *DESIGNATED REPRESENTATIVES.*—The regula-
24 tions promulgated under section 721(h) shall require that
25 each covered entity, and each entity holding allowances or

1 *credits or receiving allowances or credits from the Adminis-*
2 *trator under this title, select a designated representative.*

3 “(i) *EDUCATION AND OUTREACH.*—

4 “(1) *IN GENERAL.*—*The Administrator shall es-*
5 *tablish and carry out a program of education and*
6 *outreach to assist covered entities, especially entities*
7 *having little experience with environmental regu-*
8 *latory requirements similar or comparable to those*
9 *under this title, in preparing to meet the compliance*
10 *obligations of this title. Such program shall include*
11 *education with respect to using markets to effectively*
12 *achieve such compliance.*

13 “(2) *FAILURE TO RECEIVE INFORMATION.*—*A*
14 *failure to receive information or assistance under this*
15 *subsection may not be used as a defense against an*
16 *allegation of any violation of this title.*

17 “(j) *ADJUSTMENT OF DEADLINE.*—*The Administrator*
18 *may, by rule, establish a deadline for demonstrating com-*
19 *pliance, for a calendar year, later than the date provided*
20 *in subsection (a), as necessary to ensure the availability*
21 *of emissions data, but in no event shall the deadline be later*
22 *than June 1.*

23 “(k) *NOTICE REQUIREMENT FOR COVERED ENTITIES*
24 *RECEIVING NATURAL GAS FROM NATURAL GAS LOCAL*
25 *DISTRIBUTION COMPANIES.*—*The owner or operator of a*

1 covered entity that takes delivery of natural gas from a nat-
2 ural gas local distribution company shall, not later than
3 September 1 of each calendar year, notify such natural gas
4 local distribution company in writing that such entity will
5 qualify as a covered entity under this title for that calendar
6 year.

7 “(l) *COMPLIANCE OBLIGATION.*—For purposes of this
8 title, the year of a compliance obligation is the year in
9 which compliance is determined, not the year in which the
10 greenhouse gas emissions occur or the covered entity has at-
11 tributable greenhouse gas emissions.

12 **“SEC. 723. PENALTY FOR NONCOMPLIANCE.**

13 “(a) *ENFORCEMENT.*—A violation of any prohibition
14 of, requirement of, or regulation promulgated pursuant to
15 this title shall be a violation of this Act. It shall be a viola-
16 tion of this Act for a covered entity to emit greenhouse gases,
17 and have attributable greenhouse gas emissions, in com-
18 bination, in excess of its allowable emissions level as pro-
19 vided in section 722(a). Each ton of carbon dioxide equiva-
20 lent for which a covered entity fails to demonstrate compli-
21 ance under section 722(b) shall be a separate violation.

22 “(b) *EXCESS EMISSIONS PENALTY.*—

23 “(1) *IN GENERAL.*—The owner or operator of
24 any covered entity that fails for any year to comply,
25 on the deadline described in section 722(a) or (j),

1 shall be liable for payment to the Administrator of an
2 excess emissions penalty in the amount described in
3 paragraph (2).

4 “(2) AMOUNT.—The amount of an excess emis-
5 sions penalty required to be paid under paragraph
6 (1) shall be equal to the product obtained by multi-
7 plying—

8 “(A) the tons of carbon dioxide equivalent of
9 greenhouse gas emissions or attributable green-
10 house gas emissions for which the owner or oper-
11 ator of a covered entity failed to comply under
12 section 722(b) on the deadline; by

13 “(B) twice the fair market value of emission
14 allowances established for emissions occurring in
15 the calendar year for which the emission allow-
16 ances were due.

17 “(3) TIMING.—An excess emissions penalty re-
18 quired under this subsection shall be immediately due
19 and payable to the Administrator, without demand,
20 in accordance with regulations promulgated by the
21 Administrator, which shall be issued not later than 2
22 years after the date of enactment of this title.

23 “(4) NO EFFECT ON LIABILITY.—An excess emis-
24 sions penalty due and payable by the owners or oper-
25 ators of a covered entity under this subsection shall

1 *not diminish the liability of the owners or operators*
2 *for any fine, penalty, or assessment against the own-*
3 *ers or operators for the same violation under any*
4 *other provision of this Act or any other law.*

5 *“(c) EXCESS EMISSIONS ALLOWANCES.—The owner or*
6 *operator of a covered entity that fails for any year to com-*
7 *ply on the deadline described in section 722(a) or (j) shall*
8 *be liable to offset the covered entity’s excess combination of*
9 *greenhouse gases emitted and attributable greenhouse gas*
10 *emissions by an equal quantity of emission allowances dur-*
11 *ing the following calendar year, or such longer period as*
12 *the Administrator may prescribe. During the year in which*
13 *the covered entity failed to comply, or any year thereafter,*
14 *the Administrator may deduct the emission allowances re-*
15 *quired under this subsection to offset the covered entity’s*
16 *excess actual or attributable emissions.*

17 **“SEC. 724. TRADING.**

18 *“(a) PERMITTED TRANSACTIONS.—Except as other-*
19 *wise provided in this title, the lawful holder of an emission*
20 *allowance, compensatory allowance, or offset credit may,*
21 *without restriction, sell, exchange, transfer, hold for compli-*
22 *ance in accordance with section 722, or request that the Ad-*
23 *ministrator retire the emission allowance, compensatory al-*
24 *lowance, or offset credit.*

1 “(b) *NO RESTRICTION ON TRANSACTIONS.*—*The privi-*
2 *lege of purchasing, holding, selling, exchanging, transfer-*
3 *ring, and requesting retirement of emission allowances,*
4 *compensatory allowances, or offset credits shall not be re-*
5 *stricted to the owners and operators of covered entities, ex-*
6 *cept as otherwise provided in this title.*

7 “(c) *EFFECTIVENESS OF ALLOWANCE TRANSFERS.*—
8 *No transfer of an allowance or offset credit shall be effective*
9 *for purposes of this title until a certification of the transfer,*
10 *signed by the designated representative of the transferor, is*
11 *received and recorded by the Administrator in accordance*
12 *with regulations promulgated under section 721(h).*

13 “(d) *ALLOWANCE TRACKING SYSTEM.*—*The regula-*
14 *tions promulgated under section 721(h) shall include a sys-*
15 *tem for issuing, recording, holding, and tracking allowances*
16 *and offset credits that shall specify all necessary procedures*
17 *and requirements for an orderly and competitive func-*
18 *tioning of the allowance and offset credit markets. Such reg-*
19 *ulations shall provide for appropriate publication of the in-*
20 *formation in the system on the Internet.*

21 “**SEC. 725. BANKING AND BORROWING.**

22 “(a) *BANKING.*—*An emission allowance may be used*
23 *to comply with section 722 or section 723 for emissions*
24 *in—*

25 “(1) *the vintage year for the allowance; or*

1 “(2) *any calendar year subsequent to the vintage*
2 *year for the allowance.*

3 “(b) *EXPIRATION.—*

4 “(1) *REGULATIONS.—The Administrator may es-*
5 *tablish by regulation criteria and procedures for de-*
6 *termining whether, and for implementing a deter-*
7 *mination that, the expiration of an allowance or cred-*
8 *it established or issued by the Administrator under*
9 *this title, or expiration of the ability to use an inter-*
10 *national emission allowance to comply with section*
11 *722, is necessary to ensure the authenticity and integ-*
12 *egrity of allowances or credits or the allowance tracking*
13 *system.*

14 “(2) *GENERAL RULE.—An allowance or credit*
15 *established or issued by the Administrator under this*
16 *title shall not expire unless—*

17 “(A) *it is retired by the Administrator as*
18 *required under this title; or*

19 “(B) *it is determined to expire or to have*
20 *expired by a specific date by the Administrator*
21 *in accordance with regulations promulgated*
22 *under paragraph (1).*

23 “(3) *INTERNATIONAL EMISSION ALLOWANCES.—*
24 *The ability to use an international emission allow-*

1 *ance to comply with section 722 shall not expire un-*
2 *less—*

3 *“(A) the allowance is retired by the Admin-*
4 *istrator as required by this title; or*

5 *“(B) the ability to use such allowance to*
6 *meet such compliance obligation requirements is*
7 *determined to expire or to have expired by a spe-*
8 *cific date by the Administrator in accordance*
9 *with regulations promulgated under paragraph*
10 *(1).*

11 *“(c) BORROWING FUTURE VINTAGE YEAR ALLOW-*
12 *ANCES.—*

13 *“(1) BORROWING WITHOUT INTEREST.—In addi-*
14 *tion to the uses described in subsection (a), an emis-*
15 *sion allowance may be used to comply with section*
16 *722(a) or section 723 for emissions, production, im-*
17 *portation, manufacture, or deliveries in the calendar*
18 *year immediately preceding the vintage year for the*
19 *allowance.*

20 *“(2) BORROWING WITH INTEREST.—*

21 *“(A) IN GENERAL.—A covered entity may*
22 *demonstrate compliance under subsection (b) in*
23 *a specific calendar year for up to 15 percent of*
24 *its emissions by holding emission allowances*

1 with a vintage year 1 to 5 years later than that
2 calendar year.

3 “(B) *LIMITATIONS.*—An emission allowance
4 borrowed pursuant to this paragraph shall be an
5 emission allowance that is established by the Ad-
6 ministrators for a specific future calendar year
7 under section 721(a) and that is held by the bor-
8 rower.

9 “(C) *PREPAYMENT OF INTEREST.*—For each
10 emission allowance that an owner or operator of
11 a covered entity borrows pursuant to this para-
12 graph, such owner or operator shall, at the time
13 it borrows the allowance, hold for retirement by
14 the Administrator a quantity of emission allow-
15 ances that is equal to the product obtained by
16 multiplying—

17 “(i) 0.08; by

18 “(ii) the number of years between the
19 calendar year in which the allowance is
20 being used to satisfy a compliance obliga-
21 tion and the vintage year of the allowance.

22 **“SEC. 726. STRATEGIC RESERVE.**

23 “(a) *STRATEGIC RESERVE AUCTIONS.*—

24 “(1) *IN GENERAL.*—Once each quarter of each
25 calendar year for which allowances are established

1 *under section 721(a), the Administrator shall auction*
2 *strategic reserve allowances.*

3 “(2) *RESTRICTION TO COVERED ENTITIES.—In*
4 *each auction conducted under paragraph (1), only*
5 *covered entities that the Administrator expects will be*
6 *required to comply with section 722 in the following*
7 *calendar year shall be eligible to make purchases.*

8 “(b) *POOL OF EMISSION ALLOWANCES FOR STRATEGIC*
9 *RESERVE AUCTIONS.—*

10 “(1) *FILLING THE STRATEGIC RESERVE INI-*
11 *TIALLY.—*

12 “(A) *IN GENERAL.—The Administrator*
13 *shall, not later than 2 years after the date of en-*
14 *actment of this title, establish a strategic reserve*
15 *account, and shall place in that account an*
16 *amount of emission allowances established under*
17 *section 721(a) for each calendar year from 2012*
18 *through 2050 in the amounts specified in sub-*
19 *paragraph (B) of this paragraph.*

20 “(B) *AMOUNT.—The amount referred to in*
21 *subparagraph (A) shall be—*

22 “(i) *for each of calendar years 2012*
23 *through 2019, 1 percent of the quantity of*
24 *emission allowances established for that*
25 *year pursuant to section 721(e)(1);*

1 “(ii) for each of calendar years 2020
2 through 2029, 2 percent of the quantity of
3 emission allowances established for that
4 year pursuant to section 721(e)(1); and

5 “(iii) for each of calendar years 2030
6 through 2050, 3 percent of the quantity of
7 emission allowances established for that
8 year pursuant to section 721(e)(1).

9 “(C) *EFFECT ON OTHER PROVISIONS.*—Any
10 provision in this title (except for subparagraph
11 (B) of this paragraph) that refers to a quantity
12 or percentage of the emission allowances estab-
13 lished for a calendar year under section 721(a)
14 shall be considered to refer to the amount of
15 emission allowances as determined pursuant to
16 section 721(e), less any emission allowances es-
17 tablished for that year that are placed in the
18 strategic reserve account under this paragraph.

19 “(2) *SUPPLEMENTING THE STRATEGIC RE-*
20 *SERVE.*—The Administrator shall also—

21 “(A) at the end of each calendar year,
22 transfer to the strategic reserve account each
23 emission allowance that was offered for sale but
24 not sold at any auction conducted under section
25 791; and

1 “(B) transfer emission allowances estab-
2 lished under subsection (g) from auction pro-
3 ceeds, and deposit them into the strategic reserve,
4 to the extent necessary to maintain the reserve at
5 its original size.

6 “(c) *MINIMUM STRATEGIC RESERVE AUCTION*
7 *PRICE.*—

8 “(1) *IN GENERAL.*—At each strategic reserve auc-
9 tion, the Administrator shall offer emission allow-
10 ances for sale beginning at a minimum price per
11 emission allowance, which shall be known as the
12 ‘minimum strategic reserve auction price’.

13 “(2) *INITIAL MINIMUM STRATEGIC RESERVE AUC-*
14 *TION PRICES.*—The minimum strategic reserve auc-
15 tion price shall be \$28 (in constant 2009 dollars) for
16 the strategic reserve auctions held in 2012. For the
17 strategic reserve auctions held in 2013 and 2014, the
18 minimum strategic reserve auction price shall be the
19 strategic reserve auction price for the previous year
20 increased by 5 percent plus the rate of inflation (as
21 measured by the Consumer Price Index for All Urban
22 Consumers).

23 “(3) *MINIMUM STRATEGIC RESERVE AUCTION*
24 *PRICE IN SUBSEQUENT YEARS.*—For each strategic re-
25 serve auction held in 2015 and each year thereafter,

1 *the minimum strategic reserve auction price shall be*
2 *60 percent above a rolling 36-month average of the*
3 *daily closing price for that year’s emission allowance*
4 *vintage as reported on registered carbon trading fa-*
5 *cilities, calculated using constant dollars.*

6 *“(d) QUANTITY OF EMISSION ALLOWANCES RELEASED*
7 *FROM THE STRATEGIC RESERVE.—*

8 *“(1) INITIAL LIMITS.—For each of calendar*
9 *years 2012 through 2016, the annual limit on the*
10 *number of emission allowances from the strategic re-*
11 *serve account that may be auctioned is an amount*
12 *equal to 5 percent of the emission allowances estab-*
13 *lished for that calendar year under section 721(a).*
14 *This limit does not apply to international offset cred-*
15 *its sold on consignment pursuant to subsection (h).*

16 *“(2) LIMITS IN SUBSEQUENT YEARS.—For cal-*
17 *endar year 2017 and each year thereafter, the annual*
18 *limit on the number of emission allowances from the*
19 *strategic reserve account that may be auctioned is an*
20 *amount equal to 10 percent of the emission allowances*
21 *established for that calendar year under section*
22 *721(a). This limit does not apply to international off-*
23 *set credits sold on consignment pursuant to subsection*
24 *(h).*

1 “(3) *ALLOCATION OF LIMITATION.*—One-fourth of
2 each year’s annual strategic reserve auction limit
3 under this subsection shall be made available for auc-
4 tion in each quarter. Any allowances from the stra-
5 tegic reserve account that are made available for sale
6 in a quarterly auction and not sold shall be rolled
7 over and added to the quantity available for sale in
8 the following quarter, except that allowances not sold
9 at auction in the fourth quarter of a year shall not
10 be rolled over to the following calendar year’s auc-
11 tions, but shall be returned to the strategic reserve ac-
12 count.

13 “(e) *PURCHASE LIMIT.*—

14 “(1) *IN GENERAL.*—Except as provided in para-
15 graph (2) or (3), the annual number of emission al-
16 lowances that a covered entity may purchase at the
17 strategic reserve auctions in each calendar year shall
18 not exceed 20 percent of the covered entity’s emissions
19 during the most recent year for which allowances or
20 credits were retired under section 722.

21 “(2) *2012 LIMIT.*—For calendar year 2012, the
22 maximum aggregate number of emission allowances
23 that a covered entity may purchase from that year’s
24 strategic reserve auctions shall be 20 percent of the
25 covered entity’s greenhouse gas emissions that the cov-

1 *ered entity reported to the registry established under*
2 *section 713 for 2011 and that would be subject to sec-*
3 *tion 722(a) if occurring in later calendar years.*

4 *“(3) NEW ENTRANTS.—The Administrator shall,*
5 *by regulation, establish a separate purchase limit ap-*
6 *plicable to entities that expect to become a covered en-*
7 *tity in the year of the auction, permitting them to*
8 *purchase emission allowances at the strategic reserve*
9 *auctions in their first calendar year of operation in*
10 *an amount of at least 20 percent of their expected*
11 *combined emissions and attributable greenhouse gas*
12 *emissions for that year.*

13 *“(f) DELEGATION OR CONTRACT.—Pursuant to regula-*
14 *tions under this section, the Administrator may, by delega-*
15 *tion or contract, provide for the conduct of strategic reserve*
16 *auctions under the Administrator’s supervision by other de-*
17 *partments or agencies of the Federal Government or by non-*
18 *governmental agencies, groups, or organizations.*

19 *“(g) USE OF AUCTION PROCEEDS.—*

20 *“(1) DEPOSIT IN STRATEGIC RESERVE FUND.—*
21 *The proceeds from strategic reserve auctions shall be*
22 *placed in the Strategic Reserve Fund established*
23 *under section 793(1), and shall be available without*
24 *further appropriation or fiscal year limitation for the*
25 *purposes described in this subsection.*

1 “(2) *INTERNATIONAL OFFSET CREDITS FOR RE-*
2 *DUCED DEFORESTATION.*—*The Administrator shall*
3 *use the proceeds from each strategic reserve auction to*
4 *purchase international offset credits issued for re-*
5 *duced deforestation activities pursuant to section*
6 *743(e). The Administrator shall retire those inter-*
7 *national offset credits and establish a number of emis-*
8 *sion allowances equal to 80 percent of the number of*
9 *international offset credits so retired. Emission allow-*
10 *ances established under this paragraph shall be in ad-*
11 *dition to those established under section 721(a).*

12 “(3) *EMISSION ALLOWANCES.*—*The Adminis-*
13 *trator shall deposit emission allowances established*
14 *under paragraph (2) in the strategic reserve, except*
15 *that, with respect to any such emission allowances in*
16 *excess of the amount necessary to fill the strategic re-*
17 *serve to its original size, the Administrator shall—*

18 “(A) *except as provided in subparagraph*
19 *(B), assign a vintage year to the emission allow-*
20 *ance, which shall be no earlier than the year in*
21 *which the allowance is established under para-*
22 *graph (2) and shall treat such allowances as ones*
23 *that are not designated for distribution or auc-*
24 *tion for purposes of section 782(q) and (r); and*

1 “(B) to the extent any such allowances can-
2 not be assigned a vintage year because of the
3 limitation in paragraph (4), retire the allow-
4 ances.

5 “(4) LIMITATION.—In no case may the Adminis-
6 trator assign under paragraph (3)(A) more emission
7 allowances to a vintage year than the number of
8 emission allowances from that vintage year that were
9 placed in the strategic reserve account under sub-
10 section (b)(1).

11 “(h) AVAILABILITY OF INTERNATIONAL OFFSET CRED-
12 ITS FOR AUCTION.—

13 “(1) IN GENERAL.—The regulations promulgated
14 under section 721(h) shall allow any entity holding
15 international offset credits from reduced deforestation
16 issued under section 743(e) to request that the Admin-
17 istrator include such offset credits in an upcoming
18 strategic reserve auction. The regulations shall pro-
19 vide that—

20 “(A) such international offset credits will be
21 used to fill bid orders only after the supply of
22 strategic reserve allowances available for sale at
23 that auction has been depleted;

24 “(B) international offset credits may be sold
25 at a strategic reserve auction under this sub-

1 *section only if the Administrator determines that*
2 *it is highly likely that covered entities will, to*
3 *cover emissions occurring in the year the auction*
4 *is held, use offset credits to demonstrate compli-*
5 *ance under section 722 for emissions equal to or*
6 *greater than 80 percent of 2 billion tons of car-*
7 *bon dioxide equivalent;*

8 “(C) upon sale of such international offset
9 credits, the Administrator shall retire those
10 international offset credits, and establish and
11 provide to the purchasers a number of emission
12 allowances equal to 80 percent of the number of
13 international offset credits so retired, which al-
14 lowances shall be in addition to those established
15 under section 721(a); and

16 “(D) for international offset credits sold
17 pursuant to this subsection, the proceeds for the
18 entity that offered the international offset credits
19 for sale shall be the lesser of—

20 “(i) the average daily closing price for
21 international offset credits sold on registered
22 exchanges (or if such price is unavailable,
23 the average price as determined by the Ad-
24 ministrator) during the six months prior to
25 the strategic reserve auction at which they

1 *were auctioned, with the remaining funds*
2 *collected upon the sale of the international*
3 *offset credits deposited in the Treasury; and*

4 *“(ii) the amount received for the inter-*
5 *national offset credits at the auction.*

6 *“(2) PROCEEDS.—For international offset credits*
7 *sold pursuant to this subsection, notwithstanding sec-*
8 *tion 3302 of title 31, United States Code, or any*
9 *other provision of law, within 90 days of receipt, the*
10 *United States shall transfer the proceeds from the*
11 *auction, as defined in paragraph (1)(D), to the entity*
12 *that offered the international offset credits for sale. No*
13 *funds transferred from a purchaser to a seller of*
14 *international offset credits under this paragraph shall*
15 *be held by any officer or employee of the United*
16 *States or treated for any purpose as public monies.*

17 *“(3) PRICING.—When the Administrator acts*
18 *under this subsection as the agent of an entity in pos-*
19 *session of international offset credits, the Adminis-*
20 *trator is not obligated to obtain the highest price pos-*
21 *sible for the international offset credits, and instead*
22 *shall auction such international offset credits in the*
23 *same manner and pursuant to the same rules (except*
24 *as modified in paragraph (1)) as set forth for auc-*
25 *tioning strategic reserve allowances. Entities request-*

1 *ing that such international offset credits be offered for*
2 *sale at a strategic reserve auction may not set a min-*
3 *imum reserve price for their international offset cred-*
4 *its that is different than the minimum strategic re-*
5 *serve auction price set pursuant to subsection (c).*

6 “(i) *INITIAL REGULATIONS.*—*Not later than 24*
7 *months after the date of enactment of this title, the Admin-*
8 *istrator shall promulgate regulations, in consultation with*
9 *other appropriate agencies, governing the auction of allow-*
10 *ances under this section. Such regulations shall include the*
11 *following requirements:*

12 “(1) *FREQUENCY; FIRST AUCTION.*—*Auctions*
13 *shall be held four times per year at regular intervals,*
14 *with the first auction to be held no later than March*
15 *31, 2012.*

16 “(2) *AUCTION FORMAT.*—*Auctions shall follow a*
17 *single-round, sealed-bid, uniform price format.*

18 “(3) *PARTICIPATION; FINANCIAL ASSURANCE.*—
19 *Auctions shall be open to any covered entity eligible*
20 *to purchase emission allowances at the auction under*
21 *subsection (a)(2), except that the Administrator may*
22 *establish financial assurance requirements to ensure*
23 *that auction participants can and will perform on*
24 *their bids.*

1 “(4) *DISCLOSURE OF BENEFICIAL OWNERSHIP.*—
2 *Each bidder in an auction shall be required to dis-*
3 *close the person or entity sponsoring or benefitting*
4 *from the bidder’s participation in the auction if such*
5 *person or entity is, in whole or in part, other than*
6 *the bidder.*

7 “(5) *PURCHASE LIMITS.*—*No person may, di-*
8 *rectly or in concert with another participant, pur-*
9 *chase more than 20 percent of the allowances offered*
10 *for sale at any quarterly auction.*

11 “(6) *PUBLICATION OF INFORMATION.*—*After the*
12 *auction, the Administrator shall, in a timely fashion,*
13 *publish the identities of winning bidders, the quantity*
14 *of allowances obtained by each winning bidder, and*
15 *the auction clearing price.*

16 “(7) *OTHER REQUIREMENTS.*—*The Adminis-*
17 *trator may include in the regulations such other re-*
18 *quirements or provisions as the Administrator, in*
19 *consultation with other agencies as appropriate, con-*
20 *siders appropriate to promote effective, efficient,*
21 *transparent, and fair administration of auctions*
22 *under this section.*

23 “(j) *REVISION OF REGULATIONS.*—*The Administrator*
24 *may, at any time, in consultation with other agencies as*
25 *appropriate, revise the initial regulations promulgated*

1 *under subsection (i). Such revised regulations need not meet*
2 *the requirements identified in subsection (i) if the Adminis-*
3 *trator determines that an alternative auction design would*
4 *be more effective, taking into account factors including costs*
5 *of administration, transparency, fairness, and risks of col-*
6 *lusion or manipulation. In determining whether and how*
7 *to revise the initial regulations under this subsection, the*
8 *Administrator shall not consider maximization of revenues*
9 *to the Federal Government.*

10 **“SEC. 727. PERMITS.**

11 “(a) *PERMIT PROGRAM.—For stationary sources sub-*
12 *ject to title V of this Act, that are covered entities, the provi-*
13 *sions of this title shall be implemented by permits issued*
14 *to such covered entities (and enforced) in accordance with*
15 *the provisions of title V, as modified by this title. Any such*
16 *permit issued by the Administrator, or by a State with an*
17 *approved permit program, shall require the owner or oper-*
18 *ator of a covered entity to hold emission allowances or offset*
19 *credits at least equal to the total annual amount of carbon*
20 *dioxide equivalents for its combined emissions and attrib-*
21 *utable greenhouse gas emissions to which section 722 ap-*
22 *plies. No such permit shall be issued that is inconsistent*
23 *with the requirements of this title, and title V as applicable.*
24 *Nothing in this section regarding compliance plans or in*
25 *title V shall be construed as affecting allowances or offset*

1 *credits. Submission of a statement by the owner or operator,*
2 *or the designated representative of the owners and opera-*
3 *tors, of a covered entity that the owners and operators will*
4 *hold emission allowances or offset credits for the entity's*
5 *combined emissions and attributable greenhouse gas emis-*
6 *sions to which section 722 applies shall be deemed to meet*
7 *the proposed and approved planning requirements of title*
8 *V. Recordation by the Administrator of transfers of emis-*
9 *sion allowances shall amend automatically all applicable*
10 *proposed or approved permit applications, compliance*
11 *plans, and permits.*

12 “(b) *MULTIPLE OWNERS.—No permit shall be issued*
13 *under this section and no allowances or offset credits shall*
14 *be disbursed under this title to a covered entity or any other*
15 *person until the designated representative of the owners or*
16 *operators has filed a certificate of representation with re-*
17 *gard to matters under this title, including the holding and*
18 *distribution of emission allowances and the proceeds of*
19 *transactions involving emission allowances. Where there are*
20 *multiple holders of a legal or equitable title to, or a lease-*
21 *hold interest in, such a covered entity or other entity or*
22 *where a utility or industrial customer purchases power*
23 *under a long-term power purchase contract from an inde-*
24 *pendent power production facility that is a covered entity,*
25 *the certificate shall state—*

1 “(1) that emission allowances and the proceeds of
2 transactions involving emission allowances will be
3 deemed to be held or distributed in proportion to each
4 holder’s legal, equitable, leasehold, or contractual res-
5 ervation or entitlement; or

6 “(2) if such multiple holders have expressly pro-
7 vided for a different distribution of emission allow-
8 ances by contract, that emission allowances and the
9 proceeds of transactions involving emission allow-
10 ances will be deemed to be held or distributed in ac-
11 cordance with the contract.

12 *A passive lessor, or a person who has an equitable interest*
13 *through such lessor, whose rental payments are not based,*
14 *either directly or indirectly, upon the revenues or income*
15 *from the covered entity or other entity shall not be deemed*
16 *to be a holder of a legal, equitable, leasehold, or contractual*
17 *interest for the purpose of holding or distributing emission*
18 *allowances as provided in this subsection, during either the*
19 *term of such leasehold or thereafter, unless expressly pro-*
20 *vided for in the leasehold agreement. Except as otherwise*
21 *provided in this subsection, where all legal or equitable title*
22 *to or interest in a covered entity, or other entity, is held*
23 *by a single person, the certificate shall state that all emis-*
24 *sion allowances received by the entity are deemed to be held*
25 *for that person.*

1 “(c) *PROHIBITION.*—*It shall be unlawful for any per-*
2 *son to operate any stationary source subject to the require-*
3 *ments of this section except in compliance with the terms*
4 *and requirements of a permit issued by the Administrator*
5 *or a State with an approved permit program in accordance*
6 *with this section. For purposes of this subsection, compli-*
7 *ance, as provided in section 504(f), with a permit issued*
8 *under title V which complies with this title for covered enti-*
9 *ties shall be deemed compliance with this subsection as well*
10 *as section 502(a).*

11 “(d) *RELIABILITY.*—*Nothing in this section or title V*
12 *shall be construed as requiring termination of operations*
13 *of a stationary source that is a covered entity for failure*
14 *to have an approved permit, or compliance plan, that is*
15 *consistent with the requirements in the second and fifth sen-*
16 *tences of subsection (a) concerning the holding of emission*
17 *allowances, compensatory allowances, international emis-*
18 *sion allowances, or offset allowances, except that any such*
19 *covered entity may be subject to the applicable enforcement*
20 *provision of section 113.*

21 “(e) *REGULATIONS.*—*The Administrator shall promul-*
22 *gate regulations to implement this section. To provide for*
23 *permits required under this section, each State in which*
24 *one or more stationary sources and that are covered entities*

1 *are located shall submit, in accordance with this section*
2 *and title V, revised permit programs for approval.*

3 **“SEC. 728. INTERNATIONAL EMISSION ALLOWANCES.**

4 “(a) *QUALIFYING PROGRAMS.*—*The Administrator, in*
5 *consultation with the Secretary of State, may by rule des-*
6 *ignate an international climate change program as a quali-*
7 *fying international program if—*

8 “(1) *the program is run by a national or supra-*
9 *national foreign government, and imposes a manda-*
10 *tory absolute tonnage limit on greenhouse gas emis-*
11 *sions from 1 or more foreign countries, or from 1 or*
12 *more economic sectors in such a country or countries;*
13 *and*

14 “(2) *the program is at least as stringent as the*
15 *program established by this title, including provisions*
16 *to ensure at least comparable monitoring, compliance,*
17 *enforcement, quality of offsets, and restrictions on the*
18 *use of offsets.*

19 “(b) *DISQUALIFIED ALLOWANCES.*—*An international*
20 *emission allowance may not be held under section 722(d)(2)*
21 *if it is in the nature of an offset instrument or allowance*
22 *awarded based on the achievement of greenhouse gas emis-*
23 *sion reductions or avoidance, or greenhouse gas sequestra-*
24 *tion, that are not subject to the mandatory absolute tonnage*
25 *limits referred to in subsection (a)(1).*

1 “(c) *RETIREMENT.*—

2 “(1) *ENTITY CERTIFICATION.*—*The owner or op-*
3 *erator of an entity that holds an international emis-*
4 *sion allowance under section 722(d)(2) shall certify to*
5 *the Administrator that such international emission*
6 *allowance has not previously been used to comply*
7 *with any foreign, international, or domestic green-*
8 *house gas regulatory program.*

9 “(2) *RETIREMENT.*—

10 “(A) *FOREIGN AND INTERNATIONAL REGU-*
11 *LATORY ENTITIES.*—*The Administrator, in con-*
12 *sultation with the Secretary of State, shall seek,*
13 *by whatever means appropriate, including agree-*
14 *ments and technical cooperation on allowance*
15 *tracking, to ensure that any relevant foreign,*
16 *international, and domestic regulatory entities—*

17 “(i) *are notified of the use, for pur-*
18 *poses of compliance with this title, of any*
19 *international emission allowance; and*

20 “(ii) *provide for the disqualification of*
21 *such international emission allowance for*
22 *any subsequent use under the relevant for-*
23 *ign, international, or domestic greenhouse*
24 *gas regulatory program, regardless of*

1 *qualified by education, training, and experience to evaluate*
2 *scientific and technical information on matters referred to*
3 *the Board under this section. The Administrator shall ap-*
4 *point Advisory Board members, including a chair and vice-*
5 *chair of the Advisory Board. Terms shall be 3 years in*
6 *length, except for initial terms, which may be up to 5 years*
7 *in length to allow staggering. Members may be reappointed*
8 *only once for an additional 3-year term, and such second*
9 *term may follow directly after a first term.*

10 “(c) *ACTIVITIES.—The Advisory Board established*
11 *pursuant to subsection (a) shall—*

12 “(1) *provide recommendations, not later than 90*
13 *days after the Advisory Board’s establishment and pe-*
14 *riodically thereafter, to the Administrator regarding*
15 *offset project types that should be considered for eligi-*
16 *bility under section 733, taking into consideration*
17 *relevant scientific and other issues, including—*

18 “(A) *the availability of a representative*
19 *data set for use in developing the activity base-*
20 *line;*

21 “(B) *the potential for accurate quantifica-*
22 *tion of greenhouse gas reduction, avoidance, or*
23 *sequestration for an offset project type;*

1 “(C) the potential level of scientific and
2 measurement uncertainty associated with an off-
3 set project type; and

4 “(D) any beneficial or adverse environ-
5 mental, public health, welfare, social, economic,
6 or energy effects associated with an offset project
7 type;

8 “(2) make available to the Administrator its ad-
9 vice and comments on offset methodologies that should
10 be considered under regulations promulgated pursu-
11 ant to section 734(a) and (b), including methodologies
12 to address the issues of additionality, activity base-
13 lines, measurement, leakage, uncertainty, permanence,
14 and environmental integrity;

15 “(3) make available to the Administrator, and
16 other relevant Federal agencies, its advice and com-
17 ments regarding scientific, technical, and methodo-
18 logical issues specific to the issuance of international
19 offset credits under section 743;

20 “(4) make available to the Administrator, and
21 other relevant Federal agencies, its advice and com-
22 ments regarding scientific, technical, and methodo-
23 logical issues associated with the implementation of
24 part E;

1 “(5) make available to the Administrator its ad-
2 vice and comments on areas in which further knowl-
3 edge is required to appraise the adequacy of existing,
4 revised, or proposed methodologies for use under this
5 part and part E, and describe the research efforts nec-
6 essary to provide the required information; and

7 “(6) make available to the Administrator its ad-
8 vice and comments on other ways to improve or safe-
9 guard the environmental integrity of programs estab-
10 lished under this part and part E.

11 “(d) *SCIENTIFIC REVIEW OF OFFSET AND DEFOREST-*
12 *ATION REDUCTION PROGRAMS.*—Not later than January 1,
13 2017, and at five-year intervals thereafter, the Advisory
14 Board shall submit to the Administrator and make avail-
15 able to the public an analysis of relevant scientific and tech-
16 nical information related to this part and part E. The Ad-
17 visory Board shall review approved and potential meth-
18 odologies, scientific studies, offset project monitoring, offset
19 project verification reports, and audits related to this part
20 and part E, and evaluate the net emissions effects of imple-
21 mented offset projects. The Advisory Board shall recommend
22 changes to offset methodologies, protocols, or project types,
23 or to the overall offset program under this part, to ensure
24 that offset credits issued by the Administrator do not com-
25 promise the integrity of the annual emission reductions es-

1 *tablished under section 703, and to avoid or minimize ad-*
2 *verse effects to human health or the environment.*

3 **“SEC. 732. ESTABLISHMENT OF OFFSETS PROGRAM.**

4 “(a) *REGULATIONS.*—*Not later than 2 years after the*
5 *date of enactment of this title, the Administrator, in con-*
6 *sultation with appropriate Federal agencies and taking*
7 *into consideration the recommendations of the Advisory*
8 *Board, shall promulgate regulations establishing a program*
9 *for the issuance of offset credits in accordance with the re-*
10 *quirements of this part. The Administrator shall periodi-*
11 *cally revise these regulations as necessary to meet the re-*
12 *quirements of this part.*

13 “(b) *REQUIREMENTS.*—*The regulations described in*
14 *subsection (a) shall—*

15 “(1) *authorize the issuance of offset credits with*
16 *respect to qualifying offset projects that result in re-*
17 *ductions or avoidance of greenhouse gas emissions, or*
18 *sequestration of greenhouse gases;*

19 “(2) *ensure that such offset credits represent*
20 *verifiable and additional greenhouse gas emission re-*
21 *ductions or avoidance, or increases in sequestration;*

22 “(3) *ensure that offset credits issued for seques-*
23 *tration offset projects are only issued for greenhouse*
24 *gas reductions that are permanent;*

1 “(4) provide for the implementation of the re-
2 quirements of this part; and

3 “(5) include as reductions in greenhouse gases
4 reductions achieved through the destruction of meth-
5 ane and its conversion to carbon dioxide.

6 “(c) *COORDINATION TO MINIMIZE NEGATIVE EF-*
7 *FECTS.*—In promulgating and implementing regulations
8 under this part, the Administrator shall act (including by
9 rejecting projects, if necessary) to avoid or minimize, to the
10 maximum extent practicable, adverse effects on human
11 health or the environment resulting from the implementa-
12 tion of offset projects under this part.

13 “(d) *OFFSET REGISTRY.*—The Administrator shall es-
14 tablish within the allowance tracking system established
15 under section 724(d) an Offset Registry for qualifying offset
16 projects and offset credits issued with respect thereto under
17 this part.

18 “(e) *LEGAL STATUS OF OFFSET CREDIT.*—An offset
19 credit does not constitute a property right.

20 “(f) *FEEES.*—The Administrator shall assess fees pay-
21 able by offset project developers in an amount necessary to
22 cover the administrative costs to the Environmental Protec-
23 tion Agency of carrying out the activities under this part.
24 Amounts collected for such fees shall be available to the Ad-

1 *ministrator for carrying out the activities under this part*
2 *to the extent provided in advance in appropriations Acts.*

3 **“SEC. 733. ELIGIBLE PROJECT TYPES.**

4 *“(a) LIST OF ELIGIBLE PROJECT TYPES.—*

5 *“(1) IN GENERAL.—As part of the regulations*
6 *promulgated under section 732(a), the Administrator*
7 *shall establish, and may periodically revise, a list of*
8 *types of projects eligible to generate offset credits, in-*
9 *cluding international offset credits, under this part.*

10 *“(2) ADVISORY BOARD RECOMMENDATIONS.—In*
11 *determining the eligibility of project types, the Ad-*
12 *ministrator shall take into consideration the rec-*
13 *ommendations of the Advisory Board. If a list estab-*
14 *lished under this section differs from the recommenda-*
15 *tions of the Advisory Board, the regulations promul-*
16 *gated under section 732(a) shall include a justifica-*
17 *tion for the discrepancy.*

18 *“(3) INITIAL DETERMINATION.—The Adminis-*
19 *trator shall establish the initial eligibility list under*
20 *paragraph (1) not later than one year after the date*
21 *of enactment of this title. The Administrator shall*
22 *add additional project types to the list not later than*
23 *2 years after the date of enactment of this title. In de-*
24 *termining the initial list, the Administrator shall give*
25 *priority to consideration of offset project types that*

1 *are recommended by the Advisory Board and for*
2 *which there are well developed methodologies that the*
3 *Administrator determines would meet the criteria of*
4 *section 734, with such modifications as the Adminis-*
5 *trator deems appropriate. In issuing methodologies*
6 *pursuant to section 734, the Administrator shall give*
7 *priority to methodologies for offset types included on*
8 *the initial eligibility list.*

9 *“(b) MODIFICATION OF LIST.—The Administrator—*

10 *“(1) may at any time, by rule, add a project*
11 *type to the list established under subsection (a) if the*
12 *Administrator, in consultation with appropriate Fed-*
13 *eral agencies and taking into consideration the rec-*
14 *ommendations of the Advisory Board, determines that*
15 *the project type can generate additional reductions or*
16 *avoidance of greenhouse gas emissions, or sequestra-*
17 *tion of greenhouse gases, subject to the requirements of*
18 *this part;*

19 *“(2) may at any time, by rule, determine that*
20 *a project type on the list does not meet the require-*
21 *ments of this part, and remove a project type from*
22 *the list established under subsection (a), in consulta-*
23 *tion with appropriate Federal agencies and taking*
24 *into consideration any recommendations of the Advi-*
25 *sory Board; and*

1 “(3) shall consider adding to or removing from
2 the list established under subsection (a), at a min-
3 imum, project types proposed to the Administrator—

4 “(A) by petition pursuant to subsection (c);

5 or

6 “(B) by the Advisory Board.

7 “(c) *PETITION PROCESS.*—Any person may petition
8 the Administrator to modify the list established under sub-
9 section (a) by adding or removing a project type pursuant
10 to subsection (b). Any such petition shall include a showing
11 by the petitioner that there is adequate data to establish
12 that the project type does or does not meet the requirements
13 of this part. Not later than 12 months after receipt of such
14 a petition, the Administrator shall either grant or deny the
15 petition and publish a written explanation of the reasons
16 for the Administrator’s decision. The Administrator may
17 not deny a petition under this subsection on the basis of
18 inadequate Environmental Protection Agency resources or
19 time for review.

20 “**SEC. 734. REQUIREMENTS FOR OFFSET PROJECTS.**

21 “(a) *METHODOLOGIES.*—As part of the regulations
22 promulgated under section 732(a), the Administrator shall
23 establish, for each type of offset project listed as eligible
24 under section 733, the following:

1 “(1) *ADDITIONALITY.*—A standardized method-
2 ology for determining the additionality of greenhouse
3 gas emission reductions or avoidance, or greenhouse
4 gas sequestration, achieved by an offset project of that
5 type. Such methodology shall ensure, at a minimum,
6 that any greenhouse gas emission reduction or avoid-
7 ance, or any greenhouse gas sequestration, is consid-
8 ered additional only to the extent that it results from
9 activities that—

10 “(A) are not required by or undertaken to
11 comply with any law, including any regulation
12 or consent order;

13 “(B) were not commenced prior to January
14 1, 2009, except in the case of—

15 “(i) offset project activities that com-
16 menced after January 1, 2001, and were
17 registered as of the date of enactment of this
18 title under an offset program with respect to
19 which the Administrator has made an af-
20 firmative determination under section
21 740(a)(2); or

22 “(ii) activities that are readily revers-
23 ible, with respect to which the Adminis-
24 trator may set an alternative earlier date
25 under this subparagraph that is not earlier

1 *than January 1, 2001, where the Adminis-*
2 *trator determines that setting such an alter-*
3 *native date may produce an environmental*
4 *benefit by removing an incentive to cease*
5 *and then reinstate activities that began*
6 *prior to January 1, 2009;*

7 *“(C) are not receiving support under part*
8 *E of this title or title IV, subtitle D of the Amer-*
9 *ican Clean Energy and Security Act of 2009;*
10 *and*

11 *“(D) exceed the activity baseline established*
12 *under paragraph (2).*

13 *“(2) ACTIVITY BASELINES.—A standardized*
14 *methodology for establishing activity baselines for off-*
15 *set projects of that type. The Administrator shall set*
16 *activity baselines to reflect a conservative estimate of*
17 *business-as-usual performance or practices for the rel-*
18 *evant type of activity such that the baseline provides*
19 *an adequate margin of safety to ensure the environ-*
20 *mental integrity of offsets calculated in reference to*
21 *such baseline.*

22 *“(3) QUANTIFICATION METHODS.—A standard-*
23 *ized methodology for determining the extent to which*
24 *greenhouse gas emission reductions or avoidance, or*
25 *greenhouse gas sequestration, achieved by an offset*

1 *project of that type exceed a relevant activity baseline,*
2 *including protocols for monitoring and accounting for*
3 *uncertainty.*

4 “(4) *LEAKAGE.*—*A standardized methodology for*
5 *accounting for and mitigating potential leakage, if*
6 *any, from an offset project of that type, taking uncer-*
7 *tainty into account.*

8 “(b) *ACCOUNTING FOR REVERSALS.*—

9 “(1) *IN GENERAL.*—*For each type of sequestra-*
10 *tion project listed under section 733, the Adminis-*
11 *trator shall establish requirements to account for and*
12 *address reversals, including—*

13 “(A) *a requirement to report any reversal*
14 *with respect to an offset project for which offset*
15 *credits have been issued under this part;*

16 “(B) *provisions to require emission allow-*
17 *ances to be held in amounts to fully compensate*
18 *for greenhouse gas emissions attributable to re-*
19 *versals, and to assign responsibility for holding*
20 *such emission allowances; and*

21 “(C) *any other provisions the Adminis-*
22 *trator determines necessary to account for and*
23 *address reversals.*

24 “(2) *MECHANISMS.*—*The Administrator shall*
25 *prescribe mechanisms to ensure that any sequestra-*

1 *tion with respect to which an offset credit is issued*
2 *under this part results in a permanent net increase*
3 *in sequestration, and that full account is taken of any*
4 *actual or potential reversal of such sequestration, with*
5 *an adequate margin of safety. The Administrator*
6 *shall prescribe at least one of the following mecha-*
7 *nisms to meet the requirements of this paragraph:*

8 *“(A) An offsets reserve, pursuant to para-*
9 *graph (3).*

10 *“(B) Insurance that provides for purchase*
11 *and provision to the Administrator for retire-*
12 *ment of an amount of offset credits or emission*
13 *allowances equal in number to the tons of carbon*
14 *dioxide equivalents of greenhouse gas emissions*
15 *released due to reversal.*

16 *“(C) Another mechanism that the Adminis-*
17 *trator determines satisfies the requirements of*
18 *this part.*

19 *“(3) OFFSETS RESERVE.—*

20 *“(A) IN GENERAL.—An offsets reserve re-*
21 *ferred to in paragraph (2)(A) is a program*
22 *under which, before issuance of offset credits*
23 *under this part, the Administrator shall subtract*
24 *and reserve from the quantity to be issued a*

1 *quantity of offset credits based on the risk of re-*
2 *versal. The Administrator shall—*

3 “(i) *hold these reserved offset credits in*
4 *the offsets reserve; and*

5 “(ii) *register the holding of the reserved*
6 *offset credits in the Offset Registry estab-*
7 *lished under section 732(d).*

8 “(B) *PROJECT REVERSAL.—*

9 “(i) *IN GENERAL.—If a reversal has*
10 *occurred with respect an offset project for*
11 *which offset credits are reserved under this*
12 *paragraph, the Administrator shall remove*
13 *offset credits from the offsets reserve and*
14 *cancel them to fully account for the tons of*
15 *carbon dioxide equivalent that are no longer*
16 *sequestered.*

17 “(ii) *INTENTIONAL REVERSALS.—If the*
18 *Administrator determines that a reversal*
19 *was intentional, the offset project developer*
20 *for the relevant offset project shall place into*
21 *the offsets reserve a quantity of offset cred-*
22 *its, or combination of offset credits and*
23 *emission allowances, equal in number to the*
24 *number of reserve offset credits that were*

1 *canceled due to the reversal pursuant to*
2 *clause (i).*

3 “(iii) *UNINTENTIONAL REVERSALS.—If*
4 *the Administrator determines that a rever-*
5 *sal was unintentional, the offset project de-*
6 *veloper for the relevant offset project shall*
7 *place into the offsets reserve a quantity of*
8 *offset credits, or combination of offset cred-*
9 *its and emission allowances, equal in num-*
10 *ber to half the number of offset credits that*
11 *were reserved for that offset project, or half*
12 *the number of reserve offset credits that were*
13 *canceled due to the reversal pursuant to*
14 *clause (i), whichever is less.*

15 “(C) *USE OF RESERVED OFFSET CRED-*
16 *ITS.—Offset credits placed into the offsets reserve*
17 *under this paragraph may not be used to comply*
18 *with section 722.*

19 “(c) *CREDITING PERIODS.—*

20 “(1) *IN GENERAL.—For each offset project type,*
21 *the Administrator shall specify a crediting period,*
22 *and establish provisions for petitions for new cred-*
23 *iting periods, in accordance with this subsection.*

1 “(2) *DURATION.*—*The crediting period shall be*
2 *no less than 5 and no greater than 10 years for any*
3 *project type other than those involving sequestration.*

4 “(3) *ELIGIBILITY.*—*An offset project shall be eli-*
5 *gible to generate offset credits under this part only*
6 *during the project’s crediting period. During such*
7 *crediting period, the project shall remain eligible to*
8 *generate offset credits, subject to the methodologies*
9 *and project type eligibility list that applied as of the*
10 *date of project approval under section 735, except as*
11 *provided in paragraph (4) of this subsection.*

12 “(4) *PETITION FOR NEW CREDITING PERIOD.*—
13 *An offset project developer may petition for a new*
14 *crediting period to commence after termination of a*
15 *crediting period, subject to the methodologies and*
16 *project type eligibility list in effect at the time when*
17 *such petition is submitted. A petition may not be sub-*
18 *mitted under this paragraph more than 18 months*
19 *before the end of the pending crediting period. The*
20 *Administrator may limit the number of new crediting*
21 *periods available for projects of particular project*
22 *types.*

23 “(d) *ENVIRONMENTAL INTEGRITY.*—*In establishing the*
24 *requirements under this section, the Administrator shall*
25 *apply conservative assumptions or methods to maximize the*

1 *certainty that the environmental integrity of the cap estab-*
2 *lished under section 703 is not compromised.*

3 “(e) *PRE-EXISTING METHODOLOGIES.*—*In promul-*
4 *gating requirements under this section, the Administrator*
5 *shall give due consideration to methodologies for offset*
6 *projects existing as of the date of enactment of this title.*

7 “(f) *ADDED PROJECT TYPES.*—*The Administrator*
8 *shall establish methodologies described in subsection (a),*
9 *and, as applicable, requirements and mechanisms for rever-*
10 *sals as described in subsection (b), for any project type that*
11 *is added to the list pursuant to section 733.*

12 **“SEC. 735. APPROVAL OF OFFSET PROJECTS.**

13 “(a) *APPROVAL PETITION.*—*An offset project developer*
14 *shall submit an offset project approval petition providing*
15 *such information as the Administrator requires to deter-*
16 *mine whether the offset project is eligible for issuance of off-*
17 *set credits under rules promulgated pursuant to this part.*

18 “(b) *TIMING.*—*An approval petition shall be submitted*
19 *to the Administrator under subsection (a) no later than the*
20 *time at which an offset project’s first verification report is*
21 *submitted under section 736.*

22 “(c) *APPROVAL PETITION REQUIREMENTS.*—*As part*
23 *of the regulations promulgated under section 732, the Ad-*
24 *ministrator shall include provisions for, and shall specify,*

1 *the required components of an offset project approval peti-*
2 *tion required under subsection (a), which shall include—*

3 “(1) *designation of an offset project developer;*
4 *and*

5 “(2) *any other information that the Adminis-*
6 *trator considers to be necessary to achieve the pur-*
7 *poses of this part.*

8 “(d) *APPROVAL AND NOTIFICATION.—Not later than*
9 *90 days after receiving a complete approval petition under*
10 *subsection (a), the Administrator shall approve or deny the*
11 *petition in writing and, if the petition is denied, provide*
12 *the reasons for denial. After an offset project is approved,*
13 *the offset project developer shall not be required to resubmit*
14 *an approval petition during the offset project’s crediting pe-*
15 *riod, except as provided in section 734(c)(4).*

16 “(e) *APPEAL.—The Administrator shall establish pro-*
17 *cedures for appeal and review of determinations made*
18 *under subsection (d).*

19 “(f) *VOLUNTARY PREAPPROVAL REVIEW.—The Ad-*
20 *ministrator may establish a voluntary preapproval review*
21 *procedure, to allow an offset project developer to request the*
22 *Administrator to conduct a preliminary eligibility review*
23 *for an offset project. Findings of such reviews shall not be*
24 *binding upon the Administrator. The voluntary*
25 *preapproval review procedure—*

1 “(1) shall require the offset project developer to
2 submit such basic project information as the Admin-
3 istrator requires to provide a meaningful review; and

4 “(2) shall require a response from the Adminis-
5 trator not later than 6 weeks after receiving a request
6 for review under this subsection.

7 **“SEC. 736. VERIFICATION OF OFFSET PROJECTS.**

8 “(a) *IN GENERAL.*—As part of the regulations promul-
9 gated under section 732(a), the Administrator shall estab-
10 lish requirements, including protocols, for verification of the
11 quantity of greenhouse gas emission reductions or avoid-
12 ance, or sequestration of greenhouse gases, resulting from
13 an offset project. The regulations shall require that an offset
14 project developer shall submit a report, prepared by a third-
15 party verifier accredited under subsection (d), providing
16 such information as the Administrator requires to deter-
17 mine the quantity of greenhouse gas emission reductions or
18 avoidance, or sequestration of greenhouse gas, resulting
19 from the offset project.

20 “(b) *SCHEDULE.*—The Administrator shall prescribe a
21 schedule for the submission of verification reports under
22 subsection (a).

23 “(c) *VERIFICATION REPORT REQUIREMENTS.*—The
24 Administrator shall specify the required components of a

1 *verification report required under subsection (a), which*
2 *shall include—*

3 “(1) *the name and contact information for a des-*
4 *ignated representative for the offset project developer;*

5 “(2) *the quantity of greenhouse gas reduced,*
6 *avoided, or sequestered;*

7 “(3) *the methodologies applicable to the project*
8 *pursuant to section 734;*

9 “(4) *a certification that the project meets the ap-*
10 *plicable requirements;*

11 “(5) *a certification establishing that the conflict*
12 *of interest requirements in the regulations promul-*
13 *gated under subsection (d)(1) have been complied*
14 *with; and*

15 “(6) *any other information that the Adminis-*
16 *trator considers to be necessary to achieve the pur-*
17 *poses of this part.*

18 “(d) *VERIFIER ACCREDITATION.—*

19 “(1) *IN GENERAL.—As part of the regulations*
20 *promulgated under section 732(a), the Administrator*
21 *shall establish a process and requirements for periodic*
22 *accreditation of third-party verifiers to ensure that*
23 *such verifiers are professionally qualified and have no*
24 *conflicts of interest.*

25 “(2) *STANDARDS.—*

1 “(A) *AMERICAN NATIONAL STANDARDS IN-*
2 *STITUTE ACCREDITATION.*—*The Administrator*
3 *may accredit, or accept for purposes of accredita-*
4 *tion under this subsection, verifiers accredited*
5 *under the American National Standards Insti-*
6 *tute (ANSI) accreditation program in accord-*
7 *ance with ISO 14065. The Administrator shall*
8 *accredit, or accept for accreditation, verifiers*
9 *under this subparagraph only if the Adminis-*
10 *trator finds that the American National Stand-*
11 *ards Institute accreditation program provides*
12 *sufficient assurance that the requirements of this*
13 *part will be met.*

14 “(B) *EPA ACCREDITATION.*—*As part of the*
15 *regulations promulgated under section 732(a),*
16 *the Administrator may establish accreditation*
17 *standards for verifiers under this subsection, and*
18 *may establish related training and testing pro-*
19 *grams and requirements.*

20 “(3) *PUBLIC ACCESSIBILITY.*—*Each verifier*
21 *meeting the requirements for accreditation in accord-*
22 *ance with this subsection shall be listed in a publicly*
23 *accessible database, which shall be maintained and*
24 *updated by the Administrator.*

1 **“SEC. 737. ISSUANCE OF OFFSET CREDITS.**

2 “(a) *DETERMINATION AND NOTIFICATION.*—Not later
3 than 90 days after receiving a complete verification report
4 under section 736, the Administrator shall—

5 “(1) *make the report publicly available;*

6 “(2) *make a determination of the quantity of*
7 *greenhouse gas emissions reduced or avoided, or*
8 *greenhouse gases sequestered, resulting from an offset*
9 *project approved under section 735; and*

10 “(3) *notify the offset project developer in writing*
11 *of such determination.*

12 “(b) *ISSUANCE OF OFFSET CREDITS.*—The Adminis-
13 trator shall issue one offset credit to an offset project devel-
14 oper for each ton of carbon dioxide equivalent that the Ad-
15 ministrator has determined has been reduced, avoided, or
16 sequestered during the period covered by a verification re-
17 port submitted in accordance with section 736, only if—

18 “(1) *the Administrator has approved the offset*
19 *project pursuant to section 735; and*

20 “(2) *the relevant emissions reduction, avoidance,*
21 *or sequestration has—*

22 “(A) *already occurred, during the offset*
23 *project’s crediting period; and*

24 “(B) *occurred after January 1, 2009.*

1 “(c) *APPEAL.*—*The Administrator shall establish pro-*
2 *cedures for appeal and review of determinations made*
3 *under subsection (a).*

4 “(d) *TIMING.*—*Offset credits meeting the criteria estab-*
5 *lished in subsection (b) shall be issued not later than 2*
6 *weeks following the verification determination made by the*
7 *Administrator under subsection (a).*

8 “(e) *REGISTRATION.*—*The Administrator shall assign*
9 *a unique serial number to and register each offset credit*
10 *to be issued in the Offset Registry established under section*
11 *732(d).*

12 **“SEC. 738. AUDITS.**

13 “(a) *IN GENERAL.*—*The Administrator shall, on an*
14 *ongoing basis, conduct random audits of offset projects, off-*
15 *set credits, and practices of third-party verifiers. In each*
16 *year, the Administrator shall conduct audits, at minimum,*
17 *for a representative sample of project types and geographic*
18 *areas.*

19 “(b) *DELEGATION.*—*The Administrator may delegate*
20 *to a State or tribal government the responsibility for con-*
21 *ducting audits under this section if the Administrator finds*
22 *that the program proposed by the State or tribal govern-*
23 *ment provides assurances equivalent to those provided by*
24 *the auditing program of the Administrator, and that the*
25 *integrity of the offset program under this part will be main-*

1 *tained. Nothing in this subsection shall prevent the Admin-*
2 *istrator from conducting any audit the Administrator con-*
3 *siders necessary and appropriate.*

4 **“SEC. 739. PROGRAM REVIEW AND REVISION.**

5 *“At least once every 5 years, the Administrator shall*
6 *review and, based on new or updated information and tak-*
7 *ing into consideration the recommendations of the Advisory*
8 *Board, update and revise—*

9 *“(1) the list of eligible project types established*
10 *under section 733;*

11 *“(2) the methodologies established, including spe-*
12 *cific activity baselines, under section 734(a);*

13 *“(3) the reversal requirements and mechanisms*
14 *established or prescribed under section 734(b);*

15 *“(4) measures to improve the accountability of*
16 *the offsets program; and*

17 *“(5) any other requirements established under*
18 *this part to ensure the environmental integrity and*
19 *effective operation of this part.*

20 **“SEC. 740. EARLY OFFSET SUPPLY.**

21 *“(a) PROJECTS REGISTERED UNDER OTHER GOVERN-*
22 *MENT-RECOGNIZED PROGRAMS.—Except as provided in*
23 *subsection (b) or (c), the Administrator shall issue one offset*
24 *credit for each ton of carbon dioxide equivalent emissions*
25 *reduced, avoided, or sequestered—*

1 “(1) under an offset project that was started
2 after January 1, 2001;

3 “(2) for which a credit was issued under any
4 regulatory or voluntary greenhouse gas emission offset
5 program that the Administrator determines—

6 “(A) was established under State or tribal
7 law or regulation prior to January 1, 2009, or
8 has been approved by the Administrator pursu-
9 ant to subsection (e);

10 “(B) has developed offset project stand-
11 ards, methodologies, and protocols through a
12 public consultation process or a peer review
13 process;

14 “(C) has made available to the public
15 standards, methodologies, and protocols that re-
16 quire that credited emission reductions, avoid-
17 ance, or sequestration are permanent, additional,
18 verifiable, and enforceable;

19 “(D) requires that all emission reductions,
20 avoidance, or sequestration be verified by a State
21 regulatory agency or an accredited third-party
22 independent verification body;

23 “(E) requires that all credits issued are reg-
24 istered in a publicly accessible registry, with in-
25 dividual serial numbers assigned for each ton of

1 carbon dioxide equivalent emission reductions,
2 avoidance, or sequestration; and

3 “(F) ensures that no credits are issued for
4 activities for which the entity administering the
5 program, or a program administrator or rep-
6 resentative, has funded, solicited, or served as a
7 fund administrator for the development of, the
8 project or activity that caused the emission re-
9 duction, avoidance, or sequestration; and

10 “(3) for which the credit described in paragraph
11 (2) is transferred to the Administrator.

12 “(b) *INELIGIBLE CREDITS*.—Subsection (a) shall not
13 apply to offset credits that have expired or have been re-
14 tired, canceled, or used for compliance under a program
15 established under State or tribal law or regulation.

16 “(c) *LIMITATION*.—Notwithstanding subsection (a)(1),
17 offset credits shall be issued under this section—

18 “(1) only for reductions or avoidance of green-
19 house gas emissions, or sequestration of greenhouse
20 gases, that occur after January 1, 2009; and

21 “(2) only until the date that is 3 years after the
22 date of enactment of this title, or the date that regula-
23 tions promulgated under section 732(a) take effect,
24 whichever occurs sooner.

1 “(d) *RETIREMENT OF CREDITS.*—*The Administrator*
2 *shall seek to ensure that offset credits described in subsection*
3 *(a)(2) are retired for purposes of use under a program de-*
4 *scribed in subsection (b).*

5 “(e) *OTHER PROGRAMS.*—(1) *Offset programs that ei-*
6 *ther—*

7 “(A) *were not established under State or tribal*
8 *law; or*

9 “(B) *were not established prior to January 1,*
10 *2009,*

11 *but that otherwise meet all of the criteria of sub-*
12 *section (a)(2) may apply to the Administrator to be*
13 *approved under this subsection as an eligible program*
14 *for early offset credits under this section.*

15 “(2) *The Administrator shall approve any such pro-*
16 *gram that the Administrator determines has criteria and*
17 *methodologies of at least equal stringency to the criteria and*
18 *methodologies of the programs established under State or*
19 *tribal law that the Administrator determines meet the cri-*
20 *teria of subsection (a)(2). The Administrator may approve*
21 *types of offsets under any such program that are subject*
22 *to criteria and methodologies of at least equal stringency*
23 *to the criteria and methodologies for such types of offsets*
24 *applied under the programs established under State or trib-*
25 *al law that the Administrator determines meet the criteria*

1 of subsection (a)(2). The Administrator shall make a deter-
2 mination on any application received under this subsection
3 by no later than 180 days from the date of receipt of the
4 application.

5 **“SEC. 741. ENVIRONMENTAL CONSIDERATIONS.**

6 “If the Administrator lists forestry projects as eligible
7 offset project types under section 733, the Administrator,
8 in consultation with appropriate Federal agencies, shall
9 promulgate regulations for the selection and use of species
10 in forestry and other relevant land management-related off-
11 set projects—

12 “(1) to ensure that native species are given pri-
13 mary consideration in such projects;

14 “(2) to enhance biological diversity in such
15 projects;

16 “(3) to prohibit the use of federally designated or
17 State-designated noxious weeds;

18 “(4) to prohibit the use of a species listed by a
19 regional or State invasive plant authority within the
20 applicable region or State; and

21 “(5) in accordance with widely accepted, envi-
22 ronmentally sustainable forestry practices.

23 **“SEC. 742. TRADING.**

24 “Section 724 shall apply to the trading of offset cred-
25 its.

1 **“SEC. 743. INTERNATIONAL OFFSET CREDITS.**

2 “(a) *IN GENERAL.*—*The Administrator, in consulta-*
3 *tion with the Secretary of State and the Administrator of*
4 *the United States Agency for International Development,*
5 *may issue, in accordance with this section, international*
6 *offset credits based on activities that reduce or avoid green-*
7 *house gas emissions, or increase sequestration of greenhouse*
8 *gases, in a developing country. Such credits may be issued*
9 *for projects pursuant to the requirements of this part or*
10 *as provided in subsection (c), (d), or (e).*

11 “(b) *ISSUANCE.*—

12 “(1) *REGULATIONS.*—*Not later than 2 years*
13 *after the date of enactment of this title, the Adminis-*
14 *trator, in consultation with the Secretary of State, the*
15 *Administrator of the United States Agency for Inter-*
16 *national Development, and any other appropriate*
17 *Federal agency, and taking into consideration the rec-*
18 *ommendations of the Advisory Board, shall promul-*
19 *gate regulations for implementing this section. Except*
20 *as otherwise provided in this section, the issuance of*
21 *international offset credits under this section shall be*
22 *subject to the requirements of this part.*

23 “(2) *REQUIREMENTS FOR INTERNATIONAL OFF-*
24 *SET CREDITS.*—*The Administrator may issue inter-*
25 *national offset credits only if—*

1 “(A) *the United States is a party to a bilat-*
2 *eral or multilateral agreement or arrangement*
3 *that includes the country in which the project or*
4 *measure achieving the relevant greenhouse gas*
5 *emission reduction or avoidance, or greenhouse*
6 *gas sequestration, has occurred;*

7 “(B) *such country is a developing country;*
8 *and*

9 “(C) *such agreement or arrangement—*

10 “(i) *ensures that all of the require-*
11 *ments of this part apply to the issuance of*
12 *international offset credits under this sec-*
13 *tion; and*

14 “(ii) *provides for the appropriate dis-*
15 *tribution of international offset credits*
16 *issued.*

17 “(c) *SECTOR-BASED CREDITS.—*

18 “(1) *IN GENERAL.—In order to minimize the po-*
19 *tential for leakage and to encourage countries to take*
20 *nationally appropriate mitigation actions to reduce*
21 *or avoid greenhouse gas emissions, or sequester green-*
22 *house gases, the Administrator, in consultation with*
23 *the Secretary of State and the Administrator of the*
24 *United States Agency for International Development,*
25 *shall—*

1 “(A) identify sectors of specific countries
2 with respect to which the issuance of inter-
3 national offset credits on a sectoral basis is ap-
4 propriate; and

5 “(B) issue international offset credits for
6 such sectors only on a sectoral basis.

7 “(2) IDENTIFICATION OF SECTORS.—

8 “(A) GENERAL RULE.—For purposes of
9 paragraph (1)(A), a sectoral basis shall be ap-
10 propriate for activities—

11 “(i) in countries that have compara-
12 tively high greenhouse gas emissions, or
13 comparatively greater levels of economic de-
14 velopment; and

15 “(ii) that, if located in the United
16 States, would be within a sector subject to
17 the compliance obligation under section 722.

18 “(B) FACTORS.—In determining the sectors
19 and countries for which international offset cred-
20 its should be awarded only on a sectoral basis,
21 the Administrator, in consultation with the Sec-
22 retary of State and the Administrator of the
23 United States Agency for International Develop-
24 ment, shall consider the following factors:

1 “(i) *The country’s gross domestic prod-*
2 *uct.*

3 “(ii) *The country’s total greenhouse gas*
4 *emissions.*

5 “(iii) *Whether the comparable sector of*
6 *the United States economy is covered by the*
7 *compliance obligation under section 722.*

8 “(iv) *The heterogeneity or homogeneity*
9 *of sources within the relevant sector.*

10 “(v) *Whether the relevant sector pro-*
11 *vides products or services that are sold in*
12 *internationally competitive markets.*

13 “(vi) *The risk of leakage if inter-*
14 *national offset credits were issued on a*
15 *project-level basis, instead of on a sectoral*
16 *basis, for activities within the relevant sec-*
17 *tor.*

18 “(vii) *The capability of accurately*
19 *measuring, monitoring, reporting, and*
20 *verifying the performance of sources across*
21 *the relevant sector.*

22 “(viii) *Such other factors as the Ad-*
23 *ministrator, in consultation with the Sec-*
24 *retary of State and the Administrator of the*

1 *United States Agency for International De-*
2 *velopment, determines are appropriate to—*

3 *“(I) ensure the integrity of the*
4 *United States greenhouse gas emissions*
5 *cap established under section 703; and*

6 *“(II) encourage countries to take*
7 *nationally appropriate mitigation ac-*
8 *tions to reduce or avoid greenhouse gas*
9 *emissions, or sequester greenhouse*
10 *gases.*

11 *“(3) SECTORAL BASIS.—*

12 *“(A) DEFINITION.—In this subsection, the*
13 *term ‘sectoral basis’ means the issuance of inter-*
14 *national offset credits only for the quantity of*
15 *sector-wide reductions or avoidance of greenhouse*
16 *gas emissions, or sector-wide increases in seques-*
17 *tration of greenhouse gases, achieved across the*
18 *relevant sector of the economy relative to a base-*
19 *line level of performance established in an agree-*
20 *ment or arrangement described in subsection*
21 *(b)(2)(A) for the sector.*

22 *“(B) BASELINE.—The baseline for a sector*
23 *shall be established at levels of greenhouse gas*
24 *emissions lower than would occur under a busi-*
25 *ness-as-usual scenario taking into account rel-*

1 *evant domestic or international policies or incen-*
2 *tives to reduce greenhouse gas emissions, among*
3 *other factors, and additionality and performance*
4 *shall be determined on the basis of such baseline.*

5 “(d) *CREDITS ISSUED BY AN INTERNATIONAL BODY.—*

6 “*(1) IN GENERAL.—The Administrator, in con-*
7 *sultation with the Secretary of State, may issue inter-*
8 *national offset credits in exchange for instruments in*
9 *the nature of offset credits that are issued by an inter-*
10 *national body established pursuant to the United Na-*
11 *tions Framework Convention on Climate Change, to*
12 *a protocol to such Convention, or to a treaty that suc-*
13 *ceeds such Convention. The Administrator may issue*
14 *international offset credits under this subsection only*
15 *if, in addition to the requirements of subsection (b),*
16 *the Administrator has determined that the inter-*
17 *national body that issued the instruments has imple-*
18 *mented substantive and procedural requirements for*
19 *the relevant project type that provide equal or greater*
20 *assurance of the integrity of such instruments as is*
21 *provided by the requirements of this part.*

22 “*(2) RETIREMENT.—The Administrator, in con-*
23 *sultation with the Secretary of State, shall seek, by*
24 *whatever means appropriate, including agreements,*
25 *arrangements, or technical cooperation with the inter-*

1 *national issuing body described in paragraph (1), to*
2 *ensure that such body—*

3 *“(A) is notified of the Administrator’s*
4 *issuance, under this subsection, of an inter-*
5 *national offset credit in exchange for an instru-*
6 *ment issued by such international body; and*

7 *“(B) provides, to the extent feasible, for the*
8 *disqualification of the instrument issued by such*
9 *international body for subsequent use under any*
10 *relevant foreign or international greenhouse gas*
11 *regulatory program, regardless of whether such*
12 *use is a sale, exchange, or submission to satisfy*
13 *a compliance obligation.*

14 *“(e) OFFSETS FROM REDUCED DEFORESTATION.—*

15 *“(1) REQUIREMENTS.—The Administrator, in*
16 *accordance with the regulations promulgated under*
17 *subsection (b)(1) and an agreement or arrangement*
18 *described in subsection (b)(2)(A), shall issue inter-*
19 *national offset credits for greenhouse gas emission re-*
20 *ductions achieved through activities to reduce deforest-*
21 *ation only if, in addition to the requirements of sub-*
22 *section (b)—*

23 *“(A) the activity occurs in—*

24 *“(i) a country listed by the Adminis-*
25 *trator pursuant to paragraph (2);*

1 “(ii) a state or province listed by the
2 Administrator pursuant to paragraph (5);
3 or

4 “(iii) a country listed by the Adminis-
5 trator pursuant to paragraph (6);

6 “(B) except as provided in paragraph (5) or
7 (6), the quantity of the international offset cred-
8 its is determined by comparing the national
9 emissions from deforestation relative to a na-
10 tional deforestation baseline for that country es-
11 tablished, in accordance with an agreement or
12 arrangement described in subsection (b)(2)(A),
13 pursuant to paragraph (4);

14 “(C) the reduction in emissions from defor-
15 estation has occurred before the issuance of the
16 international offset credit and, taking into con-
17 sideration relevant international standards, has
18 been demonstrated using ground-based inven-
19 tories, remote sensing technology, and other
20 methodologies to ensure that all relevant carbon
21 stocks are accounted;

22 “(D) the Administrator has made appro-
23 priate adjustments, such as discounting for any
24 additional uncertainty, to account for cir-
25 cumstances specific to the country, including its

1 *technical capacity described in paragraph*
2 *(2)(A);*

3 *“(E) the activity is designed, carried out,*
4 *and managed—*

5 *“(i) in accordance with widely accept-*
6 *ed, environmentally sustainable forest man-*
7 *agement practices;*

8 *“(ii) to promote or restore native forest*
9 *species and ecosystems where practicable,*
10 *and to avoid the introduction of invasive*
11 *nonnative species;*

12 *“(iii) in a manner that gives due re-*
13 *gard to the rights and interests of local com-*
14 *munities, indigenous peoples, forest-depend-*
15 *ent communities, and vulnerable social*
16 *groups;*

17 *“(iv) with consultations with, and full*
18 *participation of, local communities, indige-*
19 *nous peoples, and forest-dependent commu-*
20 *nities, in affected areas, as partners and*
21 *primary stakeholders, prior to and during*
22 *the design, planning, implementation, and*
23 *monitoring and evaluation of activities; and*

24 *“(v) with equitable sharing of profits*
25 *and benefits derived from offset credits with*

1 *local communities, indigenous peoples, and*
2 *forest-dependent communities; and*

3 “(F) *the reduction otherwise satisfies and is*
4 *consistent with any relevant requirements estab-*
5 *lished by an agreement reached under the aus-*
6 *pices of the United Nations Framework Conven-*
7 *tion on Climate Change.*

8 “(2) *ELIGIBLE COUNTRIES.—The Administrator,*
9 *in consultation with the Secretary of State and the*
10 *Administrator of the United States Agency for Inter-*
11 *national Development, and in accordance with an*
12 *agreement or arrangement described in subsection*
13 *(b)(2)(A), shall establish, and periodically review and*
14 *update, a list of the developing countries that have the*
15 *capacity to participate in deforestation reduction ac-*
16 *tivities at a national level, including—*

17 “(A) *the technical capacity to monitor,*
18 *measure, report, and verify forest carbon fluxes*
19 *for all significant sources of greenhouse gas emis-*
20 *sions from deforestation with an acceptable level*
21 *of uncertainty, as determined taking into ac-*
22 *count relevant internationally accepted meth-*
23 *odologies, such as those established by the Inter-*
24 *governmental Panel on Climate Change;*

1 “(B) *the institutional capacity to reduce*
2 *emissions from deforestation, including strong*
3 *forest governance and mechanisms to equitably*
4 *distribute deforestation resources for local ac-*
5 *tions; and*

6 “(C) *a land use or forest sector strategic*
7 *plan that—*

8 “(i) *assesses national and local drivers*
9 *of deforestation and forest degradation and*
10 *identifies reforms to national policies need-*
11 *ed to address them;*

12 “(ii) *estimates the country’s emissions*
13 *from deforestation and forest degradation;*

14 “(iii) *identifies improvements in data*
15 *collection, monitoring, and institutional ca-*
16 *capacity necessary to implement a national*
17 *deforestation reduction program; and*

18 “(iv) *establishes a timeline for imple-*
19 *menting the program and transitioning to*
20 *low-emissions development.*

21 “(3) *PROTECTION OF INTERESTS.—With respect*
22 *to an agreement or arrangement described in sub-*
23 *section (b)(2)(A) with a country that addresses inter-*
24 *national offset credits under this subsection, the Ad-*
25 *ministrator, in consultation with the Secretary of*

1 *State and the Administrator of the United States*
2 *Agency for International Development, shall seek to*
3 *ensure the establishment and enforcement by such*
4 *country of legal regimes, processes, standards, and*
5 *safeguards that—*

6 “(A) *give due regard to the rights and in-*
7 *terests of local communities, indigenous peoples,*
8 *forest-dependent communities, and vulnerable so-*
9 *cial groups;*

10 “(B) *promote consultations with, and full*
11 *participation of, forest-dependent communities*
12 *and indigenous peoples in affected areas, as*
13 *partners and primary stakeholders, prior to and*
14 *during the design, planning, implementation,*
15 *and monitoring and evaluation of activities; and*

16 “(C) *encourage equitable sharing of profits*
17 *and benefits derived from international offset*
18 *credits with local communities, indigenous peo-*
19 *ples, and forest-dependent communities.*

20 “(4) *NATIONAL DEFORESTATION BASELINE.—A*
21 *national deforestation baseline established under this*
22 *subsection shall—*

23 “(A) *be national in scope;*

24 “(B) *be consistent with nationally appro-*
25 *priate mitigation commitments or actions with*

1 *respect to deforestation, taking into consideration*
2 *the average annual historical deforestation rates*
3 *of the country during a period of at least 5*
4 *years, the applicable drivers of deforestation, and*
5 *other factors to ensure additionality;*

6 “(C) *establish a trajectory that would result*
7 *in zero net deforestation by not later than 20*
8 *years after the national deforestation baseline*
9 *has been established;*

10 “(D) *be adjusted over time to take account*
11 *of changing national circumstances;*

12 “(E) *be designed to account for all signifi-*
13 *cant sources of greenhouse gas emissions from de-*
14 *forestation in the country; and*

15 “(F) *be consistent with the national defor-*
16 *estation baseline, if any, established for such*
17 *country under section 754(d)(1).*

18 “(5) *STATE-LEVEL OR PROVINCE-LEVEL ACTIVI-*
19 *TIES.—*

20 “(A) *ELIGIBLE STATES OR PROVINCES.—*
21 *The Administrator, in consultation with the Sec-*
22 *retary of State and the Administrator of the*
23 *United States Agency for International Develop-*
24 *ment, shall establish, and periodically review*

1 *and update, a list of states or provinces in devel-*
2 *oping countries where—*

3 “(i) *the developing country is not in-*
4 *cluded on the list of countries established*
5 *pursuant to paragraph (6)(A);*

6 “(ii) *the state or province by itself is*
7 *a major emitter of greenhouse gases from*
8 *tropical deforestation on a scale commensu-*
9 *rate to the emissions of other countries; and*

10 “(iii) *the state or province meets the*
11 *eligibility criteria in paragraphs (2) and*
12 *(3) for the geographic area under its juris-*
13 *isdiction.*

14 “(B) *ACTIVITIES.—The Administrator may*
15 *issue international offset credits for greenhouse*
16 *gas emission reductions achieved through activi-*
17 *ties to reduce deforestation at a state or provin-*
18 *cial level that meet the requirements of this sec-*
19 *tion. Such credits shall be determined by com-*
20 *paring the emissions from deforestation within*
21 *that state or province relative to the state or*
22 *province deforestation baseline for that state or*
23 *province established, in accordance with an*
24 *agreement or arrangement described in sub-*

1 *section (b)(2)(A), pursuant to subparagraph (C)*
2 *of this paragraph.*

3 “(C) *STATE-LEVEL OR PROVINCE-LEVEL DE-*
4 *FORESTATION BASELINE.—A state-level or prov-*
5 *ince-level deforestation baseline shall—*

6 “(i) *be consistent with any existing na-*
7 *tionally appropriate mitigation commit-*
8 *ments or actions for the country in which*
9 *the activity is occurring, taking into consid-*
10 *eration the average annual historical defor-*
11 *estation rates of the state or province dur-*
12 *ing a period of at least 5 years, relevant*
13 *drivers of deforestation, and other factors to*
14 *ensure additionality;*

15 “(ii) *establish a trajectory that would*
16 *result in zero net deforestation by not later*
17 *than 20 years after the state-level or prov-*
18 *ince-level deforestation baseline has been es-*
19 *tablished; and*

20 “(iii) *be designed to account for all sig-*
21 *nificant sources of greenhouse gas emissions*
22 *from deforestation in the state or province*
23 *and adjusted to fully account for emissions*
24 *leakage outside the state or province.*

1 “(D) *PHASE OUT.*—Beginning 5 years after
2 the first calendar year for which a covered entity
3 must demonstrate compliance with section
4 722(a), the Administrator shall issue no further
5 international offset credits for eligible state-level
6 or province-level activities to reduce deforestation
7 pursuant to this paragraph.

8 “(6) *PROJECTS AND PROGRAMS TO REDUCE DE-*
9 *FORESTATION.*—

10 “(A) *ELIGIBLE COUNTRIES.*—The Adminis-
11 trator, in consultation with the Secretary of
12 State and the Administrator of the United States
13 Agency for International Development, shall es-
14 tablish, and periodically review and update, a
15 list of developing countries that—

16 “(i) the Administrator determines,
17 based on recent, credible, and reliable emis-
18 sions data, account for less than 1 percent
19 of global greenhouse gas emissions and less
20 than 3 percent of global forest-sector and
21 land use change greenhouse gas emissions;
22 and

23 “(ii) have, or in the determination of
24 the Administrator are making a good faith
25 effort to develop, a land use or forest sector

1 *strategic plan that meets the criteria de-*
2 *scribed in paragraph (2)(C).*

3 “(B) *ACTIVITIES.*—*The Administrator may*
4 *issue international offset credits for greenhouse*
5 *gas emission reductions achieved through project*
6 *or program level activities to reduce deforestation*
7 *in countries listed under subparagraph (A) that*
8 *meet the requirements of this section. The quan-*
9 *tity of international offset credits shall be deter-*
10 *mined by comparing the project-level or pro-*
11 *gram-level emissions from deforestation to a de-*
12 *forestation baseline for such project or program*
13 *established pursuant to subparagraph (C).*

14 “(C) *PROJECT-LEVEL OR PROGRAM-LEVEL*
15 *BASELINE.*—*A project-level or program-level de-*
16 *forestation baseline shall—*

17 “(i) *be consistent with any existing na-*
18 *tionally appropriate mitigation commit-*
19 *ments or actions for the country in which*
20 *the project or program is occurring, taking*
21 *into consideration the average annual his-*
22 *torical deforestation rates in the project or*
23 *program boundary during a period of at*
24 *least 5 years, applicable drivers of deforest-*

1 *ation, and other factors to ensure*
2 *additionality;*

3 *“(ii) be designed to account for all sig-*
4 *nificant sources of greenhouse gas emissions*
5 *from deforestation in the project or program*
6 *boundary; and*

7 *“(iii) be adjusted to fully account for*
8 *emissions leakage outside the project or pro-*
9 *gram boundary.*

10 *“(D) PHASE OUT.—(i) Beginning 5 years*
11 *after the first calendar year for which a covered*
12 *entity must demonstrate compliance with section*
13 *722(a), the Administrator shall issue no further*
14 *international offset credits for project-level or*
15 *program-level activities as described in this*
16 *paragraph, except as provided in clause (ii).*

17 *“(ii) The Administrator may extend the*
18 *phase out deadline for the issuance of inter-*
19 *national offset credits under this section by up to*
20 *8 years with respect to eligible activities taking*
21 *place in a least developed nation, which is a for-*
22 *foreign country that the United Nations has identi-*
23 *fied as among the least developed of developing*
24 *countries at the time that the Administrator de-*
25 *termines to provide an extension, provided that*

1 *the Administrator, in consultation with the Sec-*
2 *retary of State and the Administrator of the*
3 *United States Agency for International Develop-*
4 *ment, determines the nation—*

5 *“(I) lacks sufficient capacity to adopt*
6 *and implement effective programs to achieve*
7 *reductions in deforestation measured*
8 *against national baselines;*

9 *“(II) is receiving support under part E*
10 *to develop such capacity; and*

11 *“(III) has developed and is working to*
12 *implement a credible national strategy or*
13 *plan to reduce deforestation.*

14 *“(7) DEFORESTATION.—In implementing this*
15 *subsection, the Administrator, taking into consider-*
16 *ation the recommendations of the Advisory Board,*
17 *may include forest degradation, or soil carbon losses*
18 *associated with forested wetlands or peatlands, within*
19 *the meaning of deforestation.*

20 *“(f) MODIFICATION OF REQUIREMENTS.—In promul-*
21 *gating regulations under subsection (b)(1) with respect to*
22 *the issuance of international offset credits under subsection*
23 *(c), (d), or (e), the Administrator, in consultation with the*
24 *Secretary of State and the Administrator of the United*
25 *States Agency for International Development, may modify*

1 *or omit a requirement of this part (excluding the require-*
2 *ments of this section) if the Administrator determines that*
3 *the application of that requirement to such subsection is*
4 *not feasible. In modifying or omitting such a requirement*
5 *on the basis of infeasibility, the Administrator, in consulta-*
6 *tion with the Secretary of State and the Administrator of*
7 *the United States Agency for International Development,*
8 *shall ensure, with an adequate margin of safety, the integ-*
9 *egrity of international offset credits issued under this section*
10 *and of the greenhouse gas emissions cap established pursu-*
11 *ant to section 703.*

12 “(g) *AVOIDING DOUBLE COUNTING.—The Adminis-*
13 *trator, in consultation with the Secretary of State, shall*
14 *seek, by whatever means appropriate, including agreements,*
15 *arrangements, or technical cooperation, to ensure that ac-*
16 *tivities on the basis of which international offset credits are*
17 *issued under this section are not used for compliance with*
18 *an obligation to reduce or avoid greenhouse gas emissions,*
19 *or increase greenhouse gas sequestration, under a foreign*
20 *or international regulatory system. In addition, no inter-*
21 *national offset credits shall be issued for emission reductions*
22 *from activities with respect to which emission allowances*
23 *were allocated under section 781 for distribution under part*
24 *E.*

1 “(h) *LIMITATION.*—*The Administrator shall not issue*
2 *international offset credits generated by projects based on*
3 *the destruction of hydrofluorocarbons.*

4 **“PART E—SUPPLEMENTAL EMISSIONS**
5 **REDUCTIONS FROM REDUCED DEFORESTATION**

6 **“SEC. 751. DEFINITIONS.**

7 *“In this part:*

8 “(1) *LEAKAGE PREVENTION ACTIVITIES.*—*The*
9 *term ‘leakage prevention activities’ means activities*
10 *in developing countries that are directed at preserving*
11 *existing forest carbon stocks, including forested wet-*
12 *lands and peatlands, that might, absent such activi-*
13 *ties, be lost through leakage.*

14 “(2) *NATIONAL DEFORESTATION REDUCTION AC-*
15 *TIVITIES.*—*The term ‘national deforestation reduction*
16 *activities’ means activities in developing countries*
17 *that reduce a quantity of greenhouse gas emissions*
18 *from deforestation that is calculated by measuring ac-*
19 *tual emissions against a national deforestation base-*
20 *line established pursuant to section 754(d)(1) and (2).*

21 “(3) *SUBNATIONAL DEFORESTATION REDUCTION*
22 *ACTIVITIES.*—*The term ‘subnational deforestation re-*
23 *duction activities’ means activities in developing*
24 *countries that reduce a quantity of greenhouse gas*
25 *emissions from deforestation that are calculated by*

1 *measuring actual emissions using an appropriate*
2 *baseline established by the Administrator that is less*
3 *than national in scope.*

4 “(4) *SUPPLEMENTAL EMISSIONS REDUCTIONS.*—
5 *The term ‘supplemental emissions reductions’ means*
6 *greenhouse gas emissions reductions achieved from re-*
7 *duced or avoided deforestation under this part.*

8 “(5) *USAID.*—*The term ‘USAID’ means the*
9 *United States Agency for International Development.*

10 **“SEC. 752. FINDINGS.**

11 *“Congress finds that—*

12 “(1) *as part of a global effort to mitigate climate*
13 *change, it is in the national interest of the United*
14 *States to assist developing countries to reduce and ul-*
15 *timately halt emissions from deforestation;*

16 “(2) *deforestation is one of the largest sources of*
17 *greenhouse gas emissions in developing countries,*
18 *amounting to roughly 20 percent of overall emissions*
19 *globally;*

20 “(3) *recent scientific analysis shows that it will*
21 *be substantially more difficult to limit the increase in*
22 *global temperatures to less than 2 degrees centigrade*
23 *above preindustrial levels without reducing and ul-*
24 *timately halting net emissions from deforestation;*

1 *appropriate agencies, shall promulgate regulations estab-*
2 *lishing a program to use emission allowances set aside for*
3 *this purpose under section 781 to achieve the reduction of*
4 *greenhouse gas emissions from deforestation in developing*
5 *countries in accordance with the requirements of this part.*

6 “(b) *OBJECTIVES.—The objectives of the program es-*
7 *tablished under this section shall be to—*

8 “(1) *achieve supplemental emissions reductions*
9 *of at least 720,000,000 tons of carbon dioxide equiva-*
10 *lent in 2020, a cumulative amount of at least*
11 *6,000,000,000 tons of carbon dioxide equivalent by*
12 *December 31, 2025, and additional supplemental*
13 *emissions reductions in subsequent years;*

14 “(2) *build capacity to reduce deforestation in de-*
15 *veloping countries experiencing deforestation, includ-*
16 *ing preparing developing countries to participate in*
17 *international markets for international offset credits*
18 *for reduced emissions from deforestation; and*

19 “(3) *preserve existing forest carbon stocks in*
20 *countries where such forest carbon may be vulnerable*
21 *to international leakage, particularly in developing*
22 *countries with largely intact native forests.*

1 **“SEC. 754. REQUIREMENTS FOR INTERNATIONAL DEFOR-**
2 **ESTATION REDUCTION PROGRAM.**

3 “(a) *ELIGIBLE COUNTRIES.*—*The Administrator may*
4 *support activities under this part only with respect to a*
5 *developing country that—*

6 “(1) *the Administrator, in consultation with the*
7 *Administrator of USAID, determines is experiencing*
8 *deforestation or forest degradation or has standing*
9 *forest carbon stocks that may be at risk of deforest-*
10 *ation or degradation; and*

11 “(2) *has entered into a bilateral or multilateral*
12 *agreement or arrangement with the United States es-*
13 *tablishing the conditions of its participation in the*
14 *program established under this part, which shall in-*
15 *clude an agreement to meet the standards established*
16 *under subsection (d) for the activities to which those*
17 *standards apply.*

18 “(b) *ACTIVITIES.*—(1) *Subject to the requirements of*
19 *this part, the Administrator, in consultation with the Ad-*
20 *ministrator of USAID, may support activities to achieve*
21 *the objectives identified in section 753(b), including—*

22 “(A) *national deforestation reduction activi-*
23 *ties;*

24 “(B) *subnational deforestation reduction ac-*
25 *tivities, including pilot activities that reduce*

1 greenhouse gas emissions but are subject to sig-
2 nificant uncertainty;

3 “(C) activities to measure, monitor, and
4 verify deforestation, avoided deforestation, and
5 deforestation rates;

6 “(D) leakage prevention activities;

7 “(E) development of measurement, moni-
8 toring, and verification capacities to enable a
9 country to quantify supplemental emissions re-
10 ductions and to generate for sale offset credits
11 from reduced or avoided deforestation;

12 “(F) development of governance structures
13 to reduce deforestation and illegal logging;

14 “(G) enforcement of requirements for re-
15 duced deforestation or forest conservation;

16 “(H) efforts to combat illegal logging and
17 increase enforcement cooperation;

18 “(I) providing incentives for policy reforms
19 to achieve the objectives identified in section
20 753(b); and

21 “(J) monitoring and evaluation of the re-
22 sults of the activities conducted under this sec-
23 tion.

24 “(2) ACTIVITIES SELECTED BY USAID.—

1 “(A) *The Administrator of USAID, in con-*
2 *sultation with the Administrator, may select for*
3 *support and implementation pursuant to sub-*
4 *section (c) any of the activities described in*
5 *paragraph (1), consistent with this part and the*
6 *regulations promulgated under subsection (d),*
7 *and subject to the requirement to achieve the ob-*
8 *jectives listed in section 753(b)(1).*

9 “(B) *With respect to the activities listed in*
10 *subparagraphs (D) through (J) of paragraph (1),*
11 *the Administrator of USAID, in consultation*
12 *with the Administrator, shall have primary but*
13 *not exclusive responsibility for selecting the ac-*
14 *tivities to be supported and implemented.*

15 “(3) *INTERAGENCY COORDINATION.—The Admin-*
16 *istrator and the Administrator of USAID shall joint-*
17 *ly develop and biennially update a strategic plan for*
18 *meeting the objectives listed in section 753(b) and*
19 *shall execute a memorandum of understanding delin-*
20 *eating the agencies’ respective roles in implementing*
21 *this part.*

22 “(c) *MECHANISMS.—*

23 “(1) *IN GENERAL.—The Administrator may sup-*
24 *port activities to achieve the objectives identified in*
25 *section 753(b) by—*

1 “(A) *developing and implementing pro-*
2 *grams and projects that achieve such objectives;*
3 *and*

4 “(B) *distributing emission allowances to a*
5 *country that is eligible under subsection (a), to*
6 *any private or public group (including inter-*
7 *national organizations), or to an international*
8 *fund established by an international agreement*
9 *to which the United States is a party, to carry*
10 *out activities to achieve such objectives.*

11 “(2) *USAID ACTIVITIES.*—*With respect to activi-*
12 *ties selected and implemented by the Administrator of*
13 *USAID pursuant to (b)(2), the Administrator shall*
14 *distribute emission allowances as provided in sub-*
15 *paragraph (1) based upon the direction of the Admin-*
16 *istrator of USAID, subject to the availability of al-*
17 *lowances for such activities.*

18 “(3) *IMPLEMENTATION THROUGH INTER-*
19 *NATIONAL ORGANIZATIONS.*—*If support is distributed*
20 *through an international organization, the agency re-*
21 *sponsible for selecting activities in accordance with*
22 *subparagraph (b)(1) or (2), in consultation with the*
23 *Secretary of State, shall ensure the establishment and*
24 *implementation of adequate mechanisms to apply and*

1 enforce the eligibility requirements and other require-
2 ments of this section.

3 “(4) *ROLE OF THE SECRETARY OF STATE.*—The
4 Administrator may not distribute emission allow-
5 ances to the government of another country or to an
6 international organization or international fund un-
7 less the Secretary of State has concurred with such
8 distribution.

9 “(d) *STANDARDS.*—The Administrator, in consulta-
10 tion with the Administrator of USAID, shall promulgate
11 standards to ensure that supplemental emissions reductions
12 achieved through supported activities are additional, meas-
13 urable, verifiable, permanent, monitored, and account for
14 leakage and uncertainty. In addition, such standards
15 shall—

16 “(1) require the establishment of a national de-
17 forestation baseline for each country with national de-
18 forestation reduction activities that is used to account
19 for reductions achieved from such activities;

20 “(2) provide that a national deforestation base-
21 line established under paragraph (1) shall—

22 “(A) be national in scope;

23 “(B) be consistent with nationally appro-
24 priate mitigation commitments or actions with
25 respect to deforestation, taking into consideration

1 *the average annual historical deforestation rates*
2 *of the country during a period of at least 5 years*
3 *and other factors to ensure additionality;*

4 “(C) *establish a trajectory that would result*
5 *in zero net deforestation by not later than 20*
6 *years from the date the baseline is established;*

7 “(D) *be adjusted over time to take account*
8 *of changing national circumstances;*

9 “(E) *be designed to account for all signifi-*
10 *cant sources of greenhouse gas emissions from de-*
11 *forestation in the country; and*

12 “(F) *be consistent with the national defor-*
13 *estation baseline, if any, established for such*
14 *country under section 743(e)(4);*

15 “(3) *with respect to support provided pursuant*
16 *to subsection (b)(1)(A) or (B), require supplemental*
17 *emissions reductions to be achieved and verified prior*
18 *to compensation through the distribution of emission*
19 *allowances under this part;*

20 “(4) *with respect to accounting for subnational*
21 *deforestation reduction activities that lack the stand-*
22 *ardized or precise measurement and monitoring tech-*
23 *niques needed for a full accounting of changes in*
24 *emissions or baselines, or are subject to other sources*
25 *of uncertainty, apply a conservative discount factor*

1 to reflect the uncertainty regarding the levels of reduc-
2 tions achieved;

3 “(5) ensure that activities under this part shall
4 be designed, carried out, and managed—

5 “(A) in accordance with widely accepted,
6 environmentally sustainable forestry practices;

7 “(B) to promote native species and con-
8 servation or restoration of native forests, if prac-
9 ticable, and to avoid the introduction of invasive
10 nonnative species;

11 “(C) in a manner that gives due regard to
12 the rights and interests of local communities, in-
13 digenous peoples, forest-dependent communities,
14 and vulnerable social groups;

15 “(D) with consultations with, and full par-
16 ticipation of, local communities, indigenous peo-
17 ples, and forest-dependent communities in af-
18 fected areas, as partners and primary stake-
19 holders, prior to and during the design, plan-
20 ning, implementation, and monitoring and eval-
21 uation of activities; and

22 “(E) with equitable sharing of profits and
23 benefits derived from the activities with local
24 communities, indigenous peoples, and forest-de-
25 pendent communities; and

1 “(6) with respect to support for all activities
2 under this part, seek to ensure the establishment and
3 enforcement by the recipient country of legal regimes,
4 standards, processes, and safeguards that—

5 “(A) give due regard to the rights and in-
6 terests of local communities, indigenous peoples,
7 forest-dependent communities, and vulnerable so-
8 cial groups;

9 “(B) promote consultations with local com-
10 munities and indigenous peoples and forest-de-
11 pendent communities in affected areas, as part-
12 ners and primary stakeholders, prior to and dur-
13 ing the design, planning, implementation, moni-
14 toring, and evaluation of activities under this
15 part; and

16 “(C) encourage equitable sharing of profits
17 and benefits from incentives for emissions reduc-
18 tions or leakage prevention with local commu-
19 nities, indigenous peoples, and forest-dependent
20 communities.

21 “(e) *EXPANSION OF SCOPE.*—The Administrator, in
22 consultation with the Administrator of USAID, may decide,
23 taking into account any advice from the Advisory Board,
24 to expand, where appropriate, the scope of activities under
25 this part to include—

1 “(1) reduced emissions from forest degradation;
2 or

3 “(2) reduced soil carbon-derived emissions asso-
4 ciated with deforestation and degradation of forested
5 wetlands and peatlands.

6 “(f) ACCOUNTING.—The Administrator shall establish
7 a publicly accessible registry of the supplemental emissions
8 reductions achieved through support provided under this
9 part each year, after appropriately discounting for uncer-
10 tainty and other relevant factors as required by the stand-
11 ards established under subsection (d).

12 “(g) TRANSITION TO NATIONAL REDUCTIONS.—Begin-
13 ning 5 years after the date that a country entered into the
14 agreement or arrangement required under subsection (a)(2),
15 the Administrator shall provide no further compensation
16 through emission allowances to that country under this part
17 for any subnational deforestation reduction activities, ex-
18 cept that the Administrator may extend this period by an
19 additional 5 years if the Administrator, in consultation
20 with the Administrator of USAID, determines that—

21 “(1) the country is making substantial progress
22 towards adopting and implementing a program to
23 achieve reductions in deforestation measured against
24 a national baseline;

1 “(2) the greenhouse gas emissions reductions
2 achieved are not resulting in significant leakage; and

3 “(3) the greenhouse gas emissions reductions
4 achieved are being appropriately discounted to ac-
5 count for any leakage that is occurring.

6 *The limitation under this subsection shall not apply to sup-
7 port for activities to further the objectives listed in section
8 753(b)(2) or (3).*

9 “(h) *COORDINATION WITH U.S. FOREIGN ASSIST-*
10 *ANCE.—Subject to the direction of the President, the Admin-*
11 *istrator and the Administrator of USAID shall, to the ex-*
12 *tent practicable and consistent with the objectives of this*
13 *program, seek to align activities under this section with*
14 *broader development, poverty alleviation, or natural re-*
15 *source management objectives and initiatives in the recipi-*
16 *ent country.*

17 “(i) *SUPPORT AS SUPPLEMENT.—The provision of*
18 *support for activities under this part shall be used to sup-*
19 *plement, and not to supplant, any other Federal, State, or*
20 *local support available to carry out such qualifying activi-*
21 *ties under this part.*

22 **“SEC. 755. REPORTS AND REVIEWS.**

23 “(a) *REPORTS.—Not later than January 1, 2014, and*
24 *annually thereafter, the Administrator and the Adminis-*
25 *trator of USAID shall submit to the Committee on Energy*

1 *and Commerce and the Committee on Foreign Affairs of*
2 *the House of Representatives, and the Committee on Envi-*
3 *ronment and Public Works and the Committee on Foreign*
4 *Relations of the Senate, and make available to the public,*
5 *a report on the support provided under this part during*
6 *the prior fiscal year. The report shall include—*

7 “(1) *a statement of the quantity of supplemental*
8 *emissions reductions for which compensation in the*
9 *form of emission allowances was provided under this*
10 *part during the prior fiscal year, as registered by the*
11 *Administrator under section 754(f); and*

12 “(2) *a description of the national and sub-*
13 *national deforestation reduction activities, capacity-*
14 *building activities, and leakage prevention activities*
15 *supported under this part, including a statement of*
16 *the quantity of emission allowances distributed to*
17 *each recipient for each activity during the prior fiscal*
18 *year, and a description of what was accomplished*
19 *through each of the activities.*

20 “(b) *REVIEWS.—Not later than 4 years after the date*
21 *of enactment of this title and every 5 years thereafter, the*
22 *Administrator and the Administrator of USAID and taking*
23 *into consideration any evaluation by or recommendations*
24 *from the Advisory Board established under section 731,*
25 *shall conduct a review of the activities undertaken pursuant*

1 *to this part and make any appropriate changes in the pro-*
2 *gram established under this part based on the findings of*
3 *the review. The review shall include the effects of the activi-*
4 *ties on—*

5 “(1) *total documented carbon stocks of each*
6 *country that directly or indirectly received support*
7 *under this part compared with such country’s na-*
8 *tional deforestation baseline established under section*
9 *754(d)(1);*

10 “(2) *the number of countries with the capacity*
11 *to generate for sale instruments in the nature of offset*
12 *credits from forest-related activities, and the amount*
13 *of such activities;*

14 “(3) *forest governance in each country that di-*
15 *rectly or indirectly received support under this part;*

16 “(4) *indigenous peoples and forest-dependent*
17 *communities residing in areas affected by such activi-*
18 *ties;*

19 “(5) *biodiversity and ecosystem services within*
20 *forested areas associated with the activities;*

21 “(6) *international leakage; and*

22 “(7) *any program or mechanism established*
23 *under the United Nations Framework Convention on*
24 *Climate Change related to greenhouse gas emissions*
25 *from deforestation.*

1 **“SEC. 756. LEGAL EFFECT OF PART.**

2 “(1) *IN GENERAL.*—Nothing in this part super-
3 sedes, limits, or otherwise affects any restriction im-
4 posed by Federal law (including regulations) on any
5 interaction between an entity located in the United
6 States and an entity located in a foreign country.

7 “(2) *ROLE OF THE SECRETARY OF STATE.*—
8 Nothing in this part shall be construed as affecting
9 the role of the Secretary of State or the responsibil-
10 ities of the Secretary under section 622 (c) of the For-
11 eign Assistance Act of 1961.”.

12 **SEC. 312. DEFINITIONS.**

13 *Title VII of the Clean Air Act, as added by section*
14 *311 of this Act, is amended by inserting before part A the*
15 *following new section:*

16 **“SEC. 700. DEFINITIONS.**

17 *“In this title:*

18 “(1) *ADDITIONAL.*—The term ‘additional’, when
19 used with respect to reductions or avoidance of green-
20 house gas emissions, or to sequestration of greenhouse
21 gases, means reductions, avoidance, or sequestration
22 that result in a lower level of net greenhouse gas emis-
23 sions or atmospheric concentrations than would occur
24 in the absence of an offset project.

25 “(2) *ADDITIONALITY.*—The term ‘additionality’
26 means the extent to which reductions or avoidance of

1 *greenhouse gas emissions, or sequestration of green-*
2 *house gases, are additional.*

3 “(3) *ADVISORY BOARD.*—*The term ‘Advisory*
4 *Board’ means the Offsets Integrity Advisory Board es-*
5 *tablished under section 731.*

6 “(4) *AFFILIATED.*—*The term ‘affiliated’—*

7 “(A) *when used in relation to an entity*
8 *means owned or controlled by, or under common*
9 *ownership or control with, another entity, as de-*
10 *termined by the Administrator; and*

11 “(B) *when used in relation to a natural gas*
12 *local distribution company, means owned or con-*
13 *trolled by, or under common ownership or con-*
14 *trol with, another natural gas local distribution*
15 *company, as determined by the Administrator.*

16 “(5) *ALLOWANCE.*—*The term ‘allowance’ means*
17 *a limited authorization to emit, or have attributable*
18 *greenhouse gas emissions in an amount of, 1 ton of*
19 *carbon dioxide equivalent of a greenhouse gas in ac-*
20 *cordance with this title; it includes an emission al-*
21 *lowance, a compensatory allowance, or an inter-*
22 *national emission allowance.*

23 “(6) *ATTRIBUTABLE GREENHOUSE GAS EMIS-*
24 *SIONS.*—*The term ‘attributable greenhouse gas emis-*
25 *sions’ means—*

1 “(A) for a covered entity that is a fuel pro-
2 ducer or importer described in paragraph
3 (13)(B), greenhouse gases that would be emitted
4 from the combustion of any petroleum-based or
5 coal-based liquid fuel, petroleum coke, or natural
6 gas liquid, produced or imported by that covered
7 entity for sale or distribution in interstate com-
8 merce, assuming no capture and sequestration of
9 any greenhouse gas emissions;

10 “(B) for a covered entity that is an indus-
11 trial gas producer or importer described in para-
12 graph (13)(C), the tons of carbon dioxide equiva-
13 lent of fossil fuel-based carbon dioxide, nitrous
14 oxide, any fluorinated gas, other than nitrogen
15 trifluoride, that is a greenhouse gas, or any com-
16 bination thereof—

17 “(i) produced or imported by such cov-
18 ered entity during the previous calendar
19 year for sale or distribution in interstate
20 commerce; or

21 “(ii) released as fugitive emissions in
22 the production of fluorinated gas; and

23 “(C) for a natural gas local distribution
24 company described in paragraph (13)(J), green-
25 house gases that would be emitted from the com-

1 *bustion of the natural gas, and any other gas*
2 *meeting the specifications for commingling with*
3 *natural gas for purposes of delivery, that such*
4 *entity delivered during the previous calendar*
5 *year to customers that are not covered entities,*
6 *assuming no capture and sequestration of that*
7 *greenhouse gas.*

8 “(7) *BIOLOGICAL SEQUESTRATION; BIO-*
9 *LOGICALLY SEQUESTERED.—The terms ‘biological se-*
10 *questration’ and ‘biologically sequestered’ mean the*
11 *removal of greenhouse gases from the atmosphere by*
12 *terrestrial biological means, such as by growing*
13 *plants, and the storage of those greenhouse gases in*
14 *plants or soils.*

15 “(8) *CAPPED EMISSIONS.—The term ‘capped*
16 *emissions’ means greenhouse gas emissions to which*
17 *section 722 applies, including emissions from the*
18 *combustion of natural gas, petroleum-based or coal-*
19 *based liquid fuel, petroleum coke, or natural gas liq-*
20 *uid to which section 722(b)(2) or (8) applies.*

21 “(9) *CAPPED SOURCE.—The term ‘capped source’*
22 *means a source that directly emits capped emissions.*

23 “(10) *CARBON DIOXIDE EQUIVALENT.—The term*
24 *‘carbon dioxide equivalent’ means the unit of meas-*

1 *ure, expressed in metric tons, of greenhouse gases as*
2 *provided under section 711 or 712.*

3 *“(11) CARBON STOCK.—The term ‘carbon stock’*
4 *means the quantity of carbon contained in a biologi-*
5 *cal reservoir or system which has the capacity to ac-*
6 *cumulate or release carbon.*

7 *“(12) COMPENSATORY ALLOWANCE.—The term*
8 *‘compensatory allowance’ means an allowance issued*
9 *under section 721(f).*

10 *“(13) COVERED ENTITY.—The term ‘covered enti-*
11 *ty’ means each of the following:*

12 *“(A) Any electricity source.*

13 *“(B) Any stationary source that produces,*
14 *and any entity that (or any group of two or*
15 *more affiliated entities that, in the aggregate)*
16 *imports, for sale or distribution in interstate*
17 *commerce in 2008 or any subsequent year, petro-*
18 *leum-based or coal-based liquid fuel, petroleum*
19 *coke, or natural gas liquid, the combustion of*
20 *which would emit more than 25,000 tons of car-*
21 *bon dioxide equivalent, as determined by the Ad-*
22 *ministrator.*

23 *“(C) Any stationary source that produces,*
24 *and any entity that (or any group of two or*
25 *more affiliated entities that, in the aggregate)*

1 imports, for sale or distribution in interstate
2 commerce, in bulk, or in products designated by
3 the Administrator, in 2008 or any subsequent
4 year more than 25,000 tons of carbon dioxide
5 equivalent of—

6 “(i) fossil fuel-based carbon dioxide;

7 “(ii) nitrous oxide;

8 “(iii) perfluorocarbons;

9 “(iv) sulfur hexafluoride;

10 “(v) any other fluorinated gas, except
11 for nitrogen trifluoride, that is a greenhouse
12 gas, as designated by the Administrator
13 under section 711(b) or (c); or

14 “(vi) any combination of greenhouse
15 gases described in clauses (i) through (vi).

16 “(D) Any stationary source that has emit-
17 ted 25,000 or more tons of carbon dioxide equiv-
18 alent of nitrogen trifluoride in 2008 or any sub-
19 sequent year.

20 “(E) Any geologic sequestration site.

21 “(F) Any stationary source in the following
22 industrial sectors:

23 “(i) Adipic acid production.

24 “(ii) Primary aluminum production.

25 “(iii) Ammonia manufacturing.

1 “(iv) *Cement production, excluding*
2 *grinding-only operations.*

3 “(v) *Hydrochlorofluorocarbon produc-*
4 *tion.*

5 “(vi) *Lime manufacturing.*

6 “(vii) *Nitric acid production.*

7 “(viii) *Petroleum refining.*

8 “(ix) *Phosphoric acid production.*

9 “(x) *Silicon carbide production.*

10 “(xi) *Soda ash production.*

11 “(xii) *Titanium dioxide production.*

12 “(xiii) *Coal-based liquid or gaseous*
13 *fuel production.*

14 “(G) *Any stationary source in the chemical*
15 *or petrochemical sector that, in 2008 or any sub-*
16 *sequent year—*

17 “(i) *produces acrylonitrile, carbon*
18 *black, ethylene, ethylene dichloride, ethylene*
19 *oxide, or methanol; or*

20 “(ii) *produces a chemical or petro-*
21 *chemical product if producing that product*
22 *results in annual combustion plus process*
23 *emissions of 25,000 or more tons of carbon*
24 *dioxide equivalent.*

25 “(H) *Any stationary source that—*

1 “(i) is in one of the following indus-
2 trial sectors: ethanol production; ferroalloy
3 production; fluorinated gas production; food
4 processing; glass production; hydrogen pro-
5 duction; iron and steel production; lead pro-
6 duction; pulp and paper manufacturing;
7 and zinc production; and

8 “(ii) has emitted 25,000 or more tons
9 of carbon dioxide equivalent in 2008 or any
10 subsequent year.

11 “(I) Any fossil fuel-fired combustion device
12 (such as a boiler) or grouping of such devices
13 that—

14 “(i) is all or part of an industrial
15 source not specified in subparagraph (D),
16 (F), (G), or (H); and

17 “(ii) has emitted 25,000 or more tons
18 of carbon dioxide equivalent in 2008 or any
19 subsequent year.

20 “(J) Any natural gas local distribution
21 company that (or any group of 2 or more affili-
22 ated natural gas local distribution companies
23 that, in the aggregate) in 2008 or any subsequent
24 year, delivers 460,000,000 cubic feet or more of

1 *natural gas to customers that are not covered en-*
2 *tities.*

3 “(14) *CREDITING PERIOD.*—*The term ‘crediting*
4 *period’ means the period with respect to which an off-*
5 *set project is eligible to earn offset credits under part*
6 *D, as determined under section 734(c).*

7 “(15) *DESIGNATED REPRESENTATIVE.*—*The term*
8 *‘designated representative’ means, with respect to a*
9 *covered entity, a reporting entity, an offset project de-*
10 *veloper, or any other entity receiving or holding al-*
11 *lowances or offset credits under this title, an indi-*
12 *vidual authorized, through a certificate of representa-*
13 *tion submitted to the Administrator by the owners*
14 *and operators or similar entity official, to represent*
15 *the owners and operators or similar entity official in*
16 *all matters pertaining to this title (including the*
17 *holding, transfer, or disposition of allowances or offset*
18 *credits), and to make all submissions to the Adminis-*
19 *trator under this title.*

20 “(16) *DEVELOPING COUNTRY.*—*The term ‘devel-*
21 *oping country’ means a country eligible to receive of-*
22 *ficial development assistance according to the income*
23 *guidelines of the Development Assistance Committee*
24 *of the Organization for Economic Cooperation and*
25 *Development.*

1 “(17) *DOMESTIC OFFSET CREDIT*.—*The term*
2 *‘domestic offset credit’ means an offset credit issued*
3 *under part D, other than an international offset cred-*
4 *it.*

5 “(18) *ELECTRICITY SOURCE*.—*The term ‘elec-*
6 *tricity source’ means a stationary source that in-*
7 *cludes one or more utility units.*

8 “(19) *EMISSION*.—*The term ‘emission’ means the*
9 *release of a greenhouse gas into the ambient air. Such*
10 *term does not include gases that are captured and se-*
11 *questered, except to the extent that they are later re-*
12 *leased into the atmosphere, in which case compliance*
13 *must be demonstrated pursuant to section 722(b)(5).*

14 “(20) *EMISSION ALLOWANCE*.—*The term ‘emis-*
15 *sion allowance’ means an allowance established under*
16 *section 721(a) or section 726(g)(2) or (h)(1)(C).*

17 “(21) *FAIR MARKET VALUE*.—*The term ‘fair*
18 *market value’ means the average daily closing price*
19 *on registered exchanges or, if such a price is unavail-*
20 *able, the average price as determined by the Adminis-*
21 *trator, during a specified time period, of an emission*
22 *allowance.*

23 “(22) *FEDERAL LAND*.—*The term ‘Federal land’*
24 *means land that is owned by the United States, other*
25 *than land held in trust for an Indian or Indian tribe.*

1 “(23) *FOSSIL FUEL*.—The term ‘fossil fuel’
2 *means natural gas, petroleum, or coal, or any form*
3 *of solid, liquid, or gaseous fuel derived from such ma-*
4 *terial, including consumer products that are derived*
5 *from such materials and are combusted.*

6 “(24) *FOSSIL FUEL-FIRED*.—The term ‘fossil
7 *fuel-fired’ means powered by combustion of fossil fuel,*
8 *alone or in combination with any other fuel, regard-*
9 *less of the percentage of fossil fuel consumed.*

10 “(25) *FUGITIVE EMISSIONS*.—The term ‘fugitive
11 *emissions’ means emissions from leaks, valves, joints,*
12 *or other small openings in pipes, ducts, or other*
13 *equipment, or from vents.*

14 “(26) *GEOLOGIC SEQUESTRATION; GEOLOGI-*
15 *CALLY SEQUESTERED*.—The terms ‘geologic sequestra-
16 *tion’ and ‘geologically sequestered’ mean the seques-*
17 *tration of greenhouse gases in subsurface geologic for-*
18 *mations for purposes of permanent storage.*

19 “(27) *GEOLOGIC SEQUESTRATION SITE*.—The
20 *term ‘geologic sequestration site’ means a site where*
21 *carbon dioxide is geologically sequestered.*

22 “(28) *GREENHOUSE GAS*.—The term ‘greenhouse
23 *gas’ means any gas described in section 711(a) or des-*
24 *ignated under section 711(b), (c), or (e), except to the*
25 *extent that it is regulated under title VI.*

1 “(29) *HIGH CONSERVATION PRIORITY LAND.*—
2 *The term ‘high conservation priority land’ means*
3 *land that is not Federal land and is—*

4 “(A) *globally or State ranked as critically*
5 *imperiled or imperiled under a State Natural*
6 *Heritage Program; or*

7 “(B) *old-growth or late-successional forest,*
8 *as identified by the office of the State Forester or*
9 *relevant State agency with regulatory jurisdic-*
10 *tion over forestry activities.*

11 “(30) *HOLD.*—*The term ‘hold’ means, with re-*
12 *spect to an allowance or offset credit, to have in the*
13 *appropriate account in the allowance tracking sys-*
14 *tem, or submit to the Administrator for recording in*
15 *such account.*

16 “(31) *INDUSTRIAL SOURCE.*—*The term ‘indus-*
17 *trial source’ means any stationary source that—*

18 “(A) *is not an electricity source; and*

19 “(B) *is in—*

20 “(i) *the manufacturing sector (as de-*
21 *defined in North American Industrial Classi-*
22 *fication System codes 31, 32, and 33); or*

23 “(ii) *the natural gas processing or nat-*
24 *ural gas pipeline transportation sector (as*

1 *defined in North American Industrial Clas-*
2 *sification System codes 211112 or 486210).*

3 “(32) *INTERNATIONAL EMISSION ALLOWANCE.*—
4 *The term ‘international emission allowance’ means a*
5 *tradable authorization to emit 1 ton of carbon dioxide*
6 *equivalent of greenhouse gas that is issued by a na-*
7 *tional or supranational foreign government pursuant*
8 *to a qualifying international program designated by*
9 *the Administrator pursuant to section 728(a).*

10 “(33) *INTERNATIONAL OFFSET CREDIT.*—*The*
11 *term ‘international offset credit’ means an offset cred-*
12 *it issued by the Administrator under section 743.*

13 “(34) *LEAKAGE.*—*The term ‘leakage’ means a*
14 *significant increase in greenhouse gas emissions, or*
15 *significant decrease in sequestration, which is caused*
16 *by an offset project and occurs outside the boundaries*
17 *of the offset project.*

18 “(35) *MINERAL SEQUESTRATION.*—*The term*
19 *‘mineral sequestration’ means sequestration of carbon*
20 *dioxide from the atmosphere by capturing carbon di-*
21 *oxide into a permanent mineral, such as the aqueous*
22 *precipitation of carbonate minerals that results in the*
23 *storage of carbon dioxide in a mineral form.*

24 “(36) *NATURAL GAS LIQUID.*—*The term ‘natural*
25 *gas liquid’ means ethane, butane, isobutane, natural*

1 *gasoline, and propane which is ready for commercial*
2 *sale or use.*

3 “(37) *NATURAL GAS LOCAL DISTRIBUTION COM-*
4 *PANY.—The term ‘natural gas local distribution com-*
5 *pany’ has the meaning given the term ‘local distribu-*
6 *tion company’ in section 2(17) of the Natural Gas*
7 *Policy Act of 1978 (15 U.S.C. 3301(17)).*

8 “(38) *OFFSET CREDIT.—The term ‘offset credit’*
9 *means a credit issued under part D.*

10 “(39) *OFFSET PROJECT.—The term ‘offset*
11 *project’ means a project or activity that reduces or*
12 *avoids greenhouse gas emissions, or sequesters green-*
13 *house gases, and for which offset credits are issued*
14 *under part D.*

15 “(40) *OFFSET PROJECT DEVELOPER.—The term*
16 *‘offset project developer’ means the individual or enti-*
17 *ty designated as the offset project developer in an off-*
18 *set project approval petition under section 735(c)(1).*

19 “(41) *PETROLEUM.—The term ‘petroleum’ in-*
20 *cludes crude oil, tar sands, oil shale, and heavy oils.*

21 “(42) *RENEWABLE BIOMASS.—The term ‘renew-*
22 *able biomass’ means any of the following:*

23 “(A) *Plant material, including waste mate-*
24 *rial, harvested or collected from actively man-*
25 *aged agricultural land that was in cultivation,*

1 *cleared, or fallow and nonforested on January 1,*
2 *2009.*

3 “(B) *Plant material, including waste mate-*
4 *rial, harvested or collected from pastureland that*
5 *was nonforested on January 1, 2009.*

6 “(C) *Nonhazardous vegetative matter de-*
7 *rived from waste, including separated yard*
8 *waste, landscape right-of-way trimmings, con-*
9 *struction and demolition debris or food waste*
10 *(but not municipal solid waste, recyclable waste*
11 *paper, painted, treated or pressurized wood, or*
12 *wood contaminated with plastic or metals).*

13 “(D) *Animal waste or animal byproducts,*
14 *including products of animal waste digesters.*

15 “(E) *Algae.*

16 “(F) *Trees, brush, slash, residues, or any*
17 *other vegetative matter removed from within 600*
18 *feet of any building, campground, or route des-*
19 *ignated for evacuation by a public official with*
20 *responsibility for emergency preparedness, or*
21 *from within 300 feet of a paved road, electric*
22 *transmission line, utility tower, or water supply*
23 *line.*

24 “(G) *Residues from or byproducts of milled*
25 *logs.*

1 “(H) Any of the following removed from for-
2 sted land that is not Federal and is not high
3 conservation priority land:

4 “(i) Trees, brush, slash, residues, inter-
5 planted energy crops, or any other vegeta-
6 tive matter removed from an actively man-
7 aged tree plantation established—

8 “(I) prior to January 1, 2009; or

9 “(II) on land that, as of January
10 1, 2009, was cultivated or fallow and
11 non-forested.

12 “(ii) Trees, logging residue, thinnings,
13 cull trees, pulpwood, and brush removed
14 from naturally-regenerated forests or other
15 non-plantation forests, including for the
16 purposes of hazardous fuel reduction or pre-
17 ventative treatment for reducing or con-
18 taining insect or disease infestation.

19 “(iii) Logging residue, thinnings, cull
20 trees, pulpwood, brush and species that are
21 non-native and noxious, from stands that
22 were planted and managed after January 1,
23 2009, to restore or maintain native forest
24 types.

1 “(iv) *Dead or severely damaged trees*
2 *removed within 5 years of fire, blowdown,*
3 *or other natural disaster, and badly infested*
4 *trees.*

5 “(I) *Materials, pre-commercial thinnings,*
6 *or removed invasive species from National Forest*
7 *System land and public lands (as defined in sec-*
8 *tion 103 of the Federal Land Policy and Man-*
9 *agement Act of 1976 (43 U.S.C. 1702)), includ-*
10 *ing those that are byproducts of preventive treat-*
11 *ments (such as trees, wood, brush, thinnings,*
12 *chips, and slash), that are removed as part of a*
13 *federally recognized timber sale, or that are re-*
14 *moved to reduce hazardous fuels, to reduce or*
15 *contain disease or insect infestation, or to restore*
16 *ecosystem health, and that are—*

17 “(i) *not from components of the Na-*
18 *tional Wilderness Preservation System, Wil-*
19 *derness Study Areas, Inventoried Roadless*
20 *Areas, old growth or mature forest stands,*
21 *components of the National Landscape Con-*
22 *servaion System, National Monuments, Na-*
23 *tional Conservation Areas, Designated*
24 *Primitive Areas; or Wild and Scenic Rivers*
25 *corridors;*

1 “(ii) harvested in environmentally sus-
2 tainable quantities, as determined by the
3 appropriate Federal land manager; and

4 “(iii) are harvested in accordance with
5 Federal and State law, and applicable land
6 management plans.

7 “(43) *RETIRE*.—The term ‘retire’, with respect to
8 an allowance or offset credit established or issued
9 under this title, means to disqualify such allowance
10 or offset credit for any subsequent use under this title,
11 regardless of whether the use is a sale, exchange, or
12 submission of the allowance or offset credit to satisfy
13 a compliance obligation.

14 “(44) *REVERSAL*.—The term ‘reversal’ means an
15 intentional or unintentional loss of sequestered green-
16 house gases to the atmosphere.

17 “(45) *SEQUESTERED AND SEQUESTRATION*.—The
18 terms ‘sequestered’ and ‘sequestration’ mean the sepa-
19 ration, isolation, or removal of greenhouse gases from
20 the atmosphere, as determined by the Administrator.
21 The terms include biological, geologic, and mineral se-
22 questration, but do not include ocean fertilization
23 techniques.

24 “(46) *STATIONARY SOURCE*.—The term ‘sta-
25 tionary source’ means any integrated operation com-

1 *prising any plant, building, structure, or stationary*
2 *equipment, including support buildings and equip-*
3 *ment, that is located within one or more contiguous*
4 *or adjacent properties, is under common control of the*
5 *same person or persons, and emits or may emit a*
6 *greenhouse gas.*

7 “(47) *STRATEGIC RESERVE ALLOWANCE.*—*The*
8 *term ‘strategic reserve allowance’ means an emission*
9 *allowance reserved for, transferred to, or deposited in*
10 *the strategic reserve, or established, under section 726.*

11 “(48) *UNCAPPED EMISSIONS.*—*The term ‘un-*
12 *capped emissions’ means emissions of greenhouse*
13 *gases emitted after December 31, 2011, that are not*
14 *capped emissions.*

15 “(49) *UNITED STATES GREENHOUSE GAS EMIS-*
16 *SIONS.*—*The term ‘United States greenhouse gas emis-*
17 *sions’ means the total quantity of annual greenhouse*
18 *gas emissions from the United States, as calculated by*
19 *the Administrator and reported to the United Nations*
20 *Framework Convention on Climate Change Secre-*
21 *tariat.*

22 “(50) *UTILITY UNIT.*—*The term ‘utility unit’*
23 *means a combustion device that, on January 1, 2009,*
24 *or any date thereafter, is fossil fuel-fired and serves*
25 *a generator that produces electricity for sale, unless*

1 *such combustion device, during the 12-month period*
2 *starting the later of January 1, 2009, or the com-*
3 *mencement of commercial operation and each cal-*
4 *endar year starting after such later date—*

5 *“(A) is part of an integrated cycle system*
6 *that cogenerates steam and electricity during*
7 *normal operation and that supplies one-third or*
8 *less of its potential electric output capacity and*
9 *25 MW or less of electrical output for sale; or*

10 *“(B) combusts materials of which more than*
11 *95 percent is municipal solid waste on a heat*
12 *input basis.*

13 *“(51) VINTAGE YEAR.—The term ‘vintage year’*
14 *means the calendar year for which an emission allow-*
15 *ance is established under section 721(a) or which is*
16 *assigned to an emission allowance under section*
17 *726(g)(3)(A), except that the vintage year for a stra-*
18 *tegic reserve allowance shall be the year in which such*
19 *allowance is purchased at auction.”.*

1 ***Subtitle B—Disposition of***
2 ***Allowances***

3 ***SEC. 321. DISPOSITION OF ALLOWANCES FOR GLOBAL***
4 ***WARMING POLLUTION REDUCTION PROGRAM.***

5 *Title VII of the Clean Air Act, as added by section*
6 *311 of this Act, is amended by adding at the end the fol-*
7 *lowing part:*

8 ***“PART H—DISPOSITION OF ALLOWANCES***

9 ***“SEC. 781. ALLOCATION OF ALLOWANCES FOR SUPPLE-***
10 ***MENTAL REDUCTIONS.***

11 *“(a) IN GENERAL.—The Administrator shall allocate*
12 *for each vintage year the following percentage of the emis-*
13 *sion allowances established under section 721(a), for dis-*
14 *tribution in accordance with part E:*

15 *“(1) For vintage years 2012 through 2025, 5*
16 *percent.*

17 *“(2) For vintage years 2026 through 2030, 3*
18 *percent.*

19 *“(3) For vintage years 2031 through 2050, 2*
20 *percent.*

21 *“(b) ADJUSTMENT.—The Administrator shall modify*
22 *the percentages set forth in subsection (a) as necessary to*
23 *ensure the achievement of the annual supplemental emission*
24 *reduction objective for 2020, and the cumulative reduction*
25 *objective through 2025, set forth in section 753(b)(1).*

1 “(c) *CARRYOVER.*—*If the Administrator has not dis-*
2 *tributed all of the allowances allocated pursuant to this sec-*
3 *tion for a given vintage year by the end of that year, the*
4 *Administrator shall—*

5 “(1) *auction the remaining emission allowances*
6 *under section 791 not later than March 31 of the year*
7 *following that vintage year; and*

8 “(2) *increase the allocation for the vintage year*
9 *after the vintage year for which emission allowances*
10 *were undistributed by the amount of undistributed*
11 *emission allowances.*

12 **“SEC. 782. ALLOCATION OF EMISSION ALLOWANCES.**

13 “(a) *ELECTRICITY CONSUMERS.*—*The Administrator*
14 *shall allocate emission allowances for the benefit of elec-*
15 *tricity consumers, to be distributed in accordance with sec-*
16 *tion 783 in the following amounts:*

17 “(1) *For vintage years 2012 and 2013, 43.75*
18 *percent of the emission allowances established for each*
19 *year under section 721(a).*

20 “(2) *For vintage years 2014 and 2015, 38.89*
21 *percent of the emission allowances established for each*
22 *year under section 721(a).*

23 “(3) *For vintage years 2016 through 2025, 35.00*
24 *percent of the emission allowances established for each*
25 *year under section 721(a).*

1 “(4) For vintage year 2026, 28 percent of the
2 emission allowances established for each year under
3 section 721(a).

4 “(5) For vintage year 2027, 21 percent of the
5 emission allowances established for each year under
6 section 721(a).

7 “(6) For vintage year 2028, 14 percent of the
8 emission allowances established for each year under
9 section 721(a).

10 “(7) For vintage year 2029, 7 percent of the
11 emission allowances established for each year under
12 section 721(a).

13 “(b) *NATURAL GAS CONSUMERS.*—*The Administrator*
14 *shall allocate emission allowances for the benefit of natural*
15 *gas consumers to be distributed in accordance with section*
16 *784 in the following amounts:*

17 “(1) For vintage years 2016 through 2025, 9
18 percent of the emission allowances established for each
19 year under section 721(a).

20 “(2) For vintage year 2026, 7.2 percent of the
21 emission allowances established for each year under
22 section 721(a).

23 “(3) For vintage year 2027, 5.4 percent of the
24 emission allowances established for each year under
25 section 721(a).

1 “(4) For vintage year 2028, 3.6 percent of the
2 emission allowances established for each year under
3 section 721(a).

4 “(5) For vintage year 2029, 1.8 percent of the
5 emission allowances established for each year under
6 section 721(a).

7 “(c) HOME HEATING OIL AND PROPANE CON-
8 SUMERS.—The Administrator shall allocate emission allow-
9 ances for the benefit of home heating oil and propane con-
10 sumers to be distributed in accordance with section 785 in
11 the following amounts:

12 “(1) For vintage years 2012 and 2013, 1.875
13 percent of the emission allowances established for each
14 year under section 721(a).

15 “(2) For vintage years 2014 and 2015, 1.67 per-
16 cent of the emission allowances established for each
17 year under section 721(a).

18 “(3) For vintage years 2016 through 2025, 1.5
19 percent of the emission allowances established for each
20 year under section 721(a).

21 “(4) For vintage year 2026, 1.2 percent of the
22 emission allowances established for each year under
23 section 721(a).

1 “(5) For vintage year 2027, 0.9 percent of the
2 emission allowances established for each year under
3 section 721(a).

4 “(6) For vintage year 2028, 0.6 percent of the
5 emission allowances established for each year under
6 section 721(a).

7 “(7) For vintage year 2029, 0.3 percent of the
8 emission allowances established for each year under
9 section 721(a).

10 “(d) *LOW INCOME CONSUMERS.*—For each vintage
11 year starting in 2012, the Administrator shall auction pur-
12 suant to section 791 15 percent of the emission allowances
13 established for each year under section 721(a), with the pro-
14 ceeds used for the benefit of low income consumers to fund
15 the program set forth in subtitle C of title IV of American
16 Clean Energy and Security Act of 2009.

17 “(e) *TRADE-VULNERABLE INDUSTRIES.*—The Admin-
18 istrator shall allocate emission allowances to energy-inten-
19 sive, trade-exposed entities, to be distributed in accordance
20 with section 765, in the following amounts:

21 “(1) For vintage years 2012 and 2013, up to 2.0
22 percent of the emission allowances established for each
23 year under section 721(a).

1 “(2) For vintage year 2014, up to 15 percent of
2 the emission allowances established for that year
3 under section 721(a).

4 “(3) For vintage year 2015, up to the product of
5 the amount specified in paragraph (2), multiplied by
6 the quantity of emission allowances established for
7 2015 under section 721(a) divided by the quantity of
8 emission allowances established for 2014 under section
9 721(a).

10 “(4) For vintage year 2016, up to the product of
11 the amount specified in paragraph (3), multiplied by
12 the quantity of emission allowances established for
13 2015 under section 721(a) divided by the quantity of
14 emission allowances established for 2014 under section
15 721(a).

16 “(5) For vintage years 2017 through 2025, up to
17 the product of the amount specified in paragraph (4),
18 multiplied by the quantity of emission allowances es-
19 tablished for that year under section 721(a) divided
20 by the quantity of emission allowances established for
21 2016 under section 721(a).

22 “(6) For vintage years 2026 through 2050, up to
23 the product of the amount specified in paragraph
24 (4)—

1 “(A) multiplied by the quantity of emission
2 allowances established for the applicable year
3 during 2026 through 2050 under section 721(a)
4 divided by the quantity of emission allowances
5 established for 2016 under section 721(a); and

6 “(B) multiplied by a factor, not exceeding
7 100 percent, that shall equal 90 percent for 2026
8 and decline 10 percent for each year thereafter
9 until reaching zero,

10 except that, if the President sets one or more factors
11 for a year under section 767(c)(3)(A), the highest fac-
12 tor set (not exceeding 100 percent) shall be used for
13 that year instead of the factor specified in subpara-
14 graph (B).

15 “(f) DEPLOYMENT OF CARBON CAPTURE AND SEQUES-
16 TRATION TECHNOLOGY.—

17 “(1) ANNUAL ALLOCATION.—The Administrator
18 shall allocate emission allowances for the deployment
19 of carbon capture and sequestration technology to be
20 distributed in accordance with section 786 in the fol-
21 lowing amounts:

22 “(A) For vintage years 2014 through 2017,
23 1.75 percent of the emission allowances estab-
24 lished for each year under section 721(a).

1 “(B) For vintage years 2018 and 2019, 4.75
2 percent of the emission allowances established for
3 each year under section 721(a).

4 “(C) For vintage years 2020 through 2050,
5 5 percent of the emission allowances established
6 for each year under section 721(a).

7 “(2) CARRYOVER.—If the Administrator has not
8 distributed all of the allowances allocated pursuant to
9 this subsection for a given vintage year by the end of
10 that year, the Administrator shall—

11 “(A) auction those emission allowances
12 under section 791 not later than March 31 of the
13 year following that vintage year; and

14 “(B) increase the allocation under this sub-
15 section for the vintage year after the vintage year
16 for which emission allowances were undisbursed
17 by the amount of undisbursed emission allow-
18 ances, but only to the extent that allowances for
19 that later year are to be auctioned.

20 “(g) INVESTMENT IN ENERGY EFFICIENCY AND RE-
21 NEWABLE ENERGY.—The Administrator shall allocate
22 emission allowances to invest in energy efficiency and re-
23 newable energy as follows:

1 “(1) To be distributed in accordance with section
2 132 of the American Clean Energy and Security Act
3 of 2009 in the following amounts:

4 “(A) For vintage years 2012 through 2015,
5 9.5 percent of the emission allowances established
6 for each year under section 721(a).

7 “(B) For vintage years 2016 through 2017,
8 6.5 percent of the emission allowances established
9 for each year under section 721(a).

10 “(C) For vintage years 2018 through 2021,
11 5.5 percent of the emission allowances established
12 for each year under section 721(a).

13 “(D) For vintage years 2022 through 2025,
14 1.0 percent of the emission allowances established
15 for each year under section 721(a).

16 “(E) For vintage years 2026 through 2050,
17 4.5 percent of the emission allowances established
18 for each year under section 721(a).

19 “(F) At the same time the vintage year
20 2022 through 2025 allowances are distributed,
21 3.55 percent of emission allowances established
22 under section 721(a) for the vintage year four
23 years greater shall also be distributed (which
24 shall be in addition to the emission allowances
25 in subparagraph (E)).

1 “(2) *To be distributed in accordance with section*
2 *201 of the American Clean Energy and Security Act*
3 *of 2009, for each vintage year from 2012 through*
4 *2050, 0.5 percent of emission allowances established*
5 *under section 721(a).*

6 “(h) *CLEAN ENERGY INNOVATION CENTERS.—For*
7 *each vintage year from 2012 through 2050, the Adminis-*
8 *trator shall allocate for Clean Energy Innovation Centers,*
9 *1.5 percent of emission allowances established under section*
10 *721(a), to be distributed in accordance with section 171 of*
11 *the American Clean Energy and Security Act of 2009.*

12 “(i) *INVESTMENT IN CLEAN VEHICLE TECHNOLOGY.—*
13 *The Administrator shall allocate emission allowances to in-*
14 *vest in the development and deployment of clean vehicles,*
15 *to be distributed in accordance with section 124 of the*
16 *American Clean Energy and Security Act of 2009 in the*
17 *following amounts:*

18 “(1) *For vintage years 2012 through 2017, 3*
19 *percent of the emission allowances established for each*
20 *year under section 721(a).*

21 “(2) *For vintage years 2018 through 2025, 1*
22 *percent of the emission allowances established for each*
23 *year under section 721(a).*

24 “(j) *DOMESTIC FUEL PRODUCTION.—For vintage*
25 *years 2014 through 2026, the Administrator shall allocate*

1 2.0 percent of the emission allowances established under sec-
2 tion 721(a) to domestic refiners, to be distributed in accord-
3 ance with section 787.

4 “(k) *INVESTMENT IN WORKERS.*—The Administrator
5 shall auction pursuant to section 791 emission allowances
6 for workers in the following amounts and shall report to
7 the Secretary of Labor the amount of proceeds from the sale
8 of these allowances:

9 “(1) For vintage years 2012 through 2021, 0.5
10 percent of the emission allowances established for each
11 year under section 721(a).

12 “(2) For vintage years 2022 through 2050, 1.0
13 percent of the emission allowances established for each
14 year under section 721(a).

15 “(l) *DOMESTIC ADAPTATION.*—The Administrator
16 shall allocate emission allowances for domestic adaptation
17 as follows:

18 “(1) To be distributed in accordance with section
19 453 of the American Clean Energy and Security Act
20 of 2009 in the following amounts:

21 “(A) For vintage years 2012 through 2021,
22 0.9 percent of the emission allowances established
23 for each year under section 721(a).

1 “(B) For vintage years 2022 through 2026,
2 1.9 percent of the emission allowances established
3 for each year under section 721(a).

4 “(C) For vintage years 2027 through 2050,
5 3.9 percent of the emission allowances established
6 for each year under section 721(a).

7 “(2) For vintage year 2012 and thereafter, the
8 Administrator shall auction, pursuant to section 791,
9 0.1 percent of the emission allowances established for
10 each year under section 721(a), and shall deposit the
11 proceeds in the Climate Change Health Protection
12 and Promotion Fund established by section 467 of the
13 American Clean Energy and Security Act of 2009.

14 “(m) WILDLIFE AND NATURAL RESOURCE ADAPTA-
15 TION.—The Administrator shall allocate emission allow-
16 ances for wildlife and natural resource adaptation as fol-
17 lows:

18 “(1) To be distributed to State agencies in ac-
19 cordance with section 480(c)(1) of the American
20 Clean Energy and Security Act of 2009 in the fol-
21 lowing amounts:

22 “(A) For vintage years 2012 through 2021,
23 0.385 percent of the emission allowances estab-
24 lished for each year under section 721(a).

1 “(B) For vintage years 2022 through 2026,
2 0.77 percent of the emission allowances estab-
3 lished for each year under section 721(a).

4 “(C) For vintage years 2027 through 2050,
5 1.54 percent of the emission allowances estab-
6 lished for each year under section 721(a).

7 “(2) To be auctioned pursuant to section 791,
8 with the proceeds to be deposited in the Natural Re-
9 sources Climate Change Adaptation Fund established
10 pursuant to section 480(a), in the following amounts:

11 “(A) For vintage years 2012 through 2021,
12 0.615 percent of the emission allowances estab-
13 lished for each year under section 721(a).

14 “(B) For vintage years 2022 through 2026,
15 1.23 percent of the emission allowances estab-
16 lished for each year under section 721(a).

17 “(C) For vintage years 2027 through 2050,
18 2.46 percent of the emission allowances estab-
19 lished for each year under section 721(a).

20 “(n) *INTERNATIONAL ADAPTATION.*—*The Adminis-*
21 *trator shall allocate emission allowances for international*
22 *adaptation to be distributed in accordance with part 2 of*
23 *subtitle E of title IV of the American Clean Energy and*
24 *Security Act of 2009 in the following amounts:*

1 “(1) For vintage years 2012 through 2021, 1.0
2 percent of the emission allowances established for each
3 year under section 721(a).

4 “(2) For vintage years 2022 through 2026, 2.0
5 percent of the emission allowances established for each
6 year under section 721(a).

7 “(3) For vintage years 2027 through 2050, 4.0
8 percent of the emission allowances established for each
9 year under section 721(a).

10 “(o) *INTERNATIONAL CLEAN TECHNOLOGY DEPLOY-*
11 *MENT.—The Administrator shall allocate emission allow-*
12 *ances for international clean technology deployment for dis-*
13 *tribution in accordance with subtitle D of title IV of the*
14 *American Clean Energy and Security Act of 2009 in the*
15 *following amounts:*

16 “(1) For vintage years 2012 through 2021, 1.0
17 percent of the emission allowances established for each
18 year under section 721(a).

19 “(2) For vintage years 2022 through 2026, 2.0
20 percent of the emission allowances established for each
21 year under section 721(a).

22 “(3) For vintage years 2027 through 2050, 4.0
23 percent of the emission allowances established for each
24 year under section 721(a).

1 “(p) *RELEASE OF FUTURE ALLOWANCES.—The Ad-*
2 *ministrators shall make future year allowances available by*
3 *auctioning allowances, pursuant to section 791, in the fol-*
4 *lowing amounts:*

5 “(1) *In each of calendar years 2014 through*
6 *2019, a string of 0.70 billion allowances with vintage*
7 *years 12 to 17 years after the year of the auction,*
8 *with an equal number of allowances from each vin-*
9 *tage year in the string.*

10 “(2) *In each of calendar years 2020 through*
11 *2025, a string of 0.50 billion allowances with vintage*
12 *years 12 to 17 years after the year of the auction,*
13 *with an equal number of allowances from each vin-*
14 *tage year in the string.*

15 “(3) *In each of calendar years 2026 through*
16 *2030, a string of 0.3 billion allowances with vintage*
17 *years 12 to 17 years after the year of the auction,*
18 *with an equal number of allowances from each vin-*
19 *tage year in the string.*

20 “(q) *DEFICIT REDUCTION.—*

21 “(1) *For each of vintage years 2012 through*
22 *2025, any allowances not designated for distribution*
23 *or auction pursuant to section 781, subsections (a)*
24 *through (o) of this section, or section 790 shall be auc-*

1 *tioned by the Administrator pursuant to section 791*
2 *and the proceeds shall be deposited into the Treasury.*

3 *“(2) Unless otherwise specified, any allowances*
4 *allocated pursuant to subsections (a) through (o) and*
5 *not distributed by March 31 of the calendar year fol-*
6 *lowing the allowance’s vintage year, shall be auc-*
7 *tioned by the Administrator and the proceeds shall be*
8 *deposited into the Treasury.*

9 *“(3) For auctions conducted through calendar*
10 *year 2020 pursuant to subsection (p), the auction*
11 *proceeds shall be deposited into the Treasury.*

12 *“(r) CLIMATE CHANGE CONSUMER REFUND.—*

13 *“(1) For each of vintage years 2026 through*
14 *2050, the Administrator shall auction the following*
15 *allowances established under section 721(a) and de-*
16 *posit the proceeds into the Climate Change Consumer*
17 *Refund Account:*

18 *“(A) Any allowances not designated for dis-*
19 *tribution or auction pursuant to section 781,*
20 *subsections (a) through (p) of this section, or sec-*
21 *tion 790.*

22 *“(B) Unless otherwise specified, any allow-*
23 *ances allocated pursuant to subsections (a)*
24 *through (o) and not distributed by March 31 of*

1 *the calendar year following the allowance’s vin-*
2 *tage year.*

3 “(2) *For auctions conducted pursuant to sub-*
4 *section (p) in calendar years 2021 and thereafter, the*
5 *Administrator shall place the proceeds from the sales*
6 *of the these allowances into the Climate Change Con-*
7 *sumer Refund Account. Funds deposited into the Cli-*
8 *mate Change Consumer Refund Account shall be used*
9 *as specified in section 789 and shall be available for*
10 *expenditure, without further appropriation or fiscal*
11 *year limitation.*

12 **“SEC. 783. ELECTRICITY CONSUMERS.**

13 “(a) *DEFINITIONS.—For purposes of this section:*

14 “(1) *ELECTRICITY LOCAL DISTRIBUTION COM-*
15 *PANY.—The term ‘electricity local distribution com-*
16 *pany’ means an electric utility—*

17 “(A) *that has a legal, regulatory, or con-*
18 *tractual obligation to deliver electricity directly*
19 *to retail consumers in the United States, regard-*
20 *less of whether that entity or another entity sells*
21 *the electricity as a commodity to those retail*
22 *consumers; and*

23 “(B) *the retail rates of which, except in the*
24 *case of a registered electric cooperative, are regu-*
25 *lated by a State regulatory authority, regulatory*

1 *commission, municipality, public utility, or by*
2 *an Indian tribe pursuant to tribal law.*

3 “(2) *LONG-TERM CONTRACT GENERATOR.*—*The*
4 *term ‘long-term contract generator’ means a quali-*
5 *fying small power production facility or a qualifying*
6 *cogeneration facility (within the meaning of section*
7 *3(17)(C) or 3(18)(B) of the Federal Power Act), or a*
8 *new independent power production facility (within*
9 *the meaning of section 416(a)(2) of this Act, except*
10 *that subparagraph (C) of such definition shall not*
11 *apply for purposes of this paragraph), that is—*

12 “(A) *a covered entity;*

13 “(B) *as of the commencement of operation,*
14 *a facility consisting of one or more utility units*
15 *with total installed net output capacity (in*
16 *MWe) of no more than 130 percent of the facili-*
17 *ty’s total planned net output capacity (in MWe);*

18 “(C) *as of the date of enactment of this title,*
19 *a facility with a power sales agreement executed*
20 *before January 1, 2007, that governs the facili-*
21 *ty’s electricity sales and provides for sales at a*
22 *price (whether a fixed price or a price formula)*
23 *for electricity that does not allow for recovery of*
24 *the costs of compliance with the limitation on*
25 *greenhouse gas emissions under this title; and*

1 “(D) not a merchant coal generator.

2 “(3) *MERCHANT COAL GENERATOR*.—The term
3 ‘merchant coal generator’ means an electric genera-
4 tion facility that—

5 “(A) is a covered entity;

6 “(B) derives at least 85 percent of its heat
7 input from coal, petroleum coke, or any com-
8 bination of these 2 fuels;

9 “(C) is not owned by a Federal, State, or
10 regional agency or power authority; and

11 “(D) generates electricity for sale to others,
12 provided that such sales are not subject to—

13 “(i) retail rate regulation by a State
14 public utility commission; or

15 “(ii) self-regulation of rates by a local
16 government, State agency, or electric coop-
17 erative.

18 “(4) *STATE REGULATORY AUTHORITY*.—The term
19 ‘State regulatory authority’ has the meaning given
20 that term in section 3(17) of the Public Utility Regu-
21 latory Policies Act of 1978 (16 U.S.C. 2602(17)).

22 “(b) *ELECTRICITY LOCAL DISTRIBUTION COMPA-*
23 *NIES*.—

24 “(1) *ALLOCATION*.—Not later than June 30 of
25 2011 and each calendar year thereafter through 2028,

1 *the Administrator shall distribute to electricity local*
2 *distribution companies for the benefit of retail rate-*
3 *payers the quantity of emission allowances allocated*
4 *for the electricity sector for the following vintage year*
5 *pursuant to section 782(a), provided that the Admin-*
6 *istrator shall first subtract from such quantity and*
7 *distribute or reserve for distribution the quantity of*
8 *emission allowances for the relevant vintage year that*
9 *are required for distribution under subsections (c)*
10 *and (d) of this section.*

11 “(2) *DISTRIBUTION OF ALLOWANCES BASED ON*
12 *EMISSIONS.—*

13 “(A) *IN GENERAL.—For each vintage year,*
14 *50 percent of the emission allowances available*
15 *for distribution under paragraph (1) shall be*
16 *distributed by the Administrator among indi-*
17 *vidual electricity local distribution companies*
18 *ratably based on the annual average carbon di-*
19 *oxide emissions attributable to generation of elec-*
20 *tricity delivered at retail by each such company*
21 *during the base period determined under sub-*
22 *paragraph (B).*

23 “(B) *BASE PERIOD.—*

24 “(i) *VINTAGE YEARS 2012 AND 2013.—*

25 *For vintage years 2012 and 2013, an elec-*

1 *tricity local distribution company's base pe-*
2 *riod shall be—*

3 *“(I) calendar years 2006 through*
4 *2008; or*

5 *“(II) any 3 consecutive calendar*
6 *years between 1999 and 2008, inclu-*
7 *sive, that such company selects, pro-*
8 *vided that the company timely informs*
9 *the Administrator of such selection.*

10 *“(i) VINTAGE YEARS 2014 AND THERE-*
11 *AFTER.—For vintage years 2014 and there-*
12 *after, the base period shall be—*

13 *“(I) the base period selected under*
14 *clause (i); or*

15 *“(II) any 3 consecutive calendar*
16 *years between 2009 through 2012, in-*
17 *clusive, or, for local distribution com-*
18 *panies with new units that are not*
19 *fully operational before 2012, solely*
20 *calendar year 2012, provided that such*
21 *company selects a period from among*
22 *these options and timely informs the*
23 *Administrator of such selection.*

24 *“(C) DETERMINATION OF EMISSIONS.—As*
25 *part of the regulations promulgated pursuant to*

1 *subsection (e), the Administrator, after consulta-*
2 *tion with the Energy Information Administra-*
3 *tion, shall determine the average amount of car-*
4 *bon dioxide emissions attributable to generation*
5 *of electricity delivered at retail by each elec-*
6 *tricity local distribution company for each of the*
7 *years 1999 through 2009 or the most recent cal-*
8 *endar year for which appropriate data are avail-*
9 *able, taking into account entities' electricity gen-*
10 *eration, electricity purchases, and electricity*
11 *sales. Not later than March 31, 2013, the Admin-*
12 *istrator, after consultation with the Energy In-*
13 *formation Administration, shall update such de-*
14 *termination to include emissions for any addi-*
15 *tional calendar years through 2012. Such deter-*
16 *minations shall be as precise as practicable, tak-*
17 *ing into account the nature of data currently*
18 *available and the nature of markets and regula-*
19 *tion in effect in various regions of the country.*
20 *The following requirements shall apply to such*
21 *determinations:*

22 *“(i) The Administrator shall determine*
23 *the amount of fossil fuel-based electricity de-*
24 *livered at retail by each electricity local dis-*
25 *tribution company, and shall use appro-*

1 *priate emission factors to calculate carbon*
2 *dioxide emissions associated with the gen-*
3 *eration of such electricity.*

4 *“(ii) Where it is not practical to deter-*
5 *mine the precise fuel mix for the electricity*
6 *delivered at retail by an individual elec-*
7 *tricity local distribution company, the Ad-*
8 *ministrator may use the best available data,*
9 *including average data on a regional basis*
10 *with reference to Regional Transmission*
11 *Organizations or regional entities (as that*
12 *term is defined in section 215(a)(7) of the*
13 *Federal Power Act (16 U.S.C. 8240(a)(7)),*
14 *to estimate fuel mix and emissions. Dif-*
15 *ferent methodologies may be applied in dif-*
16 *ferent regions if appropriate to obtain the*
17 *most accurate estimate.*

18 *“(3) DISTRIBUTION OF ALLOWANCES BASED ON*
19 *DELIVERIES.—*

20 *“(A) INITIAL ALLOCATION FORMULA.—Ex-*
21 *cept as provided in subparagraph (B), for each*
22 *vintage year, the Administrator shall distribute*
23 *50 percent of the emission allowances allocated*
24 *under paragraph (1) of this subsection among*
25 *individual electricity local distribution compa-*

1 *nies ratably based on each electricity local dis-*
2 *tribution company’s annual average retail elec-*
3 *tricity deliveries for 2006 through 2008, unless*
4 *the owner or operator of the company selects 3*
5 *other consecutive years between 1999 and 2008,*
6 *inclusive, and timely notifies the Administrator*
7 *of its selection.*

8 *“(B) UPDATING.—Prior to distributing*
9 *2015 vintage emission allowances under this sub-*
10 *paragraph and at 3-year intervals thereafter, the*
11 *Administrator shall update the distribution for-*
12 *mula under this subparagraph to reflect changes*
13 *in each electricity local distribution company’s*
14 *service territory since the most recent formula*
15 *was established. For each successive 3-year pe-*
16 *riod, the Administrator shall distribute allow-*
17 *ances ratably among individual electricity local*
18 *distribution companies based on the product of—*

19 *“(i) each electricity local distribution*
20 *company’s average annual deliveries per*
21 *customer during calendar years 2006*
22 *through 2008, or during the 3 alternative*
23 *consecutive years selected by such company*
24 *under subparagraph (A); and*

1 “(ii) the number of customers of such
2 electricity local distribution company in the
3 most recent year in which the formula is
4 updated under this clause.

5 “(4) USE OF ALLOWANCES.—

6 “(A) RATEPAYER BENEFIT.—Emission al-
7 lowances distributed to an electricity local dis-
8 tribution company under this subsection shall be
9 used exclusively for the benefit of retail rate-
10 payers of such electricity local distribution com-
11 pany and may not be used to support electricity
12 sales or deliveries to entities or persons other
13 than such ratepayers.

14 “(B) RATEPAYER CLASSES.—In using emis-
15 sion allowances distributed under this section for
16 the benefit of ratepayers, an electricity local dis-
17 tribution company shall ensure that ratepayer
18 benefits are distributed—

19 “(i) among ratepayer classes ratably
20 based on electricity deliveries to each class;
21 and

22 “(ii) equitably among individual rate-
23 payers within each ratepayer class, includ-
24 ing entities that receive emission allowances
25 pursuant to part F.

1 “(C) *LIMITATION.*—*An electricity local dis-*
2 *tribution company shall not use the value of*
3 *emission allowances distributed under this sub-*
4 *section to provide to any ratepayer a rebate that*
5 *is based solely on the quantity of electricity de-*
6 *livered to such ratepayer. To the extent an elec-*
7 *tricity local distribution company uses the value*
8 *of emission allowances distributed under this*
9 *subsection to provide rebates, it shall, to the*
10 *maximum extent practicable, provide such re-*
11 *bates with regard to the fixed portion of rate-*
12 *payers’ bills or as a fixed credit or rebate on*
13 *electricity bills.*

14 “(D) *GUIDELINES.*—*As part of the regula-*
15 *tions promulgated under subsection (e), the Ad-*
16 *ministrator shall prescribe specific guidelines for*
17 *the implementation of the requirements of this*
18 *paragraph.*

19 “(5) *REGULATORY PROCEEDINGS.*—

20 “(A) *REQUIREMENT.*—*No electricity local*
21 *distribution company shall be eligible to receive*
22 *emission allowances under this subsection unless*
23 *the State regulatory authority with authority*
24 *over such company, or the entity with authority*
25 *to regulate retail electricity rates of an electricity*

1 *local distribution company not regulated by a*
2 *State regulatory authority, has—*

3 “(i) *promulgated a regulation or com-*
4 *pleted a rate proceeding (or the equivalent,*
5 *in the case of a ratemaking entity other*
6 *than a State regulatory authority) that pro-*
7 *vides for the full implementation of the re-*
8 *quirements of paragraph (4) of this sub-*
9 *section; and*

10 “(ii) *made available to the Adminis-*
11 *trator and the public a report describing, in*
12 *adequate detail, the manner in which the*
13 *requirements of paragraph (4) will be im-*
14 *plemented.*

15 “(B) *UPDATING.—The Administrator shall*
16 *require, as a condition of continued receipt of*
17 *emission allowances under this subsection by an*
18 *electricity local distribution company, that a*
19 *new regulation be promulgated or rate pro-*
20 *ceeding be completed, and a new report be made*
21 *available to the Administrator and the public,*
22 *pursuant to subparagraph (A), not less fre-*
23 *quently than every 5 years.*

24 “(6) *PLANS AND REPORTING.—*

1 “(A) *REGULATIONS.*—As part of the regula-
2 tions promulgated under subsection (e), the Ad-
3 ministrators shall prescribe requirements gov-
4 erning plans and reports to be submitted in ac-
5 cordance with this paragraph.

6 “(B) *PLANS.*—Not later than April 30 of
7 2011 and every 5 years thereafter through 2026,
8 each electricity local distribution company shall
9 submit to the Administrator a plan, approved by
10 the State regulatory authority or other entity
11 charged with regulating the retail rates of such
12 company, describing such company’s plans for
13 the disposition of the value of emission allow-
14 ances to be received pursuant to this subsection,
15 in accordance with the requirements of this sub-
16 section.

17 “(C) *REPORTS.*—Not later than June 30 of
18 2013 and each calendar year thereafter through
19 2031, each electricity local distribution company
20 shall submit a report to the Administrator, and
21 to the relevant State regulatory authority or
22 other entity charged with regulating the retail
23 electricity rates of such company, describing the
24 disposition of the value of any emission allow-
25 ances received by such company in the prior cal-

1 *endar year pursuant to this subsection, includ-*
2 *ing—*

3 “(i) *a description of sales, transfer, ex-*
4 *change, or use by the company for compli-*
5 *ance with obligations under this title, of*
6 *any such emission allowances;*

7 “(ii) *the monetary value received by*
8 *the company, whether in money or in some*
9 *other form, from the sale, transfer, or ex-*
10 *change of emission allowances received by*
11 *the company under this subsection;*

12 “(iii) *the manner in which the com-*
13 *pany’s disposition of emission allowances*
14 *received under this subsection complies with*
15 *the requirements of this subsection, includ-*
16 *ing each of the requirements of paragraph*
17 *(4); and*

18 “(iv) *such other information as the Ad-*
19 *ministrator may require pursuant to sub-*
20 *paragraph (A).*

21 “(D) *PUBLICATION.—The Administrator*
22 *shall make available to the public all plans and*
23 *reports submitted under this subsection, includ-*
24 *ing by publishing such plans and reports on the*
25 *Internet.*

1 “(7) *AUDITS.*—*Each year, the Administrator*
2 *shall audit a representative sample of electricity local*
3 *distribution companies to ensure that emission allow-*
4 *ances distributed under this subsection have been used*
5 *exclusively for the benefit of retail ratepayers and*
6 *that such companies are complying with the require-*
7 *ments of this subsection. In selecting companies for*
8 *audit, the Administrator shall take into account any*
9 *credible evidence of noncompliance with such require-*
10 *ments. The Administrator shall make available to the*
11 *public a report describing the results of each such*
12 *audit, including by publishing such report on the*
13 *Internet.*

14 “(8) *ENFORCEMENT.*—*A violation of any re-*
15 *quirement of this subsection shall be a violation of*
16 *this Act. Each emission allowance the value of which*
17 *is used in violation of the requirements of this sub-*
18 *section shall be a separate violation.*

19 “(c) *MERCHANT COAL GENERATORS.*—

20 “(1) *QUALIFYING EMISSIONS.*—*The qualifying*
21 *emissions for a merchant coal generator for a given*
22 *calendar year shall be the product of the number of*
23 *megawatt hours of electricity generated by such gener-*
24 *ator in such calendar year and the average carbon di-*
25 *oxide emissions per megawatt hour generated by such*

1 generator during calendar years 2006 through 2008,
2 provided that the number of megawatt hours in a
3 given calendar year for purposes of such calculation
4 shall be reduced in proportion to the portion of such
5 generator's carbon dioxide emissions that are either—

6 “(A) captured and sequestered in such cal-
7 endar year; or

8 “(B) attributable to the combustion or gas-
9 ification of renewable biomass, such that the gen-
10 erator is not required to hold emission allow-
11 ances for such emissions.

12 “(2) *PHASE-DOWN SCHEDULE.*—The Adminis-
13 trator shall identify an annual phase-down factor,
14 applicable to distributions to merchant coal genera-
15 tors for each of vintage years 2012 through 2029, that
16 corresponds to the overall decline in the amount of
17 emission allowances to be allocated to the electricity
18 sector in such years pursuant to section 782(a). Such
19 factor shall—

20 “(A) for vintage year 2012, be equal to 1.0;

21 “(B) for each of vintage years 2013 through
22 2029, correspond to the quotient of—

23 “(i) the quantity of emission allow-
24 ances allocated to the electricity sector

1 *under section 782(a) for such vintage year;*
2 *divided by*

3 “(ii) *the quantity of emission allow-*
4 *ances allocated to the electricity sector*
5 *under section 782(a) for vintage year 2012.*

6 “(3) *DISTRIBUTION OF EMISSION ALLOW-*
7 *ANCES.—Not later than March 1 of 2013 and each*
8 *calendar year through 2030, the Administrator shall*
9 *distribute emission allowances of the preceding vin-*
10 *tage year to the owner or operator of each merchant*
11 *coal generator equal to the product of—*

12 “(A) *0.5;*

13 “(B) *the qualifying emissions for such mer-*
14 *chant coal generator for the preceding year, as*
15 *determined under paragraph (1); and*

16 “(C) *the phase-down factor for the preceding*
17 *calendar year, as identified under paragraph*
18 *(2).*

19 “(4) *ADJUSTMENT.—*

20 “(A) *STUDY.—Not later than July 1, 2014,*
21 *the Administrator, in consultation with the Fed-*
22 *eral Energy Regulatory Commission, shall com-*
23 *plete a study to determine whether the allocation*
24 *formula under paragraph (3) is resulting in, or*
25 *is likely to result in, windfall profits to mer-*

1 *chant coal generators or substantially disparate*
2 *treatment of merchant coal generators operating*
3 *in different markets or regions.*

4 “(B) *REGULATION.*—*If the Administrator,*
5 *in consultation with the Federal Energy Regu-*
6 *latory Commission, makes an affirmative find-*
7 *ing of windfall profits or disparate treatment*
8 *under subparagraph (A), the Administrator*
9 *shall, not later than 18 months after the comple-*
10 *tion of the study described in subparagraph (A),*
11 *promulgate regulations providing for the adjust-*
12 *ment of the allocation formula under paragraph*
13 *(3) to mitigate, to the extent practicable, such*
14 *windfall profits, if any, and such disparate*
15 *treatment, if any.*

16 “(5) *LIMITATION ON ALLOWANCES.*—*Notwith-*
17 *standing paragraph (3) or (4), for any vintage year*
18 *the Administrator shall distribute under this sub-*
19 *section no more than 10 percent of the total quantity*
20 *of emission allowances available for such vintage year*
21 *for distribution to the electricity sector under section*
22 *782(a). If the quantity of emission allowances that*
23 *would otherwise be distributed pursuant to paragraph*
24 *(3) or (4) for any vintage year would exceed such*
25 *limit, the Administrator shall distribute 10 percent of*

1 *the total emission allowances available for distribu-*
2 *tion under section 782(a) for such vintage year rat-*
3 *ably among merchant coal generators based on the*
4 *applicable formula under paragraph (3) or (4).*

5 “(d) *GENERATORS WITH LONG-TERM POWER PUR-*
6 *CHASE AGREEMENTS.—*

7 “(1) *RESERVED ALLOWANCES.—Notwithstanding*
8 *subsections (b) and (c) of this section, the Adminis-*
9 *trator shall withhold from distribution to electricity*
10 *local distribution companies a number of emission al-*
11 *lowances equal to 105 percent of the emission allow-*
12 *ances the Administrator anticipates will be distrib-*
13 *uted to long-term contract generators under this sub-*
14 *section. If not required to distribute all of these re-*
15 *served allowances under this subsection, the Adminis-*
16 *trator shall distribute any remaining emission allow-*
17 *ances to the electricity local distribution companies in*
18 *accordance with subsection (b).*

19 “(2) *DISTRIBUTION.—Not later than March 1 of*
20 *2013 and each calendar year through 2030, the Ad-*
21 *ministrator shall distribute to the owner or operator*
22 *of each long-term contract generator the number of*
23 *emission allowances of the preceding vintage year*
24 *that are equal to the number of tons of carbon dioxide*
25 *emitted as a result of a qualifying long-term power*

1 purchase agreement referred to in subsection
2 (a)(2)(C).

3 “(3) *DURATION.*—A long-term contract generator
4 shall cease to be eligible to receive allocations under
5 this subsection upon the earliest of the following dates:

6 “(A) The date when the facility no longer
7 qualifies as a qualifying small power production
8 facility or a qualifying cogeneration facility
9 (within the meaning of section 3(17)(C) or
10 3(18)(B) of the Federal Power Act), or a new
11 independent power production facility (within
12 the meaning of section 416(a)(2) of this Act, ex-
13 cept that subparagraph (C) of such definition
14 shall not apply for purposes of this clause).

15 “(B) The date when the facility no longer
16 meets the total installed net output capacity cri-
17 terion required to be met as of the commence-
18 ment of operation in subsection (a)(2)(B).

19 “(C) The date when the power purchase
20 agreement referred to in subsection (a)(2)(C)—

21 “(i) expires;

22 “(ii) is terminated; or

23 “(iii) is amended in any way that
24 changes the location of the facility, the price
25 (whether a fixed price or price formula) for

1 *electricity sold under such agreement, the*
2 *quantity of electricity sold under the agree-*
3 *ment, or the expiration or termination date*
4 *of the agreement.*

5 “(4) *ELIGIBILITY.*—*To be eligible to receive al-*
6 *lowance distributions under this subsection, the owner*
7 *or operator of a long-term contract generator shall*
8 *submit each of the following in writing to the Admin-*
9 *istrator within 180 days after the date of enactment*
10 *of this title, and not later than September 30 of each*
11 *vintage year for which such generator wishes to re-*
12 *ceive emission allowances:*

13 “(A) *A certificate of representation de-*
14 *scribed in section 700(15).*

15 “(B) *An identification of each owner and*
16 *each operator of the facility.*

17 “(C) *An identification of the units at the*
18 *facility and the location of the facility.*

19 “(D) *A written certification by the des-*
20 *ignated representative that the facility meets all*
21 *the requirements of the definition of a long-term*
22 *contract generator.*

23 “(E) *The expiration date of the power pur-*
24 *chase agreement referred to in subsection*
25 *(a)(2)(C).*

1 “(F) A copy of the power purchase agree-
2 ment referred to in subsection (a)(2)(C).

3 “(5) NOTIFICATION.—Not later than 30 days
4 after a facility loses, in accordance with paragraph
5 (3), its eligibility for emission allowances distributed
6 pursuant to this subsection, the designated representa-
7 tive of such facility shall notify the Administrator in
8 writing when, and on what basis, the facility lost its
9 eligibility to receive emission allowances.

10 “(e) REGULATIONS.—Not later than 2 years after the
11 date of enactment of this title, the Administrator, in con-
12 sultation with the Federal Energy Regulatory Commission,
13 shall promulgate regulations to implement the requirements
14 of this section.

15 **“SEC. 784. NATURAL GAS CONSUMERS.**

16 “(a) DEFINITIONS.—For purposes of this section:

17 “(1) NATURAL GAS LOCAL DISTRIBUTION COM-
18 PANY.—The term ‘natural gas local distribution com-
19 pany’ means a natural gas local distribution com-
20 pany that is a covered entity.

21 “(2) COST-EFFECTIVE.—The term ‘cost-effective’,
22 with respect to an energy efficiency program, means
23 that the program meets the Total Resource Cost Test,
24 which requires that the net present value of economic
25 benefits over the life of the program, including avoid-

1 *ed supply and delivery costs and deferred or avoided*
2 *investments, is greater than the net present value of*
3 *the economic costs over the life of the program, in-*
4 *cluding program costs and incremental costs borne by*
5 *the energy consumer.*

6 *“(b) ALLOCATION.—Not later than June 30 of 2015*
7 *and each calendar year thereafter through 2028, the Admin-*
8 *istrator shall distribute to natural gas local distribution*
9 *companies for the benefit of retail ratepayers the quantity*
10 *of emission allowances allocated for the following vintage*
11 *year pursuant to section 782(b). Such allowances shall be*
12 *distributed among local natural gas distribution companies*
13 *based on the following formula:*

14 *“(1) INITIAL FORMULA.—Except as provided in*
15 *paragraph (2), for each vintage year, the Adminis-*
16 *trator shall distribute emission allowances among*
17 *natural gas local distribution companies ratably*
18 *based on each such company’s annual average retail*
19 *natural gas deliveries for 2006 through 2008, unless*
20 *the owner or operator of the company selects 3 other*
21 *consecutive years between 1999 and 2008, inclusive,*
22 *and timely notifies the Administrator of its selection.*

23 *“(2) UPDATING.—Prior to distributing 2019 vin-*
24 *tage emission allowances and at 3-year intervals*
25 *thereafter, the Administrator shall update the dis-*

1 *tribution formula under this subsection to reflect*
2 *changes in each natural gas local distribution com-*
3 *pany's service territory since the most recent formula*
4 *was established. For each successive 3-year period, the*
5 *Administrator shall distribute allowances ratably*
6 *among natural gas local distribution companies based*
7 *on the product of—*

8 *“(A) each natural gas local distribution*
9 *company's average annual natural gas deliveries*
10 *per customer during calendar years 2006*
11 *through 2008, or during the 3 alternative con-*
12 *secutive years selected by such company under*
13 *paragraph (1); and*

14 *“(B) the number of customers of such nat-*
15 *ural gas local distribution company in the most*
16 *recent year in which the formula is updated*
17 *under this paragraph.*

18 *“(c) USE OF ALLOWANCES.—*

19 *“(1) RATEPAYER BENEFIT.—Emission allow-*
20 *ances distributed to a natural gas local distribution*
21 *company under this section shall be used exclusively*
22 *for the benefit of retail ratepayers of such natural gas*
23 *local distribution company and may not be used to*
24 *support natural gas sales or deliveries to entities or*
25 *persons other than such ratepayers.*

1 “(2) *RATEPAYER CLASSES.*—*In using emission*
2 *allowances distributed under this section for the ben-*
3 *efit of ratepayers, a natural gas local distribution*
4 *company shall ensure that ratepayer benefits are dis-*
5 *tributed—*

6 “(A) *among ratepayer classes ratably based*
7 *on natural gas deliveries to each class; and*

8 “(B) *equitably among individual ratepayers*
9 *within each ratepayer class.*

10 “(3) *LIMITATION.*—*A natural gas local distribu-*
11 *tion company shall not use the value of emission al-*
12 *lowances distributed under this section to provide to*
13 *any ratepayer a rebate that is based solely on the*
14 *quantity of natural gas delivered to such ratepayer.*
15 *To the extent a natural gas local distribution com-*
16 *pany uses the value of emission allowances distributed*
17 *under this section to provide rebates, it shall, to the*
18 *maximum extent practicable, provide such rebates*
19 *with regard to the fixed portion of ratepayers’ bills or*
20 *as a fixed creditor rebate on natural gas bills.*

21 “(4) *ENERGY EFFICIENCY PROGRAMS.*—*The*
22 *value of no less than one third of the emission allow-*
23 *ances distributed to natural gas local distribution*
24 *companies pursuant to this section in any calendar*
25 *year shall be used for cost-effective energy efficiency*

1 *programs for natural gas consumers. Such programs*
2 *must be authorized and overseen by the State regu-*
3 *latory authority, or by the entity with regulatory au-*
4 *thority over retail natural gas rates in the case of a*
5 *natural gas local distribution company that is not*
6 *regulated by a State regulatory authority.*

7 *“(5) GUIDELINES.—As part of the regulations*
8 *promulgated under subsection (h), the Administrator*
9 *shall prescribe specific guidelines for the implementa-*
10 *tion of the requirements of this subsection.*

11 *“(d) REGULATORY PROCEEDINGS.—*

12 *“(1) REQUIREMENT.—No natural gas local dis-*
13 *tribution company shall be eligible to receive emission*
14 *allowances under this section unless the State regu-*
15 *latory authority with authority over such company,*
16 *or the entity with authority to regulate retail rates of*
17 *a natural gas local distribution company not regu-*
18 *lated by a State regulatory authority, has—*

19 *“(A) promulgated a regulation or completed*
20 *a rate proceeding (or the equivalent, in the case*
21 *of a ratemaking entity other than a State regu-*
22 *latory authority) that provides for the full imple-*
23 *mentation of the requirements of subsection (c);*
24 *and*

1 “(B) made available to the Administrator
2 and the public a report describing, in adequate
3 detail, the manner in which the requirements of
4 subsection (c) will be implemented.

5 “(2) UPDATING.—The Administrator shall re-
6 quire, as a condition of continued receipt of emission
7 allowances under this section, that a new regulation
8 be promulgated or rule proceeding be completed, and
9 a new report be made available to the Administrator
10 and the public, pursuant to paragraph (1), not less
11 frequently than every 5 years.

12 “(e) PLANS AND REPORTING.—

13 “(1) REGULATIONS.—As part of the regulations
14 promulgated under subsection (h), the Administrator
15 shall prescribe requirements governing plans and re-
16 ports to be submitted in accordance with this sub-
17 section.

18 “(2) PLANS.—Not later than April 30 of 2015
19 and every 5 years thereafter through 2025, each nat-
20 ural gas local distribution company shall submit to
21 the Administrator a plan, approved by the State reg-
22 ulatory authority or other entity charged with regu-
23 lating the retail rates of such company, describing
24 such company’s plans for the disposition of the value
25 of emission allowances to be received pursuant to this

1 *section, in accordance with the requirements of this*
2 *section.*

3 *“(3) REPORTS.—Not later than June 30 of 2017*
4 *and each calendar year thereafter through 2031, each*
5 *natural gas local distribution company shall submit*
6 *a report to the Administrator, approved by the rel-*
7 *evant State regulatory authority or other entity*
8 *charged with regulating the retail natural gas rates*
9 *of such company, describing the disposition of the*
10 *value of any emission allowances received by such*
11 *company in the prior calendar year pursuant to this*
12 *subsection, including—*

13 *“(A) a description of sales, transfer, ex-*
14 *change, or use by the company for compliance*
15 *with obligations under this title, of any such*
16 *emission allowances;*

17 *“(B) the monetary value received by the*
18 *company, whether in money or in some other*
19 *form, from the sale, transfer, or exchange of*
20 *emission allowances received by the company*
21 *under this section;*

22 *“(C) the manner in which the company’s*
23 *disposition of emission allowances received under*
24 *this subsection complies with the requirements of*

1 *this section, including each of the requirements*
2 *of subsection (c);*

3 “(D) *the cost-effectiveness of, and energy*
4 *savings achieved by, energy efficiency programs*
5 *supported through such emission allowances; and*

6 “(E) *such other information as the Admin-*
7 *istrator may require pursuant to paragraph (1).*

8 “(4) *PUBLICATION.—The Administrator shall*
9 *make available to the public all plans and reports*
10 *submitted by natural gas local distribution companies*
11 *under this subsection, including by publishing such*
12 *plans and reports on the Internet.*

13 “(f) *AUDITS.—Each year, the Administrator shall*
14 *audit a representative sample of natural gas local distribu-*
15 *tion companies to ensure that emission allowances distrib-*
16 *uted under this section have been used exclusively for the*
17 *benefit of retail ratepayers and that such companies are*
18 *complying with the requirements of this section. In selecting*
19 *companies for audit, the Administrator shall take into ac-*
20 *count any credible evidence of noncompliance with such re-*
21 *quirements. The Administrator shall make available to the*
22 *public a report describing the results of each such audit,*
23 *including by publishing such report on the Internet.*

24 “(g) *ENFORCEMENT.—A violation of any requirement*
25 *of this section shall be a violation of this Act. Each emission*

1 allowance the value of which is used in violation of the re-
2 quirements of this section shall be a separate violation.

3 “(h) *REGULATIONS.*—Not later than January 1, 2014,
4 the Administrator, in consultation with the Federal Energy
5 Regulatory Commission, shall promulgate regulations to
6 implement the requirements of this section.

7 **“SEC. 785. HOME HEATING OIL AND PROPANE CONSUMERS.**

8 “(a) *DEFINITIONS.*—For purposes of this section:

9 “(1) *CARBON CONTENT.*—The term ‘carbon con-
10 tent’ means the amount of carbon dioxide that would
11 be emitted as a result of the combustion of a fuel.

12 “(2) *COST-EFFECTIVE.*—The term ‘cost-effective’
13 has the meaning given that term in section 784(a)(2).

14 “(b) *ALLOCATION.*—Not later than September 30 of
15 each of calendar years 2012 through 2029, the Adminis-
16 trator shall distribute among the States, in accordance with
17 this section, the quantity of emission allowances allocated
18 pursuant to section 782(c).

19 “(c) *DISTRIBUTION AMONG STATES.*—The Adminis-
20 trator shall distribute emission allowances among the States
21 under this section each year ratably based on the ratio of—

22 “(1) the carbon content of home heating oil and
23 propane sold to consumers within each State in the
24 preceding year for residential or commercial uses; to

1 “(2) *the carbon content of home heating oil and*
2 *propane sold to consumers within the United States*
3 *in the preceding year for residential or commercial*
4 *uses.*

5 “(d) *USE OF ALLOWANCES.—*

6 “(1) *IN GENERAL.—States shall use emission al-*
7 *lowances distributed under this section exclusively for*
8 *the benefit of consumers of home heating oil or pro-*
9 *pane for residential or commercial purposes. Such*
10 *proceeds shall be used exclusively for—*

11 “(A) *cost-effective energy efficiency pro-*
12 *grams for consumers that use home heating oil or*
13 *propane for residential or commercial purposes;*
14 *or*

15 “(B) *rebates or other direct financial assist-*
16 *ance programs for consumers of home heating oil*
17 *or propane used for residential or commercial*
18 *purposes.*

19 “(2) *ADMINISTRATION AND DELIVERY MECHA-*
20 *NISMS.—In administering programs supported by*
21 *this section, States shall—*

22 “(A) *use no less than 50 percent of the value*
23 *of emission allowances received under this sec-*
24 *tion for cost-effective energy efficiency programs*
25 *to reduce consumers’ overall fuel costs;*

1 “(B) to the extent practicable, deliver con-
2 sumer support under this section through exist-
3 ing energy efficiency and consumer energy as-
4 sistance programs or delivery mechanisms, in-
5 cluding, where appropriate, programs or mecha-
6 nisms administered by parties other than the
7 State; and

8 “(C) seek to coordinate the administration
9 and delivery of energy efficiency and consumer
10 energy assistance programs supported under this
11 section, with one another and with existing pro-
12 grams for various fuel types, so as to deliver
13 comprehensive, fuel-blind, coordinated programs
14 to consumers.

15 “(e) *REPORTING.*—Each State receiving emission al-
16 lowances under this section shall submit to the Adminis-
17 trator, within 12 months of each receipt of such allowances,
18 a report, in accordance with such requirements as the Ad-
19 ministrators may prescribe, that—

20 “(1) describes the State’s use of emission allow-
21 ances distributed under this section, including a de-
22 scription of the energy efficiency and consumer assist-
23 ance programs supported with such allowances;

1 “(2) demonstrates the cost-effectiveness of, and
2 the energy savings achieved by, energy efficiency pro-
3 grams supported under this section; and

4 “(3) includes a report prepared by an inde-
5 pendent third party, in accordance with such regula-
6 tions as the Administrator may promulgate, evalu-
7 ating the performance of the energy efficiency and
8 consumer assistance programs supported under this
9 section.

10 “(f) **ENFORCEMENT.**—If the Administrator determines
11 that a State is not in compliance with this section, the Ad-
12 ministrator may withhold a portion of the emission allow-
13 ances, the quantity of which is equal to up to twice the
14 quantity of the allowances that the State failed to use in
15 accordance with the requirements of this section, that such
16 State would otherwise be eligible to receive under this sec-
17 tion in later years. Allowances withheld pursuant to this
18 subsection shall be distributed among the remaining States
19 ratably in accordance with the formula in subsection (c).

20 **“SEC. 787. ALLOCATIONS TO REFINERIES.**

21 “(a) **PURPOSE.**—To provide emission allowance re-
22 bates to petroleum refiners in the United States in a man-
23 ner that promotes energy efficiency and a reduction in
24 greenhouse gas emissions at such facilities.

25 “(b) **DEFINITIONS.**—In this section:

1 “(1) *EMISSIONS.*—The term ‘emissions’ means
2 the greenhouse gas emissions in the calendar year pre-
3 ceding the calendar year in which emission allow-
4 ances are being distributed. The term includes direct
5 emissions from fuel combustion, process emissions,
6 and indirect emissions from the generation of elec-
7 tricity used to produce the output of the petroleum re-
8 finery or sector.

9 “(2) *INTENSITY.*—The term ‘intensity’ means
10 tons of carbon dioxide equivalent emissions per unit
11 of output in a given year.

12 “(3) *INTENSITY FACTOR.*—The term ‘intensity
13 factor’ means the intensity of the petroleum refining
14 sector divided by the intensity for an individual pe-
15 troleum refinery.

16 “(4) *OUTPUT.*—The term ‘output’ means the av-
17 erage annual number of gallons of refined fuel pro-
18 duced in the three calendar years preceding the cal-
19 endar year in which emission allowances are being
20 distributed.

21 “(5) *PETROLEUM REFINERY.*—The term ‘petro-
22 leum refinery’ means a facility classified under
23 324110 of the North American Industrial Classifica-
24 tion System of 2002.

1 “(6) *PRODUCTION FACTOR.*—The term ‘produc-
2 tion factor’ means the output of an individual petro-
3 leum refinery divided by the output of the petroleum
4 refining sector.

5 “(c) *IN GENERAL.*—For each vintage year between
6 2014 and 2026, the Administrator shall distribute allow-
7 ances pursuant to this section to owners and operators of
8 petroleum refineries in the United States.

9 “(d) *DISTRIBUTION SCHEDULE.*—The Administrator
10 shall distribute emission allowances of each vintage year
11 no later than October 31 of the preceding calendar year.

12 “(e) *CALCULATION OF EMISSION ALLOWANCE RE-*
13 *BATES.*—

14 “(1) For each petroleum refinery, the Adminis-
15 trator shall calculate an individual allocation factor
16 for each vintage year, based upon the product of the
17 intensity factor for such refinery multiplied by the
18 production factor for such refinery.

19 “(2) The Administrator shall also calculate a
20 total allocation factor for each vintage year, based
21 upon the sum of all of the individual allocation fac-
22 tors.

23 “(3) The Administrator shall calculate the num-
24 ber of emission allowances to be provided to each pe-
25 troleum refinery in each vintage year by dividing the

1 *individual allocation factor for such refinery by the*
2 *total allocation factor, then multiplying the result by*
3 *the number of emission allowances allocated to the*
4 *program under this section for that vintage year.*

5 “(f) *DATA SOURCES.*—

6 “(1) *The Administrator shall use data from the*
7 *greenhouse gas registry, established under section 713,*
8 *where it is available.*

9 “(2) *The Administrator shall determine, by rule,*
10 *the methodology by which to calculate indirect emis-*
11 *sions for a refinery. The Administrator shall also de-*
12 *termine, by rule, the methodology by which to take*
13 *into account the value of allowances provided at no*
14 *cost to local distribution companies that is passed*
15 *through to a refinery. Each person selling electricity*
16 *to the owner or operator of a petroleum refinery shall*
17 *provide the owner or operator and the Administrator,*
18 *on an annual basis, such data as the Administrator*
19 *determines is necessary to implement this section.*

20 **“SEC. 788. [SECTION RESERVED].**

21 **“SEC. 789. CLIMATE CHANGE CONSUMER REFUNDS.**

22 “(a) *REFUND.*—*In each year after deposits are made*
23 *to the Climate Change Consumer Refund Account, the Sec-*
24 *retary of the Treasury shall provide tax refunds on a per*
25 *capita basis to each household in the United States that*

1 *shall collectively equal the amount deposited into the Cli-*
2 *mate Change Consumer Refund Account.*

3 “(b) *LIMITATIONS.—The Secretary of the Treasury*
4 *shall establish procedures to ensure that individuals who*
5 *are not—*

6 “(1) *citizens or nationals of the United States; or*

7 “(2) *immigrants lawfully residing in the United*
8 *States,*

9 *are excluded for the purpose of calculating and distributing*
10 *refunds under this section.*

11 **“SEC. 790. EXCHANGE FOR STATE-ISSUED ALLOWANCES.**

12 “(a) *IN GENERAL.—Not later than one year after the*
13 *date of enactment of this title, the Administrator shall issue*
14 *regulations allowing any person in the United States to ex-*
15 *change greenhouse gas emission allowances issued before De-*
16 *cember 31, 2011, by the State of California or for the Re-*
17 *gional Greenhouse Gas Initiative, or the Western Climate*
18 *Initiative (in this section referred to as ‘State allowances’)*
19 *for emission allowances established by the Administrator*
20 *under section 721(a).*

21 “(b) *REGULATIONS.—Regulations issued under sub-*
22 *section (a) shall—*

23 “(1) *provide that a person exchanging State al-*
24 *lowances under this section receive emission allow-*
25 *ances established under section 721(a) in the amount*

1 *that is sufficient to compensate for the cost of obtain-*
2 *ing and holding such State allowances;*

3 “(2) *establish a deadline by which persons must*
4 *exchange the State allowances; and*

5 “(3) *provide that the Federal emission allow-*
6 *ances disbursed pursuant to this section shall be de-*
7 *ducted from the allowances to be auctioned pursuant*
8 *to section 782(b).*

9 “(c) *COST OF OBTAINING STATE ALLOWANCE.—For*
10 *purposes of this section, the cost of obtaining a State allow-*
11 *ance shall be the average auction price, for emission allow-*
12 *ances issued in the year in which the State allowance was*
13 *issued, under the program under which the State allowance*
14 *was issued.*

15 **“SEC. 791. AUCTION PROCEDURES.**

16 “(a) *IN GENERAL.—To the extent that auctions of*
17 *emission allowances by the Administrator are authorized*
18 *by this part, such auctions shall be carried out pursuant*
19 *to this section and the regulations established hereunder.*

20 “(b) *INITIAL REGULATIONS.—Not later than 12*
21 *months after the date of enactment of this title, the Admin-*
22 *istrator, in consultation with other agencies, as appro-*
23 *priate, shall promulgate regulations governing the auction*
24 *of allowances under this section. Such regulations shall in-*
25 *clude the following requirements:*

1 “(1) *FREQUENCY; FIRST AUCTION.*—Auctions
2 *shall be held four times per year at regular intervals,*
3 *with the first auction to be held no later than March*
4 *31, 2011.*

5 “(2) *AUCTION SCHEDULE; CURRENT AND FU-*
6 *TURE VINTAGES.*—The Administrator shall, at each
7 *quarterly auction under this section, offer for sale*
8 *both a portion of the allowances with the same vin-*
9 *tage year as the year in which the auction is being*
10 *conducted and a portion of the allowances with vin-*
11 *tage years from future years. The preceding sentence*
12 *shall not apply to auctions held before 2012, during*
13 *which period, by necessity, the Administrator shall*
14 *auction only allowances with a vintage year that is*
15 *later than the year in which the auction is held. Be-*
16 *ginning with the first auction and at each quarterly*
17 *auction held thereafter, the Administrator may offer*
18 *for sale allowances with vintage years of up to four*
19 *years after the year in which the auction is being con-*
20 *ducted, except as provided in section 782(p).*

21 “(3) *AUCTION FORMAT.*—Auctions shall follow a
22 *single-round, sealed-bid, uniform price format.*

23 “(4) *PARTICIPATION; FINANCIAL ASSURANCE.*—
24 *Auctions shall be open to any person, except that the*
25 *Administrator may establish financial assurance re-*

1 *quirements to ensure that auction participants can*
2 *and will perform on their bids.*

3 “(5) *DISCLOSURE OF BENEFICIAL OWNERSHIP.*—
4 *Each bidder in the auction shall be required to dis-*
5 *close the person or entity sponsoring or benefitting*
6 *from the bidder’s participation in the auction if such*
7 *person or entity is, in whole or in part, other than*
8 *the bidder.*

9 “(6) *PURCHASE LIMITS.*—*No person may, di-*
10 *rectly or in concert with another participant, pur-*
11 *chase more than 5 percent of the allowances offered*
12 *for sale at any quarterly auction.*

13 “(7) *PUBLICATION OF INFORMATION.*—*After the*
14 *auction, the Administrator shall, in a timely fashion,*
15 *publish the identities of winning bidders, the quantity*
16 *of allowances obtained by each winning bidder, and*
17 *the auction clearing price.*

18 “(8) *OTHER REQUIREMENTS.*—*The Adminis-*
19 *trator may include in the regulations such other re-*
20 *quirements or provisions as the Administrator, in*
21 *consultation with other agencies, as appropriate, con-*
22 *siders appropriate to promote effective, efficient,*
23 *transparent, and fair administration of auctions*
24 *under this section.*

1 “(c) *REVISION OF REGULATIONS.*—*The Administrator*
2 *may, in consultation with other agencies, as appropriate,*
3 *at any time, revise the initial regulations promulgated*
4 *under subsection (b). Such revised regulations need not meet*
5 *the requirements identified in subsection (b) if the Adminis-*
6 *trator determines that an alternative auction design would*
7 *be more effective, taking into account factors including costs*
8 *of administration, transparency, fairness, and risks of col-*
9 *lusion or manipulation. In determining whether and how*
10 *to revise the initial regulations under this subsection, the*
11 *Administrator shall not consider maximization of revenues*
12 *to the Federal Government.*

13 “(d) *RESERVE AUCTION PRICE.*—*The minimum re-*
14 *serve auction price shall be \$10 (in constant 2009 dollars)*
15 *for auctions occurring in 2012. The minimum reserve price*
16 *for auctions occurring in years after 2012 shall be the min-*
17 *imum reserve auction price for the previous year increased*
18 *by 5 percent plus the rate of inflation (as measured by the*
19 *Consumer Price Index for all urban consumers).*

20 “(e) *DELEGATION OR CONTRACT.*—*Pursuant to regula-*
21 *tions under this section, the Administrator may by delega-*
22 *tion or contract provide for the conduct of auctions under*
23 *the Administrator’s supervision by other departments or*
24 *agencies of the Federal Government or by nongovernmental*
25 *agencies, groups, or organizations.*

1 **“SEC. 792. AUCTIONING ALLOWANCES FOR OTHER ENTI-**
2 **TIES.**

3 “(a) *CONSIGNMENT.*—Any entity holding emission al-
4 lowances or compensatory allowances may request that the
5 Administrator auction, pursuant to section 791, the allow-
6 ances on consignment.

7 “(b) *PRICING.*—When the Administrator acts under
8 this section as the agent of an entity in possession of emis-
9 sion allowances, the Administrator is not obligated to ob-
10 tain the highest price possible for the emission allowances,
11 and instead shall auction consignment allowances in the
12 same manner and pursuant to the same rules as auctions
13 of other allowances under section 791. The Administrator
14 may permit the entity offering the allowance for sale to con-
15 dition the sale of its allowances pursuant to this section
16 on a minimum reserve price that is different than the re-
17 serve auction price set pursuant to section 791(d).

18 “(c) *PROCEEDS.*—For emission allowances and com-
19 pensatory allowances auctioned pursuant to this section,
20 notwithstanding section 3302 of title 31, United States
21 Code, or any other provision of law, within 90 days of re-
22 ceipt, the United States shall transfer the proceeds from the
23 auction to the entity which held the allowances auctioned.
24 No funds transferred from a purchaser to a seller of emis-
25 sion allowances or compensatory allowances under this sub-

1 *section shall be held by any officer or employee of the United*
2 *States or treated for any purpose as public monies.*

3 “(d) *REGULATIONS.—The Administrator shall issue*
4 *regulations within 24 months after the date of enactment*
5 *of this title to implement this section.*

6 **“SEC. 793. ESTABLISHMENT OF FUNDS.**

7 “*There is established in the Treasury of the United*
8 *States the following funds:*

9 “(1) *The Strategic Reserve Fund.*

10 “(2) *The Climate Change Consumer Refund*
11 *Fund.*

12 **“SEC. 794. OVERSIGHT OF ALLOCATIONS.**

13 “(a) *IN GENERAL.—Not later than January 1, 2014,*
14 *and every 2 years thereafter, the Comptroller General of the*
15 *United States shall carry out a review of programs admin-*
16 *istered by the Federal Government that distribute emission*
17 *allowances or funds from any Federal auction of allow-*
18 *ances.*

19 “(b) *CONTENTS.—Each such report shall include a*
20 *comprehensive evaluation of the administration and effec-*
21 *tiveness of each program, including—*

22 “(1) *the efficiency, transparency, and soundness*
23 *of the administration of each program;*

24 “(2) *the performance of activities receiving as-*
25 *sistance under each program;*

1 “(3) *the cost-effectiveness of each program in*
2 *achieving the stated purposes of the program; and*

3 “(4) *recommendations, if any, for regulatory or*
4 *administrative changes to each program to improve*
5 *its effectiveness.*

6 “(c) *FOCUS.—In evaluating program performance,*
7 *each review under this section review shall address the effec-*
8 *tiveness of such programs in—*

9 “(1) *creating and preserving jobs;*

10 “(2) *ensuring a manageable transition for work-*
11 *ing families and workers;*

12 “(3) *reducing the emissions, or enhancing seques-*
13 *tration, of greenhouse gases;*

14 “(4) *developing clean technologies; and*

15 “(5) *building resilience to the impacts of climate*
16 *change.”.*

17 ***Subtitle C—Additional Greenhouse***
18 ***Gas Standards***

19 ***SEC. 331. GREENHOUSE GAS STANDARDS.***

20 *The Clean Air Act (42 U.S.C. 7401 and following),*
21 *as amended by subtitles A and B of this title, is further*
22 *amended by adding the following new title after title VII:*

1 **“TITLE VIII—ADDITIONAL**
2 **GREENHOUSE GAS STANDARDS**

3 **“SEC. 801. DEFINITIONS.**

4 *“For purposes of this title, terms that are defined in*
5 *title VII, except for the term ‘stationary source’, shall have*
6 *the meaning given those terms in title VII.*

7 **“PART A—STATIONARY SOURCE STANDARDS**

8 **“SEC. 811. STANDARDS OF PERFORMANCE.**

9 *“(a) UNCAPPED STATIONARY SOURCES.—*

10 *“(1) INVENTORY OF SOURCE CATEGORIES.—(A)*

11 *Within 12 months after the date of enactment of this*
12 *title, the Administrator shall publish under section*
13 *111(b)(1)(A) an inventory of categories of stationary*
14 *sources that consist of those categories that contain*
15 *sources that individually had uncapped greenhouse*
16 *gas emissions greater than 10,000 tons of carbon diox-*
17 *ide equivalent and that, in the aggregate, were re-*
18 *sponsible for emitting at least 20 percent annually of*
19 *the uncapped greenhouse gas emissions.*

20 *“(B) The Administrator shall include in the in-*
21 *ventory under this paragraph each source category*
22 *that is responsible for at least 10 percent of the un-*
23 *capped methane emissions in 2005. Notwithstanding*
24 *any other provision, the inventory required by this*
25 *section shall not include sources of enteric fermenta-*

1 *tion. The list under this paragraph shall include in-*
2 *dustrial sources, the emissions from which, when*
3 *added to the capped emissions from industrial*
4 *sources, constitute at least 95 percent of the green-*
5 *house gas emissions of the industrial sector.*

6 *“(C) For purposes of this subsection, emissions*
7 *shall be calculated using tons of carbon dioxide*
8 *equivalents. In promulgating the inventory required*
9 *by this paragraph and the schedule required under by*
10 *paragraph (2)(C), the Administrator shall use the*
11 *most current emissions data available at the time of*
12 *promulgation, except as provided in subparagraph*
13 *(B).*

14 *“(D) Notwithstanding any other provisions, the*
15 *Administrator may list under 111(b) any source cat-*
16 *egory identified in the inventory required by this sub-*
17 *section without making a finding that the source cat-*
18 *egory causes or contributes significantly to, air pollu-*
19 *tion with may be reasonably anticipated to endanger*
20 *public health or welfare.*

21 *“(2) STANDARDS AND SCHEDULE.—(A) For each*
22 *category identified as provided in paragraph (1), the*
23 *Administrator shall promulgate standards of perform-*
24 *ance under section 111 for the uncapped emissions of*
25 *greenhouse gases from stationary sources in that cat-*

1 *egory and shall promulgate corresponding regulations*
2 *under section 111(d).*

3 *“(B) The Administrator shall promulgate stand-*
4 *ards as required by this subsection for stationary*
5 *sources in categories identified as provided in para-*
6 *graph (1) as expeditiously as practicable, assuring*
7 *that—*

8 *“(i) standards for identified source cat-*
9 *egories that, combined, emitted 80 percent or*
10 *more of the greenhouse gas emissions of the iden-*
11 *tified source categories shall be promulgated not*
12 *later than 3 years after the date of enactment of*
13 *this title and shall include standards for natural*
14 *gas extraction; and*

15 *“(ii) for all other identified source cat-*
16 *egories—*

17 *“(I) standards for not less than an ad-*
18 *ditional 25 percent of the identified cat-*
19 *egories shall be promulgated not later than*
20 *5 years after the date of enactment of this*
21 *title;*

22 *“(II) standards for not less than an*
23 *additional 25 percent of the identified cat-*
24 *egories shall be promulgated not later than*

1 7 years after the date of enactment of this
2 title; and

3 “(III) standards for all the identified
4 categories shall be promulgated not later
5 than 10 years after the date of enactment of
6 this title.

7 “(C) Not later than 24 months after the date of
8 enactment of this title and after notice and oppor-
9 tunity for comment, the Administrator shall publish
10 a schedule establishing a date for the promulgation of
11 standards for each category of sources identified pur-
12 suant to paragraph (1). The date for each category
13 shall be consistent with the requirements of subpara-
14 graph (B). The determination of priorities for the
15 promulgation of standards pursuant to this para-
16 graph is not a rulemaking and shall not be subject to
17 judicial review, except that failure to promulgate any
18 standard pursuant to the schedule established by this
19 paragraph shall be subject to review under section
20 304(a)(2).

21 “(D) Notwithstanding section 307, no action of
22 the Administrator listing a source category under
23 paragraph (1) shall be a final agency action subject
24 to judicial review, except that any such action may

1 *be reviewed under section 307 when the Adminis-*
2 *trator issues performance standards for such category.*

3 *“(b) CAPPED SOURCES.—No standard of performance*
4 *shall be established under section 111 for capped greenhouse*
5 *gas emissions from a capped source unless the Adminis-*
6 *trator determines that such standards are appropriate be-*
7 *cause of effects that do not include climate change effects.*
8 *In promulgating a standard of performance under section*
9 *111 for the emission from capped sources of any air pollut-*
10 *ant that is not a greenhouse gas, the Administrator shall*
11 *treat the emission of any greenhouse gas by those entities*
12 *as a nonair quality public health and environmental im-*
13 *pact within the meaning of section 111(a)(1).*

14 *“(c) PERFORMANCE STANDARDS.—For purposes of set-*
15 *ting a performance standard for source categories identified*
16 *pursuant to subsection (a)—*

17 *“(1) The Administrator shall take into account*
18 *the goal of reducing total United States greenhouse*
19 *gas emissions as set forth in section 702.*

20 *“(2) The Administrator may promulgate a de-*
21 *sign, equipment, work practice, or operational stand-*
22 *ard, or any combination thereof, under section 111 in*
23 *lieu of a standard of performance under that section*
24 *without regard to any determination of feasibility*

1 that would otherwise be required under section
2 111(h).

3 “(3) Notwithstanding any other provision, in
4 setting the level of each standard required by this sec-
5 tion, the Administrator shall take into account projec-
6 tions of allowance prices, such that the marginal cost
7 of compliance (expressed as dollars per ton of carbon
8 dioxide equivalent reduced) imposed by the standard
9 would not, in the judgement of the Administrator, be
10 expected to exceed the Administrator’s projected allow-
11 ance prices over the time period spanning from the
12 date of initial compliance to the date that the next re-
13 visions of the standard would come into effect pursu-
14 ant to the schedule under section 111(b)(1)(B).

15 “(d) DEFINITIONS.—In this section, the terms ‘un-
16 capped greenhouse gas emissions’ and ‘uncapped methane
17 emissions’ mean those greenhouse gas or methane emissions,
18 respectively, to which section 722 would not have applied
19 if the requirements of this title had been in effect for the
20 same year as the emissions data upon which the list is
21 based.

22 “(e) STUDY OF THE EFFECTS OF PERFORMANCE
23 STANDARDS.—

24 “(1) STUDY.—The Administrator shall conduct a
25 study of the impacts of performance standards re-

1 *quired under this section, which shall evaluate the ef-*
2 *fect of such standards on the—*

3 *“(A) costs of achieving compliance with the*
4 *economy-wide reduction goals specified in section*
5 *702 and the reduction targets specified in section*
6 *703;*

7 *“(B) available supply of offset credits; and*

8 *“(C) ability to achieve the economy-wide re-*
9 *duction goals specified in section 702 and any*
10 *other benefits of such standards.*

11 *“(2) REPORT.—The Administrator shall submit*
12 *to the House Energy and Commerce Committee a re-*
13 *port that describes the results of the study not later*
14 *than 18 months after the publication of the standards*
15 *required under subsection (a)(2)(B)(i).*

16 **“PART C—EXEMPTIONS FROM OTHER PROGRAMS**

17 **“SEC. 831. CRITERIA POLLUTANTS.**

18 *“As of the date of the enactment of the Safe Climate*
19 *Act, no greenhouse gas may be added to the list under sec-*
20 *tion 108(a) on the basis of its effect on global climate*
21 *change.*

22 **“SEC. 832. INTERNATIONAL AIR POLLUTION.**

23 *“Section 115 shall not apply to an air pollutant with*
24 *respect to that pollutant’s contribution to global warming.*

1 **“SEC. 833. HAZARDOUS AIR POLLUTANTS.**

2 *“No greenhouse gas may be added to the list of haz-*
3 *ardous air pollutants under section 112 unless such green-*
4 *house gas meets the listing criteria of section 112(b) inde-*
5 *pendent of its effects on global climate change.*

6 **“SEC. 834. NEW SOURCE REVIEW.**

7 *“The provisions of part C of title I shall not apply*
8 *to a major emitting facility that is initially permitted or*
9 *modified after January 1, 2009, on the basis of its emis-*
10 *sions of any greenhouse gas.*

11 **“SEC. 835. TITLE V PERMITS.**

12 *“Notwithstanding any provision of title III or V, no*
13 *stationary source shall be required to apply for, or operate*
14 *pursuant to, a permit under title V, solely because the*
15 *source emits any greenhouse gases that are regulated solely*
16 *because of their effect on global climate change.”.*

17 **SEC. 332. HFC REGULATION.**

18 *(a) IN GENERAL.—Title VI of the Clean Air Act (42*
19 *U.S.C. 7671 et seq.) (relating to stratospheric ozone protec-*
20 *tion) is amended by adding at the end the following:*

21 **“SEC. 619. HYDROFLUOROCARBONS (HFCS).**

22 *“(a) TREATMENT AS CLASS II, GROUP II SUB-*
23 *STANCES.—Except as otherwise provided in this section,*
24 *hydrofluorocarbons shall be treated as class II substances*
25 *for purposes of applying the provisions of this title. The*
26 *Administrator shall establish two groups of class II sub-*

1 stances. Class II, group I substances shall include all
2 hydrochlorofluorocarbons (HCFCs) listed pursuant to sec-
3 tion 602(b). Class II, group II substances shall include each
4 of the following:

- 5 “(1) Hydrofluorocarbon-23 (HFC-23).
6 “(2) Hydrofluorocarbon-32 (HFC-32).
7 “(3) Hydrofluorocarbon-41 (HFC-41).
8 “(4) Hydrofluorocarbon-125 (HFC-125).
9 “(5) Hydrofluorocarbon-134 (HFC-134).
10 “(6) Hydrofluorocarbon-134a (HFC-134a).
11 “(7) Hydrofluorocarbon-143 (HFC-143).
12 “(8) Hydrofluorocarbon-143a (HFC-143a).
13 “(9) Hydrofluorocarbon-152 (HFC-152).
14 “(10) Hydrofluorocarbon-152a (HFC-152a).
15 “(11) Hydrofluorocarbon-227ea (HFC-227ea).
16 “(12) Hydrofluorocarbon-236cb (HFC-236cb).
17 “(13) Hydrofluorocarbon-236ea (HFC-236ea).
18 “(14) Hydrofluorocarbon-236fa (HFC-236fa).
19 “(15) Hydrofluorocarbon-245ca (HFC-245ca).
20 “(16) Hydrofluorocarbon-245fa (HFC-245fa).
21 “(17) Hydrofluorocarbon-365mfc (HFC-365mfc).
22 “(18) Hydrofluorocarbon-43-10mee (HFC-43-
23 10mee).
24 “(19) Hydrofluoroolefin-1234yf (HFO-1234yf).
25 “(20) Hydrofluoroolefin-1234ze (HFO-1234ze).

1 *Not later than 6 months after the date of enactment of this*
2 *title, the Administrator shall publish an initial list of class*
3 *II, group II substances, which shall include the substances*
4 *listed in this subsection. The Administrator may add to the*
5 *list of class II, group II substances any other substance used*
6 *as a substitute for a class I or II substance if the Adminis-*
7 *trator determines that 1 metric ton of the substance makes*
8 *the same or greater contribution to global warming over*
9 *100 years as 1 metric ton of carbon dioxide. Within 24*
10 *months after the date of enactment of this section, the Ad-*
11 *ministrator shall amend the regulations under this title (in-*
12 *cluding the regulations referred to in sections 603, 608, 609,*
13 *610, 611, 612, and 613) to apply to class II, group II sub-*
14 *stances.*

15 “(b) *CONSUMPTION AND PRODUCTION OF CLASS II,*
16 *GROUP II SUBSTANCES.—*

17 “(1) *IN GENERAL.—*

18 “(A) *CONSUMPTION PHASE DOWN.—In the*
19 *case of class II, group II substances, in lieu of*
20 *applying section 605 and the regulations there-*
21 *under, the Administrator shall promulgate regu-*
22 *lations phasing down the consumption of class*
23 *II, group II substances in the United States, and*
24 *the importation of products containing any class*
25 *II, group II substance, in accordance with this*

1 *subsection within 18 months after the date of en-*
2 *actment of this section. Effective January 1,*
3 *2012, it shall be unlawful for any person to*
4 *produce any class II, group II substance, import*
5 *any class II, group II substance, or import any*
6 *product containing any class II, group II sub-*
7 *stance without holding one consumption allow-*
8 *ance or one destruction offset credit for each car-*
9 *bon dioxide equivalent ton of the class II, group*
10 *II substance. Any person who exports a class II,*
11 *group II substance for which a consumption al-*
12 *lowance was retired may receive a refund of that*
13 *allowance from the Administrator following the*
14 *export.*

15 “(B) *PRODUCTION.*—*If the United States*
16 *becomes a party or otherwise adheres to a multi-*
17 *lateral agreement, including any amendment to*
18 *the Montreal Protocol on Substances That De-*
19 *plete the Ozone Layer, that restricts the produc-*
20 *tion of class II, group II substances, the Admin-*
21 *istrator shall promulgate regulations establishing*
22 *a baseline for the production of class II, group*
23 *II substances in the United States and phasing*
24 *down the production of class II, group II sub-*
25 *stances in the United States, in accordance with*

1 *such multilateral agreement and subject to the*
2 *same exceptions and other provisions as are ap-*
3 *plicable to the phase down of consumption of*
4 *class II, group II substances under this section*
5 *(except that the Administrator shall not require*
6 *a person who obtains production allowances*
7 *from the Administrator to make payment for*
8 *such allowances if the person is making payment*
9 *for a corresponding quantity of consumption al-*
10 *lowances of the same vintage year). Upon the ef-*
11 *fective date of such regulations, it shall be un-*
12 *lawful for any person to produce any class II,*
13 *group II substance without holding one con-*
14 *sumption allowance and one production allow-*
15 *ance, or one destruction offset credit, for each*
16 *carbon dioxide equivalent ton of the class II,*
17 *group II substance.*

18 *“(C) INTEGRITY OF CAP.—To maintain the*
19 *integrity of the class II, group II cap, the Ad-*
20 *ministrator may, through rulemaking, limit the*
21 *percentage of each person’s compliance obligation*
22 *that may be met through the use of destruction*
23 *offset credits or banked allowances.*

24 *“(D) COUNTING OF VIOLATIONS.—Each*
25 *emission allowance or destruction offset credit*

1 *not held as required by this section shall be a*
 2 *separate violation of this section.*

3 “(2) *SCHEDULE.—Pursuant to the regulations*
 4 *promulgated pursuant to paragraph (1), the number*
 5 *of class II, group II consumption allowances estab-*
 6 *lished by the Administrator for each calendar year be-*
 7 *ginning in 2012 shall be the following percentage of*
 8 *the baseline, as established by the Administrator pur-*
 9 *suant to paragraph (3):*

<i>“Calendar Year</i>	<i>Percent of Baseline</i>
<i>2012</i>	<i>90</i>
<i>2013</i>	<i>87.5</i>
<i>2014</i>	<i>85</i>
<i>2015</i>	<i>82.5</i>
<i>2016</i>	<i>80</i>
<i>2017</i>	<i>77.5</i>
<i>2018</i>	<i>75</i>
<i>2019</i>	<i>71</i>
<i>2020</i>	<i>67</i>
<i>2021</i>	<i>63</i>
<i>2022</i>	<i>59</i>
<i>2023</i>	<i>54</i>
<i>2024</i>	<i>50</i>
<i>2025</i>	<i>46</i>
<i>2026</i>	<i>42</i>
<i>2027</i>	<i>38</i>
<i>2028</i>	<i>34</i>

<i>“Calendar Year</i>	<i>Percent of Baseline</i>
<i>2029</i>	<i>30</i>
<i>2030</i>	<i>25</i>
<i>2031</i>	<i>21</i>
<i>2032</i>	<i>17</i>
<i>after 2032</i>	<i>15</i>

1 *“(3) BASELINE.—(A) Within 12 months after the*
2 *date of enactment of this section, the Administrator*
3 *shall promulgate regulations to establish the baseline*
4 *for purposes of paragraph (2). The baseline shall be*
5 *the sum, expressed in tons of carbon dioxide equiva-*
6 *lents, of—*

7 *“(i) the annual average consumption of all*
8 *class II substances in calendar years 2004, 2005,*
9 *and 2006; plus*

10 *“(ii) the annual average quantity of all*
11 *class II substances contained in imported prod-*
12 *ucts in calendar years 2004, 2005, and 2006.*

13 *“(B) Notwithstanding subparagraph (A), if the*
14 *Administrator determines that the baseline is higher*
15 *than 370 million metric tons of carbon dioxide*
16 *equivalents, then the Administrator shall establish the*
17 *baseline at 370 million metric tons of carbon dioxide*
18 *equivalents.*

19 *“(C) Notwithstanding subparagraph (A), if the*
20 *Administrator determines that the baseline is lower*

1 *than 280 million metric tons of carbon dioxide*
 2 *equivalents, then the Administrator shall establish the*
 3 *baseline at 280 million metric tons of carbon dioxide*
 4 *equivalents.*

5 *“(4) DISTRIBUTION OF ALLOWANCES.—*

6 *“(A) IN GENERAL.—Pursuant to the regula-*
 7 *tions promulgated under paragraph (1), for each*
 8 *calendar year beginning in 2012, the Adminis-*
 9 *trator shall sell consumption allowances in ac-*
 10 *cordance with this paragraph.*

11 *“(B) ESTABLISHMENT OF POOLS.—The Ad-*
 12 *ministrator shall establish two allowance pools.*
 13 *Eighty percent of the consumption allowances*
 14 *available for a calendar year shall be placed in*
 15 *the producer-importer pool, and 20 percent of the*
 16 *consumption allowances available for a calendar*
 17 *year shall be placed in the secondary pool.*

18 *“(C) PRODUCER-IMPORTER POOL.—*

19 *“(i) AUCTION.—(I) For each calendar*
 20 *year, the Administrator shall offer for sale*
 21 *at auction the following percentage of the*
 22 *consumption allowances in the producer-im-*
 23 *porter pool:*

<i>“Calendar Year</i>	<i>Percent Available for Auction</i>
<i>2012</i>	<i>10</i>

<i>“Calendar Year</i>	<i>Percent Available for Auction</i>
<i>2013</i>	<i>20</i>
<i>2014</i>	<i>30</i>
<i>2015</i>	<i>40</i>
<i>2016</i>	<i>50</i>
<i>2017</i>	<i>60</i>
<i>2018</i>	<i>70</i>
<i>2019</i>	<i>80</i>
<i>2020 and thereafter</i>	<i>90</i>

1 *“(II) Any person who produced or im-*
2 *ported any class II substance during cal-*
3 *endar year 2004, 2005, or 2006 may par-*
4 *ticipate in the auction. No other persons*
5 *may participate in the auction unless per-*
6 *mitted to do so pursuant to subclause (III).*

7 *“(III) Not later than three years after*
8 *the date of the initial auction and from*
9 *time to time thereafter, the Administrator*
10 *shall determine through rulemaking whether*
11 *any persons who did not produce or import*
12 *a class II substance during calendar year*
13 *2004, 2005, or 2006 will be permitted to*
14 *participate in future auctions. The Admin-*
15 *istrator shall base this determination on the*
16 *duration, consistency, and scale of such per-*
17 *son’s purchases of consumption allowances*

1 *in the secondary pool under subparagraph*
2 *(D), as well as economic or technical hard-*
3 *ship and other factors deemed relevant by*
4 *the Administrator.*

5 *“(IV) The Administrator shall set a*
6 *minimum bid per consumption allowance of*
7 *the following:*

8 *“(aa) For vintage year 2012,*
9 *\$1.00.*

10 *“(bb) For vintage year 2013,*
11 *\$1.20.*

12 *“(cc) For vintage year 2014,*
13 *\$1.40.*

14 *“(dd) For vintage year 2015,*
15 *\$1.60.*

16 *“(ee) For vintage year 2016,*
17 *\$1.80.*

18 *“(ff) For vintage year 2017,*
19 *\$2.00.*

20 *“(gg) For vintage year 2018 and*
21 *thereafter, \$2.00 adjusted for inflation*
22 *after vintage year 2017 based upon the*
23 *producer price index as published by*
24 *the Department of Commerce.*

1 “(ii) *NON-AUCTION SALE.—(I) For*
2 *each calendar year, as soon as practicable*
3 *after auction, the Administrator shall offer*
4 *for sale the remaining consumption allow-*
5 *ances in the producer-importer pool at the*
6 *following prices:*

7 “(aa) *A fee of \$1.00 per vintage*
8 *year 2012 allowance.*

9 “(bb) *A fee of \$1.20 per vintage*
10 *year 2013 allowance.*

11 “(cc) *A fee of \$1.40 per vintage*
12 *year 2014 allowance.*

13 “(dd) *For each vintage year 2015*
14 *allowance, a fee equal to the average of*
15 *\$1.10 and the auction clearing price*
16 *for vintage year 2014 allowances.*

17 “(ee) *For each vintage year 2016*
18 *allowance, a fee equal to the average of*
19 *\$1.30 and the auction clearing price*
20 *for vintage year 2015 allowances.*

21 “(ff) *For each vintage year 2017*
22 *allowance, a fee equal to the average of*
23 *\$1.40 and the auction clearing price*
24 *for vintage year 2016 allowances.*

1 “(gg) For each allowance of vin-
2 tage year 2018 and subsequent vintage
3 years, a fee equal to the auction clear-
4 ing price for that vintage year.

5 “(II) The Administrator shall offer to
6 sell the remaining consumption allowances
7 in the producer-importer pool to producers
8 of class II, group II substances and import-
9 ers of class II, group II substances in pro-
10 portion to their relative allocation share.

11 “(III) Such allocation share for such
12 sale shall be determined by the Adminis-
13 trator using such producer’s or importer’s
14 annual average data on class II substances
15 from calendar years 2004, 2005, and 2006,
16 on a carbon dioxide equivalent basis, and—

17 “(aa) shall be based on a pro-
18 ducer’s production, plus importation,
19 plus acquisitions and purchases from
20 persons who produced class II sub-
21 stances in the United States during
22 calendar years 2004, 2005, or 2006,
23 less exportation, less transfers and sales
24 to persons who produced class II sub-
25 stances in the United States during

1 *calendar years 2004, 2005, or 2006;*
2 *and*

3 “(bb) *for an importer of class II*
4 *substances that did not produce in the*
5 *United States any class II substance*
6 *during calendar years 2004, 2005, and*
7 *2006, shall be based on the importer’s*
8 *importation less exportation.*

9 *For purposes of item (aa), the Adminis-*
10 *trator shall account for 100 percent of class*
11 *II, group II substances and 60 percent of*
12 *class II, group I substances. For purposes of*
13 *item (bb), the Administrator shall account*
14 *for 100 percent of class II, group II sub-*
15 *stances and 100 percent of class II, group*
16 *I substances.*

17 “(IV) *Any consumption allowances*
18 *made available for nonauction sale to a spe-*
19 *cific producer or importer of class II, group*
20 *II substances but not purchased by the spe-*
21 *cific producer or importer shall be made*
22 *available for sale to any producer or im-*
23 *porter of class II substances during cal-*
24 *endar years 2004, 2005, or 2006. If demand*
25 *for such consumption allowances exceeds*

1 *supply of such consumption allowances, the*
2 *Administrator shall develop and utilize cri-*
3 *teria for the sale of such consumption allow-*
4 *ances that may include pro rata shares, his-*
5 *toric production and importation, economic*
6 *or technical hardship, or other factors*
7 *deemed relevant by the Administrator. If*
8 *the supply of such consumption allowances*
9 *exceeds demand, the Administrator may*
10 *offer such consumption allowances for sale*
11 *in the secondary pool as set forth in sub-*
12 *paragraph (D).*

13 “(D) *SECONDARY POOL.—(i) For each cal-*
14 *endar year, as soon as practicable after the auc-*
15 *tion required in subparagraph (C), the Adminis-*
16 *trator shall offer for sale the consumption allow-*
17 *ances in the secondary pool at the prices listed*
18 *in subparagraph (C)(ii).*

19 “(ii) *The Administrator shall accept appli-*
20 *cations for purchase of secondary pool consump-*
21 *tion allowances from—*

22 “(I) *importers of products containing*
23 *class II, group II substances;*

24 “(II) *persons who purchased any class*
25 *II, group II substance directly from a pro-*

1 *ducer or importer of class II, group II sub-*
2 *stances for use in a product containing a*
3 *class II, group II substance, a manufac-*
4 *turing process, or a reclamation process;*

5 *“(III) persons who did not produce or*
6 *import a class II substance during calendar*
7 *year 2004, 2005, or 2006, but who the Ad-*
8 *ministrator determines have subsequently*
9 *taken significant steps to produce or import*
10 *a substantial quantity of any class II,*
11 *group II substance; and*

12 *“(IV) persons who produced or im-*
13 *ported any class II substance during cal-*
14 *endar year 2004, 2005, or 2006.*

15 *“(iii) If the supply of consumption allow-*
16 *ances in the secondary pool equals or exceeds the*
17 *demand for consumption allowances in the sec-*
18 *ondary pool as presented in the applications for*
19 *purchase, the Administrator shall sell the con-*
20 *sumption allowances in the secondary pool to the*
21 *applicants in the amounts requested in the ap-*
22 *plications for purchase. Any consumption allow-*
23 *ances in the secondary pool not purchased in a*
24 *calendar year may be rolled over and added to*

1 *the quantity available in the secondary pool in*
2 *the following year.*

3 “(iv) *If the demand for consumption allow-*
4 *ances in the secondary pool as presented in the*
5 *applications for purchase exceeds the supply of*
6 *consumption allowances in the secondary pool,*
7 *the Administrator shall sell the consumption al-*
8 *lowances as follows:*

9 “(I) *The Administrator shall first sell*
10 *the consumption allowances in the sec-*
11 *ondary pool to any importers of products*
12 *containing class II, group II substances in*
13 *the amounts requested in their applications*
14 *for purchase. If the demand for such con-*
15 *sumption allowances exceeds supply of such*
16 *consumption allowances, the Administrator*
17 *shall develop and utilize criteria for the sale*
18 *of such consumption allowances among im-*
19 *porters of products containing class II,*
20 *group II substances that may include pro*
21 *rata shares, historic importation, economic*
22 *or technical hardship, or other factors*
23 *deemed relevant by the Administrator.*

24 “(II) *The Administrator shall next sell*
25 *any remaining consumption allowances to*

1 *persons identified in subclauses (II) and*
2 *(III) of clause (i) in the amounts requested*
3 *in their applications for purchase. If the de-*
4 *mand for such consumption allowances ex-*
5 *ceeds remaining supply of such consump-*
6 *tion allowances, the Administrator shall de-*
7 *velop and utilize criteria for the sale of such*
8 *consumption allowances among subclauses*
9 *(II) and (III) applicants that may include*
10 *pro rata shares, historic use, economic or*
11 *technical hardship, or other factors deemed*
12 *relevant by the Administrator.*

13 *“(III) The Administrator shall then*
14 *sell any remaining consumption allowances*
15 *to persons who produced or imported any*
16 *class II substance during calendar year*
17 *2004, 2005, or 2006 in the amounts re-*
18 *quested in their applications for purchase.*
19 *If demand for such consumption allowances*
20 *exceeds remaining supply of such consump-*
21 *tion allowances, the Administrator shall de-*
22 *velop and utilize criteria for the sale of such*
23 *consumption allowances that may include*
24 *pro rata shares, historic production and im-*
25 *portation, economic or technical hardship,*

1 *or other factors deemed relevant by the Ad-*
2 *ministrator.*

3 “(IV) *Each person who purchases con-*
4 *sumption allowances in a non-auction sale*
5 *under this subparagraph shall be required*
6 *to disclose the person or entity sponsoring*
7 *or benefitting from the purchases if such*
8 *person or entity is, in whole or in part,*
9 *other than the purchaser or the purchaser’s*
10 *employer.*

11 “(E) *DISCRETION TO WITHHOLD ALLOW-*
12 *ANCES.—Nothing in this paragraph prevents the*
13 *Administrator from exercising discretion to*
14 *withhold and retire consumption allowances that*
15 *would otherwise be available for auction or non-*
16 *auction sale. Not later than 18 months after the*
17 *date of enactment of this section, the Adminis-*
18 *trator shall promulgate regulations establishing*
19 *criteria for withholding and retiring consump-*
20 *tion allowances.*

21 “(5) *BANKING.—A consumption allowance or de-*
22 *struction offset credit may be used to meet the compli-*
23 *ance obligation requirements of paragraph (1) in—*

24 “(A) *the vintage year for the allowance or*
25 *destruction offset credit; or*

1 “(B) any calendar year subsequent to the
2 vintage year for the allowance or destruction off-
3 set credit.

4 “(6) AUCTIONS.—

5 “(A) INITIAL REGULATIONS.—Not later
6 than 18 months after the date of enactment of
7 this section, the Administrator shall promulgate
8 regulations governing the auction of allowances
9 under this section. Such regulations shall include
10 the following requirements:

11 “(i) FREQUENCY; FIRST AUCTION.—
12 Auctions shall be held one time per year at
13 regular intervals, with the first auction to
14 be held no later than October 31, 2011.

15 “(ii) AUCTION FORMAT.—Auctions
16 shall follow a single-round, sealed-bid, uni-
17 form price format.

18 “(iii) FINANCIAL ASSURANCE.—The
19 Administrator may establish financial as-
20 surance requirements to ensure that auction
21 participants can and will perform on their
22 bids.

23 “(iv) DISCLOSURE OF BENEFICIAL
24 OWNERSHIP.—Each bidder in the auction
25 shall be required to disclose the person or

1 *entity sponsoring or benefitting from the*
2 *bidder's participation in the auction if such*
3 *person or entity is, in whole or in part,*
4 *other than the bidder or the bidder's em-*
5 *ployer.*

6 “(v) *PUBLICATION OF INFORMATION.—*
7 *After the auction, the Administrator shall,*
8 *in a timely fashion, publish the number of*
9 *bidders, number of winning bidders, the*
10 *quantity of allowances sold, and the auction*
11 *clearing price.*

12 “(vi) *BIDDING LIMITS IN 2012.—In the*
13 *vintage year 2012 auction, no auction par-*
14 *ticipant may, directly or in concert with*
15 *another participant, bid for or purchase*
16 *more allowances offered for sale at the auc-*
17 *tion than the greater of—*

18 *“(I) the number of allowances*
19 *which, when added to the number of*
20 *allowances available for purchase by*
21 *the participant in the producer-im-*
22 *porter pool non-auction sale, would*
23 *equal the participant's annual average*
24 *consumption of class II, group II sub-*

1 *stances in calendar years 2004, 2005,*
2 *and 2006; or*

3 *“(II) the number of allowances*
4 *equal to the product of—*

5 *“(aa) 1.20 multiplied by the*
6 *participant’s allocation share of*
7 *the producer-importer pool non-*
8 *auction sale as determined under*
9 *paragraph (4)(C)(ii); and*

10 *“(bb) the number of vintage*
11 *year 2012 allowances offered at*
12 *auction.*

13 *“(vii) BIDDING LIMITS IN 2013.—In the*
14 *vintage year 2013 auction, no auction par-*
15 *ticipant may, directly or in concert with*
16 *another participant, bid for or purchase*
17 *more allowances offered for sale at the auc-*
18 *tion than the product of—*

19 *“(I) 1.15 multiplied by the ratio*
20 *of the total number of vintage year*
21 *2012 allowances purchased by the par-*
22 *ticipant from the auction and from the*
23 *producer-importer pool non-auction*
24 *sale to the total number of vintage year*

1 2012 allowances in the producer-im-
2 porter pool; and

3 “(II) the number of vintage year
4 2013 allowances offered at auction.

5 “(viii) *BIDDING LIMITS IN SUBSE-*
6 *QUENT YEARS.—In the auctions for vintage*
7 *year 2014 and subsequent vintage years, no*
8 *auction participant may, directly or in*
9 *concert with another participant, bid for or*
10 *purchase more allowances offered for sale at*
11 *the auction than the product of—*

12 “(I) 1.15 multiplied by the ratio
13 of the highest number of allowances
14 held by the participant in any of the
15 three prior vintage years to meet its
16 compliance obligation under para-
17 graph (1) to the total number of allow-
18 ances in the producer-importer pool for
19 such vintage year; and

20 “(II) the number of allowances of-
21 fered at auction for that vintage year.

22 “(ix) *OTHER REQUIREMENTS.—The*
23 *Administrator may include in the regula-*
24 *tions such other requirements or provisions*
25 *as the Administrator considers necessary to*

1 *promote effective, efficient, transparent, and*
2 *fair administration of auctions under this*
3 *section.*

4 “(B) *REVISION OF REGULATIONS.*—*The Ad-*
5 *ministrator may, at any time, revise the initial*
6 *regulations promulgated under subparagraph*
7 *(A) based on the Administrator’s experience in*
8 *administering allowance auctions. Such revised*
9 *regulations need not meet the requirements iden-*
10 *tified in subparagraph (A) if the Administrator*
11 *determines that an alternative auction design*
12 *would be more effective, taking into account fac-*
13 *tors including costs of administration, trans-*
14 *parency, fairness, and risks of collusion or ma-*
15 *nipulation. In determining whether and how to*
16 *revise the initial regulations under this para-*
17 *graph, the Administrator shall not consider*
18 *maximization of revenues to the Federal Govern-*
19 *ment.*

20 “(C) *DELEGATION OR CONTRACT.*—*Pursu-*
21 *ant to regulations under this section, the Admin-*
22 *istrator may, by delegation or contract, provide*
23 *for the conduct of auctions under the Adminis-*
24 *trator’s supervision by other departments or*

1 agencies of the Federal Government or by non-
2 governmental agencies, groups, or organizations.

3 “(7) PAYMENTS FOR ALLOWANCES.—

4 “(A) INITIAL REGULATIONS.—Not later
5 than 18 months after the date of enactment of
6 this section, the Administrator shall promulgate
7 regulations governing the payment for allow-
8 ances purchased in auction and non-auction
9 sales under this section. Such regulations shall
10 include the requirement that, in the event that
11 full payment for purchased allowances is not
12 made on the date of purchase, equal payments
13 shall be made one time per calendar quarter
14 with all payments for allowances of a vintage
15 year made by the end of that vintage year.

16 “(B) REVISION OF REGULATIONS.— The
17 Administrator may, at any time, revise the ini-
18 tial regulations promulgated under subpara-
19 graph (A) based on the Administrator’s experi-
20 ence in administering collection of payments.
21 Such revised regulations need not meet the re-
22 quirements identified in subparagraph (A) if the
23 Administrator determines that an alternative
24 payment structure or frequency would be more
25 effective, taking into account factors including

1 *cost of administration, transparency, and fair-*
2 *ness. In determining whether and how to revise*
3 *the initial regulations under this paragraph, the*
4 *Administrator shall not consider maximization*
5 *of revenues to the Federal Government.*

6 “(C) *PENALTIES FOR NON-PAYMENT.—Fail-*
7 *ure to pay for purchased allowances in accord-*
8 *ance with the regulations promulgated pursuant*
9 *to this paragraph shall be a violation of the re-*
10 *quirements of subsection (b). Section 113(c)(3)*
11 *shall apply in the case of any person who know-*
12 *ingly fails to pay for purchased allowances in*
13 *accordance with the regulations promulgated*
14 *pursuant to this paragraph.*

15 “(8) *IMPORTED PRODUCTS.—If the United States*
16 *becomes a party or otherwise adheres to a multilateral*
17 *agreement, including any amendment to the Montreal*
18 *Protocol on Substances That Deplete the Ozone Layer,*
19 *which restricts the production and consumption of*
20 *class II, group II substances—*

21 “(A) *as of the date on which such agreement*
22 *or amendment enters into force, it shall no*
23 *longer be unlawful for any person to import*
24 *from a party to such agreement or amendment*
25 *any product containing any class II, group II*

1 *substance whose production and consumption are*
2 *regulated by such agreement or amendment with-*
3 *out holding one consumption allowance or one*
4 *destruction offset credit for each carbon dioxide*
5 *equivalent ton of the class II, group II substance;*

6 “(B) *the Administrator shall promulgate*
7 *regulations within 12 months of the date the*
8 *United States becomes a party or otherwise ad-*
9 *heres to such agreement or amendment, or the*
10 *date on which such agreement or amendment en-*
11 *ters into force, whichever is later, to establish a*
12 *new baseline for purposes of paragraph (2),*
13 *which new baseline shall be the original baseline*
14 *less the carbon dioxide equivalent of the annual*
15 *average quantity of any class II substances regu-*
16 *lated by such agreement or amendment con-*
17 *tained in products imported from parties to such*
18 *agreement or amendment in calendar years*
19 *2004, 2005, and 2006;*

20 “(C) *as of the date on which such agreement*
21 *or amendment enters into force, no person im-*
22 *porting any product containing any class II,*
23 *group II substance may, directly or in concert*
24 *with another person, purchase any consumption*
25 *allowances for sale by the Administrator for the*

1 *importation of products from a party to such*
2 *agreement or amendment that contain any class*
3 *II, group II substance restricted by such agree-*
4 *ment or amendment; and*

5 “(D) *the Administrator may adjust the two*
6 *allowance pools established in paragraph (4)*
7 *such that up to 90 percent of the consumption*
8 *allowances available for a calendar year are*
9 *placed in the producer-importer pool with the re-*
10 *maining consumption allowances placed in the*
11 *secondary pool.*

12 “(9) *OFFSETS.—*

13 “(A) *CHLOROFLUOROCARBON DESTRUC-*
14 *TION.—Within 18 months after the date of enact-*
15 *ment of this section, the Administrator shall pro-*
16 *mulgate regulations to provide for the issuance of*
17 *offset credits for the destruction, in the calendar*
18 *year 2012 or later, of chlorofluorocarbons in the*
19 *United States. The Administrator shall establish*
20 *and distribute to the destroying entity a quan-*
21 *tity of destruction offset credits equal to 0.8*
22 *times the number of tons of carbon dioxide*
23 *equivalents of reduction achieved through the de-*
24 *struction. No destruction offset credits shall be*

1 *established for the destruction of a class II, group*
2 *II substance.*

3 “(B) *DEFINITION.*—*For purposes of this*
4 *paragraph, the term ‘destruction’ means the con-*
5 *version of a substance by thermal, chemical, or*
6 *other means to another substance with little or*
7 *no carbon dioxide equivalent value and no ozone*
8 *depletion potential.*

9 “(C) *REGULATIONS.*—*The regulations pro-*
10 *mulgated under this paragraph shall include*
11 *standards and protocols for project eligibility,*
12 *certification of destroyers, monitoring, tracking,*
13 *destruction efficiency, quantification of project*
14 *and baseline emissions and carbon dioxide equiv-*
15 *alent value, and verification. The Administrator*
16 *shall ensure that destruction offset credits rep-*
17 *resent real and verifiable destruction of*
18 *chlorofluorocarbons or other class I or class II,*
19 *group I, substances authorized under subpara-*
20 *graph (D).*

21 “(D) *OTHER SUBSTANCES.*—*The Adminis-*
22 *trator may promulgate regulations to add to the*
23 *list of class I and class II, group I, substances*
24 *that may be destroyed for destruction offset cred-*
25 *its, taking into account a candidate substance’s*

1 carbon dioxide equivalent value, ozone depletion
2 potential, prevalence in banks in the United
3 States, and emission rates, as well as the need
4 for additional cost containment under the class
5 II, group II cap and the integrity of the class II,
6 group II cap. The Administrator shall not add
7 a class I or class II, group I substance to the list
8 if the consumption of the substance has not been
9 completely phased-out internationally (except for
10 essential use exemptions or other similar exemp-
11 tions) pursuant to the Montreal Protocol.

12 “(E) EXTENSION OF OFFSETS.—(i) At any
13 time after the Administrator promulgates regula-
14 tions pursuant to subparagraph (A), the Admin-
15 istrator may add the types of destruction projects
16 authorized to receive destruction offset credits
17 under this paragraph to the list of types of
18 projects eligible for offset credits under section
19 733. Nothing in this paragraph shall affect the
20 issuance of offset credits under section 740.

21 “(ii) The Administrator shall not make the
22 addition under clause (i) unless the Adminis-
23 trator finds that insufficient destruction is occur-
24 ring or is projected to occur under this para-

1 *graph and that the addition would increase de-*
2 *struction.*

3 “(iii) *In no event shall more than one de-*
4 *struction offset credit be issued under title VII*
5 *and this section for the destruction of the same*
6 *quantity of a substance.*

7 “(10) *LEGAL STATUS OF ALLOWANCES AND*
8 *CREDITS.—None of the following constitutes a prop-*
9 *erty right:*

10 “(A) *A production or consumption allow-*
11 *ance.*

12 “(B) *A destruction offset credit.*

13 “(c) *DEADLINES FOR COMPLIANCE.—Notwithstanding*
14 *the deadlines specified for class II substances in sections*
15 *608, 609, 610, 612, and 613 that occur prior to January*
16 *1, 2009, the deadline for promulgating regulations under*
17 *those sections for class II, group II substances shall be Janu-*
18 *ary 1, 2012.*

19 “(d) *EXCEPTIONS FOR ESSENTIAL USES.—Notwith-*
20 *standing any phase down of production and consumption*
21 *required by this section, to the extent consistent with any*
22 *applicable multilateral agreement to which the United*
23 *States is a party or otherwise adheres, the Administrator*
24 *may provide the following exceptions for essential uses:*

1 “(1) *MEDICAL DEVICES.*—*The Administrator,*
2 *after notice and opportunity for public comment, and*
3 *in consultation with the Commissioner of the Food*
4 *and Drug Administration, may provide an exception*
5 *for the production and consumption of class II, group*
6 *II substances solely for use in medical devices.*

7 “(2) *AVIATION SAFETY.*—*The Administrator,*
8 *after notice and opportunity for public comment, may*
9 *authorize the production and consumption of limited*
10 *quantities of class II, group II substances solely for*
11 *the purposes of aviation safety if the Administrator*
12 *of the Federal Aviation Administration, in consulta-*
13 *tion with the Administrator, determines that no safe*
14 *and effective substitute has been developed and that*
15 *such authorization is necessary for aviation safety*
16 *purposes.*

17 “(e) *DEVELOPING COUNTRIES.*—*Notwithstanding any*
18 *phase down of production required by this section, the Ad-*
19 *ministrator, after notice and opportunity for public com-*
20 *ment, may authorize the production of limited quantities*
21 *of class II, group II substances in excess of the amounts*
22 *otherwise allowable under this section solely for export to,*
23 *and use in, developing countries. Any production author-*
24 *ized under this subsection shall be solely for purposes of sat-*
25 *isfying the basic domestic needs of such countries as pro-*

1 *vided in applicable international agreements, if any, to*
2 *which the United States is a party or otherwise adheres.*

3 “(f) *NATIONAL SECURITY; FIRE SUPPRESSION, ETC.—*
4 *The provisions of subsection (f) and paragraphs (1) and*
5 *(2) of subsection (g) of section 604 shall apply to any con-*
6 *sumption and production phase down of class II, group II*
7 *substances in the same manner and to the same extent, con-*
8 *sistent with any applicable international agreement to*
9 *which the United States is a party or otherwise adheres,*
10 *as such provisions apply to the substances specified in such*
11 *subsection.*

12 “(g) *ACCELERATED SCHEDULE.—In lieu of section*
13 *606, the provisions of paragraphs (1), (2), and (3) of this*
14 *subsection shall apply in the case of class II, group II sub-*
15 *stances.*

16 “(1) *IN GENERAL.—The Administrator shall pro-*
17 *mulgate initial regulations not later than 18 months*
18 *after the date of enactment of this section, and revised*
19 *regulations any time thereafter, which establish a*
20 *schedule for phasing down the consumption (and, if*
21 *the condition in subsection (b)(1)(B) is met, the pro-*
22 *duction) of class II, group II substances that is more*
23 *stringent than the schedule set forth in this section if,*
24 *based on the availability of substitutes, the Adminis-*
25 *trator determines that such more stringent schedule is*

1 *practicable, taking into account technological*
2 *achievability, safety, and other factors the Adminis-*
3 *trator deems relevant, or if the Montreal Protocol, or*
4 *any applicable international agreement to which the*
5 *United States is a party or otherwise adheres, is*
6 *modified or established to include a schedule or other*
7 *requirements to control or reduce production, con-*
8 *sumption, or use of any class II, group II substance*
9 *more rapidly than the applicable schedule under this*
10 *section.*

11 “(2) *PETITION.*—*Any person may submit a peti-*
12 *tion to promulgate regulations under this subsection*
13 *in the same manner and subject to the same proce-*
14 *dures as are provided in section 606(b).*

15 “(3) *INCONSISTENCY.*—*If the Administrator de-*
16 *termines that the provisions of this section regarding*
17 *banking, allowance rollover, or destruction offset cred-*
18 *its create a significant potential for inconsistency*
19 *with the requirements of any applicable international*
20 *agreement to which the United States is a party or*
21 *otherwise adheres, the Administrator may promulgate*
22 *regulations restricting the availability of banking, al-*
23 *lowance rollover, or destruction offset credits to the ex-*
24 *tent necessary to avoid such inconsistency.*

1 “(h) *EXCHANGE*.—Section 607 shall not apply in the
2 case of class II, group II substances. Production and con-
3 sumption allowances for class II, group II substances may
4 be freely exchanged or sold but may not be converted into
5 allowances for class II, group I substances.

6 “(i) *LABELING*.—(1) In applying section 611 to prod-
7 ucts containing or manufactured with class II, group II
8 substances, in lieu of the words ‘destroying ozone in the
9 upper atmosphere’ on labels required under section 611
10 there shall be substituted the words ‘contributing to global
11 warming’.

12 “(2) The Administrator may, through rulemaking, ex-
13 empt from the requirements of section 611 products con-
14 taining or manufactured with class II, group II substances
15 determined to have little or no carbon dioxide equivalent
16 value compared to other substances used in similar prod-
17 ucts.

18 “(j) *NONESSENTIAL PRODUCTS*.—For the purposes of
19 section 610, class II, group II substances shall be regulated
20 under section 610(b), except that in applying section 610(b)
21 the word ‘hydrofluorocarbon’ shall be substituted for the
22 word ‘chlorofluorocarbon’ and the term ‘class II, group II’
23 shall be substituted for the term ‘class I’. Class II, group
24 II substances shall not be subject to the provisions of section
25 610(d).

1 “(k) *INTERNATIONAL TRANSFERS.*—*In the case of class*
2 *II, group II substances, in lieu of sections 616(a) and*
3 *616(b), this subsection shall apply. To the extent consistent*
4 *with any applicable international agreement to which the*
5 *United States is a party or otherwise adheres, including*
6 *any amendment to the Montreal Protocol, the United States*
7 *may engage in transfers with other parties to such agree-*
8 *ment or amendment under the following conditions:*

9 “(1) *The United States may transfer production*
10 *allowances to another party to such agreement or*
11 *amendment if, at the time of the transfer, the Admin-*
12 *istrator establishes revised production limits for the*
13 *United States accounting for the transfer in accord-*
14 *ance with regulations promulgated pursuant to this*
15 *subsection.*

16 “(2) *The United States may acquire production*
17 *allowances from another party to such agreement or*
18 *amendment if, at the time of the transfer, the Admin-*
19 *istrator finds that the other party has revised its do-*
20 *mestic production limits in the same manner as pro-*
21 *vided with respect to transfers by the United States*
22 *in the regulations promulgated pursuant to this sub-*
23 *section.*

24 “(l) *RELATIONSHIP TO OTHER LAWS.*—

1 “(1) *STATE LAWS*.—For purposes of section 116,
2 the requirements of this section for class II, group II
3 substances shall be treated as requirements for the
4 control and abatement of air pollution.

5 “(2) *MULTILATERAL AGREEMENTS*.—Section 614
6 shall apply to the provisions of this section con-
7 cerning class II, group II substances, except that for
8 the words ‘Montreal Protocol’ there shall be sub-
9 stituted the words ‘Montreal Protocol, or any applica-
10 ble multilateral agreement to which the United States
11 is a party or otherwise adheres that restricts the pro-
12 duction or consumption of class II, group II sub-
13 stances,’ and for the words ‘Article 4 of the Montreal
14 Protocol’ there shall be substituted ‘any provision of
15 such multilateral agreement regarding trade with
16 non-parties’.

17 “(3) *FEDERAL FACILITIES*.—For purposes of sec-
18 tion 118, the requirements of this section for class II,
19 group II substances and corresponding State, inter-
20 state, and local requirements, administrative author-
21 ity, and process and sanctions shall be treated as re-
22 quirements for the control and abatement of air pollu-
23 tion within the meaning of section 118.

24 “(m) *CARBON DIOXIDE EQUIVALENT VALUE*.—(1) In
25 lieu of section 602(e), the provisions of this subsection shall

1 *apply in the case of class II, group II substances. Simulta-*
2 *neously with establishing the list of class II, group II sub-*
3 *stances, and simultaneously with any addition to that list,*
4 *the Administrator shall publish the carbon dioxide equiva-*
5 *lent value of each listed class II, group II substance, based*
6 *on a determination of the number of metric tons of carbon*
7 *dioxide that makes the same contribution to global warming*
8 *over 100 years as 1 metric ton of each class II, group II*
9 *substance.*

10 “(2) *Not later than February 1, 2017, and not less*
11 *than every 5 years thereafter, the Administrator shall—*

12 “(A) *review, and if appropriate, revise the car-*
13 *bon dioxide equivalent values established for class II,*
14 *group II substances based on a determination of the*
15 *number of metric tons of carbon dioxide that makes*
16 *the same contributions to global warming over 100*
17 *years as 1 metric ton of each class II, group II sub-*
18 *stance; and*

19 “(B) *publish in the Federal Register the results*
20 *of that review and any revisions.*

21 “(3) *A revised determination published in the Federal*
22 *Register under paragraph (2)(B) shall take effect for pro-*
23 *duction of class II, group II substances, consumption of*
24 *class II, group II substances, and importation of products*
25 *containing class II, group II substances starting on Janu-*

1 ary 1 of the first calendar year starting at least 9 months
2 after the date on which the revised determination was pub-
3 lished.

4 “(4) *The Administrator may decrease the frequency of*
5 *review and revision under paragraph (2) if the Adminis-*
6 *trator determines that such decrease is appropriate in order*
7 *to synchronize such review and revisions with any similar*
8 *review process carried out pursuant to the United Nations*
9 *Framework Convention on Climate Change, an agreement*
10 *negotiated under that convention, The Vienna Convention*
11 *for the Protection of the Ozone Layer, or an agreement nego-*
12 *tiated under that convention, except that in no event shall*
13 *the Administrator carry out such review and revision any*
14 *less frequently than every 10 years.*

15 “(n) *REPORTING REQUIREMENTS.—In lieu of sub-*
16 *sections (b) and (c) of section 603, paragraphs (1) and (2)*
17 *of this subsection shall apply in the case of class II, group*
18 *II substances:*

19 “(1) *IN GENERAL.—On a quarterly basis, or*
20 *such other basis (not less than annually) as deter-*
21 *mined by the Administrator, each person who pro-*
22 *duced, imported, or exported a class II, group II sub-*
23 *stance, or who imported a product containing a class*
24 *II, group II substance, shall file a report with the Ad-*
25 *ministrator setting forth the carbon dioxide equiva-*

1 *lent amount of the substance that such person pro-*
2 *duced, imported, or exported, as well as the amount*
3 *that was contained in products imported by that per-*
4 *son, during the preceding reporting period. Each such*
5 *report shall be signed and attested by a responsible of-*
6 *ficer. If all other reporting is complete, no such report*
7 *shall be required from a person after April 1 of the*
8 *calendar year after such person permanently ceases*
9 *production, importation, and exportation of the sub-*
10 *stance, as well as importation of products containing*
11 *the substance, and so notifies the Administrator in*
12 *writing. If the United States becomes a party or oth-*
13 *erwise adheres to a multilateral agreement, including*
14 *any amendment to the Montreal Protocol on Sub-*
15 *stances That Deplete the Ozone Layer, that restricts*
16 *the production and consumption of class II, group II*
17 *substances, then, if all other reporting is complete, no*
18 *such report shall be required from a person with re-*
19 *spect to importation from parties to such agreement*
20 *or amendment of products containing any class II,*
21 *group II substance restricted by such agreement or*
22 *amendment, after April 1 of the calendar year fol-*
23 *lowing the year during which such agreement or*
24 *amendment enters into force.*

1 “(2) *BASELINE REPORTS FOR CLASS II, GROUP II*
2 *SUBSTANCES.—*

3 “(A) *IN GENERAL.—Unless such informa-*
4 *tion has been previously reported to the Admin-*
5 *istrator, on the date on which the first report*
6 *under paragraph (1) of this subsection is re-*
7 *quired to be filed, each person who produced, im-*
8 *ported, or exported a class II, group II sub-*
9 *stance, or who imported a product containing a*
10 *class II substance, (other than a substance added*
11 *to the list of class II, group II substances after*
12 *the publication of the initial list of such sub-*
13 *stances under this section), shall file a report*
14 *with the Administrator setting forth the amount*
15 *of such substance that such person produced, im-*
16 *ported, exported, or that was contained in prod-*
17 *ucts imported by that person, during each of cal-*
18 *endar years 2004, 2005, and 2006.*

19 “(B) *PRODUCERS.—In reporting under sub-*
20 *paragraph (A), each person who produced in the*
21 *United States a class II substance during cal-*
22 *endar years 2004, 2005, or 2006 shall—*

23 “(i) *report all acquisitions or pur-*
24 *chases of class II substances during each of*
25 *calendar years 2004, 2005, and 2006 from*

1 *all other persons who produced in the*
2 *United States a class II substance during*
3 *calendar years 2004, 2005, or 2006, and*
4 *supply evidence of such acquisitions and*
5 *purchases as deemed necessary by the Ad-*
6 *ministrator; and*

7 “(ii) *report all transfers or sales of*
8 *class II substances during each of calendar*
9 *years 2004, 2005, and 2006 to all other per-*
10 *sons who produced in the United States a*
11 *class II substance during calendar years*
12 *2004, 2005, or 2006, and supply evidence of*
13 *such transfers and sales as deemed nec-*
14 *essary by the Administrator.*

15 “(C) *ADDED SUBSTANCES.—In the case of a*
16 *substance added to the list of class II, group II*
17 *substances after publication of the initial list of*
18 *such substances under this section, each person*
19 *who produced, imported, exported, or imported*
20 *products containing such substance in calendar*
21 *year 2004, 2005, or 2006 shall file a report with*
22 *the Administrator within 180 days after the date*
23 *on which such substance is added to the list, set-*
24 *ting forth the amount of the substance that such*
25 *person produced, imported, and exported, as well*

1 *as the amount that was contained in products*
2 *imported by that person, in calendar years 2004,*
3 *2005, and 2006.*

4 “(o) *STRATOSPHERIC OZONE AND CLIMATE PROTEC-*
5 *TION FUND.—*

6 “(1) *IN GENERAL.—There is established in the*
7 *Treasury of the United States a Stratospheric Ozone*
8 *and Climate Protection Fund.*

9 “(2) *DEPOSITS.—The Administrator shall de-*
10 *posit all proceeds from the auction and non-auction*
11 *sale of allowances under this section into the Strato-*
12 *spheric Ozone and Climate Protection Fund.*

13 “(3) *USE.—Amounts deposited into the Strato-*
14 *spheric Ozone and Climate Protection Fund shall be*
15 *available, subject to appropriations, exclusively for*
16 *the following purposes:*

17 “(A) *RECOVERY, RECYCLING, AND RECLAMA-*
18 *TION.—The Administrator may utilize funds to*
19 *establish a program to incentivize the recovery,*
20 *recycling, and reclamation of any Class II sub-*
21 *stances in order to reduce emissions of such sub-*
22 *stances.*

23 “(B) *MULTILATERAL FUND.—If the United*
24 *States becomes a party or otherwise adheres to a*
25 *multilateral agreement, including any amend-*

1 *ment to the Montreal Protocol on Substances*
2 *That Deplete the Ozone Layer, which restricts*
3 *the production and consumption of class II,*
4 *group II substances, the Administrator may uti-*
5 *lize funds to meet any related contribution obli-*
6 *gation of the United States to the Multilateral*
7 *Fund for the Implementation of the Montreal*
8 *Protocol or similar multilateral fund established*
9 *under such multilateral agreement.*

10 “(C) *BEST-IN-CLASS APPLIANCES DEPLOY-*
11 *MENT PROGRAM.—The Secretary of Energy is*
12 *authorized to utilize funds to carry out the pur-*
13 *poses of section 214 of the American Clean En-*
14 *ergy and Security Act of 2009.*

15 “(D) *LOW GLOBAL WARMING PRODUCT*
16 *TRANSITION ASSISTANCE PROGRAM.—*

17 “(i) *IN GENERAL.—The Administrator,*
18 *in consultation with the Secretary of En-*
19 *ergy, may utilize funds in fiscal years 2012*
20 *through 2022 to establish a program to pro-*
21 *vide financial assistance to manufacturers*
22 *of products containing class II, group II*
23 *substances to facilitate the transition to*
24 *products that contain or utilize alternative*
25 *substances with no or low carbon dioxide*

1 *equivalent value and no ozone depletion po-*
2 *tential.*

3 “(ii) *DEFINITION.*—*In this subpara-*
4 *graph, the term ‘products’ means refrig-*
5 *erators, freezers, dehumidifiers, air condi-*
6 *tioners, foam insulation, technical aerosols,*
7 *fire protection systems, and semiconductors.*

8 “(iii) *FINANCIAL ASSISTANCE.*—*The*
9 *Administrator may provide financial assist-*
10 *ance to manufacturers pursuant to clause*
11 *(i) for—*

12 “(I) *the design and configuration*
13 *of new products that use alternative*
14 *substances with no or low carbon diox-*
15 *ide equivalent value and no ozone de-*
16 *pletion potential; and*

17 “(II) *the redesign and retooling of*
18 *facilities for the manufacture of prod-*
19 *ucts in the United States that use al-*
20 *ternative substances with no or low*
21 *carbon dioxide equivalent value and no*
22 *ozone depletion potential.*

23 “(iv) *REPORTS.*—*For any fiscal year*
24 *during which the Administrator provides fi-*
25 *nancial assistance pursuant to this sub-*

1 *paragraph, the Administrator shall submit*
2 *a report to the Congress within 3 months of*
3 *the end of such fiscal year detailing the*
4 *amounts, recipients, specific purposes, and*
5 *results of the financial assistance pro-*
6 *vided.”.*

7 **(b) TABLE OF CONTENTS.**—*The table of contents of*
8 *title VI of the Clean Air Act (42 U.S.C. 7671 et seq.) is*
9 *amended by adding the following new item at the end there-*
10 *of:*

“Sec. 619. Hydrofluorocarbons (HFCs).”.

11 **(c) FIRE SUPPRESSION AGENTS.**—*Section 605(a) of*
12 *the Clean Air Act (42 U.S.C. 7671(a)) is amended—*

13 *(1) by striking “or” at the end of paragraph (2);*

14 *(2) by striking the period at the end of para-*
15 *graph (3) and inserting “; or”; and*

16 *(3) by adding the following new paragraph after*
17 *paragraph (3):*

18 *“(4) is listed as acceptable for use as a fire sup-*
19 *pression agent for nonresidential applications in ac-*
20 *cordance with section 612(c).”.*

21 **(d) MOTOR VEHICLE AIR CONDITIONERS.**—

22 *(1) Section 609(e) of the Clean Air Act (42*
23 *U.S.C. 7671h(e)) is amended by inserting “, group I”*
24 *after each reference to “class II” in the text and head-*
25 *ing.*

1 (2) *Section 609 of the Clean Air Act (42 U.S.C.*
2 *7671h) is amended by adding the following new sub-*
3 *section after subsection (e):*

4 “(f) *CLASS II, GROUP II SUBSTANCES.—*

5 “(1) *REPAIR.—The Administrator may promul-*
6 *gate regulations establishing requirements for repair*
7 *of motor vehicle air conditioners prior to adding a*
8 *class II, group II substance.*

9 “(2) *SMALL CONTAINERS.—(A) The Adminis-*
10 *trator may promulgate regulations establishing serv-*
11 *icing practices and procedures for recovery of class II,*
12 *group II substances from containers which contain*
13 *less than 20 pounds of such class II, group II sub-*
14 *stances.*

15 “(B) *Not later than 18 months after enactment*
16 *of this subsection, the Administrator shall either pro-*
17 *mulgate regulations requiring that containers which*
18 *contain less than 20 pounds of a class II, group II*
19 *substance be equipped with a device or technology*
20 *that limits refrigerant emissions and leaks from the*
21 *container and limits refrigerant emissions and leaks*
22 *during the transfer of refrigerant from the container*
23 *to the motor vehicle air conditioner or issue a deter-*
24 *mination that such requirements are not necessary or*
25 *appropriate.*

1 “(C) Not later than 18 months after enactment
2 of this subsection, the Administrator shall promulgate
3 regulations establishing requirements for consumer
4 education materials on best practices associated with
5 the use of containers which contain less than 20
6 pounds of a class II, group II substance and prohib-
7 iting the sale or distribution, or offer for sale or dis-
8 tribution, of any class II, group II substance in any
9 container which contains less than 20 pounds of such
10 class II, group II substance, unless consumer edu-
11 cation materials consistent with such requirements
12 are displayed and available at point-of-sale locations,
13 provided to the consumer, or included in or on the
14 packaging of the container which contain less than 20
15 pounds of a class II, group II substance.

16 “(D) The Administrator may, through rule-
17 making, extend the requirements established under
18 this paragraph to containers which contain 30
19 pounds or less of a class II, group II substance if the
20 Administrator determines that such action would
21 produce significant environmental benefits.

22 “(3) RESTRICTION OF SALES.—Effective Janu-
23 ary 1, 2014, no person may sell or distribute or offer
24 to sell or distribute or otherwise introduce into inter-
25 state commerce any motor vehicle air conditioner re-

1 *frigerant in any size container unless the substance*
2 *has been found acceptable for use in a motor vehicle*
3 *air conditioner under section 612.”.*

4 *(e) SAFE ALTERNATIVES POLICY.—Section 612(e) of*
5 *the Clean Air Act (42 U.S.C. 7671k(e)) is amended by in-*
6 *serting “or class II” after each reference to “class I”.*

7 **SEC. 333. BLACK CARBON.**

8 *(a) DEFINITION.—As used in this section, the term*
9 *“black carbon” means primary light absorbing aerosols, as*
10 *defined by the Administrator, based on the best available*
11 *science.*

12 *(b) BLACK CARBON ABATEMENT REPORT.—Not later*
13 *than one year after the date of enactment of this section,*
14 *the Administrator shall, in consultation with other appro-*
15 *priate Federal agencies, submit to Congress a report regard-*
16 *ing black carbon emissions. The report shall include the fol-*
17 *lowing:*

18 *(1) A summary of the current information and*
19 *research that identifies—*

20 *(A) an inventory of the major sources of*
21 *black carbon emissions in the United States and*
22 *throughout the world, including—*

23 *(i) an estimate of the quantity of cur-*
24 *rent and projected future emissions; and*

1 (ii) the net climate forcing of the emis-
2 sions from such sources, including consider-
3 ation of co-emissions of other pollutants;

4 (B) effective and cost-effective control tech-
5 nologies, operations, and strategies for additional
6 domestic and international black carbon emis-
7 sions reductions, such as diesel retrofit tech-
8 nologies on existing on-road, non-road, and sta-
9 tionary engines and programs to address resi-
10 dential cookstoves, and forest and agriculture-
11 based burning;

12 (C) potential metrics and approaches for
13 quantifying the climatic effects of black carbon
14 emissions, including its radiative forcing and
15 warming effects, that may be used to compare
16 the climate benefits of different mitigation strate-
17 gies, including an assessment of the uncertainty
18 in such metrics and approaches; and

19 (D) the public health and environmental
20 benefits associated with additional controls for
21 black carbon emissions.

22 (2) Recommendations regarding—

23 (A) development of additional emissions
24 monitoring techniques and capabilities, mod-

1 *eling, and other black carbon-related areas of*
2 *study;*

3 *(B) areas of focus for additional study of*
4 *technologies, operations, and strategies with the*
5 *greatest potential to reduce emissions of black*
6 *carbon and associated public health, economic,*
7 *and environmental impacts associated with these*
8 *emissions; and*

9 *(C) actions, in addition to those identified*
10 *by the Administrator under section 851 of the*
11 *Clean Air Act (as added by subsection (c)), the*
12 *Federal Government may take to encourage or*
13 *require reductions in black carbon emissions.*

14 *(c) BLACK CARBON MITIGATION.—Title VIII of the*
15 *Clean Air Act, as added by section 331 of this Act, and*
16 *amended by section 222 of this Act, is further amended by*
17 *adding after part D the following new part:*

18 **“PART E—BLACK CARBON**

19 **“SEC. 851. BLACK CARBON.**

20 *“(a) DOMESTIC BLACK CARBON MITIGATION.—Not*
21 *later than 18 months after the date of enactment of this*
22 *section, the Administrator, taking into consideration the*
23 *public health and environmental impacts of black carbon*
24 *emissions, including the effects on global and regional*
25 *warming, the Arctic, and other snow and ice-covered sur-*

1 *faces, shall propose regulations under the existing authori-*
2 *ties of this Act to reduce emissions of black carbon or pro-*
3 *pose a finding that existing regulations promulgated pursu-*
4 *ant to this Act adequately regulate black carbon emissions.*
5 *Not later than two years after the date of enactment of this*
6 *section, the Administrator shall promulgate final regula-*
7 *tions under the existing authorities of this Act or finalize*
8 *the proposed finding.*

9 “(b) *INTERNATIONAL BLACK CARBON MITIGATION.*—

10 “(1) *REPORT.*—*Not later than one year after the*
11 *date of enactment of this section, the Administrator,*
12 *in coordination with the Secretary of State and other*
13 *appropriate Federal agencies, shall transmit a report*
14 *to Congress on the amount, type, and direction of all*
15 *present United States financial, technical, and related*
16 *assistance to foreign countries to reduce, mitigate,*
17 *and otherwise abate black carbon emissions.*

18 “(2) *OTHER OPPORTUNITIES.*—*The report re-*
19 *quired under paragraph (1) shall also identify oppor-*
20 *tunities and recommendations, including action*
21 *under existing authorities, to achieve significant black*
22 *carbon emission reductions in foreign countries*
23 *through technical assistance or other approaches to—*

24 “(A) *promote sustainable solutions to bring*
25 *clean, efficient, safe, and affordable stoves, fuels,*

1 *or both stoves and fuels to residents of developing*
2 *countries that are reliant on solid fuels such as*
3 *wood, dung, charcoal, coal, or crop residues for*
4 *home cooking and heating, so as to help reduce*
5 *the public health, environmental, and economic*
6 *impacts of black carbon emissions from these*
7 *sources by—*

8 *“(i) identifying key regions for large-*
9 *scale demonstration efforts, and key part-*
10 *ners in each such region; and*

11 *“(ii) developing for each such region a*
12 *large-scale implementation strategy with a*
13 *goal of collectively reaching 20,000,000*
14 *homes over 5 years with interventions that*
15 *will—*

16 *“(I) increase stove efficiency by*
17 *over 50 percent (or such other goal as*
18 *determined by the Administrator);*

19 *“(II) reduce emissions of black*
20 *carbon by over 60 percent (or such*
21 *other goal as determined by the Ad-*
22 *ministrator); and*

23 *“(III) reduce the incidence of se-*
24 *vere pneumonia in children under 5*
25 *years old by over 30 percent (or such*

1 *other goal as determined by the Ad-*
2 *ministrator);*

3 *“(B) make technological improvements to*
4 *diesel engines and provide greater access to fuels*
5 *that emit less or no black carbon;*

6 *“(C) reduce unnecessary agricultural or*
7 *other biomass burning where feasible alternatives*
8 *exist;*

9 *“(D) reduce unnecessary fossil fuel burning*
10 *that produces black carbon where feasible alter-*
11 *natives exist;*

12 *“(E) reduce other sources of black carbon*
13 *emissions; and*

14 *“(F) improve capacity to achieve greater*
15 *compliance with existing laws to address black*
16 *carbon emissions.”.*

17 *(d) AUTHORIZATION OF APPROPRIATIONS.—There are*
18 *authorized to be appropriated such sums as are necessary*
19 *to carry out this section.*

20 **SEC. 334. STATES.**

21 *Section 116 of the Clean Air Act (42 U.S.C. 7416) is*
22 *amended by adding the following at the end thereof: “For*
23 *the purposes of this section, the phrases ‘standard or limita-*
24 *tion respecting emissions of air pollutants’ and ‘require-*
25 *ments respecting control or abatement of air pollution’ shall*

1 *include any provision to: cap greenhouse gas emissions, re-*
2 *quire surrender to the State or a political subdivision there-*
3 *of of emission allowances or offset credits established or*
4 *issued under this Act, and require the use of such allowances*
5 *or credits as a means of demonstrating compliance with*
6 *requirements established by a State or political subdivision*
7 *thereof.”.*

8 **SEC. 335. STATE PROGRAMS.**

9 *Title VIII of the Clean Air Act, as added by section*
10 *331 of this Act and amended by several sections of this Act,*
11 *is further amended by adding after part E (as added by*
12 *section 333(c) of this Act) the following new part:*

13 **“PART F—MISCELLANEOUS**

14 **“SEC. 861. STATE PROGRAMS.**

15 *“Notwithstanding section 116, no State or political*
16 *subdivision thereof shall implement or enforce a cap and*
17 *trade program that covers any capped emissions emitted*
18 *during the years 2012 through 2017. For purposes of this*
19 *section, the term ‘cap and trade program’ means a system*
20 *of greenhouse gas regulation under which a State or polit-*
21 *ical subdivision issues a limited number of tradable instru-*
22 *ments in the nature of emission allowances and requires*
23 *that sources within its jurisdiction surrender such tradeable*
24 *instruments for each unit of greenhouse gases emitted dur-*
25 *ing a compliance period. For purposes of this section, a*

1 ‘cap-and-trade program’ does not include a target or limit
2 on greenhouse gas emissions adopted by a State or political
3 subdivision that is implemented other than through the
4 issuance and surrender of a limited number of tradable in-
5 struments in the nature of emission allowances, nor does
6 it include any other standard, limit, regulation, or program
7 to reduce greenhouse gas emissions that is not implemented
8 through the issuance and surrender of a limited number of
9 tradeable instruments in the nature of emission allowances.
10 For purposes of this section, the term ‘cap and trade pro-
11 gram’ does not include, among other things, fleet-wide
12 motor vehicle emission requirements that allow greater
13 emissions with increased vehicle production, or require-
14 ments that fuels, or other products, meet an average pollu-
15 tion emission rate or lifecycle greenhouse gas standard.

16 **“SEC. 862. GRANTS FOR SUPPORT OF AIR POLLUTION CON-**
17 **TROL PROGRAMS.**

18 “The Administrator is authorized to make grants to
19 air pollution control agencies pursuant to section 105 for
20 purposes of assisting in the implementation of programs to
21 address global warming established under the Safe Climate
22 Act.”.

1 **SEC. 336. ENFORCEMENT.**

2 (a) *REMAND.*—Section 307(b) of the Clean Air Act (42
3 U.S.C. 7607(b)) is amended by adding the following new
4 paragraph at the end thereof:

5 “(3) If the court determines that any action of
6 the Administrator is arbitrary, capricious, or other-
7 wise unlawful, the court may remand such action,
8 without vacatur, if vacatur would impair or delay
9 protection of the environment or public health or oth-
10 erwise undermine the timely achievement of the pur-
11 poses of this Act.”.

12 (b) *PETITION FOR RECONSIDERATION.*—Section
13 307(d)(7)(B) of the Clean Air Act (42 U.S.C.
14 7607(d)(7)(B)) is amended as follows:

15 (1) By inserting after the second sentence “If a
16 petition for reconsideration is filed, the Administrator
17 shall take final action on such petition, including
18 promulgation of final action either revising or deter-
19 mining not to revise the action for which reconsider-
20 ation is sought, within 150 days after the petition is
21 received by the Administrator or the petition shall be
22 deemed denied for the purpose of judicial review.”.

23 (2) By amending the third sentence to read as
24 follows: “Such person may seek judicial review of such
25 denial, or of any other final action, by the Adminis-
26 trator, in response to a petition for reconsideration,

1 *in the United States court of appeals for the appro-*
2 *priate circuit (as provided in subsection (b)).”.*

3 **SEC. 337. CONFORMING AMENDMENTS.**

4 (a) *FEDERAL ENFORCEMENT.*—Section 113 of the
5 *Clean Air Act (42 U.S.C. 7413) is amended as follows:*

6 (1) *In subsection (a)(3), by striking “or title*
7 *VI,” and inserting “title VI, title VII, or title VIII”.*

8 (2) *In subsection (b), by striking “or a major*
9 *stationary source” and inserting “a major stationary*
10 *source, or a covered EGU under title VIII” in the*
11 *material preceding paragraph (1).*

12 (3) *In paragraph (2) of subsection (b), by strik-*
13 *ing “or title VI” and inserting “title VI, title VII, or*
14 *title VIII”.*

15 (4) *In subsection (c)—*

16 (A) *in the first sentence of paragraph (1),*
17 *by striking “or title VI (relating to stratospheric*
18 *ozone control),” and inserting “title VI, title VII,*
19 *or title VIII,”; and*

20 (B) *in the first sentence of paragraph (3),*
21 *by striking “or VI” and inserting “VI, VII, or*
22 *VIII”.*

23 (5) *In subsection (d)(1)(B), by striking “or VI”*
24 *and inserting “VI, VII, or VIII”.*

1 (6) *In subsection (f), in the first sentence, by*
2 *striking “or VI” and inserting “VI, VII, or VIII”.*

3 (b) *RETENTION OF STATE AUTHORITY.—Section 116*
4 *of the Clean Air Act (42 U.S.C. 7416) is amended as fol-*
5 *lows:*

6 (1) *By striking “and 233” and inserting “233”.*

7 (2) *By striking “of moving sources)” and insert-*
8 *ing “of moving sources), and 861 (preempting certain*
9 *State greenhouse gas programs for a limited time)”.*

10 (c) *INSPECTIONS, MONITORING, AND ENTRY.—Section*
11 *114(a) of the Clean Air Act (42 U.S.C. 7414(a)) is amended*
12 *by striking “section 112,” and all that follows through*
13 *“(ii)” and inserting the following: “section 112, or any reg-*
14 *ulation of greenhouse gas emissions under title VII or VIII,*
15 *(ii)”.*

16 (d) *ENFORCEMENT.—Subsection (f) of section 304 of*
17 *the Clean Air Act (42 U.S.C. 7604(f)) is amended as fol-*
18 *lows:*

19 (1) *By striking “; or” at the end of paragraph*
20 (3) *thereof and inserting a comma.*

21 (2) *By striking the period at the end of para-*
22 *graph (4) thereof and inserting “, or”.*

23 (3) *By adding the following after paragraph (4)*
24 *thereof:*

25 “(5) *any requirement of title VII or VIII.”.*

1 (e) *ADMINISTRATIVE PROCEEDINGS AND JUDICIAL RE-*
2 *VIEW.—Section 307 of the Clean Air Act (42 U.S.C. 7607)*
3 *is amended as follows:*

4 (1) *In subsection (a), by striking “, or section*
5 *306” and inserting “section 306, or title VII or VIII”.*

6 (2) *In subsection (b)(1)—*

7 (A) *by striking “,” and inserting “,” in*
8 *each place such punctuation appears; and*

9 (B) *by striking “section 120,” in the first*
10 *sentence and inserting “section 120, any final*
11 *action under title VII or VIII,”.*

12 (3) *In subsection (d)(1) by amending subpara-*
13 *graph (S) to read as follows:*

14 *“(S) the promulgation or revision of any*
15 *regulation under title VII or VIII,”.*

16 **SEC. 338. DAVIS-BACON COMPLIANCE.**

17 (a) *IN GENERAL.—Notwithstanding any other provi-*
18 *sion of law and in a manner consistent with other provi-*
19 *sions in this Act, to receive emission allowances or funding*
20 *under this Act the recipient shall provide reasonable assur-*
21 *ances that all laborers and mechanics employed by contrac-*
22 *tors and subcontractors on projects funded directly by or*
23 *assisted in whole or in part by and through the Federal*
24 *Government pursuant to this Act, or by any entity estab-*
25 *lished in accordance with this Act, including the Carbon*

1 *Storage Research Corporation, will be paid wages at rates*
2 *not less than those prevailing on projects of a character*
3 *similar in the locality as determined by the Secretary of*
4 *Labor in accordance with subchapter IV of chapter 31 of*
5 *title 40, United States Code (commonly known as the*
6 *“Davis-Bacon Act”). With respect to the labor standards*
7 *specified in this section, the Secretary of Labor shall have*
8 *the authority and functions set forth in Reorganization*
9 *Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.)*
10 *and section 3145 of title 40, United States Code.*

11 (b) *EXEMPTION.—Neither subsection (a) nor the re-*
12 *quirements of subchapter IV of chapter 31 of title 40, United*
13 *States Code, shall apply to retrofitting of any residential*
14 *building (as defined in section 202(a)(5)), or to retrofitting*
15 *of a nonresidential building (as defined in section*
16 *202(a)(1)) if the net interior space of such nonresidential*
17 *building is less than 6,500 square feet, or if such nonresi-*
18 *dential building is designed for residential use for less than*
19 *4 families.*

20 ***Subtitle D—Carbon Market***
21 ***Assurance***

22 ***SEC. 341. CARBON MARKET ASSURANCE.***

23 *The Federal Power Act (16 U.S.C. 791a and following)*
24 *is amended by adding at the end the following:*

1 **“PART IV—CARBON MARKET ASSURANCE**

2 **“SEC. 401. OVERSIGHT AND ASSURANCE OF CARBON MAR-**
3 **KETS.**

4 “(a) *DEFINITIONS.*—*In this section:*

5 “(1) *CONTRACT OF SALE.*—*The term ‘contract of*
6 *sale’ includes sales, agreements of sale, and agree-*
7 *ments to sell.*

8 “(2) *COVERED ENTITY.*—*The term ‘covered enti-*
9 *ty’ shall have the meaning given in section 700 of the*
10 *Clean Air Act.*

11 “(3) *FUTURE DELIVERY.*—*The term ‘future de-*
12 *livery’ does not include any sale of any cash com-*
13 *modity for deferred shipment or delivery.*

14 “(4) *OFFSET CREATION CONTRACT.*—*The term*
15 *‘offset creation contract’ mean a written agreement*
16 *for the origination and development of an offset*
17 *project, and the related issuance of offset credits, pur-*
18 *suant to title VII of the Clean Air Act.*

19 “(5) *REGULATED ALLOWANCE.*—*The term ‘regu-*
20 *lated allowance’ means any emission allowance, com-*
21 *pensatory allowance, offset credit, or Federal renew-*
22 *able electricity credit established or issued under the*
23 *American Clean Energy and Security Act of 2009.*

24 “(6) *REGULATED ALLOWANCE DERIVATIVE.*—*The*
25 *term ‘regulated allowance derivative’ means an in-*
26 *strument that is, or includes, an instrument—*

1 “(A) *which—*

2 “(i) *is of the character of, or is com-*
3 *monly known to the trade as, a ‘put option’,*
4 *‘call option’, ‘privilege’, ‘indemnity’, ‘ad-*
5 *vance guaranty’, ‘decline guaranty’, or*
6 *‘swap agreement’; or*

7 “(ii) *is a contract of sale for future de-*
8 *livery other than an offset creation contract;*
9 *and*

10 “(B) *the value of which, in whole or in*
11 *part, is expressly linked to the price of a regu-*
12 *lated allowance or another regulated allowance*
13 *derivative.*

14 “(7) *REGULATED INSTRUMENT.—The term ‘regu-*
15 *lated instrument’ means a regulated allowance or a*
16 *regulated allowance derivative.*

17 “(b) *REGULATED ALLOWANCE MARKET.—*

18 “(1) *AUTHORITY.—The Commission shall pro-*
19 *mulgate regulations for the establishment, operation,*
20 *and oversight of markets for regulated allowances not*
21 *later than 18 months after the date of the enactment*
22 *of this section, and from time to time thereafter as*
23 *may be appropriate.*

24 “(2) *REGULATIONS.—The regulations promul-*
25 *gated pursuant to paragraph (1) shall—*

1 “(A) provide for effective and comprehensive
2 market oversight;

3 “(B) prohibit fraud, market manipulation
4 (including an entity’s fraudulent or manipula-
5 tive conduct with respect to regulated allowance
6 derivatives that benefits the entity in regulated
7 allowance markets), and excess speculation, and
8 provide measures to limit unreasonable fluctua-
9 tion in the prices of regulated allowances;

10 “(C) facilitate compliance with title VII of
11 the Clean Air Act by covered entities;

12 “(D) ensure market transparency and rec-
13 ordkeeping deemed necessary and appropriate by
14 the Commission to provide for efficient price dis-
15 covery; prevention of fraud, market manipula-
16 tion, and excess speculation; and compliance
17 with title VII of the Clean Air Act and section
18 610 of the Public Utility Regulatory Policies Act
19 of 1978;

20 “(E) as necessary, ensure that position lim-
21 itations for individual market participants are
22 established with respect to each class of regulated
23 allowances;

1 “(F) as necessary, ensure that margin re-
2 quirements are established for each class of regu-
3 lated allowances;

4 “(G) provide for the formation and oper-
5 ation of a fair, orderly and liquid national mar-
6 ket system that allows for the best execution in
7 the trading of regulated allowances;

8 “(H) limit or eliminate counterparty risks,
9 market power concentration risks, and other
10 risks associated with over-the-counter trading;
11 and

12 “(I) establish standards for qualification as,
13 and operation of, trading facilities for regulated
14 allowances;

15 “(J) establish standards for qualification
16 as, and operation of, clearing organizations for
17 trading facilities for regulated allowances; and

18 “(K) include such other requirements as
19 necessary to preserve market integrity and facili-
20 tate compliance with title VII of the Clean Air
21 Act and section 610 of the Public Utility Regu-
22 latory Policies Act of 1978 and the regulations
23 promulgated under such title and such section.

24 “(3) ENFORCEMENT.—

1 “(A) *IN GENERAL.*—*If the Commission de-*
2 *termines, after notice and an opportunity for a*
3 *hearing on the record, that any entity has vio-*
4 *lated any rule or order issued by the Commission*
5 *under this subsection, the Commission may issue*
6 *an order—*

7 “(i) *prohibiting the entity from trad-*
8 *ing on a trading facility for regulated al-*
9 *lowances registered with the Commission,*
10 *and requiring all such facilities to refuse the*
11 *entity all privileges for such period as may*
12 *be specified in the order;*

13 “(ii) *if the entity is registered with the*
14 *Commission in any capacity, suspending*
15 *for a period of not more than 6 months, or*
16 *revoking, the registration of the entity;*

17 “(iii) *assessing the entity a civil pen-*
18 *alty of not more than \$1,000,000 per day*
19 *per violation for as long as the violation*
20 *continues (and in determining the amount*
21 *of a civil penalty, the Commission shall*
22 *take into account the nature and seriousness*
23 *of the violation and the efforts to remedy the*
24 *violation); and*

1 “(iv) requiring disgorgement of unjust
2 profits, restitution to entities harmed by the
3 violation as determined by the Commission,
4 or both.

5 “(B) *AUTHORITY TO SUSPEND OR REVOKE*
6 *REGISTRATION.*—*The Commission may suspend*
7 *for a period of not more than 6 months, or re-*
8 *voke, the registration of a trading facility for*
9 *regulated allowances or of a clearing organiza-*
10 *tion registered by the Commission if, after notice*
11 *and opportunity for a hearing on the record, the*
12 *Commission finds that—*

13 “(i) *the entity violated any rule or*
14 *order issued by the Commission under this*
15 *subsection; or*

16 “(ii) *a director, officer, employee, or*
17 *agent of the entity has violated any rule or*
18 *order issued by the Commission under this*
19 *subsection.*

20 “(C) *CEASE AND DESIST PROCEEDINGS.*—

21 “(i) *IN GENERAL.*—*If the Commission*
22 *determines that any entity may be vio-*
23 *lating, may have violated, or may be about*
24 *to violate any provision of this part, or any*
25 *regulation promulgated by, or any restric-*

1 *tion, condition, or order made or imposed*
2 *by, the Commission under this Act, and if*
3 *the Commission finds that the alleged viola-*
4 *tion or threatened violation, or the continu-*
5 *ation of the violation, is likely to result in*
6 *significant harm to covered entities or mar-*
7 *ket participants, or significant harm to the*
8 *public interest, the Commission may issue a*
9 *temporary order requiring the entity—*

10 *“(I) to cease and desist from the*
11 *violation or threatened violation;*

12 *“(II) to take such action as is nec-*
13 *essary to prevent the violation or*
14 *threatened violation; and*

15 *“(III) to prevent, as the Commis-*
16 *sion determines to be appropriate—*

17 *“(aa) significant harm to*
18 *covered entities or market partici-*
19 *pants;*

20 *“(bb) significant harm to the*
21 *public interest; and*

22 *“(cc) frustration of the abil-*
23 *ity of the Commission to conduct*
24 *the proceedings or to redress the*

1 *violation at the conclusion of the*
2 *proceedings.*

3 “(ii) *TIMING OF ENTRY.*—*An order*
4 *issued under clause (i) shall be entered only*
5 *after notice and opportunity for a hearing,*
6 *unless the Commission determines that no-*
7 *tice and hearing before entry would be im-*
8 *practicable or contrary to the public inter-*
9 *est.*

10 “(iii) *EFFECTIVE DATE.*—*A temporary*
11 *order issued under clause (i) shall—*

12 *“(I) become effective upon service*
13 *upon the entity; and*

14 *“(II) unless set aside, limited, or*
15 *suspended by the Commission or a*
16 *court of competent jurisdiction, remain*
17 *effective and enforceable pending the*
18 *completion of the proceedings.*

19 “(D) *PROCEEDINGS REGARDING DISSIPATION*
20 *OR CONVERSION OF ASSETS.*—

21 “(i) *IN GENERAL.*—*In a proceeding in-*
22 *volving an alleged violation of a regulation*
23 *or order promulgated or issued by the Com-*
24 *mission, if the Commission determines that*
25 *the alleged violation or related cir-*

1 *cumstances are likely to result in signifi-*
2 *cant dissipation or conversion of assets, the*
3 *Commission may issue a temporary order*
4 *requiring the respondent to take such action*
5 *as is necessary to prevent the dissipation or*
6 *conversion of assets.*

7 “(ii) *TIMING OF ENTRY.*—*An order*
8 *issued under clause (i) shall be entered only*
9 *after notice and opportunity for a hearing,*
10 *unless the Commission determines that no-*
11 *tice and hearing before entry would be im-*
12 *practicable or contrary to the public inter-*
13 *est.*

14 “(iii) *EFFECTIVE DATE.*—*A temporary*
15 *order issued under clause (i) shall—*

16 “(I) *become effective upon service*
17 *upon the respondent; and*

18 “(II) *unless set aside, limited, or*
19 *suspended by the Commission or a*
20 *court of competent jurisdiction, remain*
21 *effective and enforceable pending the*
22 *completion of the proceedings.*

23 “(E) *REVIEW OF TEMPORARY ORDERS.*—

24 “(i) *APPLICATION FOR REVIEW.*—*At*
25 *any time after a respondent has been served*

1 *with a temporary cease-and-desist order*
2 *pursuant to subparagraph (C) or order re-*
3 *garding the dissipation or conversion of as-*
4 *sets pursuant to subparagraph (D), the re-*
5 *spondent may apply to the Commission to*
6 *have the order set aside, limited, or sus-*
7 *pending.*

8 “(ii) *NO PRIOR HEARING.—If a re-*
9 *spondent has been served with a temporary*
10 *order entered without a prior hearing of the*
11 *Commission—*

12 “(I) *the respondent may, not later*
13 *than 10 days after the date on which*
14 *the order was served, request a hearing*
15 *on the application; and*

16 “(II) *the Commission shall hold a*
17 *hearing and render a decision on the*
18 *application at the earliest practicable*
19 *time.*

20 “(iii) *JUDICIAL REVIEW.—*

21 “(I) *IN GENERAL.—An entity*
22 *shall not be required to submit a re-*
23 *quest for rehearing of a temporary*
24 *order before seeking judicial review in*
25 *accordance with this subparagraph.*

1 “(II) *TIMING OF REVIEW.*—Not
2 *later than 10 days after the date on*
3 *which a respondent is served with a*
4 *temporary cease-and-desist order en-*
5 *tered with a prior hearing of the Com-*
6 *mission, or 10 days after the date on*
7 *which the Commission renders a deci-*
8 *sion on an application and hearing*
9 *under clause (i) with respect to any*
10 *temporary order entered without such*
11 *a prior hearing—*

12 “(aa) *the respondent may ob-*
13 *tain a review of the order in a*
14 *United States circuit court having*
15 *jurisdiction over the circuit in*
16 *which the respondent resides or*
17 *has a principal place of business,*
18 *or in the United States Court of*
19 *Appeals for the District of Colum-*
20 *bia Circuit, for an order setting*
21 *aside, limiting, or suspending the*
22 *effectiveness or enforcement of the*
23 *order; and*

24 “(bb) *the court shall have ju-*
25 *risdiction to enter such an order.*

1 “(III) *NO PRIOR HEARING.*—A re-
2 spondent served with a temporary
3 order entered without a prior hearing
4 of the Commission may not apply to
5 the applicable court described in sub-
6 clause (II) except after a hearing and
7 decision by the Commission on the ap-
8 plication of the respondent under
9 clauses (i) and (ii).

10 “(iv) *PROCEDURES.*—Section 222 and
11 Part III shall apply to—

12 “(I) an application for review of
13 an order under clause (i); and

14 “(II) an order subject to review
15 under clause (iii).

16 “(v) *NO AUTOMATIC STAY OF TEM-*
17 *PORARY ORDER.*—The commencement of
18 proceedings under clause (iii) shall not, un-
19 less specifically ordered by the court, oper-
20 ate as a stay of the order of the Commis-
21 sion.

22 “(F) *ACTIONS TO COLLECT CIVIL PEN-*
23 *ALTIES.*—If any person fails to pay a civil pen-
24 alty assessed under this subsection after an order
25 assessing the penalty has become final and

1 *unappealable, the Commission shall bring an ac-*
2 *tion to recover the amount of the penalty in any*
3 *appropriate United States district court. In any*
4 *such action, the validity or appropriateness of*
5 *the final assessment order or judgment shall not*
6 *be subject to review.*

7 *“(4) TRANSACTION FEES.—*

8 *“(A) IN GENERAL.—The Commission shall,*
9 *in accordance with this paragraph, establish and*
10 *collect transaction fees designed to recover the*
11 *costs to the Federal Government of the super-*
12 *vision and regulation of regulated allowance*
13 *markets and market participants, including re-*
14 *lated costs for enforcement activities, policy and*
15 *rulemaking activities, administration, legal serv-*
16 *ices, and international regulatory activities.*

17 *“(B) INITIAL FEE RATE.—Each trading fa-*
18 *cility on or through which regulated allowances*
19 *are transacted shall pay to the Commission a fee*
20 *at a rate of not more than \$15 per \$1,000,000*
21 *of the aggregate dollar amount of sales of regu-*
22 *lated allowances transacted through the facility.*

23 *“(C) ANNUAL ADJUSTMENT OF FEE RATE.—*
24 *The Commission shall, on an annual basis—*

1 “(i) assess the rate at which fees are to
2 be collected as necessary to meet the cost re-
3 covery requirement in subparagraph (A);
4 and

5 “(ii) consistent with subparagraph
6 (B), adjust the rate as necessary in order to
7 meet the requirement.

8 “(D) *REPORT ON ADEQUACY OF FEES IN*
9 *RECOVERING COSTS.*—The Commission, shall, on
10 an annual basis, report to the Committee on En-
11 ergy and Commerce of the House of Representa-
12 tives and the Committee on Energy and Natural
13 Resources of the Senate on the adequacy of the
14 transaction fees in providing funding for the
15 Commission to regulate the regulated allowance
16 markets.

17 “(5) *JUDICIAL REVIEW.*—Judicial review of ac-
18 tions taken by the Commission under this subsection
19 shall be pursuant to part III.

20 “(6) *INFORMATION-SHARING.*—Within 6 months
21 after a Federal agency with jurisdiction over regu-
22 lated allowance derivatives is delegated authority pur-
23 suant to subsection (c)(1), the agency shall enter into
24 a memorandum of understanding with the Commis-
25 sion relating to information sharing, which shall in-

1 *clude provisions ensuring that information requests to*
2 *markets within the respective jurisdiction of the agen-*
3 *cy are properly coordinated to facilitate, among other*
4 *things, effective information-sharing while mini-*
5 *mizing duplicative information requests, and provi-*
6 *sions regarding the treatment of proprietary informa-*
7 *tion.*

8 “(7) *ADDITIONAL EMPLOYEES REPORT AND AP-*
9 *POINTMENT.*—*Within 18 months after the date of the*
10 *enactment of this section, the Commission shall sub-*
11 *mit to the President, the Committee on Energy and*
12 *Commerce of the House of Representatives, and the*
13 *Committee on Energy and Natural Resources of the*
14 *Senate, a report that contains recommendations as to*
15 *how many additional employees would be necessary to*
16 *provide robust oversight and enforcement of the regu-*
17 *lations promulgated under this subsection. As soon as*
18 *practicable after the completion of the report, subject*
19 *to appropriations, the Commission shall appoint the*
20 *recommended number of additional employees for*
21 *such purposes.*

22 “(c) *DELEGATION OF AUTHORITY BY THE PRESI-*
23 *DENT.*—

24 “(1) *DELEGATION.*—*The President, taking into*
25 *consideration the recommendations of the interagency*

1 *working group established in subsection (d), shall del-*
2 *egate to members of the working group and the heads*
3 *of other appropriate Federal agencies the authority to*
4 *promulgate regulations for the establishment, oper-*
5 *ation, and oversight of all markets for regulated al-*
6 *lowance derivatives.*

7 “(2) *REGULATIONS.—The regulations promul-*
8 *gated pursuant to paragraph (1) shall—*

9 “(A) *provide for effective and comprehensive*
10 *market oversight;*

11 “(B) *prohibit fraud, market manipulation,*
12 *and excess speculation, and provide measures to*
13 *limit unreasonable fluctuation in the prices of*
14 *regulated allowance derivatives;*

15 “(C) *facilitate compliance with title VII of*
16 *the Clean Air Act by covered entities;*

17 “(D) *ensure market transparency and rec-*
18 *ordkeeping necessary to provide for efficient*
19 *price discovery; prevention of fraud, market ma-*
20 *nipulation, and excess speculation; and compli-*
21 *ance with title VII of the Clean Air Act and sec-*
22 *tion 610 of the Public Utility Regulatory Poli-*
23 *cies Act of 1978;*

24 “(E) *ensure that position limitations for in-*
25 *dividual market participants are established*

1 *with respect to each regulated allowance deriva-*
2 *tive and aggregate position limitations for indi-*
3 *vidual market participants are established with*
4 *respect to all regulated allowance derivative*
5 *markets;*

6 “(F) ensure that margin requirements are
7 established for each regulated allowance deriva-
8 tive;

9 “(G) provide for the formation and oper-
10 ation of a market system that allows for best exe-
11 cution in the trading of regulated allowance de-
12 rivatives;

13 “(H) to the extent the regulations deviate
14 from the rule set forth in paragraph (4)(B),
15 limit or eliminate counterparty risks, market
16 power concentration risks, and other risks associ-
17 ated with over-the-counter trading, and promul-
18 gate reporting and market transparency rules for
19 large traders;

20 “(I) ensure that market participants do not
21 evade position limits or otherwise undermine the
22 integrity and effectiveness of the regulations pro-
23 mulgated under subparagraph (C) through par-
24 ticipation in markets not subject to the position
25 limits and regulations;

1 “(J) establish standards, as necessary, for
2 qualification as, and operation of, trading facili-
3 ties for regulated allowance derivatives;

4 “(K) establish standards, as necessary, for
5 qualification as, and operation of, clearing orga-
6 nizations for trading facilities for regulated al-
7 lowance derivatives;

8 “(L) provide boards of trade designated as
9 contract markets under the Commodity Ex-
10 change Act, and market participants, with an
11 adequate transition period for compliance with
12 any new regulatory requirements established
13 under this paragraph;

14 “(M) determine whether and to what extent
15 offset creation contracts, to the extent incor-
16 porating regulated allowance derivatives, should
17 be governed by the same regulations that apply
18 to other regulated allowance derivatives; and

19 “(N) include such other requirements as
20 necessary to preserve market integrity and facili-
21 tate compliance with title VII of the Clean Air
22 Act and section 610 of the Public Utility Regu-
23 latory Policies Act of 1978 and the regulations
24 promulgated under such title and such section.

1 “(3) *DEADLINE.*—*The agencies authorized to*
2 *promulgate regulations for the establishment, oper-*
3 *ation, and oversight of markets for regulated allow-*
4 *ance derivatives pursuant to paragraph (1) shall pro-*
5 *mulgate such regulations not later than 18 months*
6 *after the date of the enactment of this section, and*
7 *from time to time thereafter as may be appropriate.*

8 “(4) *DEFAULT RULES.*—

9 “(A) *An individual market participant, di-*
10 *rectly or in concert with another participant,*
11 *shall not control more than 10 percent of the*
12 *open interest in any regulated allowance deriva-*
13 *tive.*

14 “(B) *All contracts for the purchase or sale*
15 *of any regulated allowance derivative shall be ex-*
16 *ecuted on or through a board of trade designated*
17 *as a contract market under the Commodity Ex-*
18 *change Act.*

19 “(C) *To the extent that regulations promul-*
20 *gated under this subsection provide different*
21 *rules with respect to the matters described in*
22 *subparagraph (A) or (B), the regulations shall*
23 *supersede subparagraph (A) or (B), as the case*
24 *may be.*

25 “(d) *WORKING GROUP.*—

1 “(1) *ESTABLISHMENT.*—Not later than 30 days
2 after the date of the enactment of this section, the
3 President shall establish an interagency working
4 group on carbon market oversight, which shall include
5 the Administrator of the Environmental Protection
6 Agency and representatives of other relevant agencies,
7 to make recommendations to the President regarding
8 proposed regulations for the establishment, operation,
9 and oversight of markets for regulated allowance de-
10 rivatives.

11 “(2) *REPORT.*—Not later than 180 days after the
12 date of the enactment of this section, and biennially
13 thereafter, the interagency working group shall submit
14 a written report to the President and Congress that
15 includes its recommendations to the President regard-
16 ing proposed regulations for the establishment, oper-
17 ation, and oversight of markets for regulated allow-
18 ance derivatives and any recommendations to Con-
19 gress for statutory changes needed to ensure the estab-
20 lishment, operation, and oversight of transparent,
21 fair, stable, and efficient markets for regulated allow-
22 ance derivatives.

23 “(e) *ENFORCEMENT OF REGULATIONS.*—Each Federal
24 agency that promulgates under subsection (c) a regulation
25 of conduct with respect to a regulated allowance derivative

1 *shall have the same authority to enforce compliance with*
2 *the regulation as the Commodity Futures Trading Commis-*
3 *sion has to enforce compliance with any regulation of simi-*
4 *lar conduct with respect to a contract, agreement, or trans-*
5 *action over which the Commodity Futures Trading Com-*
6 *mission has jurisdiction, except that any enforcement by*
7 *the Federal Energy Regulatory Commission shall be pursu-*
8 *ant to section 222 and Part III.*

9 “(f) *PROHIBITION ON PRICE OR MARKET MANIPULA-*
10 *TION, FRAUD, AND FALSE OR MISLEADING STATEMENTS OR*
11 *REPORTS.—(1) It shall be a felony punishable by a fine*
12 *of not more than \$25,000,000 (or \$5,000,000 in the case*
13 *of a person who is an individual) or imprisonment for not*
14 *more than 20 years, or both, together with the costs of pros-*
15 *ecution for any person, directly or indirectly—*

16 “(A) *in connection with a transaction involving*
17 *a regulated instrument, to knowingly—*

18 “(i) *use any manipulative or deceptive de-*
19 *vice or contrivance in violation of regulations*
20 *promulgated pursuant to this section;*

21 “(ii) *corner or attempt to corner the regu-*
22 *lated instrument; or*

23 “(iii) *cheat or defraud, or attempt to cheat*
24 *or defraud, any other person;*

1 “(B) to knowingly deliver or cause to be deliv-
2 ered a false, misleading, or inaccurate report con-
3 cerning information or conditions that affect or tend
4 to affect the price of a regulated instrument;

5 “(C) to knowingly make, or cause to be made, in
6 an application, report, or document required to be
7 filed under any regulation promulgated pursuant to
8 this section, a statement which is false or misleading
9 with respect to a material fact, or to omit any mate-
10 rial fact required to be stated therein or necessary to
11 make the statements therein not misleading; or

12 “(D) to knowingly falsify, conceal, or cover up
13 by any trick, scheme, or artifice a material fact, make
14 any false, fictitious, or fraudulent statements or rep-
15 resentations, or make or use any false writing or doc-
16 ument that contains a false, fictitious, or fraudulent
17 statement or entry, to an entity on or through which
18 transactions in regulated instruments occur, or are
19 settled or cleared, acting in furtherance of its official
20 duties under this section or regulations promulgated
21 under this section.

22 “(2) If a person is found guilty of a felony established
23 in paragraph (1), the person may be prohibited from hold-
24 ing or trading regulated instruments for a period of not
25 more than 5 years pursuant to the regulations promulgated

1 *under this section, except that, if the person is a covered*
2 *entity, the person shall be allowed to hold sufficient regu-*
3 *lated allowances to meet its compliance obligations.*

4 “(g) *RELATION TO STATE LAW.—Nothing in this sec-*
5 *tion shall preclude, diminish or qualify any authority of*
6 *a State or political subdivision thereof to adopt or enforce*
7 *any unfair competition, antitrust, consumer protection, se-*
8 *curities, commodities or any other law or regulation, except*
9 *that no such State law or regulation may relieve any person*
10 *of any requirement otherwise applicable under this section.*

11 “(h) *MARKET REPORTS.—*

12 “(1) *COLLECTION AND ANALYSIS OF INFORMA-*
13 *TION.—The Commission, in conjunction with the Fed-*
14 *eral agency with jurisdiction over regulated allowance*
15 *derivatives pursuant to subsection (c)(1), shall, on a*
16 *continuous basis, collect and analyze the following in-*
17 *formation on the functioning of the markets for regu-*
18 *lated instruments established under this part:*

19 “(A) *The status of, and trends in, the mar-*
20 *kets, including prices, trading volumes, trans-*
21 *action types, and trading channels and mecha-*
22 *nisms.*

23 “(B) *Spikes, collapses, and volatility in*
24 *prices of regulated instruments, and the causes*
25 *therefor.*

1 “(C) *The relationship between the market*
2 *for regulated allowances and allowance deriva-*
3 *tives, and the spot and futures markets for en-*
4 *ergy commodities, including electricity.*

5 “(D) *Evidence of fraud or manipulation in*
6 *any such market, the effects on any such market*
7 *of any such fraud or manipulation (or threat of*
8 *fraud or manipulation) that the Commission, in*
9 *conjunction with the Federal agency, has identi-*
10 *fied, and the effectiveness of corrective measures*
11 *undertaken by the Commission, in conjunction*
12 *with the Federal agency, to address the fraud,*
13 *manipulation, or threat.*

14 “(E) *The economic effects of the markets, in-*
15 *cluding to macro- and micro-economic effects of*
16 *unexpected significant increases and decreases in*
17 *the price of regulated instruments.*

18 “(F) *Any changes in the roles, activities, or*
19 *strategies of various market participants.*

20 “(G) *Regional, industrial, and consumer re-*
21 *sponses to the markets, and energy investment*
22 *responses to the markets.*

23 “(H) *Any other issue related to the markets*
24 *that the Commission, in conjunction with the en-*
25 *tities, deems appropriate.*

1 “(2) *ANNUAL REPORTS TO THE CONGRESS.*—
2 *Not later than 1 month after the end of each calendar*
3 *year, the Commission, in conjunction with the Fed-*
4 *eral agency, shall submit to the President, the Com-*
5 *mittee on Energy and Commerce of the House of Rep-*
6 *resentatives, and the Committee on Energy and Nat-*
7 *ural Resources of the Senate, and make available to*
8 *the public, a report on the matters described in para-*
9 *graph (1) with respect to the year, including rec-*
10 *ommendations for any administrative or statutory*
11 *measures the Commission, in conjunction with the*
12 *Federal agency, considers necessary to address any*
13 *threats to the transparency, fairness, or integrity of*
14 *the markets in regulated instruments.*

15 **“SEC. 402. APPLICABILITY OF PART III PROVISIONS.**

16 “(a) *SECTIONS 301, 304, AND 306.*—*Sections 301, 304,*
17 *and 306 shall not apply to this part.*

18 “(b) *SECTIONS 307, 309, AND 314.*—*Sections 307, 309,*
19 *and 314 shall only apply to section 401(c) to the extent*
20 *that the Commission is delegated authority to promulgate*
21 *regulations for the establishment, operation, and oversight*
22 *of markets for regulated allowance derivatives (as defined*
23 *in section 401). If the Commission is not delegated author-*
24 *ity to promulgate regulations for the establishment, oper-*
25 *ation, and oversight of markets for regulated allowance de-*

1 *rivatives, sections 307, 309, and 314 shall not apply to sec-*
2 *tion 401(f) in the case of regulated allowance derivatives.*

3 “(c) *SECTION 315.—In applying section 315(a) to this*
4 *part, the words “person or entity” shall be substituted for*
5 *the words “licensee or public utility”. In applying section*
6 *315(b) to this part, the words “an entity” shall be sub-*
7 *stituted for the words “a licensee or public utility” and the*
8 *words “such entity” shall be substituted for the words “such*
9 *licensee or public utility.”*

10 “(d) *SECTION 316.—Section 316(a) shall not apply to*
11 *section 401(f).”*

12 ***Subtitle E—Additional Market*** 13 ***Assurance***

14 ***SEC. 351. REGULATION OF CERTAIN TRANSACTIONS IN DE-*** 15 ***RIVATIVES INVOLVING ENERGY COMMOD-*** 16 ***ITIES.***

17 (a) *ENERGY COMMODITY DEFINED.—Section 1a of the*
18 *Commodity Exchange Act (7 U.S.C. 1a) is amended—*

19 (1) *in paragraph (14), by inserting “, an energy*
20 *commodity,” after “excluded commodity”;*

21 (2) *by redesignating paragraphs (13) through*
22 *(21) and paragraphs (22) through (34) as paragraphs*
23 *(14) through (22) and paragraphs (24) through (36),*
24 *respectively;*

1 (3) *by inserting after paragraph (12) the fol-*
2 *lowing:*

3 “(13) *ENERGY COMMODITY.*—*The term ‘energy*
4 *commodity’ means—*

5 “(A) *coal;*

6 “(B) *crude oil, gasoline, diesel fuel, jet fuel,*
7 *heating oil, and propane;*

8 “(C) *electricity (excluding financial trans-*
9 *mission rights which are subject to regulation*
10 *and oversight by the Federal Energy Regulatory*
11 *Commission);*

12 “(D) *natural gas; and*

13 “(E) *any other substance (other than an ex-*
14 *cluded commodity, a metal, or an agricultural*
15 *commodity) that is used as a source of energy,*
16 *as the Commission, in its discretion, deems ap-*
17 *propriate.”; and*

18 (4) *by inserting after paragraph (22) (as so re-*
19 *designated by paragraph (2) of this subsection) the*
20 *following:*

21 “(23) *INCLUDED ENERGY TRANSACTION.*—*The*
22 *term ‘included energy transaction’ means a contract,*
23 *agreement, or transaction in an energy commodity*
24 *for future delivery that provides for a delivery point*
25 *of the energy commodity in the United States or a*

1 *territory or possession of the United States, or that is*
2 *offered or transacted on or through a computer ter-*
3 *minal located in the United States.”.*

4 (b) *EXTENSION OF REGULATORY AUTHORITY TO*
5 *SWAPS INVOLVING ENERGY TRANSACTIONS.*—Section 2(g)
6 *of such Act (7 U.S.C. 2(g)) is amended by inserting “or*
7 *an energy commodity” after “agricultural commodity”.*

8 (c) *ELIMINATION OF EXEMPTION FOR OVER-THE-*
9 *COUNTER SWAPS INVOLVING ENERGY COMMODITIES.*—Sec-
10 *tion 2(h)(1) of such Act (7 U.S.C. 2(h)(1)) is amended by*
11 *inserting “(other than an energy commodity)” after “ex-*
12 *empt commodity”.*

13 (d) *EXTENSION OF REGULATORY AUTHORITY TO IN-*
14 *CLUDED ENERGY TRANSACTIONS ON FOREIGN BOARDS OF*
15 *TRADE.*—Section 4 of such Act (7 U.S.C. 6) is amended—

16 (1) *in subsection (a), by inserting “, and which*
17 *is not an included energy transaction” after “terri-*
18 *ories or possessions” the 2nd place it appears; and*

19 (2) *in subsection (b), by adding at the end the*
20 *following: “The preceding sentence shall not apply*
21 *with respect to included energy transactions.”.*

22 (e) *LIMITATION OF GENERAL EXEMPTIVE AUTHORITY*
23 *OF THE CFTC WITH RESPECT TO INCLUDED ENERGY*
24 *TRANSACTIONS.*—

1 (1) *IN GENERAL.*—Section 4(c) of such Act (7
2 U.S.C. 6(c)) is amended by adding at the end the fol-
3 lowing:

4 “(6) *The Commission may not exempt any included*
5 *energy transaction from the requirements of subsection (a),*
6 *unless the Commission provides 60 days advance notice to*
7 *the Congress and the Position Limit Energy Advisory*
8 *Group and solicits public comment about the exemption re-*
9 *quest and any proposed Commission action.”.*

10 (2) *NULLIFICATION OF NO-ACTION LETTER EX-*
11 *EMPTIONS TO CERTAIN REQUIREMENTS APPLICABLE*
12 *TO INCLUDED ENERGY TRANSACTIONS.*—Beginning
13 180 days after the date of the enactment of this Act,
14 any exemption provided by the Commodity Futures
15 Trading Commission that has allowed included en-
16 ergy transactions (as defined in section 1a(13) of the
17 Commodity Exchange Act) to be conducted without
18 regard to the requirements of section 4(a) of such Act
19 shall be null and void.

20 (f) *REQUIREMENT TO ESTABLISH UNIFORM SPECULA-*
21 *TIVE POSITION LIMITS FOR ENERGY TRANSACTIONS.*—

22 (1) *IN GENERAL.*—Section 4a(a) of such Act (7
23 U.S.C. 6a(a)) is amended—

24 (A) by inserting “(1)” after “(a)”;

1 (B) by inserting after the 2nd sentence the
2 following: “With respect to energy transactions,
3 the Commission shall fix limits on the aggregate
4 number of positions which may be held by any
5 person for each month across all markets subject
6 to the jurisdiction of the Commission.”;

7 (C) in the 4th sentence by inserting “, con-
8 sistent with the 3rd sentence,” after “Commis-
9 sion”; and

10 (D) by adding after and below the end the
11 following:

12 “(2)(A) Not later than 60 days after the date of the
13 enactment of this paragraph, the Commission shall convene
14 a Position Limit Energy Advisory Group consisting of rep-
15 resentatives from—

16 “(i) 7 predominantly commercial short hedgers
17 of the actual energy commodity for future delivery;

18 “(ii) 7 predominantly commercial long hedgers
19 of the actual energy commodity for future delivery;

20 “(iii) 4 non-commercial participants in markets
21 for energy commodities for future delivery; and

22 “(iv) each designated contract market or deriva-
23 tives transaction execution facility upon which a con-
24 tract in the energy commodity for future delivery is
25 traded, and each electronic trading facility that has

1 *a significant price discovery contract in the energy*
2 *commodity.*

3 *“(B) Not later than 60 days after the date on which*
4 *the advisory group is convened under subparagraph (A),*
5 *and annually thereafter, the advisory group shall submit*
6 *to the Commission advisory recommendations regarding the*
7 *position limits to be established in paragraph (1).*

8 *“(C) The Commission shall have exclusive authority*
9 *to grant exemptions for bona fide hedging transactions and*
10 *positions from position limits imposed under this Act on*
11 *energy transactions.”.*

12 (2) *CONFORMING AMENDMENTS.—*

13 (A) *SIGNIFICANT PRICE DISCOVERY CON-*
14 *TRACTS.—Section 2(h)(7) of such Act (7 U.S.C.*
15 *2(h)(7)) is amended—*

16 (i) *in subparagraph (A)—*

17 (I) *by inserting “of this para-*
18 *graph and section 4a(a)” after “(B)*
19 *through (D)”;* and

20 (II) *by inserting “of this para-*
21 *graph” before the period;* and

22 (ii) *in subparagraph (C)(i)(IV)—*

23 (I) *in the heading, by striking*
24 *“LIMITATIONS OR”;* and

1 (II) by striking “position limita-
2 tions or”.

3 (B) *CONTRACTS TRADED ON OR THROUGH*
4 *DESIGNATED CONTRACT MARKETS.*—Section
5 *5(d)(5) of such Act (7 U.S.C. 7(d)(5)) is amend-*
6 *ed—*

7 (i) *in the heading by striking “LIMITA-*
8 *TIONS OR”;* and

9 (ii) *by striking “position limitations*
10 *or”.*

11 (C) *CONTRACTS TRADED ON OR THROUGH*
12 *DERIVATIVES TRANSACTION EXECUTION FACILI-*
13 *TIES.*—Section *5a(d)(4) of such Act (7 U.S.C.*
14 *7a(d)(4)) is amended—*

15 (i) *in the heading by striking “LIMITA-*
16 *TIONS OR”;* and

17 (ii) *by striking “position limits or”.*

18 (g) *ELIMINATION OF THE SWAPS LOOPHOLE.*—Section
19 *4a(c) of such Act (7 U.S.C. 6a(c)) is amended—*

20 (1) *by inserting “(1)” after “(c)”;* and

21 (2) *by adding after and below the end the fol-*
22 *lowing:*

23 “(2) *For the purposes of contracts of sale for future*
24 *delivery and options on such contracts or commodities, the*
25 *Commission shall define what constitutes a bona fide hedg-*

1 *ing transaction or position as a transaction or position*
2 *that—*

3 “(A)(i) *represents a substitute for transactions*
4 *made or to be made or positions taken or to be taken*
5 *at a later time in a physical marketing channel;*

6 “(ii) *is economically appropriate to the reduc-*
7 *tion of risks in the conduct and management of a*
8 *commercial enterprise; and*

9 “(iii) *arises from the potential change in the*
10 *value of—*

11 “(I) *assets that a person owns, produces,*
12 *manufactures, processes, or merchandises or an-*
13 *ticipates owning, producing, manufacturing,*
14 *processing, or merchandising;*

15 “(II) *liabilities that a person owns or an-*
16 *ticipates incurring; or*

17 “(III) *services that a person provides, pur-*
18 *chases, or anticipates providing or purchasing;*
19 *or*

20 “(B) *reduces risks attendant to a position result-*
21 *ing from a transaction that—*

22 “(i) *was executed pursuant to subsection*
23 *(d), (g), (h)(1), or (h)(2) of section 2, or an ex-*
24 *emption issued by the Commission by rule, regu-*
25 *lation or order; and*

1 “(i) was executed opposite a counterparty
2 for which the transaction would qualify as a
3 bona fide hedging transaction pursuant to para-
4 graph (2)(A) of this subsection.”.

5 (h) DETAILED REPORTING AND DISAGGREGATION OF
6 MARKET DATA.—Section 4 of such Act (7 U.S.C. 6) is
7 amended by adding at the end the following:

8 “(e) DETAILED REPORTING AND DISAGGREGATION OF
9 MARKET DATA.—

10 “(1) INDEX TRADERS AND SWAP DEALERS RE-
11 PORTING.—The Commission shall issue a proposed
12 rule defining and classifying index traders and swap
13 dealers (as those terms are defined by the Commis-
14 sion) for purposes of data reporting requirements and
15 setting routine detailed reporting requirements for
16 any positions of such entities in contracts traded on
17 designated contract markets, over-the-counter markets,
18 derivatives transaction execution facilities, foreign
19 boards of trade subject to section 4(f), and electronic
20 trading facilities with respect to significant price dis-
21 covery contracts not later than 120 days after the
22 date of the enactment of this subsection, and issue a
23 final rule within 180 days after such date of enact-
24 ment.

1 “(2) *DISAGGREGATION OF INDEX FUNDS AND*
2 *OTHER DATA IN MARKETS.*—Subject to section 8 and
3 beginning within 60 days of the issuance of the final
4 rule required by paragraph (1), the Commission shall
5 disaggregate and make public weekly—

6 “(A) *the number of positions and total no-*
7 *tional value of index funds and other passive,*
8 *long-only and short-only positions (as defined by*
9 *the Commission) in all markets to the extent*
10 *such information is available; and*

11 “(B) *data on speculative positions relative*
12 *to bona fide physical hedgers in those markets to*
13 *the extent such information is available.*

14 “(3) *DISCLOSURE OF IDENTITY OF HOLDERS OF*
15 *POSITIONS IN INDEXES IN EXCESS OF POSITION LIM-*
16 *ITS.*—The Commission shall include in its weekly
17 Commitment of Trader reports the identity of each
18 person who holds a position in an index in excess of
19 a limit imposed under section 4i.”.

20 (i) *AUTHORITY TO SET LIMITS TO PREVENT EXCES-*
21 *SIVE SPECULATION IN INDEXES.*—

22 (1) *IN GENERAL.*—Section 4a of such Act (7
23 U.S.C. 6a) is amended by adding at the end the fol-
24 lowing:

1 “(f) The provisions of this section shall apply to the
2 amounts of trading which may be done or positions which
3 may be held by any person under contracts of sale of an
4 index for future delivery on or subject to the rules of any
5 contract market, derivatives transaction execution facility,
6 or over-the-counter market, or on an electronic trading fa-
7 cility with respect to a significant price discovery contract,
8 in the same manner in which this section applies to con-
9 tracts of sale of a commodity for future delivery.”.

10 (2) REGULATIONS.—The Commodity Futures
11 Trading Commission shall issue regulations under
12 section 4a(f) of the Commodity Exchange Act within
13 180 days after the date of the enactment of this Act.

14 **SEC. 352. NO EFFECT ON AUTHORITY OF THE FEDERAL EN-**
15 **ERGY REGULATORY COMMISSION.**

16 Section 2 of the Commodity Exchange Act (7 U.S.C.
17 2) is amended by adding at the end the following:

18 “(j) This Act shall not be interpreted to affect the juris-
19 diction of the Federal Energy Regulatory Commission with
20 respect to the authority of the Federal Energy Regulatory
21 Commission under the Federal Power Act (16 U.S.C. 791a
22 et seq.), the Natural Gas Act (15 U.S.C. 717 et seq.), or
23 other law to obtain information, carry out enforcement ac-
24 tions, or otherwise carry out the responsibilities of the Fed-
25 eral Energy Regulatory Commission.”.

1 **SEC. 353. INSPECTOR GENERAL OF THE COMMODITY FU-**
2 **TURES TRADING COMMISSION.**

3 (a) *ELEVATION OF OFFICE.*—

4 (1) *INCLUSION OF CFTC IN DEFINITION OF ES-*
5 *TABLISHMENT.*—

6 (A) *Section 12(1) of the Inspector General*
7 *Act of 1978 (5 U.S.C. App.) is amended by strik-*
8 *ing “or the Federal Cochairpersons of the Com-*
9 *missions established under section 15301 of title*
10 *40, United States Code;” and inserting “the Fed-*
11 *eral Cochairpersons of the Commissions estab-*
12 *lished under section 15301 of title 40, United*
13 *States Code; or the Chairman of the Commodity*
14 *Futures Trading Commission;”.*

15 (B) *Section 12(2) of the Inspector General*
16 *Act of 1978 (5 U.S.C. App.) is amended by strik-*
17 *ing “or the Commissions established under sec-*
18 *tion 15301 of title 40, United States Code,” and*
19 *inserting “the Commissions established under*
20 *section 15301 of title 40, United States Code, or*
21 *the Commodity Futures Trading Commission;”.*

22 (2) *EXCLUSION OF CFTC FROM DEFINITION OF*
23 *DESIGNATED FEDERAL ENTITY.*—*Section 8G(a)(2) of*
24 *the Inspector General Act of 1978 (5 U.S.C. App.) is*
25 *amended by striking “the Commodity Futures Trad-*
26 *ing Commission;”.*

1 **(b) EFFECTIVE DATE; TRANSITION RULE.—**

2 **(1) EFFECTIVE DATE.—***The amendments made*
3 *by this section shall take effect 30 days after the date*
4 *of the enactment of this Act.*

5 **(2) TRANSITION RULE.—***An individual serving*
6 *as Inspector General of the Commodity Futures Trad-*
7 *ing Commission on the effective date of this section*
8 *pursuant to an appointment made under section 8G*
9 *of the Inspector General Act of 1978 (5 U.S.C.*
10 *App.)—*

11 **(A)** *may continue so serving until the Presi-*
12 *dent makes an appointment under section 3(a)*
13 *of such Act consistent with the amendments*
14 *made by this section; and*

15 **(B)** *shall, while serving under subparagraph*
16 *(A), remain subject to the provisions of section*
17 *8G of such Act which apply with respect to the*
18 *Commodity Futures Trading Commission.*

19 **SEC. 354. SETTLEMENT AND CLEARING THROUGH REG-**
20 **ISTERED DERIVATIVES CLEARING ORGANIZA-**
21 **TIONS.**

22 **(a) IN GENERAL.—**

23 **(1) APPLICATION TO EXCLUDED DERIVATIVE**
24 **TRANSACTIONS.—**

1 (A) Section 2(d)(1) of the Commodity Ex-
2 change Act (7 U.S.C. 2(d)(1)) is amended—

3 (i) by striking “and” at the end of sub-
4 paragraph (A);

5 (ii) by striking the period at the end of
6 subparagraph (B) and inserting “; and”;
7 and

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

10 “(C) except as provided in section 4(f), the
11 agreement, contract, or transaction is settled and
12 cleared through a derivatives clearing organiza-
13 tion registered with the Commission.”.

14 (B) Section 2(d)(2) of such Act (7 U.S.C.
15 2(d)(2)) is amended—

16 (i) by striking “and” at the end of sub-
17 paragraph (B);

18 (ii) by striking the period at the end of
19 subparagraph (C) and inserting “; and”;
20 and

21 (iii) by adding at the end the fol-
22 lowing:

23 “(D) except as provided in section 4(f), the
24 agreement, contract, or transaction is settled and

1 *cleared through a derivatives clearing organiza-*
2 *tion registered with the Commission.”.*

3 (2) *APPLICATION TO CERTAIN SWAP TRANS-*
4 *ACTIONS.—Section 2(g) of such Act (7 U.S.C. 2(g)) is*
5 *amended—*

6 (A) *by striking “and” at the end of para-*
7 *graph (2);*

8 (B) *by striking the period at the end of*
9 *paragraph (3) and inserting “; and”; and*

10 (C) *by adding at the end the following:*

11 “*(4) except as provided in section 4(f), settled*
12 *and cleared through a derivatives clearing organiza-*
13 *tion registered with the Commission.”.*

14 (3) *APPLICATION TO CERTAIN TRANSACTIONS IN*
15 *EXEMPT COMMODITIES.—*

16 (A) *Section 2(h)(1) of such Act (7 U.S.C.*
17 *2(h)(1)) is amended—*

18 (i) *by striking “and” at the end of sub-*
19 *paragraph (A);*

20 (ii) *by striking the period at the end of*
21 *subparagraph (B) and inserting “; and”;*
22 *and*

23 (iii) *by adding at the end the fol-*
24 *lowing:*

1 “(C) except as provided in section 4(f), is
2 settled and cleared through a derivatives clearing
3 organization registered with the Commission.”.

4 (B) Section 2(h)(3) of such Act (7 U.S.C.
5 2(h)(3)) is amended—

6 (i) by striking “and” at the end of sub-
7 paragraph (A);

8 (ii) by striking the period at the end of
9 subparagraph (B) and inserting “; and”;
10 and

11 (iii) by adding at the end the fol-
12 lowing:

13 “(C) except as provided in section 4(f), set-
14 tled and cleared through a derivatives clearing
15 organization registered with the Commission.”.

16 (4) GENERAL EXEMPTIVE AUTHORITY.—Section
17 4(c)(1) of such Act (7 U.S.C. 6(c)(1)) is amended by
18 inserting “the agreement, contract, or transaction, ex-
19 cept as provided in section 4(h), will be settled and
20 cleared through a derivatives clearing organization
21 registered with the Commission and” before “the
22 Commission determines”.

23 (5) CONFORMING AMENDMENT RELATING TO SIG-
24 NIFICANT PRICE DISCOVERY CONTRACTS.—Section
25 2(h)(7)(D) of such Act (7 U.S.C. 2(h)(7)(D)) is

1 *amended by striking the designation and heading for*
2 *the subparagraph and all that follows through “As*
3 *part of” and inserting the following:*

4 “(D) *REVIEW OF IMPLEMENTATION.—As*
5 *part of”.*

6 (b) *ALTERNATIVES TO CLEARING THROUGH DES-*
7 *IGNATED CLEARING ORGANIZATIONS.—Section 4 of such*
8 *Act (7 U.S.C. 6), as amended by section 351(h) of this Act,*
9 *is amended by adding at the end the following:*

10 “(f) *ALTERNATIVES TO CLEARING THROUGH DES-*
11 *IGNATED CLEARING ORGANIZATIONS.—*

12 “(1) *SETTLEMENT AND CLEARING THROUGH*
13 *CERTAIN OTHER REGULATED ENTITIES.—An agree-*
14 *ment, contract, or transaction, or class thereof, relat-*
15 *ing to an excluded commodity, that would otherwise*
16 *be required to be settled and cleared by section*
17 *2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), or*
18 *2(h)(3)(C) of this Act, or subsection (c)(1) of this sec-*
19 *tion may be settled and cleared through an entity list-*
20 *ed in subsections (a) or (b) of section 409 of the Fed-*
21 *eral Deposit Insurance Corporation Improvement Act*
22 *of 1991.*

23 “(2) *WAIVER OF CLEARING REQUIREMENT.—*

24 “(A) *The Commission, in its discretion,*
25 *may exempt an agreement, contract, or trans-*

1 *action, or class thereof, that would otherwise be*
2 *required by section 2(d)(1)(C), 2(d)(2)(D),*
3 *2(g)(4), 2(h)(1)(C), or 2(h)(3)(C) of this Act, or*
4 *subsection (c)(1) of this section to be settled and*
5 *cleared through a derivatives clearing organiza-*
6 *tion registered with the Commission from such*
7 *requirement.*

8 *“(B) In granting exemptions pursuant to*
9 *subparagraph (A), the Commission shall consult*
10 *with the Securities and Exchange Commission*
11 *and the Board of Governors of the Federal Re-*
12 *serve System regarding exemptions that relate to*
13 *excluded commodities or entities for which the*
14 *Securities Exchange Commission or the Board of*
15 *Governors of the Federal Reserve System serve as*
16 *the primary regulator.*

17 *“(C) Before granting an exemption pursu-*
18 *ant to subparagraph (A), the Commission shall*
19 *find that the agreement, contract, or transaction,*
20 *or class thereof—*

21 *“(i) is highly customized as to its ma-*
22 *terial terms and conditions;*

23 *“(ii) is transacted infrequently;*

1 “(iii) does not serve a significant
2 price-discovery function in the marketplace;
3 and

4 “(iv) is being entered into by parties
5 who can demonstrate the financial integrity
6 of the agreement, contract, or transaction
7 and their own financial integrity, as such
8 terms and standards are determined by the
9 Commission. The standards may include,
10 with respect to any federally regulated fi-
11 nancial entity for which net capital require-
12 ments are imposed, a net capital require-
13 ment associated with any agreement, con-
14 tract, or transaction subject to an exemp-
15 tion from the clearing requirement that is
16 higher than the net capital requirement that
17 would be associated with such a transaction
18 were it cleared

19 “(D) Any agreement, contract, or trans-
20 action, or class thereof, which is exempted pursu-
21 ant to subparagraph (A) shall be reported to the
22 Commission in a manner designated by the
23 Commission, or to such other entity the Commis-
24 sion deems appropriate.

1 “(E) *The Commission, the Securities and*
2 *Exchange Commission and the Board of Gov-*
3 *ernors of the Federal Reserve System shall enter*
4 *into a memorandum of understanding by which*
5 *the information reported to the Commission pur-*
6 *suant to subparagraph (D) with regard to ex-*
7 *cluded commodities or entities for which the Se-*
8 *curities Exchange Commission or the Board of*
9 *Governors of the Federal Reserve System serve as*
10 *the primary regulator may be provided to the*
11 *other agencies.*

12 “(g) *SPOT AND FORWARD EXCLUSION.—The settle-*
13 *ment and clearing requirements of section 2(d)(1)(C),*
14 *2(d)(2)(D), 2(g)(4), 2(h)(1)(C), 2(h)(3)(C), or 4(c)(1) shall*
15 *not apply to an agreement, contract, or transaction of any*
16 *cash commodity for immediate or deferred shipment or de-*
17 *livery, as defined by the Commission.”.*

18 “(c) *ADDITIONAL REQUIREMENTS APPLICABLE TO AP-*
19 *PLICANTS FOR REGISTRATION AS A DERIVATIVE CLEARING*
20 *ORGANIZATION.—Section 5b(c)(2) of such Act (7 U.S.C. 7a-*
21 *1(c)(2)) is amended by adding at the end the following:*

22 “(O) *DISCLOSURE OF GENERAL INFORMA-*
23 *TION.—The applicant shall disclose publicly and*
24 *to the Commission information concerning—*

1 “(i) the terms and conditions of con-
2 tracts, agreements, and transactions cleared
3 and settled by the applicant;

4 “(ii) the conventions, mechanisms, and
5 practices applicable to the contracts, agree-
6 ments, and transactions;

7 “(iii) the margin-setting methodology
8 and the size and composition of the finan-
9 cial resource package of the applicant; and

10 “(iv) other information relevant to
11 participation in the settlement and clearing
12 activities of the applicant.

13 “(P) *DAILY PUBLICATION OF TRADING IN-*
14 *FORMATION.—The applicant shall make public*
15 *daily information on settlement prices, volume,*
16 *and open interest for contracts settled or cleared*
17 *pursuant to the requirements of section*
18 *2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C),*
19 *2(h)(3)(C) or 4(c)(1) of this Act by the applicant*
20 *if the Commission determines that the contracts*
21 *perform a significant price discovery function*
22 *for transactions in the cash market for the com-*
23 *modity underlying the contracts.*

24 “(Q) *FITNESS STANDARDS.—The applicant*
25 *shall establish and enforce appropriate fitness*

1 standards for directors, members of any discipli-
2 nary committee, and members of the applicant,
3 and any other persons with direct access to the
4 settlement or clearing activities of the applicant,
5 including any parties affiliated with any of the
6 persons described in this subparagraph.”.

7 (d) *AMENDMENTS.*—

8 (1) *Section 409 of the Federal Deposit Insurance*
9 *Corporation Improvement Act of 1991 (12 U.S.C.*
10 *4422) is amended by adding at the end the following:*

11 “*(c) CLEARING REQUIREMENT.*—*A multilateral clear-*
12 *ing organization described in subsections (a) or (b) of this*
13 *section shall comply with requirements similar to the re-*
14 *quirements of sections 5b and 5c of the Commodity Ex-*
15 *change Act.*”.

16 (2) *Section 407 of the Legal Certainty for Bank*
17 *Products Act of 2000 (7 U.S.C. 27e) is amended by*
18 *inserting “and the settlement and clearing require-*
19 *ments of sections 2(d)(1)(C), 2(d)(2)(D), 2(g)(4),*
20 *2(h)(1)(C), 2(h)(3)(C), and 4(c)(1) of such Act” after*
21 *“the clearing of covered swap agreements”.*

22 (e) *EFFECTIVE DATE.*—*The amendments made by this*
23 *section shall take effect 150 days after the date of the enact-*
24 *ment of this Act.*

1 (f) *TRANSITION RULE.*—Any agreement, contract, or
2 transaction entered into before the date of the enactment
3 of this Act or within 150 days after such date of enactment,
4 in reliance on subsection (d), (g), (h)(1), or (h)(3) of section
5 2 of the Commodity Exchange Act or any other exemption
6 issued by the Commission Futures Trading Commission by
7 rule, regulation, or order shall, within 90 days after such
8 date of enactment, unless settled and cleared through an en-
9 tity registered with the Commission as a derivatives clear-
10 ing organization or another clearing entity pursuant to sec-
11 tion 4(f) of such Act, be reported to the Commission in a
12 manner designated by the Commission, or to such other en-
13 tity as the Commission deems appropriate.

14 **SEC. 355. LIMITATION ON ELIGIBILITY TO PURCHASE A**
15 **CREDIT DEFAULT SWAP.**

16 (a) *IN GENERAL.*—Section 4c of the Commodity Ex-
17 change Act (7 U.S.C. 6c) is amended by adding at the end
18 the following:

19 “(h) *LIMITATION ON ELIGIBILITY TO PURCHASE A*
20 *CREDIT DEFAULT SWAP.*—It shall be unlawful for any per-
21 son to enter into a credit default swap unless the person—
22 “(1) owns a credit instrument which is insured
23 by the credit default swap;

1 “(2) would experience financial loss if an event
2 that is the subject of the credit default swap occurs
3 with respect to the credit instrument; and

4 “(3) meets such minimum capital adequacy
5 standards as may be established by the Commission,
6 in consultation with the Board of Governors of the
7 Federal Reserve System, or such more stringent min-
8 imum capital adequacy standards as may be estab-
9 lished by or under the law of any State in which the
10 swap is originated or entered into, or in which pos-
11 session of the contract involved takes place.”.

12 (b) *ELIMINATION OF PREEMPTION OF STATE*
13 *BUCKETING LAWS REGARDING NAKED CREDIT DEFAULT*
14 *SWAPS.*—Section 12(e)(2)(B) of such Act (7 U.S.C.
15 16(e)(2)(B)) is amended by inserting “(other than a credit
16 default swap in which the purchaser of the swap would not
17 experience financial loss if an event that is the subject of
18 the swap occurred)” before “that is excluded”.

19 (c) *DEFINITION OF CREDIT DEFAULT SWAP.*—Section
20 1a of such Act (7 U.S.C. 1a), as amended by section 351(a)
21 of this Act, is amended by adding at the end the following:

22 “(37) *CREDIT DEFAULT SWAP.*—The term ‘credit
23 default swap’ means a contract which insures a party
24 to the contract against the risk that an entity may
25 experience a loss of value as a result of an event spec-

1 *ified in the contract, such as a default or credit down-*
2 *grade. A credit default swap that is traded on or*
3 *cleared by a registered entity shall be excluded from*
4 *the definition of a security as defined in this Act and*
5 *in section 2(a)(1) of the Securities Act of 1933 or sec-*
6 *tion 3(a)(10) of the Securities Exchange Act of 1934,*
7 *except it shall be deemed a security solely for purpose*
8 *of enforcing prohibitions against insider trading in*
9 *sections 10 and 16 of the Securities Exchange Act of*
10 *1934.”.*

11 *(d) EFFECTIVE DATE.—The amendments made by this*
12 *section shall be effective for credit default swaps (as defined*
13 *in section 1a(37) of the Commodity Exchange Act) entered*
14 *into after 60 days after the date of the enactment of this*
15 *section.*

16 **SEC. 356. TRANSACTION FEES.**

17 *(a) IN GENERAL.—Section 12 of the Commodity Ex-*
18 *change Act (7 U.S.C. 16) is amended by redesignating sub-*
19 *sections (e), (f), and (g) as subsections (f), (g), and (h), re-*
20 *spectively, and inserting after subsection (d) the following:*

21 *“(e) CLEARING FEES.—*

22 *“(1) IN GENERAL.—The Commission shall, in*
23 *accordance with this subsection, charge and collect*
24 *from each registered clearing organization, and each*
25 *such organization shall pay to the Commission, trans-*

1 *action fees at a rate calculated to recover the costs to*
2 *the Federal Government of the supervision and regu-*
3 *lation of futures markets, except those directly related*
4 *to enforcement.*

5 *“(2) FEES ASSESSED PER SIDE OF CLEARED*
6 *CONTRACTS.—*

7 *“(A) IN GENERAL.—The Commission shall*
8 *determine the fee rate referred to in paragraph*
9 *(1), and shall apply the fee rate per side of any*
10 *transaction cleared.*

11 *“(B) AUTHORITY TO DELEGATE.— The*
12 *Commission may determine the procedures by*
13 *which the fee rate is to be applied on the trans-*
14 *actions subject to the fee, or delegate the author-*
15 *ity to make the determination to any appro-*
16 *priate derivatives clearing organization.*

17 *“(3) EXEMPTIONS.—The Commission may not*
18 *impose a fee under paragraph (1) on—*

19 *“(A) a class of contracts or transactions if*
20 *the Commission finds that it is in the public in-*
21 *terest to exempt the class from the fee; or*

22 *“(B) a contract or transaction cleared by a*
23 *registered derivatives clearing organization that*
24 *is—*

1 “(i) subject to fees under section 31 of
2 the Securities Exchange Act of 1934; or

3 “(ii) a security as defined in the Secu-
4 rities Act of 1933 or the Securities Ex-
5 change Act of 1934.

6 “(4) DATES FOR PAYMENT OF FEES.—The fees
7 imposed under paragraph (1) shall be paid on or be-
8 fore—

9 “(A) March 15 of each year, with respect to
10 transactions occurring on or after the preceding
11 September 1 and on or before the preceding De-
12 cember 31; and

13 “(B) September 15 of each year, with re-
14 spect to transactions occurring on or after the
15 preceding January 1 and on or before the pre-
16 ceding August 31.

17 “(5) ANNUAL ADJUSTMENT OF FEE RATES.—

18 “(A) IN GENERAL.—Not later than April 30
19 of each fiscal year , the Commission shall, by
20 order, adjust each fee rate determined under
21 paragraph (2) for the fiscal year to a uniform
22 adjusted rate that, when applied to the estimated
23 aggregate number of cleared sides of transactions
24 for the fiscal year, is reasonably likely to produce
25 aggregate fee receipts under this subsection for

1 *the fiscal year equal to the target offsetting re-*
2 *ceipt amount for the fiscal year.*

3 “(B) *DEFINITIONS.*—*In subparagraph (A):*

4 “(i) *ESTIMATED AGGREGATE NUMBER*
5 *OF CLEARED SIDES OF TRANSACTIONS.*—
6 *The term ‘estimated aggregate number of*
7 *cleared sides of transactions’ means, with*
8 *respect to a fiscal year, the aggregate num-*
9 *ber of cleared sides of transactions to be*
10 *cleared by registered derivatives clearing or-*
11 *ganizations during the fiscal year, as esti-*
12 *mated by the Commission, after consulta-*
13 *tion with the Office of Management and*
14 *Budget, using the methodology required for*
15 *making projections pursuant to section 257*
16 *of the Balanced Budget and Emergency Def-*
17 *icit Control Act of 1985.*

18 “(ii) *TARGET OFFSETTING RECEIPT*
19 *AMOUNT.*—*The term ‘target offsetting re-*
20 *ceipt amount’ means, with respect to a fis-*
21 *cal year, the total level of Commission budg-*
22 *et authority for all non-enforcement activi-*
23 *ties of the Commission, as contained in the*
24 *regular appropriations Acts for the fiscal*
25 *year.*

1 “(C) *NO JUDICIAL REVIEW.*—*An adjusted*
2 *fee rate prescribed under subparagraph (A) shall*
3 *not be subject to judicial review.*

4 “(6) *PUBLICATION.*—*Not later than April 30 of*
5 *each fiscal year, the Commission shall cause to be*
6 *published in the Federal Register notices of the fee*
7 *rates applicable under this subsection for the suc-*
8 *ceeding fiscal year, and any estimate or projection on*
9 *which the fee rates are based.*

10 “(7) *INAPPLICABILITY OF CERTAIN PROCEDURAL*
11 *RULES.*—*Section 553 of title 5, United States Code,*
12 *shall not apply with respect to any exercise of author-*
13 *ity under this subsection.*

14 “(8) *ESTABLISHMENT OF FUTURES AND OPTIONS*
15 *TRANSACTION FEE ACCOUNT; DEPOSIT OF FEES.*—
16 *There is established in the Treasury of the United*
17 *States an account which shall be known as the ‘Fu-*
18 *tures and Options Transaction Fee Account’. All fees*
19 *collected under this subsection for a fiscal year shall*
20 *be deposited in the account. Amounts in the account*
21 *are authorized to be appropriated to fund the expend-*
22 *itures of the Commission.’.*

23 “(b) *EFFECTIVE DATE.*—*The amendments made by sub-*
24 *section (a) shall apply to fiscal years beginning 30 or more*
25 *days after the date of the enactment of this Act.*

1 (c) *TRANSITION RULE.*—If this section becomes law
2 after March 31 and before September 1 of a fiscal year,
3 then paragraphs (5)(A) and (6) of section 12(e) of the Com-
4 modity Exchange Act shall be applied, in the case of the
5 1st fiscal year beginning after the date of the enactment
6 of this Act, by substituting “August 31” for “April 30”.

7 **SEC. 357. NO EFFECT ON AUTHORITY OF THE FEDERAL**
8 **TRADE COMMISSION.**

9 Nothing in this subtitle shall be interpreted to affect
10 or diminish the jurisdiction or authority of the Federal
11 Trade Commission with respect to its authorities under the
12 Federal Trade Commission Act (15 U.S.C. 41 et seq.) or
13 the Energy Independence and Security Act of 2007 (Public
14 Law 110–140) to obtain information, to carry out enforce-
15 ment activities or otherwise carry out the responsibilities
16 of the Federal Trade Commission.

17 **SEC. 358. REGULATION OF CARBON DERIVATIVES MARKETS.**

18 (a) *DEFAULT RULE.*—Section 2 of the Commodity Ex-
19 change Act (7 U.S.C. 2), as amended by section 352 of this
20 Act, is amended by adding at the end the following:

21 “(k) The Commission shall have jurisdiction over the
22 establishment, operations, and oversight of markets for reg-
23 ulated allowance derivatives (as defined in section 401 of
24 the Federal Power Act (16 U.S.C. 791a and following)), and
25 shall provide for the establishment, operation, and oversight

1 *of the markets in accordance with the same regulations that*
2 *apply under this Act to included energy transactions.”.*

3 **(b) PRESIDENTIAL DETERMINATIONS.**—*To the extent*
4 *that the President delegates the authority to promulgate reg-*
5 *ulations for the establishment, operation, and oversight of*
6 *all markets for regulated allowance derivatives to a Federal*
7 *agency other than the Commodity Futures Trading Com-*
8 *mission pursuant to section 401 of the Federal Power Act,*
9 *such determination shall supersede subsection (a). To the*
10 *extent that the President determines that regulations pro-*
11 *mulgated pursuant to section 401(c)(2) of the Federal*
12 *Power Act would provide for more stringent and effective*
13 *market oversight, such regulations shall supersede sub-*
14 *section (a). Nothing in this section shall be construed to*
15 *affect the operation of the default rules established in section*
16 *401(c)(4) of the Federal Power Act.*

17 **SEC. 359. CEASE-AND-DESIST AUTHORITY.**

18 **(a) NATURAL GAS ACT.**—*Section 20 of the Natural*
19 *Gas Act (15 U.S.C. 717s) is amended by adding the fol-*
20 *lowing at the end:*

21 **“(e) CEASE-AND-DESIST PROCEEDINGS; TEMPORARY**
22 **ORDERS; AUTHORITY OF THE COMMISSION.**—

23 **“(1) IN GENERAL.**—*If the Commission finds,*
24 *after notice and opportunity for hearing, that any en-*
25 *tity may be violating, may have violated, or may be*

1 *about to violate any provision of this Act, or any*
2 *rule, regulation, restriction, condition, or order made*
3 *or imposed by the Commission under the authority of*
4 *this Act, the Commission may publish its findings*
5 *and issue an order requiring such entity, and any*
6 *other entity that is, was, or would be a cause of the*
7 *violation, due to an act or omission the entity knew*
8 *or should have known would contribute to such viola-*
9 *tion, to cease and desist from committing or causing*
10 *such violation and any future violation of the same*
11 *provision, rule, or regulation. Such order may, in ad-*
12 *dition to requiring an entity to cease and desist from*
13 *committing or causing a violation, require such enti-*
14 *ty to comply, to provide an accounting and*
15 *disgorgement, or to take steps to effect compliance,*
16 *with such provision, rule, or regulation, upon such*
17 *terms and conditions and within such time as the*
18 *Commission may specify in such order. Any such*
19 *order may, as the Commission deems appropriate, re-*
20 *quire future compliance or steps to effect future com-*
21 *pliance, either permanently or for such period of time*
22 *as the Commission may specify.*

23 “(2) *TIMING OF ENTRY.*—*An order issued under*
24 *this subsection shall be entered only after notice and*
25 *opportunity for a hearing, unless the Commission de-*

1 *termines that notice and hearing prior to entry would*
2 *be impracticable or contrary to the public interest.*

3 “(f) *HEARING.*—*The notice instituting proceedings*
4 *pursuant to subsection (e) shall fix a hearing date not ear-*
5 *lier than 30 days nor later than 60 days after service of*
6 *the notice unless an earlier or a later date is set by the*
7 *Commission with the consent of any respondent so served.*

8 “(g) *TEMPORARY ORDER.*—*Whenever the Commission*
9 *determines that—*

10 “(1) *a respondent may take actions to dissipate*
11 *or convert assets prior to the completion of the pro-*
12 *ceedings referred to in subsection (e), and such assets*
13 *would be necessary to comply with or otherwise sat-*
14 *isfy a final enforcement order of the Commission pur-*
15 *suant to alleged violations or threatened violations*
16 *specified in the notice instituting proceedings; or*

17 “(2) *a respondent is engaged in actual or threat-*
18 *ened violations of this Act or a Commission rule, reg-*
19 *ulation, restriction or order referred to in subsection*
20 *(e),*

21 *the Commission may issue a temporary order requiring the*
22 *respondent to take such action to prevent dissipation or*
23 *conversion of assets, significant harm to energy consumers,*
24 *or substantial harm to the public interest, frustration of the*
25 *Commission’s ability to conduct the proceedings, or frustra-*

1 *tion of the Commission's ability to redress said violation*
2 *at the conclusion of the proceedings, as the Commission*
3 *deems appropriate pending completion of such proceedings.*

4 *“(h) REVIEW OF TEMPORARY ORDERS.—*

5 *“(1) COMMISSION REVIEW.—At any time after*
6 *the respondent has been served with a temporary*
7 *cease-and-desist order pursuant to subsection (g), the*
8 *respondent may apply to the Commission to have the*
9 *order set aside, limited, or suspended. If the respond-*
10 *ent has been served with a temporary cease-and-desist*
11 *order entered without a prior Commission hearing,*
12 *the respondent may, within 10 days after the date on*
13 *which the order was served, request a hearing on such*
14 *application and the Commission shall hold a hearing*
15 *and render a decision on such application at the ear-*
16 *liest possible time.*

17 *“(2) JUDICIAL REVIEW.—Within—*

18 *“(A) 10 days after the date the respondent*
19 *was served with a temporary cease-and-desist*
20 *order entered with a prior Commission hearing;*
21 *or*

22 *“(B) 10 days after the Commission renders*
23 *a decision on an application and hearing under*
24 *paragraph (1),*

1 *with respect to any temporary cease-and-desist order*
2 *entered without a prior Commission hearing, the re-*
3 *spondent may apply to the United States district*
4 *court for the district in which the respondent resides*
5 *or has its principal place of business, or for the Dis-*
6 *trict of Columbia, for an order setting aside, limiting,*
7 *or suspending the effectiveness or enforcement of the*
8 *order, and the court shall have jurisdiction to enter*
9 *such an order. A respondent served with a temporary*
10 *cease-and-desist order entered without a prior Com-*
11 *mission hearing may not apply to the court except*
12 *after hearing and decision by the Commission on the*
13 *respondent’s application under paragraph (1) of this*
14 *subsection.*

15 “(3) *NO AUTOMATIC STAY OF TEMPORARY*
16 *ORDER.—The commencement of proceedings under*
17 *paragraph (2) of this subsection shall not, unless spe-*
18 *cifically ordered by the court, operate as a stay of the*
19 *Commission’s order.*

20 “(4) *EXCLUSIVE REVIEW.—Sections 19(d) and*
21 *24 shall not apply to a temporary order entered pur-*
22 *suant to this section.*

23 “(i) *IMPLEMENTATION.—The Commission is author-*
24 *ized to adopt rules, regulations, and orders as it deems ap-*
25 *propriate to implement this section.”.*

1 (c) *NATURAL GAS POLICY ACT OF 1978*.—Section 504
2 *of the Natural Gas Policy Act of 1978 (15 U.S.C. 3414)*
3 *is amended by adding the following at the end:*

4 “(d) *CEASE-AND-DESIST PROCEEDINGS; TEMPORARY*
5 *ORDERS; AUTHORITY OF THE COMMISSION*.—

6 “(1) *IN GENERAL*.—*If the Commission finds,*
7 *after notice and opportunity for hearing, that any en-*
8 *tity may be violating, may have violated, or may be*
9 *about to violate any provision of this Act, or any*
10 *rule, regulation, restriction, condition, or order made*
11 *or imposed by the Commission under the authority of*
12 *this Act, the Commission may publish its findings*
13 *and issue an order requiring such entity, and any*
14 *other entity that is, was, or would be a cause of the*
15 *violation, due to an act or omission the entity knew*
16 *or should have known would contribute to such viola-*
17 *tion, to cease and desist from committing or causing*
18 *such violation and any future violation of the same*
19 *provision, rule, or regulation. Such order may, in ad-*
20 *dition to requiring an entity to cease and desist from*
21 *committing or causing a violation, require such enti-*
22 *ty to comply, to provide an accounting and*
23 *disgorgement, or to take steps to effect compliance,*
24 *with such provision, rule, or regulation, upon such*
25 *terms and conditions and within such time as the*

1 *Commission may specify in such order. Any such*
2 *order may, as the Commission deems appropriate, re-*
3 *quire future compliance or steps to effect future com-*
4 *pliance, either permanently or for such period of time*
5 *as the Commission may specify.*

6 *“(2) TIMING OF ENTRY.—An order issued under*
7 *this subsection shall be entered only after notice and*
8 *opportunity for a hearing, unless the Commission de-*
9 *termines that notice and hearing prior to entry would*
10 *be impracticable or contrary to the public interest.*

11 *“(3) HEARING.—The notice instituting pro-*
12 *ceedings pursuant to paragraph (1) shall fix a hear-*
13 *ing date not earlier than 30 days nor later than 60*
14 *days after service of the notice unless an earlier or a*
15 *later date is set by the Commission with the consent*
16 *of any respondent so served.*

17 *“(4) TEMPORARY ORDER.—Whenever the Com-*
18 *mission determines that—*

19 *“(A) a respondent may take actions to dis-*
20 *sipate or convert assets prior to the completion*
21 *of the proceedings referred to in paragraph (1)*
22 *and such assets would be necessary to comply*
23 *with or otherwise satisfy a final enforcement*
24 *order of the Commission pursuant to alleged vio-*

1 *lations or threatened violations specified in the*
2 *notice instituting proceedings; or*

3 *“(B) a respondent is engaged in actual or*
4 *threatened violations of this Act or a Commis-*
5 *sion rule, regulation, restriction or order referred*
6 *to in paragraph (1),*

7 *the Commission may issue a temporary order requir-*
8 *ing the respondent to take such action to prevent dis-*
9 *sipation or conversion of assets, significant harm to*
10 *energy consumers, or substantial harm to the public*
11 *interest, frustration of the Commission’s ability to*
12 *conduct the proceedings, or frustration of the Commis-*
13 *sion’s ability to redress said violation at the conclu-*
14 *sion of the proceedings, as the Commission deems ap-*
15 *propriate pending completion of such proceedings.*

16 *“(5) REVIEW OF TEMPORARY ORDERS.—*

17 *“(A) COMMISSION REVIEW.—At any time*
18 *after the respondent has been served with a tem-*
19 *porary cease-and-desist order pursuant to para-*
20 *graph (4), the respondent may apply to the Com-*
21 *mission to have the order set aside, limited, or*
22 *suspended. If the respondent has been served with*
23 *a temporary cease-and-desist order entered with-*
24 *out a prior Commission hearing, the respondent*
25 *may, within 10 days after the date on which the*

1 *order was served, request a hearing on such ap-*
2 *plication and the Commission shall hold a hear-*
3 *ing and render a decision on such application at*
4 *the earliest possible time.*

5 “(B) *JUDICIAL REVIEW.*—*Within—*

6 “(i) *10 days after the date the respond-*
7 *ent was served with a temporary cease-and-*
8 *desist order entered with a prior Commis-*
9 *sion hearing; or*

10 “(ii) *10 days after the Commission*
11 *renders a decision on an application and*
12 *hearing under subparagraph (A), with re-*
13 *spect to any temporary cease-and-desist*
14 *order entered without a prior Commission*
15 *hearing, the respondent may apply to the*
16 *United States district court for the district*
17 *in which the respondent resides or has its*
18 *principal place of business, or for the Dis-*
19 *trict of Columbia, for an order setting aside,*
20 *limiting, or suspending the effectiveness or*
21 *enforcement of the order, and the court shall*
22 *have jurisdiction to enter such an order. A*
23 *respondent served with a temporary cease-*
24 *and-desist order entered without a prior*
25 *Commission hearing may not apply to the*

1 *court except after hearing and decision by*
 2 *the Commission on the respondent’s appli-*
 3 *cation under paragraph (1) of this sub-*
 4 *section.*

5 “(C) *NO AUTOMATIC STAY OF TEMPORARY*
 6 *ORDER.—The commencement of proceedings*
 7 *under subparagraph (B) of this paragraph shall*
 8 *not, unless specifically ordered by the court, op-*
 9 *erate as a stay of the Commission’s order.*

10 “(6) *IMPLEMENTATION.—The Commission is au-*
 11 *thorized to adopt rules, regulations, and orders as it*
 12 *deems appropriate to implement this subsection.”.*

13 ***TITLE IV—TRANSITIONING TO A***
 14 ***CLEAN ENERGY ECONOMY***

15 ***Subtitle A—Ensuring Real***
 16 ***Reductions in Industrial Emissions***

17 ***SEC. 401. ENSURING REAL REDUCTIONS IN INDUSTRIAL***
 18 ***EMISSIONS.***

19 *Title VII of the Clean Air Act is amended by inserting*
 20 *after part E the following new part:*

21 ***“PART F—ENSURING REAL REDUCTIONS IN***
 22 ***INDUSTRIAL EMISSIONS***

23 ***“SEC. 761. PURPOSES.***

24 *“(a) PURPOSE OF PART.—The purposes of this part*
 25 *are—*

1 “(1) to promote a strong global effort to signifi-
2 cantly reduce greenhouse gas emissions, and, through
3 this global effort, stabilize greenhouse gas concentra-
4 tions in the atmosphere at a level that will prevent
5 dangerous anthropogenic interference with the climate
6 system; and

7 “(2) to prevent an increase in greenhouse gas
8 emissions in countries other than the United States as
9 a result of direct and indirect compliance costs in-
10 curred under this title.

11 “(b) *PURPOSES OF SUBPART 1.*—The purposes of sub-
12 part 1 are additionally—

13 “(1) to rebate the owners and operators of enti-
14 ties in domestic eligible industrial sectors for their
15 greenhouse gas emission costs incurred under this
16 title, but not for costs associated with other related or
17 unrelated market dynamics;

18 “(2) to design such rebates in a way that will
19 prevent carbon leakage while also rewarding innova-
20 tion and facility-level investments in energy efficiency
21 performance improvements; and

22 “(3) to eliminate or reduce distribution of emis-
23 sion allowances under this part when such distribu-
24 tion is no longer necessary to prevent carbon leakage
25 from eligible industrial sectors.

1 **“SEC. 762. INTERNATIONAL NEGOTIATIONS.**

2 “(a) *FINDING.*—Congress finds that the purposes of
3 this part, as set forth in section 761, can be most effectively
4 addressed and achieved through agreements negotiated be-
5 tween the United States and foreign countries.

6 “(b) *STATEMENT OF POLICY.*—It is the policy of the
7 United States to work proactively under the United Nations
8 Framework Convention on Climate Change, and in other
9 appropriate forums, to establish binding agreements, in-
10 cluding sectoral agreements, committing all major green-
11 house gas-emitting nations to contribute equitably to the re-
12 duction of global greenhouse gas emissions.

13 “(c) *NOTIFICATION OF FOREIGN COUNTRIES.*—Not
14 later than January 1, 2020, the President shall notify for-
15 eign countries that an International Reserve Allowance
16 Program, as described in subpart 2, may apply to primary
17 products produced in a foreign country by a sector for
18 which the President has made a determination described in
19 section 767(c).

20 **“SEC. 763. DEFINITIONS.**

21 *“In this part:*

22 “(1) *CARBON LEAKAGE.*—The term ‘carbon leak-
23 age’ means any substantial increase (as determined
24 by the Administrator) in greenhouse gas emissions by
25 industrial entities located in other countries if such
26 increase is caused by an incremental cost of produc-

1 *tion increase in the United States resulting from the*
2 *implementation of this title.*

3 “(2) *ELIGIBLE INDUSTRIAL SECTOR.*—*The term*
4 *‘eligible industrial sector’ means an industrial sector*
5 *determined by the Administrator under section 764(b)*
6 *to be eligible to receive emission allowance rebates*
7 *under subpart 1.*

8 “(3) *INDUSTRIAL SECTOR.*—*The term ‘industrial*
9 *sector’ means any sector that is in the manufacturing*
10 *sector (as defined in NAICS codes 31, 32, and 33).*

11 “(4) *NAICS.*—*The term ‘NAICS’ means the*
12 *North American Industrial Classification System of*
13 *2002.*

14 “(5) *OUTPUT.*—*The term ‘output’ means the*
15 *total tonnage or other standard unit of production (as*
16 *determined by the Administrator) produced by an en-*
17 *tity in an industrial sector. The output of the cement*
18 *sector is hydraulic cement, and not clinker.*

19 “(6) *PRIMARY PRODUCT.*—*The term ‘primary*
20 *product’ means a product manufactured by an eligi-*
21 *ble industrial sector that is—*

22 “(A) *iron, steel, steel mill products (includ-*
23 *ing pipe and tube), aluminum, cement, glass (in-*
24 *cluding flat, container, and specialty glass and*

1 *fiberglass), pulp, paper, chemicals, or industrial*
2 *ceramics; or*

3 “(B) *any other manufactured product that*
4 *is sold in bulk for purposes of further manufac-*
5 *ture or inclusion in a finished product.*

6 **“Subpart 1—Emission Allowance Rebate Program**

7 **“SEC. 764. ELIGIBLE INDUSTRIAL SECTORS.**

8 “(a) *LIST.—*

9 “(1) *INITIAL LIST.—Not later than June 30,*
10 *2011, the Administrator shall publish in the Federal*
11 *Register a list of eligible industrial sectors pursuant*
12 *to subsection (b). Such list shall include the amount*
13 *of the emission allowance rebate per unit of produc-*
14 *tion that shall be provided to entities in each eligible*
15 *industrial sector in the following two calendar years*
16 *pursuant to section 765.*

17 “(2) *SUBSEQUENT LISTS.—Not later than Feb-*
18 *ruary 1, 2013, and every four years thereafter, the*
19 *Administrator shall publish in the Federal Register*
20 *an updated version of the list published under para-*
21 *graph (1).*

22 “(b) *ELIGIBLE INDUSTRIAL SECTORS.—*

23 “(1) *IN GENERAL.—Not later than June 30,*
24 *2011, the Administrator shall promulgate a rule des-*
25 *ignating, based on the criteria under paragraph (2),*

1 *the industrial sectors eligible for emission allowance*
2 *rebates under this subpart.*

3 “(2) *PRESUMPTIVELY ELIGIBLE INDUSTRIAL*
4 *SECTORS.*—

5 “(A) *ELIGIBILITY CRITERIA.*—*An owner or*
6 *operator of an entity shall be eligible to receive*
7 *emission allowance rebates under this subpart if*
8 *such entity is in an industrial sector that is in-*
9 *cluded in a six-digit classification of the NAICS*
10 *that meets the criteria in both clauses (i) and*
11 *(ii), or the criteria in clause (iii).*

12 “(i) *ENERGY OR GREENHOUSE GAS IN-*
13 *TENSITY.*—*As determined by the Adminis-*
14 *trator, the industrial sector had—*

15 “(I) *an energy intensity of at*
16 *least 5 percent, calculated by dividing*
17 *the cost of purchased electricity and*
18 *fuel costs of the sector by the value of*
19 *the shipments of the sector, based on*
20 *data described in subparagraph (E); or*

21 “(II) *a greenhouse gas intensity of*
22 *at least 5 percent, calculated by divid-*
23 *ing—*

24 “(aa) *the number 20 multi-*
25 *plied by the number of tons of*

1 carbon dioxide equivalent green-
2 house gas emissions (including di-
3 rect emissions from fuel combus-
4 tion, process emissions, and indi-
5 rect emissions from the generation
6 of electricity used to produce the
7 output of the sector) of the sector
8 based on data described in sub-
9 paragraph (E); by

10 “(bb) the value of the ship-
11 ments of the sector, based on data
12 described in subparagraph (E).

13 “(ii) *TRADE INTENSITY*.—As deter-
14 mined by the Administrator, the industrial
15 sector had a trade intensity of at least 15
16 percent, calculated by dividing the value of
17 the total imports and exports of such sector
18 by the value of the shipments plus the value
19 of imports of such sector, based on data de-
20 scribed in subparagraph (E).

21 “(iii) *VERY HIGH ENERGY OR GREEN-*
22 *HOUSE GAS INTENSITY*.—As determined by
23 the Administrator, the industrial sector had
24 an energy or greenhouse gas intensity, as

1 *calculated under clause (i)(I) or (II), of at*
2 *least 20 percent.*

3 “(B) *IRON AND STEEL SECTOR.*—*For pur-*
4 *poses of this subpart, in carrying out this section*
5 *and section 765, the Administrator shall consider*
6 *as in different industrial sectors—*

7 “(i) *entities using integrated iron and*
8 *steelmaking technologies (including coke*
9 *ovens, blast furnaces, and other iron-making*
10 *technologies); and*

11 “(ii) *entities using electric arc furnace*
12 *technologies.*

13 “(C) *METAL AND PHOSPHATE PRODUCTION*
14 *CLASSIFIED UNDER MORE THAN ONE NAICS*
15 *CODE.*—*For purposes of this subpart, in car-*
16 *rying out this section and section 765, the Ad-*
17 *ministrator shall—*

18 “(i) *aggregate data for the*
19 *beneficiation or other processing of iron and*
20 *copper ores and phosphate with subsequent*
21 *steps in the process of metal and phosphate*
22 *manufacturing regardless of the NAICS*
23 *code under which such activity is classified;*
24 *and*

1 “(ii) aggregate data for the manufac-
2 turing of steel with the manufacturing of
3 steel pipe and tube made from purchased
4 steel in a nonintegrated process.

5 “(D) *EXCLUSION.*—*The petroleum refining*
6 *sector shall not be an eligible industrial sector.*

7 “(E) *DATA SOURCES.*—

8 “(i) *ELECTRICITY AND FUEL COSTS,*
9 *VALUE OF SHIPMENTS.*—*The Administrator*
10 *shall determine electricity and fuel costs*
11 *and the value of shipments under this sub-*
12 *section from data from the United States*
13 *Census of Mineral Industries and the*
14 *United States Census Annual Survey of*
15 *Manufacturers. The Administrator shall*
16 *take the average of data from as many of*
17 *the years of 2004, 2005, and 2006 for which*
18 *such data are available. If such data are*
19 *unavailable, the Administrator shall make a*
20 *determination based upon 2002 or 2006*
21 *data from the most detailed industrial clas-*
22 *sification level of Energy Information Agen-*
23 *cy’s Manufacturing Energy Consumption*
24 *Survey (using 2006 data if it is available)*
25 *and the 2002 or 2007 Economic Census of*

1 *the United States (using 2007 data if it is*
2 *available). If data from the Manufacturing*
3 *Energy Consumption Survey are unavail-*
4 *able for any sector at the six-digit classi-*
5 *fication level in the NAICS, then the Ad-*
6 *ministrator may extrapolate the informa-*
7 *tion necessary to determine the eligibility of*
8 *a sector under this paragraph from avail-*
9 *able Manufacturing Energy Consumption*
10 *Survey data pertaining to a broader indus-*
11 *trial category classified in the NAICS. Fuel*
12 *cost data shall not include the cost of fuel*
13 *used as feedstock by an industrial sector.*

14 “(ii) *IMPORTS AND EXPORTS.—The*
15 *Administrator shall base the value of im-*
16 *ports and exports under this subsection on*
17 *United States International Trade Commis-*
18 *sion data. The Administrator shall take the*
19 *average of data from as many of the years*
20 *of 2004, 2005, and 2006 for which such*
21 *data are available.*

22 “(iii) *PERCENTAGES.—The Adminis-*
23 *trator shall round the energy intensity,*
24 *greenhouse gas intensity, and trade inten-*

1 *sity percentages under subparagraph (A) to*
2 *the nearest whole number.*

3 “(iv) *GREENHOUSE GAS EMISSION*
4 *CALCULATIONS.—When calculating the tons*
5 *of carbon dioxide equivalent greenhouse gas*
6 *emissions for each sector under subpara-*
7 *graph (A)(i)(II)(aa), the Administrator—*

8 *“(I) shall use the best available*
9 *data from as many of the years 2004,*
10 *2005, and 2006 for which such data is*
11 *available; and*

12 *“(II) may, to the extent necessary*
13 *with respect to a sector, use economic*
14 *and engineering models and the best*
15 *available information on technology*
16 *performance levels for such sector.*

17 “(3) *ADMINISTRATIVE DETERMINATION OF ADDI-*
18 *TIONAL ELIGIBLE INDUSTRIAL SECTORS.—*

19 “(A) *INDIVIDUAL SHOWING PETITION.—*

20 “(i) *PETITION.—The owner or operator*
21 *of an entity in an industrial sector may pe-*
22 *tition the Administrator to designate as eli-*
23 *gible industrial sectors under this subpart*
24 *an entity or a group of entities that—*

1 “(I) represent a subsector of a six-
2 digit section of the NAICS code; and

3 “(II) meet the eligibility criteria
4 in both clauses (i) and (ii) of para-
5 graph (2)(A), or the eligibility criteria
6 in clause (iii) of paragraph (2)(A).

7 “(ii) DATA.—In making a determina-
8 tion under this subparagraph, the Adminis-
9 trator shall consider data submitted by the
10 petitioner that is specific to the entity, data
11 solicited by the Administrator from other
12 entities in the subsector, if such other enti-
13 ties exist, and data specified in paragraph
14 (2)(E).

15 “(iii) BASIS OF SUBSECTOR DETER-
16 MINATION.—The Administrator shall deter-
17 mine an entity or group of entities to be a
18 subsector of a six-digit section of the NAICS
19 code based only upon the products manufac-
20 tured and not the industrial process by
21 which the products are manufactured, ex-
22 cept that the Administrator may determine
23 an entity or group of entities that manufac-
24 ture a product from a virgin material to be
25 a separate subsector from another entity or

1 *group of entities that manufacture the same*
2 *product from recycled material.*

3 “(iv) *FINAL ACTION.*—*The Adminis-*
4 *trator shall take final action on such peti-*
5 *tion no later than 6 months after the peti-*
6 *tion is received by the Administrator.*

7 “(B) *UPDATED TRADE INTENSITY DATA.*—
8 *The Administrator shall designate as eligible to*
9 *receive emission allowance rebates under this*
10 *subpart an industrial sector that—*

11 “(i) *met the energy or greenhouse gas*
12 *intensity criteria in paragraph (2)(A)(i) as*
13 *of the date of promulgation of the rule*
14 *under paragraph (1); and*

15 “(ii) *meets the trade intensity criteria*
16 *in paragraph (2)(A)(ii), using data from*
17 *any year after 2006.*

18 “(C) *USE OF MOST RECENT DATA.*—*In de-*
19 *termining whether to designate a sector or sub-*
20 *sector as an eligible industrial sector under this*
21 *paragraph, the Administrator shall use the most*
22 *recent data available from the sources described*
23 *in paragraph (2)(E), rather than the data from*
24 *the years specified in paragraph (2)(E), to deter-*
25 *mine the trade intensity of such sector or sub-*

1 *sector, but only for determining such trade inten-*
2 *sity.*

3 **“SEC. 765. DISTRIBUTION OF EMISSION ALLOWANCE RE-**
4 **BATES.**

5 “(a) *DISTRIBUTION SCHEDULE.*—

6 “(1) *IN GENERAL.*—*For each vintage year, the*
7 *Administrator shall distribute allowances pursuant to*
8 *this section no later than October 31 of the preceding*
9 *calendar year. The Administrator shall make such*
10 *annual distributions to the owners and operators of*
11 *each entity in an eligible industrial sector in the*
12 *amount of emission allowances calculated under sub-*
13 *section (b), except that—*

14 “(A) *for vintage years 2012 and 2013, the*
15 *distribution for a covered entity shall be the enti-*
16 *ty’s indirect carbon factor as calculated under*
17 *subsection (b)(3); and*

18 “(B) *for vintage year 2026 and thereafter,*
19 *the distribution shall be the amount calculated*
20 *under subsection (b) multiplied by, except as*
21 *modified by the President pursuant to section*
22 *767(c)(3)(A) for a sector—*

23 “(i) *90 percent for vintage year 2026;*

24 “(ii) *80 percent for vintage year 2027;*

25 “(iii) *70 percent for vintage year 2028;*

1 “(iv) 60 percent for vintage year 2029;
2 “(v) 50 percent for vintage year 2030;
3 “(vi) 40 percent for vintage year 2031;
4 “(vii) 30 percent for vintage year
5 2032;
6 “(viii) 20 percent for vintage year
7 2033;
8 “(ix) 10 percent for vintage year 2034;
9 and
10 “(x) 0 percent for vintage year 2035
11 and thereafter.

12 “(2) *RESUMPTION OF REDUCTION.*—*If the Presi-*
13 *dent has modified the percentage stated in paragraph*
14 *(1)(B) under section 767(c)(3)(A), and the President*
15 *subsequently makes a determination under section*
16 *767(b) for an eligible industrial sector that more than*
17 *70 percent of global output for that sector is produced*
18 *or manufactured in countries that have met at least*
19 *one of the criteria in that subsection, then the reduc-*
20 *tion schedule set forth in paragraph (1)(B) of this*
21 *subsection shall begin in the next vintage year, with*
22 *the percentage reduction based on the amount of the*
23 *distribution of emission allowances under this section*
24 *in the previous year.*

1 “(3) *NEWLY ELIGIBLE SECTORS.*—*In addition to*
2 *receiving a distribution of emission allowances under*
3 *this section in the first distribution occurring after an*
4 *industrial sector is designated as eligible under sec-*
5 *tion 764(b)(3), the owner or operator of an entity in*
6 *that eligible industrial sector may receive a prorated*
7 *share of any emission allowances made available for*
8 *distribution under this section that were not distrib-*
9 *uted for the year in which the petition for eligibility*
10 *was granted under section 764(b)(3)(A).*

11 “(b) *CALCULATION OF DIRECT AND INDIRECT CARBON*
12 *FACTORS.*—

13 “(1) *IN GENERAL.*—

14 “(A) *COVERED ENTITIES.*—*Except as pro-*
15 *vided in subsection (a), for covered entities that*
16 *are in eligible industrial sectors, the amount of*
17 *emission allowance rebates shall be based on the*
18 *sum of the covered entity’s direct and indirect*
19 *carbon factors.*

20 “(B) *OTHER ELIGIBLE ENTITIES.*—*For en-*
21 *tities that are in eligible industrial sectors but*
22 *are not covered entities, the amount of emission*
23 *allowance rebates shall be based on the entity’s*
24 *indirect carbon factor.*

1 “(C) *NEW ENTITIES.*—Not later than 2
2 years after the date of enactment of this title, the
3 Administrator shall issue regulations governing
4 the distribution of emission allowance rebates for
5 the first and second years of operation of a new
6 entity in an eligible industrial sector. These reg-
7 ulations shall provide for—

8 “(i) the distribution of emission allow-
9 ance rebates to such entities based on com-
10 parable entities in the same sector; and

11 “(ii) an adjustment in the third and
12 fourth years of operation to reconcile the
13 total amount of emission allowance rebates
14 received during the first and second years of
15 operation to the amount the entity would
16 have received during the first and second
17 years of operation had the appropriate data
18 been available.

19 “(2) *DIRECT CARBON FACTOR.*—The direct car-
20 bon factor for a covered entity for a vintage year is
21 the product of—

22 “(A) the average output of the covered enti-
23 ty for the two years preceding the year of the
24 distribution; and

1 “(B) *the most recent calculation of the aver-*
2 *age direct greenhouse gas emissions (expressed in*
3 *tons of carbon dioxide equivalent) per unit of*
4 *output for all covered entities in the sector, as*
5 *determined by the Administrator under para-*
6 *graph (4).*

7 “(3) *INDIRECT CARBON FACTOR.—*

8 “(A) *IN GENERAL.—The indirect carbon*
9 *factor for an entity for a vintage year is the*
10 *product obtained by multiplying the average out-*
11 *put of the entity for the two years preceding the*
12 *years of the distribution by both the electricity*
13 *emissions intensity factor determined pursuant*
14 *to subparagraph (B) and the electricity effi-*
15 *ciency factor determined pursuant to subpara-*
16 *graph (C) for the year concerned.*

17 “(B) *ELECTRICITY EMISSIONS INTENSITY*
18 *FACTOR.—Each person selling electricity to the*
19 *owner or operator of an entity in any sector des-*
20 *ignated as an eligible industrial sector under sec-*
21 *tion 764(b) shall provide the owner or operator*
22 *of the entity and the Administrator, on an an-*
23 *nual basis, the electricity emissions intensity fac-*
24 *tor for the entity. The electricity emissions inten-*
25 *sity factor for the entity, expressed in tons of*

1 *carbon dioxide equivalents per kilowatt hour, is*
2 *determined by dividing—*

3 “(i) *the annual sum of the hourly*
4 *product of—*

5 “(I) *the electricity purchased by*
6 *the entity from that person in each*
7 *hour (expressed in kilowatt hours),*
8 *multiplied by*

9 “(II) *the marginal or weighted*
10 *average tons of carbon dioxide equiva-*
11 *lent per kilowatt hour that the person*
12 *selling the electricity charges to the en-*
13 *tity, taking into account the entity’s*
14 *retail rate arrangements, by*

15 “(ii) *the total kilowatt hours of elec-*
16 *tricity purchased by the entity from that*
17 *person during that year.*

18 “(C) *ELECTRICITY EFFICIENCY FACTOR.—*

19 *The electricity efficiency factor is the average*
20 *amount of electricity (in kilowatt hours) used*
21 *per unit of output for all entities in the relevant*
22 *sector, as determined by the Administrator based*
23 *on the best available data, including data pro-*
24 *vided under paragraph (6).*

1 “(D) *INDIRECT CARBON FACTOR REDUC-*
2 *TION.—If an electricity provider received a free*
3 *allocation of emission allowances pursuant to*
4 *section 782(a), the Administrator shall adjust the*
5 *indirect carbon factor to avoid rebates to the eli-*
6 *gible entity for costs that the Administrator de-*
7 *termines were not incurred by the industrial en-*
8 *tity because the allowances were freely allocated*
9 *to the eligible entity’s electricity provider and*
10 *used for the benefit of industrial consumers.*

11 “(4) *GREENHOUSE GAS INTENSITY CALCULA-*
12 *TIONS.—The Administrator shall calculate the aver-*
13 *age direct greenhouse gas emissions (expressed in tons*
14 *of carbon dioxide equivalent) per unit of output for*
15 *all covered entities in each eligible industrial sector*
16 *every four years using an average of the two most re-*
17 *cent years of the best available data.*

18 “(5) *ENSURING EFFICIENCY IMPROVEMENTS.—*
19 *When making greenhouse gas calculations, the Admin-*
20 *istrator shall—*

21 “(A) *limit the average direct greenhouse gas*
22 *emissions per unit of output, calculated under*
23 *paragraph (4), for any eligible industrial sector*
24 *to an amount that is not greater than it was in*

1 *any previous calculation under this subsection;*
2 *and*

3 “(B) *limit the electricity emissions intensity*
4 *factor, calculated under paragraph (3)(B) and*
5 *resulting from a change in electricity supply, for*
6 *any entity to an amount that is not greater than*
7 *it was during any previous year.*

8 “(6) *DATA SOURCES.—For the purposes of this*
9 *subsection—*

10 “(A) *the Administrator shall use data from*
11 *the greenhouse gas registry, established under*
12 *section 713, where it is available; and*

13 “(B) *each owner or operator of an entity in*
14 *an eligible industrial sector and each depart-*
15 *ment, agency, and instrumentality of the United*
16 *States shall provide the Administrator with such*
17 *information as the Administrator finds necessary*
18 *to determine the direct carbon factor and the in-*
19 *direct carbon factor for each entity subject to this*
20 *section.*

21 “(c) *TOTAL MAXIMUM DISTRIBUTION.—Notwith-*
22 *standing subsections (a) and (b), the Administrator shall*
23 *not distribute more allowances for any vintage year pursu-*
24 *ant to this section than are allocated for use under this part*
25 *pursuant to section 782 for that vintage year. For any vin-*

1 “(C) exempting from the requirements of
2 subparagraph (B) primary products produced
3 in—

4 “(i) foreign countries that the United
5 Nations has identified as among the least
6 developed or developing countries; or

7 “(ii) foreign countries that the Presi-
8 dent has determined to be responsible for
9 less than 0.5 percent of total global green-
10 house gas emissions; and

11 “(D) prohibiting the introduction into
12 interstate commerce of a primary product with-
13 out submitting the required number of inter-
14 national reserve allowances in accordance with
15 such regulations, unless the product was pro-
16 duced by a covered entity under this title, or by
17 an entity that is or could be regulated under this
18 title.

19 “(2) *PURPOSE OF PROGRAM.*—The Adminis-
20 trator shall establish the program under paragraph
21 (1) in a manner that addresses, consistent with inter-
22 national agreements to which the United States is a
23 party, the competitive imbalance in the costs of pro-
24 ducing or manufacturing primary products in indus-
25 trial sectors resulting from the difference between—

1 “(A) the direct and indirect costs of com-
2 plying with this title; and

3 “(B) the direct and indirect costs, if any, of
4 complying in other countries with greenhouse gas
5 regulatory programs, requirements, export tar-
6 iffs, or other measures adopted or imposed to re-
7 duce greenhouse gas emissions.

8 “(3) *EMISSION ALLOWANCE REBATES.*—The Ad-
9 ministrators shall take into account the value of emis-
10 sion allowance rebates distributed under subpart 1
11 when making calculations under paragraph (2).

12 “(4) *LIMITATION.*—The International Reserve
13 Allowance Program may not begin before January 1,
14 2025.

15 “(b) *COVERED ENTITIES.*—International reserve al-
16 lowances may not be held by covered entities to comply with
17 section 722.

18 **“Subpart 3—Presidential Determination**

19 **“SEC. 767. PRESIDENTIAL REPORTS AND DETERMINATIONS.**

20 “(a) *REPORT.*—Not later than January 1, 2018, the
21 President shall submit a report to Congress on the effective-
22 ness of the distribution of emission allowance rebates under
23 subpart 1 in mitigating carbon leakage in industrial sec-
24 tors. Such report shall also include—

1 “(1) recommendations on how to better achieve
2 the purposes of this part, including an assessment of
3 the feasibility and usefulness of an International Re-
4 serve Allowance Program; and

5 “(2) an assessment of the amount and duration
6 of assistance, including distribution of free allow-
7 ances, being provided to eligible industrial sectors in
8 other developed countries to mitigate costs of compli-
9 ance with domestic greenhouse gas reduction pro-
10 grams in such countries.

11 “(b) *PRESIDENTIAL DETERMINATION.*—Not later than
12 June 30, 2022, and every four years thereafter, the Presi-
13 dent, in consultation with the Administrator and other ap-
14 propriate agencies, shall determine, for each eligible indus-
15 trial sector, whether more than 70 percent of global output
16 for that sector is produced or manufactured in countries
17 that have met at least one of the following criteria:

18 “(1) The country is a party to an international
19 agreement to which the United States is a party that
20 includes a nationally enforceable greenhouse gas emis-
21 sions reduction commitment for that country that is
22 at least as stringent as that of the United States.

23 “(2) The country is a party to a multilateral or
24 bilateral emission reduction agreement for that sector
25 to which the United States is a party.

1 “(3) *The country has an annual energy or green-*
2 *house gas intensity, as described in section*
3 *764(b)(2)(A)(i), for the sector that is equal to or less*
4 *than the energy or greenhouse gas intensity for such*
5 *sector in the United States in the most recent cal-*
6 *endar year for which data are available.*

7 “(4) *The country has implemented policies, in-*
8 *cluding sectoral caps, export tariffs, production fees,*
9 *electricity generation regulations, or greenhouse gas*
10 *emissions fees, that individually or collectively impose*
11 *an incremental increase on the cost of production as-*
12 *sociated with greenhouse gas emissions from the sector*
13 *that is at least 60 percent of the cost of complying*
14 *with this title in the United States for such sector,*
15 *averaged over a two-year period.*

16 “(c) *EFFECT OF PRESIDENTIAL DETERMINATION.—If*
17 *the President makes a determination under subsection (b)*
18 *with respect to an eligible industrial sector that 70 percent*
19 *or less of the global output for the sector is produced or*
20 *manufactured in countries that have met one or more of*
21 *the criteria in subsection (b), then the President shall, not*
22 *later than June 30, 2022, and every four years thereafter—*

23 “(1) *assess the extent to which the emission al-*
24 *lowance rebates provided pursuant to subpart 1 have*

1 *mitigated or addressed, or could mitigate or address,*
2 *carbon leakage in that sector;*

3 *“(2) assess the extent to which an International*
4 *Reserve Allowance Program has mitigated or ad-*
5 *dressed, or could mitigate or address, carbon leakage*
6 *in that sector and the feasibility of establishing such*
7 *a program; and*

8 *“(3) with respect to that sector—*

9 *“(A) modify the percentage by which direct*
10 *and indirect carbon factors will be multiplied*
11 *under section 765(a)(1)(B);*

12 *“(B) implement an International Reserve*
13 *Allowance Program under section 766 for the*
14 *products of the sector; or*

15 *“(C) take the actions in both subparagraph*
16 *(A) and (B).*

17 *“(d) REPORT TO CONGRESS.—Not later than June 30,*
18 *2022, and every four years thereafter, the President shall*
19 *transmit to the Congress a report providing notice of any*
20 *determination made under subsection (b), explaining the*
21 *reasons for such determination, and identifying the actions*
22 *taken by the President under subsection (c).*

23 *“(e) LIMITATION.—The President may only implement*
24 *an International Reserve Allowance Program for sectors*
25 *producing primary products.*

1 “(f) *IRON AND STEEL SECTOR.*—For the purposes of
2 *this subpart, the Administrator shall consider to be in the*
3 *same industrial sector—*

4 “(1) *entities using integrated iron and*
5 *steelmaking technologies (including coke ovens, blast*
6 *furnaces, and other iron-making technologies); and*

7 “(2) *entities using electric arc furnace tech-*
8 *nologies.*”.

9 ***Subtitle B—Green Jobs and Worker***
10 ***Transition***

11 ***PART 1—GREEN JOBS***

12 ***SEC. 421. CLEAN ENERGY CURRICULUM DEVELOPMENT***
13 ***GRANTS.***

14 (a) *AUTHORIZATION.*—The Secretary of Education is
15 *authorized to award grants, on a competitive basis, to eligi-*
16 *ble partnerships to develop programs of study (containing*
17 *the information described in section 122(c)(1)(A) of the*
18 *Carl D. Perkins Career and Technical Education Act of*
19 *2006 (20 U.S.C. 2342), that are focused on emerging careers*
20 *and jobs in renewable energy, energy efficiency, and climate*
21 *change mitigation. The Secretary of Education shall consult*
22 *with the Secretary of Labor and the Secretary of Energy*
23 *prior to the issuance of a solicitation for grant applications.*

24 (b) *ELIGIBLE PARTNERSHIPS.*—For purposes of this
25 *section, an eligible partnership shall include—*

1 (1) *at least 1 local educational agency eligible*
2 *for funding under section 131 of the Carl D. Perkins*
3 *Career and Technical Education Act of 2006 (20*
4 *U.S.C. 2351) or an area career and technical edu-*
5 *cation school or education service agency described in*
6 *such section;*

7 (2) *at least 1 postsecondary institution eligible*
8 *for funding under section 132 of such Act (20 U.S.C.*
9 *2352); and*

10 (3) *representatives of the community including*
11 *business, labor organizations, and industry that have*
12 *experience in clean energy.*

13 (c) *APPLICATION.—An eligible partnership seeking a*
14 *grant under this section shall submit an application to the*
15 *Secretary at such time and in such manner as the Secretary*
16 *may require. Applications shall include—*

17 (1) *a description of the eligible partners and*
18 *partnership, the roles and responsibilities of each*
19 *partner, and a demonstration of each partner’s ca-*
20 *capacity to support the program;*

21 (2) *a description of the career area or areas*
22 *within the field of clean energy to be developed, the*
23 *reason for the choice, and evidence of the labor market*
24 *need to prepare students in that area;*

1 (3) a description of the new or existing program
2 of study and both secondary and postsecondary com-
3 ponents;

4 (4) a description of the students to be served by
5 the new program of study;

6 (5) a description of how the program of study
7 funded by the grant will be replicable and dissemi-
8 nated to schools outside of the partnership, including
9 urban and rural areas;

10 (6) a description of applied learning that will be
11 incorporated into the program of study and how it
12 will incorporate or reinforce academic learning;

13 (7) a description of how the program of study
14 will be delivered;

15 (8) a description of how the program will pro-
16 vide accessibility to students, especially economically
17 disadvantaged, low performing, and urban and rural
18 students;

19 (9) a description of how the program will ad-
20 dress placement of students in nontraditional fields as
21 described in section 3(20) of the Carl D. Perkins Ca-
22 reer and Technical Education Act of 2006 (20 U.S.C.
23 2302(20)); and

24 (10) a description of how the applicant proposes
25 to consult or has consulted with a labor organization,

1 *labor management partnership, apprenticeship pro-*
2 *gram, or joint apprenticeship and training program*
3 *that provides education and training in the field of*
4 *study for which the applicant proposes to develop a*
5 *curriculum.*

6 (d) *PRIORITY.*—*The Secretary shall give priority to*
7 *applications that—*

8 (1) *use online learning or other innovative*
9 *means to deliver the program of study to students,*
10 *educators, and instructors outside of the partnership;*
11 *and*

12 (2) *focus on low performing students and special*
13 *populations as defined in section 3(29) of the Carl D.*
14 *Perkins Career and Technical Education Act of 2006*
15 *(20 U.S.C. 2302(29)).*

16 (e) *PEER REVIEW.*—*The Secretary shall convene a*
17 *peer review process to review applications for grants under*
18 *this section and to make recommendations regarding the se-*
19 *lection of grantees. Members of the peer review committee*
20 *shall include—*

21 (1) *educators who have experience implementing*
22 *curricula with comparable purposes; and*

23 (2) *business and industry experts in clean en-*
24 *ergy-related fields.*

1 (f) *USES OF FUNDS.*—Grants awarded under this sec-
2 tion shall be used for the development, implementation, and
3 dissemination of programs of study (as described in section
4 122(c)(1)(A) of the Carl D. Perkins Career and Technical
5 Education Act (20 U.S.C. 342(c)(1)(A))) in career areas
6 related to clean energy, renewable energy, energy efficiency,
7 and climate change mitigation.

8 **SEC. 422. INCREASED FUNDING FOR ENERGY WORKER**
9 **TRAINING PROGRAM.**

10 Section 171(e)(8) of the Workforce Investment Act of
11 1998 (29 U.S.C. 2916(e)(8)) is amended by striking
12 “\$125,000,000” and inserting “\$150,000,000”.

13 **PART 2—CLIMATE CHANGE WORKER**
14 **ADJUSTMENT ASSISTANCE**

15 **SEC. 425. PETITIONS, ELIGIBILITY REQUIREMENTS, AND DE-**
16 **TERMINATIONS.**

17 (a) *PETITIONS.*—

18 (1) *FILING.*—A petition for certification of eligi-
19 bility to apply for adjustment assistance for a group
20 of workers under this part may be filed by any of the
21 following:

22 (A) The group of workers.

23 (B) The certified or recognized union or
24 other duly authorized representative of such
25 workers.

1 (C) *Employers of such workers, one-stop op-*
2 *erators or one-stop partners (as defined in sec-*
3 *tion 101 of the Workforce Investment Act of 1998*
4 *(29 U.S.C. 2801)), including State employment*
5 *security agencies, or the State dislocated worker*
6 *unit established under title I of such Act, on be-*
7 *half of such workers.*

8 *The petition shall be filed simultaneously with the*
9 *Secretary of Labor and with the Governor of the State*
10 *in which such workers' employment site is located.*

11 (2) *ACTION BY GOVERNORS.—Upon receipt of a*
12 *petition filed under paragraph (1), the Governor*
13 *shall—*

14 (A) *ensure that rapid response activities*
15 *and appropriate core and intensive services (as*
16 *described in section 134 of the Workforce Invest-*
17 *ment Act of 1998 (29 U.S.C. 2864)) authorized*
18 *under other Federal laws are made available to*
19 *the workers covered by the petition to the extent*
20 *authorized under such laws; and*

21 (B) *assist the Secretary in the review of the*
22 *petition by verifying such information and pro-*
23 *viding such other assistance as the Secretary*
24 *may request.*

1 (3) *ACTION BY THE SECRETARY.*—Upon receipt
2 of the petition, the Secretary shall promptly publish
3 notice in the *Federal Register* and on the website of
4 the Department of Labor that the Secretary has re-
5 ceived the petition and initiated an investigation.

6 (4) *HEARINGS.*—If the petitioner, or any other
7 person found by the Secretary to have a substantial
8 interest in the proceedings, submits not later than 10
9 days after the date of the Secretary’s publication
10 under paragraph (3) a request for a hearing, the Sec-
11 retary shall provide for a public hearing and afford
12 such interested persons an opportunity to be present,
13 to produce evidence, and to be heard.

14 (b) *ELIGIBILITY.*—

15 (1) *IN GENERAL.*—A group of workers shall be
16 certified by the Secretary as eligible to apply for ad-
17 justment assistance under this part pursuant to a pe-
18 tition filed under subsection (a) if—

19 (A) the group of workers is employed in—

20 (i) energy producing and transforming
21 industries;

22 (ii) industries dependent upon energy
23 industries;

24 (iii) energy-intensive manufacturing
25 industries;

1 (iv) consumer goods manufacturing; or

2 (v) other industries whose employment

3 the Secretary determines has been adversely

4 affected by any requirement of title VII of

5 the Clean Air Act;

6 (B) the Secretary determines that a signifi-

7 cant number or proportion of the workers in

8 such workers' employment site have become to-

9 tally or partially separated, or are threatened to

10 become totally or partially separated from em-

11 ployment; and

12 (C) the sales, production, or delivery of

13 goods or services have decreased as a result of

14 any requirement of title VII of the Clean Air

15 Act, including—

16 (i) the shift from reliance upon fossil

17 fuels to other sources of energy, including

18 renewable energy, that results in the closing

19 of a facility or layoff of employees at a fa-

20 cility that mines, produces, processes, or

21 utilizes fossil fuels to generate electricity;

22 (ii) a substantial increase in the cost of

23 energy required for a manufacturing facil-

24 ity to produce items whose prices are com-

25 petitive in the marketplace, to the extent the

1 *cost is not offset by allowance allocation to*
2 *the facility pursuant to title VII of the*
3 *Clean Air Act; or*

4 *(iii) other documented occurrences that*
5 *the Secretary determines are indicators of*
6 *an adverse impact on an industry described*
7 *in subparagraph (A) as a result of any re-*
8 *quirement of title VII of the Clean Air Act.*

9 (2) *WORKERS IN PUBLIC AGENCIES.—A group of*
10 *workers in a public agency shall be certified by the*
11 *Secretary as eligible to apply for climate change ad-*
12 *justment assistance pursuant to a petition filed if the*
13 *Secretary determines that a significant number or*
14 *proportion of the workers in the public agency have*
15 *become totally or partially separated from employ-*
16 *ment, or are threatened to become totally or partially*
17 *separated as a result of any requirement of title VII*
18 *of the Clean Air Act.*

19 (3) *ADVERSELY AFFECTED SERVICE WORKERS.—*
20 *A group of workers shall be certified as eligible to*
21 *apply for climate change adjustment assistance pur-*
22 *suant to a petition filed if the Secretary determines*
23 *that—*

24 (A) *a significant number or proportion of*
25 *the service workers at an employment site where*

1 *a group of workers has been certified by the Sec-*
2 *retary as eligible to apply for adjustment assist-*
3 *ance under this part pursuant to paragraph (1)*
4 *have become totally or partially separated from*
5 *employment, or are threatened to become totally*
6 *or partially separated; and*

7 *(B) a loss of business in the firm providing*
8 *service workers to an employment site is directly*
9 *attributable to one or more of the documented oc-*
10 *currences listed in paragraph (1)(C).*

11 *(c) AUTHORITY TO INVESTIGATE AND COLLECT INFOR-*
12 *MATION.—*

13 *(1) IN GENERAL.—The Secretary shall, in deter-*
14 *mining whether to certify a group of workers under*
15 *subsection (d), obtain information the Secretary de-*
16 *termines to be necessary to make the certification,*
17 *through questionnaires and in such other manner as*
18 *the Secretary determines appropriate from—*

19 *(A) the workers' employer;*

20 *(B) officials of certified or recognized*
21 *unions or other duly authorized representatives*
22 *of the group of workers; or*

23 *(C) one-stop operators or one-stop partners*
24 *(as defined in section 101 of the Workforce In-*
25 *vestment Act of 1998 (29 U.S.C. 2801)); or*

1 (2) *VERIFICATION OF INFORMATION.*—*The Sec-*
2 *retary shall require an employer, union, or one-stop*
3 *operator or partner to certify all information ob-*
4 *tained under paragraph (1) from the employer,*
5 *union, or one-stop operator or partner (as the case*
6 *may be) on which the Secretary relies in making a*
7 *determination under subsection (d), unless the Sec-*
8 *retary has a reasonable basis for determining that*
9 *such information is accurate and complete without*
10 *being certified.*

11 (3) *PROTECTION OF CONFIDENTIAL INFORMA-*
12 *TION.*—*The Secretary may not release information*
13 *obtained under paragraph (1) that the Secretary con-*
14 *siders to be confidential business information unless*
15 *the employer submitting the confidential business in-*
16 *formation had notice, at the time of submission, that*
17 *the information would be released by the Secretary, or*
18 *the employer subsequently consents to the release of*
19 *the information. Nothing in this paragraph shall be*
20 *construed to prohibit the Secretary from providing*
21 *such confidential business information to a court in*
22 *camera or to another party under a protective order*
23 *issued by a court.*

24 (d) *DETERMINATION BY THE SECRETARY OF LABOR.*—

1 (1) *IN GENERAL.*—As soon as possible after the
2 date on which a petition is filed under subsection (a),
3 but in any event not later than 40 days after that
4 date, the Secretary, in consultation with the Secretary
5 of Energy and the Administrator, as necessary, shall
6 determine whether the petitioning group meets the re-
7 quirements of subsection (b) and shall issue a certifi-
8 cation of eligibility to apply for assistance under this
9 part covering workers in any group which meets such
10 requirements. Each certification shall specify the date
11 on which the total or partial separation began or
12 threatened to begin. Upon reaching a determination
13 on a petition, the Secretary shall promptly publish a
14 summary of the determination in the *Federal Register*
15 and on the website of the Department of Labor, to-
16 gether with the Secretary’s reasons for making such
17 determination.

18 (2) *ONE YEAR LIMITATION.*—A certification
19 under this section shall not apply to any worker
20 whose last total or partial separation from the em-
21 ployment site before the worker’s application under
22 section 426(a) occurred more than 1 year before the
23 date of the petition on which such certification was
24 granted.

1 (3) *REVOCATION OF CERTIFICATION.*—Whenever
2 the Secretary determines, with respect to any certifi-
3 cation of eligibility of the workers of an employment
4 site, that total or partial separations from such site
5 are no longer a result of the factors specified in sub-
6 section (b)(1), the Secretary shall terminate such cer-
7 tification and promptly have notice of such termi-
8 nation published in the Federal Register and on the
9 website of the Department of Labor, together with the
10 Secretary’s reasons for making such determination.
11 Such termination shall apply only with respect to
12 total or partial separations occurring after the termi-
13 nation date specified by the Secretary.

14 (e) *INDUSTRY NOTIFICATION OF ASSISTANCE.*—Upon
15 receiving a notification of a determination under subsection
16 (d) with respect to a domestic industry the Secretary of
17 Labor shall notify the representatives of the domestic indus-
18 try affected by the determination, employers publicly iden-
19 tified by name during the course of the proceeding relating
20 to the determination, and any certified or recognized union
21 or, to the extent practicable, other duly authorized rep-
22 resentative of workers employed by such representatives of
23 the domestic industry, of—

24 (1) *the adjustment allowances, training, and*
25 *other benefits available under this part;*

1 (2) *the manner in which to file a petition and*
2 *apply for such benefits; and*

3 (3) *the availability of assistance in filing such*
4 *petitions;*

5 (4) *notify the Governor of each State in which*
6 *one or more employers in such industry are located*
7 *of the Secretary's determination and the identity of*
8 *the employers; and*

9 (5) *upon request, provide any assistance that is*
10 *necessary to file a petition under subsection (a).*

11 (f) *BENEFIT INFORMATION TO WORKERS, PROVIDERS*
12 *OF TRAINING.—*

13 (1) *IN GENERAL.—The Secretary shall provide*
14 *full information to workers about the adjustment al-*
15 *lowances, training, and other benefits available under*
16 *this part and about the petition and application pro-*
17 *cedures, and the appropriate filing dates, for such al-*
18 *lowances, training and services. The Secretary shall*
19 *provide whatever assistance is necessary to enable*
20 *groups of workers to prepare petitions or applications*
21 *for program benefits. The Secretary shall make every*
22 *effort to insure that cooperating State agencies fully*
23 *comply with the agreements entered into under sec-*
24 *tion 426(a) and shall periodically review such com-*
25 *pliance. The Secretary shall inform the State Board*

1 *for Vocational Education or equivalent agency, the*
2 *one-stop operators or one-stop partners (as defined in*
3 *section 101 of the Workforce Investment Act of 1998*
4 *(29 U.S.C. 2801), and other public or private agen-*
5 *cies, institutions, and employers, as appropriate, of*
6 *each certification issued under subsection (d) and of*
7 *projections, if available, of the needs for training*
8 *under as a result of such certification.*

9 (2) *NOTICE BY MAIL.—The Secretary shall pro-*
10 *vide written notice through the mail of the benefits*
11 *available under this part to each worker whom the*
12 *Secretary has reason to believe is covered by a certifi-*
13 *cation made under subsection (d)—*

14 (A) *at the time such certification is made,*
15 *if the worker was partially or totally separated*
16 *from the adversely affected employment before*
17 *such certification, or—*

18 (B) *at the time of the total or partial sepa-*
19 *ration of the worker from the adversely affected*
20 *employment, if subparagraph (A) does not*
21 *apply.*

22 (3) *NEWSPAPERS; WEBSITE.—The Secretary*
23 *shall publish notice of the benefits available under*
24 *this part to workers covered by each certification*
25 *made under subsection (d) in newspapers of general*

1 *circulation in the areas in which such workers reside*
2 *and shall make such information available on the*
3 *website of the Department of Labor.*

4 **SEC. 426. PROGRAM BENEFITS.**

5 *(a) CLIMATE CHANGE ADJUSTMENT ALLOWANCE.—*

6 *(1) ELIGIBILITY.—Payment of a climate change*
7 *adjustment allowance shall be made to an adversely*
8 *affected worker covered by a certification under sec-*
9 *tion 425(b) who files an application for such allow-*
10 *ance for any week of unemployment which begins on*
11 *or after the date of such certification, if the following*
12 *conditions are met:*

13 *(A) Such worker's total or partial separa-*
14 *tion before the worker's application under this*
15 *part occurred—*

16 *(i) on or after the date, as specified in*
17 *the certification under which the worker is*
18 *covered, on which total or partial separa-*
19 *tion began or threatened to begin in the ad-*
20 *versely affected employment;*

21 *(ii) before the expiration of the 2-year*
22 *period beginning on the date on which the*
23 *determination under section 425(d) was*
24 *made; and*

1 (iii) before the termination date, if
2 any, determined pursuant to section
3 425(d)(3).

4 (B) Such worker had, in the 52-week period
5 ending with the week in which such total or par-
6 tial separation occurred, at least 26 weeks of
7 full-time employment or 1,040 hours of part time
8 employment in adversely affected employment,
9 or, if data with respect to weeks of employment
10 are not available, equivalent amounts of employ-
11 ment computed under regulations prescribed by
12 the Secretary. For the purposes of this para-
13 graph, any week in which such worker—

14 (i) is on employer-authorized leave for
15 purposes of vacation, sickness, injury, ma-
16 ternity, or inactive duty or active duty
17 military service for training;

18 (ii) does not work because of a dis-
19 ability that is compensable under a work-
20 men's compensation law or plan of a State
21 or the United States;

22 (iii) had his employment interrupted
23 in order to serve as a full-time representa-
24 tive of a labor organization in such firm; or

1 (iv) is on call-up for purposes of active
2 duty in a reserve status in the Armed
3 Forces of the United States, provided such
4 active duty is “Federal service” as defined
5 in section 8521(a)(1) of title 5, United
6 States Code,

7 shall be treated as a week of employment.

8 (C) Such worker is enrolled in a training
9 program approved by the Secretary under sub-
10 section (b)(2).

11 (2) *INELIGIBILITY FOR CERTAIN OTHER BENE-*
12 *FITS.—An adversely affected worker receiving a pay-*
13 *ment under this section shall be ineligible to receive*
14 *any other form of unemployment insurance for the*
15 *period in which such worker is receiving a climate*
16 *change adjustment allowance under this section.*

17 (3) *REVOCATION.—If—*

18 (A) *the Secretary determines that—*

19 (i) *the adversely affected worker—*

20 (I) *has failed to begin participa-*
21 *tion in the training program the en-*
22 *rollment in which meets the require-*
23 *ment of paragraph (1)(C); or*

1 (ii) has ceased to participate in
2 such training program before com-
3 pleting such training program; and

4 (iii) there is no justifiable cause for
5 such failure or cessation; or

6 (B) the certification made with respect to
7 such worker under section 425(d) is revoked
8 under paragraph (3) of such section,
9 no adjustment allowance may be paid to the adversely
10 affected worker under this part for the week in which
11 such failure, cessation, or revocation occurred, or any
12 succeeding week, until the adversely affected worker
13 begins or resumes participation in a training pro-
14 gram approved by the Secretary under section (b)(2).

15 (4) WAIVERS OF TRAINING REQUIREMENTS.—The
16 Secretary may issue a written statement to an ad-
17 versely affected worker waiving the requirement to be
18 enrolled in training described in subsection (b)(2) if
19 the Secretary determines that it is not feasible or ap-
20 propriate for the worker, because of 1 or more of the
21 following reasons:

22 (A) RECALL.—The worker has been notified
23 that the worker will be recalled by the employer
24 from which the separation occurred.

25 (B) MARKETABLE SKILLS.—

1 (i) *IN GENERAL.*—*The worker possesses*
2 *marketable skills for suitable employment*
3 *(as determined pursuant to an assessment*
4 *of the worker, which may include the*
5 *profiling system under section 303(j) of the*
6 *Social Security Act (42 U.S.C. 503(j)), car-*
7 *ried out in accordance with guidelines*
8 *issued by the Secretary) and there is a rea-*
9 *sonable expectation of employment at equiv-*
10 *alent wages in the foreseeable future.*

11 (ii) *MARKETABLE SKILLS DEFINED.*—
12 *For purposes of clause (i), the term “mar-*
13 *ketable skills” may include the possession of*
14 *a postgraduate degree from an institution of*
15 *higher education (as defined in section 102*
16 *of the Higher Education Act of 1965 (20*
17 *U.S.C. 1002)) or an equivalent institution,*
18 *or the possession of an equivalent post-*
19 *graduate certification in a specialized field.*

20 (C) *RETIREMENT.*—*The worker is within 2*
21 *years of meeting all requirements for entitlement*
22 *to either—*

23 (i) *old-age insurance benefits under*
24 *title II of the Social Security Act (42*

1 *U.S.C. 401 et seq.) (except for application*
2 *therefor); or*

3 *(ii) a private pension sponsored by an*
4 *employer or labor organization.*

5 *(D) HEALTH.—The worker is unable to*
6 *participate in training due to the health of the*
7 *worker, except that a waiver under this subpara-*
8 *graph shall not be construed to exempt a worker*
9 *from requirements relating to the availability for*
10 *work, active search for work, or refusal to accept*
11 *work under Federal or State unemployment com-*
12 *penetration laws.*

13 *(E) ENROLLMENT UNAVAILABLE.—The first*
14 *available enrollment date for the training of the*
15 *worker is within 60 days after the date of the de-*
16 *termination made under this paragraph, or, if*
17 *later, there are extenuating circumstances for the*
18 *delay in enrollment, as determined pursuant to*
19 *guidelines issued by the Secretary.*

20 *(F) TRAINING NOT AVAILABLE.—Training*
21 *described in subsection (b)(2) is not reasonably*
22 *available to the worker from either governmental*
23 *agencies or private sources (which may include*
24 *area career and technical education schools, as*
25 *defined in section 3 of the Carl D. Perkins Ca-*

1 *reer and Technical Education Act of 2006 (20*
2 *U.S.C. 2302), and employers), no training that*
3 *is suitable for the worker is available at a rea-*
4 *sonable cost, or no training funds are available.*

5 *(5) WEEKLY AMOUNTS.—The climate change ad-*
6 *justment allowance payable to an adversely affected*
7 *worker for a week of unemployment shall be an*
8 *amount equal to 70 percent of the average weekly*
9 *wage of such worker, but in no case shall such*
10 *amount exceed the average weekly wage for all work-*
11 *ers in the State where the adversely affected worker*
12 *resides.*

13 *(6) MAXIMUM DURATION OF BENEFITS.—An eli-*
14 *gible worker may receive a climate change adjustment*
15 *allowance under this subsection for a period of not*
16 *longer than 156 weeks.*

17 *(b) EMPLOYMENT SERVICES AND TRAINING.—*

18 *(1) INFORMATION AND EMPLOYMENT SERV-*
19 *ICES.—The Secretary shall make available, directly or*
20 *through agreements with the States under section*
21 *427(a) to adversely affected workers covered by a cer-*
22 *tification under section 425(a) the following informa-*
23 *tion and employment services:*

1 (A) *Comprehensive and specialized assess-*
2 *ment of skill levels and service needs, including*
3 *through—*

4 (i) *diagnostic testing and use of other*
5 *assessment tools; and*

6 (ii) *in-depth interviewing and evalua-*
7 *tion to identify employment barriers and*
8 *appropriate employment goals.*

9 (B) *Development of an individual employ-*
10 *ment plan to identify employment goals and ob-*
11 *jectives, and appropriate training to achieve*
12 *those goals and objectives.*

13 (C) *Information on training available in*
14 *local and regional areas, information on indi-*
15 *vidual counseling to determine which training is*
16 *suitable training, and information on how to*
17 *apply for such training.*

18 (D) *Information on training programs and*
19 *other services provided by a State pursuant to*
20 *title I of the Workforce Investment Act of 1998*
21 *and available in local and regional areas, infor-*
22 *mation on individual counseling to determine*
23 *which training is suitable training, and infor-*
24 *mation on how to apply for such training.*

1 (E) Information on how to apply for finan-
2 cial aid, including referring workers to edu-
3 cational opportunity centers described in section
4 402F of the Higher Education Act of 1965 (20
5 U.S.C. 1070a–16), where applicable, and noti-
6 fying workers that the workers may request fi-
7 nancial aid administrators at institutions of
8 higher education (as defined in section 102 of
9 such Act (20 U.S.C. 1002)) to use the adminis-
10 trators’ discretion under section 479A of such
11 Act (20 U.S.C. 1087tt) to use current year in-
12 come data, rather than preceding year income
13 data, for determining the amount of need of the
14 workers for Federal financial assistance under
15 title IV of such Act (20 U.S.C. 1070 et seq.).

16 (F) Short-term prevocational services, in-
17 cluding development of learning skills, commu-
18 nications skills, interviewing skills, punctuality,
19 personal maintenance skills, and professional
20 conduct to prepare individuals for employment
21 or training.

22 (G) Individual career counseling, including
23 job search and placement counseling, during the
24 period in which the individual is receiving a cli-
25 mate change adjustment allowance or training

1 under this part, and after receiving such train-
2 ing for purposes of job placement.

3 (H) Provision of employment statistics in-
4 formation, including the provision of accurate
5 information relating to local, regional, and na-
6 tional labor market areas, including—

7 (i) job vacancy listings in such labor
8 market areas;

9 (ii) information on jobs skills nec-
10 essary to obtain jobs identified in job va-
11 cancy listings described in subparagraph
12 (A);

13 (iii) information relating to local occu-
14 pations that are in demand and earnings
15 potential of such occupations; and

16 (iv) skills requirements for local occu-
17 pations described in subparagraph (C).

18 (I) Information relating to the availability
19 of supportive services, including services relating
20 to child care, transportation, dependent care,
21 housing assistance, and need-related payments
22 that are necessary to enable an individual to
23 participate in training.

24 (2) TRAINING.—

1 (A) *APPROVAL OF AND PAYMENT FOR*
2 *TRAINING.—If the Secretary determines, with re-*
3 *spect to an adversely affected worker that—*

4 (i) *there is no suitable employment*
5 *(which may include technical and profes-*
6 *sional employment) available for an ad-*
7 *versely affected worker;*

8 (ii) *the worker would benefit from ap-*
9 *propriate training;*

10 (iii) *there is a reasonable expectation*
11 *of employment following completion of such*
12 *training;*

13 (iv) *training approved by the Sec-*
14 *retary is reasonably available to the worker*
15 *from either governmental agencies or pri-*
16 *vate sources (including area career and*
17 *technical education schools, as defined in*
18 *section 3 of the Carl D. Perkins Career and*
19 *Technical Education Act of 2006, and em-*
20 *ployers);*

21 (v) *the worker is qualified to undertake*
22 *and complete such training; and*

23 (vi) *such training is suitable for the*
24 *worker and available at a reasonable cost,*

1 *the Secretary shall approve such training for the*
2 *worker. Upon such approval, the worker shall be*
3 *entitled to have payment of the costs of such*
4 *training (subject to the limitations imposed by*
5 *this section) paid on the worker's behalf by the*
6 *Secretary directly or through a voucher system.*

7 *(B) DISTRIBUTION.—The Secretary shall es-*
8 *tablish procedures for the distribution of the*
9 *funds to States to carry out the training pro-*
10 *grams approved under this paragraph, and shall*
11 *make an initial distribution of the funds made*
12 *available as soon as practicable after the begin-*
13 *ning of each fiscal year.*

14 *(C) ADDITIONAL RULES REGARDING AP-*
15 *PROVAL OF AND PAYMENT FOR TRAINING.—*

16 *(i) For purposes of applying subpara-*
17 *graph (A)(iii), a reasonable expectation of*
18 *employment does not require that employ-*
19 *ment opportunities for a worker be avail-*
20 *able, or offered, immediately upon the com-*
21 *pletion of training approved under such*
22 *subparagraph.*

23 *(ii) If the costs of training an ad-*
24 *versely affected worker are paid by the Sec-*
25 *retary under subparagraph (A), no other*

1 *payment for such costs may be made under*
2 *any other provision of Federal law. No pay-*
3 *ment may be made under subparagraph (A)*
4 *of the costs of training an adversely affected*
5 *worker or an adversely affected incumbent*
6 *worker if such costs—*

7 *(I) have already been paid under*
8 *any other provision of Federal law; or*

9 *(II) are reimbursable under any*
10 *other provision of Federal law and a*
11 *portion of such costs have already been*
12 *paid under such other provision of*
13 *Federal law.*

14 *The provisions of this clause shall not apply*
15 *to, or take into account, any funds provided*
16 *under any other provision of Federal law*
17 *which are used for any purpose other than*
18 *the direct payment of the costs incurred in*
19 *training a particular adversely affected*
20 *worker, even if such use has the effect of in-*
21 *directly paying or reducing any portion of*
22 *the costs involved in training the adversely*
23 *affected worker.*

1 (D) *TRAINING PROGRAMS.*—*The training*
2 *programs that may be approved under subpara-*
3 *graph (A) include—*

4 (i) *employer-based training, includ-*
5 *ing—*

6 (I) *on-the-job training if approved*
7 *by the Secretary under subsection (c);*
8 *and*

9 (II) *joint labor-management ap-*
10 *prenticeship programs;*

11 (ii) *any training program provided by*
12 *a State pursuant to title I of the Workforce*
13 *Investment Act of 1998;*

14 (iii) *any training program approved*
15 *by a private industry council established*
16 *under section 102 of such Act;*

17 (iv) *any programs in career and tech-*
18 *nical education described in section 3(5) of*
19 *the Carl D. Perkins Career and Technical*
20 *Education Act of 2006;*

21 (v) *any program of remedial edu-*
22 *cation;*

23 (vi) *any program of prerequisite edu-*
24 *cation or coursework required to enroll in*

1 *training that may be approved under this*
2 *paragraph;*

3 *(vii) any training program for which*
4 *all, or any portion, of the costs of training*
5 *the worker are paid—*

6 *(I) under any Federal or State*
7 *program other than this part; or*

8 *(II) from any source other than*
9 *this part;*

10 *(viii) any training program or*
11 *coursework at an accredited institution of*
12 *higher education (described in section 102*
13 *of the Higher Education Act of 1965 (20*
14 *U.S.C. 1002)), including a training pro-*
15 *gram or coursework for the purpose of—*

16 *(I) obtaining a degree or certifi-*
17 *cation; or*

18 *(II) completing a degree or certifi-*
19 *cation that the worker had previously*
20 *begun at an accredited institution of*
21 *higher education; and*

22 *(ix) any other training program ap-*
23 *proved by the Secretary.*

24 *(3) SUPPLEMENTAL ASSISTANCE.—The Secretary may,*
25 *as appropriate, authorize supplemental assistance that is*

1 *necessary to defray reasonable transportation and subsist-*
2 *ence expenses for separate maintenance in a case in which*
3 *training for a worker is provided in a facility that is not*
4 *within commuting distance of the regular place of residence*
5 *of the worker.*

6 (c) *ON-THE-JOB TRAINING REQUIREMENTS.—*

7 (1) *IN GENERAL.—The Secretary may approve*
8 *on-the-job training for any adversely affected worker*
9 *if—*

10 (A) *the Secretary determines that on-the-job*
11 *training—*

12 (i) *can reasonably be expected to lead*
13 *to suitable employment with the employer*
14 *offering the on-the-job training;*

15 (ii) *is compatible with the skills of the*
16 *worker;*

17 (iii) *includes a curriculum through*
18 *which the worker will gain the knowledge or*
19 *skills to become proficient in the job for*
20 *which the worker is being trained; and*

21 (iv) *can be measured by benchmarks*
22 *that indicate that the worker is gaining*
23 *such knowledge or skills; and*

1 (B) *the State determines that the on-the-job*
2 *training program meets the requirements of*
3 *clauses (iii) and (iv) of subparagraph (A).*

4 (2) *MONTHLY PAYMENTS.—The Secretary shall*
5 *pay the costs of on-the-job training approved under*
6 *paragraph (1) in monthly installments.*

7 (3) *CONTRACTS FOR ON-THE-JOB TRAINING.—*

8 (A) *IN GENERAL.—The Secretary shall en-*
9 *sure, in entering into a contract with an em-*
10 *ployer to provide on-the-job training to a worker*
11 *under this subsection, that the skill requirements*
12 *of the job for which the worker is being trained,*
13 *the academic and occupational skill level of the*
14 *worker, and the work experience of the worker*
15 *are taken into consideration.*

16 (B) *TERM OF CONTRACT.—Training under*
17 *any such contract shall be limited to the period*
18 *of time required for the worker receiving on-the-*
19 *job training to become proficient in the job for*
20 *which the worker is being trained, but may not*
21 *exceed 156 weeks in any case.*

22 (4) *EXCLUSION OF CERTAIN EMPLOYERS.—The*
23 *Secretary shall not enter into a contract for on-the-*
24 *job training with an employer that exhibits a pattern*

1 of failing to provide workers receiving on-the-job
2 training from the employer with—

3 (A) continued, long-term employment as
4 regular employees; and

5 (B) wages, benefits, and working conditions
6 that are equivalent to the wages, benefits, and
7 working conditions provided to regular employ-
8 ees who have worked a similar period of time
9 and are doing the same type of work as workers
10 receiving on-the-job training from the employer.

11 (d) *ADMINISTRATIVE AND EMPLOYMENT SERVICES*

12 *FUNDING.*—

13 (1) *ADMINISTRATIVE FUNDING.*—*In addition to*
14 *any funds made available to a State to carry out this*
15 *section for a fiscal year, the State shall receive for the*
16 *fiscal year a payment in an amount that is equal to*
17 *15 percent of the amount of such funds and shall—*

18 (A) *use not more than $\frac{2}{3}$ of such payment*
19 *for the administration of the climate change ad-*
20 *justment assistance for workers program under*
21 *this part, including for—*

22 (i) *processing waivers of training re-*
23 *quirements under subsection (a)(4); and*

24 (ii) *collecting, validating, and report-*
25 *ing data required under this part; and*

1 (B) use not less than $\frac{1}{3}$ of such payment for
2 information and employment services under sub-
3 section (b)(1).

4 (2) *EMPLOYMENT SERVICES FUNDING.*—

5 (A) *IN GENERAL.*—*In addition to any funds*
6 *made available to a State to carry out subsection*
7 *(b)(2) and the payment under paragraph (1) for*
8 *a fiscal year, the Secretary shall provide to the*
9 *State for the fiscal year a reasonable payment*
10 *for the purpose of providing employment and*
11 *services under subsection (b)(1).*

12 (B) *VOLUNTARY RETURN OF FUNDS.*—*A*
13 *State that receives a payment under subpara-*
14 *graph (A) may decline or otherwise return such*
15 *payment to the Secretary.*

16 (e) *JOB SEARCH ALLOWANCES.*—*The Secretary of*
17 *Labor may provide adversely affected workers a one-time*
18 *job search allowance in accordance with regulations pre-*
19 *scribed by the Secretary. Any job search allowance provided*
20 *shall be available only under the following circumstances*
21 *and conditions:*

22 (1) *The worker is no longer eligible for the cli-*
23 *mate change adjustment allowance under subsection*
24 *(a) and has completed the training program required*
25 *by subsection (a)(1)(E).*

1 (2) *The Secretary determines that the worker*
2 *cannot reasonably be expected to secure suitable em-*
3 *ployment in the commuting area in which the worker*
4 *resides.*

5 (3) *An allowance granted shall provide reim-*
6 *bursement to the worker of all necessary job search ex-*
7 *penditures as prescribed by the Secretary in regulations.*
8 *Such reimbursement under this subsection may not*
9 *exceed \$1,500 for any worker.*

10 (f) *RELOCATION ALLOWANCE AUTHORIZED.—*

11 (1) *IN GENERAL.—Any adversely affected worker*
12 *covered by a certification issued under section 425*
13 *may file an application for a relocation allowance*
14 *with the Secretary, and the Secretary may grant the*
15 *relocation allowance, subject to the terms and condi-*
16 *tions of this subsection.*

17 (2) *CONDITIONS FOR GRANTING ALLOWANCE.—A*
18 *relocation allowance may be granted if all of the fol-*
19 *lowing terms and conditions are met:*

20 (A) *ASSIST AN ADVERSELY AFFECTED*
21 *WORKER.—The relocation allowance will assist*
22 *an adversely affected worker in relocating within*
23 *the United States.*

24 (B) *LOCAL EMPLOYMENT NOT AVAILABLE.—*
25 *The Secretary determines that the worker cannot*

1 *reasonably be expected to secure suitable employ-*
2 *ment in the commuting area in which the worker*
3 *resides.*

4 (C) *TOTAL SEPARATION.*—*The worker is to-*
5 *tally separated from employment at the time re-*
6 *location commences.*

7 (D) *SUITABLE EMPLOYMENT OBTAINED.*—
8 *The worker—*

9 (i) *has obtained suitable employment*
10 *affording a reasonable expectation of long-*
11 *term duration in the area in which the*
12 *worker wishes to relocate; or*

13 (ii) *has obtained a bona fide offer of*
14 *such employment.*

15 (E) *APPLICATION.*—*The worker filed an ap-*
16 *plication with the Secretary at such time and in*
17 *such manner as the Secretary shall specify by*
18 *regulation.*

19 (3) *AMOUNT OF ALLOWANCE.*—*The relocation al-*
20 *lowance granted to a worker under paragraph (1) in-*
21 *cludes—*

22 (A) *all reasonable and necessary expenses*
23 *(including, subsistence and transportation ex-*
24 *penditures at levels not exceeding amounts prescribed*
25 *by the Secretary in regulations) incurred in*

1 *transporting the worker, the worker's family,*
2 *and household effects; and*

3 *(B) a lump sum equivalent to 3 times the*
4 *worker's average weekly wage, up to a maximum*
5 *payment of \$1,500.*

6 (4) *LIMITATIONS.—A relocation allowance may*
7 *not be granted to a worker unless—*

8 *(A) the relocation occurs within 182 days*
9 *after the filing of the application for relocation*
10 *assistance; or*

11 *(B) the relocation occurs within 182 days*
12 *after the conclusion of training, if the worker en-*
13 *tered a training program approved by the Sec-*
14 *retary under subsection (b)(2).*

15 (g) *HEALTH INSURANCE CONTINUATION.—Not later*
16 *than 1 year after the date of enactment of this part, the*
17 *Secretary of Labor shall prescribe regulations to provide,*
18 *for the period in which an adversely affected worker is par-*
19 *ticipating in a training program described in subsection*
20 *(b)(2), 80 percent of the monthly premium of any health*
21 *insurance coverage that an adversely affected worker was*
22 *receiving from such worker's employer prior to the separa-*
23 *tion from employment described in section 425(b), to be*
24 *paid to any health care insurance plan designated by the*

1 *adversely affected worker receiving an allowance under this*
2 *section.*

3 **SEC. 427. GENERAL PROVISIONS.**

4 *(a) AGREEMENTS WITH STATES.—*

5 *(1) IN GENERAL.—The Secretary is authorized*
6 *on behalf of the United States to enter into an agree-*
7 *ment with any State, or with any State agency (re-*
8 *ferred to in this section as “cooperating States” and*
9 *“cooperating States agencies” respectively). Under*
10 *such an agreement, the cooperating State agency—*

11 *(A) as agent of the United States, shall re-*
12 *ceive applications for, and shall provide, pay-*
13 *ments on the basis provided in this part;*

14 *(B) in accordance with paragraph (6), shall*
15 *make available to adversely affected workers cov-*
16 *ered by a certification under section 425(d) the*
17 *employment services described in section*
18 *426(b)(1);*

19 *(C) shall make any certifications required*
20 *under section 425(d);*

21 *(D) shall otherwise cooperate with the Sec-*
22 *retary and with other State and Federal agencies*
23 *in providing payments and services under this*
24 *part.*

1 *Each agreement under this section shall provide the*
2 *terms and conditions upon which the agreement may*
3 *be amended, suspended, or terminated.*

4 (2) *FORM AND MANNER OF DATA.—Each agree-*
5 *ment under this section shall—*

6 (A) *provide the Secretary with the authority*
7 *to collect any data the Secretary determines nec-*
8 *essary to meet the requirements of this part; and*

9 (B) *specify the form and manner in which*
10 *any such data requested by the Secretary shall be*
11 *reported.*

12 (3) *RELATIONSHIP TO UNEMPLOYMENT INSUR-*
13 *ANCE.—Each agreement under this section shall pro-*
14 *vide that an adversely affected worker receiving a cli-*
15 *mate change adjustment allowance under this part*
16 *shall not be eligible for unemployment insurance oth-*
17 *erwise payable to such worker under the laws of the*
18 *State.*

19 (4) *REVIEW.—A determination by a cooperating*
20 *State agency with respect to entitlement to program*
21 *benefits under an agreement is subject to review in*
22 *the same manner and to the same extent as deter-*
23 *minations under the applicable State law and only in*
24 *that manner and to that extent.*

1 (5) *COORDINATION.*—Any agreement entered into
2 under this section shall provide for the coordination
3 of the administration of the provisions for employ-
4 ment services, training, and supplemental assistance
5 under section 426 and under title I of the Workforce
6 Investment Act of 1998 upon such terms and condi-
7 tions as are established by the Secretary in consulta-
8 tion with the States and set forth in such agreement.
9 Any agency of the State jointly administering such
10 provisions under such agreement shall be considered
11 to be a cooperating State agency for purposes of this
12 part.

13 (6) *RESPONSIBILITIES OF COOPERATING AGEN-*
14 *CIES.*—Each cooperating State agency shall, in car-
15 rying out paragraph (1)(B)—

16 (A) advise each worker who applies for un-
17 employment insurance of the benefits under this
18 part and the procedures and deadlines for apply-
19 ing for such benefits;

20 (B) facilitate the early filing of petitions
21 under section 425(a) for any workers that the
22 agency considers are likely to be eligible for bene-
23 fits under this part;

24 (C) advise each adversely affected worker to
25 apply for training under section 426(b) before,

1 or at the same time, the worker applies for cli-
2 mate change adjustment allowances under sec-
3 tion 426(a);

4 (D) perform outreach to, intake of, and ori-
5 entation for adversely affected workers and ad-
6 versely affected incumbent workers covered by a
7 certification under section 426(a) with respect to
8 assistance and benefits available under this part;

9 (E) make employment services described in
10 section 426(b)(1) available to adversely affected
11 workers and adversely affected incumbent work-
12 ers covered by a certification under section
13 425(d) and, if funds provided to carry out this
14 part are insufficient to make such services avail-
15 able, make arrangements to make such services
16 available through other Federal programs; and

17 (F) provide the benefits and reemployment
18 services under this part in a manner that is nec-
19 essary for the proper and efficient administra-
20 tion of this part, including the use of state agen-
21 cy personnel employed in accordance with a
22 merit system of personnel administration stand-
23 ards, including—

24 (i) making determinations of eligibility
25 for, and payment of, climate change read-

1 *justment allowances and health care benefit*
2 *replacement amounts;*

3 *(ii) developing recommendations re-*
4 *garding payments as a bridge to retirement*
5 *and lump sum payments to pension plans*
6 *in accordance with this subsection; and*

7 *(iii) the provision of reemployment*
8 *services to eligible workers, including refer-*
9 *ral to training services.*

10 *(7) In order to promote the coordination of work-*
11 *force investment activities in each State with activi-*
12 *ties carried out under this part, any agreement en-*
13 *tered into under this section shall provide that the*
14 *State shall submit to the Secretary, in such form as*
15 *the Secretary may require, the description and infor-*
16 *mation described in paragraphs (8) and (14) of sec-*
17 *tion 112(b) of the Workforce Investment Act of 1998*
18 *(29 U.S.C. 2822(b)) and a description of the State's*
19 *rapid response activities under section 221(a)(2)(A).*

20 *(8) CONTROL MEASURES.—*

21 *(A) IN GENERAL.—The Secretary shall re-*
22 *quire each cooperating State and cooperating*
23 *State agency to implement effective control meas-*
24 *ures and to effectively oversee the operation and*
25 *administration of the climate change adjustment*

1 *assistance program under this part, including by*
2 *means of monitoring the operation of control*
3 *measures to improve the accuracy and timeliness*
4 *of the data being collected and reported.*

5 *(B) DEFINITION.—For purposes of subpara-*
6 *graph (A), the term “control measures” means*
7 *measures that—*

8 *(i) are internal to a system used by a*
9 *State to collect data; and*

10 *(ii) are designed to ensure the accuracy*
11 *and verifiability of such data.*

12 *(9) DATA REPORTING.—*

13 *(A) IN GENERAL.—Any agreement entered*
14 *into under this section shall require the cooper-*
15 *ating State or cooperating State agency to report*
16 *to the Secretary on a quarterly basis comprehen-*
17 *sive performance accountability data, to consist*
18 *of—*

19 *(i) the core indicators of performance*
20 *described in subparagraph (B)(i);*

21 *(ii) the additional indicators of per-*
22 *formance described in subparagraph (B)(ii),*
23 *if any; and*

24 *(iii) a description of efforts made to*
25 *improve outcomes for workers under the cli-*

1 *mate change adjustment assistance pro-*
2 *gram.*

3 *(B) CORE INDICATORS DESCRIBED.—*

4 *(i) IN GENERAL.—The core indicators*
5 *of performance described in this subpara-*
6 *graph are—*

7 *(I) the percentage of workers re-*
8 *ceiving benefits under this part who*
9 *are employed during the second cal-*
10 *endar quarter following the calendar*
11 *quarter in which the workers cease re-*
12 *ceiving such benefits;*

13 *(II) the percentage of such workers*
14 *who are employed in each of the third*
15 *and fourth calendar quarters following*
16 *the calendar quarter in which the*
17 *workers cease receiving such benefits;*
18 *and*

19 *(III) the earnings of such workers*
20 *in each of the third and fourth cal-*
21 *endar quarters following the calendar*
22 *quarter in which the workers cease re-*
23 *ceiving such benefits.*

24 *(ii) ADDITIONAL INDICATORS.—The*
25 *Secretary and a cooperating State or co-*

1 *operating State agency may agree upon ad-*
2 *ditional indicators of performance for the*
3 *climate change adjustment assistance pro-*
4 *gram under this part, as appropriate.*

5 *(C) STANDARDS WITH RESPECT TO RELI-*
6 *ABILITY OF DATA.—In preparing the quarterly*
7 *report required by subparagraph (A), each co-*
8 *operating State or cooperating State agency*
9 *shall establish procedures that are consistent*
10 *with guidelines to be issued by the Secretary to*
11 *ensure that the data reported are valid and reli-*
12 *able.*

13 *(10) VERIFICATION OF ELIGIBILITY FOR PRO-*
14 *GRAM BENEFITS.—*

15 *(A) IN GENERAL.—An agreement under this*
16 *section shall provide that the State shall periodi-*
17 *cally redetermine that a worker receiving benefits*
18 *under this part who is not a citizen or national*
19 *of the United States remains in a satisfactory*
20 *immigration status. Once satisfactory immigra-*
21 *tion status has been initially verified through the*
22 *immigration status verification system described*
23 *in section 1137(d) of the Social Security Act (42*
24 *U.S.C. 1320b-7(d)) for purposes of establishing a*
25 *worker's eligibility for unemployment compensa-*

1 *tion, the State shall reverify the worker's immi-*
2 *gration status if the documentation provided*
3 *during initial verification will expire during the*
4 *period in which that worker is potentially eligi-*
5 *ble to receive benefits under this part. The State*
6 *shall conduct such redetermination in a timely*
7 *manner, utilizing the immigration status*
8 *verification system described in section 1137(d)*
9 *of the Social Security Act (42 U.S.C. 1320b-*
10 *7(d)).*

11 *(B) PROCEDURES.—The Secretary shall es-*
12 *tablish procedures to ensure the uniform applica-*
13 *tion by the States of the requirements of this*
14 *paragraph.*

15 *(b) ADMINISTRATION ABSENT STATE AGREEMENT.—*

16 *(1) In any State where there is no agreement in*
17 *force between a State or its agency under subsection*
18 *(a), the Secretary shall promulgate regulations for the*
19 *performance of all necessary functions under section*
20 *426, including provision for a fair hearing for any*
21 *worker whose application for payments is denied.*

22 *(2) A final determination under paragraph (1)*
23 *with respect to entitlement to program benefits under*
24 *section 426 is subject to review by the courts in the*
25 *same manner and to the same extent as is provided*

1 *by section 205(g) of the Social Security Act (42*
2 *U.S.C. 405(g)).*

3 (c) *PROHIBITION ON CONTRACTING WITH PRIVATE*
4 *ENTITIES.—Neither the Secretary nor a State may contract*
5 *with any private for-profit or nonprofit entity for the ad-*
6 *ministration of the climate change adjustment assistance*
7 *program under this part.*

8 (d) *PAYMENT TO THE STATES.—*

9 (1) *IN GENERAL.—The Secretary shall from time*
10 *to time certify to the Secretary of the Treasury for*
11 *payment to each cooperating State the sums necessary*
12 *to enable such State as agent of the United States to*
13 *make payments provided for by this part.*

14 (2) *RESTRICTION.—All money paid a State*
15 *under this subsection shall be used solely for the pur-*
16 *poses for which it is paid; and money so paid which*
17 *is not used for such purposes shall be returned, at the*
18 *time specified in the agreement under this section, to*
19 *the Secretary of the Treasury.*

20 (3) *BONDS.—Any agreement under this section*
21 *may require any officer or employee of the State cer-*
22 *tifying payments or disbursing funds under the agree-*
23 *ment or otherwise participating in the performance of*
24 *the agreement, to give a surety bond to the United*
25 *States in such amount as the Secretary may deem*

1 *necessary, and may provide for the payment of the*
2 *cost of such bond from funds for carrying out the pur-*
3 *poses of this part.*

4 *(e) LABOR STANDARDS.—*

5 *(1) PROHIBITION ON DISPLACEMENT.—An indi-*
6 *vidual in an apprenticeship program or on-the-job*
7 *training program under this part shall not displace*
8 *(including a partial displacement, such as a reduc-*
9 *tion in the hours of non-overtime work, wages, or em-*
10 *ployment benefits) any employed employee.*

11 *(2) PROHIBITION ON IMPAIRMENT OF CON-*
12 *TRACTS.—An apprenticeship program or on-the-job*
13 *training program under this Act shall not impair an*
14 *existing contract for services or collective bargaining*
15 *agreement, and no such activity that would be incon-*
16 *sistent with the terms of a collective bargaining agree-*
17 *ment shall be undertaken without the written concur-*
18 *rence of the labor organization and employer con-*
19 *cerned.*

20 *(3) ADDITIONAL STANDARDS.—The Secretary, or*
21 *a State acting under an agreement described in sub-*
22 *section (a) may pay the costs of on-the-job training,*
23 *notwithstanding any other provision of this section,*
24 *only if—*

1 (A) *in the case of training which would be*
2 *inconsistent with the terms of a collective bar-*
3 *gaining agreement, the written concurrence of*
4 *the labor organization concerned has been ob-*
5 *tained;*

6 (B) *the job for which such adversely affected*
7 *worker is being trained is not being created in*
8 *a promotional line that will infringe in any way*
9 *upon the promotional opportunities of currently*
10 *employed individuals;*

11 (C) *such training is not for the same occu-*
12 *vation from which the worker was separated and*
13 *with respect to which such worker's group was*
14 *certified pursuant to section 425(d);*

15 (D) *the employer is provided reimbursement*
16 *of not more than 50 percent of the wage rate of*
17 *the participant, for the cost of providing the*
18 *training and additional supervision related to*
19 *the training; and*

20 (E) *the employer has not received payment*
21 *under with respect to any other on-the-job train-*
22 *ing provided by such employer which failed to*
23 *meet the requirements of subparagraphs (A)*
24 *through (D).*

1 (f) *DEFINITIONS.*—As used in this part the following
2 *definitions apply:*

3 (1) *The term “adversely affected employment”*
4 *means employment at an employment site, if workers*
5 *at such site are eligible to apply for adjustment as-*
6 *sistance under this part.*

7 (2) *The term “adversely affected worker” means*
8 *an individual who has been totally or partially sepa-*
9 *rated from employment and is eligible to apply for*
10 *adjustment assistance under this part.*

11 (3) *The term “average weekly wage” means ¹/₁₃*
12 *of the total wages paid to an individual in the quar-*
13 *ter in which the individual’s total wages were highest*
14 *among the first 4 of the last 5 completed calendar*
15 *quarters immediately before the quarter in which oc-*
16 *curs the week with respect to which the computation*
17 *is made. Such week shall be the week in which total*
18 *separation occurred, or, in cases where partial sepa-*
19 *ration is claimed, an appropriate week, as defined in*
20 *regulations prescribed by the Secretary.*

21 (4) *The term “average weekly hours” means the*
22 *average hours worked by the individual (excluding*
23 *overtime) in the employment from which he has been*
24 *or claims to have been separated in the 52 weeks (ex-*
25 *cluding weeks during which the individual was sick*

1 or on vacation) preceding the week specified in the
2 last sentence of paragraph (4).

3 (5) The term “benefit period” means, with re-
4 spect to an individual—

5 (A) the benefit year and any ensuing pe-
6 riod, as determined under applicable State law,
7 during which the individual is eligible for reg-
8 ular compensation, additional compensation, or
9 extended compensation; or

10 (B) the equivalent to such a benefit year or
11 ensuing period provided for under the applicable
12 Federal unemployment insurance law.

13 (6) The term “consumer goods manufacturing”
14 means the electrical equipment, appliance, and com-
15 ponent manufacturing industry and transportation
16 equipment manufacturing.

17 (7) The term “employment site” means a single
18 facility or site of employment.

19 (8) The term “energy-intensive manufacturing
20 industries” means all industrial sectors, entities, or
21 groups of entities that meet the energy or greenhouse
22 gas intensity criteria in section 765(b)(2)(A)(i) of the
23 Clean Air Act based on the most recent data avail-
24 able.

1 (9) *The term “energy producing and trans-*
2 *forming industries” means the coal mining industry,*
3 *oil and gas extraction, electricity power generation,*
4 *transmission and distribution, and natural gas dis-*
5 *tribution.*

6 (10) *The term “industries dependent on energy*
7 *industries” means rail transportation and pipeline*
8 *transportation.*

9 (11) *The term “on-the-job training” means*
10 *training provided by an employer to an individual*
11 *who is employed by the employer.*

12 (12) *The terms “partial separation” and “par-*
13 *tially separated” refer, with respect to an individual*
14 *who has not been totally separated, that such indi-*
15 *vidual has had—*

16 (A) *his or her hours of work reduced to 80*
17 *percent or less of his average weekly hours in ad-*
18 *versely affected employment; and*

19 (B) *his or her wages reduced to 80 percent*
20 *or less of his average weekly wage in such ad-*
21 *versely affected employment.*

22 (13) *The term “public agency” means a depart-*
23 *ment or agency of a State or political subdivision of*
24 *a State or of the Federal government.*

1 (14) *The term “Secretary” means the Secretary*
2 *of Labor.*

3 (15) *The term “service workers” means workers*
4 *supplying support or auxiliary services to an employ-*
5 *ment site.*

6 (16) *The term “State” includes the District of*
7 *Columbia and the Commonwealth of Puerto Rico; and*
8 *the term “United States” when used in the geo-*
9 *graphical sense includes such Commonwealth.*

10 (17) *The term “State agency” means the agency*
11 *of the State which administers the State law.*

12 (18) *The term “State law” means the unemploy-*
13 *ment insurance law of the State approved by the Sec-*
14 *retary of Labor under section 3304 of the Internal*
15 *Revenue Code of 1954.*

16 (19) *The terms “total separation” and “totally*
17 *separated” refer to the layoff or severance of an indi-*
18 *vidual from employment with an employer in which*
19 *adversely affected employment exists.*

20 (20) *The term “unemployment insurance” means*
21 *the unemployment compensation payable to an indi-*
22 *vidual under any State law or Federal unemployment*
23 *compensation law, including chapter 85 of title 5,*
24 *United States Code, and the Railroad Unemployment*
25 *Insurance Act. The terms “regular compensation”,*

1 “*additional compensation*”, and “*extended compensa-*
2 *tion*” have the same respective meanings that are
3 given them in section 205(2), (3), and (4) of the *Fed-*
4 *eral-State Extended Unemployment Compensation*
5 *Act of 1970 (26 U.S.C. 3304 note.)*

6 (21) *The term “week” means a week as defined*
7 *in the applicable State law.*

8 (22) *The term “week of unemployment” means a*
9 *week of total, part-total, or partial unemployment as*
10 *determined under the applicable State law or Federal*
11 *unemployment insurance law.*

12 (g) *SPECIAL RULE WITH RESPECT TO MILITARY*
13 *SERVICE.—*

14 (1) *IN GENERAL.—Notwithstanding any other*
15 *provision of this part, the Secretary may waive any*
16 *requirement of this part that the Secretary determines*
17 *is necessary to ensure that an adversely affected work-*
18 *er who is a member of a reserve component of the*
19 *Armed Forces and serves a period of duty described*
20 *in paragraph (2) is eligible to receive a climate*
21 *change adjustment allowance, training, and other*
22 *benefits under this part in the same manner and to*
23 *the same extent as if the worker had not served the*
24 *period of duty.*

1 (2) *PERIOD OF DUTY DESCRIBED.*—*An adversely*
2 *affected worker serves a period of duty described in*
3 *this paragraph if, before completing training under*
4 *this part, the worker—*

5 (A) *serves on active duty for a period of*
6 *more than 30 days under a call or order to ac-*
7 *tive duty of more than 30 days; or*

8 (B) *in the case of a member of the Army*
9 *National Guard of the United States or Air Na-*
10 *tional Guard of the United States, performs full-*
11 *time National Guard duty under section 502(f)*
12 *of title 32, United States Code, for 30 consecutive*
13 *days or more when authorized by the President*
14 *or the Secretary of Defense for the purpose of re-*
15 *sponding to a national emergency declared by*
16 *the President and supported by Federal funds.*

17 (h) *FRAUD AND RECOVERY OF OVERPAYMENTS.*—

18 (1) *RECOVERY OF PAYMENTS TO WHICH AN INDI-*
19 *VIDUAL WAS NOT ENTITLED.*—*If the Secretary or a*
20 *court of competent jurisdiction determines that any*
21 *person has received any payment under this part to*
22 *which the individual was not entitled, such indi-*
23 *vidual shall be liable to repay such amount to the*
24 *Secretary, as the case may be, except that the Sec-*

1 *retary shall waive such repayment if such agency or*
2 *the Secretary determines that—*

3 *(A) the payment was made without fault on*
4 *the part of such individual; and*

5 *(B) requiring such repayment would cause*
6 *a financial hardship for the individual (or the*
7 *individual's household, if applicable) when tak-*
8 *ing into consideration the income and resources*
9 *reasonably available to the individual (or house-*
10 *hold) and other ordinary living expenses of the*
11 *individual (or household).*

12 *(2) MEANS OF RECOVERY.—Unless an overpay-*
13 *ment is otherwise recovered, or waived under para-*
14 *graph (1), the Secretary shall recover the overpay-*
15 *ment by deductions from any sums payable to such*
16 *person under this part, under any Federal unemploy-*
17 *ment compensation law or other Federal law admin-*
18 *istered by the Secretary which provides for the pay-*
19 *ment of assistance or an allowance with respect to*
20 *unemployment. Any amount recovered under this sec-*
21 *tion shall be returned to the Treasury of the United*
22 *States.*

23 *(3) PENALTIES FOR FRAUD.—Any person who—*

24 *(A) makes a false statement of a material*
25 *fact knowing it to be false, or knowingly fails to*

1 *disclose a material fact, for the purpose of ob-*
2 *taining or increasing for that person or for any*
3 *other person any payment authorized to be fur-*
4 *nished under this part; or*

5 *(B) makes a false statement of a material*
6 *fact knowing it to be false, or knowingly fails to*
7 *disclose a material fact, when providing infor-*
8 *mation to the Secretary during an investigation*
9 *of a petition under section 425(c),*

10 *shall be imprisoned for not more than one year, or fined*
11 *under title 18, United States Code, or both, and be ineligible*
12 *for any further payments under this part.*

13 *(i) REGULATIONS.—The Secretary shall prescribe such*
14 *regulations as may be necessary to carry out the provisions*
15 *of this part.*

16 *(j) STUDY ON OLDER WORKERS.—The Secretary shall*
17 *conduct a study examine the circumstances of older ad-*
18 *versely affected workers and the ability of such workers to*
19 *access their retirement benefits. The Secretary shall trans-*
20 *mit a report to Congress not later than 2 years after the*
21 *date of enactment of this part on the findings of the study*
22 *and the Secretary's recommendations on how to ensure that*
23 *adversely affected workers within 2 years of retirement are*
24 *able to access their retirement benefits.*

1 **[(k) SPENDING LIMIT.—***For each fiscal year, the total*
 2 *amount of funds disbursed for the purposes described in sec-*
 3 *tion 426 shall not exceed the amount deposited in that fiscal*
 4 *year into the Climate Change Worker Assistance Fund es-*
 5 *tablished under section [782(j)] of the Clean Air Act. The*
 6 *annual spending limit for any succeeding year shall be in-*
 7 *creased by the difference, if any, between the amount of the*
 8 *prior year’s disbursements and the spending limitation for*
 9 *that year. The Secretary shall promulgate rules to ensure*
 10 *that this spending limit is not exceeded. Such rules shall*
 11 *provide that workers who receive any of the benefits de-*
 12 *scribed in section 426 receive full benefits, and shall include*
 13 *the establishment of a waiting list for workers in the event*
 14 *that the requests for assistance exceed the spending limit.]*

15 **Subtitle C—Consumer Assistance**

16 **SEC. 431. ENERGY TAX CREDIT.**

17 *Subpart C of part IV of subchapter A of chapter 1*
 18 *of the Internal Revenue Code of 1986 is amended by insert-*
 19 *ing after section 36A the following new section:*

20 **“SEC. 36B. ENERGY TAX CREDIT.**

21 *“(a) ALLOWANCE OF CREDIT.—In the case of an eligi-*
 22 *ble individual, there shall be allowed as a credit against*
 23 *the tax imposed by this subtitle for the taxable year an*
 24 *amount equal to—*

1 “(1) for an eligible individual with applicable
2 income of less than \$6,000, the phase in rate times the
3 applicable income;

4 “(2) for an eligible individual with applicable
5 income that is greater than or equal to \$6,000 and is
6 less than or equal to the phase down amount, the
7 maximum energy tax credit; and

8 “(3) for an individual with applicable income
9 that exceeds the phase down amount, an amount
10 equal to—

11 “(A) the maximum energy tax credit minus;

12 or

13 “(B) the difference between the individual’s
14 applicable income and the phase down amount
15 multiplied by .2.

16 “(b) *COORDINATION WITH ENERGY REFUND RE-*
17 *CEIVED THROUGH STATE HUMAN SERVICE AGENCIES.—*

18 *The amount described in subsection (a) shall be reduced by*
19 *$\frac{1}{12}$ for each month in which the individual or his or her*
20 *spouse received a refund under section 432 of the American*
21 *Clean Energy and Security Act of 2009.*

22 “(1) *The Secretary of the Treasury shall promul-*
23 *gate regulations that instruct States on how to inform*
24 *adult individuals who receive a refund under section*
25 *432 of the American Clean Energy and Security Act*

1 of 2009 of the number of months he or she received
2 a refund and how such information shall be provided
3 to the Internal Revenue Service.

4 “(2) The Secretary of the Treasury shall estab-
5 lish a telephone and online system that allows an in-
6 dividual to inquire about the number of months she
7 or he received such a refund.

8 “(3) In the case of an individual that does not
9 report the number of months a refund was provided
10 under section 432 of the American Clean Energy and
11 Security Act of 2009 or recorded an incorrect number
12 of months, the Secretary of the Treasury shall adjust
13 the energy tax credit based on the information re-
14 ceived from States, provided that the Secretary of the
15 Treasury has made a determination that the informa-
16 tion meets a sufficient standard for accuracy.

17 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-
18 poses of this section:

19 “(1) ELIGIBLE INDIVIDUAL.—

20 “(A) IN GENERAL.—The term ‘eligible indi-
21 vidual’ means any individual other than—

22 “(i) any nonresident alien individual;

23 “(ii) any individual with respect to
24 whom a deduction under section 151 is al-
25 lowable to another taxpayer for a taxable

1 *year beginning in the calendar year in*
2 *which the individual's taxable year begins;*
3 *and*

4 “(iii) *an estate or trust.*

5 “(B) *IDENTIFICATION NUMBER REQUIRE-*
6 *MENT.—Such term shall not include any indi-*
7 *vidual who—*

8 “(i) *in the case of a return that is not*
9 *a joint return, does not include the social*
10 *security number of the individual; and*

11 “(ii) *in the case of joint return, does*
12 *not include the social security number of at*
13 *least one of the taxpayers on such return.*

14 *For purposes of the preceding sentence, the social*
15 *security number shall not include a TIN issued*
16 *by the Internal Revenue Service.*

17 “(2) *APPLICABLE INCOME.—Applicable income*
18 *means the larger of—*

19 “(A) *earned income as defined in section*
20 *32(c)(2), except that such term shall not include*
21 *net earnings from self-employment which are not*
22 *taken into account in computing taxable income;*
23 *and*

24 “(B) *adjusted gross income.*

1 “(3) *PHASE IN RATE.*—*The Secretary of the*
2 *Treasury shall compute the phase in rates each year*
3 *for the energy credit for joint returns and for returns*
4 *that are not filed jointly with respect to each relevant*
5 *number of qualifying individuals such that the phase*
6 *in rate equals the maximum energy tax credit divided*
7 *by \$6,000.*

8 “(4) *MAXIMUM ENERGY TAX CREDIT.*—

9 “(A) *IN GENERAL.*—

10 “(i) *The maximum energy tax credit*
11 *shall vary based on the number of individ-*
12 *uals in the tax filing unit.*

13 “(ii) *The maximum energy tax credit*
14 *for a filing unit of a particular size shall*
15 *be equal to the average annual reduction in*
16 *purchasing power for low-income households*
17 *of that household size, as calculated by the*
18 *Environmental Protection Agency, that re-*
19 *sults from the regulation of greenhouse gas*
20 *emissions under title VII of the Clean Air*
21 *Act.*

22 “(iii) *The Environmental Protection*
23 *Agency, in consultation with other appro-*
24 *priate Federal agencies, shall calculate the*
25 *maximum energy tax credit by August 31 of*

1 *each year for the following calendar year*
2 *using the most recent, reliable data avail-*
3 *able.*

4 “(B) *ENERGY TAX CREDIT CALCULATION.*—

5 “(i) *DISTRIBUTION.*—*For each cal-*
6 *endar year, the Environmental Protection*
7 *Agency shall determine pursuant to sub-*
8 *paragraph (B)(iii) the aggregate reduction*
9 *in purchasing power among all United*
10 *States households that results from the regu-*
11 *lation of greenhouse gas emissions under*
12 *title VII of the Clean Air Act and distribute*
13 *that aggregate reduction in purchasing*
14 *power among all United States households*
15 *based on—*

16 “(I) *households’ share of total con-*
17 *sumption by all households;*

18 “(II) *the carbon intensity and*
19 *covered-emissions intensity of house-*
20 *holds’ consumption; and*

21 “(III) *the share of households’ car-*
22 *bon and covered-emissions consump-*
23 *tion that is not financed by Federal*
24 *benefits subject to a cost of living ad-*

1 *justment that offsets increased carbon*
2 *costs.*

3 “(ii) *MAXIMUM ENERGY TAX CRED-*
4 *IT.—The maximum energy tax credit shall*
5 *be equal to the arithmetic mean value of the*
6 *amount allocated under clause (i) to house-*
7 *holds of a specified household size in the*
8 *lowest income quintile. Tax filing units that*
9 *include 5 or more individuals shall be eligi-*
10 *ble for the arithmetic mean value of the*
11 *amount allocated under clause (i) to house-*
12 *holds that includes 5 or more individuals.*

13 “(iii) *AGGREGATE REDUCTION IN PUR-*
14 *CHASING POWER.—For purposes of this sec-*
15 *tion, the aggregate reduction in purchasing*
16 *power shall be based on the projected total*
17 *market value of the emissions allowances*
18 *used to demonstrate compliance with title*
19 *VII of the Clean Air Act in that year, ad-*
20 *justed to reflect costs that were not incurred*
21 *by households as a result of allowances free-*
22 *ly allocated pursuant to section 782 of the*
23 *Clean Air Act, as estimated by the Environ-*
24 *mental Protection Agency, and calculated*
25 *in a way generally recognized as suitable by*

1 *experts in evaluating such purchasing*
2 *power impacts.*

3 “(iv) *INCOME QUINTILES.—Income*
4 *quintiles shall be determined by ranking*
5 *households according to income adjusted for*
6 *household size, and shall be constructed so*
7 *that each quintile contains an equal number*
8 *of people.*

9 “(5) *PHASE DOWN AMOUNT.—*

10 “(A) *In the case of an eligible individual*
11 *who has no qualifying individuals, the phase*
12 *down amount shall be—*

13 “(i) *\$20,000 in the case of an indi-*
14 *vidual who does not file a joint return; and*

15 “(ii) *\$25,000 in the case of a joint re-*
16 *turn.*

17 “(B) *In the case of an eligible individual*
18 *who files a joint return and has at least one*
19 *qualifying individual—*

20 “(i) *If the eligible individual has one*
21 *qualifying individual, the lowest income*
22 *level that exceeds the phaseout amount as*
23 *defined in section 32(b)(2) at which a mar-*
24 *ried couple with one qualifying child is in-*

1 *eligible for the earned income credit for the*
2 *taxable year.*

3 *“(ii) If the eligible individual has two*
4 *qualifying individuals, the lowest income*
5 *level that exceeds the phaseout amount as*
6 *defined in section 32(b)(2) at which a mar-*
7 *ried couple with two qualifying children is*
8 *ineligible for the earned income credit for*
9 *the taxable year.*

10 *“(iii) If the eligible individual claims*
11 *three or more qualifying individuals, the*
12 *lowest income level that exceeds the phaseout*
13 *amount as defined in section 32(b)(2) at*
14 *which a married couple with three or more*
15 *qualifying children is ineligible for the*
16 *earned income credit for the taxable year.*

17 *“(C) In the case of an eligible individual*
18 *who does not file a joint return and has at least*
19 *one individual qualifying individual—*

20 *“(i) If the eligible individual has one*
21 *qualifying individual, the lowest income*
22 *level that exceeds the phaseout amount as*
23 *defined in section 32(b)(2) at which a single*
24 *individual with one qualifying child is in-*

1 *eligible for the earned income credit for the*
2 *taxable year.*

3 “(ii) *If the eligible individual has two*
4 *qualifying individuals, the lowest income*
5 *level that exceeds the phaseout amount as*
6 *defined in section 32(b)(2) at which a single*
7 *individual with two qualifying children is*
8 *ineligible for the earned income credit for*
9 *the taxable year.*

10 “(iii) *If the eligible individual has*
11 *three or more qualifying individuals, the*
12 *lowest income level that exceeds the phaseout*
13 *amount as defined in section 32(b)(2) at*
14 *which a single individual with three or*
15 *more qualifying children is ineligible for the*
16 *earned income credit for the taxable year.*

17 “(6) *QUALIFYING INDIVIDUAL.—A qualifying in-*
18 *dividual is an individual whom the eligible indi-*
19 *vidual claims as a dependent under section 151, or as*
20 *a qualifying child for the earned income credit under*
21 *section 32(c)(3) or the child tax credit under section*
22 *24, or both. The term qualifying individual does not*
23 *include—*

24 “(A) *someone claimed as a dependent under*
25 *section 151 if that dependent is claimed as a*

1 *qualifying child for the earned income tax credit*
2 *or the child tax credit on a tax form by someone*
3 *other than the eligible individual; and*

4 “(B) *the eligible individual and, if a joint*
5 *return, his or her spouse.*

6 “(7) *NUMBER OF PEOPLE IN THE TAX FILING*
7 *UNIT.—The number of people in the tax filing unit*
8 *shall equal the sum of the number of qualifying indi-*
9 *viduals plus—*

10 “(A) *in the case of a joint return, 2; and*

11 “(B) *in the case of a return that is not filed*
12 *jointly, 1.*

13 “(d) *TREATMENT OF POSSESSIONS.—*

14 “(1) *PAYMENTS TO POSSESSIONS.—*

15 “(A) *MIRROR CODE POSSESSION.—The Sec-*
16 *retary of the Treasury shall pay to each posses-*
17 *sion of the United States with a mirror code tax*
18 *system amounts equal to the loss to that posses-*
19 *sion by reason of the amendments made by this*
20 *section. Such amounts shall be determined by the*
21 *Secretary of the Treasury based on information*
22 *provided by the Government of the respective*
23 *possession.*

24 “(B) *OTHER POSSESSIONS.—The Secretary*
25 *of the Treasury shall pay to each possession of*

1 *the United States which does not have a mirror*
2 *code tax system amounts estimated by the Sec-*
3 *retary of the Treasury as being equal to the ag-*
4 *gregate benefits that would have been provided to*
5 *residents of such possession by reason of the*
6 *amendments made by this section if a mirror*
7 *code tax system had been in effect in such posses-*
8 *sion. The preceding sentence shall not apply for*
9 *a given taxable year with respect to any posses-*
10 *sion of the United States unless such possession*
11 *has a plan, which has been approved by the Sec-*
12 *retary of the Treasury, under which such posses-*
13 *sion will promptly distribute such payments to*
14 *residents of such possession.*

15 “(2) *COORDINATION WITH CREDIT ALLOWED*
16 *AGAINST UNITED STATES INCOME TAXES.—No credit*
17 *shall be allowed against United States income taxes*
18 *for any taxable year under this section to any per-*
19 *son—*

20 “(A) *to whom a credit is allowed against*
21 *taxes imposed by the possession by reason of the*
22 *amendments made by this section for such tax-*
23 *able year; or*

1 “(B) who is eligible for a payment under a
2 plan described in paragraph (1)(B) with respect
3 to such taxable year.

4 “(e) AMOUNT OF CREDIT TO BE DETERMINED UNDER
5 TABLES.—The amount of the credit allowed by this section
6 shall be determined under tables prescribed by the Sec-
7 retary.

8 “(f) INFLATION ADJUSTMENTS.— In the case of any
9 taxable year beginning after 2009, dollar amounts in sub-
10 section (c)(4)(A) shall be increased by an amount equal to
11 such dollar amount, multiplied by the cost-of-living adjust-
12 ment determined under section 1(f)(3) of the Internal Rev-
13 enue Code of 1986.

14 “(g) TREATMENT IN OTHER PROGRAMS.—The energy
15 tax credit provided under this section shall not be consid-
16 ered income or resources for any purpose under any Fed-
17 eral, State, or local laws, including, but not limited to, laws
18 relating to an income tax or public assistance program (in-
19 cluding, but not limited to, health care, cash aid, child care,
20 nutrition programs, and housing assistance), and no par-
21 ticipating State or political subdivision thereof shall de-
22 crease any assistance otherwise provided an individual or
23 individuals because of the receipt of an energy tax credit
24 under this Act.”.

1 **SEC. 432. ENERGY REFUND PROGRAM FOR LOW-INCOME**
2 **CONSUMERS.**

3 (a) *ENERGY REFUND PROGRAM.*—

4 (1) *The Administrator of the Environmental*
5 *Protection Agency, or the agency designated by the*
6 *Administrator shall formulate and administer the*
7 *“Energy Refund Program”.*

8 (2) *At the request of the State agency, eligible*
9 *low-income households within the State shall receive*
10 *a monthly cash energy refund equal to the estimated*
11 *loss in purchasing power resulting from this Act.*

12 (b) *ELIGIBILITY.*—

13 (1) *ELIGIBLE HOUSEHOLDS.*—*Participation in*
14 *the Energy Refund Program shall be limited to a*
15 *household that—*

16 (A) *the State agency determines to be par-*
17 *ticipating in (i) the Supplemental Nutrition As-*
18 *sistance Program authorized by the Food and*
19 *Nutrition Act of 2008 (7 U.S.C. 2011 et seq.);*
20 *(ii) the Food Distribution Program on Indian*
21 *Reservations authorized by section 4(b) of such*
22 *Act (7 U.S.C. 2013(b)); or (iii) the program for*
23 *nutrition assistance in Puerto Rico or American*
24 *Samoa under section 19 of the such Act (7*
25 *U.S.C. 2028);*

1 (B) has gross income that does not exceed
2 150 percent of the poverty line; or

3 (C) consists of a single individual or a mar-
4 ried couple and (i) receives the subsidy described
5 in section 1860D–14 of the Social Security Act
6 (42 U.S.C. 1395w–114); or (ii)(I) participates in
7 the program under section XVIII of the Social
8 Security Act; and (II) meets the income require-
9 ments described in section 1860D–14(a)(1) or
10 (a)(2) of such Act (42 U.S.C. 1395w–114(a)(1)
11 or (a)(2)).

12 (2) *STREAMLINED ELIGIBILITY FOR CERTAIN*
13 *BENEFICIARIES.*—The Administrator, in consultation
14 with the Secretary of Health and Human Services,
15 the Commissioner of Social Security, the Railroad
16 Retirement Board, the Secretary of Veterans Affairs,
17 and the State agencies shall develop procedures to en-
18 sure that low-income beneficiaries of the benefit pro-
19 grams they administer receive the energy refund for
20 which they are eligible.

21 (3) *LIMITATION.*—Notwithstanding any provi-
22 sion of law, the Administrator shall establish proce-
23 dures to ensure that individuals that qualify for the
24 refund under paragraph (1)(B) and that do not par-
25 ticipate in the Supplemental Nutrition Assistance

1 *Program are United States citizens, United States*
2 *nationals, or individuals lawfully residing in the*
3 *United States.*

4 (4) *NATIONAL STANDARDS.—The Administrator*
5 *shall establish uniform national standards of eligi-*
6 *bility in accordance with the provisions of this sec-*
7 *tion. No State agency shall impose any other stand-*
8 *ard or requirement as a condition of eligibility or re-*
9 *fund receipt under the program. Assistance in the En-*
10 *ergy Refund Program shall be furnished promptly to*
11 *all eligible households who make application for such*
12 *participation.*

13 (c) *MONTHLY ENERGY REFUND AMOUNT.—*

14 (1) *MONTHLY ENERGY REFUND.—The monthly*
15 *refund under this subsection for households of 1, 2, 3,*
16 *4, and 5 or more members shall be equal to the max-*
17 *imum energy tax credit amount calculated under sec-*
18 *tion 36B(c)(4) of the Internal Revenue Code of 1986*
19 *for each household size, divided by 12 and rounded to*
20 *the nearest whole dollar amount.*

21 (2) *MONTHLY ELIGIBILITY.—A household shall*
22 *not be eligible for the refund under this section for*
23 *months that the household has not established eligi-*
24 *bility under subsection (b).*

25 (d) *DELIVERY MECHANISM.—*

1 (1) *Subject to standards and an implementation*
2 *schedule set by the Administrator, the energy refund*
3 *shall be provided in monthly installments via—*

4 (A) *direct deposit into the eligible house-*
5 *hold’s designated bank account;*

6 (B) *the State’s electronic benefit transfer*
7 *system; or*

8 (C) *another Federal or State mechanism, if*
9 *such a mechanism is approved by the Adminis-*
10 *trator.*

11 (2) *Such standards shall include—*

12 (A)(i) *defining the required level of recipi-*
13 *ent protection regarding privacy;*

14 (ii) *guidance on how recipients are offered*
15 *choices, when relevant, about the delivery mecha-*
16 *nism;*

17 (iii) *guidance on ease of use and access to*
18 *the refund, including the prohibition of fees*
19 *charged to recipients for withdrawals or other*
20 *services; and*

21 (iv) *cost-effective protections against im-*
22 *proper accessing of the energy refund;*

23 (B) *operating standards that provide for*
24 *interoperability between States and law enforce-*
25 *ment monitoring; and*

1 (C) other standards, as determined by the
2 Administrator or the Administrator's designee.

3 (e) *INFORMATION ABOUT REFUND PROVIDED TO*
4 *HOUSEHOLDS AND INTERNAL REVENUE SERVICE.—*

5 (1) *By January 31 of each year, for each adult*
6 *that was a member of a household that received an*
7 *energy refund under this section in the State during*
8 *the prior calendar year, each State shall issue a form*
9 *that conforms to standards established by the Sec-*
10 *retary of the Treasury under section 36B(b) of the In-*
11 *ternal Revenue Code of 1986, containing—*

12 (A) *the name, address, and social security*
13 *number of the adult household member; and*

14 (B) *the number of months the individual*
15 *was a member of a household that received an*
16 *energy refund under this section.*

17 (2) *States shall provide this information to the*
18 *Internal Revenue Service in accordance to standards*
19 *and regulations set forth by the Secretary of the*
20 *Treasury.*

21 (f) *ADMINISTRATION.—*

22 (1) *IN GENERAL.—The State agency of each par-*
23 *ticipating State shall assume responsibility for the*
24 *certification of applicant households and for the*

1 *issuance of refunds and the control and accountability*
2 *thereof.*

3 (2) *PROCEDURES.*—*Under standards established*
4 *by the Administrator, the State agency shall establish*
5 *procedures governing the administration of the En-*
6 *ergy Refund Program that the State agency deter-*
7 *mines best serve households in the State, including*
8 *households with special needs, such as households with*
9 *elderly or disabled members, households in rural*
10 *areas, homeless individuals, and households residing*
11 *on reservations as defined in the Indian Child Wel-*
12 *fare Act of 1978 and the Indian Financing Act of*
13 *1974. In carrying out this paragraph, a State agen-*
14 *cy—*

15 (A) *shall provide timely, accurate, and fair*
16 *service to applicants for, and participants in,*
17 *the Energy Refund Program;*

18 (B) *shall permit an applicant household to*
19 *apply to participate in the program at the time*
20 *that the household first contacts the State agency,*
21 *and shall consider an application that contains*
22 *the name, address, and signature of the appli-*
23 *cant to be sufficient to constitute an application*
24 *for participation;*

1 (C) shall screen any applicant household for
2 the Supplemental Nutrition Assistance Program,
3 the State's medical assistance program under
4 section XIX of the Social Security Act, State
5 Childrens Health Insurance Program under sec-
6 tion XXI of the Social Security Act, and a State
7 program that provides basic assistance under a
8 State program funded under title IV of the So-
9 cial Security Act or with qualified State expend-
10 itures as defined in section 409(a)(7) of the So-
11 cial Security Act for eligibility for the Energy
12 Refund Program and, if eligible, shall enroll
13 such applicant household in the Energy Refund
14 Program;

15 (D) shall complete certification of and pro-
16 vide a refund to any eligible household not later
17 than thirty days following its filing of an appli-
18 cation;

19 (E) shall use appropriate bilingual per-
20 sonnel and materials in the administration of
21 the program in those portions of the State in
22 which a substantial number of members of low-
23 income households speak a language other than
24 English; and

1 (F) shall utilize State agency personnel who
2 are employed in accordance with the current
3 standards for a Merit System of Personnel Ad-
4 ministration or any standards later prescribed
5 by the Office of Personnel Management pursuant
6 to section 208 of the Intergovernmental Personnel
7 Act of 1970 (42 U.S.C. 4728) modifying or su-
8 perseding such standards relating to the estab-
9 lishment and maintenance of personnel stand-
10 ards on a merit basis to make all tentative and
11 final determinations of eligibility and ineligi-
12 bility.

13 (3) REGULATIONS.—

14 (A) Except as provided in subparagraph
15 (B) the Administrator shall issue such regula-
16 tions consistent with this section as the Adminis-
17 trator deems necessary or appropriate for the ef-
18 fective and efficient administration of the En-
19 ergy Refund Program and shall promulgate all
20 such regulations in accordance with the proce-
21 dures set forth in section 553 of title 5, United
22 States Code.

23 (B) Without regard to section 553 of title 5
24 of such Code, the Administrator may, during the
25 period beginning with the effective date of this

1 *section and ending two years after such date, by*
2 *rule promulgate as final any procedures that are*
3 *substantially the same as the procedures gov-*
4 *erning the Supplemental Nutrition Assistance*
5 *Program at 7 C.F.R. 273.2, 273.12.273.15.*

6 *(g) TREATMENT.—The value of the refund provided*
7 *under this Act shall not be considered income or resources*
8 *for any purpose under any Federal, State, or local laws,*
9 *including, but not limited to, laws relating to an income*
10 *tax, or public assistance programs (including, but not lim-*
11 *ited to, health care, cash aid, child care, nutrition pro-*
12 *grams, and housing assistance) and no participating State*
13 *or political subdivision thereof shall decrease any assistance*
14 *otherwise provided an individual or individuals because of*
15 *the receipt of a refund under this Act.*

16 *(h) PROGRAM INTEGRITY.—For purposes of ensuring*
17 *program integrity and complying with the requirements of*
18 *the Improper Payment Information Act of 2002, the Ad-*
19 *ministrator shall—*

20 *(1) to the maximum extent possible rely on and*
21 *coordinate with the quality control sample and review*
22 *procedures of section 16(c)(2), (3), (4), and (5) of the*
23 *Supplemental Nutrition Assistance Program; and*

24 *(2) develop procedures to monitor the compliance*
25 *with and accuracy of State agencies in providing*

1 *forms to household members and the Internal Revenue*
2 *Service under subsection (f).*

3 *(i) DEFINITIONS.—*

4 *(1) ADMINISTRATOR.—The term “Adminis-*
5 *trator” means the Administrator of the Environ-*
6 *mental Protection Agency or the head of another*
7 *agency designated by the Administrator.*

8 *(2) ELECTRONIC BENEFIT TRANSFER SYSTEM.—*
9 *The term “electronic benefit transfer system” means a*
10 *system by which household benefits or refunds defined*
11 *under subsection (d) are issued from and stored in a*
12 *central databank via electronic benefit transfer cards.*

13 *(3) GROSS INCOME.—The term “gross income”*
14 *means the gross income of a household that is deter-*
15 *mined in accordance with standards and procedures*
16 *established under section 5 of the Food and Nutrition*
17 *Act of 2008 (7 U.S.C. 2014) and its implementing*
18 *regulations.*

19 *(4) HOUSEHOLD.—The term “household”*
20 *means—*

21 *(A)(i) except as provided in subparagraph*
22 *(C), an individual or a group of individuals who*
23 *are a household under section 3(n) of the Food*
24 *and Nutrition Act of 2008 (7 U.S.C. 2012(n));*
25 *and*

1 (ii) a single individual or married couple
2 that receive benefits under section 1860D–14 of
3 the Social Security Act (42 U.S.C. 1395w–114).

4 (B) The Administrator shall establish rules
5 for providing the energy refund in an equitable
6 and administratively simple manner to house-
7 holds where the group of individuals who live to-
8 gether includes a combination of members de-
9 scribed in clauses (i) and (ii) of subparagraph
10 (A), or includes additional members not de-
11 scribed in clause (i) or clause (ii) of subpara-
12 graph (A).

13 (C) The Administrator shall establish rules
14 regarding the eligibility and delivery of the en-
15 ergy refund to groups of individuals described in
16 section 3(n)(4) or (5) of the Food and Nutrition
17 Act of 2008 (7 U.S.C. 2012(n)).

18 (5) *POVERTY LINE*.—The term “poverty line”
19 has the meaning given the term in section 673(2) of
20 the Community Services Block Grant Act (42 U.S.C.
21 9902(2)), including any revision required by that sec-
22 tion.

23 (6) *STATE*.—The term “State” means the 50
24 States, the District of Columbia, the Commonwealth
25 of Puerto Rico, American Samoa, the United States

1 *Virgin Islands, Guam, and the Commonwealth of the*
2 *Northern Mariana Islands.*

3 (7) *STATE AGENCY.*—*The term “State agency”*
4 *means an agency of State government, including the*
5 *local offices thereof, that has responsibility for admin-*
6 *istration of the 1 or more federally aided public as-*
7 *sistance programs within the State, and in those*
8 *States where such assistance programs are operated*
9 *on a decentralized basis, the term shall include the*
10 *counterpart local agencies administering such pro-*
11 *grams.*

12 (8) *OTHER TERMS.*—*Other terms not defined in*
13 *this Act shall have the same meaning applied in the*
14 *Supplemental Nutrition Assistance Program unless*
15 *the Administrator finds for good cause that applica-*
16 *tion of a particular definition would be detrimental*
17 *to the purposes of the Energy Refund Program.*

18 ***Subtitle D—Exporting Clean***
19 ***Technology***

20 ***SEC. 441. FINDINGS AND PURPOSES.***

21 (a) *FINDINGS.*—*Congress finds the following:*

22 (1) *Protecting Americans from the impacts of*
23 *climate change requires global reductions in green-*
24 *house gas emissions.*

1 (2) *Although developing countries are histori-*
2 *cally least responsible for the cumulative greenhouse*
3 *gas emissions that are causing climate change and*
4 *continue to have very low per capita greenhouse gas*
5 *emissions, their overall greenhouse gas emissions are*
6 *increasing as they seek to grow their economies and*
7 *reduce energy poverty for their populations.*

8 (3) *Many developing countries lack the financial*
9 *and technical resources to adopt clean energy tech-*
10 *nologies and absent assistance their greenhouse gas*
11 *emissions will continue to increase.*

12 (4) *Investments in clean energy technology co-*
13 *operation can substantially reduce global greenhouse*
14 *gas emissions while providing developing countries*
15 *with incentives to adopt policies that will address*
16 *competitiveness concerns related to regulation of*
17 *United States greenhouse gas emissions.*

18 (5) *Investments in clean technology in devel-*
19 *oping countries will increase demand for clean energy*
20 *products, open up new markets for United States*
21 *companies, spur innovation, and lower costs.*

22 (6) *Under Article 4 of the United Nations*
23 *Framework Convention on Climate Change, developed*
24 *country parties, including the United States, com-*
25 *mitted to “take all practicable steps to promote, fa-*

1 *ilitate, and finance, as appropriate, the transfer of,*
2 *or access to, environmentally sound technologies and*
3 *know-how to other parties, particularly developing*
4 *country parties, to enable them to implement the pro-*
5 *visions of the Convention”.*

6 *(7) Under the Bali Action Plan, developed coun-*
7 *try parties to the United Nations Framework Conven-*
8 *tion on Climate Change, including the United States,*
9 *committed to “enhanced action on the provision of fi-*
10 *nancial resources and investment to support action*
11 *on mitigation and adaptation and technology co-*
12 *operation,” including, inter alia, consideration of*
13 *“improved access to adequate, predictable, and sus-*
14 *tainable financial resources and financial and tech-*
15 *nical support, and the provision of new and addi-*
16 *tional resources, including official and concessional*
17 *funding for developing country parties”.*

18 *(b) PURPOSES.—The purposes of this subtitle are—*

19 *(1) to provide United States assistance and le-*
20 *verage private resources to encourage widespread im-*
21 *plementation, in developing countries, of activities*
22 *that reduce, sequester, or avoid greenhouse gas emis-*
23 *sions; and*

24 *(2) to provide such assistance in a manner*
25 *that—*

1 (A) encourages such countries to adopt poli-
2 cies and measures, including sector-based and
3 cross-sector policies and measures, that substan-
4 tially reduce, sequester, or avoid greenhouse gas
5 emissions; and

6 (B) promotes the successful negotiation of a
7 global agreement to reduce greenhouse gas emis-
8 sions under the United Nations Framework Con-
9 vention on Climate Change.

10 **SEC. 442. DEFINITIONS.**

11 *In this subtitle:*

12 (1) *ALLOWANCE.*—The term “allowance” means
13 an emission allowance established under section 721
14 of the Clean Air Act.

15 (2) *APPROPRIATE CONGRESSIONAL COMMIT-*
16 *TEES.*—The term “appropriate congressional commit-

17 tees” means—

18 (A) the Committees on Energy and Com-
19 merce, Foreign Affairs, and Financial Services
20 of the House of Representatives; and

21 (B) the Committees on Environment and
22 Public Works, Energy and Natural Resources,
23 and Foreign Relations of the Senate.

24 (3) *CONVENTION.*—The term “Convention”
25 means the United Nations Framework Convention on

1 *Climate Change, done at New York on May 9, 1992,*
2 *and entered into force on March 21, 1994.*

3 (4) *DEVELOPING COUNTRY.*—*The term “devel-*
4 *oping country” means a country eligible to receive of-*
5 *ficial development assistance according to the income*
6 *guidelines of the Development Assistance Committee*
7 *of the Organization for Economic Cooperation and*
8 *Development.*

9 (5) *ELIGIBLE COUNTRY.*—*The term “eligible*
10 *country” means a developing country that is deter-*
11 *mined by the interagency group under section 444 to*
12 *be eligible to receive assistance from the International*
13 *Clean Technology Account.*

14 (6) *INTERAGENCY GROUP.*—*The term “inter-*
15 *agency group” means the group established by the*
16 *President under section 443 to administer distribu-*
17 *tions from the International Clean Technology Ac-*
18 *count.*

19 (7) *INTERNATIONAL CLEAN TECHNOLOGY AC-*
20 *COUNT.*—*The term “International Clean Technology*
21 *Account” means the account to which the Adminis-*
22 *trator allocates allowances under section 782(o) of the*
23 *Clean Air Act.*

24 (8) *LEAST DEVELOPED COUNTRY.*—*The term*
25 *“least developed country” means a foreign country the*

1 *United Nations has identified as among the least de-*
2 *veloped of developing countries.*

3 (9) *QUALIFYING ACTIVITY.*—*The term “quali-*
4 *fying activity” means an activity that meets the cri-*
5 *teria in section 445.*

6 (10) *QUALIFYING ENTITY.*—*The term “qualifying*
7 *entity” means a national, regional, or local govern-*
8 *ment in, or a nongovernmental organization or pri-*
9 *vate entity located or operating in, an eligible coun-*
10 *try.*

11 **SEC. 443. GOVERNANCE.**

12 (a) *OVERSIGHT.*—*The Secretary of State, or such other*
13 *Federal agency head as the President may designate, in*
14 *consultation with the interagency group established under*
15 *subsection (b), shall oversee distributions of allowances from*
16 *the International Clean Technology Account.*

17 (b) *INTERAGENCY GROUP.*—*The President shall estab-*
18 *lish an interagency group to administer the International*
19 *Clean Technology Account. The Members of the interagency*
20 *group shall include—*

21 (1) *the Secretary of State;*

22 (2) *the Administrator of the Environmental Pro-*
23 *tection Agency;*

24 (3) *the Secretary of Energy;*

25 (4) *the Secretary of the Treasury;*

1 (5) *the Administrator of the United States Agency*
2 *for International Development; and*

3 (6) *any other head of a Federal agency or execu-*
4 *tive branch appointee that the President may des-*
5 *ignate.*

6 (c) *CHAIRPERSON.—The Secretary of State shall serve*
7 *as the chairperson of the interagency group.*

8 (d) *SUPPLEMENT NOT SUPPLANT.—Allowances dis-*
9 *tributed from the International Clean Technology Account*
10 *shall be used to supplement, and not to supplant, any other*
11 *Federal, State, or local resources available to carry out ac-*
12 *tivities that are qualifying activities under this subtitle.*

13 **SEC. 444. DETERMINATION OF ELIGIBLE COUNTRIES.**

14 (a) *IN GENERAL.—The interagency group shall deter-*
15 *mine a country to be an eligible country for the purposes*
16 *of this subtitle if a country meets the following criteria:*

17 (1) *The country is a developing country that—*

18 (A) *has entered into an international agree-*
19 *ment to which the United States is a party,*
20 *under which such country agrees to take actions*
21 *to produce measurable, reportable, and verifiable*
22 *greenhouse gas emissions mitigation; or*

23 (B) *is determined by the interagency group*
24 *to have in force national policies and measures*
25 *that are capable of producing measurable, re-*

1 *portable, and verifiable greenhouse gas emissions*
2 *mitigation.*

3 (2) *The country has developed a nationally ap-*
4 *propriate mitigation strategy that seeks to achieve*
5 *substantial reductions, sequestration, or avoidance of*
6 *greenhouse gas emissions, relative to business-as-usual*
7 *levels.*

8 (3) *Subject to subsection (b)(1), such other cri-*
9 *teria as the President determines will serve the pur-*
10 *poses of this subtitle or other United States national*
11 *security, foreign policy, environmental, or economic*
12 *objectives.*

13 (b) *EXCEPTIONS.—*

14 (1) *Subsection (a)(3) applies only to bilateral as-*
15 *sistance under section 446(c).*

16 (2) *The eligibility criteria in this section do not*
17 *apply in the case of least developed countries receiv-*
18 *ing assistance under section 445(7) for the purpose of*
19 *building capacity to meet such eligibility criteria.*

20 **SEC. 445. QUALIFYING ACTIVITIES.**

21 *Assistance under this subtitle may be provided only*
22 *to qualifying entities for clean technology activities (includ-*
23 *ing building relevant technical and institutional capacity)*
24 *that contribute to substantial, measurable, reportable, and*

1 *verifiable reductions, sequestration, or avoidance of green-*
2 *house gas emissions including—*

3 (1) *deployment of technologies to capture and se-*
4 *quester carbon dioxide emissions from electric gener-*
5 *ating units or large industrial sources (except that as-*
6 *sistance under this subtitle for such deployment shall*
7 *be limited to the cost of retrofitting existing facilities*
8 *with such technologies or the incremental cost of pur-*
9 *chasing and installing such technologies at new facili-*
10 *ties);*

11 (2) *deployment of renewable electricity genera-*
12 *tion from wind, solar, sustainably-produced biomass,*
13 *geothermal, marine, or hydrokinetic sources;*

14 (3) *substantial increases in the efficiency of elec-*
15 *tricity transmission, distribution, and consumption;*

16 (4) *deployment of low- or zero emissions tech-*
17 *nologies that are facing financial or other barriers to*
18 *their widespread deployment which could be addressed*
19 *through support under this subtitle in order to reduce,*
20 *sequester, or avoid emission;*

21 (5) *reduction in transportation sector emissions*
22 *through increased transportation system and vehicle*
23 *efficiency or use of transportation fuels that have*
24 *lifecycle greenhouse gas emissions that are substan-*

1 *tially lower than those attributable to fossil fuel-based*
2 *alternatives;*

3 *(6) reduction in black carbon emissions; or*

4 *(7) capacity building activities, including—*

5 *(A) developing and implementing meth-*
6 *odologies and programs for measuring and quan-*
7 *tifying greenhouse gas emissions and verifying*
8 *emissions mitigation;*

9 *(B) assessing, developing, and implementing*
10 *technology and policy options for greenhouse gas*
11 *emissions mitigation and avoidance of future*
12 *emissions, including sector and cross-sector miti-*
13 *gation strategies; and*

14 *(C) providing other forms of technical as-*
15 *sistance to facilitate the qualification for, and re-*
16 *ceipt of, assistance under this Act.*

17 **SEC. 446. ASSISTANCE.**

18 *(a) IN GENERAL.—The Secretary of State, or such*
19 *other Federal agency head as the President may designate,*
20 *is authorized to provide assistance, through the distribution*
21 *of allowances, from the International Clean Technology Ac-*
22 *count for qualifying activities that take place in eligible*
23 *countries.*

24 *(b) DISTRIBUTION OF ALLOWANCES.—*

1 (1) *IN GENERAL.*—*The Secretary of State, or*
2 *such other Federal agency head as the President may*
3 *designate, after consultation with the interagency*
4 *group, shall distribute allowances from the Inter-*
5 *national Clean Technology Account—*

6 (A) *in the form of bilateral assistance in ac-*
7 *cordance with paragraph (4);*

8 (B) *to multilateral funds or institutions*
9 *pursuant to the Convention or an agreement ne-*
10 *gotiated under the Convention; or*

11 (C) *through some combination of the mecha-*
12 *nisms identified in subparagraphs (A) and (B).*

13 (2) *GLOBAL ENVIRONMENT FACILITY.*—*For any*
14 *allowances provided to the Global Environment Facil-*
15 *ity pursuant to paragraph (1)(B), the President shall*
16 *designate the Secretary of the Treasury to distribute*
17 *those allowances to the Global Environment Facility.*

18 (3) *DISTRIBUTION THROUGH INTERNATIONAL*
19 *FUND OR INSTITUTION.*—*If allowances are distributed*
20 *to a multilateral fund or institution, as authorized in*
21 *paragraph (1), the Secretary of State, or such other*
22 *Federal agency head as the President may designate,*
23 *shall seek to ensure the establishment and implemen-*
24 *tation of adequate mechanisms to—*

1 (A) apply and enforce the criteria for deter-
2 mination of eligible countries and qualifying ac-
3 tivities under sections 444 and 445, respectively;
4 and

5 (B) require public reporting describing the
6 process and methodology for selecting the ulti-
7 mate recipients of assistance and a description of
8 each activity that received assistance, including
9 the amount of obligations and expenditures for
10 assistance.

11 (4) *BILATERAL ASSISTANCE.*—

12 (A) *IN GENERAL.*—*Bilateral assistance*
13 *under paragraph (1) shall be carried out by the*
14 *Administrator of the United States Agency for*
15 *International Development, in consultation with*
16 *the interagency group.*

17 (B) *LIMITATIONS.*—*Not more than 15 per-*
18 *cent of allowances made available to carry out*
19 *bilateral assistance under this subtitle in any*
20 *year shall be distributed to support activities in*
21 *any single country.*

22 (C) *SELECTION CRITERIA.*—*Not later than*
23 *2 years after the date of enactment of this sub-*
24 *title, the Administrator of the United States*
25 *Agency for International Development, after con-*

1 *sultation with the interagency group, shall de-*
2 *velop and publish a set of criteria to be used in*
3 *evaluating activities within eligible countries for*
4 *bilateral assistance under this subtitle.*

5 *(D) CRITERIA REQUIREMENTS.—The cri-*
6 *teria under subparagraph (C) shall require*
7 *that—*

8 *(i) the activity is a qualifying activity;*

9 *(ii) the activity will be conducted as*
10 *part of an eligible country’s nationally ap-*
11 *propriate mitigation strategy or as part of*
12 *an eligible country’s actions towards pro-*
13 *viding a nationally appropriate mitigation*
14 *strategy to reduce, sequester, or avoid emis-*
15 *sions being implemented by the eligible*
16 *country;*

17 *(iii) the activity will not have adverse*
18 *effects on human health, safety, or welfare,*
19 *the environment, or natural resources;*

20 *(iv) any technologies deployed through*
21 *bilateral assistance under this subtitle will*
22 *be properly implemented and maintained;*

23 *(v) the activity will not cause any net*
24 *loss of United States jobs or displacement of*
25 *United States production;*

1 (vi) costs of the activity will be shared
2 by the host country government, private sec-
3 tor parties, or a multinational development
4 bank, except that this clause does not apply
5 to least developed countries; and

6 (vii) the activity meets such other re-
7 quirements as the interagency group deter-
8 mines appropriate to further the purposes of
9 this subtitle.

10 (E) CRITERIA PREFERENCES.—The criteria
11 under subparagraph (C) shall give preference to
12 activities that—

13 (i) promise to achieve large-scale green-
14 house gas reductions, sequestration, or
15 avoidance at a national, sectoral or cross-
16 sectoral level;

17 (ii) have the potential to catalyze a
18 shift within the host country towards wide-
19 spread deployment of low- or zero-carbon
20 energy technologies;

21 (iii) build technical and institutional
22 capacity and other activities that are un-
23 likely to be attractive to private sector fund-
24 ing; or

1 (iv) maximize opportunities to leverage
2 other sources of assistance and catalyze pri-
3 vate-sector investment.

4 (c) *MONITORING, EVALUATION, AND ENFORCEMENT.*—
5 *The Secretary of State, or such other Federal agency head*
6 *as the President may designate, in consultation with the*
7 *interagency group, shall establish and implement a system*
8 *to monitor and evaluate the performance of activities receiv-*
9 *ing assistance under this subtitle. The Secretary of State,*
10 *or such other Federal agency head as the President may*
11 *designate, shall have the authority to suspend or terminate*
12 *assistance in whole or in part for an activity if it is deter-*
13 *mined that the activity is not operating in compliance with*
14 *the approved proposal.*

15 (d) *COORDINATION WITH U.S. FOREIGN ASSIST-*
16 *ANCE.*—*Subject to the direction of the President, the Sec-*
17 *retary of State shall, to the extent practicable, seek to align*
18 *activities under this section with broader development, pov-*
19 *erty alleviation, or natural resource management objectives*
20 *and initiatives in the recipient country.*

21 (e) *ANNUAL REPORTS.*—*Not later than March 1, 2012,*
22 *and annually thereafter, the President shall submit to the*
23 *appropriate congressional committees a report on the assist-*
24 *ance provided under this subtitle during the prior fiscal*
25 *year. Such report shall include—*

1 (1) a description of the amount and value of al-
2 lowances distributed during the prior fiscal year;

3 (2) a description of each activity that received
4 assistance during the prior fiscal year, and a descrip-
5 tion of the anticipated and actual outcomes;

6 (3) an assessment of any adverse effects to
7 human health, safety, or welfare, the environment, or
8 natural resources as a result of activities supported
9 under this subtitle;

10 (4) an assessment of the success of the assistance
11 provided under this subtitle to improving the tech-
12 nical and institutional capacity to implement sub-
13 stantial emissions reductions; and

14 (5) an estimate of the greenhouse gas emissions
15 reductions, sequestration, or avoidance achieved by
16 assistance provided under this subtitle during the
17 prior fiscal year.

1 ***Subtitle E—Adapting to Climate***
2 ***Change***

3 ***PART 1—DOMESTIC ADAPTATION***

4 ***Subpart A—National Climate Change Adaptation***
5 ***Program***

6 ***SEC. 451. NATIONAL CLIMATE CHANGE ADAPTATION PRO-***
7 ***GRAM.***

8 *The President shall establish within the United States*
9 *Global Change Research Program a National Climate*
10 *Change Adaptation Program for the purpose of increasing*
11 *the overall effectiveness of Federal climate change adapta-*
12 *tion efforts.*

13 ***SEC. 452. CLIMATE SERVICES.***

14 *The Secretary of Commerce, acting through the Ad-*
15 *ministrator of the National Oceanic and Atmospheric Ad-*
16 *ministration (NOAA), shall establish within NOAA a Na-*
17 *tional Climate Service to develop climate information, data,*
18 *forecasts, and warnings at national and regional scales,*
19 *and to distribute information related to climate impacts to*
20 *State, local, and tribal governments and the public to facili-*
21 *tate the development and implementation of strategies to*
22 *reduce society's vulnerability to climate variability and*
23 *change.*

1 **SEC. 453. STATE PROGRAMS TO BUILD RESILIENCE TO CLI-**
2 **MATE CHANGE IMPACTS.**

3 *(a) DISTRIBUTION OF ALLOWANCES.—*

4 *(1) IN GENERAL.—Not later than September 30,*
5 *2012, and annually thereafter through 2050, the Ad-*
6 *ministrator shall distribute allowances allocated for*
7 *purposes of this subpart pursuant to section 782 of*
8 *the Clean Air Act ratably among the State govern-*
9 *ments based on the product of—*

10 *(A) each State’s population; and*

11 *(B) each State’s allocation factor as deter-*
12 *mined under paragraph (2).*

13 *(2) STATE ALLOCATION FACTORS.—*

14 *(A) IN GENERAL.—Except as provided in*
15 *subparagraph (B), the allocation factor for a*
16 *State shall be the quotient of—*

17 *(i) the per capita income of all indi-*
18 *viduals in the United States, divided by*

19 *(ii) the per capita income of all indi-*
20 *viduals in such State.*

21 *(B) LIMITATION.—If the allocation factor*
22 *for a State as calculated under subparagraph*
23 *(A) would exceed 1.2, then the allocation factor*
24 *for such State shall be 1.2. If the allocation fac-*
25 *tor for a State as calculated under subparagraph*

1 (A) would be less than 0.8, then the allocation
2 factor for such State shall be 0.8.

3 (C) *PER CAPITA INCOME*.—For purposes of
4 this paragraph, per capita income shall be—

5 (i) determined at 2-year intervals; and

6 (ii) subject to subparagraph (D), equal
7 to the average of the annual per capita in-
8 comes for the most recent period of 3 con-
9 secutive years for which satisfactory data
10 are available from the Department of Com-
11 merce at the time such determination is
12 made.

13 (D) *REVENUE DIRECTLY RESULTING FROM*
14 *A PRESIDENTIALLY DECLARED MAJOR DIS-*
15 *ASTER*.—For purposes of this paragraph, per
16 capita income from one or more of the following
17 sources shall be reduced or excluded if the Sec-
18 retary of Commerce (in consultation with the
19 Administrator and the secretaries or administra-
20 tors of the departments or agencies involved) de-
21 termines that the income accrues to persons as
22 the result of a Major Disaster (as declared by the
23 President of the United States) and if the Sec-
24 retary finds that the inclusion of one or more of
25 these income sources, in whole or in part, results

1 *in a transitory, rather than a sustainable, in-*
2 *crease in a State's per capita income level rel-*
3 *ative to the national average:*

4 *(i) Property and casualty insurance*
5 *(including homeowners and renters insur-*
6 *ance).*

7 *(ii) The National Flood Insurance Pro-*
8 *gram of the Federal Emergency Manage-*
9 *ment Agency .*

10 *(iii) The Individual and Family*
11 *Grants Program of the Federal Emergency*
12 *Management Agency.*

13 *(iv) The Disaster Housing Program of*
14 *the Federal Emergency Management Agen-*
15 *cy.*

16 *(v) The Community Development Block*
17 *Grant Program of the Department of Hous-*
18 *ing and Urban Development.*

19 *(vi) The Disaster Unemployment As-*
20 *sistance Program of the Department of*
21 *Labor.*

22 *(vii) Any other source determined ap-*
23 *propriate by the Administrator.*

24 **(b) SALE OF ALLOWANCES.**—*Each State receiving*
25 *emission allowances under this section shall sell such allow-*

1 *ances within 1 year of receipt, either directly or through*
2 *consignment to the Administrator for auction. States shall*
3 *deposit the proceeds of such sales within the State Energy*
4 *and Environment Development (SEED) Fund established*
5 *pursuant to section 131 of this Act . Emission allowances*
6 *distributed under this section that are not sold within 1*
7 *year of receipt by a State shall be returned to the Adminis-*
8 *trator, who shall distribute such allowances to the remain-*
9 *ing States ratably in accordance with the formula in sub-*
10 *section (a).*

11 *(c) USE OF PROCEEDS.—States shall, in accordance*
12 *with a State climate adaptation plan approved pursuant*
13 *to subsection (e), use the proceeds of sales of emission allow-*
14 *ances distributed under this section exclusively for the im-*
15 *plementation of projects, programs, or measures to build re-*
16 *silience to the impacts of climate change, including—*

17 *(1) extreme weather events such as flooding and*
18 *tropical cyclones;*

19 *(2) more frequent heavy precipitation events;*

20 *(3) water scarcity and adverse impacts on water*
21 *quality;*

22 *(4) stronger and longer heat waves;*

23 *(5) more frequent and severe droughts;*

24 *(6) rises in sea level;*

25 *(7) ecosystem disruption;*

1 (8) *increased air pollution; and*

2 (9) *effects on public health.*

3 (d) *PRIORITY IN PROJECTS TO REDUCE FLOOD*

4 *EVENTS.—When implementing any project, program, or*

5 *measure funded under this section and designed to reduce*

6 *flood events, a State should consider prioritizing projects*

7 *that seek to—*

8 (1) *mitigate the destructive impacts of climate-*

9 *related increases in the duration, frequency, or mag-*

10 *nitude of rainfall or runoff, including snowmelt run-*

11 *off, as well as hurricanes;*

12 (2) *improve flood protection for densely popu-*

13 *lated urban areas; and*

14 (3) *mitigate the destructive impact of ocean-re-*

15 *lated climate change effects, including effects on bays,*

16 *estuaries, populated barrier islands and other ocean-*

17 *related features, through a variety of means and*

18 *measures, including the construction of jetties, levies,*

19 *and other coastal structures in densely populated*

20 *coastal areas impacted by climate change.*

21 (e) *STATE CLIMATE ADAPTATION PLANS.—*

22 (1) *IN GENERAL.—Not later than 2 years after*

23 *the date of enactment of this Act, the Administrator,*

24 *or such other Federal agency head or heads as the*

25 *President may designate, shall promulgate regulations*

1 *establishing requirements for submission and ap-*
2 *proval of State climate adaptation plans under this*
3 *section. Receipt of emission allowances pursuant to*
4 *this section shall be contingent on approval of a State*
5 *climate adaptation plan meeting the requirements of*
6 *such guidelines.*

7 (2) *REQUIREMENTS.—Regulations promulgated*
8 *under this subsection shall require, at minimum,*
9 *that—*

10 (A) *State climate adaptation plans assess*
11 *and prioritize the State’s vulnerability to a*
12 *broad range of impacts of climate change, based*
13 *on the best available science;*

14 (B) *State climate adaptation plans include*
15 *an assessment of potential for carbon reduction*
16 *through changes to land management policies*
17 *(including enhancement, or protection, of forest*
18 *carbon sinks);*

19 (C) *State climate adaptation plans identify*
20 *and prioritize specific cost-effective projects, pro-*
21 *grams, and measures to build resilience to pre-*
22 *dicted impacts of climate change;*

23 (D) *State climate adaptation plans ensure*
24 *that the State fully considers and undertakes, to*

1 *the maximum extent practicable, initiatives*
2 *that—*

3 *(i) protect or enhance natural eco-*
4 *system functions, including protection,*
5 *maintenance, or restoration of natural in-*
6 *frastructure such as wetlands, reefs, and*
7 *barrier islands to buffer communities from*
8 *floodwaters or storms, watershed protection*
9 *to maintain water quality and groundwater*
10 *recharge, or floodplain restoration to im-*
11 *prove natural flood control capacity; or*

12 *(ii) use non-structural approaches in-*
13 *cluding practices that utilize, enhance, or*
14 *mimic the natural hydrologic cycle processes*
15 *of infiltration, evapotranspiration, and*
16 *reuse;*

17 *(E) in order to be eligible to receive emis-*
18 *sion allowances under this section, a State shall*
19 *submit a revised State climate adaptation plan*
20 *for approval not less frequently than every 5*
21 *years; and*

22 *(F) State climate adaptation plans be con-*
23 *sistent with Federal conservation and environ-*
24 *mental laws and, to the maximum extent prac-*
25 *ticable, avoid environmental degradation.*

1 (3) *COORDINATION WITH PRIOR PLANNING EF-*
2 *FORTS.—In promulgating regulations under this sub-*
3 *section, the Administrator, or such other Federal*
4 *agency head or heads as the President may designate,*
5 *shall—*

6 (A) *draw upon lessons learned and best*
7 *practices from preexisting State climate adapta-*
8 *tion planning efforts;*

9 (B) *seek to avoid duplication of such efforts;*
10 *and*

11 (C) *ensure that the plans developed under*
12 *this section reflect and are fully consistent with*
13 *State natural resources adaptation plans devel-*
14 *oped under section 479.*

15 (f) *REPORTING.—Each State receiving emission allow-*
16 *ances under this section shall submit to the Administrator,*
17 *or such other Federal agency head or heads as the President*
18 *may designate, within 12 months after each receipt of such*
19 *allowances and once every 2 years thereafter until the pro-*
20 *ceeds from the sale of emission allowances received under*
21 *this section are fully expended, a report that—*

22 (1) *provides a full accounting for the State's use*
23 *of proceeds of sales of emission allowances distributed*
24 *under this section, including a description of the*

1 *projects, programs, or measures funded through such*
2 *proceeds;*

3 *(2) includes a report prepared by an inde-*
4 *pendent third party, in accordance with such regula-*
5 *tions as are promulgated by the Administrator or*
6 *such other Federal agency head or heads as the Presi-*
7 *dent may designate, evaluating the performance of the*
8 *projects, programs, or measures funded under this sec-*
9 *tion; and*

10 *(3) identifies any use by the State of proceeds of*
11 *sales of emission allowances distributed under this*
12 *section for the reduction of flood and storm damage*
13 *and the effects of climate change on water and flood*
14 *protection infrastructure.*

15 *(g) ENFORCEMENT.—If the Administrator, or such*
16 *other Federal agency head or heads as the President may*
17 *designate, determines that a State is not in compliance with*
18 *this section, the Administrator may withhold a portion of*
19 *the allowances, the value of which is equal to up to twice*
20 *the value of the allowances that the State failed to use in*
21 *accordance with the requirements of this section, that such*
22 *State would otherwise be eligible to receive under this sec-*
23 *tion in 1 or more later years. Allowances withheld pursuant*
24 *to this subsection shall be distributed among the remaining*

1 *States ratably in accordance with the formula in subsection*
2 *(a).*

3 *(h) SUPPLEMENT, NOT SUPPLANT.—It is the intent of*
4 *the Congress that emission allowances distributed to carry*
5 *out this subpart should be used to supplement, and not re-*
6 *place, existing sources of funding used to build resilience*
7 *to the impacts of climate change identified in subsection*
8 *(c).*

9 ***Subpart B—Public Health and Climate Change***

10 ***SEC. 461. SENSE OF CONGRESS ON PUBLIC HEALTH AND***
11 ***CLIMATE CHANGE.***

12 *It is the sense of the Congress that the Federal Govern-*
13 *ment, in cooperation with international, State, tribal, and*
14 *local governments, concerned public and private organiza-*
15 *tions, and citizens, should use all practicable means and*
16 *measures—*

17 *(1) to assist the efforts of public health and*
18 *health care professionals, first responders, States,*
19 *tribes, municipalities, and local communities to in-*
20 *corporate measures to prepare health systems to re-*
21 *spond to the impacts of climate change;*

22 *(2) to ensure—*

23 *(A) that the Nation’s health professionals*
24 *have sufficient information to prepare for and*

1 *respond to the adverse health impacts of climate*
2 *change;*

3 *(B) the utility and value of scientific re-*
4 *search in advancing understanding of—*

5 *(i) the health impacts of climate*
6 *change; and*

7 *(ii) strategies to prepare for and re-*
8 *spond to the health impacts of climate*
9 *change;*

10 *(C) the identification of communities vul-*
11 *nerable to the health effects of climate change*
12 *and the development of strategic response plans*
13 *to be carried out by health professionals for those*
14 *communities;*

15 *(D) the improvement of health status and*
16 *health equity through efforts to prepare for and*
17 *respond to climate change; and*

18 *(E) the inclusion of health policy in the de-*
19 *velopment of climate change responses;*

20 *(3) to encourage further research, interdiscipli-*
21 *nary partnership, and collaboration among stake-*
22 *holders in order to—*

23 *(A) understand and monitor the health im-*
24 *pacts of climate change; and*

1 (B) improve public health knowledge and
2 response strategies to climate change;

3 (4) to enhance preparedness activities, and pub-
4 lic health infrastructure, relating to climate change
5 and health;

6 (5) to encourage each and every American to
7 learn about the impacts of climate change on health;
8 and

9 (6) to assist the efforts of developing nations to
10 incorporate measures to prepare health systems to re-
11 spond to the impacts of climate change.

12 **SEC. 462. RELATIONSHIP TO OTHER LAWS.**

13 Nothing in this subpart in any manner limits the au-
14 thority provided to or responsibility conferred on any Fed-
15 eral department or agency by any provision of any law (in-
16 cluding regulations) or authorizes any violation of any pro-
17 vision of any law (including regulations), including any
18 health, energy, environmental, transportation, or any other
19 law or regulation.

20 **SEC. 463. NATIONAL STRATEGIC ACTION PLAN.**

21 (a) *REQUIREMENT.*—

22 (1) *IN GENERAL.*—The Secretary of Health and
23 Human Services, within 2 years after the date of the
24 enactment of this Act, on the basis of the best avail-
25 able science, and in consultation pursuant to para-

1 *graph (2), shall publish a strategic action plan to as-*
2 *assist health professionals in preparing for and re-*
3 *sponding to the impacts of climate change on public*
4 *health in the United States and other nations, par-*
5 *ticularly developing nations.*

6 (2) *CONSULTATION.—In developing or making*
7 *any revision to the national strategic action plan, the*
8 *Secretary shall—*

9 (A) *consult with the Director of the Centers*
10 *for Disease Control and Prevention, the Admin-*
11 *istrator of the Environmental Protection Agency,*
12 *the Director of the National Institutes of Health,*
13 *the Secretary of Energy, other appropriate Fed-*
14 *eral agencies, Indian tribes, State and local gov-*
15 *ernments, public health organizations, scientists,*
16 *and other interested stakeholders; and*

17 (B) *provide opportunity for public input.*

18 (b) *CONTENTS.—*

19 (1) *IN GENERAL.—The Secretary, acting through*
20 *the Director of the Centers for Disease Control and*
21 *Prevention and other appropriate Federal agencies,*
22 *shall assist health professionals in preparing for and*
23 *responding effectively and efficiently to the health ef-*
24 *fects of climate change through measures including—*

1 (A) *developing, improving, integrating, and*
2 *maintaining domestic and international disease*
3 *surveillance systems and monitoring capacity to*
4 *respond to health-related effects of climate*
5 *change, including on topics addressing—*

6 (i) *water, food, and vector borne infec-*
7 *tious diseases and climate change;*

8 (ii) *pulmonary effects, including re-*
9 *sponses to aeroallergens;*

10 (iii) *cardiovascular effects, including*
11 *impacts of temperature extremes;*

12 (iv) *air pollution health effects, includ-*
13 *ing heightened sensitivity to air pollution;*

14 (v) *hazardous algal blooms;*

15 (vi) *mental and behavioral health im-*
16 *pacts of climate change;*

17 (vii) *the health of refugees, displaced*
18 *persons, and vulnerable communities;*

19 (viii) *the implications for communities*
20 *vulnerable to health effects of climate*
21 *change, as well as strategies for responding*
22 *to climate change within these communities;*
23 *and*

1 *(ix) local and community-based health*
2 *interventions for climate-related health im-*
3 *pacts;*

4 *(B) creating tools for predicting and moni-*
5 *toring the public health effects of climate change*
6 *on the international, national, regional, State,*
7 *and local levels, and providing technical support*
8 *to assist in their implementation;*

9 *(C) developing public health communica-*
10 *tions strategies and interventions for extreme*
11 *weather events and disaster response situations;*

12 *(D) identifying and prioritizing commu-*
13 *nities and populations vulnerable to the health*
14 *effects of climate change, and determining ac-*
15 *tions and communication strategies that should*
16 *be taken to inform and protect these communities*
17 *and populations from the health effects of climate*
18 *change;*

19 *(E) developing health communication, pub-*
20 *lic education, and outreach programs aimed at*
21 *public health and health care professionals, as*
22 *well as the general public, to promote prepared-*
23 *ness and response strategies relating to climate*
24 *change and public health, including the identi-*

1 *fication of greenhouse gas reduction behaviors*
2 *that are health-promoting; and*
3 *(F) developing academic and regional cen-*
4 *ters of excellence devoted to—*
5 *(i) researching relationships between*
6 *climate change and health;*
7 *(ii) expanding and training the public*
8 *health workforce to strengthen the capacity*
9 *of such workforce to respond to and prepare*
10 *for the health effects of climate change;*
11 *(iii) creating and supporting academic*
12 *fellowships focusing on the health effects of*
13 *climate change; and*
14 *(iv) training senior health ministry of-*
15 *ficials from developing nations to strengthen*
16 *the capacity of such nations to—*
17 *(I) prepare for and respond to the*
18 *health effects of climate change; and*
19 *(II) build an international net-*
20 *work of public health professionals*
21 *with the necessary climate change*
22 *knowledge base;*
23 *(G) using techniques, including health im-*
24 *pact assessments, to assess various climate*
25 *change public health preparedness and response*

1 *strategies on international, national, State, re-*
2 *gional, tribal, and local levels, and make rec-*
3 *ommendations as to those strategies that best*
4 *protect the public health;*

5 *(H)(i) assisting in the development, imple-*
6 *mentation, and support of State, regional, tribal,*
7 *and local preparedness, communication, and re-*
8 *sponse plans (including with respect to the*
9 *health departments of such entities) to anticipate*
10 *and reduce the health threats of climate change;*
11 *and*

12 *(ii) pursuing collaborative efforts to develop,*
13 *integrate, and implement such plans;*

14 *(I) creating a program to advance research*
15 *as it relates to the effects of climate change on*
16 *public health across Federal agencies, including*
17 *research to—*

18 *(i) identify and assess climate change*
19 *health effects preparedness and response*
20 *strategies;*

21 *(ii) prioritize critical public health in-*
22 *frastructure projects related to potential cli-*
23 *mate change impacts that affect public*
24 *health; and*

1 (iii) coordinate preparedness for cli-
2 mate change health impacts, including the
3 development of modeling and forecasting
4 tools;

5 (J) providing technical assistance for the
6 development, implementation, and support of
7 preparedness and response plans to anticipate
8 and reduce the health threats of climate change
9 in developing nations; and

10 (K) carrying out other activities determined
11 appropriate by the Secretary to plan for and re-
12 spond to the impacts of climate change on public
13 health.

14 (c) *REVISION.*—The Secretary shall revise the national
15 strategic action plan not later than July 1, 2014, and every
16 4 years thereafter, to reflect new information collected pur-
17 suant to implementation of the national strategic action
18 plan and otherwise, including information on—

19 (1) the status of critical environmental health
20 parameters and related human health impacts;

21 (2) the impacts of climate change on public
22 health; and

23 (3) advances in the development of strategies for
24 preparing for and responding to the impacts of cli-
25 mate change on public health.

1 (d) *IMPLEMENTATION.*—

2 (1) *IMPLEMENTATION THROUGH HHS.*—*The Sec-*
3 *retary shall exercise the Secretary’s authority under*
4 *this subpart and other provisions of Federal law to*
5 *achieve the goals and measures of the national stra-*
6 *tegic action plan.*

7 (2) *OTHER PUBLIC HEALTH PROGRAMS AND INI-*
8 *TIATIVES.*—*The Secretary and Federal officials of*
9 *other relevant Federal agencies shall administer pub-*
10 *lic health programs and initiatives authorized by pro-*
11 *visions of law other than this subpart, subject to the*
12 *requirements of such statutes, in a manner designed*
13 *to achieve the goals of the national strategic action*
14 *plan.*

15 (3) *CDC.*—*In furtherance of the national stra-*
16 *tegic action plan, the Secretary, acting through the*
17 *Director of the Centers for Disease Control and Pre-*
18 *vention and the head of any other appropriate Fed-*
19 *eral agency, shall—*

20 (A) *conduct scientific research to assist*
21 *health professionals in preparing for and re-*
22 *sponding to the impacts of climate change on*
23 *public health; and*

24 (B) *provide funding for—*

1 (i) *research on the health effects of cli-*
2 *mate change; and*

3 (ii) *preparedness planning on the*
4 *international, national, State, regional, and*
5 *local levels to respond to or reduce the bur-*
6 *den of health effects of climate change; and*

7 (C) *carry out other activities determined*
8 *appropriate by the Director or the head of such*
9 *agency to prepare for and respond to the impacts*
10 *of climate change on public health.*

11 **SEC. 464. ADVISORY BOARD.**

12 (a) *ESTABLISHMENT.*—*The Secretary shall establish a*
13 *permanent science advisory board comprised of not less*
14 *than 10 and not more than 20 members.*

15 (b) *APPOINTMENT OF MEMBERS.*—*The Secretary shall*
16 *appoint the members of the science advisory board from*
17 *among individuals—*

18 (1) *who have expertise in public health and*
19 *human services, climate change, and other relevant*
20 *disciplines; and*

21 (2) *at least 1/2 of whom are recommended by the*
22 *President of the National Academy of Sciences.*

23 (c) *FUNCTIONS.*—*The science advisory board shall—*

24 (1) *provide scientific and technical advice and*
25 *recommendations to the Secretary on the domestic*

1 *and international impacts of climate change on pub-*
2 *lic health, populations and regions particularly vul-*
3 *nerable to the effects of climate change, and strategies*
4 *and mechanisms to prepare for and respond to the*
5 *impacts of climate change on public health; and*

6 (2) *advise the Secretary regarding the best*
7 *science available for purposes of issuing the national*
8 *strategic action plan.*

9 **SEC. 465. REPORTS.**

10 (a) *NEEDS ASSESSMENT.*—

11 (1) *IN GENERAL.*—*The Secretary shall seek to*
12 *enter into, by not later than 6 months after the date*
13 *of the enactment of this Act, an agreement with the*
14 *National Research Council and the Institute of Medi-*
15 *cine to complete a report that—*

16 (A) *assesses the needs for health profes-*
17 *sionals to prepare for and respond to climate*
18 *change impacts on public health; and*

19 (B) *recommends programs to meet those*
20 *needs.*

21 (2) *SUBMISSION.*—*The agreement under para-*
22 *graph (1) shall require the completed report to be sub-*
23 *mitted to the Congress and the Secretary and made*
24 *publicly available not later than 1 year after the date*
25 *of the agreement.*

1 (b) *CLIMATE CHANGE HEALTH PROTECTION AND PRO-*
2 *MOTION REPORTS.*—

3 (1) *IN GENERAL.*—*The Secretary, in consultation*
4 *with the advisory board established under section 464,*
5 *shall ensure the issuance of reports to aid health pro-*
6 *professionals in preparing for and responding to the ad-*
7 *verse health effects of climate change that—*

8 (A) *review scientific developments on health*
9 *impacts of climate change; and*

10 (B) *recommend changes to the national*
11 *strategic action plan.*

12 (2) *SUBMISSION.*—*The Secretary shall submit*
13 *the reports required by paragraph (1) to the Congress*
14 *and make such reports publicly available not later*
15 *than July 1, 2013, and every 4 years thereafter.*

16 **SEC. 466. DEFINITIONS.**

17 *In this subpart:*

18 (1) *HEALTH IMPACT ASSESSMENT.*—*The term*
19 *“health impact assessment” means a combination of*
20 *procedures, methods, and tools by which a policy, pro-*
21 *gram, or project may be judged as to its potential ef-*
22 *fects on the health of a population, and the distribu-*
23 *tion of those effects within the population.*

1 (2) *NATIONAL STRATEGIC ACTION PLAN.*—*The*
2 *term “national strategic action plan” means the plan*
3 *issued and revised under section 463.*

4 (3) *SECRETARY.*—*Unless otherwise specified, the*
5 *term “Secretary” means the Secretary of Health and*
6 *Human Services.*

7 **SEC. 467. CLIMATE CHANGE HEALTH PROTECTION AND**
8 **PROMOTION FUND.**

9 (a) *ESTABLISHMENT OF FUND.*—*There is hereby estab-*
10 *lished in the Treasury a separate account that shall be*
11 *known as the Climate Change Health Protection and Pro-*
12 *motion Fund.*

13 (b) *AVAILABILITY OF AMOUNTS.*—*All amounts depos-*
14 *ited into the Climate Change Health Protection and Pro-*
15 *motion Fund shall be available to the Secretary to carry*
16 *out this subpart subject to further appropriation.*

17 (c) *DISTRIBUTION OF FUNDS BY HHS.*—*In carrying*
18 *out this subpart, the Secretary may make funds deposited*
19 *in the Climate Change Health Protection and Promotion*
20 *Fund available to—*

21 (1) *other departments, agencies, and offices of the*
22 *Federal Government;*

23 (2) *foreign, State, tribal, and local governments;*
24 *and*

1 (3) *such other entities as the Secretary deter-*
2 *mines appropriate.*

3 (d) *SUPPLEMENT, NOT REPLACE.—It is the intent of*
4 *Congress that funds made available to carry out this sub-*
5 *part should be used to supplement, and not replace, existing*
6 *sources of funding for public health.*

7 ***Subpart C—Natural Resource Adaptation***

8 ***SEC. 471. PURPOSES.***

9 *The purposes of this subpart are to—*

10 (1) *establish an integrated Federal program to*
11 *protect, restore, and conserve the Nation’s natural re-*
12 *sources in response to the threats of climate change*
13 *and ocean acidification; and*

14 (2) *provide financial support and incentives for*
15 *programs, strategies, and activities that protect, re-*
16 *store, and conserve the Nation’s natural resources in*
17 *response to the threats of climate change and ocean*
18 *acidification.*

19 ***SEC. 472. NATURAL RESOURCES CLIMATE CHANGE ADAPTA-***
20 ***TION POLICY.***

21 *It is the policy of the Federal Government, in coopera-*
22 *tion with State and local governments, Indian tribes, and*
23 *other interested stakeholders to use all practicable means*
24 *and measures to protect, restore, and conserve natural re-*
25 *sources to enable them to become more resilient, adapt to,*

1 *and withstand the impacts of climate change and ocean*
2 *acidification.*

3 **SEC. 473. DEFINITIONS.**

4 *In this subpart:*

5 (1) *COASTAL STATE.*—*The term “coastal State”*
6 *has the meaning given the term in section 304 of the*
7 *Coastal Zone Management Act of 1972 (16 U.S.C.*
8 *1453).*

9 (2) *CORRIDORS.*—*The term “corridors” means*
10 *areas that provide connectivity, over different time*
11 *scales (including seasonal or longer), of habitat or po-*
12 *tential habitat and that facilitate the ability of terres-*
13 *trial, marine, estuarine, and freshwater fish, wildlife,*
14 *or plants to move within a landscape as needed for*
15 *migration, gene flow, or dispersal, or in response to*
16 *the impacts of climate change and ocean acidification*
17 *or other impacts.*

18 (3) *ECOLOGICAL PROCESSES.*—*The term “eco-*
19 *logical processes” means biological, chemical, or phys-*
20 *ical interaction between the biotic and abiotic compo-*
21 *nents of an ecosystem and includes—*

22 (A) *nutrient cycling;*

23 (B) *pollination;*

24 (C) *predator-prey relationships;*

25 (D) *soil formation;*

1 *(E) gene flow;*
2 *(F) disease epizootiology;*
3 *(G) larval dispersal and settlement;*
4 *(H) hydrological cycling;*
5 *(I) decomposition; and*
6 *(J) disturbance regimes such as fire and*
7 *flooding.*

8 (4) *HABITAT.*—*The term “habitat” means the*
9 *physical, chemical, and biological properties that are*
10 *used by fish, wildlife, or plants for growth, reproduc-*
11 *tion, survival, food, water, and cover, on a tract of*
12 *land, in a body of water, or in an area or region.*

13 (5) *INDIAN TRIBE.*—*The term “Indian tribe” has*
14 *the meaning given the term in section 4 of the Indian*
15 *Self-Determination and Education Assistance Act (25*
16 *U.S.C. 450b).*

17 (6) *NATURAL RESOURCES.*—*The term “natural*
18 *resources” means the terrestrial, freshwater, estuarine,*
19 *and marine fish, wildlife, plants, land, water, habi-*
20 *tats, and ecosystems of the United States.*

21 (7) *NATURAL RESOURCES ADAPTATION.*—*The*
22 *term “natural resources adaptation” means the pro-*
23 *tection, restoration, and conservation of natural re-*
24 *sources to enable them to become more resilient, adapt*

1 *to, and withstand the impacts of climate change and*
2 *ocean acidification.*

3 (8) *RESILIENCE.*—*Each of the terms “resilience”*
4 *and “resilient” means the ability to resist or recover*
5 *from disturbance and preserve diversity, productivity,*
6 *and sustainability.*

7 (9) *STATE.*—*The term “State” means—*

8 (A) *a State of the United States;*

9 (B) *the District of Columbia; and*

10 (C) *the Commonwealth of Puerto Rico,*
11 *Guam, the United States Virgin Islands, the*
12 *Northern Mariana Islands, and American*
13 *Samoa.*

14 **SEC. 474. COUNCIL ON ENVIRONMENTAL QUALITY.**

15 *The Chair of the Council on Environmental Quality*
16 *shall—*

17 (1) *advise the President on implementation and*
18 *development of—*

19 (A) *a Natural Resources Climate Change*
20 *Adaptation Strategy required under section 476;*
21 *and*

22 (B) *Federal natural resource agency adap-*
23 *tation plans required under section 478;*

1 (2) *serve as the Chair of the Natural Resources*
2 *Climate Change Adaptation Panel established under*
3 *section 475; and*

4 (3) *coordinate Federal agency strategies, plans,*
5 *programs, and activities related to protecting, restor-*
6 *ing, and maintaining natural resources to become*
7 *more resilient, adapt to, and withstand the impacts*
8 *of climate change and ocean acidification.*

9 **SEC. 475. NATURAL RESOURCES CLIMATE CHANGE ADAPTA-**
10 **TION PANEL.**

11 (a) *ESTABLISHMENT.*—*Not later than 90 days after*
12 *the date of the enactment of this subpart, the President shall*
13 *establish a Natural Resources Climate Change Adaptation*
14 *Panel, consisting of—*

15 (1) *the head, or their designee, of each of—*

16 (A) *the National Oceanic and Atmospheric*
17 *Administration;*

18 (B) *the Forest Service;*

19 (C) *the National Park Service;*

20 (D) *the United States Fish and Wildlife*
21 *Service;*

22 (E) *the Bureau of Land Management;*

23 (F) *the United States Geological Survey;*

24 (G) *the Bureau of Reclamation;*

25 (H) *the Bureau of Indian Affairs;*

1 (I) the Environmental Protection Agency;

2 and

3 (J) the Army Corps of Engineers;

4 (2) the Chair of the Council on Environmental
5 Quality; and

6 (3) the heads of such other Federal agencies or
7 departments with jurisdiction over natural resources
8 of the United States, as determined by the President.

9 (b) *FUNCTIONS.*—The Panel shall serve as a forum for
10 interagency consultation on and the coordination of the de-
11 velopment and implementation of a national Natural Re-
12 sources Climate Change Adaptation Strategy required
13 under section 476.

14 (c) *CHAIR.*—The Chair of the Council on Environ-
15 mental Quality shall serve as the Chair of the Panel.

16 **SEC. 476. NATURAL RESOURCES CLIMATE CHANGE ADAPTA-**
17 **TION STRATEGY.**

18 (a) *IN GENERAL.*—Not later than one year after the
19 date of the enactment of this subpart, the President, through
20 the Natural Resources Climate Change Adaptation Panel
21 established under section 475, shall develop a Natural Re-
22 sources Climate Change Adaptation Strategy to protect, re-
23 store, and conserve natural resources to enable them to be-
24 come more resilient, adapt to, and withstand the impacts

1 *of climate change and ocean acidification and to identify*
2 *opportunities to mitigate those impacts.*

3 (b) *DEVELOPMENT AND REVISION.*—*In developing and*
4 *revising the Strategy, the Panel shall—*

5 (1) *base the strategy on the best available science;*

6 (2) *develop the strategy in close cooperation with*
7 *States and Indian tribes;*

8 (3) *coordinate with other Federal agencies as ap-*
9 *propriate;*

10 (4) *consult with local governments, conservation*
11 *organizations, scientists, and other interested stake-*
12 *holders;*

13 (5) *provide public notice and opportunity for*
14 *comment; and*

15 (6) *review and revise the Strategy every 5 years*
16 *to incorporate new information regarding the impacts*
17 *of climate change and ocean acidification on natural*
18 *resources and advances in the development of strate-*
19 *gies for becoming more resilient and adapting to those*
20 *impacts.*

21 (c) *CONTENTS.*—*The National Resources Adaptation*
22 *Strategy shall include—*

23 (1) *an assessment of the vulnerability of natural*
24 *resources to climate change and ocean acidification,*

1 *including the short-term, medium-term, long-term, cu-*
2 *mulative, and synergistic impacts;*

3 *(2) a description of current research, observation,*
4 *and monitoring activities at the Federal, State, trib-*
5 *al, and local level related to the impacts of climate*
6 *change and ocean acidification on natural resources,*
7 *as well as identification of research and data needs*
8 *and priorities;*

9 *(3) identification of natural resources that are*
10 *likely to have the greatest need for protection, restora-*
11 *tion, and conservation because of the adverse effects of*
12 *climate change and ocean acidification;*

13 *(4) specific protocols for integrating climate*
14 *change and ocean acidification adaptation strategies*
15 *and activities into the conservation and management*
16 *of natural resources by Federal departments and*
17 *agencies to ensure consistency across agency jurisdic-*
18 *tions and resources;*

19 *(5) specific actions that Federal departments*
20 *and agencies shall take to protect, conserve, and re-*
21 *store natural resources to become more resilient,*
22 *adapt to, and withstand the impacts of climate*
23 *change and ocean acidification, including a timeline*
24 *to implement those actions;*

1 (6) *specific mechanisms for ensuring commu-*
2 *nication and coordination among Federal depart-*
3 *ments and agencies, and between Federal departments*
4 *and agencies and State natural resource agencies,*
5 *United States territories, Indian tribes, private land-*
6 *owners, conservation organizations, and other nations*
7 *that share jurisdiction over natural resources with the*
8 *United States;*

9 (7) *specific actions to develop and implement*
10 *consistent natural resources inventory and moni-*
11 *toring protocols through interagency coordination and*
12 *collaboration; and*

13 (8) *a process for guiding the development of de-*
14 *tailed agency- and department-specific adaptation*
15 *plans required under section 478 to address the im-*
16 *pacts of climate change and ocean acidification on the*
17 *natural resources in the jurisdiction of each agency.*

18 (d) *IMPLEMENTATION.*—*Consistent with its authorities*
19 *under other laws and with Federal trust responsibilities*
20 *with respect to Indian lands, each Federal department or*
21 *agency with representation on the National Resources Cli-*
22 *mate Change Adaptation Panel shall consider the impacts*
23 *of climate change and ocean acidification and integrate the*
24 *elements of the strategy into agency plans, environmental*

1 *reviews, programs, and activities related to the conserva-*
2 *tion, restoration, and management of natural resources.*

3 **SEC. 477. NATURAL RESOURCES ADAPTATION SCIENCE AND**
4 **INFORMATION.**

5 (a) *COORDINATION.*—*Not later than 90 days after the*
6 *date of the enactment of this subpart, the Secretary of Com-*
7 *merce, acting through the Administrator of the National*
8 *Oceanic and Atmospheric Administration, and the Sec-*
9 *retary of the Interior, acting through the Director of the*
10 *United States Geological Survey, shall establish a coordi-*
11 *nated process for developing and providing science and in-*
12 *formation needed to assess and address the impacts of cli-*
13 *mate change and ocean acidification on natural resources.*
14 *The process shall be led by the National Climate Change*
15 *and Wildlife Science Center established within the United*
16 *States Geological Survey under subsection (d) and the Na-*
17 *tional Climate Service of the National Oceanic and Atmos-*
18 *pheric Administration.*

19 (b) *FUNCTIONS.*—*The Secretaries shall ensure that*
20 *such process avoids duplication and that the National Oce-*
21 *anic and Atmospheric Administration and the United*
22 *States Geological Survey shall—*

23 (1) *provide technical assistance to Federal de-*
24 *partments and agencies, State and local governments,*
25 *Indian tribes, and interested private landowners in*

1 *their efforts to assess and address the impacts of cli-*
2 *mate change and ocean acidification on natural re-*
3 *sources;*

4 (2) *conduct and sponsor research and provide*
5 *Federal departments and agencies, State and local*
6 *governments, Indian tribes, and interested private*
7 *landowners with research products, decision and mon-*
8 *itoring tools and information, to develop strategies for*
9 *assisting natural resources to become more resilient,*
10 *adapt to, and withstand the impacts of climate*
11 *change and ocean acidification; and*

12 (3) *assist Federal departments and agencies in*
13 *the development of the adaptation plans required*
14 *under section 478.*

15 (c) *SURVEY.*—*Not later than one year after the date*
16 *of enactment of this subpart and every 5 years thereafter,*
17 *the Secretary of Commerce and the Secretary of the Interior*
18 *shall undertake a climate change and ocean acidification*
19 *impact survey that—*

20 (1) *identifies natural resources considered likely*
21 *to be adversely affected by climate change and ocean*
22 *acidification;*

23 (2) *includes baseline monitoring and ongoing*
24 *trend analysis;*

1 (3) uses a stakeholder process to identify and
2 prioritize needed monitoring and research that is of
3 greatest relevance to the ongoing needs of natural re-
4 source managers to address the impacts of climate
5 change and ocean acidification; and

6 (4) identifies decision tools necessary to develop
7 strategies for assisting natural resources to become
8 more resilient and adapt to and withstand the im-
9 pacts of climate change and ocean acidification.

10 (d) NATIONAL CLIMATE CHANGE AND WILDLIFE
11 SCIENCE CENTER.—

12 (1) ESTABLISHMENT.—The Secretary of the Inte-
13 rior shall establish the National Climate Change and
14 Wildlife Science Center within the United States Geo-
15 logical Survey.

16 (2) FUNCTIONS.—The Center shall, in collabora-
17 tion with Federal and State natural resources agen-
18 cies and departments, Indian tribes, universities, and
19 other partner organizations—

20 (A) assess and synthesize current physical
21 and biological knowledge and prioritize scientific
22 gaps in such knowledge in order to forecast the
23 ecological impacts of climate change on fish and
24 wildlife at the ecosystem, habitat, community,
25 population, and species levels;

1 (B) develop and improve tools to identify,
2 evaluate, and, where appropriate, link scientific
3 approaches and models for forecasting the im-
4 pacts of climate change and adaptation on fish,
5 wildlife, plants, and their habitats, including
6 monitoring, predictive models, vulnerability
7 analyses, risk assessments, and decision support
8 systems to help managers make informed deci-
9 sions;

10 (C) develop and evaluate tools to adaptively
11 manage and monitor the effects of climate change
12 on fish and wildlife at national, regional, and
13 local scales; and

14 (D) develop capacities for sharing standard-
15 ized data and the synthesis of such data.

16 (e) *SCIENCE ADVISORY BOARD.*—

17 (1) *ESTABLISHMENT.*—Not later than 180 days
18 after the date of enactment of this subpart, the Sec-
19 retary of Commerce and the Secretary of the Interior
20 shall establish and appoint the members of a Science
21 Advisory Board, to be comprised of not fewer than 10
22 and not more than 20 members—

23 (A) who have expertise in fish, wildlife,
24 plant, aquatic, and coastal and marine biology,

1 *ecology, climate change, ocean acidification, and*
2 *other relevant scientific disciplines;*

3 *(B) who represent a balanced membership*
4 *among Federal, State, Indian tribes, and local*
5 *representatives, universities, and conservation*
6 *organizations; and*

7 *(C) at least 1/2 of whom are recommended*
8 *by the President of the National Academy of*
9 *Sciences.*

10 (2) *DUTIES.—The Science Advisory Board*
11 *shall—*

12 *(A) advise the Secretaries on the state-of-*
13 *the-science regarding the impacts of climate*
14 *change and ocean acidification on natural re-*
15 *sources and scientific strategies and mechanisms*
16 *for protecting, restoring, and conserving natural*
17 *resources to enable them to become more resilient,*
18 *adapt to, and withstand the impacts of climate*
19 *change and ocean acidification; and*

20 *(B) identify and recommend priorities for*
21 *ongoing research needs on such issues.*

22 (3) *COLLABORATION.—The Science Advisory*
23 *Board shall collaborate with other climate change and*
24 *ecosystem research entities in other Federal agencies*
25 *and departments.*

1 *ing in the case of a plan by the Bureau of Indian Af-*
2 *fairs, review by Indian tribes; and*

3 *(3) submit such plan to the President for ap-*
4 *proval.*

5 *(b) REVIEW BY PRESIDENT AND SUBMISSION TO CON-*
6 *GRESS.—*

7 *(1) REVIEW BY PRESIDENT.—The President*
8 *shall—*

9 *(A) approve an adaptation plan submitted*
10 *under subsection (a)(3) if the plan meets the re-*
11 *quirements of subsection (c) and is consistent*
12 *with the strategy developed under section 476;*

13 *(B) decide whether to approve the plan*
14 *within 60 days after submission; and*

15 *(C) if the President disapproves a plan, di-*
16 *rect the department or agency to submit a re-*
17 *vised plan to the President under subsection*
18 *(a)(3) within 60 days after such disapproval.*

19 *(2) SUBMISSION TO CONGRESS.—Not later than*
20 *30 days after the date of approval of such adaptation*
21 *plan by the President, the department or agency shall*
22 *submit the approved plan to the Committee on Nat-*
23 *ural Resources of the House of Representatives, the*
24 *Committee on Energy and Natural Resources of the*
25 *Senate, and the committees of the House of Represent-*

1 *atives and the Senate with principal jurisdiction over*
2 *the department or agency.*

3 *(c) REQUIREMENTS.—Each adaptation plan shall—*

4 *(1) establish programs for assessing the current*
5 *and future impacts of climate change and ocean*
6 *acidification on natural resources within the depart-*
7 *ment's or agency's, respectively, jurisdiction, includ-*
8 *ing cumulative and synergistic effects, and for identi-*
9 *fying and monitoring those natural resources that are*
10 *likely to be adversely affected and that have need for*
11 *conservation;*

12 *(2) identify and prioritize the department's or*
13 *agency's strategies and specific conservation actions*
14 *to address the current and future impacts of climate*
15 *change and ocean acidification on natural resources*
16 *within the scope of the department's or agency's juris-*
17 *isdiction and to develop and implement strategies to*
18 *protect, restore, and conserve such resources to become*
19 *more resilient, adapt to, and better withstand those*
20 *impacts, including—*

21 *(A) the protection, restoration, and con-*
22 *servation of terrestrial, marine, estuarine, and*
23 *freshwater habitats and ecosystems;*

1 *(B) the establishment of terrestrial, marine,*
2 *estuarine, and freshwater habitat linkages and*
3 *corridors;*

4 *(C) the restoration and conservation of eco-*
5 *logical processes;*

6 *(D) the protection of a broad diversity of*
7 *native species of fish, wildlife, and plant popu-*
8 *lations across their range; and*

9 *(E) the protection of fish, wildlife, and*
10 *plant health, recognizing that climate can alter*
11 *the distribution and ecology of parasites, patho-*
12 *gens, and vectors;*

13 *(3) describe how the department or agency will*
14 *integrate such strategies and conservation activities*
15 *into plans, programs, activities, and actions of the de-*
16 *partment or agency, related to the conservation and*
17 *management of natural resources and establish new*
18 *plans, programs, activities, and actions as necessary;*

19 *(4) establish methods for assessing the effective-*
20 *ness of strategies and conservation actions taken to*
21 *protect, restore, and conserve natural resources to en-*
22 *able them to become more resilient, adapt to, and*
23 *withstand the impacts of climate change and ocean*
24 *acidification, and for updating those strategies and*

1 *actions to respond to new information and changing*
2 *conditions;*

3 *(5) include a description of current and proposed*
4 *mechanisms to enhance cooperation and coordination*
5 *of natural resources adaptation efforts with other*
6 *Federal agencies, State and local governments, Indian*
7 *tribes, and nongovernmental stakeholders;*

8 *(6) include specific written guidance to resource*
9 *managers to—*

10 *(A) explain how managers are expected to*
11 *address the effects of climate change and ocean*
12 *acidification;*

13 *(B) identify how managers are to obtain*
14 *any site-specific information that may be nec-*
15 *essary; and*

16 *(C) reflect best practices shared among rel-*
17 *evant agencies, while also recognizing the unique*
18 *missions, objectives, and responsibilities of each*
19 *agency; and*

20 *(7) identify and assess data and information*
21 *gaps necessary to develop natural resources adapta-*
22 *tion plans and strategies.*

23 *(d) IMPLEMENTATION.—*

24 *(1) IN GENERAL.—Upon approval by the Presi-*
25 *dent, each department or agency that serves on the*

1 *Natural Resources Climate Change Adaptation Panel*
2 *shall implement its adaptation plan through existing*
3 *and new plans, policies, programs, activities, and ac-*
4 *tions to the extent not inconsistent with existing au-*
5 *thority.*

6 (2) *CONSIDERATION OF IMPACTS.—*

7 (A) *IN GENERAL.—To the maximum extent*
8 *practicable and consistent with applicable law,*
9 *every natural resource management decision*
10 *made by the department or agency shall consider*
11 *the impacts of climate change and ocean acidifi-*
12 *cation on those natural resources.*

13 (B) *GUIDANCE.—The Council on Environ-*
14 *mental Quality shall issue guidance for Federal*
15 *departments and agencies for considering those*
16 *impacts.*

17 (e) *REVISION AND REVIEW.—Not less than every 5*
18 *years, each adaptation plan under this section shall be re-*
19 *viewed and revised to incorporate the best available science*
20 *and other information regarding the impacts of climate*
21 *change and ocean acidification on natural resources.*

22 **SEC. 479. STATE NATURAL RESOURCES ADAPTATION**
23 **PLANS.**

24 (a) *REQUIREMENT.—In order to be eligible for funds*
25 *under section 480, not later than 1 year after the develop-*

1 *ment of a Natural Resources Climate Change Adaptation*
2 *Strategy required under section 476 each State shall pre-*
3 *pare a State natural resources adaptation plan detailing*
4 *the State's current and projected efforts to address the po-*
5 *tential impacts of climate change and ocean acidification*
6 *on natural resources and coastal areas within the State's*
7 *jurisdiction.*

8 (b) *REVIEW OR APPROVAL.—*

9 (1) *IN GENERAL.—Each State adaptation plan*
10 *shall be reviewed and approved or disapproved by the*
11 *Secretary of the Interior and, as applicable, the Sec-*
12 *retary of Commerce. Such approval shall be granted*
13 *if the plan meets the requirements of subsection (c)*
14 *and is consistent with the Natural Resources Climate*
15 *Change Adaptation Strategy required under section*
16 *476.*

17 (2) *APPROVAL OR DISAPPROVAL.—Within 180*
18 *days after transmittal of such a plan, or a revision*
19 *to such a plan, the Secretary of the Interior and, as*
20 *applicable, the Secretary of Commerce shall approve*
21 *or disapprove the plan by written notice.*

22 (3) *RESUBMITTAL.—Within 90 days after trans-*
23 *mittal of a resubmitted adaptation plan as a result*
24 *of disapproval under paragraph (3), the Secretary of*
25 *the Interior and, as applicable, the Secretary of Com-*

1 *merce, shall approve or disapprove the plan by writ-*
2 *ten notice.*

3 *(c) CONTENTS.—A State natural resources adaptation*
4 *plan shall—*

5 *(1) include a strategy for addressing the impacts*
6 *of climate change and ocean acidification on terres-*
7 *trial, marine, estuarine, and freshwater fish, wildlife,*
8 *plants, habitats, ecosystems, wildlife health, and eco-*
9 *logical processes, that—*

10 *(A) describes the impacts of climate change*
11 *and ocean acidification on the diversity and*
12 *health of the fish, wildlife and plant populations,*
13 *habitats, ecosystems, and associated ecological*
14 *processes;*

15 *(B) establishes programs for monitoring the*
16 *impacts of climate change and ocean acidifica-*
17 *tion on fish, wildlife, and plant populations,*
18 *habitats, ecosystems, and associated ecological*
19 *processes;*

20 *(C) describes and prioritizes proposed con-*
21 *servation actions to assist fish, wildlife, plant*
22 *populations, habitats, ecosystems, and associated*
23 *ecological processes in becoming more resilient,*
24 *adapting to, and better withstanding those im-*
25 *pacts;*

1 (D) includes strategies, specific conservation
2 actions, and a time frame for implementing con-
3 servation actions for fish, wildlife, and plant
4 populations, habitats, ecosystems, and associated
5 ecological processes;

6 (E) establishes methods for assessing the ef-
7 fectiveness of strategies and conservation actions
8 taken to assist fish, wildlife, and plant popu-
9 lations, habitats, ecosystems, and associated eco-
10 logical processes in becoming more resilient,
11 adapt to, and better withstand the impacts of cli-
12 mate changes and ocean acidification and for
13 updating those strategies and actions to respond
14 appropriately to new information or changing
15 conditions;

16 (F) is incorporated into a revision of the
17 State wildlife action plan (also known as the
18 State comprehensive wildlife strategy)—

19 (i) that has been submitted to the
20 United States Fish and Wildlife Service;
21 and

22 (ii) that has been approved by the
23 Service or on which a decision on approval
24 is pending; and

25 (G) is developed—

1 (i) with the participation of the State
2 fish and wildlife agency, the State coastal
3 agency, the State agency responsible for ad-
4 ministration of Land and Water Conserva-
5 tion Fund grants, the State Forest Legacy
6 program coordinator, and other State agen-
7 cies considered appropriate by the Governor
8 of such State; and

9 (ii) in coordination with the Secretary
10 of the Interior, and where applicable, the
11 Secretary of Commerce and other States
12 that share jurisdiction over natural re-
13 sources with the State; and

14 (2) include, in the case of a coastal State, a
15 strategy for addressing the impacts of climate change
16 and ocean acidification on the coastal zone that—

17 (A) identifies natural resources that are
18 likely to be impacted by climate change and
19 ocean acidification and describes those impacts;

20 (B) identifies and prioritizes continuing re-
21 search and data collection needed to address
22 those impacts including—

23 (i) acquisition of high resolution coast-
24 al elevation and nearshore bathymetry data;

- 1 (ii) historic shoreline position maps,
2 erosion rates, and inventories of shoreline
3 features and structures;
- 4 (iii) measures and models of relative
5 rates of sea level rise or lake level changes,
6 including effects on flooding, storm surge,
7 inundation, and coastal geological processes;
- 8 (iv) habitat loss, including projected
9 losses of coastal wetlands and potentials for
10 inland migration of natural shoreline habi-
11 tats;
- 12 (v) ocean and coastal species and eco-
13 system migrations, and changes in species
14 population dynamics;
- 15 (vi) changes in storm frequency, inten-
16 sity, or rainfall patterns;
- 17 (vii) saltwater intrusion into coastal
18 rivers and aquifers;
- 19 (viii) changes in chemical or physical
20 characteristics of marine and estuarine sys-
21 tems;
- 22 (ix) increased harmful algal blooms;
- 23 and
- 24 (x) spread of invasive species;

1 (C) identifies and prioritizes adaptation
2 strategies to protect, restore, and conserve nat-
3 ural resources to enable them to become more re-
4 siliant, adapt to, and withstand the impacts of
5 climate change and ocean acidification, includ-
6 ing—

7 (i) protection, maintenance, and res-
8 toration of ecologically important coastal
9 lands, coastal and ocean ecosystems, and
10 species biodiversity and the establishment of
11 habitat buffer zones, migration corridors,
12 and climate refugia; and

13 (ii) improved planning, siting policies,
14 and hazard mitigation strategies;

15 (D) establishes programs for the long-term
16 monitoring of the impacts of climate change and
17 ocean acidification on the ocean and coastal zone
18 and to assess and adjust, when necessary, such
19 adaptive management strategies;

20 (E) establishes performance measures for as-
21 sessing the effectiveness of adaptation strategies
22 intended to improve resilience and the ability of
23 natural resources in the coastal zone to adapt to
24 and withstand the impacts of climate change
25 and ocean acidification and of adaptation strat-

1 egies intended to minimize those impacts on the
2 coastal zone and to update those strategies to re-
3 spond to new information or changing condi-
4 tions; and

5 (F) is developed with the participation of
6 the State coastal agency and other appropriate
7 State agencies and in coordination with the Sec-
8 retary of Commerce and other appropriate Fed-
9 eral agencies.

10 (d) *PUBLIC INPUT*.—States shall provide for sollicita-
11 tion and consideration of public and independent scientific
12 input in the development of their plans.

13 (e) *COORDINATION WITH OTHER PLANS*.—The State
14 plan shall take into consideration research and information
15 contained in, and coordinate with and integrate the goals
16 and measures identified in, as appropriate, other natural
17 resources conservation strategies, including—

18 (1) the national fish habitat action plan;

19 (2) plans under the North American Wetlands
20 Conservation Act (16 U.S.C. 4401 et seq.);

21 (3) the Federal, State, and local partnership
22 known as “Partners in Flight”;

23 (4) federally approved coastal zone management
24 plans under the Coastal Zone Management Act of
25 1972 (16 U.S.C. 1451 et seq.);

1 (5) *federally approved regional fishery manage-*
2 *ment plans and habitat conservation activities under*
3 *the Magnuson-Stevens Fishery Conservation and*
4 *Management Act (16 U.S.C. 1801 et seq.);*

5 (6) *the national coral reef action plan;*

6 (7) *recovery plans for threatened species and en-*
7 *dangered species under section 4(f) of the Endangered*
8 *Species Act of 1973 (16 U.S.C. 1533(f));*

9 (8) *habitat conservation plans under section 10*
10 *of that Act (16 U.S.C. 1539);*

11 (9) *other Federal, State, and tribal plans for im-*
12 *periled species;*

13 (10) *State or tribal hazard mitigation plans;*

14 (11) *State or tribal water management plans;*
15 *and*

16 (12) *other State-based strategies that comprehen-*
17 *sively implement adaptation activities to remediate*
18 *the effects of climate change and ocean acidification*
19 *on terrestrial, marine, and freshwater fish, wildlife,*
20 *plants, and other natural resources.*

21 (f) *UPDATING.—Each State plan shall be updated not*
22 *less than every 5 years.*

23 (g) *FUNDING.—*

24 (1) *IN GENERAL.—Funds allocated to States*
25 *under section 480 shall be used only for activities that*

1 *are consistent with a State natural resources adapta-*
2 *tion plan that has been approved by the Secretaries*
3 *of Interior and Commerce.*

4 (2) *FUNDING PRIOR TO THE APPROVAL OF A*
5 *STATE PLAN.—Until the earlier of the date that is 3*
6 *years after the date of the enactment of this subpart*
7 *or the date on which a State receives approval for the*
8 *State strategy, a State shall be eligible to receive*
9 *funding under section 480 for adaptation activities*
10 *that are—*

11 (A) *consistent with the comprehensive wild-*
12 *life strategy of the State and, where appropriate,*
13 *other natural resources conservation strategies;*
14 *and*

15 (B) *in accordance with a workplan devel-*
16 *oped in coordination with—*

17 (i) *the Secretary of the Interior; and*

18 (ii) *the Secretary of Commerce, for any*
19 *coastal State subject to the condition that*
20 *coordination with the Secretary of Com-*
21 *merce shall be required only for those por-*
22 *tions of the strategy relating to activities af-*
23 *fecting the coastal zone.*

24 (3) *PENDING APPROVAL.—During the period for*
25 *which approval by the applicable Secretary of a State*

1 (1) *ESTABLISHMENT.*—*There is hereby estab-*
2 *lished in the Treasury a separate account that shall*
3 *be known as the Natural Resources Climate Change*
4 *Adaptation Fund.*

5 (2) *AUTHORIZATION OF APPROPRIATIONS.*—
6 *There are authorized to be appropriated for section*
7 *480(c) such sums as are deposited in the Natural Re-*
8 *sources Climate Change Fund, and the amounts ap-*
9 *propriated for section 480(c) shall be no less than the*
10 *total estimated annual deposits in the Natural Re-*
11 *sources Climate Change Adaptation Fund. Such ap-*
12 *propriations shall be offset by the amounts deposited*
13 *in such fund pursuant to section 782(m).*

14 (c) *ALLOCATIONS TO FEDERAL AGENCIES.*—

15 (1) *DEPARTMENT OF THE INTERIOR.*—*Of the*
16 *amounts made available for each fiscal year to carry*
17 *out this subpart—*

18 (A) *27.6 percent shall be allocated to the*
19 *Secretary of the Interior for use in funding—*

20 (i) *natural resources adaptation activi-*
21 *ties carried out—*

22 (I) *under endangered species, mi-*
23 *gratory species, and other fish and*
24 *wildlife programs administered by the*
25 *National Park Service, the United*

1 *States Fish and Wildlife Service, the*
2 *Bureau of Indian Affairs, and the Bu-*
3 *reau of Land Management;*

4 *(II) on wildlife refuges, National*
5 *Park Service land, and other public*
6 *land under the jurisdiction of the*
7 *United States Fish and Wildlife Serv-*
8 *ice, the Bureau of Land Management,*
9 *the Bureau of Indian Affairs, or the*
10 *National Park Service; or*

11 *(III) within Federal water man-*
12 *aged by the Bureau of Reclamation*
13 *and the National Park Service; and*

14 *(ii) for the implementation of the Na-*
15 *tional Fish and Wildlife Habitat and Cor-*
16 *ridors Identification Program pursuant to*
17 *section 481;*

18 *(B) 8.1 percent shall be allocated to the Sec-*
19 *retary of the Interior for natural resources adap-*
20 *tation activities carried out under cooperative*
21 *grant programs, including—*

22 *(i) the cooperative endangered species*
23 *conservation fund authorized under section*
24 *6 of the Endangered Species Act of 1973 (16*
25 *U.S.C. 1535);*

- 1 (ii) programs under the North Amer-
2 ican Wetlands Conservation Act (16 U.S.C.
3 4401 et seq.);
- 4 (iii) the Neotropical Migratory Bird
5 Conservation Fund established by section
6 478(a) of the Neotropical Migratory Bird
7 Conservation Act (16 U.S.C. 6108(a));
- 8 (iv) the Coastal Program of the United
9 States Fish and Wildlife Service;
- 10 (v) the National Fish Habitat Action
11 Plan;
- 12 (vi) the Partners for Fish and Wildlife
13 Program;
- 14 (vii) the Landowner Incentive Pro-
15 gram;
- 16 (viii) the Wildlife Without Borders
17 Program of the United States Fish and
18 Wildlife Service; and
- 19 (ix) the Migratory Species Program
20 and Park Flight Migratory Bird Program
21 of the National Park Service; and
- 22 (C) 4.9 percent shall be allocated to the Sec-
23 retary of the Interior to provide financial assist-
24 ance to Indian tribes to carry out natural re-
25 sources adaptation activities through the Tribal

1 *Wildlife Grants Program of the United States*
2 *Fish and Wildlife Service.*

3 (2) *LAND AND WATER CONSERVATION FUND.—*

4 (A) *DEPOSITS.—*

5 (i) *IN GENERAL.—Of the amounts*
6 *made available for each fiscal year to carry*
7 *out this subpart, 19.5 percent shall be de-*
8 *posited into the Land and Water Conserva-*
9 *tion Fund established under section 2 of the*
10 *Land and Water Conservation Fund Act of*
11 *1965 (16 U.S.C. 460l-5).*

12 (ii) *USE OF DEPOSITS.— (I) Deposits*
13 *into the Land and Water Conservation*
14 *Fund under this paragraph shall be supple-*
15 *mental to authorizations provided under*
16 *section 3 of the Land and Water Conserva-*
17 *tion Fund Act of 1965 (16 U.S.C. 460l-6),*
18 *which shall remain available for non-*
19 *adaptation needs.*

20 (II) *There are authorized to be appro-*
21 *priated for activities in this subpart such*
22 *sums as are deposited in the Land and*
23 *Water Conservation Fund pursuant to sec-*
24 *tion 480(c)(3)(A)(ii), and the amounts ap-*
25 *propriated for this paragraph shall be no*

1 *less than the total estimated annual deposits*
2 *in the Land and Water Conservation Fund.*
3 *Such appropriations shall be offset by the*
4 *amounts deposited in such Fund pursuant*
5 *to section 782(m).*

6 *(B) ALLOCATIONS.—Of the amounts depos-*
7 *ited under this paragraph into the Land and*
8 *Water Conservation Fund—*

9 *(i) $\frac{1}{6}$ shall be allocated to the Sec-*
10 *retary of the Interior and made available*
11 *on a competitive basis to carry out natural*
12 *resources adaptation activities through the*
13 *acquisition of land and interests in land*
14 *under section 6 of the Land and Water Con-*
15 *servation Fund Act of 1965 (16 U.S.C.*
16 *460l-8)—*

17 *(I) to States in accordance with*
18 *their natural resources adaptation*
19 *plans, and to Indian tribes;*

20 *(II) notwithstanding section 5 of*
21 *that Act (16 U.S.C. 460l-7); and*

22 *(III) in addition to any funds*
23 *provided pursuant to annual appro-*
24 *priations Acts, the Energy Policy Act*
25 *of 2005 (42 U.S.C. 15801 et seq.), or*

1 *any other authorization for non-*
2 *adaptation needs;*

3 *(ii) $\frac{1}{3}$ shall be allocated to the Sec-*
4 *retary of the Interior to carry out natural*
5 *resources adaptation activities through the*
6 *acquisition of lands and interests in land*
7 *under section 7 of the Land and Water Con-*
8 *servation Fund Act of 1965 (16 U.S.C.*
9 *460l-9);*

10 *(iii) $\frac{1}{6}$ shall be allocated to the Sec-*
11 *retary of Agriculture and made available to*
12 *the States and Indian tribes to carry out*
13 *natural resources adaptation activities*
14 *through the acquisition of land and inter-*
15 *ests in land under section 7 of the Forest*
16 *Legacy Program under the Cooperative For-*
17 *estry Assistance Act of 1978 (16 U.S.C.*
18 *2103c); and*

19 *(iv) $\frac{1}{3}$ shall be allocated to the Sec-*
20 *retary of Agriculture to carry out natural*
21 *resources adaptation activities through the*
22 *acquisition of land and interests in land*
23 *under section 7 of the Land and Water Con-*
24 *servation Fund Act of 1965 (16 U.S.C.*
25 *460l-9).*

1 (C) *EXPENDITURE OF FUNDS.*—*In allo-*
2 *cating funds under subparagraph (B), the Sec-*
3 *retary of the Interior and the Secretary of Agri-*
4 *culture shall take into consideration factors in-*
5 *cluding—*

6 *(i) the availability of non-Federal con-*
7 *tributions from State, local, or private*
8 *sources;*

9 *(ii) opportunities to protect fish and*
10 *wildlife corridors or otherwise to link or*
11 *consolidate fragmented habitats;*

12 *(iii) opportunities to reduce the risk of*
13 *catastrophic wildfires, drought, extreme*
14 *flooding, or other climate-related events that*
15 *are harmful to fish and wildlife and people;*
16 *and*

17 *(iv) the potential for conservation of*
18 *species or habitat types at serious risk due*
19 *to climate change, ocean acidification, and*
20 *other stressors.*

21 (3) *FOREST SERVICE.*—*Of the amounts made*
22 *available for each fiscal year to carry out this sub-*
23 *part, 8.1 percent shall be allocated to the Secretary of*
24 *Agriculture for use in funding natural resources ad-*
25 *aptation activities carried out on national forests and*

1 *national grasslands under the jurisdiction of the For-*
2 *est Service.*

3 (4) *DEPARTMENT OF COMMERCE.—Of the*
4 *amounts made available for each fiscal year to carry*
5 *out this subpart, 11.5 percent shall be allocated to the*
6 *Secretary of Commerce for use in funding natural re-*
7 *sources adaptation activities to protect, maintain,*
8 *and restore coastal, estuarine, and marine resources,*
9 *habitats, and ecosystems, including such activities*
10 *carried out under—*

11 (A) *the coastal and estuarine land conserva-*
12 *tion program;*

13 (B) *the community-based restoration pro-*
14 *gram;*

15 (C) *the Coastal Zone Management Act of*
16 *1972 (16 U.S.C. 1451 et seq.), that are specifi-*
17 *cally designed to strengthen the ability of coastal,*
18 *estuarine, and marine resources, habitats, and*
19 *ecosystems to adapt to and withstand the im-*
20 *pacts of climate change and ocean acidification;*

21 (D) *the Open Rivers Initiative;*

22 (E) *the Magnuson-Stevens Fishery Con-*
23 *servation and Management Act (16 U.S.C. 1801*
24 *et seq.);*

1 (F) *the Marine Mammal Protection Act of*
2 1972 (16 U.S.C. 1361 *et seq.*);

3 (G) *the Endangered Species Act of 1973* (16
4 U.S.C. 1531 *et seq.*);

5 (H) *the Marine Protection, Research, and*
6 *Sanctuaries Act of 1972* (33 U.S.C. 1401 *et seq.*);

7 (I) *the Coral Reef Conservation Act of 2000*
8 (16 U.S.C. 6401 *et seq.*); and

9 (J) *the Estuary Restoration Act of 2000* (33
10 U.S.C. 2901 *et seq.*).

11 (5) *ENVIRONMENTAL PROTECTION AGENCY.—Of*
12 *the amounts made available each fiscal year to carry*
13 *out this section, 12.2 percent shall be allocated to the*
14 *Administrator for use in natural resources adaptation*
15 *activities restoring and protecting—*

16 (A) *large-scale freshwater aquatic eco-*
17 *systems, such as the Everglades, the Great Lakes,*
18 *Flathead Lake, the Missouri River, the Mis-*
19 *issippi River, the Colorado River, the Sac-*
20 *ramento-San Joaquin Rivers, the Ohio River,*
21 *the Columbia-Snake River System, the Apalachi-*
22 *cola, Chattahoochee, and Flint River System, the*
23 *Connecticut River, and the Yellowstone River;*

24 (B) *large-scale estuarine ecosystems, such as*
25 *Chesapeake Bay, Long Island Sound, Puget*

1 *Sound, the Mississippi River Delta, the San*
2 *Francisco Bay Delta, Narragansett Bay, and Al-*
3 *bemarle-Pamlico Sound; and*

4 (C) *freshwater and estuarine ecosystems,*
5 *watersheds, and basins identified as priorities by*
6 *the Administrator, working in cooperation with*
7 *other Federal agencies, States, Indian tribes,*
8 *local governments, scientists, and other conserva-*
9 *tion partners.*

10 (6) *CORPS OF ENGINEERS.—Of the amounts*
11 *made available each fiscal year to carry out this sec-*
12 *tion, 8.1 percent shall be available to the Secretary of*
13 *the Army for use by the Corps of Engineers to carry*
14 *out natural resources adaptation activities restor-*
15 *ing—*

16 (A) *large-scale freshwater aquatic eco-*
17 *systems, such as the ecosystems described in*
18 *paragraph (5)(A);*

19 (B) *large-scale estuarine ecosystems, such as*
20 *the ecosystems described in paragraph (5)(B);*

21 (C) *freshwater and estuarine ecosystems,*
22 *watersheds, and basins identified as priorities by*
23 *the Corps of Engineers, working in cooperation*
24 *with other Federal agencies, States, Indian*

1 tribes, local governments, scientists, and other
2 conservation partners; and

3 (D) habitats and ecosystems through the im-
4 plementation of estuary habitat restoration
5 projects authorized by the Estuary Restoration
6 Act of 2000 (33 U.S.C. 2901 et seq.), project
7 modifications for improvement of the environ-
8 ment, aquatic restoration and protection projects
9 authorized by section 206 of the Water Resources
10 Development Act of 1996 (33 U.S.C. 2330), and
11 other appropriate programs and activities.

12 (d) *USE OF FUNDS BY FEDERAL DEPARTMENTS AND*
13 *AGENCIES.—Funds allocated to Federal departments and*
14 *agencies under this section shall only be used for natural*
15 *resources adaptation activities that are consistent with an*
16 *adaptation plan developed and approved by the President*
17 *under section 478.*

18 (e) *STATE COST SHARING.—Notwithstanding any*
19 *other provision of law, a State that receives a grant with*
20 *amounts allocated under this section shall use funds from*
21 *non-Federal sources to pay 10 percent of the costs of each*
22 *activity carried out using amounts provided under the*
23 *grant.*

1 **SEC. 481. NATIONAL WILDLIFE HABITAT AND CORRIDORS**
2 **INFORMATION PROGRAM.**

3 (a) *ESTABLISHMENT.*—Within 6 months of the date of
4 enactment of this subpart, the Secretary of the Interior, in
5 cooperation with the States and Indian tribes, shall estab-
6 lish a National Fish and Wildlife Habitat and Corridors
7 Information Program in accordance with the requirements
8 of this section.

9 (b) *PURPOSE.*—The purpose of this program is to—

10 (1) support States and Indian tribes in the de-
11 velopment of a geographic information system data-
12 base of fish and wildlife habitat and corridors that
13 would inform planning and development decisions
14 within each State, enable each State to model climate
15 impacts and adaptation, and provide geographically
16 specific enhancements of State wildlife action plans;

17 (2) ensure the collaborative development, with
18 the States and Indian tribes, of a comprehensive, na-
19 tional geographic information system database of
20 maps, models, data, surveys, informational products,
21 and other geospatial information regarding fish and
22 wildlife habitat and corridors, that—

23 (A) is based on consistent protocols for sam-
24 pling and mapping across landscapes that take
25 into account regional differences; and

26 (B) that utilizes—

1 (i) existing and planned State- and
2 tribal-based geographic information system
3 databases; and

4 (ii) existing databases, analytical tools,
5 metadata activities, and other information
6 products available through the National Bi-
7 ological Information Infrastructure main-
8 tained by the Secretary and nongovern-
9 mental organizations; and

10 (3) facilitate the use of such databases by Fed-
11 eral, State, local, and tribal decisionmakers to incor-
12 porate qualitative information on fish and wildlife
13 habitat and corridors at the earliest possible stage
14 to—

15 (A) prioritize and target natural resources
16 adaptation strategies and activities;

17 (B) avoid, minimize, and mitigate the im-
18 pacts on fish and wildlife habitat and corridors
19 in siting energy development, water, trans-
20 mission, transportation, and other land use
21 projects;

22 (C) assess the impacts of existing develop-
23 ment on habitats and corridors; and

24 (D) develop management strategies to en-
25 hance the ability of fish, wildlife, and plant spe-

1 *cies to migrate or respond to shifting habitats*
2 *within existing habitats and corridors.*

3 (c) *HABITAT AND CORRIDORS INFORMATION SYS-*
4 *TEM.—*

5 (1) *IN GENERAL.—The Secretary, in cooperation*
6 *with the States and Indian tribes, shall develop a*
7 *Habitat and Corridors Information System.*

8 (2) *CONTENTS.—The System shall—*

9 (A) *include maps, data, and descriptions of*
10 *fish and wildlife habitat and corridors, that—*

11 (i) *have been developed by Federal*
12 *agencies, State wildlife agencies and nat-*
13 *ural heritage programs, Indian tribes, local*
14 *governments, nongovernmental organiza-*
15 *tions, and industry;*

16 (ii) *meet accepted Geospatial Inter-*
17 *operability Framework data and metadata*
18 *protocols and standards;*

19 (B) *include maps and descriptions of pro-*
20 *jected shifts in habitats and corridors of fish and*
21 *wildlife species in response to climate change;*

22 (C) *assure data quality and make the data,*
23 *models, and analyses included in the System*
24 *available at scales useful to decisionmakers—*

1 (i) to prioritize and target natural re-
2 sources adaptation strategies and activities;

3 (ii) to assess the impacts of proposed
4 energy development, water, transmission,
5 transportation, and other land use projects
6 and avoid, minimize, and mitigate those
7 impacts on habitats and corridors;

8 (iii) to assess the impacts of existing
9 development on habitats and corridors; and

10 (iv) to develop management strategies
11 to enhance the ability of fish, wildlife, and
12 plant species to migrate or respond to shift-
13 ing habitats within existing habitats and
14 corridors;

15 (D) establish a process for updating maps
16 and other information as landscapes, habitats,
17 corridors, and wildlife populations change or as
18 other information becomes available;

19 (E) encourage the development of collabo-
20 rative plans by Federal and State agencies and
21 Indian tribes to monitor and evaluate the effi-
22 cacy of the System to meet the needs of decision-
23 makers;

24 (F) identify gaps in habitat and corridor
25 information, mapping, and research that should

1 *be addressed to fully understand and assess cur-*
2 *rent data and metadata, and to prioritize re-*
3 *search and future data collection activities for*
4 *use in updating the System and provide support*
5 *for those activities;*

6 *(G) include mechanisms to support collabo-*
7 *rative research, mapping, and planning of habi-*
8 *tats and corridors by Federal and State agencies,*
9 *Indian tribes, and other interested stakeholders;*

10 *(H) incorporate biological and geospatial*
11 *data on species and corridors found in energy*
12 *development and transmission plans, including*
13 *renewable energy initiatives, transportation, and*
14 *other land use plans;*

15 *(I) be based on the best scientific informa-*
16 *tion available; and*

17 *(J) identify, prioritize, and describe key*
18 *parcels of non-Federal land located within the*
19 *boundaries of units of the National Park System,*
20 *National Wildlife Refuge System, National For-*
21 *est System, or National Grassland System that*
22 *are critical to maintenance of wildlife habitat*
23 *and migration corridors.*

24 *(d) FINANCIAL AND OTHER SUPPORT.—The Secretary*
25 *may provide support to the States and Indian tribes, in-*

1 *cluding financial and technical assistance, for activities*
2 *that support the development and implementation of the*
3 *System.*

4 (e) *COORDINATION.—The Secretary, in cooperation*
5 *with the States and Indian tribes, shall make recommenda-*
6 *tions on how the information developed in the System may*
7 *be incorporated into existing relevant State and Federal*
8 *plans affecting fish and wildlife, including land manage-*
9 *ment plans, the State Comprehensive Wildlife Conservation*
10 *Strategies, and appropriate tribal conservation plans, to*
11 *ensure that they—*

12 (1) *prevent unnecessary habitat fragmentation*
13 *and disruption of corridors;*

14 (2) *promote the landscape connectivity necessary*
15 *to allow wildlife to move as necessary to meet biologi-*
16 *cal needs, adjust to shifts in habitat, and adapt to cli-*
17 *mate change; and*

18 (3) *minimize the impacts of energy, development,*
19 *water, transportation, and transmission projects and*
20 *other activities expected to impact habitat and cor-*
21 *ridors.*

22 (f) *DEFINITIONS.—In this section:*

23 (1) *GEOSPATIAL INTEROPERABILITY FRAME-*
24 *WORK.—The term “Geospatial Interoperability*
25 *Framework” means the strategy utilized by the Na-*

1 **PART 2—INTERNATIONAL CLIMATE CHANGE**

2 **ADAPTATION PROGRAM**

3 **SEC. 491. FINDINGS AND PURPOSES.**

4 (a) *FINDINGS.*—Congress finds the following:

5 (1) *Global climate change is a potentially sig-*
6 *nificant national and global security threat multi-*
7 *plier and is likely to exacerbate competition and con-*
8 *flict over agricultural, vegetative, marine, and water*
9 *resources and to result in increased displacement of*
10 *people, poverty, and hunger within developing coun-*
11 *tries.*

12 (2) *The strategic, social, political, economic, cul-*
13 *tural, and environmental consequences of global cli-*
14 *mate change are likely to have disproportionate ad-*
15 *verse impacts on developing countries, which have less*
16 *economic capacity to respond to such impacts.*

17 (3) *The countries most vulnerable to climate*
18 *change, due both to greater exposure to harmful im-*
19 *pacts and to lower capacity to adapt, are developing*
20 *countries with very low industrial greenhouse gas*
21 *emissions that have contributed less to climate change*
22 *than more affluent countries.*

23 (4) *To a much greater degree than developed*
24 *countries, developing countries rely on the natural*
25 *and environmental systems likely to be affected by cli-*

1 *mate change for sustenance, livelihoods, and economic*
2 *growth and stability.*

3 (5) *Within developing countries there may be*
4 *varying climate change adaptation and resilience*
5 *needs among different communities and populations,*
6 *including impoverished communities, children,*
7 *women, and indigenous peoples.*

8 (6) *The consequences of global climate change,*
9 *including increases in poverty and destabilization of*
10 *economies and societies, are likely to pose long-term*
11 *challenges to the national security, foreign policy, and*
12 *economic interests of the United States.*

13 (7) *It is in the national security, foreign policy,*
14 *and economic interests of the United States to recog-*
15 *nize, plan for, and mitigate the international stra-*
16 *tegic, social, political, cultural, environmental, health,*
17 *and economic effects of climate change and to assist*
18 *developing countries to increase their resilience to*
19 *those effects.*

20 (8) *Under Article 4 of the United Nations*
21 *Framework Convention on Climate Change, developed*
22 *country parties, including the United States, com-*
23 *mitted to “assist the developing country parties that*
24 *are particularly vulnerable to the adverse effects of*

1 *climate change in meeting costs of adaptation to those*
2 *adverse effects”.*

3 *(9) Under the Bali Action Plan, developed coun-*
4 *try parties to the United Nations Framework Conven-*
5 *tion on Climate Change, including the United States,*
6 *committed to “enhanced action on the provision of fi-*
7 *nancial resources and investment to support action*
8 *on mitigation and adaptation and technology co-*
9 *operation,” including, inter alia, consideration of*
10 *“improved access to adequate, predictable, and sus-*
11 *tainable financial resources and financial and tech-*
12 *nical support, and the provision of new and addi-*
13 *tional resources, including official and concessional*
14 *funding for developing country parties”.*

15 *(b) PURPOSES.—The purposes of this part are—*

16 *(1) to provide new and additional assistance*
17 *from the United States to the most vulnerable devel-*
18 *oping countries, including the most vulnerable com-*
19 *munities and populations therein, in order to support*
20 *the development and implementation of climate*
21 *change adaptation programs and activities that re-*
22 *duce the vulnerability and increase the resilience of*
23 *communities to climate change impacts, including*
24 *impacts on water availability, agricultural produc-*
25 *tivity, flood risk, coastal resources, timing of seasons,*

1 *biodiversity, economic livelihoods, health and diseases,*
2 *and human migration; and*

3 *(2) to provide such assistance in a manner that*
4 *protects and promotes the national security, foreign*
5 *policy, environmental, and economic interests of the*
6 *United States to the extent such interests may be ad-*
7 *vanced by minimizing, averting, or increasing resil-*
8 *ience to climate change impacts.*

9 **SEC. 492. DEFINITIONS.**

10 *In this part:*

11 *(1) ALLOWANCE.—The term “allowance” means*
12 *an emission allowance established under section 721*
13 *of the Clean Air Act.*

14 *(2) APPROPRIATE CONGRESSIONAL COMMIT-*
15 *TEES.—The term “appropriate congressional commit-*
16 *tees” means—*

17 *(A) the Committees on Energy and Com-*
18 *merce, Financial Services, and Foreign Affairs*
19 *of the House of Representatives; and*

20 *(B) the Committees on Environment and*
21 *Public Works and Foreign Relations of the Sen-*
22 *ate.*

23 *(3) DEVELOPING COUNTRY.—The term “devel-*
24 *oping country” means a country eligible to receive of-*
25 *ficial development assistance according to the income*

1 *guidelines of the Development Assistance Committee*
2 *of the Organization for Economic Cooperation and*
3 *Development.*

4 (4) *MOST VULNERABLE DEVELOPING COUN-*
5 *TRIES.—The term “most vulnerable developing coun-*
6 *tries” means, as determined by the Administrator of*
7 *USAID, developing countries that are at risk of sub-*
8 *stantial adverse impacts of climate change and have*
9 *limited capacity to respond to such impacts, consid-*
10 *ering the approaches included in any international*
11 *treaties and agreements.*

12 (5) *MOST VULNERABLE COMMUNITIES AND POPU-*
13 *LATIONS.—The term “most vulnerable communities*
14 *and populations” means communities and popu-*
15 *lations that are at risk of substantial adverse impacts*
16 *of climate change and have limited capacity to re-*
17 *spond to such impacts, including impoverished com-*
18 *munities, children, women, and indigenous peoples.*

19 (6) *PROGRAM.—The term “Program” means the*
20 *International Climate Change Adaptation Program*
21 *established under section 493.*

22 (7) *USAID.—The term “USAID” means the*
23 *United States Agency for International Development.*

24 (8) *UNITED NATIONS FRAMEWORK CONVENTION*
25 *ON CLIMATE CHANGE.—The term “United Nations*

1 *Administrator of USAID, and the Administrator of the En-*
2 *vironmental Protection Agency, shall direct the distribution*
3 *of allowances to carry out the Program—*

4 *(1) in the form of bilateral assistance pursuant*
5 *to the requirements under section 495;*

6 *(2) to multilateral funds or international insti-*
7 *tutions pursuant to the Convention or an agreement*
8 *negotiated under the Convention; or*

9 *(3) through a combination of the mechanisms*
10 *identified under paragraphs (1) and (2).*

11 *(b) LIMITATION.—*

12 *(1) CONDITIONAL DISTRIBUTION TO MULTILAT-*
13 *ERAL FUNDS OR INTERNATIONAL INSTITUTIONS.—In*
14 *any fiscal year, the Secretary of State, or such other*
15 *Federal agency head as the President may designate,*
16 *in consultation with the Administrator of USAID, the*
17 *Secretary of the Treasury, and the Administrator of*
18 *the Environmental Protection Agency, shall distribute*
19 *at least 40 percent and up to 60 percent of the allow-*
20 *ances available to carry out the Program to one or*
21 *more multilateral funds or international institutions*
22 *that meet the requirements of paragraph (2), if any*
23 *such fund or institution exists, and shall annually*
24 *certify in a report to the appropriate congressional*
25 *committees that any multilateral fund or inter-*

1 *national institution receiving allowances under this*
2 *section meets the requirements of paragraph (2) or*
3 *that no multilateral fund or international institution*
4 *that meets the requirements of paragraph (2) exists,*
5 *as the case may be. The Secretary of State shall no-*
6 *tify the appropriate congressional committees not less*
7 *than 15 days prior to any transfer of allowances to*
8 *a multilateral fund or international institution pur-*
9 *suant to this section.*

10 (2) *MULTILATERAL FUND OR INTERNATIONAL IN-*
11 *STITUTION ELIGIBILITY.—A multilateral fund or*
12 *international institution is eligible to receive allow-*
13 *ances available to carry out the Program—*

14 (A) *if—*

15 (i) *such fund or institution is estab-*
16 *lished pursuant to—*

17 (I) *the Convention; or*

18 (II) *an agreement negotiated*
19 *under the Convention; or*

20 (ii) *the allowances are directed to one*
21 *or more multilateral development banks or*
22 *international development institutions, pur-*
23 *suant to an agreement negotiated under*
24 *such Convention; and*

25 (B) *if such fund or institution—*

1 (i) specifies the terms and conditions
2 under which the United States is to provide
3 allowances to the fund or institution, and
4 under which the fund or institution is to
5 provide assistance to recipient countries;

6 (ii) ensures that assistance from the
7 United States to the fund or institution and
8 the principal and income of the fund or in-
9 stitution are disbursed only for purposes
10 that are consistent with those described in
11 section 491(b)(1);

12 (iii) requires a regular meeting of a
13 governing body of the fund or institution
14 that includes representation from countries
15 among the most vulnerable developing coun-
16 tries and provides public access;

17 (iv) requires that local communities
18 and indigenous peoples in areas where any
19 activities or programs are planned are en-
20 gaged through adequate disclosure of infor-
21 mation, public participation, and consulta-
22 tion; and

23 (v) prepares and makes public an an-
24 nual report that—

- 1 (I) describes the process and meth-
2 odology for selecting the recipients of
3 assistance from the fund or institution,
4 including assessments of vulnerability;
- 5 (II) describes specific programs
6 and activities supported by the fund or
7 institution and the extent to which the
8 assistance is addressing the adaptation
9 needs of the most vulnerable developing
10 countries, and the most vulnerable
11 communities and populations therein;
- 12 (III) describes the performance
13 goals for assistance authorized under
14 the fund or institution and expresses
15 such goals in an objective and quan-
16 tifiable form, to the extent practicable;
- 17 (IV) describes the performance in-
18 dicators to be used in measuring or as-
19 sessing the achievement of the perform-
20 ance goals described in subclause (III);
- 21 (V) provides a basis for rec-
22 ommendations for adjustments to as-
23 sistance authorized under this part to
24 enhance the impact of such assistance;
25 and

1 (VI) describes the participation of
2 other nations and international orga-
3 nizations in supporting and governing
4 the fund or institution.

5 (c) *OVERSIGHT.*—

6 (1) *DISTRIBUTION TO MULTILATERAL FUNDS OR*
7 *INTERNATIONAL INSTITUTIONS.*—The Secretary of
8 State, or such other Federal agency head as the Presi-
9 dent may designate, in consultation with the Admin-
10 istrator of USAID, shall oversee the distribution of al-
11 lowances available to carry out the Program to a
12 multilateral fund or international institution under
13 subsection (b).

14 (2) *BILATERAL ASSISTANCE.*—The Adminis-
15 trator of USAID, in consultation with the Secretary
16 of State, shall oversee the distribution of allowances
17 available to carry out the Program for bilateral as-
18 sistance under section 495.

19 **SEC. 495. BILATERAL ASSISTANCE.**

20 (a) *ACTIVITIES AND FOREIGN AID.*—

21 (1) *IN GENERAL.*—In order to achieve the pur-
22 poses of this part, the Administrator of USAID may
23 carry out programs and activities and distribute al-
24 lowances to any private or public group (including
25 international organizations and faith-based organiza-

1 *tions), association, or other entity engaged in peaceful*
2 *activities to—*

3 *(A) provide assistance to the most vulner-*
4 *able developing countries for—*

5 *(i) the development of national or re-*
6 *gional climate change adaptation plans, in-*
7 *cluding a systematic assessment of socio-*
8 *economic vulnerabilities in order to identify*
9 *the most vulnerable communities and popu-*
10 *lations;*

11 *(ii) associated national policies; and*

12 *(iii) planning, financing, and execu-*
13 *tion of adaptation programs and activities;*

14 *(B) support investments, capacity-building*
15 *activities, and other assistance, to reduce vulner-*
16 *ability and promote community-level resilience*
17 *related to climate change and its impacts in the*
18 *most vulnerable developing countries, including*
19 *impacts on water availability, agricultural pro-*
20 *ductivity, flood risk, coastal resources, timing of*
21 *seasons, biodiversity, economic livelihoods,*
22 *health, human migration, or other social, eco-*
23 *nomie, political, cultural, or environmental mat-*
24 *ters;*

1 (C) support climate change adaptation re-
2 search in or for the most vulnerable developing
3 countries;

4 (D) reduce vulnerability and provide in-
5 creased resilience to climate change for local
6 communities and livelihoods in the most vulner-
7 able developing countries by encouraging—

8 (i) the protection and rehabilitation of
9 natural systems;

10 (ii) the enhancement and diversifica-
11 tion of agricultural, fishery, and other live-
12 lihoods; and

13 (iii) the reduction of disaster risks;

14 (E) support the deployment of technologies
15 to help the most vulnerable developing countries
16 respond to the destabilizing impacts of climate
17 change and encourage the identification and
18 adoption of appropriate renewable and efficient
19 energy technologies that are beneficial in increas-
20 ing community-level resilience to the impacts of
21 global climate change in those countries; and

22 (F) encourage the engagement of local com-
23 munities through disclosure of information, con-
24 sultation, and the communities' informed par-
25 ticipation relating to the development of plans,

1 *programs, and activities to increase community-*
2 *level resilience to climate change impacts.*

3 (2) *LIMITATIONS.*—*Not more than 10 percent of*
4 *the allowances made available to carry out bilateral*
5 *assistance under this part in any year shall be dis-*
6 *tributed to support activities in any single country.*

7 (3) *PRIORITIZING ASSISTANCE.*—*In providing*
8 *assistance under this section, the Administrator of*
9 *USAID shall give priority to countries, including the*
10 *most vulnerable communities and populations therein,*
11 *that are most vulnerable to the adverse impacts of cli-*
12 *mate change, determined by the likelihood and sever-*
13 *ity of such impacts and the country’s capacity to*
14 *adapt to such impacts.*

15 (b) *COMMUNITY ENGAGEMENT.*—

16 (1) *IN GENERAL.*—*The Administrator of USAID*
17 *shall ensure that local communities, including the*
18 *most vulnerable communities and populations therein,*
19 *in areas where any programs or activities are carried*
20 *out pursuant to this section are engaged in, through*
21 *disclosure of information, public participation, and*
22 *consultation, the design, implementation, monitoring,*
23 *and evaluation of such programs and activities.*

24 (2) *CONSULTATION AND DISCLOSURE.*—*For each*
25 *country receiving assistance under this section, the*

1 *Administrator of USAID shall establish a process for*
2 *consultation with, and disclosure of information to,*
3 *local, national, and international stakeholders regard-*
4 *ing any programs and activities carried out pursuant*
5 *to this section.*

6 *(c) COORDINATION.—*

7 *(1) ALIGNMENT OF ACTIVITIES.—Subject to the*
8 *direction of the President and the Secretary of State,*
9 *the Administrator of USAID shall, to the extent prac-*
10 *ticable, seek to align activities under this section with*
11 *broader development, poverty alleviation, or natural*
12 *resource management objectives and initiatives in the*
13 *recipient country.*

14 *(2) COORDINATION OF ACTIVITIES.—The Admin-*
15 *istrator of USAID shall ensure that there is coordina-*
16 *tion among the activities under this section, subtitle*
17 *D of this title, and part E of title VII of the Clean*
18 *Air Act, in order to maximize the effectiveness of*
19 *United States assistance to developing countries.*

20 *(d) REPORTING.—*

21 *(1) INITIAL REPORT.—Not later than 180 days*
22 *after the date of enactment of this part, the Adminis-*
23 *trator of USAID, in consultation with the Secretary*
24 *of State, shall submit to the President and the appro-*

1 *appropriate congressional committees an initial report*
2 *that—*

3 *(A) based on the most recent information*
4 *available from reliable public sources or knowl-*
5 *edge obtained by USAID on a reliable basis, as*
6 *determined by the Administrator of USAID,*
7 *identifies the developing countries, including the*
8 *most vulnerable communities and populations*
9 *therein, that are most vulnerable to climate*
10 *change impacts and in which assistance may*
11 *have the greatest and most sustainable benefit in*
12 *reducing vulnerability to climate change; and*

13 *(B) describes the process and methodology*
14 *for selecting the recipients of assistance under*
15 *subsection (a)(1).*

16 *(2) ANNUAL REPORTS.—Not later than 18*
17 *months after the date on which the initial report is*
18 *submitted pursuant to paragraph (1), and annually*
19 *thereafter, the Administrator of USAID, in consulta-*
20 *tion with the Secretary of State, shall submit to the*
21 *President and the appropriate congressional commit-*
22 *tees a report that—*

23 *(A) describes the extent to which global cli-*
24 *mate change, through its potential negative im-*
25 *pacts on sensitive populations and natural re-*

1 *sources in the most vulnerable developing coun-*
2 *tries, may threaten, cause, or exacerbate polit-*
3 *ical, economic, environmental, cultural, or social*
4 *instability or international conflict in those re-*
5 *gions;*

6 *(B) describes the ramifications of any po-*
7 *tentially destabilizing impacts climate change*
8 *may have on the national security, foreign pol-*
9 *icy, and economic interests of the United States,*
10 *including—*

11 *(i) the creation of environmental mi-*
12 *grants and internally displaced peoples;*

13 *(ii) international or internal armed*
14 *conflicts over water, food, land, or other re-*
15 *sources;*

16 *(iii) loss of agricultural and other live-*
17 *lihoods, cultural stability, and other causes*
18 *of increased poverty and economic desta-*
19 *bilization;*

20 *(iv) decline in availability of resources*
21 *needed for survival, including water;*

22 *(v) increased impact of natural disas-*
23 *ters (including droughts, flooding, and other*
24 *severe weather events);*

1 (vi) increased prevalence or virulence
2 of climate-related diseases; and

3 (vii) intensified urban migration;

4 (C) describes how allowances available
5 under this section were distributed during the
6 previous fiscal year to enhance the national secu-
7 rity, foreign policy, and economic interests of the
8 United States and assist in avoiding the eco-
9 nomically, politically, environmentally, cul-
10 turally, and socially destabilizing impacts of cli-
11 mate change in most vulnerable developing coun-
12 tries;

13 (D) identifies and recommends the devel-
14 oping countries, including the most vulnerable
15 communities and populations therein, that are
16 most vulnerable to climate change impacts and
17 in which assistance may have the greatest and
18 most sustainable benefit in reducing vulner-
19 ability to climate change, including in the form
20 of deploying technologies, investments, capacity-
21 building activities, and other types of assistance
22 for adaptation to climate change impacts and
23 approaches to reduce greenhouse gases in ways
24 that may also provide community-level resilience
25 to climate change impacts; and

1 (E) describes cooperation undertaken with
2 other nations and international organizations to
3 carry out this part.

4 (e) *MONITORING AND EVALUATION.*—

5 (1) *IN GENERAL.*—*The Administrator of USAID*
6 *shall establish and implement a system to monitor*
7 *and evaluate the effectiveness and efficiency of assist-*
8 *ance provided under this section in order to maximize*
9 *the long-term sustainable development impact of such*
10 *assistance, including the extent to which such assist-*
11 *ance is meeting the purposes of this part and address-*
12 *ing the adaptation needs of developing countries.*

13 (2) *REQUIREMENTS.*—*In carrying out para-*
14 *graph (1), the Administrator of USAID shall—*

15 (A) *in consultation with national govern-*
16 *ments in recipient countries, establish perform-*
17 *ance goals for assistance authorized under this*
18 *section and express such goals in an objective*
19 *and quantifiable form, to the extent practicable;*

20 (B) *establish performance indicators to be*
21 *used in measuring or assessing the achievement*
22 *of the performance goals described in subpara-*
23 *graph (A), including an evaluation of—*

24 (i) *the extent to which assistance under*
25 *this section provided for disclosure of infor-*

1 *mation to, consultation with, and informed*
2 *participation by local communities;*

3 *(ii) the extent to which local commu-*
4 *nities participated in the design, implemen-*
5 *tation, and evaluation of programs and ac-*
6 *tivities implemented pursuant to this sec-*
7 *tion; and*

8 *(iii) the impacts of such participation*
9 *on the goals and objectives of the programs*
10 *and activities implemented under this sec-*
11 *tion;*

12 *(C) provide a basis for recommendations for*
13 *adjustments to assistance authorized under this*
14 *section to enhance the impact of such assistance;*
15 *and*

16 *(D) include, in the annual report to the ap-*
17 *propriate congressional committees and other rel-*
18 *evant agencies required under subsection (d)(2),*
19 *findings resulting from the monitoring and eval-*
20 *uation of programs and activities under this sec-*
21 *tion.*

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A BILL

To create clean energy jobs, achieve energy independence, reduce global warming pollution and transition to a clean energy economy.

JUNE 19, 2009

The Committees on Financial Services, Science and Technology, Transportation and Infrastructure, Natural Resources, Agriculture, and Ways and Means discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed