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108TH CONGRESS
1ST SESSION

H. R. 1644

[Report No. 108–65, Part I]

To enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 7, 2003

Mr. BARTON of Texas introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Science, Resources, Education and the Workforce, and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

APRIL 8, 2003

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*]

APRIL 8, 2003

Referred to the Committee on the Judiciary for a period ending not later than April 9, 2003, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(k), rule X

APRIL 8, 2003

Referral to the Committees on Science, Resources, Education and the Workforce, and Transportation and Infrastructure extended for a period ending not later than April 9, 2003

APRIL 9, 2003

Referred to the Committee on Government Reform for a period ending not later than April 9, 2003, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(h), rule X

APRIL 9, 2003

The Committees on Science, Resources, Education and the Workforce, Transportation and Infrastructure, the Judiciary, and Government Reform discharged; referred to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on April 7, 2003]

A BILL

To enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes.

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 “En-*
 5 *ergy Policy Act of 2003”.*

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

Sec. 1. Short title; table of contents.

TITLE I—ENERGY CONSERVATION

Subtitle A—Federal Leadership in Energy Conservation

Sec. 1001. Energy and water saving measures in congressional buildings.

Sec. 1002. Energy management requirements.

Sec. 1003. Energy use measurement and accountability.

Sec. 1004. Federal building performance standards.

Sec. 1005. Procurement of energy efficient products.

Sec. 1006. Energy savings performance contracts.

Sec. 1007. Voluntary commitments to reduce industrial energy intensity.

Sec. 1008. Federal agency participation in demand reduction programs.

Sec. 1009. Advanced Building Efficiency Testbed.

Sec. 1010. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete.

Subtitle B—Energy Assistance and State Programs

Sec. 1021. LIHEAP and weatherization assistance.

- Sec. 1022. State energy programs.*
Sec. 1023. Energy efficient appliance rebate programs.
Sec. 1024. Energy efficient public buildings.
Sec. 1025. Low income community energy efficiency pilot program.

Subtitle C—Energy Efficient Products

- Sec. 1041. Energy Star program.*
Sec. 1042. Consumer education on energy efficiency benefits of air conditioning, heating, and ventilation maintenance.
Sec. 1043. Additional definitions.
Sec. 1044. Additional test procedures.
Sec. 1045. Energy conservation standards for additional consumer and commercial products.
Sec. 1046. Energy labeling.
Sec. 1047. Study of energy efficiency standards.

TITLE II—OIL AND GAS

Subtitle A—Alaska Natural Gas Pipeline

- Sec. 2001. Short title.*
Sec. 2002. Findings and purposes.
Sec. 2003. Definitions.
Sec. 2004. Issuance of certificate of public convenience and necessity.
Sec. 2005. Environmental reviews.
Sec. 2006. Pipeline expansion.
Sec. 2007. Federal Coordinator.
Sec. 2008. Judicial review.
Sec. 2009. State jurisdiction over in-State delivery of natural gas.
Sec. 2010. Study of alternative means of construction.
Sec. 2011. Clarification of ANGTA status and authorities.
Sec. 2012. Sense of Congress.
Sec. 2013. Participation of small business concerns.
Sec. 2014. Alaska pipeline construction training program.

Subtitle B—Strategic Petroleum Reserve

- Sec. 2101. Full capacity of Strategic Petroleum Reserve.*
Sec. 2102. Strategic Petroleum Reserve expansion.
Sec. 2103. Permanent authority to operate the Strategic Petroleum Reserve and other energy programs.

Subtitle C—Hydraulic Fracturing

- Sec. 2201. Hydraulic fracturing.*

Subtitle D—Unproven Oil and Natural Gas Reserves Recovery Program

- Sec. 2301. Program.*
Sec. 2302. Eligible reservoirs.
Sec. 2303. Focus areas.
Sec. 2304. Limitation on location of activities.
Sec. 2305. Program administration.
Sec. 2306. Advisory Committee.
Sec. 2307. Limits on participation.
Sec. 2308. Payments to Federal Government.
Sec. 2309. Authorization of appropriations.

- Sec. 2310. Public availability of project results and methodologies.*
Sec. 2311. Sunset.
Sec. 2312. Definitions.

Subtitle E—Miscellaneous

- Sec. 2401. Appeals relating to pipeline construction projects.*
Sec. 2402. Natural gas market data transparency.
Sec. 2403. Oil and gas exploration and production defined.

TITLE III—HYDROELECTRIC RELICENSING

Subtitle A—Alternative Conditions

- Sec. 3001. Alternative conditions and fishways.*

Subtitle B—Additional Hydropower

- Sec. 3201. Hydroelectric production incentives.*
Sec. 3202. Hydroelectric efficiency improvement.
Sec. 3203. Small hydroelectric power projects.
Sec. 3204. Increased hydroelectric generation at existing Federal facilities.

TITLE IV—NUCLEAR MATTERS

Subtitle A—Price-Anderson Act Amendments

- Sec. 4001. Short title.*
Sec. 4002. Extension of indemnification authority.
Sec. 4003. Maximum assessment.
Sec. 4004. Department of Energy liability limit.
Sec. 4005. Incidents outside the United States.
Sec. 4006. Reports.
Sec. 4007. Inflation adjustment.
Sec. 4008. Price-Anderson treatment of modular reactors.
Sec. 4009. Applicability.
*Sec. 4010. Prohibition on assumption by United States Government of liability
for certain foreign accidents.*
Sec. 4011. Secure transfer of nuclear materials.
Sec. 4012. Nuclear facility threats.
Sec. 4013. Unreasonable risk consultation.
Sec. 4014. Financial accountability.
Sec. 4015. Civil penalties.

Subtitle B—Miscellaneous Matters

- Sec. 4021. Licenses.*
Sec. 4022. Nuclear Regulatory Commission meetings.
Sec. 4023. NRC training program.
Sec. 4024. Cost recovery from Government agencies.
Sec. 4025. Elimination of pension offset.
Sec. 4026. Carrying of firearms by licensee employees.
Sec. 4027. Unauthorized introduction of dangerous weapons.
Sec. 4028. Sabotage of nuclear facilities or fuel.
*Sec. 4029. Cooperative research and development and special demonstration
projects for the uranium mining industry.*
Sec. 4030. Uranium sales.
Sec. 4031. Medical isotope production.

- Sec. 4032. Highly enriched uranium diversion threat report.*
Sec. 4033. Whistleblower protection.

TITLE V—VEHICLES AND FUELS

Subtitle A—Energy Policy Act Amendments

- Sec. 5011. Credit for substantial contribution toward noncovered fleets.*
Sec. 5012. Credit for alternative fuel infrastructure.
Sec. 5013. Alternative fueled vehicle report.
Sec. 5014. Allocation of incremental costs.

Subtitle B—FreedomCAR and Hydrogen Fuel Program

- Sec. 5021. Short title.*
Sec. 5022. Findings, purpose, and definitions.
Sec. 5023. Plan; report.
Sec. 5024. Public-private partnership.
Sec. 5025. Deployment.
Sec. 5026. Assessment and transfer.
Sec. 5027. Interagency task force.
Sec. 5028. Advisory Committee.
Sec. 5029. Authorization of appropriations.
Sec. 5030. Fuel cell program at National Parks.
Sec. 5030A. Advanced power system technology incentive program.

Subtitle C—Clean School Buses

- Sec. 5031. Establishment of pilot program.*
Sec. 5032. Fuel cell bus development and demonstration program.
Sec. 5033. Authorization of appropriations.

Subtitle D—Advanced Vehicles

- Sec. 5041. Definitions.*
Sec. 5042. Pilot program.
Sec. 5043. Reports to Congress.
Sec. 5044. Authorization of appropriations.

Subtitle E—Hydrogen Fuel Cell Heavy-Duty Vehicles

- Sec. 5051. Definition.*
Sec. 5052. Findings.
Sec. 5053. Hydrogen fuel cell buses.
Sec. 5054. Authorization of appropriations.

Subtitle F—Miscellaneous

- Sec. 5061. Railroad efficiency.*
Sec. 5062. Mobile emission reductions trading and crediting.
Sec. 5063. Idle reduction technologies.
Sec. 5064. Study of aviation fuel conservation and emissions.
Sec. 5065. Diesel fueled vehicles.
Sec. 5066. Hybrid vehicles.
Sec. 5067. Waivers of alternative fueled vehicle fueling requirement.

TITLE VI—DOE PROGRAMS

- Sec. 6001. Purposes.*

Sec. 6002. Definitions.

Subtitle A—Energy Efficiency

PART 1—AUTHORIZATION OF APPROPRIATIONS

Sec. 6011. Energy efficiency.

PART 2—LIGHTING SYSTEMS

Sec. 6021. Next Generation Lighting Initiative.

PART 3—VEHICLES

Sec. 6031. Definitions.

Sec. 6032. Establishment of secondary electric vehicle battery use program.

Subtitle B—Distributed Energy and Electric Energy Systems

PART 1—AUTHORIZATION OF APPROPRIATIONS

Sec. 6201. Distributed energy and electric energy systems.

PART 2—DISTRIBUTED POWER

Sec. 6221. Strategy.

Sec. 6222. High power density industry program.

Sec. 6223. Micro-cogeneration energy technology.

PART 3—TRANSMISSION SYSTEMS

Sec. 6231. Transmission infrastructure systems.

Subtitle C—Renewable Energy

PART 1—AUTHORIZATION OF APPROPRIATIONS

Sec. 6301. Renewable energy.

PART 2—BIOENERGY

Sec. 6321. Bioenergy programs.

Subtitle D—Nuclear Energy

PART 1—AUTHORIZATION OF APPROPRIATIONS

Sec. 6411. Nuclear energy.

PART 2—NUCLEAR ENERGY RESEARCH PROGRAMS

Sec. 6421. Nuclear energy research programs.

PART 3—ADVANCED FUEL RECYCLING

Sec. 6431. Advanced fuel recycling program.

PART 4—UNIVERSITY PROGRAMS

Sec. 6441. University nuclear science and engineering support.

*Subtitle E—Fossil Energy**PART 1—AUTHORIZATION OF APPROPRIATIONS**Sec. 6501. Fossil energy.**PART 2—ULTRA-DEEPWATER AND UNCONVENTIONAL NATURAL GAS AND OTHER
PETROLEUM RESOURCES**Sec. 6521. Program authority.**Sec. 6522. Ultra-deepwater program.**Sec. 6523. Unconventional natural gas and other petroleum resources program.**Sec. 6524. Additional requirements for awards.**Sec. 6525. Advisory committees.**Sec. 6526. Limits on participation.**Sec. 6527. Fund.**Sec. 6528. Sunset.**Sec. 6529. Definitions.**Subtitle F—Miscellaneous**Sec. 6601. Waste reduction and use of alternatives.**Sec. 6602. Coal gasification.**Sec. 6603. Petroleum coke gasification.**Sec. 6604. Other biopower and bioenergy.**Sec. 6605. Technology transfer.**Sec. 6606. Limitation on legal fee reimbursement.**Sec. 6607. Complex well technology testing facility.**Sec. 6608. Total integrated thermal systems.**Sec. 6609. Oil bypass filtration technology.**TITLE VII—ELECTRICITY**Subtitle A—Transmission Capacity**Sec. 7011. Transmission infrastructure improvement rulemaking.**Sec. 7012. Siting of interstate electrical transmission facilities.**Subtitle B—Transmission Operation**Sec. 7021. Open access transmission by certain utilities.**Sec. 7022. Regional transmission organizations.**Sec. 7023. Native load.**Subtitle C—Reliability**Sec. 7031. Electric reliability standards.**Subtitle D—PUHCA Amendments**Sec. 7041. Short title.**Sec. 7042. Definitions.**Sec. 7043. Repeal of the Public Utility Holding Company Act of 1935.**Sec. 7044. Federal access to books and records.**Sec. 7045. State access to books and records.**Sec. 7046. Exemption authority.**Sec. 7047. Affiliate transactions.**Sec. 7048. Applicability.**Sec. 7049. Effect on other regulations.*

- Sec. 7050. Enforcement.*
Sec. 7051. Savings provisions.
Sec. 7052. Implementation.
Sec. 7053. Transfer of resources.
Sec. 7054. Effective date.
Sec. 7055. Authorization of appropriations.
Sec. 7056. Conforming amendments to the Federal Power Act.

Subtitle E—PURPA Amendments

- Sec. 7061. Real-time pricing and time-of-use metering standards.*
Sec. 7062. Cogeneration and small power production purchase and sale requirements.
Sec. 7063. Smart metering.

Subtitle F—Renewable Energy

- Sec. 7071. Net metering.*
Sec. 7072. Renewable energy production incentive.
Sec. 7073. Renewable energy on Federal lands.
Sec. 7074. Assessment of renewable energy resources.

Subtitle G—Market Transparency, Round Trip Trading Prohibition, and Enforcement

- Sec. 7081. Market transparency rules.*
Sec. 7082. Prohibition on round trip trading.
Sec. 7083. Conforming changes.
Sec. 7084. Enforcement.

Subtitle H—Consumer Protections

- Sec. 7091. Refund effective date.*
Sec. 7092. Jurisdiction over interstate sales.
Sec. 7093. Consumer privacy.
Sec. 7094. Unfair trade practices.

Subtitle I—Merger Review Reform and Accountability

- Sec. 7101. Merger review reform and accountability.*

Subtitle J—Study of Economic Dispatch

- Sec. 7111. Study on the benefits of economic dispatch.*

TITLE VIII—COAL

- Sec. 8001. Authorization of appropriations.*
Sec. 8002. Project criteria.
Sec. 8003. Report.
Sec. 8004. Clean coal centers of excellence.

TITLE IX—MOTOR FUELS

Subtitle A—General Provisions

- Sec. 9101. Renewable content of motor vehicle fuel.*
Sec. 9102. Fuels safe harbor.
Sec. 9103. Findings and MTBE transition assistance.

Sec. 9104. Elimination of oxygen content requirement for reformulated gasoline.
Sec. 9105. Analyses of motor vehicle fuel changes.
Sec. 9106. Data collection.
Sec. 9107. Fuel system requirements harmonization study.

Subtitle B—MTBE Cleanup

Sec. 9201. Funding for MTBE contamination.

TITLE X—AUTOMOBILE EFFICIENCY

Sec. 10001. Authorization of appropriations for implementation and enforcement of fuel economy standards.
Sec. 10002. Study of feasibility and effects of reducing use of fuel for automobiles.

TITLE XI—PREVENTING THE MISUSE OF NUCLEAR MATERIALS AND TECHNOLOGY

Sec. 11001. Preventing the misuse of nuclear materials and technology.

TITLE XII—ADDITIONAL PROVISIONS

Sec. 12001. Transmission technologies.

1 ***TITLE I—ENERGY***
 2 ***CONSERVATION***
 3 ***Subtitle A—Federal Leadership in***
 4 ***Energy Conservation***

5 ***SEC. 1001. ENERGY AND WATER SAVING MEASURES IN CON-***
 6 ***GRESSIONAL BUILDINGS.***

7 *(a) IN GENERAL.—Part 3 of title V of the National*
 8 *Energy Conservation Policy Act is amended by adding at*
 9 *the end:*

10 ***“SEC. 552. ENERGY AND WATER SAVINGS MEASURES IN***
 11 ***CONGRESSIONAL BUILDINGS.***

12 *“(a) IN GENERAL.—The Architect of the Capitol—*
 13 *“(1) shall develop, update, and implement a cost-*
 14 *effective energy conservation and management plan*
 15 *(referred to in this section as the ‘plan’) for all facili-*

1 *ties administered by the Congress (referred to in this*
2 *section as ‘congressional buildings’) to meet the en-*
3 *ergy performance requirements for Federal buildings*
4 *established under section 543(a)(1); and*

5 *“(2) shall submit the plan to Congress, not later*
6 *than 180 days after the date of enactment of this sec-*
7 *tion.*

8 *“(b) PLAN REQUIREMENTS.—The plan shall include—*

9 *“(1) a description of the life cycle cost analysis*
10 *used to determine the cost-effectiveness of proposed en-*
11 *ergy efficiency projects;*

12 *“(2) a schedule of energy surveys to ensure com-*
13 *plete surveys of all congressional buildings every 5*
14 *years to determine the cost and payback period of en-*
15 *ergy and water conservation measures;*

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

18 *“(4) the results of a study of the costs and bene-*
19 *fits of installation of submetering in congressional*
20 *buildings; and*

21 *“(5) information packages and ‘how-to’ guides*
22 *for each Member and employing authority of Congress*
23 *that detail simple, cost-effective methods to save en-*
24 *ergy and taxpayer dollars in the workplace.*

1 “(c) *ANNUAL REPORT.*—*The Architect shall submit to*
2 *Congress annually a report on congressional energy man-*
3 *agement and conservation programs required under this*
4 *section that describes in detail—*

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

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

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

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

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

15 “(c) *REPEAL.*—*Section 310 of the Legislative Branch*
16 *Appropriations Act, 1999 (40 U.S.C. 166i), is repealed.*

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

1 (e) *AUTHORIZATION.*—*There are authorized to be ap-*
 2 *propriated to the Architect of the Capitol to carry out sub-*
 3 *section (d), not more than \$2,000,000 for fiscal years after*
 4 *the enactment of this Act.*

5 **SEC. 1002. ENERGY MANAGEMENT REQUIREMENTS.**

6 (a) *ENERGY REDUCTION GOALS.*—

7 (1) *AMENDMENT.*—*Section 543(a)(1) of the Na-*
 8 *tional Energy Conservation Policy Act (42 U.S.C.*
 9 *8253(a)(1)) is amended by striking “its Federal*
 10 *buildings so that” and all that follows through the*
 11 *end and inserting “the Federal buildings of the agen-*
 12 *cy (including each industrial or laboratory facility)*
 13 *so that the energy consumption per gross square foot*
 14 *of the Federal buildings of the agency in fiscal years*
 15 *2004 through 2013 is reduced, as compared with the*
 16 *energy consumption per gross square foot of the Fed-*
 17 *eral buildings of the agency in fiscal year 2001, by*
 18 *the percentage specified in the following table:*

“Fiscal Year	Percentage reduction
2004	2
2005	4
2006	6
2007	8
2008	10
2009	12
2010	14
2011	16
2012	18
2013	20.”.

19 (2) *REPORTING BASELINE.*—*The energy reduc-*
 20 *tion goals and baseline established in paragraph (1)*

1 of section 543(a) of the National Energy Conservation
2 Policy Act, as amended by paragraph (1) of this sub-
3 section, supersede all previous goals and baselines
4 under such paragraph, and related reporting require-
5 ments.

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

10 “(3) Not later than December 31, 2012, the Secretary
11 shall review the results of the implementation of the energy
12 performance requirement established under paragraph (1)
13 and submit to Congress recommendations concerning en-
14 ergy performance requirements for fiscal years 2014
15 through 2023.”.

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

1 “(i) compliance with those requirements would
2 be impracticable;

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

5 “(iii) the agency has achieved compliance with
6 the energy efficiency requirements of this Act, the En-
7 ergy Policy Act of 1992, Executive Orders, and other
8 Federal law; and

9 “(iv) the agency has implemented all practicable,
10 life cycle cost-effective projects with respect to the Fed-
11 eral building or collection of Federal buildings to be
12 excluded.

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

15 “(i) the energy intensiveness of activities carried
16 out in the Federal building or collection of Federal
17 buildings; or

18 “(ii) the fact that the Federal building or collec-
19 tion of Federal buildings is used in the performance
20 of a national security function.”.

21 (d) REVIEW BY SECRETARY.—Section 543(c)(2) of the
22 National Energy Conservation Policy Act (42 U.S.C.
23 8253(c)(2)) is amended—

24 (1) by striking “impracticability standards” and
25 inserting “standards for exclusion”; and

1 (2) *by striking “a finding of impracticability”*
2 *and inserting “the exclusion”.*

3 (e) *CRITERIA.—Section 543(c) of the National Energy*
4 *Conservation Policy Act (42 U.S.C. 8253(c)) is further*
5 *amended by adding at the end the following:*

6 “*(3) Not later than 180 days after the date of enact-*
7 *ment of this paragraph, the Secretary shall issue guidelines*
8 *that establish criteria for exclusions under paragraph (1).”.*

9 (f) *RETENTION OF ENERGY SAVINGS.—Section 546 of*
10 *the National Energy Conservation Policy Act (42 U.S.C.*
11 *8256) is amended by adding at the end the following new*
12 *subsection:*

13 “*(e) RETENTION OF ENERGY SAVINGS.—An agency*
14 *may retain any funds appropriated to that agency for en-*
15 *ergy expenditures, at buildings subject to the requirements*
16 *of section 543(a) and (b), that are not made because of en-*
17 *ergy savings. Except as otherwise provided by law, such*
18 *funds may be used only for energy efficiency or unconven-*
19 *tional and renewable energy resources projects.”.*

20 (g) *REPORTS.—Section 548(b) of the National Energy*
21 *Conservation Policy Act (42 U.S.C. 8258(b)) is amended—*

22 (1) *in the subsection heading, by inserting “THE*
23 *PRESIDENT AND” before “CONGRESS”; and*

24 (2) *by inserting “President and” before “Con-*
25 *gress”.*

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

8 **SEC. 1003. ENERGY USE MEASUREMENT AND ACCOUNT-**
9 **ABILITY.**

10 Section 543 of the *National Energy Conservation Pol-*
11 *icy Act* (42 U.S.C. 8253) is further amended by adding at
12 the end the following:

13 “(e) *METERING OF ENERGY USE.*—

14 “(1) *DEADLINE.*—By October 1, 2010, in accord-
15 ance with guidelines established by the Secretary
16 under paragraph (2), all Federal buildings shall, for
17 the purposes of efficient use of energy and reduction
18 in the cost of electricity used in such buildings, be me-
19 tered or submetered. Each agency shall use, to the
20 maximum extent practicable, advanced meters or ad-
21 vanced metering devices that provide data at least
22 daily and that measure at least hourly consumption
23 of electricity in the Federal buildings of the agency.
24 Such data shall be incorporated into existing Federal

1 *energy tracking systems and made available to Fed-*
2 *eral facility energy managers.*

3 “(2) *GUIDELINES.*—

4 “(A) *IN GENERAL.*—Not later than 180
5 *days after the date of enactment of this sub-*
6 *section, the Secretary, in consultation with the*
7 *Department of Defense, the General Services Ad-*
8 *ministration, representatives from the metering*
9 *industry, utility industry, energy services indus-*
10 *try, energy efficiency industry, national labora-*
11 *tories, universities, and Federal facility energy*
12 *managers, shall establish guidelines for agencies*
13 *to carry out paragraph (1).*

14 “(B) *REQUIREMENTS FOR GUIDELINES.*—

15 *The guidelines shall—*

16 “(i) *take into consideration—*

17 “(I) *the cost of metering and sub-*
18 *metering and the reduced cost of oper-*
19 *ation and maintenance expected to re-*
20 *sult from metering and submetering;*

21 “(II) *the extent to which metering*
22 *and submetering are expected to result*
23 *in increased potential for energy man-*
24 *agement, increased potential for energy*
25 *savings and energy efficiency improve-*

1 *ment, and cost and energy savings due*
2 *to utility contract aggregation; and*

3 *“(III) the measurement and*
4 *verification protocols of the Depart-*
5 *ment of Energy;*

6 *“(ii) include recommendations con-*
7 *cerning the amount of funds and the num-*
8 *ber of trained personnel necessary to gather*
9 *and use the metering information to track*
10 *and reduce energy use;*

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

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

23 *“(3) PLAN.—No later than 6 months after the*
24 *date guidelines are established under paragraph (2),*
25 *in a report submitted by the agency under section*

1 548(a), each agency shall submit to the Secretary a
2 plan describing how the agency will implement the
3 requirements of paragraph (1), including (A) how the
4 agency will designate personnel primarily responsible
5 for achieving the requirements and (B) demonstration
6 by the agency, complete with documentation, of any
7 finding that advanced meters or advanced metering
8 devices, as defined in paragraph (1), are not prac-
9 ticable.”.

10 **SEC. 1004. FEDERAL BUILDING PERFORMANCE STANDARDS.**

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

13 (1) in paragraph (2)(A), by striking “CABO
14 Model Energy Code, 1992” and inserting “the 2000
15 International Energy Conservation Code”; and

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

17 “(3) **REVISED FEDERAL BUILDING ENERGY EFFI-**
18 **CIENCY PERFORMANCE STANDARDS.—**

19 “(A) **IN GENERAL.—**Not later than 1 year after
20 the date of enactment of this paragraph, the Secretary
21 of Energy shall establish, by rule, revised Federal
22 building energy efficiency performance standards that
23 require that, if cost-effective, for new Federal build-
24 ings—

1 “(i) such buildings be designed so as to
2 achieve energy consumption levels at least 30
3 percent below those of the most recent ASHRAE
4 Standard 90.1 or the most recent version of the
5 International Energy Conservation Code, as ap-
6 propriate; and

7 “(ii) sustainable design principles are ap-
8 plied to the siting, design, and construction of
9 all new and replacement buildings.

10 “(B) ADDITIONAL REVISIONS.—Not later than 1
11 year after the date of approval of amendments to
12 ASHRAE Standard 90.1 or the 2000 International
13 Energy Conservation Code, the Secretary of Energy
14 shall determine, based on the cost-effectiveness of the
15 requirements under the amendments, whether the re-
16 vised standards established under this paragraph
17 should be updated to reflect the amendments.

18 “(C) STATEMENT ON COMPLIANCE OF NEW
19 BUILDINGS.—In the budget request of the Federal
20 agency for each fiscal year and each report submitted
21 by the Federal agency under section 548(a) of the Na-
22 tional Energy Conservation Policy Act (42 U.S.C.
23 8258(a)), the head of each Federal agency shall in-
24 clude—

1 “(i) a list of all new Federal buildings
2 owned, operated, or controlled by the Federal
3 agency; and

4 “(ii) a statement concerning whether the
5 Federal buildings meet or exceed the revised
6 standards established under this paragraph.”.

7 **SEC. 1005. PROCUREMENT OF ENERGY EFFICIENT PROD-**
8 **UCTS.**

9 (a) *REQUIREMENTS.*—Part 3 of title V of the National
10 Energy Conservation Policy Act is amended by adding at
11 the end the following:

12 **“SEC. 553. FEDERAL PROCUREMENT OF ENERGY EFFICIENT**
13 **PRODUCTS.**

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

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

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

22 “(3) *EXECUTIVE AGENCY.*—The term ‘executive
23 agency’ has the meaning given the term in section 4
24 of the Office of Federal Procurement Policy Act (41
25 U.S.C. 403).

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

7 “(b) *PROCUREMENT OF ENERGY EFFICIENT PROD-*
8 *UCTS*.—

9 “(1) *REQUIREMENT*.—To meet the requirements
10 of an executive agency for an energy consuming prod-
11 uct, the head of the executive agency shall, except as
12 provided in paragraph (2), procure—

13 “(A) an *Energy Star* product; or

14 “(B) a *FEMP* designated product.

15 “(2) *EXCEPTIONS*.—The head of an executive
16 agency is not required to procure an *Energy Star*
17 product or *FEMP* designated product under para-
18 graph (1) if the head of the executive agency finds in
19 writing that—

20 “(A) an *Energy Star* product or *FEMP* des-
21 ignated product is not cost-effective over the life
22 of the product taking energy cost savings into ac-
23 count; or

24 “(B) no *Energy Star* product or *FEMP* des-
25 ignated product is reasonably available that

1 *meets the functional requirements of the executive*
2 *agency.*

3 “(3) *PROCUREMENT PLANNING.*—*The head of an*
4 *executive agency shall incorporate into the specifica-*
5 *tions for all procurements involving energy con-*
6 *suming products and systems, including guide speci-*
7 *fications, project specifications, and construction, ren-*
8 *ovation, and services contracts that include provision*
9 *of energy consuming products and systems, and into*
10 *the factors for the evaluation of offers received for the*
11 *procurement, criteria for energy efficiency that are*
12 *consistent with the criteria used for rating Energy*
13 *Star products and for rating FEMP designated prod-*
14 *ucts.*

15 “(c) *LISTING OF ENERGY EFFICIENT PRODUCTS IN*
16 *FEDERAL CATALOGS.*—*Energy Star products and FEMP*
17 *designated products shall be clearly identified and promi-*
18 *nently displayed in any inventory or listing of products*
19 *by the General Services Administration or the Defense Lo-*
20 *gistics Agency. The General Services Administration or the*
21 *Defense Logistics Agency shall supply only Energy Star*
22 *products or FEMP designated products for all product cat-*
23 *egories covered by the Energy Star program or the Federal*
24 *Energy Management Program, except in cases where the*
25 *agency ordering a product specifies in writing that no En-*

1 *ergy Star product or FEMP designated product is available*
2 *to meet the buyer’s functional requirements, or that no En-*
3 *ergy Star product or FEMP designated product is cost-effec-*
4 *tive for the intended application over the life of the product,*
5 *taking energy cost savings into account.*

6 “(d) *DESIGNATION OF ELECTRIC MOTORS.—In the*
7 *case of electric motors of 1 to 500 horsepower, agencies shall*
8 *select only premium efficient motors that meet a standard*
9 *designated by the Secretary. The Secretary shall designate*
10 *such a standard within 120 days after the date of the enact-*
11 *ment of this section, after considering the recommendations*
12 *of associated electric motor manufacturers and energy effi-*
13 *ciency groups.*”

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

17 “(b) *CONFORMING AMENDMENT.—The table of contents*
18 *in section 101(b) of the National Energy Conservation Pol-*
19 *icy Act (42 U.S.C. 8201 note), as amended by section*
20 *1001(b) of this Act, is further amended by inserting after*
21 *the item relating to section 552 the following:*

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

22 ***SEC. 1006. ENERGY SAVINGS PERFORMANCE CONTRACTS.***

23 “(a) *PERMANENT EXTENSION.—Section 801(c) of the*
24 *National Energy Conservation Policy Act (42 U.S.C.*
25 *8287(c)) is repealed.*”

1 (b) *REPLACEMENT FACILITIES*.—Section 801(a) of the
2 *National Energy Conservation Policy Act* (42 U.S.C.
3 8287(a)) is amended by adding at the end the following
4 new paragraph:

5 “(3)(A) *In the case of an energy savings contract*
6 *or energy savings performance contract providing for*
7 *energy savings through the construction and oper-*
8 *ation of one or more buildings or facilities to replace*
9 *one or more existing buildings or facilities, benefits*
10 *ancillary to the purpose of such contract under para-*
11 *graph (1) may include savings resulting from reduced*
12 *costs of operation and maintenance at such replace-*
13 *ment buildings or facilities when compared with costs*
14 *of operation and maintenance at the buildings or fa-*
15 *ilities being replaced, established through a method-*
16 *ology set forth in the contract.*

17 “(B) *Notwithstanding paragraph (2)(B), aggre-*
18 *gate annual payments by an agency under an energy*
19 *savings contract or energy savings performance con-*
20 *tract referred to in subparagraph (A) may take into*
21 *account (through the procedures developed pursuant*
22 *to this section) savings resulting from reduced costs of*
23 *operation and maintenance as described in that sub-*
24 *paragraph.*”.

1 (c) *ENERGY SAVINGS.*—Section 804(2) of the National
2 *Energy Conservation Policy Act (42 U.S.C. 8287c(2)) is*
3 *amended to read as follows:*

4 “(2) The term ‘energy savings’ means—

5 “(A) a reduction in the cost of energy or
6 water, from a base cost established through a
7 methodology set forth in the contract, used in an
8 existing federally owned building or buildings or
9 other federally owned facilities as a result of—

10 “(i) the lease or purchase of operating
11 equipment, improvements, altered operation
12 and maintenance, or technical services;

13 “(ii) the increased efficient use of exist-
14 ing energy sources by cogeneration or heat
15 recovery, excluding any cogeneration process
16 for other than a federally owned building or
17 buildings or other federally owned facilities;
18 or

19 “(iii) the increased efficient use of ex-
20 isting water sources; or

21 “(B) in the case of a replacement building
22 or facility described in section 801(a)(3), a re-
23 duction in the cost of energy, from a base cost es-
24 tablished through a methodology set forth in the
25 contract, that would otherwise be utilized in one

1 *or more existing federally owned buildings or*
2 *other federally owned facilities by reason of the*
3 *construction and operation of the replacement*
4 *building or facility.”.*

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

8 *“(3) The terms ‘energy savings contract’ and ‘en-*
9 *ergy savings performance contract’ mean a contract*
10 *which provides for—*

11 *“(A) the performance of services for the de-*
12 *sign, acquisition, installation, testing, operation,*
13 *and, where appropriate, maintenance and re-*
14 *pair, of an identified energy or water conserva-*
15 *tion measure or series of measures at one or*
16 *more locations; or*

17 *“(B) energy savings through the construc-*
18 *tion and operation of one or more buildings or*
19 *facilities to replace one or more existing build-*
20 *ings or facilities.*

21 *Such contracts shall, with respect to an agency facil-*
22 *ity that is a public building as such term is defined*
23 *in section 13(1) of the Public Buildings Act of 1959*
24 *(40 U.S.C. 3301), be in compliance with the pro-*

1 *spectus requirements and procedures of section 7 of*
2 *the Public Buildings Act of 1959 (40 U.S.C. 3307).”.*

3 *(e) ENERGY OR WATER CONSERVATION MEASURE.—*

4 *Section 804(4) of the National Energy Conservation Policy*
5 *Act (42 U.S.C. 8287c(4)) is amended to read as follows:*

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

8 *“(A) an energy conservation measure, as de-*
9 *finied in section 551(4) (42 U.S.C. 8259(4)); or*

10 *“(B) a water conservation measure that im-*
11 *proves water efficiency, is life cycle cost-effective,*
12 *and involves water conservation, water recycling*
13 *or reuse, more efficient treatment of wastewater*
14 *or stormwater, improvements in operation or*
15 *maintenance efficiencies, retrofit activities, or*
16 *other related activities, not at a Federal hydro-*
17 *electric facility.”.*

18 *(f) REVIEW.—Within 180 days after the date of the*
19 *enactment of this section, the Secretary of Energy shall*
20 *complete a review of the Energy Savings Performance Con-*
21 *tract program to identify statutory, regulatory, and admin-*
22 *istrative obstacles that prevent Federal agencies from fully*
23 *utilizing the program. In addition, this review shall iden-*
24 *tify all areas for increasing program flexibility and effec-*
25 *tiveness, including audit and measurement verification re-*

1 *quirements, accounting for energy use in determining sav-*
2 *ings, contracting requirements, and energy efficiency serv-*
3 *ices covered. The Secretary shall report these findings to the*
4 *Committee on Energy and Commerce of the House of Rep-*
5 *resentatives and the Committee on Energy and Natural Re-*
6 *sources of the Senate, and shall implement identified ad-*
7 *ministrative and regulatory changes to increase program*
8 *flexibility and effectiveness to the extent that such changes*
9 *are consistent with statutory authority.*

10 ***SEC. 1007. VOLUNTARY COMMITMENTS TO REDUCE INDUS-***
11 ***TRIAL ENERGY INTENSITY.***

12 *(a) VOLUNTARY AGREEMENTS.—The Secretary of En-*
13 *ergy shall enter into voluntary agreements with one or more*
14 *persons in industrial sectors that consume significant*
15 *amounts of primary energy per unit of physical output to*
16 *reduce the energy intensity of their production activities.*

17 *(b) GOAL.—Voluntary agreements under this section*
18 *shall have a goal of reducing energy intensity by not less*
19 *than 2.5 percent each year from 2004 through 2014.*

20 *(c) RECOGNITION.—The Secretary of Energy, in co-*
21 *operation with the Administrator of the Environmental*
22 *Protection Agency and other appropriate Federal agencies,*
23 *shall develop mechanisms to recognize and publicize the*
24 *achievements of participants in voluntary agreements*
25 *under this section.*

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

4 (e) *TECHNICAL ASSISTANCE.*—*An entity that enters*
5 *into an agreement under this section and continues to make*
6 *a good faith effort to achieve the energy efficiency goals*
7 *specified in the agreement shall be eligible to receive from*
8 *the Secretary a grant or technical assistance as appropriate*
9 *to assist in the achievement of those goals.*

10 (f) *REPORT.*—*Not later than June 30, 2010 and June*
11 *30, 2014, the Secretary shall submit to Congress a report*
12 *that evaluates the success of the voluntary agreements, with*
13 *independent verification of a sample of the energy savings*
14 *estimates provided by participating firms.*

15 **SEC. 1008. FEDERAL AGENCY PARTICIPATION IN DEMAND**

16 **REDUCTION PROGRAMS.**

17 *Section 546(c) of the National Energy Conservation*
18 *Policy Act (42 U.S.C. 8256(c)) is amended by adding at*
19 *the end of the following new paragraph:*

20 “(6) *Federal agencies are encouraged to participate in*
21 *State or regional demand side reduction programs. The*
22 *availability of such programs, including measures employ-*
23 *ing onsite generation, and the savings resulting from such*
24 *participation, should be included in the evaluation of en-*
25 *ergy options for Federal facilities.”.*

1 **SEC. 1009. ADVANCED BUILDING EFFICIENCY TESTBED.**

2 (a) *ESTABLISHMENT.*—*The Secretary of Energy, in*
3 *consultation with the Administrator of the General Services*
4 *Administration, shall establish an Advanced Building Effi-*
5 *ciency Testbed program for the development, testing, and*
6 *demonstration of advanced engineering systems, compo-*
7 *nents, and materials to enable innovations in building tech-*
8 *nologies. The program shall evaluate efficiency concepts for*
9 *government and industry buildings, and demonstrate the*
10 *ability of next generation buildings to support individual*
11 *and organizational productivity and health as well as flexi-*
12 *bility and technological change to improve environmental*
13 *sustainability. Such program shall complement and not du-*
14 *plicate existing national programs.*

15 (b) *PARTICIPANTS.*—*The program established under*
16 *subsection (a) shall be led by a university with the ability*
17 *to combine the expertise from numerous academic fields in-*
18 *cluding, at a minimum, intelligent workplaces and ad-*
19 *vanced building systems and engineering, electrical and*
20 *computer engineering, computer science, architecture,*
21 *urban design, and environmental and mechanical engineer-*
22 *ing. Such university shall partner with other universities*
23 *and entities who have established programs and the capa-*
24 *bility of advancing innovative building efficiency tech-*
25 *nologies.*

1 (c) *AUTHORIZATION OF APPROPRIATIONS.*—*There are*
 2 *authorized to be appropriated to the Secretary of Energy*
 3 *to carry out this section \$6,000,000 for each of the fiscal*
 4 *years 2004 through 2006, to remain available until ex-*
 5 *pended. For any fiscal year in which funds are expended*
 6 *under this section, the Secretary shall provide one-third of*
 7 *the total amount to the lead university described in sub-*
 8 *section (b), and provide the remaining two-thirds to the*
 9 *other participants referred to in subsection (b) on an equal*
 10 *basis.*

11 ***SEC. 1010. INCREASED USE OF RECOVERED MINERAL COM-***
 12 ***PONENT IN FEDERALLY FUNDED PROJECTS***
 13 ***INVOLVING PROCUREMENT OF CEMENT OR***
 14 ***CONCRETE.***

15 (a) *AMENDMENT.*—*Subtitle F of the Solid Waste Dis-*
 16 *posal Act (42 U.S.C. 6961 et seq.) is amended by adding*
 17 *at the end the following new section:*

18 *“INCREASED USE OF RECOVERED MINERAL COMPONENT IN*
 19 *FEDERALLY FUNDED PROJECTS INVOLVING PROCURE-*
 20 *MENT OF CEMENT OR CONCRETE*

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

22 *“(1) AGENCY HEAD.—The term ‘agency head’*
 23 *means—*

24 *“(A) the Secretary of Transportation; and*

25 *“(B) the head of each other Federal agency*

26 *that on a regular basis procures, or provides*

1 *Federal funds to pay or assist in paying the cost*
2 *of procuring, material for cement or concrete*
3 *projects.*

4 “(2) *CEMENT OR CONCRETE PROJECT.*—*The*
5 *term ‘cement or concrete project’ means a project for*
6 *the construction or maintenance of a highway or*
7 *other transportation facility or a Federal, State, or*
8 *local government building or other public facility*
9 *that—*

10 “(A) *involves the procurement of cement or*
11 *concrete; and*

12 “(B) *is carried out in whole or in part*
13 *using Federal funds.*

14 “(3) *RECOVERED MINERAL COMPONENT.*—*The*
15 *term ‘recovered mineral component’ means—*

16 “(A) *ground granulated blast furnace slag;*

17 “(B) *coal combustion fly ash; and*

18 “(C) *any other waste material or byproduct*
19 *recovered or diverted from solid waste that the*
20 *Administrator, in consultation with an agency*
21 *head, determines should be treated as recovered*
22 *mineral component under this section for use in*
23 *cement or concrete projects paid for, in whole or*
24 *in part, by the agency head.*

25 “(b) *IMPLEMENTATION OF REQUIREMENTS.*—

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

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

16 “(3) *CONFORMANCE.*—The Administrator and
17 each agency head shall carry out this subsection in
18 accordance with section 6002.

19 “(c) *FULL IMPLEMENTATION STUDY.*—

20 “(1) *IN GENERAL.*—The Administrator, in co-
21 operation with the Secretary of Transportation and
22 the Secretary of Energy, shall conduct a study to de-
23 termine the extent to which current procurement re-
24 quirements, when fully implemented in accordance
25 with subsection (b), may realize energy savings and

1 *environmental benefits attainable with substitution of*
2 *recovered mineral component in cement used in ce-*
3 *ment or concrete projects.*

4 “(2) *MATTERS TO BE ADDRESSED.—The study*
5 *shall—*

6 “(A) *quantify the extent to which recovered*
7 *mineral components are being substituted for*
8 *Portland cement, particularly as a result of cur-*
9 *rent procurement requirements, and the energy*
10 *savings and environmental benefits associated*
11 *with that substitution;*

12 “(B) *identify all barriers in procurement*
13 *requirements to fuller realization of energy sav-*
14 *ings and environmental benefits, including bar-*
15 *riers resulting from exceptions from current law;*
16 *and*

17 “(C)(i) *identify potential mechanisms to*
18 *achieve greater substitution of recovered mineral*
19 *component in types of cement or concrete projects*
20 *for which recovered mineral components histori-*
21 *cally have not been used or have been used only*
22 *minimally;*

23 “(ii) *evaluate the feasibility of establishing*
24 *guidelines or standards for optimized substi-*

1 *tution rates of recovered mineral component in*
2 *those cement or concrete projects; and*

3 *“(iii) identify any potential environmental*
4 *or economic effects that may result from greater*
5 *substitution of recovered mineral component in*
6 *those cement or concrete projects.*

7 *“(3) REPORT.—Not later than 30 months after*
8 *the date of enactment of this section, the Adminis-*
9 *trator shall submit to the Committee on Appropria-*
10 *tions and Committee on Environment and Public*
11 *Works of the Senate and the Committee on Appro-*
12 *priations, Committee on Energy and Commerce, and*
13 *Committee on Transportation and Infrastructure of*
14 *the House of Representatives a report on the study.*

15 *“(d) ADDITIONAL PROCUREMENT REQUIREMENTS.—*
16 *Unless the study conducted under subsection (c) identifies*
17 *any effects or other problems described in subsection*
18 *(c)(2)(C)(iii) that warrant further review or delay, the Ad-*
19 *ministrator and each agency head shall, within 1 year of*
20 *the release of the report in accordance with subsection*
21 *(c)(3), take additional actions authorized under this Act to*
22 *establish procurement requirements and incentives that pro-*
23 *vide for the use of cement and concrete with increased sub-*
24 *stitution of recovered mineral component in the construc-*

1 *tion and maintenance of cement or concrete projects, so as*
 2 *to—*

3 “(1) *realize more fully the energy savings and*
 4 *environmental benefits associated with increased sub-*
 5 *stitution; and*

6 “(2) *eliminate barriers identified under sub-*
 7 *section (c).*

8 “(e) *EFFECT OF SECTION.—Nothing in this section af-*
 9 *fects the requirements of section 6002 (including the guide-*
 10 *lines and specifications for implementing those require-*
 11 *ments).*”.

12 (b) *TABLE OF CONTENTS AMENDMENT.—The table of*
 13 *contents of the Solid Waste Disposal Act is amended by*
 14 *adding after the item relating to section 6004 the following*
 15 *new item:*

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

16 ***Subtitle B—Energy Assistance and***
 17 ***State Programs***

18 ***SEC. 1021. LIHEAP AND WEATHERIZATION ASSISTANCE.***

19 (a) *LOW-INCOME HOME ENERGY ASSISTANCE PRO-*
 20 *GRAM.—Section 2602(b) of the Low-Income Home Energy*
 21 *Assistance Act of 1981 (42 U.S.C. 8621(b)) is amended by*
 22 *striking “each of fiscal years 2002 through 2004” and in-*
 23 *serting “each of fiscal years 2002 and 2003, and*
 24 *\$3,400,000,000 for each of fiscal years 2004 through 2006”.*

1 (b) *WEATHERIZATION*.—Section 422 of the Energy
2 *Conservation and Production Act* (42 U.S.C. 6872) is
3 amended by striking “for fiscal years 1999 through 2003
4 such sums as may be necessary” and inserting
5 “\$325,000,000 for fiscal year 2004, \$400,000,000 for fiscal
6 year 2005, and \$500,000,000 for fiscal year 2006”.

7 (c) *REPORT TO CONGRESS*.—Not later than 1 year
8 after the date of enactment of this Act, the Secretary of
9 Health and Human Services shall transmit to the Congress
10 a report on how the Low-Income Home Energy Assistance
11 Program could be used more effectively to prevent loss of
12 life from extreme temperatures. In preparing such report,
13 the Secretary shall consult with appropriate officials in all
14 50 States and the District of Columbia.

15 **SEC. 1022. STATE ENERGY PROGRAMS.**

16 (a) *STATE ENERGY CONSERVATION PLANS*.—Section
17 362 of the Energy Policy and Conservation Act (42 U.S.C.
18 6322) is amended by inserting at the end the following new
19 subsection:

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

1 *in the region, and identify opportunities and actions car-*
 2 *ried out in pursuit of common energy conservation goals.”.*

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

6 “*STATE ENERGY EFFICIENCY GOALS*

7 “*SEC. 364. Each State energy conservation plan with*
 8 *respect to which assistance is made available under this*
 9 *part on or after the date of enactment of the Energy Policy*
 10 *Act of 2003 shall contain a goal, consisting of an improve-*
 11 *ment of 25 percent or more in the efficiency of use of energy*
 12 *in the State concerned in calendar year 2010 as compared*
 13 *to calendar year 1990, and may contain interim goals.”.*

14 (c) *AUTHORIZATION OF APPROPRIATIONS.*—Section
 15 *365(f) of the Energy Policy and Conservation Act (42*
 16 *U.S.C. 6325(f)) is amended by striking “for fiscal years*
 17 *1999 through 2003 such sums as may be necessary” and*
 18 *inserting “\$100,000,000 for each of the fiscal years 2004*
 19 *and 2005 and \$125,000,000 for fiscal year 2006”.*

20 ***SEC. 1023. ENERGY EFFICIENT APPLIANCE REBATE PRO-***
 21 ***GRAMS.***

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

23 (1) *ELIGIBLE STATE.*—*The term “eligible State”*
 24 *means a State that meets the requirements of sub-*
 25 *section (b).*

1 (2) *ENERGY STAR PROGRAM.*—*The term “Energy*
2 *Star program” means the program established by sec-*
3 *tion 324A of the Energy Policy and Conservation Act.*

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

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

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

16 (b) *ELIGIBLE STATES.*—*A State shall be eligible to re-*
17 *ceive an allocation under subsection (c) if the State—*

18 (1) *establishes (or has established) a State energy*
19 *efficient appliance rebate program to provide rebates*
20 *to residential consumers for the purchase of residen-*
21 *tial Energy Star products to replace used appliances*
22 *of the same type;*

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

1 (3) *provides assurances satisfactory to the Sec-*
2 *retary that the State will use the allocation to supple-*
3 *ment, but not supplant, funds made available to*
4 *carry out the State program.*

5 (c) *AMOUNT OF ALLOCATIONS.—*

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

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

21 (d) *USE OF ALLOCATED FUNDS.—The allocation to a*
22 *State energy office under subsection (c) may be used to pay*
23 *up to 50 percent of the cost of establishing and carrying*
24 *out a State program.*

1 (e) *ISSUANCE OF REBATES.*—*Rebates may be provided*
2 *to residential consumers that meet the requirements of the*
3 *State program. The amount of a rebate shall be determined*
4 *by the State energy office, taking into consideration—*

5 (1) *the amount of the allocation to the State en-*
6 *ergy office under subsection (c);*

7 (2) *the amount of any Federal or State tax in-*
8 *centive available for the purchase of the residential*
9 *Energy Star product; and*

10 (3) *the difference between the cost of the residen-*
11 *tial Energy Star product and the cost of an appliance*
12 *that is not a residential Energy Star product, but is*
13 *of the same type as, and is the nearest capacity, per-*
14 *formance, and other relevant characteristics (as deter-*
15 *mined by the State energy office) to the residential*
16 *Energy Star product.*

17 (f) *AUTHORIZATION OF APPROPRIATIONS.*—*There are*
18 *authorized to be appropriated to carry out this section*
19 *\$50,000,000 for each of the fiscal years 2004 through 2008.*

20 ***SEC. 1024. ENERGY EFFICIENT PUBLIC BUILDINGS.***

21 (a) *GRANTS.*—*The Secretary of Energy may make*
22 *grants to the State agency responsible for developing State*
23 *energy conservation plans under section 362 of the Energy*
24 *Policy and Conservation Act (42 U.S.C. 6322), or, if no*
25 *such agency exists, a State agency designated by the Gov-*

1 *ernor of the State, to assist units of local government in*
2 *the State in improving the energy efficiency of public build-*
3 *ings and facilities—*

4 (1) *through construction of new energy efficient*
5 *public buildings that use at least 30 percent less en-*
6 *ergy than a comparable public building constructed*
7 *in compliance with standards prescribed in chapter 8*
8 *of the 2000 International Energy Conservation Code,*
9 *or a similar State code intended to achieve substan-*
10 *tially equivalent efficiency levels; or*

11 (2) *through renovation of existing public build-*
12 *ings to achieve reductions in energy use of at least 30*
13 *percent as compared to the baseline energy use in*
14 *such buildings prior to renovation, assuming a 3-*
15 *year, weather-normalized average for calculating such*
16 *baseline.*

17 (b) *ADMINISTRATION.—State energy offices receiving*
18 *grants under this section shall—*

19 (1) *maintain such records and evidence of com-*
20 *pliance as the Secretary may require; and*

21 (2) *develop and distribute information and ma-*
22 *terials and conduct programs to provide technical*
23 *services and assistance to encourage planning, financ-*
24 *ing, and design of energy efficient public buildings by*
25 *units of local government.*

1 (c) *AUTHORIZATION OF APPROPRIATIONS.*—*For the*
2 *purposes of this section, there are authorized to be appro-*
3 *priated to the Secretary of Energy such sums as may be*
4 *necessary for each of fiscal years 2004 through 2013. Not*
5 *more than 30 percent of appropriated funds shall be used*
6 *for administration.*

7 ***SEC. 1025. LOW INCOME COMMUNITY ENERGY EFFICIENCY***
8 ***PILOT PROGRAM.***

9 (a) *GRANTS.*—*The Secretary of Energy is authorized*
10 *to make grants to units of local government, private, non-*
11 *profit community development organizations, and Indian*
12 *tribe economic development entities to improve energy effi-*
13 *ciency, identify and develop alternative renewable and dis-*
14 *tributed energy supplies, and increase energy conservation*
15 *in low income rural and urban communities.*

16 (b) *PURPOSE OF GRANTS.*—*The Secretary may make*
17 *grants on a competitive basis for—*

18 (1) *investments that develop alternative renew-*
19 *able and distributed energy supplies;*

20 (2) *energy efficiency projects and energy con-*
21 *servation programs;*

22 (3) *studies and other activities that improve en-*
23 *ergy efficiency in low income rural and urban com-*
24 *munities;*

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

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

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

17 (d) *AUTHORIZATION OF APPROPRIATIONS.*—*For the*
18 *purposes of this section there are authorized to be appro-*
19 *priated to the Secretary of Energy \$20,000,000 for fiscal*
20 *year 2004 and each fiscal year thereafter through fiscal year*
21 *2006.*

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

3 **SEC. 1041. ENERGY STAR PROGRAM.**

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

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

8 *“There is established at the Department of Energy and*
9 *the Environmental Protection Agency a program to identify*
10 *and promote energy-efficient products and buildings in*
11 *order to reduce energy consumption, improve energy secu-*
12 *rity, and reduce pollution through labeling of and other*
13 *forms of communication about products and buildings that*
14 *meet the highest energy efficiency standards. Responsibil-*
15 *ities under the program shall be divided between the De-*
16 *partment of Energy and the Environmental Protection*
17 *Agency consistent with the terms of agreements between the*
18 *two agencies. The Administrator and the Secretary shall—*

19 *“(1) promote Energy Star compliant technologies*
20 *as the preferred technologies in the marketplace for*
21 *achieving energy efficiency and to reduce pollution;*

22 *“(2) work to enhance public awareness of the*
23 *Energy Star label, including special outreach to small*
24 *businesses;*

1 “(3) preserve the integrity of the Energy Star
2 label; and

3 “(4) solicit the comments of interested parties in
4 establishing a new Energy Star product category or
5 in revising a product category, and upon adoption of
6 a new or revised product category provide an expla-
7 nation of the decision that responds to significant
8 public comments.”.

9 (b) *TABLE OF CONTENTS AMENDMENT.*—The table of
10 contents of the Energy Policy and Conservation Act is
11 amended by inserting after the item relating to section 324
12 the following new item:

“Sec. 324A. Energy Star program.”.

13 **SEC. 1042. CONSUMER EDUCATION ON ENERGY EFFICIENCY**
14 **BENEFITS OF AIR CONDITIONING, HEATING,**
15 **AND VENTILATION MAINTENANCE.**

16 Section 337 of the Energy Policy and Conservation Act
17 (42 U.S.C. 6307) is amended by adding at the end the fol-
18 lowing:

19 “(c) *HVAC MAINTENANCE.*—(1) For the purpose of en-
20 suring that installed air conditioning and heating systems
21 operate at their maximum rated efficiency levels, the Sec-
22 retary shall, within 180 days of the date of enactment of
23 this subsection, carry out a program to educate homeowners
24 and small business owners concerning the energy savings

1 *resulting from properly conducted maintenance of air con-*
2 *ditioning, heating, and ventilating systems.*

3 “(2) *The Secretary shall carry out the program in co-*
4 *operation with the Administrator of the Environmental*
5 *Protection Agency and such other entities as the Secretary*
6 *considers appropriate, including industry trade associa-*
7 *tions, industry members, and energy efficiency organiza-*
8 *tions.*

9 “(d) *SMALL BUSINESS EDUCATION AND ASSIST-*
10 *ANCE.—The Administrator of the Small Business Adminis-*
11 *tration, in consultation with the Secretary of Energy and*
12 *the Administrator of the Environmental Protection Agency,*
13 *shall develop and coordinate a Government-wide program,*
14 *building on the existing Energy Star for Small Business*
15 *Program, to assist small business to become more energy*
16 *efficient, understand the cost savings obtainable through ef-*
17 *ficiencies, and identify financing options for energy effi-*
18 *ciency upgrades. The Secretary and the Administrator shall*
19 *make the program information available directly to small*
20 *businesses and through other Federal agencies, including the*
21 *Federal Emergency Management Agency, and the Depart-*
22 *ment of Agriculture.”.*

1 **SEC. 1043. ADDITIONAL DEFINITIONS.**

2 *Section 321 of the Energy Policy and Conservation Act*
3 *(42 U.S.C. 6291) is amended by adding at the end the fol-*
4 *lowing:*

5 “(32) *The term ‘battery charger’ means a device*
6 *that charges batteries for consumer products.*

7 “(33) *The term ‘commercial refrigerator, freezer*
8 *and refrigerator-freezer’ means a refrigerator, freezer*
9 *or refrigerator-freezer that—*

10 “(A) *is not a consumer product regulated*
11 *under this Act; and*

12 “(B) *incorporates most components involved*
13 *in the vapor-compression cycle and the refriger-*
14 *erated compartment in a single package.*

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

20 “(35) *The term ‘illuminated exit sign’ means a*
21 *sign that—*

22 “(A) *is designed to be permanently fixed in*
23 *place to identify an exit; and*

24 “(B) *consists of—*

1 “(i) an electrically powered integral
2 light source that illuminates the legend
3 ‘EXIT’ and any directional indicators; and

4 “(ii) provides contrast between the leg-
5 end, any directional indicators, and the
6 background.

7 “(36)(A) Except as provided in subparagraph
8 (B), the term ‘low-voltage dry-type transformer’
9 means a transformer that—

10 “(i) has an input voltage of 600 volts or
11 less;

12 “(ii) is air-cooled;

13 “(iii) does not use oil as a coolant; and

14 “(iv) is rated for operation at a frequency
15 of 60 Hertz.

16 “(B) The term ‘low-voltage dry-type transformer’
17 does not include—

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

21 “(ii) transformers that are designed to be
22 used in a special purpose application, such as
23 transformers commonly known as drive trans-
24 formers, rectifier transformers, autotransformers,
25 Uninterruptible Power System transformers, im-

1 *pedance transformers, harmonic transformers,*
2 *regulating transformers, sealed and nonven-*
3 *tilating transformers, machine tool transformers,*
4 *welding transformers, grounding transformers, or*
5 *testing transformers; or*

6 “(iii) any transformer not listed in clause
7 (ii) that is excluded by the Secretary by rule be-
8 cause the transformer is designed for a special
9 application and the application of standards to
10 the transformer would not result in significant
11 energy savings.

12 “(37) The term ‘standby mode’ means the lowest
13 amount of electric power used by a household appli-
14 ance when not performing its active functions, as de-
15 fined on an individual product basis by the Sec-
16 retary.

17 “(38) The term ‘torchiere’ means a portable elec-
18 tric lamp with a reflector bowl that directs light up-
19 ward so as to give indirect illumination.

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

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

5 “(41) The term ‘traffic signal module’ means a
6 standard 8-inch (200mm) or 12-inch (300mm) traffic
7 signal indication, consisting of a light source, a lens,
8 and all other parts necessary for operation, that com-
9 municates movement messages to drivers through red,
10 amber, and green colors.”

11 **SEC. 1044. ADDITIONAL TEST PROCEDURES.**

12 (a) *EXIT SIGNS.*—Section 323(b) of the Energy Policy
13 and Conservation Act (42 U.S.C. 6293) is amended by add-
14 ing at the end the following:

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

19 “(10) Test procedures for low voltage dry-type
20 distribution transformers shall be based on the
21 ‘Standard Test Method for Measuring the Energy
22 Consumption of Distribution Transformers’ pre-
23 scribed by the National Electrical Manufacturers As-
24 sociation (NEMA TP 2–1998). The Secretary may re-

1 *view and revise this test procedure based on future re-*
2 *visions to such standard test method.*

3 *“(11) Test procedures for traffic signal modules*
4 *shall be based on the test method used under the En-*
5 *ergy Star program of the Environmental Protection*
6 *Agency for traffic signal modules, as in effect on the*
7 *date of enactment of this paragraph.”.*

8 *(b) ADDITIONAL CONSUMER AND COMMERCIAL PROD-*
9 *UCTS.—Section 323 of the Energy Policy and Conservation*
10 *Act (42 U.S.C. 6293) is further amended by adding at the*
11 *end the following:*

12 *“(f) ADDITIONAL CONSUMER AND COMMERCIAL PROD-*
13 *UCTS.—The Secretary shall within 24 months after the date*
14 *of enactment of this subsection prescribe testing require-*
15 *ments for suspended ceiling fans, refrigerated bottled or*
16 *canned beverage vending machines, commercial unit heat-*
17 *ers, and commercial refrigerators, freezers and refrigerator-*
18 *freezers. Such testing requirements shall be based on exist-*
19 *ing test procedures used in industry to the extent practical*
20 *and reasonable. In the case of suspended ceiling fans, such*
21 *test procedures shall include efficiency at both maximum*
22 *output and at an output no more than 50 percent of the*
23 *maximum output.”.*

1 **SEC. 1045. ENERGY CONSERVATION STANDARDS FOR ADDI-**
2 **TIONAL CONSUMER AND COMMERCIAL PROD-**
3 **UCTS.**

4 *Section 325 of the Energy Policy and Conservation Act*
5 *(42 U.S.C. 6295) is amended by adding at the end the fol-*
6 *lowing:*

7 *“(u) STANDBY MODE ELECTRIC ENERGY CONSUMP-*
8 *TION.—*

9 *“(1) INITIAL RULEMAKING.—(A) The Secretary*
10 *shall, within 18 months after the date of enactment*
11 *of this subsection, prescribe by notice and comment,*
12 *definitions of standby mode and test procedures for*
13 *the standby mode power use of battery chargers and*
14 *external power supplies. In establishing these test pro-*
15 *cedures, the Secretary shall consider, among other fac-*
16 *tors, existing test procedures used for measuring en-*
17 *ergy consumption in standby mode and assess the*
18 *current and projected future market for battery char-*
19 *gers and external power supplies. This assessment*
20 *shall include estimates of the significance of potential*
21 *energy savings from technical improvements to these*
22 *products and suggested product classes for standards.*
23 *Prior to the end of this time period, the Secretary*
24 *shall hold a scoping workshop to discuss and receive*
25 *comments on plans for developing energy conservation*

1 standards for standby mode energy use for these prod-
2 ucts.

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

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

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

15 “(2) DESIGNATION OF ADDITIONAL COVERED
16 PRODUCTS.—(A) Not later than 180 days after the
17 date of enactment of this subsection, the Secretary
18 shall publish for public comment and public hearing
19 a notice to determine whether any noncovered prod-
20 ucts should be designated as covered products for the
21 purpose of instituting a rulemaking under this section
22 to determine whether an energy conservation standard
23 restricting standby mode energy consumption, should
24 be promulgated; except that any restriction on stand-

1 *by mode energy consumption shall be limited to major*
2 *sources of such consumption.*

3 *“(B) In making the determinations pursuant to*
4 *subparagraph (A) of whether to designate new covered*
5 *products and institute rulemakings, the Secretary*
6 *shall, among other relevant factors and in addition to*
7 *the criteria in section 322(b), consider—*

8 *“(i) standby mode power consumption com-*
9 *pared to overall product energy consumption;*
10 *and*

11 *“(ii) the priority and energy savings poten-*
12 *tial of standards which may be promulgated*
13 *under this subsection compared to other required*
14 *rulemakings under this section and the available*
15 *resources of the Department to conduct such*
16 *rulemakings.*

17 *“(C) Not later than 1 year after the date of en-*
18 *actment of this subsection, the Secretary shall issue a*
19 *determination of any new covered products for which*
20 *he intends to institute rulemakings on standby mode*
21 *pursuant to this section and he shall state the dates*
22 *by which he intends to initiate those rulemakings.*

23 *“(3) REVIEW OF STANDBY ENERGY USE IN COV-*
24 *ERED PRODUCTS.—In determining pursuant to sec-*
25 *tion 323 whether test procedures and energy conserva-*

1 *tion standards pursuant to this section should be re-*
2 *vised, the Secretary shall consider for covered prod-*
3 *ucts which are major sources of standby mode energy*
4 *consumption whether to incorporate standby mode*
5 *into such test procedures and energy conservation*
6 *standards, taking into account, among other relevant*
7 *factors, the criteria for non-covered products in sub-*
8 *paragraph (B) of paragraph (2) of this subsection.*

9 *“(4) RULEMAKING FOR STANDBY MODE.—(A)*
10 *Any rulemaking instituted under this subsection or*
11 *for covered products under this section which restricts*
12 *standby mode power consumption shall be subject to*
13 *the criteria and procedures for issuing energy con-*
14 *servation standards set forth in this section and the*
15 *criteria set forth in subparagraph (B) of paragraph*
16 *(2) of this subsection.*

17 *“(B) No standard can be proposed for new cov-*
18 *ered products or covered products in a standby mode*
19 *unless the Secretary has promulgated applicable test*
20 *procedures for each product pursuant to section 323.*

21 *“(C) The provisions of section 327 shall apply to*
22 *new covered products which are subject to the*
23 *rulemakings for standby mode after a final rule has*
24 *been issued.*

1 “(5) *EFFECTIVE DATE.*—Any standard promul-
2 gated under this subsection shall be applicable to
3 products manufactured or imported 3 years after the
4 date of promulgation.

5 “(6) *VOLUNTARY PROGRAMS TO REDUCE STAND-*
6 *BY MODE ENERGY USE.*—The Secretary and the Ad-
7 ministrators shall collaborate and develop programs,
8 including programs pursuant to section 324A (relat-
9 ing to Energy Star Programs) and other voluntary
10 industry agreements or codes of conduct, which are
11 designed to reduce standby mode energy use.

12 “(v) *SUSPENDED CEILING FANS, VENDING MACHINES,*
13 *UNIT HEATERS, AND COMMERCIAL REFRIGERATORS,*
14 *FREEZERS AND REFRIGERATOR-FREEZERS.*—The Sec-
15 retary shall within 24 months after the date on which test-
16 ing requirements are prescribed by the Secretary pursuant
17 to section 323(f), prescribe, by rule, energy conservation
18 standards for suspended ceiling fans, refrigerated bottled or
19 canned beverage vending machines, unit heaters, and com-
20 mercial refrigerators, freezers and refrigerator-freezers. In
21 establishing standards under this subsection, the Secretary
22 shall use the criteria and procedures contained in sub-
23 sections (l) and (m). Any standard prescribed under this
24 subsection shall apply to products manufactured 3 years

1 *after the date of publication of a final rule establishing such*
2 *standard.*

3 “(w) *ILLUMINATED EXIT SIGNS.*—*Illuminated exit*
4 *signs manufactured on or after January 1, 2005 shall meet*
5 *the Version 2.0 Energy Star Program performance require-*
6 *ments for illuminated exit signs prescribed by the Environ-*
7 *mental Protection Agency*

8 “(x) *TORCHIERES.*—*Torchieres manufactured on or*
9 *after January 1, 2005—*

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

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

14 “(y) *LOW VOLTAGE DRY-TYPE TRANSFORMERS.*—*The*
15 *efficiency of low voltage dry-type transformers manufac-*
16 *tured on or after January 1, 2005 shall be the Class I Effi-*
17 *ciency Levels for low voltage dry-type transformers specified*
18 *in Table 4–2 of the ‘Guide for Determining Energy Effi-*
19 *ciency for Distribution Transformers’ published by the Na-*
20 *tional Electrical Manufacturers Association (NEMA TP–*
21 *1–1996).*

22 “(z) *TRAFFIC SIGNAL MODULES.*—*Traffic signal mod-*
23 *ules manufactured on or after January 1, 2006 shall meet*
24 *the performance requirements used under the Energy Star*
25 *program of the Environmental Protection Agency for traffic*

1 *signals, as in effect on the date of enactment of this para-*
2 *graph, and shall be installed with compatible, electrically-*
3 *connected signal control interface devices and conflict moni-*
4 *toring systems.*

5 “(aa) *EFFECTIVE DATE OF SECTION 327.—The provi-*
6 *sions of section 327 shall apply to products for which stand-*
7 *ards are set in subsections (v) through (z) of this section*
8 *after the effective date for such standards.”.*

9 **SEC. 1046. ENERGY LABELING.**

10 (a) *RULEMAKING ON EFFECTIVENESS OF CONSUMER*
11 *PRODUCT LABELING.—Paragraph (2) of section 324(a) of*
12 *the Energy Policy and Conservation Act (42 U.S.C.*
13 *6294(a)(2)) is amended by adding at the end the following:*

14 “(F) *Not later than 3 months after the date of enact-*
15 *ment of this subparagraph, the Commission shall initiate*
16 *a rulemaking to consider the effectiveness of the current con-*
17 *sumer products labeling program in assisting consumers in*
18 *making purchasing decisions and improving energy effi-*
19 *ciency and to consider changes to the labeling rules that*
20 *would improve the effectiveness of consumer product labels.*
21 *Such rulemaking shall be completed within 2 years after*
22 *the date of enactment of this subparagraph.”.*

23 (b) *RULEMAKING ON LABELING FOR ADDITIONAL*
24 *PRODUCTS.—Section 324(a) of the Energy Policy and Con-*

1 *ervation Act (42 U.S.C. 6294(a)) is further amended by*
2 *adding at the end the following:*

3 “(5) *The Secretary or the Commission, as appropriate,*
4 *may for covered products referred to in subsections (u)*
5 *through (z) of section 325, prescribe, by rule, pursuant to*
6 *this section, labeling requirements for such products after*
7 *a test procedure has been set pursuant to section 323.”.*

8 ***SEC. 1047. STUDY OF ENERGY EFFICIENCY STANDARDS.***

9 *The Secretary of Energy shall contract with the Na-*
10 *tional Academy of Sciences for a study, to be completed*
11 *within 1 year of enactment of this Act, to examine whether*
12 *the goals of energy efficiency standards are best served by*
13 *measurement of energy consumed, and efficiency improve-*
14 *ments, at the actual site of energy consumption, or through*
15 *the full fuel cycle, beginning at the source of energy produc-*
16 *tion. The Secretary shall submit the report to the Congress.*

17 ***TITLE II—OIL AND GAS***
18 ***Subtitle A—Alaska Natural Gas***
19 ***Pipeline***

20 ***SEC. 2001. SHORT TITLE.***

21 *This subtitle may be cited as the “Alaska Natural Gas*
22 *Pipeline Act of 2003”.*

23 ***SEC. 2002. FINDINGS AND PURPOSES.***

24 *(a) FINDINGS.—Congress finds the following:*

1 (1) *Construction of a natural gas pipeline sys-*
2 *tem from the Alaskan North Slope to United States*
3 *markets is in the national interest and will enhance*
4 *national energy security by providing access to the*
5 *significant gas reserves in Alaska needed to meet the*
6 *anticipated demand for natural gas.*

7 (2) *The Commission issued a conditional certifi-*
8 *cate of public convenience and necessity for the Alas-*
9 *ka natural gas transportation system, which remains*
10 *in effect.*

11 (b) *PURPOSES.—The purposes of this subtitle are as*
12 *follows:*

13 (1) *To provide a statutory framework for the ex-*
14 *pedited approval, construction, and initial operation*
15 *of an Alaska natural gas transportation project, as*
16 *an alternative to the framework provided in the Alas-*
17 *ka Natural Gas Transportation Act of 1976 (15*
18 *U.S.C. 719 et seq.), which remains in effect.*

19 (2) *To establish a process for providing access to*
20 *such transportation project in order to promote com-*
21 *petition in the exploration, development, and produc-*
22 *tion of Alaska natural gas.*

23 (3) *To clarify Federal authorities under the*
24 *Alaska Natural Gas Transportation Act of 1976.*

1 **SEC. 2003. DEFINITIONS.**

2 *In this subtitle, the following definitions apply:*

3 (1) *ALASKA NATURAL GAS.*—*The term “Alaska*
4 *natural gas” means natural gas derived from the area*
5 *of the State of Alaska lying north of 64 degrees North*
6 *latitude.*

7 (2) *ALASKA NATURAL GAS TRANSPORTATION*
8 *PROJECT.*—*The term “Alaska natural gas transpor-*
9 *tation project” means any natural gas pipeline sys-*
10 *tem that carries Alaska natural gas to the border be-*
11 *tween Alaska and Canada (including related facilities*
12 *subject to the jurisdiction of the Commission) that is*
13 *authorized under either—*

14 (A) *the Alaska Natural Gas Transportation*
15 *Act of 1976 (15 U.S.C. 719 et seq.); or*

16 (B) *section 2004.*

17 (3) *ALASKA NATURAL GAS TRANSPORTATION SYS-*
18 *TEM.*—*The term “Alaska natural gas transportation*
19 *system” means the Alaska natural gas transportation*
20 *project authorized under the Alaska Natural Gas*
21 *Transportation Act of 1976 and designated and de-*
22 *scribed in section 2 of the President’s decision.*

23 (4) *COMMISSION.*—*The term “Commission”*
24 *means the Federal Energy Regulatory Commission.*

25 (5) *PRESIDENT’S DECISION.*—*The term “Presi-*
26 *dent’s decision” means the decision and report to*

1 (2) *CONSIDERATIONS.*—*In considering an appli-*
2 *cation under this section, the Commission shall pre-*
3 *sume that—*

4 (A) *a public need exists to construct and*
5 *operate the proposed Alaska natural gas trans-*
6 *portation project; and*

7 (B) *sufficient downstream capacity will*
8 *exist to transport the Alaska natural gas moving*
9 *through such project to markets in the contiguous*
10 *United States.*

11 (c) *EXPEDITED APPROVAL PROCESS.*—*The Commis-*
12 *sion shall issue a final order granting or denying any ap-*
13 *plication for a certificate of public convenience and neces-*
14 *sity under section 7(c) of the Natural Gas Act (15 U.S.C.*
15 *717f(c)) and this section not more than 60 days after the*
16 *issuance of the final environmental impact statement for*
17 *that project pursuant to section 2005.*

18 (d) *PROHIBITION ON CERTAIN PIPELINE ROUTE.*—*No*
19 *license, permit, lease, right-of-way, authorization, or other*
20 *approval required under Federal law for the construction*
21 *of any pipeline to transport natural gas from lands within*
22 *the Prudhoe Bay oil and gas lease area may be granted*
23 *for any pipeline that follows a route that traverses—*

1 (1) *the submerged lands (as defined by the Sub-*
2 *merged Lands Act) beneath, or the adjacent shoreline*
3 *of, the Beaufort Sea; and*

4 (2) *enters Canada at any point north of 68 de-*
5 *grees North latitude.*

6 (e) *OPEN SEASON.—Except where an expansion is or-*
7 *dered pursuant to section 2006, initial or expansion capac-*
8 *ity on any Alaska natural gas transportation project shall*
9 *be allocated in accordance with procedures to be established*
10 *by the Commission in regulations governing the conduct of*
11 *open seasons for such project. Such procedures shall include*
12 *the criteria for and timing of any open seasons, be con-*
13 *sistent with the purposes set forth in section 2002(b)(2),*
14 *and, for any open season for capacity beyond the initial*
15 *capacity, provide the opportunity for the transportation of*
16 *natural gas other than from the Prudhoe Bay and Point*
17 *Thompson units. The Commission shall issue such regula-*
18 *tions not later than 120 days after the date of enactment*
19 *of this Act.*

20 (f) *PROJECTS IN THE CONTIGUOUS UNITED STATES.—*
21 *Applications for additional or expanded pipeline facilities*
22 *that may be required to transport Alaska natural gas from*
23 *Canada to markets in the contiguous United States may*
24 *be made pursuant to the Natural Gas Act. To the extent*
25 *such pipeline facilities include the expansion of any facility*

1 *constructed pursuant to the Alaska Natural Gas Transpor-*
2 *tation Act of 1976, the provisions of that Act shall continue*
3 *to apply.*

4 (g) *STUDY OF IN-STATE NEEDS.*—*The holder of the*
5 *certificate of public convenience and necessity issued, modi-*
6 *fied, or amended by the Commission for an Alaska natural*
7 *gas transportation project shall demonstrate that it has con-*
8 *ducted a study of Alaska in-State needs, including tie-in*
9 *points along the Alaska natural gas transportation project*
10 *for in-State access.*

11 (h) *ALASKA ROYALTY GAS.*—*The Commission, upon*
12 *the request of the State of Alaska and after a hearing, may*
13 *provide for reasonable access to the Alaska natural gas*
14 *transportation project for the State of Alaska or its designee*
15 *for the transportation of the State’s royalty gas for local*
16 *consumption needs within the State; except that the rates*
17 *of existing shippers of subscribed capacity on such project*
18 *shall not be increased as a result of such access.*

19 (i) *REGULATIONS.*—*The Commission may issue regu-*
20 *lations to carry out the provisions of this section.*

21 **SEC. 2005. ENVIRONMENTAL REVIEWS.**

22 (a) *COMPLIANCE WITH NEPA.*—*The issuance of a cer-*
23 *tificate of public convenience and necessity authorizing the*
24 *construction and operation of any Alaska natural gas*
25 *transportation project under section 2004 shall be treated*

1 *as a major Federal action significantly affecting the quality*
2 *of the human environment within the meaning of section*
3 *102(2)(C) of the National Environmental Policy Act of*
4 *1969 (42 U.S.C. 4332(2)(C)).*

5 (b) *DESIGNATION OF LEAD AGENCY.*—*The Commis-*
6 *sion shall be the lead agency for purposes of complying with*
7 *the National Environmental Policy Act of 1969, and shall*
8 *be responsible for preparing the statement required by sec-*
9 *tion 102(2)(c) of that Act (42 U.S.C. 4332(2)(c)) with re-*
10 *spect to an Alaska natural gas transportation project under*
11 *section 2004. The Commission shall prepare a single envi-*
12 *ronmental statement under this section, which shall consoli-*
13 *date the environmental reviews of all Federal agencies con-*
14 *sidering any aspect of the project.*

15 (c) *OTHER AGENCIES.*—*All Federal agencies consid-*
16 *ering aspects of the construction and operation of an Alaska*
17 *natural gas transportation project under section 2004 shall*
18 *cooperate with the Commission, and shall comply with*
19 *deadlines established by the Commission in the preparation*
20 *of the statement under this section. The statement prepared*
21 *under this section shall be used by all such agencies to sat-*
22 *isfy their responsibilities under section 102(2)(C) of the Na-*
23 *tional Environmental Policy Act of 1969 (42 U.S.C.*
24 *4332(2)(C)) with respect to such project.*

1 (d) *EXPEDITED PROCESS.*—*The Commission shall*
2 *issue a draft statement under this section not later than*
3 *12 months after the Commission determines the application*
4 *to be complete and shall issue the final statement not later*
5 *than 6 months after the Commission issues the draft state-*
6 *ment, unless the Commission for good cause finds that addi-*
7 *tional time is needed.*

8 ***SEC. 2006. PIPELINE EXPANSION.***

9 (a) *AUTHORITY.*—*With respect to any Alaska natural*
10 *gas transportation project, upon the request of one or more*
11 *persons and after giving notice and an opportunity for a*
12 *hearing, the Commission may order the expansion of such*
13 *project if it determines that such expansion is required by*
14 *the present and future public convenience and necessity.*

15 (b) *REQUIREMENTS.*—*Before ordering an expansion,*
16 *the Commission shall—*

17 (1) *approve or establish rates for the expansion*
18 *service that are designed to ensure the recovery, on an*
19 *incremental or rolled-in basis, of the cost associated*
20 *with the expansion (including a reasonable rate of re-*
21 *turn on investment);*

22 (2) *ensure that the rates as established do not re-*
23 *quire existing shippers on the Alaska natural gas*
24 *transportation project to subsidize expansion ship-*
25 *pers;*

1 (3) *find that the proposed shipper will comply*
2 *with, and the proposed expansion and the expansion*
3 *of service will be undertaken and implemented based*
4 *on, terms and conditions consistent with the then-ef-*
5 *fective tariff of the Alaska natural gas transportation*
6 *project;*

7 (4) *find that the proposed facilities will not ad-*
8 *versely affect the financial or economic viability of the*
9 *Alaska natural gas transportation project;*

10 (5) *find that the proposed facilities will not ad-*
11 *versely affect the overall operations of the Alaska nat-*
12 *ural gas transportation project;*

13 (6) *find that the proposed facilities will not di-*
14 *minish the contract rights of existing shippers to pre-*
15 *viously subscribed certificated capacity;*

16 (7) *ensure that all necessary environmental re-*
17 *views have been completed; and*

18 (8) *find that adequate downstream facilities exist*
19 *or are expected to exist to deliver incremental Alaska*
20 *natural gas to market.*

21 (c) *REQUIREMENT FOR A FIRM TRANSPORTATION*
22 *AGREEMENT.—Any order of the Commission issued pursu-*
23 *ant to this section shall be null and void unless the person*
24 *or persons requesting the order executes a firm transpor-*
25 *tation agreement with the Alaska natural gas transpor-*

1 *tation project within a reasonable period of time as speci-*
2 *fied in such order.*

3 (d) *LIMITATION.*—*Nothing in this section shall be con-*
4 *strued to expand or otherwise affect any authorities of the*
5 *Commission with respect to any natural gas pipeline lo-*
6 *cated outside the State of Alaska.*

7 (e) *REGULATIONS.*—*The Commission may issue regu-*
8 *lations to carry out the provisions of this section.*

9 **SEC. 2007. FEDERAL COORDINATOR.**

10 (a) *ESTABLISHMENT.*—*There is established, as an*
11 *independent office in the executive branch, the Office of the*
12 *Federal Coordinator for Alaska Natural Gas Transpor-*
13 *tation Projects.*

14 (b) *FEDERAL COORDINATOR.*—*The Office shall be*
15 *headed by a Federal Coordinator for Alaska Natural Gas*
16 *Transportation Projects, who shall—*

17 (1) *be appointed by the President, by and with*
18 *the advice of the Senate;*

19 (2) *hold office at the pleasure of the President;*
20 *and*

21 (3) *be compensated at the rate prescribed for*
22 *level III of the Executive Schedule (5 U.S.C. 5314).*

23 (c) *DUTIES.*—*The Federal Coordinator shall be respon-*
24 *sible for—*

1 (1) *coordinating the expeditious discharge of all*
2 *activities by Federal agencies with respect to an Alas-*
3 *ka natural gas transportation project; and*

4 (2) *ensuring the compliance of Federal agencies*
5 *with the provisions of this subtitle.*

6 (d) *REVIEWS AND ACTIONS OF OTHER FEDERAL*
7 *AGENCIES.—*

8 (1) *EXPEDITED REVIEWS AND ACTIONS.—All re-*
9 *views conducted and actions taken by any Federal of-*
10 *ficer or agency relating to an Alaska natural gas*
11 *transportation project authorized under this section*
12 *shall be expedited, in a manner consistent with com-*
13 *pletion of the necessary reviews and approvals by the*
14 *deadlines set forth in this subtitle.*

15 (2) *PROHIBITION ON CERTAIN TERMS AND CON-*
16 *DITIONS.—Except with respect to Commission actions*
17 *under sections 2004, 2005, and 2006, no Federal offi-*
18 *cer or agency shall have the authority to include*
19 *terms and conditions that are permitted, but not re-*
20 *quired, by law on any certificate, right-of-way, per-*
21 *mit, lease, or other authorization issued to an Alaska*
22 *natural gas transportation project if the Federal Co-*
23 *ordinator determines that the terms and conditions*
24 *would prevent or impair in any significant respect*

1 *the expeditious construction and operation of the*
2 *project.*

3 (3) *PROHIBITION ON CERTAIN ACTIONS.—Except*
4 *with respect to Commission actions under sections*
5 *2004, 2005, and 2006, unless required by law, no*
6 *Federal officer or agency shall add to, amend, or ab-*
7 *rogate any certificate, right-of-way, permit, lease, or*
8 *other authorization issued to an Alaska natural gas*
9 *transportation project if the Federal Coordinator de-*
10 *termines that such action would prevent or impair in*
11 *any significant respect the expeditious construction*
12 *and operation of the project.*

13 (e) *STATE COORDINATION.—The Federal Coordinator*
14 *shall enter into a Joint Surveillance and Monitoring Agree-*
15 *ment, approved by the President and the Governor of Alas-*
16 *ka, with the State of Alaska similar to that in effect during*
17 *construction of the Trans-Alaska Oil Pipeline to monitor*
18 *the construction of the Alaska natural gas transportation*
19 *project. The Federal Government shall have primary sur-*
20 *veillance and monitoring responsibility where the Alaska*
21 *natural gas transportation project crosses Federal lands*
22 *and private lands, and the State government shall have pri-*
23 *mary surveillance and monitoring responsibility where the*
24 *Alaska natural gas transportation project crosses State*
25 *lands.*

1 (f) *TRANSFER OF FEDERAL INSPECTOR FUNCTIONS*
2 *AND AUTHORITY.*—Upon appointment of the Federal Coor-
3 dinator by the President, all of the functions and authority
4 of the Office of Federal Inspector of Construction for the
5 Alaska Natural Gas Transportation System vested in the
6 Secretary of Energy pursuant to section 3012(b) of Public
7 Law 102–486 (15 U.S.C. 719e(b)), including all functions
8 and authority described and enumerated in the Reorganiza-
9 tion Plan No. 1 of 1979 (44 Fed. Reg. 33,663), Executive
10 Order No. 12142 of June 21, 1979 (44 Fed. Reg. 36,927),
11 and section 5 of the President’s decision, shall be transferred
12 to the Federal Coordinator.

13 **SEC. 2008. JUDICIAL REVIEW.**

14 (a) *EXCLUSIVE JURISDICTION.*—Except for review by
15 the Supreme Court of the United States on writ of certio-
16 rari, the United States Court of Appeals for the District
17 of Columbia Circuit shall have original and exclusive juris-
18 diction to determine—

19 (1) the validity of any final order or action (in-
20 cluding a failure to act) of any Federal agency or of-
21 ficer under this subtitle;

22 (2) the constitutionality of any provision of this
23 subtitle, or any decision made or action taken under
24 this subtitle; or

1 *project for delivery to consumers within the State of Alaska*
2 *shall be deemed to be a local distribution facility within*
3 *the meaning of section 1(b) of the Natural Gas Act (15*
4 *U.S.C. 717(b)), and therefore not subject to the jurisdiction*
5 *of the Commission.*

6 (b) *ADDITIONAL PIPELINES.—Nothing in this subtitle,*
7 *except as provided in section 2004(d), shall preclude or af-*
8 *fect a future gas pipeline that may be constructed to deliver*
9 *natural gas to Fairbanks, Anchorage, Matanuska-Susitna*
10 *Valley, or the Kenai peninsula or Valdez or any other site*
11 *in the State of Alaska for consumption within or distribu-*
12 *tion outside the State of Alaska.*

13 (c) *RATE COORDINATION.—Pursuant to the Natural*
14 *Gas Act, the Commission shall establish rates for the trans-*
15 *portation of natural gas on the Alaska natural gas trans-*
16 *portation project. In exercising such authority, the Commis-*
17 *sion, pursuant to section 17(b) of the Natural Gas Act (15*
18 *U.S.C. 717p(b)), shall confer with the State of Alaska re-*
19 *garding rates (including rate settlements) applicable to nat-*
20 *ural gas transported on and delivered from the Alaska nat-*
21 *ural gas transportation project for use within the State of*
22 *Alaska.*

1 **SEC. 2010. STUDY OF ALTERNATIVE MEANS OF CONSTRUC-**
2 **TION.**

3 (a) *REQUIREMENT OF STUDY.*—If no application for
4 the issuance of a certificate or amended certificate of public
5 convenience and necessity authorizing the construction and
6 operation of an Alaska natural gas transportation project
7 has been filed with the Commission not later than 18
8 months after the date of enactment of this Act, the Secretary
9 of Energy shall conduct a study of alternative approaches
10 to the construction and operation of the project.

11 (b) *SCOPE OF STUDY.*—The study shall consider the
12 feasibility of establishing a Government corporation to con-
13 struct an Alaska natural gas transportation project, and
14 alternative means of providing Federal financing and own-
15 ership (including alternative combinations of Government
16 and private corporate ownership) of the project.

17 (c) *CONSULTATION.*—In conducting the study, the Sec-
18 retary of Energy shall consult with the Secretary of the
19 Treasury and the Secretary of the Army (acting through
20 the Commanding General of the Corps of Engineers).

21 (d) *REPORT.*—If the Secretary of Energy is required
22 to conduct a study under subsection (a), the Secretary shall
23 submit a report containing the results of the study, the Sec-
24 retary's recommendations, and any proposals for legislation
25 to implement the Secretary's recommendations to Congress.

1 **SEC. 2011. CLARIFICATION OF ANGTA STATUS AND AU-**
2 **THORITIES.**

3 (a) *SAVINGS CLAUSE.*—*Nothing in this subtitle affects*
4 *any decision, certificate, permit, right-of-way, lease, or*
5 *other authorization issued under section 9 of the Alaska*
6 *Natural Gas Transportation Act of 1976 (15 U.S.C. 719g)*
7 *or any Presidential findings or waivers issued in accord-*
8 *ance with that Act.*

9 (b) *CLARIFICATION OF AUTHORITY TO AMEND TERMS*
10 *AND CONDITIONS TO MEET CURRENT PROJECT REQUIRE-*
11 *MENTS.*—*Any Federal officer or agency responsible for*
12 *granting or issuing any certificate, permit, right-of-way,*
13 *lease, or other authorization under section 9 of the Alaska*
14 *Natural Gas Transportation Act of 1976 (15 U.S.C. 719g)*
15 *may add to, amend, or abrogate any term or condition in-*
16 *cluded in such certificate, permit, right-of-way, lease, or*
17 *other authorization to meet current project requirements*
18 *(including the physical design, facilities, and tariff speci-*
19 *fications), so long as such action does not compel a change*
20 *in the basic nature and general route of the Alaska natural*
21 *gas transportation system as designated and described in*
22 *section 2 of the President’s decision, or would otherwise pre-*
23 *vent or impair in any significant respect the expeditious*
24 *construction and initial operation of such transportation*
25 *system.*

1 (c) *UPDATED ENVIRONMENTAL REVIEWS.*—*The Sec-*
2 *retary of Energy shall require the sponsor of the Alaska nat-*
3 *ural gas transportation system to submit such updated en-*
4 *vironmental data, reports, permits, and impact analyses as*
5 *the Secretary determines are necessary to develop detailed*
6 *terms, conditions, and compliance plans required by section*
7 *5 of the President’s decision.*

8 **SEC. 2012. SENSE OF CONGRESS.**

9 *It is the sense of Congress that an Alaska natural gas*
10 *transportation project will provide significant economic*
11 *benefits to the United States and Canada. In order to maxi-*
12 *mize those benefits, Congress urges the sponsors of the pipe-*
13 *line project to make every effort to use steel that is manufac-*
14 *tured or produced in North America and to negotiate a*
15 *project labor agreement to expedite construction of the pipe-*
16 *line.*

17 **SEC. 2013. PARTICIPATION OF SMALL BUSINESS CONCERNS.**

18 (a) *SENSE OF CONGRESS.*—*It is the sense of Congress*
19 *that an Alaska natural gas transportation project will pro-*
20 *vide significant economic benefits to the United States and*
21 *Canada. In order to maximize those benefits, Congress urges*
22 *the sponsors of the pipeline project to maximize the partici-*
23 *pation of small business concerns in contracts and sub-*
24 *contracts awarded in carrying out the project.*

25 (b) *STUDY.*—

1 (1) *develop a plan to train, through the work-*
2 *force investment system established in the State of*
3 *Alaska under the Workforce Investment Act of 1998*
4 *(112 Stat. 936 et seq.), adult and dislocated workers,*
5 *including Alaska Natives, in urban and rural Alaska*
6 *in the skills required to construct and operate an*
7 *Alaska gas pipeline system; and*

8 (2) *implement the plan developed pursuant to*
9 *paragraph (1).*

10 (b) *REQUIREMENTS FOR PLANNING GRANTS.—The*
11 *Secretary may make a grant under subsection (a)(1) only*
12 *if—*

13 (1) *the Governor of Alaska certifies in writing to*
14 *the Secretary that there is a reasonable expectation*
15 *that construction of an Alaska gas pipeline will com-*
16 *mence within 3 years after the date of such certifi-*
17 *cation; and*

18 (2) *the Secretary of the Interior concurs in writ-*
19 *ing to the Secretary with the certification made under*
20 *paragraph (1).*

21 (c) *REQUIREMENTS FOR IMPLEMENTATION GRANTS.—*
22 *The Secretary may make a grant under subsection (a)(2)*
23 *only if—*

24 (1) *the Secretary has approved a plan developed*
25 *pursuant to subsection (a)(1);*

1 (2) *the Governor of Alaska requests the grant*
2 *funds and certifies in writing to the Secretary that*
3 *there is a reasonable expectation that the construction*
4 *of an Alaska gas pipeline system will commence with-*
5 *in 2 years after the date of such certification;*

6 (3) *the Secretary of the Interior concurs in writ-*
7 *ing to the Secretary with the certification made under*
8 *paragraph (2) after considering—*

9 (A) *the status of necessary State and Fed-*
10 *eral permits;*

11 (B) *the availability of financing for the*
12 *pipeline project; and*

13 (C) *other relevant factors and cir-*
14 *cumstances.*

15 (d) *AUTHORIZATION OF APPROPRIATIONS.—There are*
16 *authorized to be appropriated to the Secretary of Labor*
17 *such sums as may be necessary, but not to exceed*
18 *\$20,000,000, to carry out this section.*

19 ***Subtitle B—Strategic Petroleum***
20 ***Reserve***

21 ***SEC. 2101. FULL CAPACITY OF STRATEGIC PETROLEUM RE-***
22 ***SERVE.***

23 *The President shall—*

24 (1) *fill the Strategic Petroleum Reserve estab-*
25 *lished pursuant to part B of title I of the Energy Pol-*

1 *icy and Conservation Act (42 U.S.C. 6231 et seq.) to*
2 *full capacity as soon as practicable;*

3 (2) *acquire petroleum for the Strategic Petro-*
4 *leum Reserve by the most practicable and cost-effec-*
5 *tive means, with consideration being given to domes-*
6 *tically produced petroleum, including the acquisition*
7 *of crude oil the United States is entitled to receive in*
8 *kind as royalties from production on Federal lands;*
9 *and*

10 (3) *ensure that the fill rate minimizes impacts*
11 *on petroleum markets.*

12 **SEC. 2102. STRATEGIC PETROLEUM RESERVE EXPANSION.**

13 (a) *PLAN.*—*Not later than 180 days after the date of*
14 *the enactment of this Act, the Secretary of Energy shall*
15 *transmit to the Congress a plan for the expansion of the*
16 *Strategic Petroleum Reserve to 1,000,000,000 barrels, in-*
17 *cluding—*

18 (1) *plans for the elimination of infrastructure*
19 *impediments to maximum drawdown capability;*

20 (2) *a schedule for the completion of all required*
21 *environmental reviews;*

22 (3) *provision for consultation with Federal and*
23 *State environmental agencies;*

24 (4) *a schedule and procedures for site selection;*
25 *and*

1 (5) *anticipated annual budget requests.*

2 (b) *CONSTRUCTION OF ADDITIONAL CAPACITY.—The*
3 *Secretary of Energy shall acquire property and complete*
4 *construction for the expansion of the Strategic Petroleum*
5 *Reserve in accordance with the plan transmitted under sub-*
6 *section (a).*

7 (c) *AUTHORIZATION OF APPROPRIATIONS.—There are*
8 *authorized to be appropriated to the Secretary of Energy*
9 *\$1,500,000,000 for carrying out this section, to remain*
10 *available until expended.*

11 ***SEC. 2103. PERMANENT AUTHORITY TO OPERATE THE***
12 ***STRATEGIC PETROLEUM RESERVE AND***
13 ***OTHER ENERGY PROGRAMS.***

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

17 (1) *by striking section 166 (42 U.S.C. 6246) and*
18 *inserting—*

19 “*AUTHORIZATION OF APPROPRIATIONS*

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

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

*“PART C—SUMMER FILL AND FUEL BUDGETING PROGRAMS**“Sec. 273. Summer fill and fuel budgeting programs.”; and*

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

3 (d) *AMENDMENT TO THE ENERGY POLICY AND CON-*
4 *SERVATION ACT.—Section 183(b)(1) of the Energy Policy*
5 *and Conservation Act (42 U.S.C. 6250b(b)(1)) is amended*
6 *by inserting “(considered as a heating season average)”*
7 *after “mid-October through March”.*

8 ***Subtitle C—Hydraulic Fracturing***

9 ***SEC. 2201. HYDRAULIC FRACTURING.***

10 *Paragraph (1) of section 1421(d) of the Safe Drinking*
11 *Water Act (42 U.S.C. 300h(d)) is amended to read as fol-*
12 *lows:*

13 *“(1) The term ‘underground injection’—*

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

16 *“(B) excludes—*

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

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

1 ***Subtitle D—Unproven Oil and Nat-***
2 ***ural Gas Reserves Recovery Pro-***
3 ***gram***

4 ***SEC. 2301. PROGRAM.***

5 *The Secretary shall carry out a program to dem-*
6 *onstrate technologies for the recovery of oil and natural gas*
7 *reserves from reservoirs described in section 2302.*

8 ***SEC. 2302. ELIGIBLE RESERVOIRS.***

9 *The program under this subtitle shall only address oil*
10 *and natural gas reservoirs with 1 or more of the following*
11 *characteristics:*

12 *(1) Complex geology involving rapid changes in*
13 *the type and quality of the oil reservoir across the res-*
14 *ervoir.*

15 *(2) Low reservoir pressure.*

16 *(3) Unconventional natural gas reservoirs in*
17 *coalbeds, tight sands, or shales.*

18 ***SEC. 2303. FOCUS AREAS.***

19 *The program under this subtitle may focus on areas*
20 *including coal-bed methane, deep drilling, natural gas pro-*
21 *duction from tight sands, natural gas production from gas*
22 *shales, innovative production techniques (including hori-*
23 *zontal drilling, fracture detection methodologies, and three-*
24 *dimensional seismic), and enhanced recovery techniques.*

1 **SEC. 2304. LIMITATION ON LOCATION OF ACTIVITIES.**

2 *Activities under this subtitle shall be carried out*
3 *only—*

4 (1) *in—*

5 (A) *areas onshore in the United States on*
6 *public land administered by the Secretary of the*
7 *Interior available for oil and gas leasing, where*
8 *consistent with applicable law and land use*
9 *plans; and*

10 (B) *areas onshore in the United States on*
11 *State or private land, subject to applicable law;*
12 *and*

13 (2) *with the approval of the appropriate Federal*
14 *or State land management agency or private land*
15 *owner.*

16 **SEC. 2305. PROGRAM ADMINISTRATION.**

17 (a) *ROLE OF THE SECRETARY.—The Secretary shall*
18 *have ultimate responsibility for, and oversight of, all aspects*
19 *of the program under this subtitle.*

20 (b) *ROLE OF THE PROGRAM CONSORTIUM.—*

21 (1) *IN GENERAL.—The Secretary shall contract*
22 *with a consortium to—*

23 (A) *manage awards pursuant to subsection*

24 (e)(4);

25 (B) *make recommendations to the Secretary*
26 *for project solicitations;*

1 (C) disburse funds awarded under sub-
2 section (e) as directed by the Secretary in ac-
3 cordance with the annual plan under subsection
4 (d); and

5 (D) carry out other activities assigned to
6 the program consortium by this section.

7 (2) *LIMITATION.*—The Secretary may not assign
8 any activities to the program consortium except as
9 specifically authorized under this section.

10 (3) *CONFLICT OF INTEREST.*—(A) The Secretary
11 shall establish procedures—

12 (i) to ensure that each board member, offi-
13 cer, or employee of the program consortium who
14 is in a decisionmaking capacity under subsection
15 (e)(3) or (4) shall disclose to the Secretary any
16 financial interests in, or financial relationships
17 with, applicants for or recipients of awards
18 under this section, including those of his or her
19 spouse or minor child, unless such relationships
20 or interests would be considered to be remote or
21 inconsequential; and

22 (ii) to require any board member, officer, or
23 employee with a financial relationship or inter-
24 est disclosed under clause (i) to recuse himself or
25 herself from any review under subsection (e)(3)

1 *or oversight under subsection (e)(4) with respect*
2 *to such applicant or recipient.*

3 *(B) The Secretary may disqualify an applica-*
4 *tion or revoke an award under this section if a board*
5 *member, officer, or employee has failed to comply*
6 *with procedures required under subparagraph (A)(ii).*

7 *(c) SELECTION OF THE PROGRAM CONSORTIUM.—*

8 *(1) IN GENERAL.—The Secretary shall select the*
9 *program consortium through an open, competitive*
10 *process.*

11 *(2) MEMBERS.—The program consortium may*
12 *include corporations and institutions of higher edu-*
13 *cation. The Secretary shall give preference in the se-*
14 *lection of the program consortium to applicants with*
15 *broad representation from the various major oil and*
16 *natural gas basins in the United States. After submit-*
17 *ting a proposal under paragraph (4), the program*
18 *consortium may not add members without the consent*
19 *of the Secretary.*

20 *(3) TAX STATUS.—The program consortium shall*
21 *be an entity that is exempt from tax under section*
22 *501(c)(3) of the Internal Revenue Code of 1986.*

23 *(4) SCHEDULE.—Not later than 90 days after*
24 *the date of enactment of this Act, the Secretary shall*
25 *solicit proposals for the creation of the program con-*

1 *sortium, which must be submitted not less than 180*
2 *days after the date of enactment of this Act. The Sec-*
3 *retary shall select the program consortium not later*
4 *than 240 days after such date of enactment.*

5 (5) *APPLICATION.—Applicants shall submit a*
6 *proposal including such information as the Secretary*
7 *may require. At a minimum, each proposal shall—*

8 (A) *list all members of the consortium;*

9 (B) *fully describe the structure of the con-*
10 *sortium, including any provisions relating to in-*
11 *tellectual property; and*

12 (C) *describe how the applicant would carry*
13 *out the activities of the program consortium*
14 *under this section.*

15 (6) *ELIGIBILITY.—To be eligible to be selected as*
16 *the program consortium, an applicant must be an en-*
17 *tity whose members collectively have demonstrated ca-*
18 *pabilities in planning and managing programs for*
19 *the production of oil or natural gas.*

20 (7) *CRITERION.—The Secretary may consider the*
21 *amount of the fee an applicant proposes to receive*
22 *under subsection (f) in selecting a consortium under*
23 *this section.*

24 (d) *ANNUAL PLAN.—*

1 (1) *IN GENERAL.*—*The program under this sub-*
2 *title shall be carried out pursuant to an annual plan*
3 *prepared by the Secretary in accordance with para-*
4 *graph (2).*

5 (2) *DEVELOPMENT.*—*(A) Before drafting an an-*
6 *annual plan under this subsection, the Secretary shall*
7 *solicit specific written recommendations from the pro-*
8 *gram consortium for each element to be addressed in*
9 *the plan, including those described in paragraph (4).*
10 *The Secretary may request that the program consor-*
11 *tium submit its recommendations in the form of a*
12 *draft annual plan.*

13 *(B) The Secretary shall submit the recommenda-*
14 *tions of the program consortium under subparagraph*
15 *(A) to the Advisory Committee for review, and the*
16 *Advisory Committee shall provide to the Secretary*
17 *written comments by a date determined by the Sec-*
18 *retary. The Secretary may also solicit comments from*
19 *any other experts.*

20 *(C) The Secretary shall consult regularly with*
21 *the program consortium throughout the preparation*
22 *of the annual plan.*

23 (3) *PUBLICATION.*—*The Secretary shall transmit*
24 *to the Congress and publish in the Federal Register*
25 *the annual plan, along with any written comments*

1 received under paragraph (2)(A) and (B). The annual
2 plan shall be transmitted and published not later
3 than 60 days after the date of enactment of an Act
4 making appropriations for a fiscal year for the pro-
5 gram under this subtitle.

6 (4) CONTENTS.—The annual plan shall describe
7 the ongoing and prospective activities of the program
8 under this subtitle and shall include—

9 (A) a list of any solicitations for awards
10 that the Secretary plans to issue to carry out ac-
11 tivities, including the topics for such work, who
12 would be eligible to apply, selection criteria, and
13 the duration of awards; and

14 (B) a description of the activities expected
15 of the program consortium to carry out sub-
16 section (e)(4).

17 (e) AWARDS.—

18 (1) IN GENERAL.—The Secretary shall make
19 awards to carry out activities under the program
20 under this subtitle. The program consortium shall not
21 be eligible to receive such awards, but members of the
22 program consortium may receive such awards.

23 (2) PROPOSALS.—

24 (A) SOLICITATION.—The Secretary shall so-
25 licit proposals for awards under this subsection

1 *in such manner and at such time as the Sec-*
2 *retary may prescribe, in consultation with the*
3 *program consortium.*

4 (B) *CONTENTS.—Each proposal submitted*
5 *shall include the following:*

6 (i) *An estimate of the potential*
7 *unproven reserves in the reservoir, estab-*
8 *lished by a registered petroleum engineer.*

9 (ii) *An estimate of the potential for*
10 *success of the project.*

11 (iii) *A detailed project plan.*

12 (iv) *A detailed analysis of the costs as-*
13 *sociated with the project.*

14 (v) *A time frame for project comple-*
15 *tion.*

16 (vi) *Evidence that any lienholder on*
17 *the project will subordinate its interests to*
18 *the extent necessary to ensure that the Fed-*
19 *eral government receives its portion of any*
20 *revenues pursuant to section 2308.*

21 (vii) *Such other matters as the Sec-*
22 *retary considers appropriate.*

23 (3) *REVIEW.—The Secretary shall make awards*
24 *under this subsection through a competitive process,*
25 *which shall include a review by individuals selected*

1 *by the Secretary. Such individuals shall include, for*
2 *each application, Federal officials, the program con-*
3 *sortium, and non-Federal experts who are not board*
4 *members, officers, or employees of the program consor-*
5 *tium or of a member of the program consortium.*

6 (4) *OVERSIGHT.—(A) The program consortium*
7 *shall oversee the implementation of awards under this*
8 *subsection, consistent with the annual plan under*
9 *subsection (d), including disbursing funds and moni-*
10 *toring activities carried out under such awards for*
11 *compliance with the terms and conditions of the*
12 *awards.*

13 (B) *Nothing in subparagraph (A) shall limit the*
14 *authority or responsibility of the Secretary to oversee*
15 *awards, or limit the authority of the Secretary to re-*
16 *view or revoke awards.*

17 (C) *The Secretary shall provide to the program*
18 *consortium the information necessary for the program*
19 *consortium to carry out its responsibilities under this*
20 *paragraph.*

21 (f) *FEE.—To compensate the program consortium for*
22 *carrying out its activities under this section, the Secretary*
23 *shall provide to the program consortium a fee in an amount*
24 *not to exceed 7.5 percent of the amounts awarded under*
25 *subsection (e) for each fiscal year.*

1 (g) *DISALLOWED EXPENSES.*—No portion of any
2 award shall be used by a recipient for general or adminis-
3 trative expenses of any kind.

4 (h) *AUDIT.*—The Secretary shall retain an inde-
5 pendent, commercial auditor to determine the extent to
6 which funds provided to the program consortium, and funds
7 provided under awards made under subsection (e), have
8 been expended in a manner consistent with the purposes
9 and requirements of this subtitle. The auditor shall trans-
10 mit a report annually to the Secretary, who shall transmit
11 the report to Congress, along with a plan to remedy any
12 deficiencies cited in the report.

13 ***SEC. 2306. ADVISORY COMMITTEE.***

14 (a) *ESTABLISHMENT.*—Not later than 270 days after
15 the date of enactment of this Act, the Secretary shall estab-
16 lish an Advisory Committee.

17 (b) *MEMBERSHIP.*—The Advisory Committee shall be
18 composed of members appointed by the Secretary and in-
19 cluding—

20 (1) *individuals with extensive experience or oper-*
21 *ational knowledge of oil and natural gas production,*
22 *including independent oil and gas producers;*

23 (2) *individuals broadly representative of oil and*
24 *natural gas production; and*

25 (3) *no individuals who are Federal employees.*

1 (c) *DUTIES.*—*The Advisory Committee shall advise the*
2 *Secretary on the development and implementation of activi-*
3 *ties under this subtitle.*

4 (d) *COMPENSATION.*—*A member of the Advisory Com-*
5 *mittee shall serve without compensation but shall receive*
6 *travel expenses, including per diem in lieu of subsistence,*
7 *in accordance with applicable provisions under subchapter*
8 *I of chapter 57 of title 5, United States Code.*

9 (e) *PROHIBITION.*—*The Advisory Committee shall not*
10 *make recommendations on funding awards to consortia or*
11 *for specific projects.*

12 **SEC. 2307. LIMITS ON PARTICIPATION.**

13 *An entity shall be eligible to receive an award under*
14 *this subtitle only if the Secretary finds—*

15 (1) *that the entity's participation in the pro-*
16 *gram under this subtitle would be in the economic in-*
17 *terest of the United States;*

18 (2) *that the entity is a United States-owned enti-*
19 *ty organized under the laws of the United States with*
20 *production levels of less than 1,000 barrels per day of*
21 *oil equivalent; and*

22 (3) *that the entity has demonstrated that non-*
23 *governmental third party sources of financing are not*
24 *available for the proposal project.*

1 **SEC. 2308. PAYMENTS TO FEDERAL GOVERNMENT.**

2 (a) *INITIAL RATE.*—Until the amount of a grant
3 under this subtitle has been fully repaid to the Federal Gov-
4 ernment under this subsection, 95 percent of all revenues
5 derived from increased incremental production attributable
6 to participation in the program under this subtitle shall
7 be paid to the Secretary by the purchaser of such increased
8 production.

9 (b) *RATE AFTER REPAYMENT.*—After the Federal Gov-
10 ernment has been fully repaid under subsection (a), 5 per-
11 cent of all revenues derived from increased incremental pro-
12 duction attributable to participation in the program under
13 this subtitle shall be paid to the Secretary by the purchaser
14 of such increased production.

15 **SEC. 2309. AUTHORIZATION OF APPROPRIATIONS.**

16 *There are authorized to be appropriated to the Sec-*
17 *retary for carrying out this subtitle \$100,000,000, to re-*
18 *main available until expended.*

19 **SEC. 2310. PUBLIC AVAILABILITY OF PROJECT RESULTS**
20 **AND METHODOLOGIES.**

21 *The results of any project undertaken pursuant to this*
22 *subtitle and the methodologies used to achieve those results*
23 *shall be made public by the Secretary. The methodologies*
24 *used shall not be proprietary so that such methodologies*
25 *may be used for other projects by persons not seeking*
26 *awards pursuant to this subtitle.*

1 **SEC. 2311. SUNSET.**

2 *The authority provided by this subtitle shall terminate*
 3 *on September 30, 2010.*

4 **SEC. 2312. DEFINITIONS.**

5 *In this subtitle:*

6 (1) *PROGRAM CONSORTIUM.*—*The term “pro-*
 7 *gram consortium” means the consortium selected*
 8 *under section 2305(c).*

9 (2) *REMOTE OR INCONSEQUENTIAL.*—*The term*
 10 *“remote or inconsequential” has the meaning given*
 11 *that term in regulations issued by the Office of Gov-*
 12 *ernment Ethics under section 208(b)(2) of title 18,*
 13 *United States Code.*

14 (3) *SECRETARY.*—*The term “Secretary” means*
 15 *the Secretary of Energy.*

16 ***Subtitle E—Miscellaneous***

17 **SEC. 2401. APPEALS RELATING TO PIPELINE CONSTRUC-**
 18 ***TION PROJECTS.***

19 (a) *AGENCY OF RECORD.*—*Any Federal administra-*
 20 *tive agency proceeding that is an appeal or review of Fed-*
 21 *eral authority for an interstate natural gas pipeline con-*
 22 *struction project, including construction of natural gas stor-*
 23 *age and liquefied natural gas facilities, shall use as its ex-*
 24 *clusive record for all purposes the record compiled by the*
 25 *Federal Energy Regulatory Commission pursuant to such*

1 *Commission's proceeding under section 7 of the Natural Gas*
2 *Act.*

3 (b) *SENSE OF THE CONGRESS.*—*It is the sense of the*
4 *Congress that all Federal and State agencies with jurisdic-*
5 *tion over interstate natural gas pipeline construction ac-*
6 *tivities should coordinate their proceedings within the time*
7 *frames established by the Federal Energy Regulatory Com-*
8 *mission while it is acting pursuant to section 7 of the Nat-*
9 *ural Gas Act to determine whether a proposed interstate*
10 *natural gas pipeline is in the public convenience and neces-*
11 *sity.*

12 **SEC. 2402. NATURAL GAS MARKET DATA TRANSPARENCY.**

13 (a) *ESTABLISHMENT OF SYSTEM.*—*Not later than 180*
14 *days after the date of enactment of this Act, the Federal*
15 *Energy Regulatory Commission shall issue rules author-*
16 *izing or establishing an electronic information system to*
17 *provide the Commission and the public with timely access*
18 *to such information as is necessary or appropriate to facili-*
19 *tate price transparency and participation in natural gas*
20 *markets. Such system shall provide information about the*
21 *market price of natural gas sold in interstate commerce.*

22 (b) *DATA SUBJECT TO DISCLOSURE.*—*Rules issued*
23 *under subsection (a) shall require public availability only*
24 *of—*

25 (1) *aggregate data; and*

1 **TITLE III—HYDROELECTRIC**
2 **RELICENSING**
3 **Subtitle A—Alternative Conditions**

4 **SEC. 3001. ALTERNATIVE CONDITIONS AND FISHWAYS.**

5 (a) *FEDERAL RESERVATIONS.*—Section 4(e) of the
6 *Federal Power Act (16 U.S.C. 797(e))* is amended by insert-
7 ing after “adequate protection and utilization of such res-
8 ervation.” at the end of the first proviso the following: “The
9 license applicant shall be entitled to a determination on the
10 record, after opportunity for an agency trial-type hearing
11 of any disputed issues of material fact, with respect to such
12 conditions.”.

13 (b) *FISHWAYS.*—Section 18 of the *Federal Power Act*
14 *(16 U.S.C. 811)* is amended by inserting after “and such
15 fishways as may be prescribed by the Secretary of Com-
16 merce.” the following: “The license applicant shall be enti-
17 tled to a determination on the record, after opportunity for
18 an agency trial-type hearing of any disputed issues of mate-
19 rial fact, with respect to such fishways.”.

20 (c) *ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.*—
21 *Part I of the Federal Power Act (16 U.S.C. 791a et seq.)*
22 *is amended by adding the following new section at the end*
23 *thereof:*

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

2 “(a) *ALTERNATIVE CONDITIONS.—(1) Whenever any*
3 *person applies for a license for any project works within*
4 *any reservation of the United States, and the Secretary of*
5 *the department under whose supervision such reservation*
6 *falls (referred to in this subsection as ‘the Secretary’) deems*
7 *a condition to such license to be necessary under the first*
8 *proviso of section 4(e), the license applicant may propose*
9 *an alternative condition.*

10 “(2) *Notwithstanding the first proviso of section 4(e),*
11 *the Secretary shall accept the proposed alternative condi-*
12 *tion referred to in paragraph (1), and the Commission shall*
13 *include in the license such alternative condition, if the Sec-*
14 *retary determines, based on substantial evidence provided*
15 *by the license applicant or otherwise available to the Sec-*
16 *retary, that such alternative condition—*

17 “(A) *provides for the adequate protection and*
18 *utilization of the reservation; and*

19 “(B) *will either—*

20 “(i) *cost less to implement; or*

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

25 “(3) *The Secretary shall submit into the public record*
26 *of the Commission proceeding with any condition under*

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

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

19 “(5) *If the Secretary does not accept an applicant's*
20 *alternative condition under this section, and the Commis-*
21 *sion finds that the Secretary's condition would be incon-*
22 *sistent with the purposes of this part, or other applicable*
23 *law, the Commission may refer the dispute to the Commis-*
24 *sion's Dispute Resolution Service. The Dispute Resolution*
25 *Service shall consult with the Secretary and the Commis-*

1 sion and issue a non-binding advisory within 90 days. The
2 Secretary may accept the Dispute Resolution Service advi-
3 sory unless the Secretary finds that the recommendation
4 will not adequately protect the reservation. The Secretary
5 shall submit the advisory and the Secretary's final written
6 determination into the record of the Commission's pro-
7 ceeding.

8 “(b) *ALTERNATIVE PRESCRIPTIONS.*—(1) Whenever
9 the Secretary of the Interior or the Secretary of Commerce
10 prescribes a fishway under section 18, the license applicant
11 or licensee may propose an alternative to such prescription
12 to construct, maintain, or operate a fishway. The alter-
13 native may include a fishway or an alternative to a
14 fishway.

15 “(2) Notwithstanding section 18, the Secretary of the
16 Interior or the Secretary of Commerce, as appropriate, shall
17 accept and prescribe, and the Commission shall require, the
18 proposed alternative referred to in paragraph (1), if the
19 Secretary of the appropriate department determines, based
20 on substantial evidence provided by the licensee or otherwise
21 available to the Secretary, that such alternative—

22 “(A) will be no less protective of the fish re-
23 sources than the fishway initially prescribed by the
24 Secretary; and

25 “(B) will either—

1 “(i) cost less to implement; or

2 “(ii) result in improved operation of the
3 project works for electricity production,
4 as compared to the fishway initially deemed necessary
5 by the Secretary.

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

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

1 “(5) If the Secretary concerned does not accept an ap-
2 plicant’s alternative prescription under this section, and
3 the Commission finds that the Secretary’s prescription
4 would be inconsistent with the purposes of this part, or
5 other applicable law, the Commission may refer the dispute
6 to the Commission’s Dispute Resolution Service. The Dis-
7 pute Resolution Service shall consult with the Secretary and
8 the Commission and issue a non-binding advisory within
9 90 days. The Secretary may accept the Dispute Resolution
10 Service advisory unless the Secretary finds that the rec-
11 ommendation will not adequately protect the fish resources.
12 The Secretary shall submit the advisory and the Secretary’s
13 final written determination into the record of the Commis-
14 sion’s proceeding.”.

15 **Subtitle B—Additional Hydropower**

16 **SEC. 3201. HYDROELECTRIC PRODUCTION INCENTIVES.**

17 (a) *INCENTIVE PAYMENTS.*—For electric energy gen-
18 erated and sold by a qualified hydroelectric facility during
19 the incentive period, the Secretary of Energy (referred to
20 in this section as the “Secretary”) shall make, subject to
21 the availability of appropriations, incentive payments to
22 the owner or operator of such facility. The amount of such
23 payment made to any such owner or operator shall be as
24 determined under subsection (e) of this section. Payments
25 under this section may only be made upon receipt by the

1 *Secretary of an incentive payment application which estab-*
2 *lishes that the applicant is eligible to receive such payment*
3 *and which satisfies such other requirements as the Secretary*
4 *deems necessary. Such application shall be in such form,*
5 *and shall be submitted at such time, as the Secretary shall*
6 *establish.*

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

8 (1) *QUALIFIED HYDROELECTRIC FACILITY.—The*
9 *term “qualified hydroelectric facility” means a tur-*
10 *bine or other generating device owned or solely oper-*
11 *ated by a non-Federal entity which generates hydro-*
12 *electric energy for sale and which is added to an ex-*
13 *isting dam or conduit.*

14 (2) *EXISTING DAM OR CONDUIT.—The term “ex-*
15 *isting dam or conduit” means any dam or conduit*
16 *the construction of which was completed before the*
17 *date of the enactment of this section and which does*
18 *not require any construction or enlargement of im-*
19 *poundment or diversion structures (other than repair*
20 *or reconstruction) in connection with the installation*
21 *of a turbine or other generating device.*

22 (3) *CONDUIT.—The term “conduit” has the same*
23 *meaning as when used in section 30(a)(2) of the Fed-*
24 *eral Power Act.*

1 *The terms defined in this subsection shall apply without*
2 *regard to the hydroelectric kilowatt capacity of the facility*
3 *concerned, without regard to whether the facility uses a dam*
4 *owned by a governmental or nongovernmental entity, and*
5 *without regard to whether the facility begins operation on*
6 *or after the date of the enactment of this section.*

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

13 (d) *INCENTIVE PERIOD.—A qualified hydroelectric fa-*
14 *cility may receive payments under this section for a period*
15 *of 10 fiscal years (referred to in this section as the “incen-*
16 *tive period”). Such period shall begin with the fiscal year*
17 *in which electric energy generated from the facility is first*
18 *eligible for such payments.*

19 (e) *AMOUNT OF PAYMENT.—*

20 (1) *IN GENERAL.—Payments made by the Sec-*
21 *retary under this section to the owner or operator of*
22 *a qualified hydroelectric facility shall be based on the*
23 *number of kilowatt hours of hydroelectric energy gen-*
24 *erated by the facility during the incentive period. For*
25 *any such facility, the amount of such payment shall*

1 *be 1.8 cents per kilowatt hour (adjusted as provided*
2 *in paragraph (2)), subject to the availability of ap-*
3 *propriations under subsection (g), except that no fa-*
4 *cility may receive more than \$750,000 in one cal-*
5 *endar year.*

6 (2) *ADJUSTMENTS.—The amount of the payment*
7 *made to any person under this section as provided in*
8 *paragraph (1) shall be adjusted for inflation for each*
9 *fiscal year beginning after calendar year 2003 in the*
10 *same manner as provided in the provisions of section*
11 *29(d)(2)(B) of the Internal Revenue Code of 1986, ex-*
12 *cept that in applying such provisions the calendar*
13 *year 2003 shall be substituted for calendar year 1979.*

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

21 (g) *AUTHORIZATION OF APPROPRIATIONS.—There are*
22 *authorized to be appropriated to the Secretary to carry out*
23 *the purposes of this section \$10,000,000 for each of the fiscal*
24 *years 2004 through 2013.*

1 **SEC. 3202. HYDROELECTRIC EFFICIENCY IMPROVEMENT.**

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

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

14 (c) *AUTHORIZATION.*—*There is authorized to be appro-*
15 *priated to carry out this section not more than \$10,000,000*
16 *for each of the fiscal years 2004 through 2013.*

17 **SEC. 3203. SMALL HYDROELECTRIC POWER PROJECTS.**

18 *Section 408(a)(6) of the Public Utility Regulatory*
19 *Policies Act of 1978 is amended by striking “April 20,*
20 *1977” and inserting “March 4, 2003”.*

21 **SEC. 3204. INCREASED HYDROELECTRIC GENERATION AT**
22 **EXISTING FEDERAL FACILITIES.**

23 (a) *IN GENERAL.*—*The Secretary of Energy, in con-*
24 *sultation with the Secretary of the Interior and Secretary*
25 *of the Army, shall conduct studies of the cost-effective oppor-*
26 *tunities to increase hydropower generation at existing feder-*

1 *ally-owned or operated water regulation, storage, and con-*
2 *veyance facilities. Such studies shall be completed within*
3 *two years after the date of enactment of this subtitle and*
4 *transmitted to the Committee on Commerce of the House*
5 *of Representatives and the Committee on Energy and Nat-*
6 *ural Resources of the Senate. An individual study shall be*
7 *prepared for each of the Nation's principal river basins.*
8 *Each such study shall identify and describe with specificity*
9 *the following matters:*

10 (1) *Opportunities to improve the efficiency of hy-*
11 *dropower generation at such facilities through, but*
12 *not limited to, mechanical, structural, or operational*
13 *changes.*

14 (2) *Opportunities to improve the efficiency of the*
15 *use of water supplied or regulated by Federal projects*
16 *where such improvement could, in the absence of legal*
17 *or administrative constraints, make additional water*
18 *supplies available for hydropower generation or re-*
19 *duce project energy use.*

20 (3) *Opportunities to create additional hydro-*
21 *power generating capacity at existing facilities*
22 *through, but not limited to, the construction of addi-*
23 *tional generating facilities, the uprating of generators*
24 *and turbines, and the construction of pumped storage*
25 *facilities.*

1 (4) *Preliminary assessment of the costs and the*
 2 *economic and environmental consequences of such*
 3 *measures.*

4 (b) *PREVIOUS STUDIES.*—*If studies of the type re-*
 5 *quired by subsection (a) have been prepared by any agency*
 6 *of the United States and published within the five years*
 7 *prior to the date of enactment of this subtitle, the Secretary*
 8 *of Energy may choose not to perform new studies and incor-*
 9 *porate the information in such studies into the studies re-*
 10 *quired by subsection (a).*

11 (c) *AUTHORIZATION.*—*There is authorized to be appro-*
 12 *priated such sums as may be necessary to carry out the*
 13 *purposes of this section.*

14 ***TITLE IV—NUCLEAR MATTERS***
 15 ***Subtitle A—Price-Anderson Act***
 16 ***Amendments***

17 ***SEC. 4001. SHORT TITLE.***

18 *This subtitle may be cited as the “Price-Anderson*
 19 *Amendments Act of 2003”.*

20 ***SEC. 4002. EXTENSION OF INDEMNIFICATION AUTHORITY.***

21 (a) *INDEMNIFICATION OF NUCLEAR REGULATORY*
 22 *COMMISSION LICENSEES.*—*Section 170 c. of the Atomic En-*
 23 *ergy Act of 1954 (42 U.S.C. 2210(c)) is amended—*

24 (1) *in the subsection heading, by striking “LI-*
 25 *CENSES” and inserting “LICENSEES”; and*

1 (2) by striking “December 31, 2003” each place
2 it appears and inserting “August 1, 2017”.

3 (b) *INDEMNIFICATION OF DEPARTMENT OF ENERGY*
4 *CONTRACTORS*.—Section 170 d.(1)(A) of the Atomic Energy
5 Act of 1954 (42 U.S.C. 2210(d)(1)(A)) is amended by strik-
6 ing “December 31, 2004” and inserting “August 1, 2017”.

7 (c) *INDEMNIFICATION OF NONPROFIT EDUCATIONAL*
8 *INSTITUTIONS*.—Section 170 k. of the Atomic Energy Act
9 of 1954 (42 U.S.C. 2210(k)) is amended by striking “August
10 1, 2002” each place it appears and inserting “August 1,
11 2017”.

12 **SEC. 4003. MAXIMUM ASSESSMENT.**

13 Section 170 of the Atomic Energy Act of 1954 (42
14 U.S.C. 2210) is amended—

15 (1) in subsection b.(1), in the second proviso of
16 the third sentence—

17 (A) by striking “\$63,000,000” and inserting
18 “\$94,000,000”; and

19 (B) by striking “\$10,000,000 in any 1
20 year” and inserting “\$15,000,000 in any 1 year
21 (subject to adjustment for inflation under sub-
22 section t.)”; and

23 (2) in subsection t.—

24 (A) by inserting “total and annual” after
25 “amount of the maximum”;

1 (B) by striking “the date of the enactment
2 of the Price-Anderson Amendments Act of 1988”
3 and inserting “July 1, 2002”; and

4 (C) by striking “such date of enactment”
5 and inserting “July 1, 2002”.

6 **SEC. 4004. DEPARTMENT OF ENERGY LIABILITY LIMIT.**

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

11 “(2) In an agreement of indemnification entered into
12 under paragraph (1), the Secretary—

13 “(A) may require the contractor to provide and
14 maintain the financial protection of such a type and
15 in such amounts as the Secretary shall determine to
16 be appropriate to cover public liability arising out of
17 or in connection with the contractual activity; and

18 “(B) shall indemnify the persons indemnified
19 against such liability above the amount of the finan-
20 cial protection required, in the amount of
21 \$10,000,000,000 (subject to adjustment for inflation
22 under subsection t.), in the aggregate, for all persons
23 indemnified in connection with the contract and for
24 each nuclear incident, including such legal costs of the
25 contractor as are approved by the Secretary.”.

1 (b) *CONTRACT AMENDMENTS.*—Section 170 d. of the
2 *Atomic Energy Act of 1954 (42 U.S.C. 2210(d))* is amended
3 *by striking paragraph (3) and inserting the following:*

4 “(3) *All agreements of indemnification under which*
5 *the Department of Energy (or its predecessor agencies) may*
6 *be required to indemnify any person under this section shall*
7 *be deemed to be amended, on the date of enactment of the*
8 *Price-Anderson Amendments Act of 2003, to reflect the*
9 *amount of indemnity for public liability and any applica-*
10 *ble financial protection required of the contractor under this*
11 *subsection.”.*

12 (c) *LIABILITY LIMIT.*—Section 170 e.(1)(B) of the
13 *Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(1)(B))* is
14 *amended—*

15 (1) *by striking “the maximum amount of finan-*
16 *cial protection required under subsection b. or”;* and

17 (2) *by striking “paragraph (3) of subsection d.,*
18 *whichever amount is more” and inserting “paragraph*
19 *(2) of subsection d.”.*

20 ***SEC. 4005. INCIDENTS OUTSIDE THE UNITED STATES.***

21 (a) *AMOUNT OF INDEMNIFICATION.*—Section 170 d.(5)
22 *of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)(5))*
23 *is amended by striking “\$100,000,000” and inserting*
24 *“\$500,000,000”.*

1 (b) *LIABILITY LIMIT.*—Section 170 e.(4) of the Atomic
2 *Energy Act of 1954 (42 U.S.C. 2210(e)(4)) is amended by*
3 *striking “\$100,000,000” and inserting “\$500,000,000”.*

4 ***SEC. 4006. REPORTS.***

5 Section 170 p. of the Atomic Energy Act of 1954 (42
6 *U.S.C. 2210(p)) is amended by striking “August 1, 1998”*
7 *and inserting “August 1, 2013”.*

8 ***SEC. 4007. INFLATION ADJUSTMENT.***

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

11 (1) *by redesignating paragraph (2) as para-*
12 *graph (3); and*

13 (2) *by adding after paragraph (1) the following:*

14 “(2) *The Secretary shall adjust the amount of indem-*
15 *nification provided under an agreement of indemnification*
16 *under subsection d. not less than once during each 5-year*
17 *period following July 1, 2002, in accordance with the aggre-*
18 *gate percentage change in the Consumer Price Index*
19 *since—*

20 “(A) *that date, in the case of the first adjustment*
21 *under this paragraph; or*

22 “(B) *the previous adjustment under this para-*
23 *graph.”.*

1 **SEC. 4008. PRICE-ANDERSON TREATMENT OF MODULAR RE-**
2 **ACTORS.**

3 *Section 170 b. of the Atomic Energy Act of 1954 (42*
4 *U.S.C. 2210(b)) is amended by adding at the end the fol-*
5 *lowing new paragraph:*

6 *“(5)(A) For purposes of this section only, the Commis-*
7 *sion shall consider a combination of facilities described in*
8 *subparagraph (B) to be a single facility having a rated ca-*
9 *capacity of 100,000 electrical kilowatts or more.*

10 *“(B) A combination of facilities referred to in subpara-*
11 *graph (A) is 2 or more facilities located at a single site,*
12 *each of which has a rated capacity of 100,000 electrical kilo-*
13 *watts or more but not more than 300,000 electrical kilo-*
14 *watts, with a combined rated capacity of not more than*
15 *1,300,000 electrical kilowatts.”.*

16 **SEC. 4009. APPLICABILITY.**

17 *The amendments made by sections 4003, 4004, and*
18 *4005 do not apply to a nuclear incident that occurs before*
19 *the date of enactment of this Act.*

20 **SEC. 4010. PROHIBITION ON ASSUMPTION BY UNITED**
21 **STATES GOVERNMENT OF LIABILITY FOR**
22 **CERTAIN FOREIGN ACCIDENTS.**

23 *Section 170 of the Atomic Energy Act of 1954 (42*
24 *U.S.C. 2210) is amended by adding at the end the following*
25 *new subsection:*

1 “u. *PROHIBITION ON ASSUMPTION OF LIABILITY FOR*
2 *CERTAIN FOREIGN ACCIDENTS.—Notwithstanding this sec-*
3 *tion or any other provision of law, no officer of the United*
4 *States or of any department, agency, or instrumentality of*
5 *the United States Government may enter into any contract*
6 *or other arrangement, or into any amendment or modifica-*
7 *tion of a contract or other arrangement, the purpose or ef-*
8 *fect of which would be to directly or indirectly impose li-*
9 *ability on the United States Government, or any depart-*
10 *ment, agency, or instrumentality of the United States Gov-*
11 *ernment, or to otherwise directly or indirectly require an*
12 *indemnity by the United States Government, for nuclear*
13 *accidents occurring in connection with the design, construc-*
14 *tion, or operation of a production facility or utilization fa-*
15 *cility in any country whose government has been identified*
16 *by the Secretary of State as engaged in state sponsorship*
17 *of terrorist activities (specifically including any country the*
18 *government of which, as of September 11, 2001, had been*
19 *determined by the Secretary of State under section 620A(a)*
20 *of the Foreign Assistance Act of 1961, section 6(j)(1) of the*
21 *Export Administration Act of 1979, or section 40(d) of the*
22 *Arms Export Control Act to have repeatedly provided sup-*
23 *port for acts of international terrorism).”*

1 **SEC. 4011. SECURE TRANSFER OF NUCLEAR MATERIALS.**

2 (a) *AMENDMENT.*—Chapter 14 of the Atomic Energy
3 Act of 1954 (42 U.S.C. 2201–2210b) is amended by adding
4 at the end the following new section:

5 “SEC. 170C. SECURE TRANSFER OF NUCLEAR MATE-
6 RIALS.—

7 “a. *The Nuclear Regulatory Commission shall establish*
8 *a system to ensure that, with respect to activities by any*
9 *party pursuant to a license issued under this Act—*

10 “(1) *materials described in subsection b., when*
11 *transferred or received in the United States—*

12 “(A) *from a facility licensed by the Nuclear*
13 *Regulatory Commission;*

14 “(B) *from a facility licensed by an agree-*
15 *ment State; or*

16 “(C) *from a country with whom the United*
17 *States has an agreement for cooperation under*
18 *section 123,*

19 *are accompanied by a manifest describing the type*
20 *and amount of materials being transferred;*

21 “(2) *each individual transferring or accom-*
22 *panying the transfer of such materials has been sub-*
23 *ject to a security background check by appropriate*
24 *Federal entities; and*

25 “(3) *such materials are not transferred to or re-*
26 *ceived at a destination other than a facility licensed*

1 *by the Nuclear Regulatory Commission or an agree-*
2 *ment State under this Act or other appropriate Fed-*
3 *eral facility, or a destination outside the United*
4 *States in a country with whom the United States has*
5 *an agreement for cooperation under section 123.*

6 *“b. Except as otherwise provided by the Commission*
7 *by regulation, the materials referred to in subsection a. are*
8 *byproduct materials, source materials, special nuclear ma-*
9 *terials, high-level radioactive waste, spent nuclear fuel,*
10 *transuranic waste, and low-level radioactive waste (as de-*
11 *finied in section 2(16) of the Nuclear Waste Policy Act of*
12 *1982 (42 U.S.C. 10101(16))).”.*

13 *(b) REGULATIONS.—Not later than 1 year after the*
14 *date of the enactment of this Act, and from time to time*
15 *thereafter as it considers necessary, the Nuclear Regulatory*
16 *Commission shall issue regulations identifying radioactive*
17 *materials that, consistent with the protection of public*
18 *health and safety and the common defense and security, are*
19 *appropriate exceptions to the requirements of section 170C*
20 *of the Atomic Energy Act of 1954, as added by subsection*
21 *(a) of this section.*

22 *(c) EFFECTIVE DATE.—The amendment made by sub-*
23 *section (a) shall take effect upon the issuance of regulations*
24 *under subsection (b).*

1 (d) *EFFECT ON OTHER LAW.*—Nothing in this section
2 or the amendment made by this section shall waive, modify,
3 or affect the application of chapter 51 of title 49, United
4 States Code, part A of subtitle V of title 49, United States
5 Code, part B of subtitle VI of title 49, United States Code,
6 and title 23, United States Code.

7 (e) *TABLE OF SECTIONS AMENDMENT.*—The table of
8 sections for chapter 14 of the Atomic Energy Act of 1954
9 is amended by adding at the end the following new item:
“Sec. 170C. Secure transfer of nuclear materials.”.

10 **SEC. 4012. NUCLEAR FACILITY THREATS.**

11 (a) *STUDY.*—The President, in consultation with the
12 Nuclear Regulatory Commission and other appropriate
13 Federal, State, and local agencies and private entities, shall
14 conduct a study to identify the types of threats that pose
15 an appreciable risk to the security of the various classes
16 of facilities licensed by the Nuclear Regulatory Commission
17 under the Atomic Energy Act of 1954. Such study shall take
18 into account, but not be limited to—

19 (1) the events of September 11, 2001;

20 (2) an assessment of physical, cyber, biochemical,
21 and other terrorist threats;

22 (3) the potential for attack on facilities by mul-
23 tiple coordinated teams of a large number of individ-
24 uals;

1 (4) *the potential for assistance in an attack from*
2 *several persons employed at the facility;*

3 (5) *the potential for suicide attacks;*

4 (6) *the potential for water-based and air-based*
5 *threats;*

6 (7) *the potential use of explosive devices of con-*
7 *siderable size and other modern weaponry;*

8 (8) *the potential for attacks by persons with a*
9 *sophisticated knowledge of facility operations;*

10 (9) *the potential for fires, especially fires of long*
11 *duration; and*

12 (10) *the potential for attacks on spent fuel ship-*
13 *ments by multiple coordinated teams of a large num-*
14 *ber of individuals.*

15 (b) *SUMMARY AND CLASSIFICATION REPORT.—Not*
16 *later than 180 days after the date of the enactment of this*
17 *Act, the President shall transmit to the Congress and the*
18 *Nuclear Regulatory Commission a report—*

19 (1) *summarizing the types of threats identified*
20 *under subsection (a); and*

21 (2) *classifying each type of threat identified*
22 *under subsection (a), in accordance with existing laws*
23 *and regulations, as either—*

24 (A) *involving attacks and destructive acts,*
25 *including sabotage, directed against the facility*

1 *by an enemy of the United States, whether a for-*
2 *ign government or other person, or otherwise*
3 *falling under the responsibilities of the Federal*
4 *Government; or*

5 *(B) involving the type of risks that Nuclear*
6 *Regulatory Commission licensees should be re-*
7 *sponsible for guarding against.*

8 *(c) FEDERAL ACTION REPORT.—Not later than 90*
9 *days after the date on which a report is transmitted under*
10 *subsection (b), the President shall transmit to the Congress*
11 *a report on actions taken, or to be taken, to address the*
12 *types of threats identified under subsection (b)(2)(A). Such*
13 *report may include a classified annex as appropriate.*

14 *(d) REGULATIONS.—Not later than 270 days after the*
15 *date on which a report is transmitted under subsection (b),*
16 *the Nuclear Regulatory Commission shall issue regulations,*
17 *including changes to the design basis threat, to ensure that*
18 *licensees address the threats identified under subsection*
19 *(b)(2)(B).*

20 *(e) PHYSICAL SECURITY PROGRAM.—The Nuclear*
21 *Regulatory Commission shall establish an operational safe-*
22 *guards response evaluation program that ensures that the*
23 *physical protection capability and operational safeguards*
24 *response for sensitive nuclear facilities, as determined by*
25 *the Commission consistent with the protection of public*

1 *health and the common defense and security, shall be tested*
2 *periodically through Commission approved or designed, ob-*
3 *served, and evaluated force-on-force exercises to determine*
4 *whether the ability to defeat the design basis threat is being*
5 *maintained. For purposes of this subsection, the term “sen-*
6 *sitive nuclear facilities” includes at a minimum commer-*
7 *cial nuclear power plants, including associated spent fuel*
8 *storage facilities, spent fuel storage pools and dry cask stor-*
9 *age at closed reactors, independent spent fuel storage facili-*
10 *ties and geologic repository operations areas, category I fuel*
11 *cycle facilities, and gaseous diffusion plants.*

12 (f) *CONTROL OF INFORMATION.—In carrying out this*
13 *section, the President and the Nuclear Regulatory Commis-*
14 *sion shall control the dissemination of restricted data, safe-*
15 *guards information, and other classified national security*
16 *information in a manner so as to ensure the common de-*
17 *fense and security, consistent with chapter 12 of the Atomic*
18 *Energy Act of 1954.*

19 **SEC. 4013. UNREASONABLE RISK CONSULTATION.**

20 Section 170 of the Atomic Energy Act of 1954 (42
21 U.S.C. 2210) is amended by adding at the end the following
22 new subsection:

23 “v. *UNREASONABLE RISK CONSULTATION.—(1) Before*
24 *entering into an agreement of indemnification under this*
25 *section with respect to a utilization facility, the Nuclear*

1 *Regulatory Commission shall consult with the Assistant to*
2 *the President for Homeland Security (or any successor offi-*
3 *cial) concerning whether the location of the proposed facil-*
4 *ity and the design of that type of facility ensure that the*
5 *facility provides for adequate protection of public health*
6 *and safety if subject to a terrorist attack.*

7 “(2) *Before issuing a license or a license renewal for*
8 *a sensitive nuclear facility, the Nuclear Regulatory Com-*
9 *mission shall consult with the Secretary of Homeland Secu-*
10 *rity or his designee concerning the emergency evacuation*
11 *plan for the communities living near the sensitive nuclear*
12 *facility. For purposes of this paragraph, the term ‘sensitive*
13 *nuclear facility’ has the meaning given that term in section*
14 *4012 of the Energy Policy Act of 2003.”.*

15 **SEC. 4014. FINANCIAL ACCOUNTABILITY.**

16 (a) *AMENDMENT.—Section 170 of the Atomic Energy*
17 *Act of 1954 (42 U.S.C. 2210) is amended by adding at the*
18 *end the following new subsection:*

19 “*w. FINANCIAL ACCOUNTABILITY.—(1) Notwith-*
20 *standing subsection d., the Attorney General may bring an*
21 *action in the appropriate United States district court to*
22 *recover from a contractor of the Secretary (or subcontractor*
23 *or supplier of such contractor) amounts paid by the Federal*
24 *Government under an agreement of indemnification under*
25 *subsection d. for public liability resulting from conduct*

1 *which constitutes intentional misconduct of any corporate*
2 *officer, manager, or superintendent of such contractor (or*
3 *subcontractor or supplier of such contractor).*

4 “(2) *The Attorney General may recover under para-*
5 *graph (1) an amount not to exceed the amount of the profit*
6 *derived by the defendant from the contract.*

7 “(3) *No amount recovered from any contractor (or sub-*
8 *contractor or supplier of such contractor) under paragraph*
9 *(1) may be reimbursed directly or indirectly by the Depart-*
10 *ment of Energy.*

11 “(4) *Paragraph (1) shall not apply to any nonprofit*
12 *entity conducting activities under contract for the Sec-*
13 *retary.*

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

17 “(6) *The Secretary shall, by rule, define the terms*
18 *‘profit’ and ‘nonprofit entity’ for purposes of this sub-*
19 *section. Such rulemaking shall be completed not later than*
20 *180 days after the date of the enactment of this subsection.”.*

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

1 **SEC. 4015. CIVIL PENALTIES.**

2 (a) *REPEAL OF AUTOMATIC REMISSION.*—Section
3 234A b. (2) of the Atomic Energy Act of 1954 (42 U.S.C.
4 2282a(b)(2)) is amended by striking the last sentence.

5 (b) *LIMITATION FOR NONPROFIT INSTITUTIONS.*—Sub-
6 section d. of section 234A of the Atomic Energy Act of 1954
7 (42 U.S.C. 2282a(d)) is amended to read as follows:

8 “d. Notwithstanding subsection a., a civil penalty for
9 a violation under subsection a. shall not exceed the amount
10 of any discretionary fee paid under the contract under
11 which such violation occurs for any nonprofit contractor,
12 subcontractor, or supplier—

13 “(1) described in section 501(c)(3) of the Inter-
14 nal Revenue Code of 1986 and exempt from tax under
15 section 501(a) of such Code; or

16 “(2) identified by the Secretary by rule as ap-
17 propriate to be treated the same under this subsection
18 as an entity described in paragraph (1), consistent
19 with the purposes of this section.”.

20 (c) *EFFECTIVE DATE.*—The amendments made by this
21 section shall not apply to any violation of the Atomic En-
22 ergy Act of 1954 occurring under a contract entered into
23 before the date of the enactment of this Act.

24 (d) *RULEMAKING.*—Not later than 6 months after the
25 date of the enactment of this Act, the Secretary of Energy

1 *shall issue a rule for the implementation of the amendment*
2 *made by subsection (b).*

3 ***Subtitle B—Miscellaneous Matters***

4 ***SEC. 4021. LICENSES.***

5 *Section 103 c. of the Atomic Energy Act of 1954 (42*
6 *U.S.C. 2133(c)) is amended by inserting “from the author-*
7 *ization to commence operations” after “forty years”.*

8 ***SEC. 4022. NUCLEAR REGULATORY COMMISSION MEETINGS.***

9 *If a quorum of the Nuclear Regulatory Commission*
10 *gathers to discuss official Commission business the discus-*
11 *sions shall be recorded, and the Commission shall notify the*
12 *public of such discussions within 15 days after they occur.*
13 *The Commission shall promptly make a transcript of the*
14 *recording available to the public on request, except to the*
15 *extent that public disclosure is exempted or prohibited by*
16 *law. This section shall not apply to a meeting, within the*
17 *meaning of that term under section 552b(a)(2) of title 5,*
18 *United States Code.*

19 ***SEC. 4023. NRC TRAINING PROGRAM.***

20 *(a) IN GENERAL.—In order to maintain the human*
21 *resource investment and infrastructure of the United States*
22 *in the nuclear sciences, health physics, and engineering*
23 *fields, in accordance with the statutory authorities of the*
24 *Commission relating to the civilian nuclear energy pro-*
25 *gram, the Nuclear Regulatory Commission shall carry out*

1 *a training and fellowship program to address shortages of*
2 *individuals with critical nuclear safety regulatory skills.*

3 *(b) AUTHORIZATION OF APPROPRIATIONS.—*

4 *(1) IN GENERAL.—There are authorized to be ap-*
5 *propriated to carry out this section \$1,000,000 for*
6 *each of fiscal years 2004 through 2007.*

7 *(2) AVAILABILITY.—Funds made available under*
8 *paragraph (1) shall remain available until expended.*

9 **SEC. 4024. COST RECOVERY FROM GOVERNMENT AGENCIES.**

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

12 *(1) by striking “for or is issued” and all that fol-*
13 *lows through “1702” and inserting “to the Commis-*
14 *sion for, or is issued by the Commission, a license or*
15 *certificate”;*

16 *(2) by striking “483a” and inserting “9701”;*
17 *and*

18 *(3) by striking “, of applicants for, or holders of,*
19 *such licenses or certificates”.*

20 **SEC. 4025. ELIMINATION OF PENSION OFFSET.**

21 *Section 161 of the Atomic Energy Act of 1954 (42*
22 *U.S.C. 2201) is amended by adding at the end the following:*

23 *“y. exempt from the application of sections 8344*
24 *and 8468 of title 5, United States Code, an annuitant*
25 *who was formerly an employee of the Commission*

1 (A) facilities owned or operated by a Commis-
2 sion licensee or certificate holder that are des-
3 ignated by the Commission, or (B) property of
4 significance to the common defense and security
5 located at facilities owned or operated by a Com-
6 mission licensee or certificate holder or being
7 transported to or from such facilities;
8 to carry firearms while in the discharge of their offi-
9 cial duties. A person authorized to carry firearms
10 under this subsection may, while in the performance
11 of, and in connection with, official duties, make ar-
12 rests without warrant for any offense against the
13 United States committed in that person's presence or
14 for any felony cognizable under the laws of the United
15 States if that person has reasonable grounds to believe
16 that the individual to be arrested has committed or
17 is committing such felony. An employee of a con-
18 tractor or subcontractor or of a Commission licensee
19 or certificate holder (or a contractor of a licensee or
20 certificate holder) authorized to carry firearms under
21 this subsection may make such arrests only when the
22 individual to be arrested is within, or in direct flight
23 from, the area of such offense. A person granted au-
24 thority to make arrests by this subsection may exer-
25 cise that authority only in the enforcement of laws re-

1 *authority or to certification by the Commission under this*
2 *Act or any other Act”.*

3 **SEC. 4028. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.**

4 *Section 236 a. of the Atomic Energy Act of 1954 (42*
5 *U.S.C. 2284(a)) is amended to read as follows:*

6 *“a. Any person who intentionally and willfully de-*
7 *stroys or causes physical damage to, or who intentionally*
8 *and willfully attempts to destroy or cause physical damage*
9 *to—*

10 *“(1) any production facility or utilization facil-*
11 *ity licensed under this Act;*

12 *“(2) any nuclear waste storage, treatment, or*
13 *disposal facility licensed under this Act;*

14 *“(3) any nuclear fuel for a utilization facility li-*
15 *censed under this Act or any spent nuclear fuel from*
16 *such a facility;*

17 *“(4) any uranium enrichment or nuclear fuel*
18 *fabrication facility licensed or certified by the Nuclear*
19 *Regulatory Commission; or*

20 *“(5) any production, utilization, waste storage,*
21 *waste treatment, waste disposal, uranium enrichment,*
22 *or nuclear fuel fabrication facility subject to licensing*
23 *or certification under this Act during its construction*
24 *where the destruction or damage caused or attempted*

1 *to be caused could affect public health and safety dur-*
2 *ing the operation of the facility,*
3 *shall be fined not more than \$1,000,000 or imprisoned for*
4 *up to life in prison without parole, or both.”.*

5 **SEC. 4029. COOPERATIVE RESEARCH AND DEVELOPMENT**
6 **AND SPECIAL DEMONSTRATION PROJECTS**
7 **FOR THE URANIUM MINING INDUSTRY.**

8 *(a) AUTHORIZATION OF APPROPRIATIONS.—There are*
9 *authorized to be appropriated to the Secretary of Energy*
10 *\$10,000,000 for each of fiscal years 2004, 2005, and 2006*
11 *for—*

12 *(1) cooperative, cost-shared agreements between*
13 *the Department of Energy and domestic uranium*
14 *producers to identify, test, and develop improved in*
15 *situ leaching mining technologies, including low-cost*
16 *environmental restoration technologies that may be*
17 *applied to sites after completion of in situ leaching*
18 *operations; and*

19 *(2) funding for competitively selected demonstra-*
20 *tion projects with domestic uranium producers relat-*
21 *ing to—*

22 *(A) enhanced production with minimal en-*
23 *vironmental impacts;*

24 *(B) restoration of well fields; and*

1 (C) decommissioning and decontamination
2 activities.

3 (b) *DOMESTIC URANIUM PRODUCER.*—For purposes of
4 this section, the term “domestic uranium producer” has the
5 meaning given that term in section 1018(4) of the Energy
6 Policy Act of 1992 (42 U.S.C. 2296b–7(4)), except that the
7 term shall not include any producer that has not produced
8 uranium from domestic reserves on or after July 30, 1998,
9 in Colorado, Nebraska, Texas, Utah, or Wyoming.

10 **SEC. 4030. URANIUM SALES.**

11 (a) *RESTRICTIONS ON INVENTORY SALES.*—Section
12 3112(d) of the USEC Privatization Act (42 U.S.C. 2297h–
13 10(d)) is amended to read as follows:

14 “(d) *INVENTORY SALES.*—(1) In addition to the trans-
15 fers and sales authorized under subsections (b), (c), and (e),
16 the Secretary of Energy or the Secretary of the Army may
17 transfer or sell uranium subject to paragraph (2).

18 “(2) Except as provided in subsections (b), (c), and
19 (e), no sale or transfer of uranium shall be made under
20 this subsection by the Secretary of Energy or the Secretary
21 of the Army unless—

22 “(A) the President determines that the material
23 is not necessary for national security needs;

1 “(B) the price paid to the appropriate Secretary,
2 if the transaction is a sale, will not be less than the
3 fair market value of the material; and

4 “(C) the sale or transfer to end users is made
5 pursuant to a contract of at least 3 years duration.

6 “(3) The Secretary of Energy shall not make any
7 transfer or sale of uranium under this subsection that would
8 cause the total amount of uranium transferred or sold pur-
9 suant to this subsection that is delivered for consumption
10 by end users to exceed—

11 “(A) 3 million pounds of U_3O_8 equivalent in fis-
12 cal year 2004, 2005, 2006, 2007, 2008, or 2009;

13 “(B) 5 million pounds of U_3O_8 equivalent in fis-
14 cal year 2010 or 2011;

15 “(C) 7 million pounds of U_3O_8 equivalent in fis-
16 cal year 2012; and

17 “(D) 10 million pounds of U_3O_8 equivalent in
18 fiscal year 2013 or any fiscal year thereafter.

19 “(4) For the purposes of this subsection, the recovery
20 of uranium from uranium bearing materials transferred or
21 sold by the Secretary of Energy or the Secretary of the
22 Army to the domestic uranium industry shall be the pre-
23 ferred method of making uranium available. The recovered
24 uranium shall be counted against the annual maximum de-

1 *liveries set for in this section, when such uranium is sold*
2 *to end users.”.*

3 **(b) TRANSFERS TO CORPORATION.**—*Section 3112 of*
4 *the USEC Privatization Act (42 U.S.C. 2297h–10) is fur-*
5 *ther amended by adding at the end the following new sub-*
6 *section:*

7 **“(g) TRANSFERS TO CORPORATION.**—*Notwithstanding*
8 *subsection (b)(2) and subsection (d)(2), the Secretary may*
9 *transfer up to 9,550 metric tons of uranium to the Corpora-*
10 *tion to replace uranium that the Secretary transferred to*
11 *the Corporation on or about June 30, 1993, April 20, 1998,*
12 *and May 18, 1998, and that does not meet commercial spec-*
13 *ifications.”.*

14 **(c) SERVICES.**—*Section 3112 of the USEC Privatiza-*
15 *tion Act (42 U.S.C. 2297h–10) is further amended by add-*
16 *ing at the end the following new subsection:*

17 **“(h) SERVICES.**—*(1) Notwithstanding any other pro-*
18 *vision of this section, if the Secretary determines that if*
19 *the Corporation has failed, or may fail, to perform any obli-*
20 *gation under the Agreement between the Department of En-*
21 *ergy and the Corporation dated June 17, 2002, and as*
22 *amended thereafter, which failure could result in termi-*
23 *nation of the Agreement, the Secretary shall notify the Com-*
24 *mittee on Energy and Commerce of the House of Represent-*
25 *atives and the Committee on Energy and Natural Resources*

1 *of the Senate, in such a manner that affords the Committees*
2 *an opportunity to comment, prior to a determination by*
3 *the Secretary whether termination, waiver, or modification*
4 *of the Agreement is required. The Secretary is authorized*
5 *to take such action as he determines necessary under the*
6 *Agreement to terminate, waive, or modify provisions of the*
7 *Agreement to achieve its purposes.*

8 “(2) *Notwithstanding any other provision of this sec-*
9 *tion, if the Secretary determines in accordance with Article*
10 *2D of the Agreement between the Department of Energy and*
11 *the Corporation dated June 17, 2002, and as amended*
12 *thereafter, to transition operation of the Paducah gaseous*
13 *diffusion plant, the Secretary may provide uranium enrich-*
14 *ment services in a manner consistent with Article 2D of*
15 *such Agreement.”.*

16 (d) *REPORT.—Within 3 years after the date of enact-*
17 *ment of this Act, the Secretary shall report to the Congress*
18 *on the implementation of this section. The report shall in-*
19 *clude a discussion of available excess uranium inventories,*
20 *all sales or transfers made by the Secretary of Energy or*
21 *the Secretary of the Army, the impact of such sales or trans-*
22 *fers on the domestic uranium industry, the spot market ura-*
23 *nium price, and the national security interests of the*
24 *United States, and any steps taken to remediate any ad-*
25 *verse impacts of such sales or transfers.*

1 **SEC. 4031. MEDICAL ISOTOPE PRODUCTION.**

2 *Section 134 of the Atomic Energy Act of 1954 (42*
3 *U.S.C. 2160d) is amended—*

4 *(1) by redesignating subsection b. as subsection*
5 *f;*

6 *(2) by inserting after subsection a. the following:*

7 *“b. The Commission may issue a license authorizing*
8 *the export (including shipment to and use at intermediate*
9 *and ultimate consignees specified in the license) to a Re-*
10 *ipient Country of highly enriched uranium for medical*
11 *isotope production if, in addition to any other requirements*
12 *of this Act, the Commission determines that—*

13 *“(1) a Recipient Country that supplies an assur-*
14 *ance letter to the United States Government in con-*
15 *nection with the Commission’s consideration of the*
16 *export license application has informed the United*
17 *States Government that any intermediate consignees*
18 *and the ultimate consignee specified in the applica-*
19 *tion are required to use such highly enriched uranium*
20 *solely to produce medical isotopes; and*

21 *“(2) the highly enriched uranium for medical*
22 *isotope production will be irradiated only in a reac-*
23 *tor in a Recipient Country that—*

24 *“(A) uses an alternative nuclear reactor*
25 *fuel; or*

1 “(B) is the subject of an agreement with the
2 United States Government to convert to an alter-
3 native nuclear reactor fuel when such fuel can be
4 used in that reactor.

5 “c. Applications to the Commission for licenses author-
6 izing the export to a Recipient Country of highly enriched
7 uranium for medical isotope production shall be subject to
8 subsection b., and subsection a. shall not be applicable to
9 such exports.

10 “d. The Commission is authorized to specify, by rule-
11 making or decision in connection with an export license ap-
12 plication, that a country other than a Recipient Country
13 may receive exports of highly enriched uranium for medical
14 isotope production in accordance with the same criteria es-
15 tablished by subsection b. for exports to a Recipient Coun-
16 try, upon the Commission’s finding that such additional
17 country is a party to the Treaty on the Nonproliferation
18 of Nuclear Weapons and the Convention on the Physical
19 Protection of Nuclear Material and will receive such highly
20 enriched uranium pursuant to an agreement with the
21 United States concerning peaceful uses of nuclear energy.

22 “e. The Commission shall review the adequacy of phys-
23 ical protection requirements that are currently applicable
24 to the transportation of highly enriched uranium for med-
25 ical isotope production. If it determines that additional

1 *physical protection measures are necessary, including any*
2 *limits that the Commission finds are necessary on the quan-*
3 *tity of highly enriched uranium contained in a single ship-*
4 *ment for medical isotope production, the Commission shall*
5 *impose such requirements, as license conditions or through*
6 *other appropriate means.”; and*

7 *(3) in subsection f., as so redesignated by para-*
8 *graph (1) of this section—*

9 *(A) by striking “and” at the end of para-*
10 *graph (2);*

11 *(B) by striking the period at the end of*
12 *paragraph (3)(B) and inserting a semicolon; and*

13 *(C) by adding at the end the following:*

14 *“(4) the term ‘medical isotopes’ means radio-*
15 *active isotopes, including Molybdenum 99, Iodine*
16 *131, and Xenon 133, that are used to produce radio-*
17 *pharmaceuticals for diagnostic or therapeutic proce-*
18 *dures on patients, or in connection with research and*
19 *development of radiopharmaceuticals;*

20 *“(5) the term ‘highly enriched uranium for med-*
21 *ical isotope production’ means highly enriched ura-*
22 *nium contained in, or for use in, targets to be irradi-*
23 *ated for the sole purpose of producing medical iso-*
24 *topes;*

1 “(6) the term ‘radiopharmaceuticals’ means ra-
2 dioactive isotopes containing byproduct material com-
3 bined with chemical or biological material that are
4 designed to accumulate temporarily in a part of the
5 body, for therapeutic purposes or for enabling the pro-
6 duction of a useful image of the appropriate body
7 organ or function for use in diagnosis of medical con-
8 ditions; and

9 “(7) the term ‘Recipient Country’ means Can-
10 ada, Belgium, France, Germany, and the Nether-
11 lands.”.

12 **SEC. 4032. HIGHLY ENRICHED URANIUM DIVERSION**
13 **THREAT REPORT.**

14 Section 307 of the Energy Reorganization Act of 1974
15 (42 U.S.C. 5877) is amended by adding at the end the fol-
16 lowing new subsection:

17 “(d) Not later than 6 months after the date of the en-
18 actment of this Act, the Secretary of Energy shall transmit
19 to the Congress a report with recommendations on reducing
20 the threat resulting from the theft or diversion of highly en-
21 riched uranium. Such report shall address—

22 “(1) monitoring of highly enriched uranium sup-
23 plies at any commercial companies who have access
24 to substantial amounts of highly enriched uranium;

1 “(2) assistance to companies described in para-
2 graph (1) with security and personnel checks;

3 “(3) acceleration of the process of blending down
4 excess highly enriched uranium into low-enriched
5 uranium;

6 “(4) purchasing highly enriched uranium (except
7 for production of medical isotopes);

8 “(5) paying the cost of shipping highly enriched
9 uranium;

10 “(6) accelerating the conversion of commercial
11 research reactors and energy reactors to the use of
12 low-enriched uranium fuel where they now use highly
13 enriched uranium fuel; and

14 “(7) minimizing, and encouraging transparency
15 in, the further enrichment of low-enriched uranium to
16 highly enriched uranium.”.

17 **SEC. 4033. WHISTLEBLOWER PROTECTION.**

18 (a) *DEFINITION OF EMPLOYER.*—Section 211(a)(2) of
19 the *Energy Reorganization Act of 1974* (42 U.S.C.
20 5851(a)(2)) is amended—

21 (1) by striking “and” at the end of subpara-
22 graph (C);

23 (2) in subparagraph (D), by striking “that is in-
24 demnified” and all that follows through “12344.” and
25 inserting “or the Commission; and”; and

1 (3) *by adding at the end the following new sub-*
2 *paragraph:*

3 “(E) *the Department of Energy and the Com-*
4 *mission.*”.

5 (b) *DE NOVO REVIEW.*—*Subsection (b) of such section*
6 *211 is amended by adding at the end the following new*
7 *paragraph:*

8 “(4) *If the Secretary has not issued a final decision*
9 *within 180 days after the filing of a complaint under para-*
10 *graph (1), and there is no showing that such delay is due*
11 *to the bad faith of the claimant, the claimant may bring*
12 *an action at law or equity for de novo review in the appro-*
13 *priate district court of the United States, which shall have*
14 *jurisdiction over such an action without regard to the*
15 *amount in controversy.*”.

16 ***TITLE V—VEHICLES AND FUELS***
17 ***Subtitle A—Energy Policy Act***
18 ***Amendments***

19 ***SEC. 5011. CREDIT FOR SUBSTANTIAL CONTRIBUTION TO-***
20 ***WARD NONCOVERED FLEETS.***

21 *Section 508 of the Energy Policy Act of 1992 (42*
22 *U.S.C. 13258) is amended by adding at the end the fol-*
23 *lowing new subsection:*

1 “(e) *CREDIT FOR SUBSTANTIAL CONTRIBUTION TO-*
2 *WARD USE OF DEDICATED VEHICLES IN NONCOVERED*
3 *FLEETS.*—

4 “(1) *DEFINITIONS.*—*In this subsection:*

5 “(A) *MEDIUM OR HEAVY DUTY VEHICLE.*—

6 *The term ‘medium or heavy duty vehicle’ means*
7 *a dedicated vehicle that—*

8 “(i) *in the case of a medium duty vehi-*
9 *cle, has a gross vehicle weight rating of*
10 *more than 8,500 pounds but not more than*
11 *14,000 pounds; or*

12 “(ii) *in the case of a heavy duty vehi-*
13 *cle, has a gross vehicle weight rating of*
14 *more than 14,000 pounds.*

15 “(B) *SUBSTANTIAL CONTRIBUTION.*—*The*
16 *term ‘substantial contribution’ means not less*
17 *than \$15,000 in cash or in kind services, as de-*
18 *termined by the Secretary.*

19 “(2) *ALLOCATION OF CREDITS.*—*The Secretary*
20 *shall allocate a credit to a fleet or covered person*
21 *under this section if the fleet or person makes a sub-*
22 *stantial contribution toward the acquisition and use*
23 *of dedicated vehicles or neighborhood electric vehicles*
24 *by a person that owns, operates, leases, or otherwise*
25 *controls a fleet that is not covered by this title.*

1 “(3) *MULTIPLE CREDITS FOR MEDIUM AND*
 2 *HEAVY DUTY VEHICLES.*—*The Secretary shall issue 2*
 3 *full credits to a fleet or covered person under this sec-*
 4 *tion if the fleet or person makes a substantial con-*
 5 *tribution toward the acquisition and use of a medium*
 6 *or heavy duty vehicle.*

7 “(4) *USE OF CREDITS.*—*At the request of a fleet*
 8 *or covered person allocated a credit under this sub-*
 9 *section, the Secretary shall, for the year in which the*
 10 *acquisition of the dedicated vehicle or neighborhood*
 11 *electric vehicle is made, treat that credit as the acqui-*
 12 *sition of 1 alternative fueled vehicle that the fleet or*
 13 *covered person is required to acquire under this title.*

14 “(5) *LIMITATION.*—*Except as provided in para-*
 15 *graph (3), no more than 1 credit shall be allocated*
 16 *under this subsection for each vehicle.”.*

17 **SEC. 5012. CREDIT FOR ALTERNATIVE FUEL INFRASTRUC-**
 18 **TURE.**

19 *Section 508 of the Energy Policy Act of 1992 (42*
 20 *U.S.C. 13258), as amended by this Act, is further amended*
 21 *by adding at the end the following new subsection:*

22 “(f) *CREDIT FOR INVESTMENT IN ALTERNATIVE FUEL*
 23 *INFRASTRUCTURE.*—

24 “(1) *DEFINITION.*—*In this subsection, the term*
 25 *‘qualifying infrastructure’ means—*

1 “(A) equipment required to refuel or re-
2 charge alternative fueled vehicles;

3 “(B) facilities or equipment required to
4 maintain, repair, or operate alternative fueled
5 vehicles;

6 “(C) training programs, educational mate-
7 rials, or other activities necessary to provide in-
8 formation regarding the operation, maintenance,
9 or benefits associated with alternative fueled ve-
10 hicles; and

11 “(D) such other activities the Secretary con-
12 siders to constitute an appropriate expenditure
13 in support of the operation, maintenance, or fur-
14 ther widespread adoption of or utilization of al-
15 ternative fueled vehicles.

16 “(2) ALLOCATION OF CREDITS.—The Secretary
17 shall allocate a credit to a fleet or covered person
18 under this section for investment in qualifying infra-
19 structure if the qualifying infrastructure is open to
20 the general public during regular business hours.

21 “(3) AMOUNT.—For the purposes of credits
22 under this subsection—

23 “(A) 1 credit shall be equal to a minimum
24 investment of \$25,000 in cash or in kind serv-
25 ices, as determined by the Secretary; and

1 “(B) *except in the case of a Federal or State*
2 *fleet, no part of the investment may be provided*
3 *by Federal or State funds.*

4 “(4) *USE OF CREDITS.—At the request of a fleet*
5 *or covered person allocated a credit under this sub-*
6 *section, the Secretary shall, for the year in which the*
7 *investment is made, treat that credit as the acquisi-*
8 *tion of 1 alternative fueled vehicle that the fleet or*
9 *covered person is required to acquire under this*
10 *title.”.*

11 **SEC. 5013. ALTERNATIVE FUELED VEHICLE REPORT.**

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

13 (1) *ALTERNATIVE FUEL.—The term “alternative*
14 *fuel” has the meaning given the term in section 301*
15 *of the Energy Policy Act of 1992 (42 U.S.C. 13211).*

16 (2) *ALTERNATIVE FUELED VEHICLE.—The term*
17 *“alternative fueled vehicle” has the meaning given the*
18 *term in section 301 of the Energy Policy Act of 1992*
19 *(42 U.S.C. 13211).*

20 (3) *LIGHT DUTY MOTOR VEHICLE.—The term*
21 *“light duty motor vehicle” has the meaning given the*
22 *term in section 301 of the Energy Policy Act of 1992*
23 *(42 U.S.C. 13211).*

24 (4) *SECRETARY.—The term “Secretary” means*
25 *the Secretary of Energy.*

1 (b) *REPORT.*—Not later than 1 year after the date of
2 enactment of this Act, the Secretary shall submit to Con-
3 gress a report on the effect that titles III, IV, and V of the
4 Energy Policy Act of 1992 have had on the development
5 of alternative fueled vehicle technology, the availability of
6 alternative fueled vehicles in the market, the cost of light
7 duty motor vehicles that are alternative fueled vehicles, and
8 the availability, cost, and use of alternative fuels and bio-
9 diesel. Such report shall include any recommendations of
10 the Secretary for legislation concerning the alternative
11 fueled vehicle requirements under the Energy Policy Act of
12 1992, and shall examine, discuss, and determine the fol-
13 lowing:

14 (1) *The number of alternative fueled vehicles ac-*
15 *quired by fleets or covered persons required to acquire*
16 *alternative fueled vehicles.*

17 (2) *The extent to which fleets subject to alter-*
18 *native fueled vehicle acquisition requirements have*
19 *met those requirements through the use of fuel mix-*
20 *tures that contain at least 20 percent biodiesel pursu-*
21 *ant to section 312 of the Energy Policy Act of 1992*
22 *(42 U.S.C. 13220).*

23 (3) *The amount of alternative fuel used in alter-*
24 *native fueled vehicles acquired by fleets required to ac-*

1 *quire alternative fueled vehicles under the Energy*
2 *Policy Act of 1992.*

3 *(4) The amount of petroleum displaced by the*
4 *use of alternative fueled vehicles acquired by fleets or*
5 *covered persons.*

6 *(5) The cost of compliance with vehicle acquisi-*
7 *tion requirements under the Energy Policy Act of*
8 *1992, and the benefits of using such fuel and vehicles.*

9 *(6) Projections of the amount of biodiesel, the*
10 *number of alternative fueled vehicles, and the amount*
11 *of alternative fuel that will be used over the next dec-*
12 *ade by fleets required to acquire alternative fueled ve-*
13 *hicles under the Energy Policy Act of 1992.*

14 *(7) The existence of any obstacles to increased*
15 *use of alternative fuel and biodiesel in vehicles ac-*
16 *quired or maintained by fleets required to acquire al-*
17 *ternative fueled vehicles under the Energy Policy Act*
18 *of 1992, and the benefits of using such fuel and vehi-*
19 *cles.*

20 **SEC. 5014. ALLOCATION OF INCREMENTAL COSTS.**

21 *Section 303(c) of the Energy Policy Act of 1992 (42*
22 *U.S.C. 13212(c)) is amended by striking “may” and insert-*
23 *ing “shall”.*

1 ***Subtitle B—FreedomCAR and***
2 ***Hydrogen Fuel Program***

3 ***SEC. 5021. SHORT TITLE.***

4 *This subtitle may be cited as the “FreedomCAR and*
5 *Hydrogen Fuel Act of 2003” or “Freedom Act”.*

6 ***SEC. 5022. FINDINGS, PURPOSE, AND DEFINITIONS.***

7 *(a) FINDINGS.—Congress finds that—*

8 *(1) the United States is currently dependent on*
9 *foreign sources for a majority of its petroleum supply;*

10 *(2) the Nation’s dependence on foreign petroleum*
11 *is expected to increase in the decades ahead;*

12 *(3) it is in the national interest to reduce de-*
13 *pendence on imported petroleum by accelerating Fed-*
14 *eral efforts to partner with the private sector by de-*
15 *ploying hydrogen fuel cell vehicles and the refueling*
16 *infrastructure to support those vehicles;*

17 *(4) it is in the national interest to develop a*
18 *light duty vehicle fleet that substantially reduces de-*
19 *pendence on foreign petroleum, assists the Nation in*
20 *meeting its requirements under the Clean Air Act and*
21 *reduces greenhouse gas emissions in a manner that*
22 *maintains the freedom of consumers to purchase the*
23 *kinds of vehicles they wish to drive and the freedom*
24 *to refuel those vehicles safely, affordably, and conven-*
25 *iently;*

1 (5) *hydrogen fuel cell vehicles and supporting in-*
2 *frastructure have the potential to accelerate the par-*
3 *allel advancement of fuel cells for stationary power*
4 *that will enhance the resiliency, reliability, and envi-*
5 *ronmental performance of the Nation's electricity in-*
6 *frastructure;*

7 (6) *ancillary benefits for the Nation, including*
8 *the acceleration of fuel cell technology for consumer*
9 *electronics and portable power, are likely to result*
10 *from the advancement of hydrogen fuel cell vehicles*
11 *and supporting infrastructure;*

12 (7) *there is a need for deployment of bridging*
13 *technologies including gasoline electric and diesel elec-*
14 *tric hybrid drive systems, advanced combustion en-*
15 *gines including clean diesel, electric battery, and*
16 *power electronics, and alternative fuels and other*
17 *technology that can contribute to reducing petroleum*
18 *demand and decreasing air emissions;*

19 (8) *low-cost hydrogen production, storage, and*
20 *delivery facilities are essential to the success of the*
21 *FreedomCAR Vehicle Programs; and*

22 (9) *work should be performed in a manner that*
23 *is cognizant of consumer acceptance, passenger safety,*
24 *and marketplace success.*

1 **(b) PURPOSE.**—*The purpose of this subtitle is to reduce*
2 *significantly the Nation’s dependence on imported petro-*
3 *leum, enhance the production and conservation of energy,*
4 *and reduce air emissions through support of the following*
5 *Department of Energy actions:*

6 **(1) Programs and activities leading to—**

7 **(A)** *a commitment by automakers and hy-*
8 *drogen energy and energy infrastructure pro-*
9 *viders no later than year 2015 to offer safe, af-*
10 *fordable, and technically viable hydrogen fuel cell*
11 *vehicles and refueling infrastructure in the mass*
12 *consumer market; and*

13 **(B)** *a commitment by the automakers and*
14 *hydrogen energy and energy infrastructure pro-*
15 *viders to the deployment of hydrogen fuel cell ve-*
16 *hicles and affordable and convenient refueling*
17 *infrastructure no later than year 2020.*

18 **(2)** *A program to establish international codes,*
19 *standards, and safety protocols for the use and manu-*
20 *facture of domestic and foreign products.*

21 **(3)** *Interagency, intergovernmental, and inter-*
22 *national programs and activities for education, infor-*
23 *mation exchange, and cooperation.*

24 **(c) DEFINITIONS.**—*In this subtitle:*

1 (1) *The term “Advisory Committee” means the*
2 *Hydrogen Technical and Fuel Cell Advisory Com-*
3 *mittee established under section 5028 of this Act.*

4 (2) *The term “Department” means the Depart-*
5 *ment of Energy.*

6 (3) *The term “FreedomCAR” is the acronym for*
7 *a Department initiative in automotive research and*
8 *development entitled “Freedom Cooperative Auto-*
9 *motive Research”.*

10 (4) *The term “fuel cell” means a device that di-*
11 *rectly converts the chemical energy of a fuel and an*
12 *oxidant into electricity by an electrochemical process*
13 *taking place at separate electrodes in the device.*

14 (5) *The term “infrastructure” means the equip-*
15 *ment, systems, or facilities used to produce, distribute,*
16 *deliver, or store hydrogen and other advanced clean*
17 *fuels.*

18 (6) *The term “light duty vehicle” means a car*
19 *or truck, classified by the Department of Transpor-*
20 *tation as a Class I or IIA vehicle.*

21 (7) *The term “Secretary” means the Secretary of*
22 *Energy.*

23 **SEC. 5023. PLAN; REPORT.**

24 (a) *PLAN.—The Secretary, in consultation with other*
25 *appropriate Federal agencies, shall prepare a comprehen-*

1 *sive interagency coordination plan for activities under this*
2 *subtitle. This plan may be provided as part of the Presi-*
3 *dent's annual budget submission to Congress.*

4 **(b) REPORT.**—*Not later than one year after the date*
5 *of enactment of this subtitle, and biennially thereafter, the*
6 *Secretary shall transmit to the Congress a report on the*
7 *status of programs and activities under this subtitle. This*
8 *report may be provided as part of the President's annual*
9 *budget submission to Congress. This report may include,*
10 *in addition to any views and recommendations of the Sec-*
11 *retary—*

12 **(1)** *an assessment of the effectiveness of the pro-*
13 *grams and activities under this subtitle and the ex-*
14 *tent to which the purposes in section 5022(b) have*
15 *been met; and*

16 **(2)** *the potential for interagency, intergovern-*
17 *mental, international, or private sector collaboration*
18 *opportunities and activities under this subtitle.—*

19 **SEC. 5024. PUBLIC-PRIVATE PARTNERSHIP.**

20 **(a) PROGRAM.**—*In partnership with the private sector,*
21 *the Secretary shall conduct a program designed to facilitate*
22 *the production and conservation of energy and the deploy-*
23 *ment of energy infrastructure, including all of the following:*

24 **(1)** *Hydrogen energy.*

25 **(2)** *Fuel cells.*

1 (3) *Advanced vehicle technologies.*

2 (4) *Clean fuels in addition to hydrogen.*

3 (5) *Codes, standards, and safety protocols.—*

4 (b) *PROGRAM GOALS.—*

5 (1) *AUTOMAKERS.—For automakers the goals of*
6 *the program are—*

7 (A) *to enable a commitment by automakers*
8 *no later than year 2015 to offer safe, affordable,*
9 *and technically viable hydrogen fuel cell vehicles*
10 *into commerce; and*

11 (B) *to enable production, delivery, and ac-*
12 *ceptance by consumers of model year 2020 hy-*
13 *drogen fuel cell and other vehicles that will*
14 *have—*

15 (i) *a range of at least three hundred*
16 *miles;*

17 (ii) *improved performance and ease of*
18 *driving;*

19 (iii) *met all light duty safety regula-*
20 *tions created under section 30111 of title*
21 *49, United States Code; and*

22 (iv) *when compared to light duty vehi-*
23 *cles in model year 2003—*

24 (I) *a fuel economy that is two and*
25 *one half times the equivalent fuel econ-*

1 *omy of these vehicles as regulated*
2 *under the Motor Vehicle Information*
3 *and Cost Savings Act, or about 70*
4 *miles per gallon, and*

5 *(II) near zero emissions of air*
6 *pollutants regulated under the Clean*
7 *Air Act.*

8 *(2) HYDROGEN ENERGY AND ENERGY INFRA-*
9 *STRUCTURE.—For hydrogen energy and energy infra-*
10 *structure the goals of the program include, but are not*
11 *limited to, a commitment not later than 2015 that*
12 *will enable the deployment by 2020 of infrastructure*
13 *to provide—*

14 *(A) safe and convenient refueling;*

15 *(B) activities leading to widespread avail-*
16 *ability of hydrogen from domestic energy sources*
17 *through—*

18 *(i) production, including consideration*
19 *of cost-effective production from domestic*
20 *energy sources;*

21 *(ii) delivery, including transmission*
22 *by pipeline and other distribution methods*
23 *for hydrogen; and*

24 *(iii) storage, including storage in sur-*
25 *face transportation vehicles;*

1 (C) hydrogen for fuel cells, internal combus-
2 tion engines, and other energy conversion devices
3 for portable, stationary, and transportation ap-
4 plications; and

5 (D) other technologies consistent with the
6 Department's plan.

7 (3) *FUEL CELLS*.—The program for fuel cells
8 and their portable, stationary, and transportation ap-
9 plications may include, but is not limited to—

10 (A) a safe, economical, and environmentally
11 sound hydrogen fuel cell;

12 (B) a fuel cell for light duty and other vehi-
13 cles; and

14 (C) other technologies consistent with the
15 Department's plan.

16 (4) *ADVANCED VEHICLE TECHNOLOGIES*.—The
17 program for advanced vehicle technologies may in-
18 clude, but is not limited to—

19 (A) advanced combustion;

20 (B) materials;

21 (C) energy storage;

22 (D) control systems; and

23 (E) other technologies consistent with the
24 Department's plan.

1 (5) *CODES, STANDARDS, AND SAFETY PROTO-*
2 *COLS.—(A) The Department’s program for codes,*
3 *standards, and safety protocols shall strive towards*
4 *establishment of international codes, standards, and*
5 *safety protocols for the use and manufacture of domes-*
6 *tic and foreign products.*

7 (B) *The Secretary may represent the United*
8 *States interests with respect to activities and pro-*
9 *grams under this subsection, collaborating with the*
10 *Secretary of Transportation, and in consultation with*
11 *other appropriate governments and nongovernmental*
12 *organizations including the following:*

13 (i) *Other Federal, State, regional, and local*
14 *governments and their representatives.*

15 (ii) *Industry and its representatives, in-*
16 *cluding members of the energy and transpor-*
17 *tation industries.*

18 (iii) *Foreign governments and their rep-*
19 *resentatives including international organiza-*
20 *tions.*

21 (c) *FEDERAL FUNDING.—(1) The Secretary shall carry*
22 *out the programs and activities under this section con-*
23 *sistent with the generally applicable Federal laws and regu-*
24 *lations governing awards of financial assistance, contracts,*

1 *or other agreements, and may include funding to nationally*
2 *recognized university-based research centers.*

3 *(2) The Secretary shall endeavor to avoid duplication*
4 *or displacement of other research and development pro-*
5 *grams and activities.*

6 *(d) COST SHARING.—(1) The Secretary shall require*
7 *a commitment from non-Federal sources of at least 20 per-*
8 *cent of the cost of proposed programs under this section.*

9 *(2) The Secretary may reduce or eliminate the cost*
10 *sharing requirement under paragraph (1)—*

11 *(A) if the Secretary determines that the activity*
12 *is of a basic or fundamental nature which is vital to*
13 *the success of the program and unlikely to occur in*
14 *a timely manner without reduction or elimination of*
15 *the cost-sharing requirement; or*

16 *(B) for technical analyses, outreach programs,*
17 *and other activities including educational programs*
18 *under section 5027 of this subtitle that the Secretary*
19 *does not expect to result in a marketable product.*

20 **SEC. 5025. DEPLOYMENT.**

21 *(a) DEPLOYMENT PROGRAM.—In partnership with the*
22 *private sector, the Secretary shall conduct a program to fa-*
23 *cilitate the deployment of—*

24 *(1) hydrogen energy and energy infrastructure;*

25 *(2) fuel cells;*

1 (3) *advanced vehicle technologies;*

2 (4) *clean fuels in addition to hydrogen; and*

3 (5) *codes, standards, and safety protocols.—*

4 (b) *PROGRAM GOALS.—(1) For automakers, the goals*
5 *of the program are—*

6 (A) *to enable a decision by automakers no later*
7 *than year 2015 to offer safe, affordable, and tech-*
8 *nically viable hydrogen fuel cell vehicles into com-*
9 *merce; and*

10 (B) *to enable production and delivery to, and ac-*
11 *ceptance by, consumers of model year 2020 hydrogen*
12 *fuel cell and other vehicles that will have—*

13 (i) *a range of at least 300 miles;*

14 (ii) *improved performance and ease of driv-*
15 *ing;*

16 (iii) *met all light duty safety regulations*
17 *created under section 30111 of title 49, United*
18 *States Code; and*

19 (iv) *when compared to light duty vehicles in*
20 *model year 2003—*

21 (I) *a fuel economy that is two and one*
22 *half times the equivalent fuel economy of*
23 *these vehicles under the Motor Vehicle Infor-*
24 *mation and Cost Savings Act, or about 70*
25 *miles per gallon; and*

1 (ii) near zero emissions of air pollut-
2 ants regulated under the Clean Air Act.

3 (2) For hydrogen energy and energy infrastructure the
4 goals of the program include, but are not limited to, a com-
5 mitment not later than 2015 that will enable the deploy-
6 ment by 2020 of infrastructure to provide—

7 (A) safe, convenient, and affordable refueling;

8 (B) widespread availability of hydrogen from do-
9 mestic energy sources through—

10 (i) production, including consideration of
11 cost-effective production from domestic energy
12 sources;

13 (ii) delivery, including transmission by
14 pipeline and other distribution methods, for hy-
15 drogen in its gaseous, liquid, and solid states;
16 and

17 (iii) storage, including storage in surface
18 transportation vehicles;

19 (C) hydrogen for fuel cells, internal combustion
20 engines, and other energy conversion devices for port-
21 able, stationary, and transportation applications; and

22 (D) other technologies consistent with the De-
23 partment's plan.

1 (c) *FUEL CELLS.*—*The program for fuel cells and their*
2 *portable, stationary, and transportation applications may*
3 *include but is not limited to—*

4 (1) *a safe, economical, and environmentally*
5 *sound hydrogen fuel cell;*

6 (2) *a fuel cell for light duty and other vehicles;*
7 *and*

8 (3) *other technologies consistent with the Depart-*
9 *ment's plan.*

10 (d) *ADVANCED VEHICLE TECHNOLOGIES.*—*The pro-*
11 *gram for advanced vehicle technologies may include, but is*
12 *not limited to—*

13 (1) *advanced combustion;*

14 (2) *materials;*

15 (3) *energy storage;*

16 (4) *control systems; and*

17 (5) *other technologies consistent with the Depart-*
18 *ment's plan.*

19 (e) *FEDERAL FUNDING.*—*The Secretary shall carry*
20 *out the program and activities under this section consistent*
21 *with laws and regulations governing awards of financial*
22 *assistance, contracts or other agreements, and may include*
23 *funding to nationally recognized university-based research*
24 *centers. The Secretary shall endeavor to avoid duplication*
25 *or displacement of other programs.*

1 (f) *COST SHARING.*—

2 (1) *IN GENERAL.*—*The Secretary shall require a*
3 *commitment from non-Federal sources of at least 50*
4 *percent of the costs directly relating to a demonstra-*
5 *tion under this section.*

6 (2) *REDUCTION.*—*The Secretary may reduce the*
7 *non-Federal requirement under paragraph (1) if the*
8 *Secretary determines that—*

9 (A) *the reduction is appropriate considering*
10 *the technological risks involved; and*

11 (B) *the terms and conditions are consistent*
12 *with the Agreement on Subsidies and Counter-*
13 *vailing Measures.*

14 (3) *COOPERATIVE AGREEMENTS WITH GOVERN-*
15 *MENTS.*—*The Secretary may enter into cooperative*
16 *and cost sharing agreements with Federal, State, or*
17 *local governments to deploy vehicles, vehicle systems,*
18 *and refueling infrastructure using hydrogen, fuel cells,*
19 *or other advanced technologies in government facili-*
20 *ties or fleet transportation systems.*

21 **SEC. 5026. ASSESSMENT AND TRANSFER.**

22 (a) *PROGRAM.*—*The Secretary may conduct a pro-*
23 *gram to transfer technology to the private sector under this*
24 *subtitle.*

1 (b) *DISCLOSURE.*—*The Secretary may protect from*
2 *disclosure, for up to 5 years after the information was devel-*
3 *oped, any information developed pursuant to a cost shared*
4 *transaction, or subagreement thereunder, entered into under*
5 *this subtitle to advance the goals of the programs, which*
6 *developed information is of a character that it would be*
7 *protected from disclosure under section 552(b)(4) of title 5,*
8 *United States Code, if this developed information had been*
9 *obtained from a person other than a Federal agency.*

10 ***SEC. 5027. INTERAGENCY TASK FORCE.***

11 (a) *ESTABLISHMENT.*—*Not later than 120 days after*
12 *the date of enactment of this Act, the President shall estab-*
13 *lish an interagency task force chaired by the Secretary or*
14 *his designee with representatives from each of the following:*

15 (1) *The Office of Science and Technology Policy*
16 *within the Executive Office of the President.*

17 (2) *The Department of Transportation.*

18 (3) *The Department of Defense.*

19 (4) *The Department of Commerce (including the*
20 *National Institute of Standards and Technology).*

21 (5) *The Environmental Protection Agency.*

22 (6) *The National Aeronautics and Space Admin-*
23 *istration.*

24 (7) *Other Federal agencies as the Secretary de-*
25 *termines appropriate.*

1 **(b) DUTIES OF THE INTERAGENCY TASK FORCE.—**

2 **(1) PLANNING.—***The task force shall coordinate*
3 *the implementation of the interagency plan in section*
4 *5023(a), and work towards deployment of—*

5 **(A)** *a safe, economical, and environmentally*
6 *sound fuel infrastructure, including an infra-*
7 *structure that supports buses and other fleet*
8 *transportation;*

9 **(B)** *fuel cells in government and other ap-*
10 *plications, including portable, stationary, and*
11 *transportation applications; and*

12 **(C)** *distributed power generation, including*
13 *the generation of combined heat, power, and*
14 *clean fuels including hydrogen.*

15 **(2) INFORMATION EXCHANGE.—****(A)** *The inter-*
16 *agency task force shall coordinate interagency pro-*
17 *grams and activities including the exchange of infor-*
18 *mation.*

19 **(B)** *The heads of all agencies, including those*
20 *whose agencies are not represented on the interagency*
21 *task force, shall cooperate with and furnish informa-*
22 *tion to the interagency task force, the Advisory Com-*
23 *mittee, and the Department.*

24 **(C)** *The information exchange may consist of*
25 *workshops, publications, conferences, and a database*

1 for use by the public and private sectors. The inter-
2 agency task force is expected to—

3 (i) foster the exchange of generic, nonpropri-
4 etary information and technology among indus-
5 try, academia, and government;

6 (ii) update the inventory and assessment of
7 hydrogen, fuel cells, and other advanced tech-
8 nologies, including their commercial capability
9 for the economic and environmentally safe pro-
10 duction, distribution, delivery, storage, and use
11 of clean fuels including hydrogen;

12 (iii) integrate technical and other informa-
13 tion made available as a result of the programs
14 and activities under this subtitle;

15 (iv) promote the marketplace introduction
16 of infrastructure for hydrogen and other clean
17 fuel vehicles; and

18 (v) conduct an education program to pro-
19 vide FreedomCAR and hydrogen fuel informa-
20 tion to potential end-users.

21 **SEC. 5028. ADVISORY COMMITTEE.**

22 (a) *ESTABLISHMENT.*—The Hydrogen Technical and
23 Fuel Cell Advisory Committee is established to advise the
24 Secretary on the programs and activities under this sub-
25 title.

1 **(b) MEMBERSHIP.**—

2 **(1) MEMBERS.**—*The Advisory Committee is com-*
3 *prised of not fewer than 12 nor more than 25 mem-*
4 *bers. These members shall be appointed by the Sec-*
5 *retary to represent domestic industry, academia, pro-*
6 *fessional societies, government agencies, and finan-*
7 *cial, environmental, and other appropriate organiza-*
8 *tions based on the Department’s assessment of the*
9 *technical and other qualifications of committee mem-*
10 *bers and the needs of the Advisory Committee.*

11 **(2) TERMS.**—*The term of a member of the Advi-*
12 *sory Committee shall not be more than 3 years. The*
13 *Secretary may appoint members of the Advisory*
14 *Committee in a manner that allows the terms of the*
15 *members serving at any time to expire at spaced in-*
16 *tervals so as to ensure continuity in the functioning*
17 *of the Advisory Committee. A member of the Advisory*
18 *Committee whose term is expiring may be re-*
19 *appointed.*

20 **(3) CHAIRPERSON.**—*The Advisory Committee*
21 *shall have a chairperson, who is elected by the mem-*
22 *bers from among their number.*

23 **(c) REVIEW.**—*The Advisory Committee shall review*
24 *and make recommendations to the Secretary on—*

1 (1) *the implementation of programs and activi-*
2 *ties under this subtitle;*

3 (2) *the safety, economical, and environmental*
4 *consequences of technologies for the production, dis-*
5 *tribution, delivery, storage, or use of hydrogen energy*
6 *and fuel cells; and*

7 (3) *the interagency coordination plan under sec-*
8 *tion 5023(a) of this Act.*

9 (d) *RESPONSE TO RECOMMENDATIONS.*—*The Sec-*
10 *retary shall consider, but need not adopt, any recommenda-*
11 *tions of the Advisory Committee under subsection (c).*

12 (e) *ADVISORY COMMITTEE SUPPORT.*—*The Secretary*
13 *shall provide resources necessary in the judgment of the Sec-*
14 *retary for the Advisory Committee to carry out its respon-*
15 *sibilities under this subtitle.*

16 ***SEC. 5029. AUTHORIZATION OF APPROPRIATIONS.***

17 *There are authorized to be appropriated to carry out*
18 *the purposes of this subtitle including programs for light*
19 *duty vehicles, in addition to any amounts made available*
20 *for these purposes under other Acts—*

21 (1) *\$273,500,000 for fiscal year 2004;*

22 (2) *\$325,000,000 for fiscal year 2005;*

23 (3) *\$375,000,000 for fiscal year 2006;*

24 (4) *\$400,000,000 for fiscal year 2007; and*

25 (5) *\$425,000,000 for fiscal year 2008.*

1 **SEC. 5030. FUEL CELL PROGRAM AT NATIONAL PARKS.**

2 *The Secretary of Energy, in cooperation with the Sec-*
3 *retary of Interior and the National Park Service, is author-*
4 *ized to establish a program to provide matching funds to*
5 *assist in the deployment of fuel cells at one or more promi-*
6 *nent National Parks. The Secretary of Energy shall trans-*
7 *mit to Congress within 1 year, and annually thereafter, a*
8 *report describing any activities taken pursuant to such pro-*
9 *gram. The report shall address whether activities taken pur-*
10 *suant to such program reduce the environmental impacts*
11 *of energy use at National Parks. There are authorized to*
12 *be appropriated \$2,000,000 for each of fiscal years 2004*
13 *through 2010 to carry out the purposes of this section.*

14 **SEC. 5030A. ADVANCED POWER SYSTEM TECHNOLOGY IN-**
15 **CENTIVE PROGRAM.**

16 *(a) PROGRAM.—The Secretary of Energy is authorized*
17 *to establish an Advanced Power System Technology Incen-*
18 *tive Program to support the deployment of certain advanced*
19 *power system technologies and to improve and protect cer-*
20 *tain critical governmental, industrial, and commercial*
21 *processes. Funds provided under this section shall be used*
22 *by the Secretary to make incentive payments to eligible*
23 *owners or operators of advanced power system technologies*
24 *to increase power generation through enhanced operational,*
25 *economic, and environmental performance. Payments under*
26 *this section may only be made upon receipt by the Secretary*

1 of an incentive payment application establishing an appli-
2 cant as either—

3 (1) a qualifying advanced power system tech-
4 nology facility; or

5 (2) a qualifying security and assured power fa-
6 cility.

7 (b) *INCENTIVES*.—Subject to availability of funds, a
8 payment of 1.8 cents per kilowatt-hour shall be paid to the
9 owner or operator of a qualifying advanced power system
10 technology facility under this section for electricity gen-
11 erated at such facility. An additional 0.7 cents per kilowatt-
12 hour shall be paid to the owner or operator of a qualifying
13 security and assured power facility for electricity generated
14 at such facility. Any facility qualifying under this section
15 shall be eligible for an incentive payment for up to, but
16 not more than, the first 10,000,000 kilowatt-hours produced
17 in any fiscal year.

18 (c) *ELIGIBILITY*.—For purposes of this section—

19 (1) the term “qualifying advanced power system
20 technology facility” means a facility using an ad-
21 vanced fuel cell, turbine, or hybrid power system or
22 power storage system to generate or store electric en-
23 ergy; and

24 (2) the term “qualifying security and assured
25 power facility” means a qualifying advanced power

1 *system technology facility determined by the Sec-*
2 *retary of Energy, in consultation with the Secretary*
3 *of Homeland Security, to be in critical need of secure,*
4 *reliable, rapidly available, high-quality power for*
5 *critical governmental, industrial, or commercial ap-*
6 *plications.*

7 *(d) AUTHORIZATION.—There are authorized to be ap-*
8 *propriated to the Secretary of Energy for the purposes of*
9 *this section, \$10,000,000 for each of the fiscal years 2004*
10 *through 2010.*

11 ***Subtitle C—Clean School Buses***

12 ***SEC. 5031. ESTABLISHMENT OF PILOT PROGRAM.***

13 *(a) ESTABLISHMENT.—The Secretary of Energy, in*
14 *consultation with the Secretary of Transportation and the*
15 *Administrator of the Environmental Protection Agency,*
16 *shall establish a pilot program for awarding grants on a*
17 *competitive basis to eligible entities for the acquisition of*
18 *alternative fuel school buses and ultra-low sulfur diesel*
19 *school buses.*

20 *(b) REQUIREMENTS.—Not later than 3 months after*
21 *the date of the enactment of this Act, the Secretary shall*
22 *establish and publish in the Federal register grant require-*
23 *ments on eligibility for assistance, and on implementation*
24 *of the program established under subsection (a), including*

1 *certification requirements to ensure compliance with this*
2 *subtitle.*

3 (c) *SOLICITATION.*—*Not later than 6 months after the*
4 *date of the enactment of this Act, the Secretary shall solicit*
5 *proposals for grants under this section.*

6 (d) *ELIGIBLE RECIPIENTS.*—*A grant shall be awarded*
7 *under this section only—*

8 (1) *to a local or State governmental entity re-*
9 *sponsible for providing school bus service to one or*
10 *more public school systems or responsible for the pur-*
11 *chase of school buses; or*

12 (2) *to a contracting entity that provides school*
13 *bus service to one or more public school systems, if the*
14 *grant application is submitted jointly with the school*
15 *system or systems which the buses will serve.*

16 (e) *TYPES OF GRANTS.*—

17 (1) *IN GENERAL.*—*Grants under this section*
18 *shall promote the conservation of energy and improve-*
19 *ment of public health and the environment by facili-*
20 *tating the acquisition of alternative fuel school buses*
21 *and ultra-low sulfur diesel school buses in lieu of*
22 *buses manufactured before model year 1977 and die-*
23 *sel-powered buses manufactured before model year*
24 *1991.*

1 (2) *NO ECONOMIC BENEFIT.*—*Other than the re-*
2 *ceipt of the grant, a recipient of a grant under this*
3 *section may not receive any economic benefit in con-*
4 *nection with the receipt of the grant.*

5 (3) *PRIORITY OF GRANT APPLICATIONS.*—*The*
6 *Secretary shall give priority to awarding grants to*
7 *applicants who will utilize grants to replace buses*
8 *manufactured before model year 1977.*

9 (f) *CONDITIONS OF GRANT.*—*A grant provided under*
10 *this section shall include the following conditions:*

11 (1) *All buses acquired with funds provided under*
12 *the grant shall be operated as part of the school bus*
13 *fleet for which the grant was made for a minimum*
14 *of 5 years.*

15 (2) *Funds provided under the grant may only be*
16 *used—*

17 (A) *to pay the cost, except as provided in*
18 *paragraph (3), of new alternative fuel school*
19 *buses or ultra-low sulfur diesel school buses, in-*
20 *cluding State taxes and contract fees; and*

21 (B) *to provide—*

22 (i) *up to 10 percent of the price of the*
23 *alternative fuel buses acquired, for necessary*
24 *alternative fuel infrastructure if the infra-*

1 *structure will only be available to the grant*
2 *recipient; and*

3 *(ii) up to 15 percent of the price of the*
4 *alternative fuel buses acquired, for necessary*
5 *alternative fuel infrastructure if the infra-*
6 *structure will be available to the grant re-*
7 *ipient and to other bus fleets.*

8 *(3) The grant recipient shall be required to pro-*
9 *vide at least the lesser of 15 percent of the total cost*
10 *of each bus received or \$15,000 per bus.*

11 *(4) In the case of a grant recipient receiving a*
12 *grant to demonstrate ultra-low sulfur diesel school*
13 *buses, the grant recipient shall be required to provide*
14 *documentation to the satisfaction of the Secretary*
15 *that diesel fuel containing sulfur at not more than 15*
16 *parts per million is available for carrying out the*
17 *purposes of the grant, and a commitment by the ap-*
18 *plicant to use such fuel in carrying out the purposes*
19 *of the grant.*

20 *(g) BUSES.—Funding under a grant made under this*
21 *section may be used to facilitate the use only of new alter-*
22 *native fuel school buses or ultra-low sulfur diesel school*
23 *buses—*

24 *(1) with a gross vehicle weight of greater than*
25 *14,000 pounds;*

1 (2) that are powered by a heavy duty engine;

2 (3) that, in the case of alternative fuel school
3 buses, emit not more than—

4 (A) for buses manufactured in model year
5 2002, 2.5 grams per brake horsepower-hour of
6 nonmethane hydrocarbons and oxides of nitrogen
7 and .01 grams per brake horsepower-hour of par-
8 ticulate matter; and

9 (B) for buses manufactured in model years
10 2003 through 2006, 1.8 grams per brake horse-
11 power-hour of nonmethane hydrocarbons and ox-
12 ides of nitrogen and .01 grams per brake horse-
13 power-hour of particulate matter; and

14 (4) that, in the case of ultra-low sulfur diesel
15 school buses, emit not more than—

16 (A) for buses manufactured in model years
17 2002 through 2003, 3.0 grams per brake horse-
18 power-hour of oxides of nitrogen and .01 grams
19 per brake horsepower-hour of particulate matter;
20 and

21 (B) for buses manufactured in model years
22 2004 through 2006, 2.5 grams per brake horse-
23 power-hour of nonmethane hydrocarbons and ox-
24 ides of nitrogen and .01 grams per brake horse-
25 power-hour of particulate matter,

1 *except that under no circumstances shall buses be ac-*
2 *quired under this section that emit nonmethane hy-*
3 *drocarbons, oxides of nitrogen, or particulate matter*
4 *at a rate greater than the best performing technology*
5 *of the same class of ultra-low sulfur diesel school buses*
6 *commercially available at the time the grant is made.*

7 *(h) DEPLOYMENT AND DISTRIBUTION.—The Secretary*
8 *shall seek to the maximum extent practicable to achieve na-*
9 *tionwide deployment of alternative fuel school buses and*
10 *ultra-low sulfur diesel school buses through the program*
11 *under this section, and shall ensure a broad geographic dis-*
12 *tribution of grant awards, with a goal of no State receiving*
13 *more than 10 percent of the grant funding made available*
14 *under this section for a fiscal year.*

15 *(i) LIMIT ON FUNDING.—The Secretary shall provide*
16 *not less than 20 percent and not more than 25 percent of*
17 *the grant funding made available under this section for any*
18 *fiscal year for the acquisition of ultra-low sulfur diesel*
19 *school buses.*

20 *(j) REDUCTION OF SCHOOL BUS IDLING.—Each local*
21 *educational agency (as defined in section 9101 of the Ele-*
22 *mentary and Secondary Education Act of 1965 (20 U.S.C.*
23 *7801)) that receives Federal funds under the Elementary*
24 *and Secondary Education Act of 1965 (20 U.S.C. 6301 et*
25 *seq.) is encouraged to develop a policy, consistent with the*

1 *health, safety, and welfare of students and the proper oper-*
2 *ation and maintenance of school buses, to reduce the inci-*
3 *dence of unnecessary school bus idling at schools when pick-*
4 *ing up and unloading students.*

5 *(k) ANNUAL REPORT.—Not later than January 31 of*
6 *each year, the Secretary of Energy shall provide a report*
7 *evaluating implementation of the program under this sec-*
8 *tion to the Congress. Such report shall include the total*
9 *number of grant applications received, the number and*
10 *types of alternative fuel school buses and ultra-low sulfur*
11 *diesel school buses requested in grant applications, a list*
12 *of grants awarded and the criteria used to select the grant*
13 *recipients, certified engine emission levels of all buses pur-*
14 *chased under the program, and any other information the*
15 *Secretary considers appropriate.*

16 *(l) DEFINITIONS.—For purposes of this section—*

17 *(1) the term “alternative fuel school bus” means*
18 *a school bus powered substantially by electricity (in-*
19 *cluding electricity supplied by a fuel cell), or by liq-*
20 *uefied natural gas, compressed natural gas, liquefied*
21 *petroleum gas, hydrogen, propane, or methanol or eth-*
22 *anol at no less than 85 percent by volume;*

23 *(2) the term “idling” means operating an engine*
24 *while remaining stationary for more than approxi-*
25 *mately 3 minutes, except that such term does not*

1 *apply to routine stoppages associated with traffic*
2 *movement or congestion; and*

3 *(3) the term “ultra-low sulfur diesel school bus”*
4 *means a school bus powered by diesel fuel which con-*
5 *tains sulfur at not more than 15 parts per million.*

6 **SEC. 5032. FUEL CELL BUS DEVELOPMENT AND DEM-**
7 **ONSTRATION PROGRAM.**

8 *(a) ESTABLISHMENT OF PROGRAM.—The Secretary*
9 *shall establish a program for entering into cooperative*
10 *agreements with private sector fuel cell bus developers for*
11 *the acquisition of fuel cell-powered school buses, and subse-*
12 *quently with not less than 2 units of local government using*
13 *natural gas-powered school buses and such private sector*
14 *fuel cell bus developers to facilitate the use of fuel cell-pow-*
15 *ered school buses.*

16 *(b) COST SHARING.—The non-Federal contribution for*
17 *activities funded under this section shall be not less than*
18 *20 percent for fuel infrastructure development activities.*

19 *(c) FUNDING.—No more than \$25,000,000 of the*
20 *amounts authorized under section 5033 may be used for*
21 *carrying out this section for the period encompassing fiscal*
22 *years 2003 through 2006.*

23 *(d) REPORTS TO CONGRESS.—Not later than 3 years*
24 *after the date of the enactment of this Act, and not later*

1 *than October 1, 2006, the Secretary shall transmit to the*
2 *Congress a report that—*

3 *(1) evaluates the process of converting natural*
4 *gas infrastructure to accommodate fuel cell-powered*
5 *school buses; and*

6 *(2) assesses the overall impact on energy con-*
7 *servation, public health, and the environment as a re-*
8 *sult of this program under this section.*

9 **SEC. 5033. AUTHORIZATION OF APPROPRIATIONS.**

10 *There are authorized to be appropriated to the Sec-*
11 *retary for carrying out this subtitle, to remain available*
12 *until expended—*

13 *(1) \$60,000,000 for fiscal year 2004;*

14 *(2) \$70,000,000 for fiscal year 2005; and*

15 *(3) \$80,000,000 for fiscal year 2006.*

16 ***Subtitle D—Advanced Vehicles***

17 **SEC. 5041. DEFINITIONS.**

18 *For the purposes of this subtitle, the following defini-*
19 *tions apply:*

20 *(1) ALTERNATIVE FUELED VEHICLE.—The term*
21 *“alternative fueled vehicle” means a vehicle propelled*
22 *solely on an alternative fuel as defined in section 301*
23 *of the Energy Policy Act of 1992 (42 U.S.C. 13211),*
24 *except the term does not include any vehicle that the*
25 *Secretary determines, by rule, does not yield substan-*

1 *tial environmental benefits over a vehicle operating*
2 *solely on gasoline or diesel derived from fossil fuels.*

3 (2) *FUEL CELL VEHICLE.*—*The term “fuel cell*
4 *vehicle” means a vehicle propelled by one or more*
5 *cells that convert chemical energy directly into elec-*
6 *tricity by combining oxygen with hydrogen fuel which*
7 *is stored on board the vehicle in any form and may*
8 *or may not require reformation prior to use.*

9 (3) *HYBRID VEHICLE.*—*The term “hybrid vehi-*
10 *cle” means a medium or heavy duty vehicle propelled*
11 *by an internal combustion engine using any combus-*
12 *tible fuel and an onboard rechargeable battery storage*
13 *system.*

14 (4) *NEIGHBORHOOD ELECTRIC VEHICLE.*—*The*
15 *term “neighborhood electric vehicle” means a motor*
16 *vehicle that qualifies as both—*

17 (A) *a low-speed vehicle, as such term is de-*
18 *defined in section 571.3(b) of title 49, Code of Fed-*
19 *eral Regulations; and*

20 (B) *a zero-emission vehicle, as such term is*
21 *defined in section 86.1702–99 of title 40, Code of*
22 *Federal Regulations.*

23 (5) *PILOT PROGRAM.*—*The term “pilot program”*
24 *means the competitive grant program established*
25 *under section 5042.*

1 (6) *ULTRA-LOW SULFUR DIESEL VEHICLE.*—*The*
2 *term “ultra-low sulfur diesel vehicle” means a vehicle*
3 *manufactured in model years 2002 through 2006*
4 *powered by a heavy-duty diesel engine that—*

5 (A) *is fueled by diesel fuel which contains*
6 *sulfur at not more than 15 parts per million;*
7 *and*

8 (B) *emits not more than the lesser of—*

9 (i) *for vehicles manufactured in—*

10 (I) *model years 2002 and 2003,*
11 *3.0 grams per brake horsepower-hour of*
12 *oxides of nitrogen and .01 grams per*
13 *brake horsepower-hour of particulate*
14 *matter; and*

15 (II) *model years 2004 through*
16 *2006, 2.5 grams per brake horsepower-*
17 *hour of nonmethane hydrocarbons and*
18 *oxides of nitrogen and .01 grams per*
19 *brake horsepower-hour of particulate*
20 *matter; or*

21 (ii) *the emissions of nonmethane hy-*
22 *drocarbons, oxides of nitrogen, and particu-*
23 *late matter of the best performing tech-*
24 *nology of ultra-low sulfur diesel vehicles of*

1 *the same class and application that are*
2 *commercially available.*

3 **SEC. 5042. PILOT PROGRAM.**

4 *(a) ESTABLISHMENT.—The Secretary shall establish a*
5 *competitive grant pilot program, to be administered*
6 *through the Clean Cities Program of the Department of En-*
7 *ergy, to provide not more than 10 geographically dispersed*
8 *project grants to State governments, local governments, or*
9 *metropolitan transportation authorities to carry out a*
10 *project or projects for the purposes described in subsection*
11 *(b).*

12 *(b) GRANT PURPOSES.—Grants under this section*
13 *may be used for the following purposes:*

14 *(1) The acquisition of alternative fueled vehicles*
15 *or fuel cell vehicles, including—*

16 *(A) passenger vehicles including neighbor-*
17 *hood electric vehicles; and*

18 *(B) motorized two-wheel bicycles, scooters,*
19 *or other vehicles for use by law enforcement per-*
20 *sonnel or other State or local government or met-*
21 *ropolitan transportation authority employees.*

22 *(2) The acquisition of alternative fueled vehicles,*
23 *hybrid vehicles, or fuel cell vehicles, including—*

24 *(A) buses used for public transportation or*
25 *transportation to and from schools;*

1 (B) *delivery vehicles for goods or services;*
2 *and*

3 (C) *ground support vehicles at public air-*
4 *ports, including vehicles to carry baggage or*
5 *push airplanes away from terminal gates.*

6 (3) *The acquisition of ultra-low sulfur diesel ve-*
7 *hicles.*

8 (4) *Infrastructure necessary to directly support*
9 *an alternative fueled vehicle, fuel cell vehicle, or hy-*
10 *brid vehicle project funded by the grant, including*
11 *fueling and other support equipment.*

12 (5) *Operation and maintenance of vehicles, in-*
13 *frastructure, and equipment acquired as part of a*
14 *project funded by the grant.*

15 (c) *APPLICATIONS.—*

16 (1) *REQUIREMENTS.—The Secretary shall issue*
17 *requirements for applying for grants under the pilot*
18 *program. At a minimum, the Secretary shall require*
19 *that applications be submitted by the head of a State*
20 *or local government or a metropolitan transportation*
21 *authority, or any combination thereof, and a reg-*
22 *istered participant in the Clean Cities Program of the*
23 *Department of Energy, and shall include—*

1 (A) a description of the projects proposed in
2 the application, including how they meet the re-
3 quirements of this subtitle;

4 (B) an estimate of the ridership or degree of
5 use of the projects proposed in the application;

6 (C) an estimate of the air pollution emis-
7 sions reduced and fossil fuel displaced as a result
8 of the projects proposed in the application, and
9 a plan to collect and disseminate environmental
10 data, related to the projects to be funded under
11 the grant, over the life of the projects;

12 (D) a description of how the projects pro-
13 posed in the application will be sustainable
14 without Federal assistance after the completion
15 of the term of the grant;

16 (E) a complete description of the costs of
17 each project proposed in the application, includ-
18 ing acquisition, construction, operation, and
19 maintenance costs over the expected life of the
20 project;

21 (F) a description of which costs of the
22 projects proposed in the application will be sup-
23 ported by Federal assistance under this subtitle;
24 and

1 (G) documentation to the satisfaction of the
2 Secretary that diesel fuel containing sulfur at
3 not more than 15 parts per million is available
4 for carrying out the projects, and a commitment
5 by the applicant to use such fuel in carrying out
6 the projects.

7 (2) *PARTNERS.*—An applicant under paragraph
8 (1) may carry out projects under the pilot program
9 in partnership with public and private entities.

10 (d) *SELECTION CRITERIA.*—In evaluating applica-
11 tions under the pilot program, the Secretary shall consider
12 each applicant’s previous experience with similar projects
13 and shall give priority consideration to applications that—

14 (1) are most likely to maximize protection of the
15 environment;

16 (2) demonstrate the greatest commitment on the
17 part of the applicant to ensure funding for the pro-
18 posed projects and the greatest likelihood that each
19 project proposed in the application will be main-
20 tained or expanded after Federal assistance under
21 this subtitle is completed; and

22 (3) exceed the minimum requirements of sub-
23 section (c)(1)(A).

24 (e) *PILOT PROJECT REQUIREMENTS.*—

1 (1) *MAXIMUM AMOUNT.*—*The Secretary shall not*
2 *provide more than \$20,000,000 in Federal assistance*
3 *under the pilot program to any applicant.*

4 (2) *COST SHARING.*—*The Secretary shall not*
5 *provide more than 50 percent of the cost, incurred*
6 *during the period of the grant, of any project under*
7 *the pilot program.*

8 (3) *MAXIMUM PERIOD OF GRANTS.*—*The Sec-*
9 *retary shall not fund any applicant under the pilot*
10 *program for more than 5 years.*

11 (4) *DEPLOYMENT AND DISTRIBUTION.*—*The Sec-*
12 *retary shall seek to the maximum extent practicable*
13 *to ensure a broad geographic distribution of project*
14 *sites.*

15 (5) *TRANSFER OF INFORMATION AND KNOWL-*
16 *EDGE.*—*The Secretary shall establish mechanisms to*
17 *ensure that the information and knowledge gained by*
18 *participants in the pilot program are transferred*
19 *among the pilot program participants and to other*
20 *interested parties, including other applicants that*
21 *submitted applications.*

22 (f) *SCHEDULE.*—

23 (1) *PUBLICATION.*—*Not later than 3 months*
24 *after the date of the enactment of this Act, the Sec-*
25 *retary shall publish in the Federal Register, Com-*

1 *merce Business Daily, and elsewhere as appropriate,*
2 *a request for applications to undertake projects under*
3 *the pilot program. Applications shall be due within 6*
4 *months of the publication of the notice.*

5 (2) *SELECTION.*—*Not later than 6 months after*
6 *the date by which applications for grants are due, the*
7 *Secretary shall select by competitive, peer review all*
8 *applications for projects to be awarded a grant under*
9 *the pilot program.*

10 (g) *LIMIT ON FUNDING.*—*The Secretary shall provide*
11 *not less than 20 percent and not more than 25 percent of*
12 *the grant funding made available under this section for the*
13 *acquisition of ultra-low sulfur diesel vehicles.*

14 **SEC. 5043. REPORTS TO CONGRESS.**

15 (a) *INITIAL REPORT.*—*Not later than 2 months after*
16 *the date grants are awarded under this subtitle, the Sec-*
17 *retary shall transmit to the Congress a report containing—*

18 (1) *an identification of the grant recipients and*
19 *a description of the projects to be funded;*

20 (2) *an identification of other applicants that*
21 *submitted applications for the pilot program; and*

22 (3) *a description of the mechanisms used by the*
23 *Secretary to ensure that the information and knowl-*
24 *edge gained by participants in the pilot program are*
25 *transferred among the pilot program participants*

1 *and to other interested parties, including other appli-*
2 *cants that submitted applications.*

3 (b) *EVALUATION.*—*Not later than 3 years after the*
4 *date of the enactment of this Act, and annually thereafter*
5 *until the pilot program ends, the Secretary shall transmit*
6 *to the Congress a report containing an evaluation of the*
7 *effectiveness of the pilot program, including an assessment*
8 *of the benefits to the environment derived from the projects*
9 *included in the pilot program as well as an estimate of the*
10 *potential benefits to the environment to be derived from*
11 *widespread application of alternative fueled vehicles and*
12 *ultra-low sulfur diesel vehicles.*

13 ***SEC. 5044. AUTHORIZATION OF APPROPRIATIONS.***

14 *There are authorized to be appropriated to the Sec-*
15 *retary \$200,000,000 to carry out this subtitle, to remain*
16 *available until expended.*

17 ***Subtitle E—Hydrogen Fuel Cell***
18 ***Heavy-Duty Vehicles***

19 ***SEC. 5051. DEFINITION.***

20 *For the purposes of this subtitle, the term “advanced*
21 *vehicle technologies program” means the program created*
22 *pursuant to section 5506 of title 49, United States Code.*

23 ***SEC. 5052. FINDINGS.***

24 *The Congress makes the following findings:*

1 (1) *The Department of Energy and the Department of Transportation jointly developed the consortium-based advanced vehicle technologies program to develop energy efficient and clean heavy-duty vehicles in 1998.*

6 (2) *The majority of clean fuel vehicles in operation today are transit buses.*

8 (3) *Hydrogen fuel cell heavy-duty vehicle bus deployments can most appropriately advance hydrogen fuel cell technology development due to centralized refueling, stable duty cycles, and fixed routes.*

12 (4) *Hydrogen fuel cell heavy-duty vehicle bus deployments are the most effective manner in which to advance technology developments for public awareness, consumption, and acceptance.*

16 **SEC. 5053. HYDROGEN FUEL CELL BUSES.**

17 *The Secretary of Energy, through the advanced vehicle technologies program, in coordination with the Secretary of Transportation, shall advance the development of fuel cell bus technologies by providing funding for 4 demonstration sites that—*

22 (1) *have or will soon have hydrogen infrastructure for fuel cell bus operation; and*

24 (2) *are operated by entities with experience in the development of fuel cell bus technologies,*

1 *to enable the widespread utilization of fuel cell buses. Such*
2 *demonstrations shall address the reliability of fuel cell*
3 *heavy-duty vehicles, expense, infrastructure, containment,*
4 *storage, safety, training, and other issues.*

5 **SEC. 5054. AUTHORIZATION OF APPROPRIATIONS.**

6 *There are authorized to be appropriated to the Sec-*
7 *retary of Energy \$10,000,000 for each of the fiscal years*
8 *2004 through 2008 for carrying out this subtitle.*

9 ***Subtitle F—Miscellaneous***

10 **SEC. 5061. RAILROAD EFFICIENCY.**

11 *(a) ESTABLISHMENT.—The Secretary shall, in con-*
12 *junction with the Secretary of Transportation and the Ad-*
13 *ministrator of the Environmental Protection Agency, estab-*
14 *lish a public-private research partnership involving the*
15 *Federal Government, the railroad industry, locomotive*
16 *manufacturers and equipment suppliers, and the research*
17 *facility owned by the Federal Railroad Administration and*
18 *operated by contract. The goal of the research partnership*
19 *shall include developing and demonstrating locomotive tech-*
20 *nologies that increase fuel economy, reduce emissions, and*
21 *lower costs.*

22 *(b) AUTHORIZATION OF APPROPRIATIONS.—There are*
23 *authorized to be appropriated to carry out the requirements*
24 *of this section \$25,000,000 for fiscal year 2004, \$30,000,000*
25 *for fiscal year 2005, and \$35,000,000 for fiscal year 2006.*

1 **SEC. 5062. MOBILE EMISSION REDUCTIONS TRADING AND**
2 **CREDITING.**

3 *Within 180 days after the date of enactment of this*
4 *Act, the Administrator of the Environmental Protection*
5 *Agency shall provide a report to the Congress on the Envi-*
6 *ronmental Protection Agency's experience with the trading*
7 *of mobile source emission reduction credits for use by own-*
8 *ers and operators of stationary source emission sources to*
9 *meet emission offset requirements within a nonattainment*
10 *area. The report shall describe—*

11 *(1) projects approved by the Environmental Pro-*
12 *tection Agency that include the trading of mobile*
13 *source emission reduction credits for use by sta-*
14 *tionary sources in complying with offset require-*
15 *ments, including project and stationary sources loca-*
16 *tion, volumes of emissions offset and traded, a de-*
17 *scription of the sources of mobile emission reduction*
18 *credits, and, if available, the cost of the credits;*

19 *(2) the significant issues identified by the Envi-*
20 *ronmental Protection Agency in its consideration and*
21 *approval of trading in such projects;*

22 *(3) the requirements for monitoring and assess-*
23 *ing the air quality benefits of any approved project;*

24 *(4) the statutory authority upon which the Envi-*
25 *ronmental Protection Agency has based approval of*
26 *such projects;*

1 (5) *an evaluation of how the resolution of issues*
2 *in approved projects could be utilized in other*
3 *projects; and*

4 (6) *any other issues the Environmental Protec-*
5 *tion Agency considers relevant to the trading and*
6 *generation of mobile source emission reduction credits*
7 *for use by stationary sources or for other purposes.*

8 **SEC. 5063. IDLE REDUCTION TECHNOLOGIES.**

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

10 (1) *IDLE REDUCTION TECHNOLOGY.—The term*
11 *“idle reduction technology” means a device or system*
12 *of devices utilized to reduce long-duration idling of a*
13 *heavy-duty vehicle.*

14 (2) *HEAVY-DUTY VEHICLE.—The term “heavy-*
15 *duty vehicle” means a vehicle that has a gross vehicle*
16 *weight rating greater than 26,000 pounds and is pow-*
17 *ered by a diesel engine.*

18 (3) *LONG-DURATION IDLING.—The term “long-*
19 *duration idling” means the operation of a main drive*
20 *engine, for a period greater than 15 consecutive min-*
21 *utes, where the main drive engine is not engaged in*
22 *gear. Such term does not apply to routine stoppages*
23 *associated with traffic movement or congestion.*

24 (b) *STUDIES OF THE BENEFITS OF IDLE REDUCTION*
25 *TECHNOLOGIES.—*

1 (1) *POTENTIAL FUEL SAVINGS.*—Not later than
2 90 days after the date of enactment of this section, the
3 Secretary of Energy shall, in consultation with the
4 Secretary of Transportation, commence a study to
5 analyze the potential fuel savings resulting from use
6 of idle reduction technologies.

7 (2) *RECOGNITION OF BENEFITS OF ADVANCED*
8 *IDLE REDUCTION TECHNOLOGIES.*—Within 90 days
9 after the date of enactment of this section, the Admin-
10 istrator of the Environmental Protection Agency is
11 directed to commence a review of the Agency’s mobile
12 source air emissions models used under the Clean Air
13 Act to determine whether such models accurately re-
14 flect the emissions resulting from long-duration idling
15 of heavy-duty trucks and other vehicles and engines,
16 and shall update those models as the Administrator
17 deems appropriate. Additionally, within 90 days after
18 the date of enactment of this section, the Adminis-
19 trator shall commence a review as to the appropriate
20 emissions reductions credit that should be allotted
21 under the Clean Air Act for the use of advanced idle
22 reduction technologies, and whether such credits
23 should be subject to an emissions trading system, and
24 shall revise Agency regulations and guidance as the
25 Administrator deems appropriate.

1 (3) *IDLING TECHNOLOGIES.*—Not later than 180
2 days after the date of the enactment of this section,
3 the Secretary of Energy, in consultation with the Sec-
4 retary of Transportation and the Administrator of the
5 Environmental Protection Agency, shall commence a
6 study to analyze where heavy duty and other vehicles
7 stop for long duration idling.

8 (c) *VEHICLE WEIGHT EXEMPTION.*—Section 127(a) of
9 title 23, United States Code, is amended by adding at the
10 end the following: “In instances where an idle reduction
11 technology is installed onboard a motor vehicle, the max-
12 imum gross vehicle weight limit and the axle weight limit
13 for any motor vehicle equipped with an idling reduction
14 system may be increased by an amount necessary to com-
15 pensate for the additional weight of the idling reduction
16 system, except that the weight limit increase shall be no
17 greater than 400 pounds.”.

18 **SEC. 5064. STUDY OF AVIATION FUEL CONSERVATION AND**
19 **EMISSIONS.**

20 The Administrator of the Federal Aviation Adminis-
21 tration and the Administrator of the Environmental Protec-
22 tion Agency shall jointly commence a study within 60 days
23 after the date of enactment of this Act to identify the impact
24 of aircraft emissions on air quality in nonattainment areas
25 and to identify ways to promote fuel conservation measures

1 *for aviation, enhance fuel efficiency, and reduce emissions.*
2 *As part of this study, the Administrator of the Federal*
3 *Aviation Administration and the Administrator of the En-*
4 *vironmental Protection Agency shall focus on how air traf-*
5 *fic management inefficiencies, such as aircraft idling at*
6 *airports, result in unnecessary fuel burn and air emissions.*
7 *Within 180 days after the commencement of the study, the*
8 *Administrator of the Federal Aviation Administration and*
9 *the Administrator of the Environmental Protection Agency*
10 *shall submit a report to the Committees on Energy and*
11 *Commerce and Transportation and Infrastructure of the*
12 *House of Representatives and the Committees on Environ-*
13 *ment and Public Works and Commerce, Science, and Trans-*
14 *portation of the Senate containing the results of the study*
15 *and recommendations as to how unnecessary fuel use and*
16 *emissions affecting air quality may be reduced, without im-*
17 *pacting safety and security, increasing individual aircraft*
18 *noise, and taking into account all aircraft emissions and*
19 *their relative impact on human health.*

20 **SEC. 5065. DIESEL FUELED VEHICLES.**

21 (a) **DIESEL COMBUSTION AND AFTER TREATMENT**
22 **TECHNOLOGIES.**—*The Secretary of Energy shall accelerate*
23 *efforts to improve diesel combustion and after-treatment*
24 *technologies for use in diesel fueled motor vehicles.*

25 (b) **GOAL.**—

1 (1) *COMPLIANCE WITH TIER 2 EMISSION STAND-*
2 *ARDS BY 2010.*—*The Secretary shall carry out sub-*
3 *section (a) with a view to developing and dem-*
4 *onstrating diesel technology meeting tier 2 emission*
5 *standards not later than 2010.*

6 (2) *TIER 2 EMISSION STANDARDS DEFINED.*—*In*
7 *this subsection, the term “tier 2 emission standards”*
8 *means the motor vehicle emission standards promul-*
9 *gated by the Administrator of the Environmental*
10 *Protection Agency on February 10, 2000, under sec-*
11 *tions 202 and 211 of the Clean Air Act to apply to*
12 *passenger cars, light trucks, and larger passenger ve-*
13 *hicles of model years after the 2003 vehicle model*
14 *year.*

15 **SEC. 5066. HYBRID VEHICLES.**

16 (a) *IN GENERAL.*—*Notwithstanding section 102(a)(1)*
17 *of title 23, United States Code, a State may, for the purpose*
18 *of promoting energy conservation, permit a hybrid vehicle*
19 *which is either a passenger automobile or light duty truck*
20 *with fewer than 2 occupants to operate in high occupancy*
21 *vehicle lanes.*

22 (b) *DEFINITION.*—*In this section, the term “hybrid ve-*
23 *hicle” means a motor vehicle which draws propulsion en-*
24 *ergy from both—*

1 (1) *an internal combustion or heat engine using*
2 *combustible fuel; and*

3 (2) *an onboard rechargeable energy storage sys-*
4 *tem.*

5 **SEC. 5067. WAIVERS OF ALTERNATIVE FUELED VEHICLE**
6 **FUELING REQUIREMENT.**

7 Section 400AA(a)(3)(E) of the Energy Policy and
8 Conservation Act (42 U.S.C. 6374(a)(3)(E)) is amended to
9 read as follows:

10 “(E)(i) *Dual fueled vehicles acquired pursuant to this*
11 *section shall be operated on alternative fuels unless the Sec-*
12 *retary determines that an agency needs a waiver of such*
13 *requirement for vehicles in the fleet of the agency in a par-*
14 *ticular geographic area where—*

15 “(I) *the alternative fuel otherwise required to be*
16 *used in the vehicle is not reasonably available to re-*
17 *tail purchasers of the fuel, as certified to the Sec-*
18 *retary by the head of the agency; or*

19 “(II) *the cost of the alternative fuel otherwise re-*
20 *quired to be used in the vehicle is unreasonably more*
21 *expensive compared to gasoline, as certified by the*
22 *head of the agency.*

23 “(ii) *The Secretary shall monitor compliance with this*
24 *subparagraph by all such fleets and shall report annually*
25 *to the Congress on the extent to which the requirements of*

1 *this subparagraph are being achieved. The report shall in-*
2 *clude information on annual reductions achieved of petro-*
3 *leum-based fuels and the problems, if any, encountered in*
4 *acquiring alternative fuels.”.*

5 ***TITLE VI—DOE PROGRAMS***

6 ***SEC. 6001. PURPOSES.***

7 *The purposes of this title are to—*

8 *(1) contribute to a national energy strategy*
9 *through Department of Energy programs that pro-*
10 *mote the production and conservation of energy in*
11 *partnership with industry;*

12 *(2) protect and strengthen the Nation’s economy,*
13 *standard of living, and national security by reducing*
14 *dependence on imported energy;*

15 *(3) meet future needs for energy services at the*
16 *lowest total cost to the Nation, giving balanced and*
17 *comprehensive consideration to technologies that im-*
18 *prove the efficiency of energy end uses and that en-*
19 *hance energy supply;*

20 *(4) reduce the environmental impacts of energy*
21 *production, distribution, transportation, and use;*

22 *(5) help increase domestic production of energy,*
23 *increase the availability of hydrocarbon reserves, and*
24 *lower energy prices; and*

1 (6) *stimulate economic growth and enhance the*
2 *ability of United States companies to compete in fu-*
3 *ture markets for advanced energy technologies.*

4 **SEC. 6002. DEFINITIONS.**

5 *For purposes of this title:*

6 (1) *DEPARTMENT.*—*The term “Department”*
7 *means the Department of Energy.*

8 (2) *DEPARTMENTAL MISSION.*—*The term “de-*
9 *partmental mission” means any of the functions vest-*
10 *ed in the Secretary of Energy by the Department of*
11 *Energy Organization Act (42 U.S.C. 7101 et seq.) or*
12 *other law.*

13 (3) *INSTITUTION OF HIGHER EDUCATION.*—*The*
14 *term “institution of higher education” has the mean-*
15 *ing given that term in section 101(a) of the Higher*
16 *Education Act of 1965 (20 U.S.C. 1001(a)).*

17 (4) *JOINT VENTURE.*—*The term “joint venture”*
18 *has the meaning given that term under section 2 of*
19 *the National Cooperative Research and Production*
20 *Act of 1993 (15 U.S.C. 4301).*

21 (5) *NATIONAL LABORATORY.*—*The term “Na-*
22 *tional Laboratory” means any of the following lab-*
23 *oratories owned by the Department:*

24 (A) *Ames National Laboratory.*

25 (B) *Argonne National Laboratory.*

1 (C) *Brookhaven National Laboratory.*

2 (D) *Fermi National Laboratory.*

3 (E) *Idaho National Engineering and Envi-*
4 *ronmental Laboratory.*

5 (F) *Lawrence Berkeley National Labora-*
6 *tory.*

7 (G) *Lawrence Livermore National Labora-*
8 *tory.*

9 (H) *Los Alamos National Laboratory.*

10 (I) *National Energy Technology Labora-*
11 *tory.*

12 (J) *National Renewable Energy Laboratory.*

13 (K) *Oak Ridge National Laboratory.*

14 (L) *Pacific Northwest National Laboratory.*

15 (M) *Princeton Plasma Physics Laboratory.*

16 (N) *Sandia National Laboratories.*

17 (O) *Thomas Jefferson National Accelerator*
18 *Facility.*

19 (6) *NONMILITARY ENERGY LABORATORY.—The*
20 *term “nonmilitary energy laboratory” means any of*
21 *the following laboratories of the Department:*

22 (A) *Ames National Laboratory.*

23 (B) *Argonne National Laboratory.*

24 (C) *Brookhaven National Laboratory.*

25 (D) *Fermi National Laboratory.*

1 (E) *Lawrence Berkeley National Labora-*
2 *tory.*

3 (F) *Oak Ridge National Laboratory.*

4 (G) *Pacific Northwest National Laboratory.*

5 (H) *Princeton Plasma Physics Laboratory.*

6 (I) *Stanford Linear Accelerator Center.*

7 (J) *Thomas Jefferson National Accelerator*
8 *Facility.*

9 (7) *SECRETARY.*—*The term “Secretary” means*
10 *the Secretary of Energy.*

11 ***Subtitle A—Energy Efficiency***

12 ***PART 1—AUTHORIZATION OF APPROPRIATIONS***

13 ***SEC. 6011. ENERGY EFFICIENCY.***

14 (a) *IN GENERAL.*—*The following sums are authorized*
15 *to be appropriated to the Secretary for energy efficiency and*
16 *conservation activities, including activities authorized*
17 *under this subtitle:*

18 (1) *For fiscal year 2003, \$560,000,000.*

19 (2) *For fiscal year 2004, \$616,000,000.*

20 (3) *For fiscal year 2005, \$695,000,000.*

21 (4) *For fiscal year 2006, \$772,000,000.*

22 (5) *For fiscal year 2007, \$865,000,000.*

23 (b) *ALLOCATIONS.*—*From amounts authorized under*
24 *subsection (a), the following sums are authorized:*

1 (1) *LIGHTING SYSTEMS.*—*For activities under*
2 *section 6021, \$10,000,000 for fiscal year 2003 and*
3 *\$50,000,000 for each of fiscal years 2004 through*
4 *2007.*

5 (2) *SECONDARY ELECTRIC VEHICLE BATTERY*
6 *USE PROGRAM.*—*For activities under section 6032—*

7 (A) *for fiscal year 2003, \$1,000,000;*

8 (B) *for fiscal year 2004, \$4,000,000;*

9 (C) *for fiscal year 2005, \$7,000,000;*

10 (D) *for fiscal year 2006, \$7,000,000; and*

11 (E) *for fiscal year 2007, \$7,000,000.*

12 (c) *EXTENDED AUTHORIZATION.*—*There are author-*
13 *ized to be appropriated to the Secretary for activities under*
14 *section 6021, \$50,000,000 for each of fiscal years 2008*
15 *through 2012.*

16 (d) *LIMITS ON USE OF FUNDS.*—*None of the funds au-*
17 *thorized to be appropriated under this section may be used*
18 *for—*

19 (1) *the promulgation and implementation of en-*
20 *ergy efficiency regulations;*

21 (2) *the Weatherization Assistance Program*
22 *under part A of title IV of the Energy Conservation*
23 *and Production Act;*

1 (3) *the State Energy Program under part D of*
2 *title III of the Energy Policy and Conservation Act;*
3 *or*

4 (4) *the Federal Energy Management Program*
5 *under part 3 of title V of the National Energy Con-*
6 *servation Policy Act.*

7 **PART 2—LIGHTING SYSTEMS**

8 **SEC. 6021. NEXT GENERATION LIGHTING INITIATIVE.**

9 (a) *IN GENERAL.*—*The Secretary shall carry out a*
10 *Next Generation Lighting Initiative in accordance with this*
11 *section to support activities related to advanced solid-state*
12 *lighting technologies based on white light emitting diodes.*

13 (b) *OBJECTIVES.*—*The objectives of the initiative shall*
14 *be—*

15 (1) *to develop, by 2012, advanced solid-state*
16 *lighting technologies based on white light emitting di-*
17 *odes that, compared to incandescent and fluorescent*
18 *lighting technologies, are—*

19 (A) *longer lasting;*

20 (B) *more energy-efficient; and*

21 (C) *cost-competitive;*

22 (2) *to develop an inorganic white light emitting*
23 *diode that has an efficiency of 160 lumens per watt*
24 *and a 10-year lifetime; and*

1 (3) *to develop an organic white light emitting*
2 *diode with an efficiency of 100 lumens per watt with*
3 *a 5-year lifetime that—*

4 (A) *illuminates over a full color spectrum;*

5 (B) *covers large areas over flexible surfaces;*

6 *and*

7 (C) *does not contain harmful pollutants,*

8 *such as mercury, typical of fluorescent lamps.*

9 (c) *CONSORTIUM.—*

10 (1) *IN GENERAL.—The Secretary shall establish*
11 *the Next Generation Lighting Initiative through a*
12 *private consortium (which may include private firms,*
13 *trade associations and institutions of higher edu-*
14 *cation), which the Secretary shall select through a*
15 *competitive process. Each proposed consortium shall*
16 *submit to the Secretary such information as the Sec-*
17 *retary may require, including a program plan agreed*
18 *to by all participants of the consortium.*

19 (2) *JOINT VENTURE.—The consortium shall be*
20 *structured as a joint venture among the participants*
21 *of the consortium. The Secretary shall serve on the*
22 *governing council of the consortium.*

23 (3) *ELIGIBILITY.—To be eligible to be selected as*
24 *the consortium under paragraph (1), an applicant*
25 *must be broadly representative of United States solid-*

1 *state lighting research, development, and manufac-*
2 *turing expertise as a whole.*

3 (4) *GRANTS.—(A) The Secretary shall award*
4 *grants to the consortium, which the consortium may*
5 *disburse to researchers, including those who are not*
6 *participants of the consortium.*

7 (B) *To receive a grant, the consortium must pro-*
8 *vide a description to the Secretary of the proposed ac-*
9 *tivities and list the parties that will receive funding.*

10 (5) *NATIONAL LABORATORIES.—National Lab-*
11 *oratories may participate in the activities described*
12 *in this section, and may receive funds from the con-*
13 *sortium.*

14 (6) *INTELLECTUAL PROPERTY.—Participants in*
15 *the consortium and the Federal Government shall*
16 *have royalty-free nonexclusive rights to use intellec-*
17 *tual property derived from activities funded pursuant*
18 *to this subsection.*

19 (d) *DEVELOPMENT, DEMONSTRATION, AND COMMER-*
20 *CIAL APPLICATION.—The Secretary shall carry out the de-*
21 *velopment, demonstration, and commercial application ac-*
22 *tivities of the Next Generation Lighting Initiative through*
23 *awards to private firms, trade associations, and institu-*
24 *tions of higher education. In selecting awardees, the Sec-*

1 *retary may give preference to members of the consortium*
2 *selected pursuant to subsection (c).*

3 *(e) PLANS AND ASSESSMENTS.—(1) The consortium*
4 *shall formulate an annual operating plan which shall in-*
5 *clude priorities, technical milestones, and plans for tech-*
6 *nology transfer, and which shall be subject to approval by*
7 *the Secretary.*

8 *(2) The Secretary shall enter into an arrangement*
9 *with the National Academy of Sciences to conduct periodic*
10 *reviews of the Next Generation Lighting Initiative. The*
11 *Academy shall review the priorities, technical milestones,*
12 *and plans for technology transfer established under para-*
13 *graph (1) and evaluate the progress toward achieving them.*
14 *The Secretary shall consider the results of such reviews in*
15 *evaluating the plans submitted under paragraph (1).*

16 *(f) AUDIT.—The Secretary shall retain an inde-*
17 *pendent, commercial auditor to perform an audit of the*
18 *consortium to determine the extent to which the funds au-*
19 *thorized by this section have been expended in a manner*
20 *consistent with the purposes of this section. The auditor*
21 *shall transmit a report annually to the Secretary, who shall*
22 *transmit the report to the Congress, along with a plan to*
23 *remedy any deficiencies cited in the report.*

24 *(g) SUNSET.—The Next Generation Lighting Initia-*
25 *tive shall terminate no later than September 30, 2013.*

1 **SEC. 6032. ESTABLISHMENT OF SECONDARY ELECTRIC VE-**
2 **HICLE BATTERY USE PROGRAM.**

3 (a) *PROGRAM.*—The Secretary shall establish and con-
4 duct a program for the secondary use of batteries. Such pro-
5 gram shall be—

6 (1) *designed to demonstrate the use of batteries*
7 *in secondary application, including utility and com-*
8 *mercial power storage and power quality;*

9 (2) *structured to evaluate the performance, in-*
10 *cluding useful service life and costs, of such batteries*
11 *in field operations, and evaluate the necessary sup-*
12 *porting infrastructure, including reuse and disposal*
13 *of batteries; and*

14 (3) *coordinated with ongoing secondary battery*
15 *use programs at the National Laboratories and in in-*
16 *dustry.*

17 (b) *SOLICITATION.*—(1) *Not later than 6 months after*
18 *the date of the enactment of this Act, the Secretary shall*
19 *solicit proposals to demonstrate the secondary use of bat-*
20 *teries and associated equipment and supporting infrastruc-*
21 *ture in geographic locations throughout the United States.*
22 *The Secretary may make additional solicitations for pro-*
23 *posals if the Secretary determines that such solicitations are*
24 *necessary to carry out this section.*

25 (2)(A) *Proposals submitted in response to a sollicita-*
26 *tion under this section shall include—*

1 (i) a description of the project, including the bat-
2 teries to be used in the project, the proposed locations
3 and applications for the batteries, the number of bat-
4 teries to be demonstrated, and the type, characteris-
5 tics, and estimated life-cycle costs of the batteries com-
6 pared to other energy storage devices currently used;

7 (ii) the contribution, if any, of State or local
8 governments and other persons to the demonstration
9 project;

10 (iii) the type of associated equipment and sup-
11 porting infrastructure to be demonstrated; and

12 (iv) any other information the Secretary con-
13 siders appropriate.

14 (B) If the proposal includes a lease arrangement, the
15 proposal shall indicate the terms of such lease arrangement
16 for the batteries and associated equipment.

17 (c) *SELECTION OF PROPOSALS.*—(1)(A) The Secretary,
18 in cooperation with affected Federal Regulatory agencies,
19 shall, not later than 3 months after the closing date estab-
20 lished by the Secretary for receipt of proposals under sub-
21 section (b), select at least 5 proposals to receive financial
22 assistance under this section.

23 (B) No one project selected under this section shall re-
24 ceive more than 25 percent of the funds authorized under

1 *this section. No more than 3 projects selected under this sec-*
2 *tion shall demonstrate the same battery type.*

3 *(2) In selecting a proposal under this section, the Sec-*
4 *retary shall consider—*

5 *(A) the ability of the proposer to acquire the bat-*
6 *teries and associated equipment and to successfully*
7 *manage and conduct the demonstration project, in-*
8 *cluding satisfying the reporting requirements set forth*
9 *in paragraph (3)(B);*

10 *(B) the geographic and climatic diversity of the*
11 *projects selected;*

12 *(C) the long-term technical and competitive via-*
13 *bility of the batteries to be used in the project and of*
14 *the original manufacturer of such batteries;*

15 *(D) the suitability of the batteries for their in-*
16 *tended uses;*

17 *(E) the technical performance of the batteries,*
18 *including the expected additional useful life and the*
19 *batteries' ability to retain energy;*

20 *(F) the environmental effects of the use of and*
21 *disposal of the batteries proposed to be used in the*
22 *project selected;*

23 *(G) the extent of involvement of State or local*
24 *government and other persons in the demonstration*
25 *project and whether such involvement will—*

1 (i) permit a reduction of the Federal cost
2 share per project; or

3 (ii) otherwise be used to allow the Federal
4 contribution to be provided to demonstrate a
5 greater number of batteries; and

6 (H) such other criteria as the Secretary considers
7 appropriate.

8 (3) CONDITIONS.—The Secretary shall require that—

9 (A) as a part of a demonstration project, the
10 users of the batteries provide to the proposer informa-
11 tion regarding the operation, maintenance, perform-
12 ance, and use of the batteries, and the proposer pro-
13 vide such information to the battery manufacturer,
14 for 3 years after the beginning of the demonstration
15 project;

16 (B) the proposer provide to the Secretary and the
17 Administrator of the United States Environmental
18 Protection Agency such information regarding the op-
19 eration, maintenance, performance, and use of the
20 batteries as the Secretary or the Administrator may
21 request;

22 (C) the proposer provide to the Secretary such
23 information regarding the disposal of the batteries as
24 the Secretary may require to ensure that the proposer

1 disposes of the batteries in accordance with applicable
2 law; and

3 (D) the proposer provide at least 50 percent of
4 the costs associated with the proposal.

5 ***Subtitle B—Distributed Energy and***
6 ***Electric Energy Systems***

7 ***PART 1—AUTHORIZATION OF APPROPRIATIONS***

8 ***SEC. 6201. DISTRIBUTED ENERGY AND ELECTRIC ENERGY***
9 ***SYSTEMS.***

10 *The following sums are authorized to be appropriated*
11 *to the Secretary for distributed energy and electric energy*
12 *systems activities, including activities authorized under*
13 *this subtitle:*

14 (1) *For fiscal year 2004, \$190,000,000.*

15 (2) *For fiscal year 2005, \$200,000,000.*

16 (3) *For fiscal year 2006, \$220,000,000.*

17 (4) *For fiscal year 2007, \$240,000,000.*

18 ***PART 2—DISTRIBUTED POWER***

19 ***SEC. 6221. STRATEGY.***

20 (a) *REQUIREMENT.*—*Not later than 1 year after the*
21 *date of enactment of this Act, the Secretary shall develop*
22 *and transmit to the Congress a strategy for a comprehensive*
23 *program to develop hybrid distributed power systems that*
24 *combine—*

1 (1) *one or more renewable electric power genera-*
2 *tion technologies of 10 megawatts or less located near*
3 *the site of electric energy use; and*

4 (2) *nonintermittent electric power generation*
5 *technologies suitable for use in a distributed power*
6 *system.*

7 (b) *CONTENTS.—The strategy shall—*

8 (1) *identify the needs best met with such hybrid*
9 *distributed power systems and the technological bar-*
10 *riers to the use of such systems;*

11 (2) *provide for the development of methods to de-*
12 *sign, test, integrate into systems, and operate such hy-*
13 *brid distributed power systems;*

14 (3) *include, as appropriate, activities needed for*
15 *the adoption of such hybrid distributed power sys-*
16 *tems, including energy storage devices and environ-*
17 *mental control technologies; and*

18 (4) *describe how activities under the strategy*
19 *will be integrated with other activities supported by*
20 *the Department of Energy related to electric power*
21 *technologies.*

22 **SEC. 6222. HIGH POWER DENSITY INDUSTRY PROGRAM.**

23 *The Secretary shall establish a comprehensive program*
24 *to improve energy efficiency of high power density facilities,*
25 *including data centers, server farms, and telecommuni-*

1 cations facilities. Such program shall consider technologies
2 that provide significant improvement in thermal controls,
3 metering, load management, peak load reduction, or the ef-
4 ficient cooling of electronics.

5 **SEC. 6223. MICRO-COGENERATION ENERGY TECHNOLOGY.**

6 The Secretary shall make competitive, merit-based
7 grants to consortia for the development of micro-cogenera-
8 tion energy technology. The consortia shall explore the use
9 of small-scale combined heat and power in residential heat-
10 ing appliances.

11 **PART 3—TRANSMISSION SYSTEMS**

12 **SEC. 6231. TRANSMISSION INFRASTRUCTURE SYSTEMS.**

13 (a) PROGRAM AUTHORIZED.—The Secretary shall de-
14 velop a program to promote improved reliability and effi-
15 ciency of electrical transmission systems. Such program
16 may include—

17 (1) advanced energy technologies, materials, and
18 systems;

19 (2) advanced grid reliability and efficiency tech-
20 nology development;

21 (3) technologies contributing to significant load
22 reductions;

23 (4) advanced metering, load management, and
24 control technologies;

1 (5) *technologies to enhance existing grid compo-*
2 *nents;*

3 (6) *the development and use of high-temperature*
4 *superconductors to—*

5 (A) *enhance the reliability, operational*
6 *flexibility, or power-carrying capability of elec-*
7 *tric transmission or distribution systems; or*

8 (B) *increase the efficiency of electric energy*
9 *generation, transmission, distribution, or storage*
10 *systems;*

11 (7) *integration of power systems, including sys-*
12 *tems to deliver high-quality electric power, electric*
13 *power reliability, and combined heat and power;*

14 (8) *any other infrastructure technologies, as ap-*
15 *propriate; and*

16 (9) *technology transfer and education.*

17 (b) *PROGRAM PLAN.—Not later than 1 year after the*
18 *date of the enactment of this Act, the Secretary, in consulta-*
19 *tion with other appropriate Federal agencies, shall prepare*
20 *and transmit to Congress a 5-year program plan to guide*
21 *activities under this section. In preparing the program*
22 *plan, the Secretary shall consult with utilities, energy serv-*
23 *ices providers, manufacturers, institutions of higher edu-*
24 *cation, other appropriate State and local agencies, environ-*

1 *mental organizations, professional and technical societies,*
2 *and any other persons the Secretary considers appropriate.*

3 *(c) REPORT.—Not later than 2 years after the trans-*
4 *mittal of the plan under subsection (b), the Secretary shall*
5 *transmit a report to Congress describing the progress made*
6 *under this section and identifying any additional resources*
7 *needed to continue the development and commercial appli-*
8 *cation of transmission infrastructure technologies.*

9 ***Subtitle C—Renewable Energy***

10 ***PART 1—AUTHORIZATION OF APPROPRIATIONS***

11 ***SEC. 6301. RENEWABLE ENERGY.***

12 *(a) IN GENERAL.—The following sums are authorized*
13 *to be appropriated to the Secretary for renewable energy*
14 *activities, including activities authorized under this sub-*
15 *title:*

16 *(1) For fiscal year 2004, \$460,000,000.*

17 *(2) For fiscal year 2005, \$510,000,000.*

18 *(3) For fiscal year 2006, \$560,000,000.*

19 *(4) For fiscal year 2007, \$609,000,000.*

20 *(b) BIOENERGY.—From the amounts authorized under*
21 *subsection (a), the following sums are authorized to be ap-*
22 *propriated to carry out section 6321 and other bioenergy*
23 *activities:*

24 *(1) For fiscal year 2004, \$135,425,000.*

25 *(2) For fiscal year 2005, \$155,600,000.*

- 1 (1) *biopower energy systems;*
 2 (2) *biofuels;*
 3 (3) *integrated applications of both biopower and*
 4 *biofuels;*
 5 (4) *feedstocks; and*
 6 (5) *economic analysis.*

7 (b) *DEFINITION.*—*For purposes of this section, the*
 8 *term “bioenergy” includes energy produced from animal*
 9 *waste and agricultural crops.*

10 ***Subtitle D—Nuclear Energy***

11 ***PART 1—AUTHORIZATION OF APPROPRIATIONS***

12 ***SEC. 6411. NUCLEAR ENERGY.***

13 (a) *CORE PROGRAMS.*—*The following sums are au-*
 14 *thorized to be appropriated to the Secretary for nuclear en-*
 15 *ergy activities, regulation of research and development ac-*
 16 *tivities and nuclear regulatory research, including activi-*
 17 *ties authorized under this subtitle, other than those de-*
 18 *scribed in subsection (b):*

19 (1) *For fiscal year 2004, \$200,000,000.*

20 (2) *For fiscal year 2005, \$233,000,000.*

21 (3) *For fiscal year 2006, \$266,000,000.*

22 (4) *For fiscal year 2007, \$300,000,000.*

23 (b) *NUCLEAR INFRASTRUCTURE SUPPORT.*—*The fol-*
 24 *lowing sums are authorized to be appropriated to the Sec-*
 25 *retary for activities under section 6421(f):*

1 (1) *For fiscal year 2004, \$120,000,000.*

2 (2) *For fiscal year 2005, \$125,000,000.*

3 (3) *For fiscal year 2006, \$130,000,000.*

4 (4) *For fiscal year 2007, \$135,000,000.*

5 (c) *ALLOCATIONS.—From amounts authorized under*
6 *subsection (a), the following sums are authorized:*

7 (1) *ADVANCED FUEL RECYCLING PROGRAM.—For*
8 *activities under section 6431—*

9 (A) *for fiscal year 2004, \$80,000,000;*

10 (B) *for fiscal year 2005, \$93,000,000;*

11 (C) *for fiscal year 2006, \$106,000,000; and*

12 (D) *for fiscal year 2007, \$120,000,000.*

13 (2) *UNIVERSITY PROGRAMS.—For activities*
14 *under section 6441—*

15 (A) *for fiscal year 2004, \$25,000,000;*

16 (B) *for fiscal year 2005, \$33,900,000;*

17 (C) *for fiscal year 2006, \$37,900,000; and*

18 (D) *for fiscal year 2007, \$43,600,000.*

19 (d) *LIMIT ON USE OF FUNDS.—None of the funds au-*
20 *thorized under this section may be used for decommis-*
21 *sioning the Fast Flux Test Facility.*

1 **PART 2—NUCLEAR ENERGY RESEARCH**

2 **PROGRAMS**

3 **SEC. 6421. NUCLEAR ENERGY RESEARCH PROGRAMS.**

4 (a) *NUCLEAR ENERGY RESEARCH INITIATIVE.*—The
5 *Secretary shall carry out a Nuclear Energy Research Ini-*
6 *tiative for research and development related to nuclear en-*
7 *ergy.*

8 (b) *NUCLEAR ENERGY PLANT OPTIMIZATION PRO-*
9 *GRAM.*—The *Secretary shall carry out a Nuclear Energy*
10 *Plant Optimization Program to support research and devel-*
11 *opment activities addressing reliability, availability, pro-*
12 *ductivity, and component aging in existing nuclear power*
13 *plants.*

14 (c) *NUCLEAR POWER 2010 PROGRAM.*—The *Secretary*
15 *shall carry out a Nuclear Power 2010 Program, consistent*
16 *with recommendations in the October 2001 report entitled*
17 *“A Roadmap to Deploy New Nuclear Power Plants in the*
18 *United States by 2010” issued by the Nuclear Energy Re-*
19 *search Advisory Committee of the Department. The Pro-*
20 *gram shall—*

21 (1) *rely on the expertise and capabilities of the*
22 *National Laboratories in the areas of advanced nu-*
23 *clear fuels cycles and fuels testing;*

24 (2) *pursue an approach that considers a variety*
25 *of reactor designs;*

1 (3) include participation of international col-
2 laborators in research, development, and design efforts
3 as appropriate; and

4 (4) encourage industry participation.

5 (d) *GENERATION IV NUCLEAR ENERGY SYSTEMS INI-*
6 *TIATIVE.*—*The Secretary shall carry out a Generation IV*
7 *Nuclear Energy Systems Initiative to develop an overall*
8 *technology plan and to support research and development*
9 *necessary to make an informed technical decision about the*
10 *most promising candidates for eventual commercial appli-*
11 *cation. The Initiative shall examine advanced proliferation-*
12 *resistant and passively safe reactor designs, including de-*
13 *signs that—*

14 (1) are economically competitive with other elec-
15 tric power generation plants;

16 (2) have higher efficiency, lower cost, and im-
17 proved safety compared to reactors in operation on
18 the date of enactment of this Act;

19 (3) use fuels that are proliferation resistant and
20 have substantially reduced production of high-level
21 waste per unit of output; and

22 (4) utilize improved instrumentation.

23 (e) *REACTOR PRODUCTION OF HYDROGEN.*—*The Sec-*
24 *retary shall carry out research to examine designs for high-*

1 *temperature reactors capable of producing large-scale quan-*
2 *tities of hydrogen using thermochemical processes.*

3 *(f) NUCLEAR INFRASTRUCTURE SUPPORT.—The Sec-*
4 *retary shall develop and implement a strategy for the facili-*
5 *ties of the Office of Nuclear Energy, Science, and Tech-*
6 *nology and shall transmit a report containing the strategy*
7 *along with the President’s budget request to the Congress*
8 *for fiscal year 2005. Such strategy shall provide a cost-effec-*
9 *tive means for—*

10 *(1) maintaining existing facilities and infra-*
11 *structure, as needed;*

12 *(2) closing unneeded facilities;*

13 *(3) making facility upgrades and modifications;*

14 *and*

15 *(4) building new facilities.*

16 **PART 3—ADVANCED FUEL RECYCLING**

17 **SEC. 6431. ADVANCED FUEL RECYCLING PROGRAM.**

18 *(a) IN GENERAL.—The Secretary, through the Director*
19 *of the Office of Nuclear Energy, Science and Technology,*
20 *shall conduct an advanced fuel recycling technology re-*
21 *search and development program to evaluate proliferation-*
22 *resistant fuel recycling and transmutation technologies*
23 *which minimize environmental or public health and safety*
24 *impacts as an alternative to aqueous reprocessing tech-*
25 *nologies deployed as of the date of enactment of this Act*

1 *in support of evaluation of alternative national strategies*
2 *for spent nuclear fuel and the Generation IV advanced reac-*
3 *tor concepts, subject to annual review by the Secretary's Nu-*
4 *clear Energy Research Advisory Committee or other inde-*
5 *pendent entity, as appropriate. Opportunities to enhance*
6 *progress of this program through international cooperation*
7 *should be sought.*

8 (b) *REPORTS.*—*The Secretary shall report on the ac-*
9 *tivities of the advanced fuel recycling technology research*
10 *and development program, as part of the Department's an-*
11 *nual budget submission.*

12 ***PART 4—UNIVERSITY PROGRAMS***

13 ***SEC. 6441. UNIVERSITY NUCLEAR SCIENCE AND ENGINEER-***
14 ***ING SUPPORT.***

15 (a) *ESTABLISHMENT.*—*The Secretary shall support a*
16 *program to invest in human resources and infrastructure*
17 *in the nuclear sciences and engineering and related fields*
18 *(including health physics and nuclear and radiochemistry),*
19 *consistent with departmental missions related to civilian*
20 *nuclear research and development.*

21 (b) *DUTIES.*—*In carrying out the program under this*
22 *section, the Secretary shall—*

23 (1) *establish a graduate and undergraduate fel-*
24 *lowship program to attract new and talented stu-*
25 *dents;*

1 (2) *establish a Junior Faculty Research Initiation Grant Program to assist institutions of higher education in recruiting and retaining new faculty in the nuclear sciences and engineering;*

5 (3) *support fundamental nuclear sciences and engineering research through the Nuclear Engineering Education Research Program;*

8 (4) *encourage collaborative nuclear research among industry, National Laboratories, and institutions of higher education through the Nuclear Energy Research Initiative; and*

12 (5) *support communication and outreach related to nuclear science and engineering.*

14 (c) *MAINTAINING UNIVERSITY RESEARCH AND TRAINING REACTORS AND ASSOCIATED INFRASTRUCTURE.—Activities under this section may include—*

17 (1) *converting research reactors currently using high-enrichment fuels to low-enrichment fuels, upgrading operational instrumentation, and sharing of reactors among institutions of higher education;*

21 (2) *providing technical assistance, in collaboration with the United States nuclear industry, in relicensing and upgrading training reactors as part of a student training program; and*

1 (3) *providing funding for reactor improvements*
2 *as part of a focused effort that emphasizes research,*
3 *training, and education.*

4 (d) *UNIVERSITY-NATIONAL LABORATORY INTER-*
5 *ACTIONS.—The Secretary shall develop—*

6 (1) *a sabbatical fellowship program for profes-*
7 *sors at institutions of higher education to spend ex-*
8 *tended periods of time at National Laboratories in*
9 *the areas of nuclear science and technology; and*

10 (2) *a visiting scientist program in which Na-*
11 *tional Laboratory staff can spend time in academic*
12 *nuclear science and engineering departments.*

13 *The Secretary may provide fellowships for students to spend*
14 *time at National Laboratories in the area of nuclear science*
15 *with a member of the Laboratory staff acting as a mentor.*

16 (e) *OPERATING AND MAINTENANCE COSTS.—Funding*
17 *for a research project provided under this section may be*
18 *used to offset a portion of the operating and maintenance*
19 *costs of a research reactor at an institution of higher edu-*
20 *cation used in the research project.*

1 **Subtitle E—Fossil Energy**

2 **PART 1—AUTHORIZATION OF APPROPRIATIONS**

3 **SEC. 6501. FOSSIL ENERGY.**

4 *There are authorized to be appropriated to the Sec-*
5 *retary for fossil energy activities, including activities au-*
6 *thorized under this subtitle—*

7 (1) \$523,000,000 for fiscal year 2004;

8 (2) \$542,000,000 for fiscal year 2005;

9 (3) \$558,000,000 for fiscal year 2006; and

10 (4) \$585,000,000 for fiscal year 2007.

11 **PART 2—ULTRA-DEEPWATER AND UNCONVEN-**
12 **TIONAL NATURAL GAS AND OTHER PETRO-**
13 **LEUM RESOURCES**

14 **SEC. 6521. PROGRAM AUTHORITY.**

15 (a) *IN GENERAL.*—*The Secretary shall carry out a*
16 *program under this part for ultra-deepwater and unconven-*
17 *tional natural gas and other petroleum resource exploration*
18 *and production, including safe operations and environ-*
19 *mental mitigation.*

20 (b) *PROGRAM ELEMENTS.*—*The program under this*
21 *part shall address the following areas, including improving*
22 *safety and minimizing environmental impacts of activities*
23 *within each area:*

24 (1) *Ultra-deepwater technology.*

25 (2) *Ultra-deepwater architecture.*

1 (3) *Unconventional natural gas and other petro-*
2 *leum resource exploration and production technology.*

3 (c) *LIMITATION ON LOCATION OF FIELD ACTIVITIES.—*
4 *Field activities under the program under this part shall*
5 *be carried out only—*

6 (1) *in—*

7 (A) *areas in the territorial waters of the*
8 *United States not under any Outer Continental*
9 *Shelf moratorium as of September 30, 2002;*

10 (B) *areas onshore in the United States on*
11 *public land administered by the Secretary of the*
12 *Interior available for oil and gas leasing, where*
13 *consistent with applicable law and land use*
14 *plans; and*

15 (C) *areas onshore in the United States on*
16 *State or private land, subject to applicable law;*
17 *and*

18 (2) *with the approval of the appropriate Federal*
19 *or State land management agency or private land*
20 *owner.*

21 (d) *NATIONAL ENERGY TECHNOLOGY LABORATORY.—*
22 *The Secretary, through the National Energy Technology*
23 *Laboratory, shall carry out activities complementary to ac-*
24 *tivities under subsection (b)(1).*

1 (e) *CONSULTATION WITH SECRETARY OF THE INTE-*
2 *RIOR.—In carrying out this part, the Secretary shall con-*
3 *sult regularly with the Secretary of the Interior.*

4 ***SEC. 6522. ULTRA-DEEPWATER PROGRAM.***

5 (a) *IN GENERAL.—The Secretary shall carry out the*
6 *activities under paragraphs (1) and (2) of section 6521(b),*
7 *to maximize the value of the ultra-deepwater natural gas*
8 *and other petroleum resources of the United States by in-*
9 *creasing the supply of such resources and by reducing the*
10 *cost and increasing the efficiency of exploration for and*
11 *production of such resources, while improving safety and*
12 *minimizing environmental impacts.*

13 (b) *ROLE OF THE SECRETARY.—The Secretary shall*
14 *have ultimate responsibility for, and oversight of, all aspects*
15 *of the program under this section.*

16 (c) *ROLE OF THE PROGRAM CONSORTIUM.—*

17 (1) *IN GENERAL.—The Secretary shall contract*
18 *with a consortium to—*

19 (A) *manage awards pursuant to subsection*
20 *(f)(4);*

21 (B) *make recommendations to the Secretary*
22 *for project solicitations;*

23 (C) *disburse funds awarded under sub-*
24 *section (f) as directed by the Secretary in accord-*

1 *ance with the annual plan under subsection (e);*
2 *and*

3 *(D) carry out other activities assigned to*
4 *the program consortium by this section.*

5 *(2) LIMITATION.—The Secretary may not assign*
6 *any activities to the program consortium except as*
7 *specifically authorized under this section.*

8 *(3) CONFLICT OF INTEREST.—(A) The Secretary*
9 *shall establish procedures—*

10 *(i) to ensure that each board member, offi-*
11 *cer, or employee of the program consortium who*
12 *is in a decisionmaking capacity under subsection*
13 *(f)(3) or (4) shall disclose to the Secretary any*
14 *financial interests in, or financial relationships*
15 *with, applicants for or recipients of awards*
16 *under this section, including those of his or her*
17 *spouse or minor child, unless such relationships*
18 *or interests would be considered to be remote or*
19 *inconsequential; and*

20 *(ii) to require any board member, officer, or*
21 *employee with a financial relationship or inter-*
22 *est disclosed under clause (i) to recuse himself or*
23 *herself from any review under subsection (f)(3)*
24 *or oversight under subsection (f)(4) with respect*
25 *to such applicant or recipient.*

1 (B) *The Secretary may disqualify an applica-*
2 *tion or revoke an award under this section if a board*
3 *member, officer, or employee has failed to comply*
4 *with procedures required under subparagraph (A)(ii).*

5 (d) *SELECTION OF THE PROGRAM CONSORTIUM.—*

6 (1) *IN GENERAL.—The Secretary shall select the*
7 *program consortium through an open, competitive*
8 *process.*

9 (2) *MEMBERS.—The program consortium may*
10 *include corporations, institutions of higher education,*
11 *National Laboratories, or other research institutions.*
12 *After submitting a proposal under paragraph (4), the*
13 *program consortium may not add members without*
14 *the consent of the Secretary.*

15 (3) *TAX STATUS.—The program consortium shall*
16 *be an entity that is exempt from tax under section*
17 *501(c)(3) of the Internal Revenue Code of 1986.*

18 (4) *SCHEDULE.—Not later than 90 days after*
19 *the date of enactment of this Act, the Secretary shall*
20 *solicit proposals for the creation of the program con-*
21 *sortium, which must be submitted not less than 180*
22 *days after the date of enactment of this Act. The Sec-*
23 *retary shall select the program consortium not later*
24 *than 240 days after such date of enactment.*

1 (5) *APPLICATION.*—*Applicants shall submit a*
2 *proposal including such information as the Secretary*
3 *may require. At a minimum, each proposal shall—*

4 (A) *list all members of the consortium;*

5 (B) *fully describe the structure of the con-*
6 *sortium, including any provisions relating to in-*
7 *tellectual property; and*

8 (C) *describe how the applicant would carry*
9 *out the activities of the program consortium*
10 *under this section.*

11 (6) *ELIGIBILITY.*—*To be eligible to be selected as*
12 *the program consortium, an applicant must be an en-*
13 *tity whose members collectively have demonstrated ca-*
14 *pabilities in planning and managing programs in*
15 *natural gas or other petroleum exploration or produc-*
16 *tion.*

17 (7) *CRITERION.*—*The Secretary may consider the*
18 *amount of the fee an applicant proposes to receive*
19 *under subsection (g) in selecting a consortium under*
20 *this section.*

21 (e) *ANNUAL PLAN.*—

22 (1) *IN GENERAL.*—*The program under this sec-*
23 *tion shall be carried out pursuant to an annual plan*
24 *prepared by the Secretary in accordance with para-*
25 *graph (2).*

1 (2) *DEVELOPMENT.*—(A) *Before drafting an an-*
2 *nuual plan under this subsection, the Secretary shall*
3 *solicit specific written recommendations from the pro-*
4 *gram consortium for each element to be addressed in*
5 *the plan, including those described in paragraph (4).*
6 *The Secretary may request that the program consor-*
7 *tium submit its recommendations in the form of a*
8 *draft annual plan.*

9 (B) *The Secretary shall submit the recommenda-*
10 *tions of the program consortium under subparagraph*
11 *(A) to the Ultra-Deepwater Advisory Committee es-*
12 *tablished under section 6525(a) for review, and such*
13 *Advisory Committee shall provide to the Secretary*
14 *written comments by a date determined by the Sec-*
15 *retary. The Secretary may also solicit comments from*
16 *any other experts.*

17 (C) *The Secretary shall consult regularly with*
18 *the program consortium throughout the preparation*
19 *of the annual plan.*

20 (3) *PUBLICATION.*—*The Secretary shall transmit*
21 *to the Congress and publish in the Federal Register*
22 *the annual plan, along with any written comments*
23 *received under paragraph (2)(A) and (B). The annual*
24 *plan shall be transmitted and published not later*
25 *than 60 days after the date of enactment of an Act*

1 *making appropriations for a fiscal year for the pro-*
2 *gram under this section.*

3 (4) *CONTENTS.*—*The annual plan shall describe*
4 *the ongoing and prospective activities of the program*
5 *under this section and shall include—*

6 (A) *a list of any solicitations for awards*
7 *that the Secretary plans to issue to carry out ac-*
8 *tivities, including the topics for such work, who*
9 *would be eligible to apply, selection criteria, and*
10 *the duration of awards; and*

11 (B) *a description of the activities expected*
12 *of the program consortium to carry out sub-*
13 *section (f)(4).*

14 (f) *AWARDS.*—

15 (1) *IN GENERAL.*—*The Secretary shall make*
16 *awards to carry out activities under the program*
17 *under this section. The program consortium shall not*
18 *be eligible to receive such awards, but members of the*
19 *program consortium may receive such awards.*

20 (2) *PROPOSALS.*—*The Secretary shall solicit pro-*
21 *posals for awards under this subsection in such man-*
22 *ner and at such time as the Secretary may prescribe,*
23 *in consultation with the program consortium.*

24 (3) *REVIEW.*—*The Secretary shall make awards*
25 *under this subsection through a competitive process,*

1 *which shall include a review by individuals selected*
2 *by the Secretary. Such individuals shall include, for*
3 *each application, Federal officials, the program con-*
4 *sortium, and non-Federal experts who are not board*
5 *members, officers, or employees of the program consor-*
6 *tium or of a member of the program consortium.*

7 (4) *OVERSIGHT.—(A) The program consortium*
8 *shall oversee the implementation of awards under this*
9 *subsection, consistent with the annual plan under*
10 *subsection (e), including disbursing funds and moni-*
11 *toring activities carried out under such awards for*
12 *compliance with the terms and conditions of the*
13 *awards.*

14 (B) *Nothing in subparagraph (A) shall limit the*
15 *authority or responsibility of the Secretary to oversee*
16 *awards, or limit the authority of the Secretary to re-*
17 *view or revoke awards.*

18 (C) *The Secretary shall provide to the program*
19 *consortium the information necessary for the program*
20 *consortium to carry out its responsibilities under this*
21 *paragraph.*

22 (g) *FEE.—*

23 (1) *IN GENERAL.—To compensate the program*
24 *consortium for carrying out its activities under this*
25 *section, the Secretary shall provide to the program*

1 *such resources, while improving safety and minimizing en-*
2 *vironmental impacts.*

3 (b) *AWARDS.*—

4 (1) *IN GENERAL.*—*The Secretary shall carry out*
5 *this section through awards made through an open,*
6 *competitive process.*

7 (2) *CONSORTIA.*—*In carrying out paragraph (1),*
8 *the Secretary shall give preference to making awards*
9 *to consortia.*

10 (c) *AUDIT.*—*The Secretary shall retain an inde-*
11 *pendent, commercial auditor to determine the extent to*
12 *which funds provided under awards made under this sec-*
13 *tion have been expended in a manner consistent with the*
14 *purposes and requirements of this part. The auditor shall*
15 *transmit a report annually to the Secretary, who shall*
16 *transmit the report to Congress, along with a plan to rem-*
17 *edy any deficiencies cited in the report.*

18 (d) *FOCUS AREAS.*—*Awards under this section may*
19 *focus on areas including advanced coal-bed methane, deep*
20 *drilling, natural gas production from tight sands, natural*
21 *gas production from gas shales, innovative exploration and*
22 *production techniques, enhanced recovery techniques, and*
23 *environmental mitigation of unconventional natural gas*
24 *and other petroleum resources exploration and production.*

1 (e) *ACTIVITIES BY THE UNITED STATES GEOLOGICAL*
2 *SURVEY.—The Secretary of the Interior, through the United*
3 *States Geological Survey, shall, where appropriate, carry*
4 *out programs to complement the programs under this sec-*
5 *tion.*

6 **SEC. 6524. ADDITIONAL REQUIREMENTS FOR AWARDS.**

7 (a) *DEMONSTRATION PROJECTS.—An application for*
8 *an award under this part for a demonstration project shall*
9 *describe with specificity the intended commercial use of the*
10 *technology to be demonstrated.*

11 (b) *FLEXIBILITY IN LOCATING DEMONSTRATION*
12 *PROJECTS.—Subject to the limitation in section 6521(c),*
13 *a demonstration project under this part relating to an*
14 *ultra-deepwater technology or an ultra-deepwater architec-*
15 *ture may be conducted in deepwater depths.*

16 (c) *INTELLECTUAL PROPERTY AGREEMENTS.—If an*
17 *award under this part is made to a consortium (other than*
18 *the program consortium), the consortium shall provide to*
19 *the Secretary a signed contract agreed to by all members*
20 *of the consortium describing the rights of each member to*
21 *intellectual property used or developed under the award.*

22 (d) *TECHNOLOGY TRANSFER.—Each recipient of an*
23 *award under this part shall conduct technology transfer ac-*
24 *tivities, as appropriate.*

1 **SEC. 6525. ADVISORY COMMITTEES.**

2 (a) *ULTRA-DEEPWATER ADVISORY COMMITTEE.*—

3 (1) *ESTABLISHMENT.*—Not later than 270 days
4 after the date of enactment of this section, the Sec-
5 retary shall establish an advisory committee to be
6 known as the Ultra-Deepwater Advisory Committee.

7 (2) *MEMBERSHIP.*—The advisory committee
8 under this subsection shall be composed of members
9 appointed by the Secretary and including—

10 (A) individuals with extensive experience or
11 operational knowledge of offshore natural gas
12 and other petroleum exploration and production;

13 (B) individuals broadly representative of
14 the affected interests in ultra-deepwater natural
15 gas and other petroleum production, including
16 interests in environmental protection and safe
17 operations;

18 (C) no individuals who are Federal employ-
19 ees; and

20 (D) no individuals who are board members,
21 officers, or employees of the program consortium.

22 (3) *DUTIES.*—The advisory committee under this
23 subsection shall—

24 (A) advise the Secretary on the development
25 and implementation of programs under this part

1 *related to ultra-deepwater natural gas and other*
2 *petroleum resources; and*

3 *(B) carry out section 6522(e)(2)(B).*

4 (4) *COMPENSATION.*—*A member of the advisory*
5 *committee under this subsection shall serve without*
6 *compensation but shall receive travel expenses, includ-*
7 *ing per diem in lieu of subsistence, in accordance*
8 *with applicable provisions under subchapter I of*
9 *chapter 57 of title 5, United States Code.*

10 (b) *UNCONVENTIONAL RESOURCES TECHNOLOGY AD-*
11 *VISORY COMMITTEE.*—

12 (1) *ESTABLISHMENT.*—*Not later than 270 days*
13 *after the date of enactment of this section, the Sec-*
14 *retary shall establish an advisory committee to be*
15 *known as the Unconventional Resources Technology*
16 *Advisory Committee.*

17 (2) *MEMBERSHIP.*—*The advisory committee*
18 *under this subsection shall be composed of members*
19 *appointed by the Secretary and including—*

20 (A) *individuals with extensive experience or*
21 *operational knowledge of unconventional natural*
22 *gas and other petroleum resource exploration*
23 *and production, including independent oil and*
24 *gas producers;*

1 (B) *individuals broadly representative of*
2 *the affected interests in unconventional natural*
3 *gas and other petroleum resource exploration*
4 *and production, including interests in environ-*
5 *mental protection and safe operations; and*

6 (C) *no individuals who are Federal employ-*
7 *ees.*

8 (3) *DUTIES.*—*The advisory committee under this*
9 *subsection shall advise the Secretary on the develop-*
10 *ment and implementation of activities under this*
11 *part related to unconventional natural gas and other*
12 *petroleum resources.*

13 (4) *COMPENSATION.*—*A member of the advisory*
14 *committee under this subsection shall serve without*
15 *compensation but shall receive travel expenses, includ-*
16 *ing per diem in lieu of subsistence, in accordance*
17 *with applicable provisions under subchapter I of*
18 *chapter 57 of title 5, United States Code.*

19 (c) *PROHIBITION.*—*No advisory committee established*
20 *under this section shall make recommendations on funding*
21 *awards to consortia or for specific projects.*

22 **SEC. 6526. LIMITS ON PARTICIPATION.**

23 (a) *IN GENERAL.*—*An entity shall be eligible to receive*
24 *an award under this part only if the Secretary finds—*

1 (1) *that the entity's participation in the pro-*
2 *gram under this part would be in the economic inter-*
3 *est of the United States; and*

4 (2) *that either—*

5 (A) *the entity is a United States-owned en-*
6 *tity organized under the laws of the United*
7 *States; or*

8 (B) *the entity is organized under the laws*
9 *of the United States and has a parent entity or-*
10 *ganized under the laws of a country which af-*
11 *fords—*

12 (i) *to United States-owned entities op-*
13 *portunities, comparable to those afforded to*
14 *any other entity, to participate in any co-*
15 *operative venture similar to those author-*
16 *ized under this part;*

17 (ii) *to United States-owned entities*
18 *local investment opportunities comparable*
19 *to those afforded to any other entity; and*

20 (iii) *adequate and effective protection*
21 *for the intellectual property rights of United*
22 *States-owned entities.*

23 (b) *SENSE OF CONGRESS AND REPORT.—It is the*
24 *Sense of the Congress that ultra-deepwater technology devel-*
25 *oped under this part is to be developed primarily for pro-*

1 *duction of ultra-deepwater natural gas and other petroleum*
2 *resources of the United States, and that this priority is to*
3 *be reflected in the terms of grants, contracts, and coopera-*
4 *tive agreements entered under this part. As part of the an-*
5 *nual Departmental budget submission, the Secretary shall*
6 *report on all steps taken to implement the policy described*
7 *in this subsection.*

8 **SEC. 6527. FUND.**

9 *There is hereby established in the Treasury of the*
10 *United States a separate fund to be known as the “Ultra-*
11 *Deepwater and Unconventional Natural Gas and Other Pe-*
12 *troleum Products Fund”.*

13 **SEC. 6528. SUNSET.**

14 *The authority provided by this part shall terminate*
15 *on September 30, 2010.*

16 **SEC. 6529. DEFINITIONS.**

17 *In this part:*

18 (1) *DEEPWATER.*—*The term “deepwater” means*
19 *a water depth that is greater than 200 but less than*
20 *1,500 meters.*

21 (2) *PROGRAM CONSORTIUM.*—*The term “pro-*
22 *gram consortium” means the consortium selected*
23 *under section 6522(d).*

24 (3) *REMOTE OR INCONSEQUENTIAL.*—*The term*
25 *“remote or inconsequential” has the meaning given*

1 *that term in regulations issued by the Office of Gov-*
2 *ernment Ethics under section 208(b)(2) of title 18,*
3 *United States Code.*

4 (4) *ULTRA-DEEPWATER.*—*The term “ultra-deep-*
5 *water” means a water depth that is equal to or great-*
6 *er than 1,500 meters.*

7 (5) *ULTRA-DEEPWATER ARCHITECTURE.*—*The*
8 *term “ultra-deepwater architecture” means the inte-*
9 *gration of technologies for the exploration for, or pro-*
10 *duction of, natural gas or other petroleum resources*
11 *located at ultra-deepwater depths.*

12 (6) *ULTRA-DEEPWATER TECHNOLOGY.*—*The term*
13 *“ultra-deepwater technology” means a discrete tech-*
14 *nology that is specially suited to address one or more*
15 *challenges associated with the exploration for, or pro-*
16 *duction of, natural gas or other petroleum resources*
17 *located at ultra-deepwater depths.*

18 (7) *UNCONVENTIONAL NATURAL GAS AND OTHER*
19 *PETROLEUM RESOURCE.*—*The term “unconventional*
20 *natural gas and other petroleum resource” means nat-*
21 *ural gas and other petroleum resource located onshore*
22 *in an economically inaccessible geological formation.*

1 ***Subtitle F—Miscellaneous***

2 ***SEC. 6601. WASTE REDUCTION AND USE OF ALTERNATIVES.***

3 (a) *GRANT AUTHORITY.*—*The Secretary is authorized*
4 *to make a single grant to a qualified institution to examine*
5 *and develop the feasibility of burning post-consumer carpet*
6 *in cement kilns as an alternative energy source. The pur-*
7 *poses of the grant shall include determining—*

8 (1) *how post-consumer carpet can be burned*
9 *without disrupting kiln operations;*

10 (2) *the extent to which overall kiln emissions*
11 *may be reduced;*

12 (3) *the emissions of air pollutants and other rel-*
13 *evant environmental impacts; and*

14 (4) *how this process provides benefits to both ce-*
15 *ment kiln operations and carpet suppliers.*

16 (b) *QUALIFIED INSTITUTION.*—*For the purposes of*
17 *subsection (a), a qualified institution is a research-intensive*
18 *institution of higher education with demonstrated expertise*
19 *in the fields of fiber recycling and logistical modeling of*
20 *carpet waste collection and preparation.*

21 (c) *WASTE REDUCTION AND USE OF ALTERNATIVES.*—
22 *There are authorized to be appropriated to the Secretary*
23 *to carry out activities under this section \$500,000 for fiscal*
24 *year 2004.*

1 **SEC. 6602. COAL GASIFICATION.**

2 *The Secretary is authorized to provide loan guarantees*
3 *for a project to produce energy from a plant using inte-*
4 *grated gasification combined cycle technology of at least 400*
5 *megawatts in capacity that produces power at competitive*
6 *rates in deregulated energy generation markets and that*
7 *does not receive any subsidy (direct or indirect) from rate-*
8 *payers.*

9 **SEC. 6603. PETROLEUM COKE GASIFICATION.**

10 *The Secretary is authorized to provide loan guarantees*
11 *for at least one petroleum coke gasification polygeneration*
12 *project.*

13 **SEC. 6604. OTHER BIOPOWER AND BIOENERGY.**

14 *The Secretary shall conduct a program to assist in the*
15 *planning, design, and implementation of projects to convert*
16 *rice straw, rice hulls, sugarcane bagasse, forest thinnings,*
17 *and barley grain into biopower and biofuels.*

18 **SEC. 6605. TECHNOLOGY TRANSFER.**

19 *There are authorized to be appropriated to the Sec-*
20 *retary \$1,000,000 for a competitively awarded contract, to*
21 *an entity with offshore oil and gas management experience,*
22 *for the transfer of technologies relating to ultra-deepwater*
23 *research and development developed at the Naval Surface*
24 *Warfare Center, Carderock Division.*

1 **SEC. 6606. LIMITATION ON LEGAL FEE REIMBURSEMENT.**

2 *The Department of Energy shall not, except as re-*
3 *quired under a contract entered into before the date of en-*
4 *actment of this Act, reimburse any contractor or subcon-*
5 *tractor of the Department for any legal fees or expenses in-*
6 *curred with respect to a complaint subsequent to—*

7 (1) *an adverse determination on the merits with*
8 *respect to such complaint against the contractor or*
9 *subcontractor by the Director of the Department of*
10 *Energy’s Office of Hearings and Appeals pursuant to*
11 *section 708 of title 10, Code of Federal Regulations,*
12 *or by a Department of Labor Administrative Law*
13 *Judge pursuant to section 211 of the Energy Reorga-*
14 *nization Act of 1974 (42 U.S.C. 5851); or*

15 (2) *an adverse final judgment by any State or*
16 *Federal court with respect to such complaint against*
17 *the contractor or subcontractor for wrongful termi-*
18 *nation or retaliation due to the making of disclosures*
19 *protected under chapter 12 of title 5, United States*
20 *Code, section 211 of the Energy Reorganization Act*
21 *of 1974 (42 U.S.C. 5851), or any comparable State*
22 *law,*

23 *unless the adverse determination or final judgment is re-*
24 *versed upon further administrative or judicial review.*

1 **SEC. 6607. COMPLEX WELL TECHNOLOGY TESTING FACIL-**
2 **ITY.**

3 *The Secretary, in coordination with industry leaders*
4 *in extended reach drilling technology, shall establish a Com-*
5 *plex Well Technology Testing Facility at the Rocky Moun-*
6 *tain Oilfield Testing Center to increase the range of ex-*
7 *tended drilling technology to 50,000 feet, so that more en-*
8 *ergy resources can be realized with fewer drilling facilities.*

9 **SEC. 6608. TOTAL INTEGRATED THERMAL SYSTEMS.**

10 *The Secretary shall—*

11 *(1) conduct a study of the benefits of total inte-*
12 *grated thermal systems in reducing demand for oil*
13 *and protecting the environment; and*

14 *(2) examine the feasibility of using total inte-*
15 *grated thermal systems in Department of Defense and*
16 *other Federal motor vehicle fleets.*

17 **SEC. 6609. OIL BYPASS FILTRATION TECHNOLOGY.**

18 *The Secretary of Energy and the Administrator of the*
19 *Environmental Protection Agency shall—*

20 *(1) conduct a joint study of the benefits of oil by-*
21 *pass filtration technology in reducing demand for oil*
22 *and protecting the environment; and*

23 *(2) examine the feasibility of using oil bypass*
24 *filtration technology in Federal motor vehicle fleets.*

1 **TITLE VII—ELECTRICITY**
2 **Subtitle A—Transmission Capacity**

3 **SEC. 7011. TRANSMISSION INFRASTRUCTURE IMPROVE-**
4 **MENT RULEMAKING.**

5 *Part II of the Federal Power Act (16 U.S.C. 824 et*
6 *seq.) is amended by adding the following new section at*
7 *the end thereof:*

8 **“SEC. 215. TRANSMISSION INFRASTRUCTURE IMPROVE-**
9 **MENT RULEMAKING.**

10 “(a) *RULEMAKING REQUIREMENT.—Within 1 year*
11 *after the enactment of this section, the Commission shall*
12 *establish, by rule, incentive-based (including but not limited*
13 *to performance-based) transmission rate treatments to pro-*
14 *mote capital investment in the enlargement and improve-*
15 *ment of facilities for the transmission of electric energy in*
16 *interstate commerce as appropriate to—*

17 “*(1) promote economically efficient transmission*
18 *and generation of electricity;*

19 “*(2) provide a return on equity that attracts*
20 *new investment in transmission facilities and reason-*
21 *ably reflects the risks taken by public utilities in re-*
22 *structuring control of transmission assets; and*

23 “*(3) encourage deployment of transmission tech-*
24 *nologies and other measures to increase the capacity*

1 *and efficiency of existing transmission facilities and*
2 *improve the operation of such facilities.*

3 *The Commission may, from time to time, revise such rule.*

4 “(b) *FUNDING OF CERTAIN FACILITIES.*—*The rule*
5 *promulgated pursuant to this section shall provide that,*
6 *upon the request of a regional transmission organization*
7 *or other Commission-approved transmission organization,*
8 *new transmission facilities that increase the transfer capa-*
9 *bility of the transmission system shall be participant fund-*
10 *ed. In such rules, the Commission shall also provide guid-*
11 *ance as to what types of facilities may be participant fund-*
12 *ed.*

13 “(c) *JUST AND REASONABLE RATES.*—*With respect to*
14 *any transmission rate filed with the Commission on or after*
15 *the effective date of the rule promulgated under this section,*
16 *the Commission shall, in its review of such rate under sec-*
17 *tions 205 and 206, apply the rules adopted pursuant to this*
18 *section, including any revisions thereto. Nothing in this sec-*
19 *tion shall be construed to override, weaken, or conflict with*
20 *the procedural and other requirements of this part, includ-*
21 *ing the requirement of sections 205 and 206 that all rates,*
22 *charges, terms, and conditions be just and reasonable and*
23 *not unduly discriminatory or preferential.”*

1 **SEC. 7012. SITING OF INTERSTATE ELECTRICAL TRANS-**
2 **MISSION FACILITIES.**

3 (a) *AMENDMENT OF FEDERAL POWER ACT.—Part II*
4 *of the Federal Power Act is amended by adding at the end*
5 *the following:*

6 **“SEC. 216. SITING OF INTERSTATE ELECTRICAL TRANS-**
7 **MISSION FACILITIES**

8 “(a) *TRANSMISSION STUDIES.—Within one year after*
9 *the enactment of this section, and every 3 years thereafter,*
10 *the Secretary of Energy shall conduct a study of electric*
11 *transmission congestion. After considering alternatives and*
12 *recommendations from interested parties the Secretary shall*
13 *issue a report, based on such study, which may designate*
14 *one or more geographic areas experiencing electric energy*
15 *transmission congestion as ‘interstate congestion areas’.*

16 “(b) *CONSTRUCTION PERMIT.—The Commission is au-*
17 *thorized, after notice and an opportunity for hearing, to*
18 *issue permits for the construction or modification of electric*
19 *transmission facilities in interstate congestion areas des-*
20 *ignated by the Secretary under subsection (a) if the Com-*
21 *mission makes each of the following findings:*

22 “(1) *A finding that—*

23 “(A) *the State in which the transmission fa-*
24 *ilities are to be constructed or modified is with-*
25 *out authority to approve the siting of the facili-*
26 *ties, or*

1 “(B) a State commission or body in the
2 State in which the transmission facilities are to
3 be constructed or modified that has authority to
4 approve the siting of the facilities has withheld
5 approval, conditioned its approval in such a
6 manner that the proposed construction or modi-
7 fication will not significantly reduce trans-
8 mission congestion in interstate commerce and is
9 otherwise not economically feasible, or delayed
10 final approval for more than one year after the
11 filing of an application seeking approval or one
12 year after the designation of the relevant inter-
13 state congestion area, whichever is later.

14 “(2) A finding that the facilities to be authorized
15 by the permit will be used for the transmission of
16 electric energy in interstate commerce.

17 “(3) A finding that the proposed construction or
18 modification is consistent with the public interest.

19 “(4) A finding that the proposed construction or
20 modification will significantly reduce transmission
21 congestion in interstate commerce.

22 The Commission may include in a permit issued under this
23 section conditions consistent with the public interest.

24 “(c) *PERMIT APPLICATIONS.*—Permit applications
25 under subsection (b) shall be made in writing to the Com-

1 mission and verified under oath. The Commission shall
2 issue rules setting forth the form of the application, the in-
3 formation it is to contain, and the manner of service of
4 notice of the permit application upon interested persons.

5 “(d) COMMENTS.—In any proceeding before the Com-
6 mission under subsection (b), the Commission shall afford
7 each State in which a transmission facility covered by the
8 permit is or will be located, each affected Federal agency
9 and Indian tribe, private property owners, and other inter-
10 ested persons, a reasonable opportunity to present their
11 views and recommendations with respect to the need for and
12 impact of a facility covered by the permit.

13 “(e) RIGHTS-OF-WAY.—In the case of a permit under
14 subsection (b) for electric transmission facilities to be lo-
15 cated on property other than property owned by the United
16 States or a State, if the permit holder cannot acquire by
17 contract, or is unable to agree with the owner of the prop-
18 erty to the compensation to be paid for, the necessary right-
19 of-way to construct or modify such transmission facilities,
20 the permit holder may acquire the right-of-way by the exer-
21 cise of the right of eminent domain in the district court
22 of the United States for the district in which the property
23 concerned is located, or in the appropriate court of the State
24 in which the property is located. The practice and proce-
25 dure in any action or proceeding for that purpose in the

1 *district court of the United States shall conform as nearly*
2 *as may be with the practice and procedure in similar action*
3 *or proceeding in the courts of the State where the property*
4 *is situated.*

5 “(f) *STATE LAW.*—*Nothing in this section shall pre-*
6 *clude any person from constructing any transmission facili-*
7 *ties pursuant to State law.*

8 “(g) *COMPLIANCE WITH OTHER LAWS.*—*Commission*
9 *action under this section shall be subject to the National*
10 *Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)*
11 *and all other applicable Federal laws.*

12 “(h) *COMPENSATION.*—*Any exercise of eminent do-*
13 *main authority pursuant to this section shall be considered*
14 *a taking of private property for which just compensation*
15 *is due. Just compensation shall be an amount equal to the*
16 *full fair market value of the property taken on the date of*
17 *the exercise of eminent domain authority, except that the*
18 *compensation shall exceed fair market value if necessary to*
19 *make the landowner whole for decreases in the value of any*
20 *portion of the land not subject to eminent domain. Any par-*
21 *cel of land acquired by eminent domain under this sub-*
22 *section shall be transferred back to the owner from whom*
23 *it was acquired (or his heirs or assigns) if the land is not*
24 *used for power line construction or modification within a*
25 *reasonable period of time after the acquisition. Property ac-*

1 *quired under this subsection may not be used for any herit-*
2 *age area, recreational trail, or park, or for any other pur-*
3 *pose (other than power line construction or modification,*
4 *and for power line operation and maintenance) without the*
5 *consent of the owner of the parcel from whom the property*
6 *was acquired (or his heirs or assigns).*

7 “(i) *ERCOT.*—*Nothing in this section shall be con-*
8 *strued to authorize any interconnection with any facility*
9 *owned or operated by an entity referred to in section*
10 *212(k)(2)(B).*

11 “(j) *RIGHTS OF WAY ON FEDERAL LANDS.*—

12 “(1) *LEAD AGENCY.*—*If an applicant, or pro-*
13 *spective applicant, for Federal authorization related*
14 *to an electricity transmission or distribution facility*
15 *so requests, the Department of Energy (DOE) shall*
16 *act as the lead agency for purposes of coordinating all*
17 *applicable Federal authorization and related environ-*
18 *mental review of the facility. The term ‘Federal au-*
19 *thorization’ shall mean any authorization required*
20 *under Federal law in order to site a transmission or*
21 *distribution facility, including but not limited to such*
22 *permits, special use authorizations, certifications,*
23 *opinions, or other approvals as may be required,*
24 *whether issued by a Federal or a State agency. To the*
25 *maximum extent practicable under applicable Federal*

1 *law, the Secretary of Energy shall coordinate this*
2 *Federal authorization and review process with any*
3 *Indian tribes, multi-State entities, and State agencies*
4 *that are responsible for conducting any separate per-*
5 *mitting and environmental reviews of the facility, to*
6 *ensure timely and efficient review and permit deci-*
7 *sions.*

8 *“(2) AUTHORITY TO SET DEADLINES.—As lead*
9 *agency, the Department of Energy, in consultation*
10 *with other Federal and, as appropriate, with Indian*
11 *tribes, multi-State entities, and State agencies that*
12 *are willing to coordinate their own separate permit-*
13 *ting and environmental reviews with the Federal au-*
14 *thorization and environmental reviews, shall establish*
15 *prompt and binding intermediate milestones and ulti-*
16 *mate deadlines for the review of and Federal author-*
17 *ization decisions relating to the proposed facility. The*
18 *Secretary of Energy shall ensure that once an appli-*
19 *cation has been submitted with such data as the Sec-*
20 *retary deems necessary, all permit decisions and re-*
21 *lated environmental reviews under all applicable Fed-*
22 *eral laws shall be completed within 1 year or, if a re-*
23 *quirement of another provision of Federal law makes*
24 *this impossible, as soon thereafter as is practicable.*
25 *The Secretary of Energy also shall provide an expedi-*

1 *tious pre-application mechanism for prospective ap-*
2 *plicants to confer with the agencies involved to have*
3 *each such agency determine and communicate to the*
4 *prospective applicant within 60 days of when the pro-*
5 *spective applicant submits a request for such informa-*
6 *tion concerning—*

7 *“(A) the likelihood of approval for a poten-*
8 *tial facility; and*

9 *“(B) key issues of concern to the agencies*
10 *and public.*

11 *“(3) CONSOLIDATED ENVIRONMENTAL REVIEW*
12 *AND RECORD OF DECISION.—The Secretary of En-*
13 *ergy, in consultation with the affected agencies, shall*
14 *prepare a single environmental review document,*
15 *which shall be used as the basis for all decisions on*
16 *the proposed project under Federal law. The document*
17 *may be an environmental assessment or environ-*
18 *mental impact statement under the National Envi-*
19 *ronmental Policy Act of 1969 if warranted, or such*
20 *other form of analysis as may be warranted. DOE*
21 *and other agencies shall streamline the review and*
22 *permitting of transmission and distribution facilities*
23 *within corridors designated under section 503 of the*
24 *Federal Land Policy and Management Act (43 U.S.C.*
25 *1763) by fully taking into account prior analyses and*

1 *decisions as to the corridors. The document under this*
2 *section may consist of or include an environmental*
3 *assessment, if allowed by law, or an environmental*
4 *impact statement, if warranted or required by law, or*
5 *such other form of analysis as warranted, consistent*
6 *with any requirement of the National Environmental*
7 *Policy Act, the Federal Land Policy and Management*
8 *Act, or any other applicable law. Such document shall*
9 *include consideration by the relevant agencies of any*
10 *applicable criteria or other matters as required under*
11 *applicable laws.*

12 *“(4) APPEALS.—In the event that any agency*
13 *has denied a Federal authorization required for a*
14 *transmission or distribution facility, or has failed to*
15 *act by the deadline established by the Secretary pur-*
16 *suant to this section for deciding whether to issue the*
17 *authorization, the applicant or any State in which*
18 *the facility would be located may file an appeal with*
19 *the Secretary of Energy, who shall, in consultation*
20 *with the affected agency, review the denial or take ac-*
21 *tion on the pending application. Based on the overall*
22 *record and in consultation with the affected agency,*
23 *the Secretary may then either issue the necessary au-*
24 *thorization with any appropriate conditions, or deny*
25 *the application. The Secretary shall issue a decision*

1 *within 90 days of the filing of the appeal. In making*
2 *a decision under this paragraph, the Secretary shall*
3 *comply with all applicable requirements of Federal*
4 *law, including any requirements of the Endangered*
5 *Species Act, the Clean Water Act, the National Forest*
6 *Management Act, the National Environmental Policy*
7 *Act, and the Federal Land Management and Policy*
8 *Act.*

9 *“(5) CONFORMING REGULATIONS AND MEMO-*
10 *RANDA OF AGREEMENT.—Not later than 18 months*
11 *after the date of enactment of this section, the Sec-*
12 *retary of Energy shall issue any regulations necessary*
13 *to implement the foregoing provisions. Not later than*
14 *1 year after the date of enactment of this section, the*
15 *Secretary and the heads of all relevant Federal de-*
16 *partments and non-departmental agencies shall, and*
17 *interested Indian tribes, multi-State entities, and*
18 *State agencies may, enter into Memoranda of Agree-*
19 *ment to ensure the timely and coordinated review and*
20 *permitting of electricity transmission and distribu-*
21 *tion facilities. The head of each Federal department*
22 *or non-departmental agency with approval authority*
23 *shall designate a senior responsible official and dedi-*
24 *cate sufficient other staff and resources to ensure that*

1 *the DOE regulations and any Memoranda are fully*
2 *implemented.*

3 “(6) *MISCELLANEOUS.—Each Federal authoriza-*
4 *tion for an electricity transmission or distribution fa-*
5 *ility shall be issued for a duration, as determined by*
6 *the Secretary of Energy, commensurate with the an-*
7 *ticipated use of the facility and with appropriate au-*
8 *thority to manage the right-of-way for reliability and*
9 *environmental protection. Further, when such author-*
10 *izations expire, they shall be reviewed for renewal*
11 *taking fully into account reliance on such electricity*
12 *infrastructure, recognizing its importance for public*
13 *health, safety and economic welfare and as a legiti-*
14 *mate use of Federal lands.*

15 “(7) *MAINTAINING AND ENHANCING THE TRANS-*
16 *MISSION INFRASTRUCTURE.—In exercising the respon-*
17 *sibilities under this section, the Secretary of Energy*
18 *shall consult regularly with the Federal Energy Regu-*
19 *latory Commission (FERC) and FERC-approved Re-*
20 *gional Transmission Organizations and Independent*
21 *System Operators.*

22 “(k) *INTERSTATE COMPACTS.—The consent of Con-*
23 *gress is hereby given for States to enter into interstate com-*
24 *pacts establishing regional transmission siting agencies to*
25 *facilitate coordination among the States within such areas*

1 *for purposes of siting future electric energy transmission*
2 *facilities and to carry out State electric energy trans-*
3 *mission siting responsibilities. The Secretary of Energy*
4 *may provide technical assistance to regional transmission*
5 *siting agencies established under this subsection.*

6 “(l) *SAVINGS CLAUSE.*—*Nothing in this section shall*
7 *be construed to affect any requirement of the environmental*
8 *laws of the United States, including, but not limited to,*
9 *the National Environmental Policy Act of 1969. This sec-*
10 *tion shall not apply to any component of the National Wil-*
11 *derness Preservation System, the National Wild and Scenic*
12 *Rivers System, or the National Park system (including Na-*
13 *tional Monuments therein).”*

14 “(b) *FEDERAL CORRIDORS.*—*The Secretary of the Inte-*
15 *rior, the Secretary of Energy, the Secretary of Agriculture,*
16 *and the Chairman of the Council on Environmental Qual-*
17 *ity shall, within 90 days of the date of enactment of this*
18 *subsection, submit a joint report to Congress identifying the*
19 *following:*

20 (1) *all existing designated transmission and dis-*
21 *tribution corridors on Federal land and the status of*
22 *work related to proposed transmission and distribu-*
23 *tion corridor designations, the schedule for completing*
24 *such work, any impediments to completing the work,*

1 *and steps that Congress could take to expedite the*
2 *process;*

3 *(2) the number of pending applications to locate*
4 *transmission and distribution facilities on Federal*
5 *lands, key information relating to each such facility,*
6 *how long each application has been pending, the*
7 *schedule for issuing a timely decision as to each facil-*
8 *ity, and progress in incorporating existing and new*
9 *such rights-of-way into relevant land use and resource*
10 *management plans or their equivalent; and*

11 *(3) the number of existing transmission and dis-*
12 *tribution rights-of-way on Federal lands that will*
13 *come up for renewal within the following 5, 10, and*
14 *15 year periods, and a description of how the Secre-*
15 *taries plan to manage such renewals.*

16 ***Subtitle B—Transmission***
17 ***Operation***

18 ***SEC. 7021. OPEN ACCESS TRANSMISSION BY CERTAIN UTILI-***
19 ***TIES.***

20 *Part II of the Federal Power Act (16 U.S.C. 824 et*
21 *seq.) is amended by inserting after section 211 the following:*

1 **“SEC. 211A. OPEN ACCESS BY UNREGULATED TRANSMIT-**
2 **TING UTILITIES.**

3 “(a) *IN GENERAL.*—Subject to section 212(h), the
4 Commission may, by rule or order, require an unregulated
5 transmitting utility to provide transmission services—

6 “(1) *at rates that are comparable to those that*
7 *the unregulated transmitting utility charges itself,*
8 *and*

9 “(2) *on terms and conditions (not relating to*
10 *rates) that are comparable to those under which such*
11 *unregulated transmitting utility provides trans-*
12 *mission services to itself and that are not unduly dis-*
13 *criminatory or preferential.*

14 “(b) *EXEMPTIONS.*—

15 “(1) *IN GENERAL.*—The Commission shall ex-
16 *empt from any rule or order under this subsection*
17 *any unregulated transmitting utility that—*

18 “(A)(i) *sells no more than 4,000,000 mega-*
19 *watt hours of electricity per year; and*

20 “(ii) *is a distribution utility; or*

21 “(B) *does not own or operate any trans-*
22 *mission facilities that are necessary for oper-*
23 *ating an interconnected transmission system (or*
24 *any portion thereof); or*

25 “(C) *meets other criteria the Commission*
26 *determines to be in the public interest.*

1 “(2) *LOCAL DISTRIBUTION.*— *The requirements*
2 *of subsection (a) shall not apply to facilities used in*
3 *local distribution.*

4 “(c) *RATE CHANGING PROCEDURES.*—*The rate chang-*
5 *ing procedures applicable to public utilities under sub-*
6 *sections (c) and (d) of section 205 are applicable to unregu-*
7 *lated transmitting utilities for purposes of this section.*

8 “(d) *REMAND.*—*In exercising its authority under*
9 *paragraph (1), the Commission may remand transmission*
10 *rates to an unregulated transmitting utility for review and*
11 *revision where necessary to meet the requirements of sub-*
12 *section (a).*

13 “(e) *SECTION 211 REQUESTS.*—*The provision of*
14 *transmission services under subsection (a) does not preclude*
15 *a request for transmission services under section 211.*

16 “(f) *DEFINITIONS.*—*For purposes of this section—*

17 “(1) *The term ‘unregulated transmitting utility’*
18 *means an entity that—*

19 “(A) *owns or operates facilities used for the*
20 *transmission of electric energy in interstate com-*
21 *merce, and*

22 “(B) *is either an entity described in section*
23 *201(f) or a rural electric cooperative.*

1 “(2) The term ‘distribution utility’ means an
2 unregulated transmitting utility that serves at least
3 ninety percent of its electric customers at retail.”.

4 **SEC. 7022. REGIONAL TRANSMISSION ORGANIZATIONS.**

5 (a) *SENSE OF THE CONGRESS ON RTOs.*—It is the
6 sense of Congress that, in order to promote fair, open access
7 to electric transmission service, benefit retail consumers, fa-
8 cilitate wholesale competition, improve efficiencies in trans-
9 mission grid management, promote grid reliability, remove
10 opportunities for unduly discriminatory or preferential
11 transmission practices, and provide for the efficient devel-
12 opment of transmission infrastructure needed to meet the
13 growing demands of competitive wholesale power markets,
14 all transmitting utilities in interstate commerce should vol-
15 untarily become members of independently administered re-
16 gional transmission organizations that have operational
17 control of interstate transmission facilities and do not own
18 or control generation facilities used to supply electric en-
19 ergy for sale at wholesale.

20 (b) *SENSE OF THE CONGRESS ON CAPITAL INVEST-*
21 *MENT.*—It is the sense of the Congress that the Federal En-
22 ergy Regulatory Commission should provide to any trans-
23 mitting utility that becomes a member of an operational
24 regional transmitting organization approved by the Com-
25 mission a return on equity sufficient to attract new invest-

1 *ment capital for expansion of transmission capacity, in ac-*
2 *cordance with sections 205 and 206 of the Federal Power*
3 *Act (16 U.S.C. 824d and 824e), including the requirement*
4 *that rates be just and reasonable.*

5 *(c) REPORT ON PENDING APPLICATIONS.—Not later*
6 *than 120 days after the date of enactment of this section,*
7 *the Federal Energy Regulatory Commission shall submit to*
8 *the Committee on Energy and Commerce of the United*
9 *States House of Representatives and the Committee on En-*
10 *ergy and Natural Resources of the United States Senate a*
11 *report containing the following:*

12 *(1) A list of all regional transmission organiza-*
13 *tion applications filed at the Commission pursuant to*
14 *the Commission's Order No. 2000, including an iden-*
15 *tification of each public utility and other entity in-*
16 *cluded within the proposed membership of the re-*
17 *gional transmission organization.*

18 *(2) A table showing the date each such applica-*
19 *tion was filed, the date of any revised filings of such*
20 *application, the date of each preliminary or final*
21 *Commission order regarding such application, and a*
22 *statement of whether the application has been rejected,*
23 *preliminarily approved, finally approved, or has*
24 *some other status (including a description of that sta-*
25 *tus).*

1 (3) *For any application that has not been fi-*
2 *nally approved by the Commission, a detailed de-*
3 *scription of every aspect of the application that the*
4 *Commission has determined does not conform to the*
5 *requirements of Order No. 2000.*

6 (4) *For any application that has not been fi-*
7 *nally approved by the Commission, an explanation*
8 *by the Commission of why the items described pursu-*
9 *ant to paragraph (3) constitute material noncompli-*
10 *ance with the requirements of the Commission's Order*
11 *No. 2000 sufficient to justify denial of approval by*
12 *the Commission.*

13 (5) *For all regional transmission organization*
14 *applications filed pursuant to the Commission's*
15 *Order No. 2000, whether finally approved or not—*

16 (A) *a discussion of that regional trans-*
17 *mission organization's efforts to minimize rate*
18 *seams between itself and—*

19 (i) *other regional transmission organi-*
20 *zations; and*

21 (ii) *entities not participating in a re-*
22 *gional transmission organization; and*

23 (B) *a discussion of the impact of such seams*
24 *on consumers and wholesale competition; and*

1 (C) a discussion of minimizing cost-shifting
2 on consumers.

3 (d) *FEDERAL UTILITY PARTICIPATION IN RTOS.*—

4 (1) *DEFINITIONS.*—For purposes of this sec-
5 tion—

6 (A) The term “appropriate Federal regu-
7 latory authority” means—

8 (i) with respect to a Federal power
9 marketing agency, the Secretary of Energy,
10 except that the Secretary may designate the
11 Administrator of a Federal power mar-
12 keting agency to act as the appropriate Fed-
13 eral regulatory authority with respect to the
14 transmission system of that Federal power
15 marketing agency; and

16 (ii) with respect to the Tennessee Val-
17 ley Authority, the Board of Directors of the
18 Tennessee Valley Authority.

19 (B) The term “Federal utility” means a
20 Federal power marketing agency or the Ten-
21 nessee Valley Authority.

22 (C) The term “transmission system” means
23 electric transmission facilities owned, leased, or
24 contracted for by the United States and operated
25 by a Federal utility.

1 (2) *TRANSFER.*—*The appropriate Federal regu-*
2 *latory authority is authorized to enter into a con-*
3 *tract, agreement or other arrangement transferring*
4 *control and use of all or part of the Federal utility’s*
5 *transmission system to a regional transmission orga-*
6 *nization approved by the Federal Energy Regulatory*
7 *Commission. Such contract, agreement or arrange-*
8 *ment shall include—*

9 (A) *performance standards for operation*
10 *and use of the transmission system that the head*
11 *of the Federal utility determines necessary or ap-*
12 *propriate, including standards that assure recov-*
13 *ery of all the Federal utility’s costs and expenses*
14 *related to the transmission facilities that are the*
15 *subject of the contract, agreement or other ar-*
16 *rangement, consistency with existing contracts*
17 *and third-party financing arrangements, and*
18 *consistency with said Federal utility’s statutory*
19 *authorities, obligations, and limitations;*

20 (B) *provisions for monitoring and oversight*
21 *by the Federal utility of the regional trans-*
22 *mission organization’s fulfillment of the terms*
23 *and conditions of the contract, agreement or*
24 *other arrangement, including a provision that*
25 *may provide for the resolution of disputes*

1 *through arbitration or other means with the re-*
2 *gional transmission organization or with other*
3 *participants, notwithstanding the obligations*
4 *and limitations of any other law regarding arbi-*
5 *tration; and*

6 *(C) a provision that allows the Federal util-*
7 *ity to withdraw from the regional transmission*
8 *organization and terminate the contract, agree-*
9 *ment or other arrangement in accordance with*
10 *its terms.*

11 *Neither this section, actions taken pursuant to it, nor*
12 *any other transaction of a Federal utility using a re-*
13 *gional transmission organization shall serve to confer*
14 *upon the Federal Energy Regulatory Commission ju-*
15 *risdiction or authority over the Federal utility's elec-*
16 *tric generation assets, electric capacity or energy that*
17 *the Federal utility is authorized by law to market, or*
18 *the Federal utility's power sales activities.*

19 *(3) EXISTING STATUTORY AND OTHER OBLIGA-*
20 *TIONS.—*

21 *(A) SYSTEM OPERATION REQUIREMENTS.—*

22 *Any statutory provision requiring or authorizing*
23 *a Federal utility to transmit electric power or to*
24 *construct, operate or maintain its transmission*
25 *system shall not be construed to prohibit a trans-*

1 *fer of control and use of its transmission system*
2 *pursuant to, and subject to all requirements of*
3 *paragraph (2).*

4 *(B) OTHER OBLIGATIONS.—This subsection*
5 *shall not be construed to—*

6 *(i) suspend, or exempt any Federal*
7 *utility from, any provision of existing Fed-*
8 *eral law, including but not limited to any*
9 *requirement or direction relating to the use*
10 *of the Federal utility’s transmission system,*
11 *environmental protection, fish and wildlife*
12 *protection, flood control, navigation, water*
13 *delivery, or recreation; or*

14 *(ii) authorize abrogation of any con-*
15 *tract or treaty obligation.*

16 **SEC. 7023. NATIVE LOAD.**

17 *Part II of the Federal Power Act (16 U.S.C. 824 et*
18 *seq.) is amended by adding the following new section at*
19 *the end thereof:*

20 **“SEC. 217. SERVICE OBLIGATIONS OF LOAD-SERVING ENTI-**
21 **TIES.**

22 *“(a) IN GENERAL.—In exercising authority under this*
23 *Act, the Commission shall ensure that any load-serving en-*
24 *tity that either—*

1 “(1) owns transmission facilities for the trans-
2 mission of electric energy in interstate commerce used
3 to purchase or deliver electric energy to meet—

4 “(A) a service obligation to customers; or

5 “(B) an existing wholesale contractual obli-
6 gation; or

7 “(2) holds a contract or service agreement for
8 firm transmission service used to purchase or deliver
9 electric energy to meet—

10 “(A) a service obligation to customers; or

11 “(B) an existing wholesale contractual obli-
12 gation

13 shall be entitled to use such transmission facilities or equiv-
14 alent transmission rights to meet such obligations before
15 transmission capacity is made available for other uses.

16 “(b) *USE BY SUCCESSOR IN INTEREST.*—To the extent
17 that all or a portion of the service obligation or contractual
18 obligation covered by subsection (a) is transferred to an-
19 other load serving entity, the successor shall be entitled to
20 use such transmission facilities or firm transmission rights
21 associated with the transferred service obligation consistent
22 with subsection (a). Subsequent transfers to another load
23 serving entity, or back to the original load-serving entity,
24 shall be entitled to the same rights.

1 “(c) *OTHER ENTITIES.*—*The Commission may exer-*
2 *cise authority under this Act to make transmission rights*
3 *not used to meet an obligation covered by subsection (a)*
4 *available to other entities in a manner determined by the*
5 *Commission to be not unduly discriminatory or pref-*
6 *erential.*

7 “(d) *DEFINITIONS.*—*For the purposes of this section:*

8 “(1) *The term ‘load-serving entity’ means an*
9 *electric utility, transmitting utility or Federal power*
10 *marketing agency that has an obligation under Fed-*
11 *eral, State, or local law, or under long-term contracts,*
12 *to provide electric service to either—*

13 “(A) *electric consumers (as defined in sec-*
14 *tion 3(5) of the Public Utility Regulatory Poli-*
15 *cies Act of 1978 (16 U.S.C. 2602(5)); or*

16 “(B) *an electric utility as defined in section*
17 *3(4) of the Public Utility Regulatory Policies Act*
18 *of 1978 (16 U.S.C. 2602(5)) that has an obliga-*
19 *tion to provide electric service to electric con-*
20 *sumers.*

21 *Such obligations shall be deemed ‘service obligations’.*

22 “(2) *The term ‘existing wholesale contractual ob-*
23 *ligation’ means an obligation under a firm long-term*
24 *wholesale contract that was in effect on March 28,*
25 *2003. A contract modification after March 28, 2003*

1 *(other than one that increases the quantity of electric*
2 *energy sold under the contract) shall not affect the*
3 *status of such contract as an existing wholesale con-*
4 *tractual obligation.*

5 “(e) *RELATIONSHIP TO OTHER PROVISIONS.—To the*
6 *extent that a transmitting utility reserves transmission ca-*
7 *capacity (or reserves the equivalent amount of tradable trans-*
8 *mission rights) to provide firm transmission service to meet*
9 *service obligations or firm long-term wholesale contractual*
10 *obligations pursuant to subsection (a), that transmitting*
11 *utility shall not be considered as engaging in undue dis-*
12 *crimination or preference under this Act.*

13 “(f) *JURISDICTION.—This section shall not apply to*
14 *an entity located in an area referred to in section*
15 *212(k)(2)(A).*

16 “(g) *SAVINGS CLAUSE.—Nothing in this section shall*
17 *affect any allocation of transmission rights by the PJM*
18 *Interconnection, the New York Independent System Oper-*
19 *ator, the New England Independent System Operator, the*
20 *Midwest Independent System Operator, or the California*
21 *Independent System Operator. Nothing in this section shall*
22 *provide a basis for abrogating any contract for firm trans-*
23 *mission service or rights in effect as of the date of enactment*
24 *of this section.”.*

1 ***Subtitle C—Reliability***

2 ***SEC. 7031. ELECTRIC RELIABILITY STANDARDS.***

3 *Part II of the Federal Power Act (16 U.S.C 824 et*
4 *seq.) is amended by inserting the following new section at*
5 *the end thereof:*

6 ***“SEC. 218. ELECTRIC RELIABILITY.***

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

8 *“(1) The term ‘bulk-power system’ means—*

9 *“(A) facilities and control systems necessary*
10 *for operating an interconnected electric energy*
11 *transmission network (or any portion thereof);*
12 *and*

13 *“(B) electric energy from generation facili-*
14 *ties needed to maintain transmission system re-*
15 *liability.*

16 *The term does not include facilities used in the local*
17 *distribution of electric energy.*

18 *“(2) The terms ‘Electric Reliability Organiza-*
19 *tion’ and ‘ERO’ mean the organization certified by*
20 *the Commission under subsection (c) the purpose of*
21 *which is to establish and enforce reliability standards*
22 *for the bulk-power system, subject to Commission re-*
23 *view.*

24 *“(3) The term ‘reliability standard’ means a re-*
25 *quirement, approved by the Commission under this*

1 *section, to provide for reliable operation of the bulk-*
2 *power system. The term includes requirements for the*
3 *operation of existing bulk-power system facilities and*
4 *the design of planned additions or modifications to*
5 *such facilities to the extent necessary to provide for*
6 *reliable operation of the bulk-power system, but the*
7 *term does not include any requirement to enlarge*
8 *such facilities or to construct new transmission ca-*
9 *capacity or generation capacity.*

10 *“(4) The term ‘reliable operation’ means oper-*
11 *ating the elements of the bulk-power system within*
12 *equipment and electric system thermal, voltage, and*
13 *stability limits so that instability, uncontrolled sepa-*
14 *ration, or cascading failures of such system will not*
15 *occur as a result of a sudden disturbance or unantici-*
16 *ipated failure of system elements.*

17 *“(5) The term ‘Interconnection’ means a geo-*
18 *graphic area in which the operation of bulk-power*
19 *system components is synchronized such that the fail-*
20 *ure of one or more of such components may adversely*
21 *affect the ability of the operators of other components*
22 *within the system to maintain reliable operation of*
23 *the facilities within their control.*

24 *“(6) The term ‘transmission organization’ means*
25 *a regional transmission organization, independent*

1 *system operator, independent transmission provider,*
2 *or other transmission organization finally approved*
3 *by the Commission for the operation of transmission*
4 *facilities.*

5 *“(7) The term ‘regional entity’ means an entity*
6 *having enforcement authority pursuant to subsection*
7 *(e)(4).*

8 *“(b) JURISDICTION AND APPLICABILITY.—(1) The*
9 *Commission shall have jurisdiction, within the United*
10 *States, over the ERO certified by the Commission under*
11 *subsection (c), any regional entities, and all users, owners*
12 *and operators of the bulk-power system, including but not*
13 *limited to the entities described in section 201(f), for pur-*
14 *poses of approving reliability standards established under*
15 *this section and enforcing compliance with this section. All*
16 *users, owners and operators of the bulk-power system shall*
17 *comply with reliability standards that take effect under this*
18 *section.*

19 *“(2) The Commission shall issue a final rule to imple-*
20 *ment the requirements of this section not later than 180*
21 *days after the date of enactment of this section.*

22 *“(c) CERTIFICATION.—Following the issuance of a*
23 *Commission rule under subsection (b)(2), any person may*
24 *submit an application to the Commission for certification*
25 *as the Electric Reliability Organization (ERO). The Com-*

1 mission may certify one such ERO if the Commission deter-
2 mines that such ERO—

3 “(1) has the ability to develop and enforce, sub-
4 ject to subsection (e)(2), reliability standards that
5 provide for an adequate level of reliability of the bulk-
6 power system;

7 “(2) has established rules that—

8 “(A) assure its independence of the users
9 and owners and operators of the bulk-power sys-
10 tem, while assuring fair stakeholder representa-
11 tion in the selection of its directors and balanced
12 decisionmaking in any ERO committee or subor-
13 dinate organizational structure;

14 “(B) allocate equitably reasonable dues, fees,
15 and other charges among end users for all activi-
16 ties under this section;

17 “(C) provide fair and impartial procedures
18 for enforcement of reliability standards through
19 the imposition of penalties in accordance with
20 subsection (e) (including limitations on activi-
21 ties, functions, or operations, or other appro-
22 priate sanctions);

23 “(D) provide for reasonable notice and op-
24 portunity for public comment, due process, open-
25 ness, and balance of interests in developing reli-

1 *ability standards and otherwise exercising its*
2 *duties; and*

3 “(E) provide for taking, after certification,
4 *appropriate steps to gain recognition in Canada*
5 *and Mexico.*

6 “(d) *RELIABILITY STANDARDS.—(1) The Electric Reli-*
7 *ability Organization shall file each reliability standard or*
8 *modification to a reliability standard that it proposes to*
9 *be made effective under this section with the Commission.*

10 “(2) *The Commission may approve, by rule or order,*
11 *a proposed reliability standard or modification to a reli-*
12 *ability standard if it determines that the standard is just,*
13 *reasonable, not unduly discriminatory or preferential, and*
14 *in the public interest. The Commission shall give due weight*
15 *to the technical expertise of the Electric Reliability Organi-*
16 *zation with respect to the content of a proposed standard*
17 *or modification to a reliability standard and to the tech-*
18 *nical expertise of a regional entity organized on an Inter-*
19 *connection-wide basis with respect to a reliability standard*
20 *to be applicable within that Interconnection, but shall not*
21 *defer with respect to the effect of a standard on competition.*
22 *A proposed standard or modification shall take effect upon*
23 *approval by the Commission.*

24 “(3) *The Electric Reliability Organization shall*
25 *rebuttably presume that a proposal from a regional entity*

1 *organized on an Interconnection-wide basis for a reliability*
2 *standard or modification to a reliability standard to be ap-*
3 *plicable on an Interconnection-wide basis is just, reason-*
4 *able, and not unduly discriminatory or preferential, and*
5 *in the public interest.*

6 “(4) *The Commission shall remand to the Electric Re-*
7 *liability Organization for further consideration a proposed*
8 *reliability standard or a modification to a reliability stand-*
9 *ard that the Commission disapproves in whole or in part.*

10 “(5) *The Commission, upon its own motion or upon*
11 *complaint, may order the Electric Reliability Organization*
12 *to submit to the Commission a proposed reliability stand-*
13 *ard or a modification to a reliability standard that address-*
14 *es a specific matter if the Commission considers such a new*
15 *or modified reliability standard appropriate to carry out*
16 *this section.*

17 “(6) *The final rule adopted under subsection (b)(2)*
18 *shall include fair processes for the identification and timely*
19 *resolution of any conflict between a reliability standard and*
20 *any function, rule, order, tariff, rate schedule, or agreement*
21 *accepted, approved, or ordered by the Commission applica-*
22 *ble to a transmission organization. Such transmission orga-*
23 *nization shall continue to comply with such function, rule,*
24 *order, tariff, rate schedule or agreement accepted approved,*
25 *or ordered by the Commission until—*

1 “(A) the Commission finds a conflict exists be-
2 tween a reliability standard and any such provision;

3 “(B) the Commission orders a change to such
4 provision pursuant to section 206 of this part; and

5 “(C) the ordered change becomes effective under
6 this part.

7 If the Commission determines that a reliability standard
8 needs to be changed as a result of such a conflict, it shall
9 order the ERO to develop and file with the Commission a
10 modified reliability standard under paragraph (4) or (5)
11 of this subsection.

12 “(e) ENFORCEMENT.—(1) The ERO may impose, sub-
13 ject to paragraph (2), a penalty on a user or owner or oper-
14 ator of the bulk-power system for a violation of a reliability
15 standard approved by the Commission under subsection (d)
16 if the ERO, after notice and an opportunity for a hearing—

17 “(A) finds that the user or owner or operator has
18 violated a reliability standard approved by the Com-
19 mission under subsection (d); and

20 “(B) files notice and the record of the proceeding
21 with the Commission.

22 “(2) A penalty imposed under paragraph (1) may take
23 effect not earlier than the 31st day after the electric reli-
24 ability organization files with the Commission notice of the
25 penalty and the record of proceedings. Such penalty shall

1 *be subject to review by the Commission, on its own motion*
2 *or upon application by the user, owner or operator that*
3 *is the subject of the penalty filed within 30 days after the*
4 *date such notice is filed with the Commission. Application*
5 *to the Commission for review, or the initiation of review*
6 *by the Commission on its own motion, shall not operate*
7 *as a stay of such penalty unless the Commission otherwise*
8 *orders upon its own motion or upon application by the*
9 *user, owner or operator that is the subject of such penalty.*
10 *In any proceeding to review a penalty imposed under para-*
11 *graph (1), the Commission, after notice and opportunity*
12 *for hearing (which hearing may consist solely of the record*
13 *before the electric reliability organization and opportunity*
14 *for the presentation of supporting reasons to affirm, modify,*
15 *or set aside the penalty), shall by order affirm, set aside,*
16 *reinstate, or modify the penalty, and, if appropriate, re-*
17 *mand to the electric reliability organization for further pro-*
18 *ceedings. The Commission shall implement expedited proce-*
19 *dures for such hearings.*

20 “(3) *On its own motion or upon complaint, the Com-*
21 *mission may order compliance with a reliability standard*
22 *and may impose a penalty against a user or owner or oper-*
23 *ator of the bulk-power system, if the Commission finds, after*
24 *notice and opportunity for a hearing, that the user or owner*
25 *or operator of the bulk-power system has engaged or is about*

1 *to engage in any acts or practices that constitute or will*
2 *constitute a violation of a reliability standard.*

3 “(4) *The Commission shall establish regulations au-*
4 *thorizing the ERO to enter into an agreement to delegate*
5 *authority to a regional entity for the purpose of proposing*
6 *reliability standards to the ERO and enforcing reliability*
7 *standards under paragraph (1) if—*

8 “(A) *the regional entity is governed by—*

9 “(i) *an independent board;*

10 “(ii) *a balanced stakeholder board; or*

11 “(iii) *a combination independent and bal-*
12 *anced stakeholder board.*

13 “(B) *the regional entity otherwise satisfies the*
14 *provisions of subsection (c)(1) and (2); and*

15 “(C) *the agreement promotes effective and effi-*
16 *cient administration of bulk-power system reliability.*

17 *The Commission may modify such delegation. The ERO*
18 *and the Commission shall rebuttably presume that a pro-*
19 *posal for delegation to a regional entity organized on an*
20 *Interconnection-wide basis promotes effective and efficient*
21 *administration of bulk-power system reliability and should*
22 *be approved. Such regulation may provide that the Com-*
23 *mission may assign the ERO’s authority to enforce reli-*
24 *ability standards under paragraph (1) directly to a re-*

1 *gional entity consistent with the requirements of this para-*
2 *graph.*

3 “(5) *The Commission may take such action as is nec-*
4 *essary or appropriate against the ERO or a regional entity*
5 *to ensure compliance with a reliability standard or any*
6 *Commission order affecting the ERO or a regional entity.*

7 “(6) *Any penalty imposed under this section shall bear*
8 *a reasonable relation to the seriousness of the violation and*
9 *shall take into consideration the efforts of such user, owner,*
10 *or operator to remedy the violation in a timely manner.*

11 “(f) *CHANGES IN ELECTRICITY RELIABILITY ORGANI-*
12 *ZATION RULES.—The Electric Reliability Organization*
13 *shall file with the Commission for approval any proposed*
14 *rule or proposed rule change, accompanied by an expla-*
15 *nation of its basis and purpose. The Commission, upon its*
16 *own motion or complaint, may propose a change to the*
17 *rules of the Electric Reliability Organization. A proposed*
18 *rule or proposed rule change shall take effect upon a finding*
19 *by the Commission, after notice and opportunity for com-*
20 *ment, that the change is just, reasonable, not unduly dis-*
21 *criminatory or preferential, is in the public interest, and*
22 *satisfies the requirements of subsection (c).*

23 “(g) *RELIABILITY REPORTS.—The Electric Reliability*
24 *Organization shall conduct periodic assessments of the reli-*

1 *ability and adequacy of the bulk-power system in North*
2 *America.*

3 “(h) *COORDINATION WITH CANADA AND MEXICO.*—*The*
4 *President is urged to negotiate international agreements*
5 *with the governments of Canada and Mexico to provide for*
6 *effective compliance with reliability standards and the effec-*
7 *tiveness of the Electric Reliability Organization in the*
8 *United States and Canada or Mexico.*

9 “(i) *SAVINGS PROVISIONS.*—(1) *The Electric Reli-*
10 *ability Organization shall have authority to develop and*
11 *enforce compliance with reliability standards for only the*
12 *bulk-power system.*

13 “(2) *This section does not authorize the Electric Reli-*
14 *ability Organization or the Commission to order the con-*
15 *struction of additional generation or transmission capacity*
16 *or to set and enforce compliance with standards for ade-*
17 *quacy or safety of electric facilities or services.*

18 “(3) *Nothing in this section shall be construed to pre-*
19 *empt any authority of any State to take action to ensure*
20 *the safety, adequacy, and reliability of electric service with-*
21 *in that State, as long as such action is not inconsistent*
22 *with any reliability standard, except that the State of New*
23 *York may establish rules that result in greater reliability*
24 *within that State, as long as such action does not result*

1 *in lesser reliability outside the State than that provided by*
2 *the reliability standards.*

3 “(4) *Within 90 days of the application of the Electric*
4 *Reliability Organization or other affected party, and after*
5 *notice and opportunity for comment, the Commission shall*
6 *issue a final order determining whether a State action is*
7 *inconsistent with a reliability standard, taking into consid-*
8 *eration any recommendation of the Electric Reliability Or-*
9 *ganization.*

10 “(5) *The Commission, after consultation with the Elec-*
11 *tric Reliability Organization and the State taking action,*
12 *may stay the effectiveness of any State action, pending the*
13 *Commission’s issuance of a final order.*

14 “(j) *REGIONAL ADVISORY BODIES.—The Commission*
15 *shall establish a regional advisory body on the petition of*
16 *at least two-thirds of the States within a region that have*
17 *more than one-half of their electric load served within the*
18 *region. A regional advisory body shall be composed or of*
19 *one member from each participating State in the region,*
20 *appointed by the Governor of each State, and may include*
21 *representatives of agencies, States, and provinces outside the*
22 *United States. A regional advisory body may provide ad-*
23 *vice to the Electric Reliability Organization, a regional en-*
24 *tity, or the Commission regarding the governance of an ex-*
25 *isting or proposed regional entity within the same region,*

1 *whether a standard proposed to apply within the region is*
2 *just, reasonable, not unduly discriminatory or preferential,*
3 *and in the public interest, whether fees proposed to be as-*
4 *sessed within the region are just, reasonable, not unduly*
5 *discriminatory or preferential, and in the public interest*
6 *and any other responsibilities requested by the Commission.*
7 *The Commission may give deference to the advice of any*
8 *such regional advisory body if that body is organized on*
9 *an Interconnection-wide basis.*

10 “(k) *APPLICATION TO ALASKA AND HAWAII.—The pro-*
11 *visions of this section do not apply to Alaska or Hawaii.*”.

12 ***Subtitle D—PUHCA Amendments***

13 ***SEC. 7041. SHORT TITLE.***

14 *This subtitle may be cited as the “Public Utility Hold-*
15 *ing Company Act of 2003”.*

16 ***SEC. 7042. DEFINITIONS.***

17 *For purposes of this subtitle:*

18 (1) *The term “affiliate” of a company means*
19 *any company, 5 percent or more of the outstanding*
20 *voting securities of which are owned, controlled, or*
21 *held with power to vote, directly or indirectly, by*
22 *such company.*

23 (2) *The term “associate company” of a company*
24 *means any company in the same holding company*
25 *system with such company.*

1 (3) *The term “Commission” means the Federal*
2 *Energy Regulatory Commission.*

3 (4) *The term “company” means a corporation,*
4 *partnership, association, joint stock company, busi-*
5 *ness trust, or any organized group of persons, whether*
6 *incorporated or not, or a receiver, trustee, or other*
7 *liquidating agent of any of the foregoing.*

8 (5) *The term “electric utility company” means*
9 *any company that owns or operates facilities used for*
10 *the generation, transmission, or distribution of elec-*
11 *tric energy for sale.*

12 (6) *The terms “exempt wholesale generator” and*
13 *“foreign utility company” have the same meanings as*
14 *in sections 32 and 33, respectively, of the Public Util-*
15 *ity Holding Company Act of 1935 (15 U.S.C. 79z–5a,*
16 *79z–5b), as those sections existed on the day before the*
17 *effective date of this subtitle.*

18 (7) *The term “gas utility company” means any*
19 *company that owns or operates facilities used for dis-*
20 *tribution at retail (other than the distribution only in*
21 *enclosed portable containers or distribution to tenants*
22 *or employees of the company operating such facilities*
23 *for their own use and not for resale) of natural or*
24 *manufactured gas for heat, light, or power.*

25 (8) *The term “holding company” means—*

1 (A) any company that directly or indirectly
2 owns, controls, or holds, with power to vote, 10
3 percent or more of the outstanding voting securi-
4 ties of a public utility company or of a holding
5 company of any public utility company; and

6 (B) any person, determined by the Commis-
7 sion, after notice and opportunity for hearing, to
8 exercise directly or indirectly (either alone or
9 pursuant to an arrangement or understanding
10 with one or more persons) such a controlling in-
11 fluence over the management or policies of any
12 public utility company or holding company as to
13 make it necessary or appropriate for the rate
14 protection of utility customers with respect to
15 rates that such person be subject to the obliga-
16 tions, duties, and liabilities imposed by this sub-
17 title upon holding companies.

18 (9) The term “holding company system” means
19 a holding company, together with its subsidiary com-
20 panies.

21 (10) The term “jurisdictional rates” means rates
22 established by the Commission for the transmission of
23 electric energy in interstate commerce, the sale of elec-
24 tric energy at wholesale in interstate commerce, the
25 transportation of natural gas in interstate commerce,

1 *and the sale in interstate commerce of natural gas for*
2 *resale for ultimate public consumption for domestic,*
3 *commercial, industrial, or any other use.*

4 (11) *The term “natural gas company” means a*
5 *person engaged in the transportation of natural gas*
6 *in interstate commerce or the sale of such gas in*
7 *interstate commerce for resale.*

8 (12) *The term “person” means an individual or*
9 *company.*

10 (13) *The term “public utility” means any person*
11 *who owns or operates facilities used for transmission*
12 *of electric energy in interstate commerce or sales of*
13 *electric energy at wholesale in interstate commerce.*

14 (14) *The term “public utility company” means*
15 *an electric utility company or a gas utility company.*

16 (15) *The term “State commission” means any*
17 *commission, board, agency, or officer, by whatever*
18 *name designated, of a State, municipality, or other*
19 *political subdivision of a State that, under the laws*
20 *of such State, has jurisdiction to regulate public util-*
21 *ity companies.*

22 (16) *The term “subsidiary company” of a hold-*
23 *ing company means—*

24 (A) *any company, 10 percent or more of the*
25 *outstanding voting securities of which are di-*

1 *rectly or indirectly owned, controlled, or held*
2 *with power to vote, by such holding company;*
3 *and*

4 *(B) any person, the management or policies*
5 *of which the Commission, after notice and oppor-*
6 *tunity for hearing, determines to be subject to a*
7 *controlling influence, directly or indirectly, by*
8 *such holding company (either alone or pursuant*
9 *to an arrangement or understanding with one or*
10 *more other persons) so as to make it necessary*
11 *for the rate protection of utility customers with*
12 *respect to rates that such person be subject to the*
13 *obligations, duties, and liabilities imposed by*
14 *this subtitle upon subsidiary companies of hold-*
15 *ing companies.*

16 *(17) The term “voting security” means any secu-*
17 *rity presently entitling the owner or holder thereof to*
18 *vote in the direction or management of the affairs of*
19 *a company.*

20 **SEC. 7043. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**
21 **PANY ACT OF 1935.**

22 *The Public Utility Holding Company Act of 1935 (15*
23 *U.S.C. 79 et seq.) is repealed.*

1 **SEC. 7044. FEDERAL ACCESS TO BOOKS AND RECORDS.**

2 (a) *IN GENERAL.*—Each holding company and each
3 associate company thereof shall maintain, and shall make
4 available to the Commission, such books, accounts, memo-
5 randa, and other records as the Commission deems to be
6 relevant to costs incurred by a public utility or natural gas
7 company that is an associate company of such holding com-
8 pany and necessary or appropriate for the protection of
9 utility customers with respect to jurisdictional rates.

10 (b) *AFFILIATE COMPANIES.*—Each affiliate of a hold-
11 ing company or of any subsidiary company of a holding
12 company shall maintain, and shall make available to the
13 Commission, such books, accounts, memoranda, and other
14 records with respect to any transaction with another affil-
15 iate, as the Commission deems to be relevant to costs in-
16 curred by a public utility or natural gas company that is
17 an associate company of such holding company and nec-
18 essary or appropriate for the protection of utility customers
19 with respect to jurisdictional rates.

20 (c) *HOLDING COMPANY SYSTEMS.*—The Commission
21 may examine the books, accounts, memoranda, and other
22 records of any company in a holding company system, or
23 any affiliate thereof, as the Commission deems to be rel-
24 evant to costs incurred by a public utility or natural gas
25 company within such holding company system and nec-

1 *essary or appropriate for the protection of utility customers*
2 *with respect to jurisdictional rates.*

3 (d) *CONFIDENTIALITY.*—*No member, officer, or em-*
4 *ployee of the Commission shall divulge any fact or informa-*
5 *tion that may come to his or her knowledge during the*
6 *course of examination of books, accounts, memoranda, or*
7 *other records as provided in this section, except as may be*
8 *directed by the Commission or by a court of competent ju-*
9 *risdiction.*

10 ***SEC. 7045. STATE ACCESS TO BOOKS AND RECORDS.***

11 (a) *In GENERAL.*—*Upon the written request of a State*
12 *commission having jurisdiction to regulate a public utility*
13 *company in a holding company system, the holding com-*
14 *pany or any associate company or affiliate thereof, other*
15 *than such public utility company, wherever located, shall*
16 *produce for inspection books, accounts, memoranda, and*
17 *other records that—*

18 (1) *have been identified in reasonable detail by*
19 *the State commission;*

20 (2) *the State commission deems are relevant to*
21 *costs incurred by such public utility company; and*

22 (3) *are necessary for the effective discharge of the*
23 *responsibilities of the State commission with respect*
24 *to such proceeding.*

1 (b) *LIMITATION.*—Subsection (a) does not apply to
2 any person that is a holding company solely by reason of
3 ownership of one or more qualifying facilities under the
4 *Public Utility Regulatory Policies Act of 1978 (16 U.S.C.*
5 *2601 et seq.)*.

6 (c) *CONFIDENTIALITY OF INFORMATION.*—The produc-
7 tion of books, accounts, memoranda, and other records
8 under subsection (a) shall be subject to such terms and con-
9 ditions as may be necessary and appropriate to safeguard
10 against unwarranted disclosure to the public of any trade
11 secrets or sensitive commercial information.

12 (d) *EFFECT ON STATE LAW.*—Nothing in this section
13 shall preempt applicable State law concerning the provision
14 of books, accounts, memoranda, and other records, or in any
15 way limit the rights of any State to obtain books, accounts,
16 memoranda, and other records under any other Federal
17 law, contract, or otherwise.

18 (e) *COURT JURISDICTION.*—Any United States district
19 court located in the State in which the State commission
20 referred to in subsection (a) is located shall have jurisdic-
21 tion to enforce compliance with this section.

22 **SEC. 7046. EXEMPTION AUTHORITY.**

23 (a) *RULEMAKING.*—Not later than 90 days after the
24 effective date of this subtitle, the Commission shall promul-
25 gate a final rule to exempt from the requirements of section

1 7044 (relating to Federal access to books and records) any
2 person that is a holding company, solely with respect to
3 one or more—

4 (1) qualifying facilities under the Public Utility
5 Regulatory Policies Act of 1978 (16 U.S.C. 2601 et
6 seq.);

7 (2) exempt wholesale generators; or

8 (3) foreign utility companies.

9 (b) *OTHER AUTHORITY.*—The Commission shall ex-
10 empt a person or transaction from the requirements of sec-
11 tion 7044 (relating to Federal access to books and records)
12 if, upon application or upon the motion of the Commis-
13 sion—

14 (1) the Commission finds that the books, ac-
15 counts, memoranda, and other records of any person
16 are not relevant to the jurisdictional rates of a public
17 utility or natural gas company; or

18 (2) the Commission finds that any class of trans-
19 actions is not relevant to the jurisdictional rates of a
20 public utility or natural gas company.

21 **SEC. 7047. AFFILIATE TRANSACTIONS.**

22 (a) *COMMISSION AUTHORITY UNAFFECTED.*—Nothing
23 in this subtitle shall limit the authority of the Commission
24 under the Federal Power Act (16 U.S.C. 791a et seq.) to
25 require that jurisdictional rates are just and reasonable, in-

1 *cluding the ability to deny or approve the pass through of*
2 *costs, the prevention of cross-subsidization, and the promul-*
3 *gation of such rules and regulations as are necessary or ap-*
4 *propriate for the protection of utility consumers.*

5 **(b) RECOVERY OF COSTS.**—*Nothing in this subtitle*
6 *shall preclude the Commission or a State commission from*
7 *exercising its jurisdiction under otherwise applicable law*
8 *to determine whether a public utility company, public util-*
9 *ity, or natural gas company may recover in rates any costs*
10 *of an activity performed by an associate company, or any*
11 *costs of goods or services acquired by such public utility*
12 *company from an associate company.*

13 **SEC. 7048. APPLICABILITY.**

14 *Except as otherwise specifically provided in this sub-*
15 *title, no provision of this subtitle shall apply to, or be*
16 *deemed to include—*

17 (1) *the United States;*

18 (2) *a State or any political subdivision of a*
19 *State;*

20 (3) *any foreign governmental authority not oper-*
21 *ating in the United States;*

22 (4) *any agency, authority, or instrumentality of*
23 *any entity referred to in paragraph (1), (2), or (3);*

24 *or*

1 (5) *any officer, agent, or employee of any entity*
2 *referred to in paragraph (1), (2), or (3) acting as*
3 *such in the course of his or her official duty.*

4 **SEC. 7049. EFFECT ON OTHER REGULATIONS.**

5 *Nothing in this subtitle precludes the Commission or*
6 *a State commission from exercising its jurisdiction under*
7 *otherwise applicable law to protect utility customers.*

8 **SEC. 7050. ENFORCEMENT.**

9 *The Commission shall have the same powers as set*
10 *forth in sections 306 through 317 of the Federal Power Act*
11 *(16 U.S.C. 825e–825p) to enforce the provisions of this sub-*
12 *title.*

13 **SEC. 7051. SAVINGS PROVISIONS.**

14 (a) *IN GENERAL.*—*Nothing in this subtitle prohibits*
15 *a person from engaging in or continuing to engage in ac-*
16 *tivities or transactions in which it is legally engaged or*
17 *authorized to engage on the date of enactment of this Act,*
18 *so long as that person continues to comply with the terms*
19 *of any such authorization, whether by rule or by order.*

20 (b) *EFFECT ON OTHER COMMISSION AUTHORITY.*—
21 *Nothing in this subtitle limits the authority of the Commis-*
22 *sion under the Federal Power Act (16 U.S.C. 791a et seq.)*
23 *(including section 301 of that Act) or the Natural Gas Act*
24 *(15 U.S.C. 717 et seq.) (including section 8 of that Act).*

1 **SEC. 7052. IMPLEMENTATION.**

2 *Not later than 12 months after the date of enactment*
3 *of this subtitle, the Commission shall—*

4 *(1) promulgate such regulations as may be nec-*
5 *essary or appropriate to implement this subtitle*
6 *(other than section 7045, relating to State access to*
7 *books and records); and*

8 *(2) submit to the Congress detailed recommenda-*
9 *tions on technical and conforming amendments to*
10 *Federal law necessary to carry out this subtitle and*
11 *the amendments made by this subtitle.*

12 **SEC. 7053. TRANSFER OF RESOURCES.**

13 *All books and records that relate primarily to the func-*
14 *tions transferred to the Commission under this subtitle shall*
15 *be transferred from the Securities and Exchange Commis-*
16 *sion to the Commission.*

17 **SEC. 7054. EFFECTIVE DATE.**

18 *This subtitle shall take effect 12 months after the date*
19 *of enactment of this subtitle.*

20 **SEC. 7055. AUTHORIZATION OF APPROPRIATIONS.**

21 *There are authorized to be appropriated such funds as*
22 *may be necessary to carry out this subtitle.*

23 **SEC. 7056. CONFORMING AMENDMENTS TO THE FEDERAL**
24 **POWER ACT.**

25 *(a) CONFLICT OF JURISDICTION.—Section 318 of the*
26 *Federal Power Act (16 U.S.C. 825q) is repealed.*

1 *Policies Act of 1978 shall be deemed to be a reference*
2 *to the date of enactment of this paragraph.*

3 “(C) Notwithstanding subsections (b) and (c) of
4 section 112, each State regulatory authority shall con-
5 sider and make a determination concerning whether
6 it is appropriate to implement the standard set out
7 in subparagraph (A) not later than 1 year after the
8 date of enactment of this paragraph.

9 “(12) *TIME-OF-USE METERING.*—(A) Each elec-
10 tric utility shall, at the request of an electric con-
11 sumer, provide electric service under a time-of-use
12 rate schedule which enables the electric consumer to
13 manage energy use and cost through time-of-use me-
14 tering and technology.

15 “(B) For purposes of implementing this para-
16 graph, any reference contained in this section to the
17 date of enactment of the Public Utility Regulatory
18 Policies Act of 1978 shall be deemed to be a reference
19 to the date of enactment of this paragraph.

20 “(C) Notwithstanding subsections (b) and (c) of
21 section 112, each State regulatory authority shall con-
22 sider and make a determination concerning whether
23 it is appropriate to implement the standards set out
24 in subparagraph (A) not later than 1 year after the
25 date of enactment of this paragraph.”.

1 (b) *SPECIAL RULES.*—Section 115 of the Public Util-
 2 ity Regulatory Policies Act of 1978 (16 U.S.C. 2625) is
 3 amended by adding at the end the following:

4 “(i) *REAL-TIME PRICING.*—In a State that permits
 5 third-party marketers to sell electric energy to retail electric
 6 consumers, the electric consumer shall be entitled to receive
 7 the same real-time metering and communication service as
 8 a direct retail electric consumer of the electric utility.

9 “(j) *TIME-OF-USE METERING.*—In a State that per-
 10 mits third-party marketers to sell electric energy to retail
 11 electric consumers, the electric consumer shall be entitled
 12 to receive the same time-of-use metering and communica-
 13 tion service as a direct retail electric consumer of the elec-
 14 tric utility.”.

15 **SEC. 7062. COGENERATION AND SMALL POWER PRODUC-**
 16 **TION PURCHASE AND SALE REQUIREMENTS.**

17 (a) *TERMINATION OF MANDATORY PURCHASE AND*
 18 *SALE REQUIREMENTS.*—Section 210 of the Public Utility
 19 Regulatory Policies Act of 1978 (16 U.S.C. 824a-3) is
 20 amended by adding at the end the following:

21 “(m) *TERMINATION OF MANDATORY PURCHASE AND*
 22 *SALE REQUIREMENTS.*—

23 “(1) *OBLIGATION TO PURCHASE.*—After the date
 24 of enactment of this subsection, no electric utility
 25 shall be required to enter into a new contract or obli-

1 *gation to purchase electric energy from a qualifying*
2 *cogeneration facility or a qualifying small power pro-*
3 *duction facility under this section if the Commission*
4 *finds that—*

5 *“(A) the qualifying cogeneration facility or*
6 *qualifying small power production facility has*
7 *access to*

8 *“(i) independently administered, auc-*
9 *tion-based day ahead and real time whole-*
10 *sale markets for the sale of electric energy,*
11 *and*

12 *“(ii) long-term wholesale markets for*
13 *the sale of capacity and electric energy;*

14 *“(B) the qualifying cogeneration facility or*
15 *qualifying small power production facility has*
16 *access to a competitive wholesale market for the*
17 *sale of electric energy that provides such quali-*
18 *fying cogeneration facility or qualifying small*
19 *power production facility with opportunities to*
20 *sell electric energy that, at a minimum, are com-*
21 *parable to the opportunities provided by the*
22 *markets, or some minimum combination thereof,*
23 *described in subparagraph (A); or*

24 *“(C) the qualifying cogeneration facility*
25 *does not meet criteria established by the Commis-*

1 *sion pursuant to the rulemaking set forth in sub-*
2 *paragraph (n) and has not filed with the Com-*
3 *mission a notice of self-certification or an appli-*
4 *cation for Commission certification under 18*
5 *C.F.R. 292.207 prior to the date of enactment of*
6 *this subsection.*

7 “(2) *COMMISSION REVIEW.—(A) Any electric*
8 *utility may file an application with the Commission*
9 *for relief from the mandatory purchase obligation*
10 *pursuant to this subsection on a utility-wide basis.*
11 *Such application shall set forth the reasons why such*
12 *relief is appropriate and describe how the conditions*
13 *set forth in subparagraphs (A) and (B) of paragraph*
14 *(1) of this subsection have been met.*

15 “(B) *After notice, including sufficient notice to*
16 *potentially affected qualifying facilities, and an op-*
17 *portunity for comment, and within 90 days of the fil-*
18 *ing of an application under subparagraph (A), the*
19 *Commission shall make a final determination as to*
20 *whether the conditions set forth in subparagraphs (A)*
21 *and (B) of paragraph (1) have been met. The Com-*
22 *mission shall not be authorized to issue a tolling*
23 *order regarding such application or otherwise delay a*
24 *final decision regarding such application.*

1 “(3) *REINSTATEMENT OF OBLIGATION TO PUR-*
2 *CHASE.—(A) At any time after the Commission*
3 *makes a finding under paragraph (2) relieving an*
4 *electric utility of its obligation to purchase electric*
5 *energy, a qualifying cogeneration facility or a quali-*
6 *fying small power production facility may apply to*
7 *the Commission for an order reinstating the electric*
8 *utility’s obligation to purchase electric energy under*
9 *this section. Such application shall set forth the rea-*
10 *sons why such relief is no longer appropriate and de-*
11 *scribe how the tests set forth in subparagraphs (A)*
12 *and (B) of paragraph (1) of this subsection are no*
13 *longer met.*

14 “(B) *After notice, including sufficient notice to*
15 *potentially affected utilities, and opportunity for com-*
16 *ment, and within 90 days of the filing of an applica-*
17 *tion under subparagraph (A), the Commission shall*
18 *issue an order reinstating the electric utility’s obliga-*
19 *tion to purchase electric energy under this section if*
20 *the Commission finds that the condition in paragraph*
21 *(1), which relieved the obligation to purchase, is no*
22 *longer met. The Commission shall not be authorized*
23 *to issue a tolling order regarding such application or*
24 *otherwise delay a final decision regarding such appli-*
25 *cation.*

1 “(4) *OBLIGATION TO SELL.*—After the date of en-
2 actment of this subsection, no electric utility shall be
3 required to enter into a new contract or obligation to
4 sell electric energy to a qualifying cogeneration facil-
5 ity or a qualifying small power production facility
6 if—

7 “(A) competing retail electric suppliers are
8 willing and able to provide electric energy to the
9 qualifying cogeneration facility or qualifying
10 small power production facility, and

11 “(B) the electric utility is not required by
12 State law to sell electric energy in its service ter-
13 ritory.

14 “(5) *NO EFFECT ON EXISTING RIGHTS AND REM-*
15 *EDIES.*—Nothing in this subsection affects the rights
16 or remedies of any party under any contract or obli-
17 gation, in effect or pending approval before the ap-
18 propriate State regulatory authority or nonregulated
19 electric utility on the date of enactment of this sub-
20 section, to purchase electric energy or capacity from
21 or to sell electric energy or capacity to a facility
22 under this Act (including the right to recover costs of
23 purchasing electric energy or capacity).

24 “(6) *RECOVERY OF COSTS.*—

1 “(A) *REGULATION.*—*To ensure recovery by*
2 *an electric utility that purchases electric energy*
3 *or capacity from a qualifying facility pursuant*
4 *to any legally enforceable obligation entered into*
5 *or imposed under this section of all prudently*
6 *incurred costs associated with the purchases, the*
7 *Commission shall issue and enforce such regula-*
8 *tions as may be required to ensure that the elec-*
9 *tric utility shall recover the prudently incurred*
10 *costs associated with such purchases.*

11 “(B) *ENFORCEMENT.*—*A regulation under*
12 *subparagraph (A) shall be enforceable in accord-*
13 *ance with the provisions of law applicable to en-*
14 *forcement of regulations under the Federal Power*
15 *Act (16 U.S.C. 791a et seq.).*

16 “(n) *RULEMAKING FOR NEW FACILITIES.*—

17 “(1) *IN GENERAL.*—*Not later than 180 days*
18 *after the date of enactment of this subsection, the*
19 *Commission shall issue a rule revising the criteria for*
20 *qualifying cogeneration facilities in 18 C.F.R.*
21 *292.205. In particular, the Commission shall evaluate*
22 *the rules regarding qualifying facility criteria and re-*
23 *visе such rules, as necessary, to ensure—*

1 “(A) that the thermal energy output of a
2 new qualifying cogeneration facility is used in a
3 productive and beneficial manner;

4 “(B) the electrical and thermal output of
5 the cogeneration facility is used predominantly
6 for commercial or industrial processes and not
7 intended predominantly for sale to an electric
8 utility; and

9 “(C) continuing progress in the development
10 of efficient electric energy generating technology.

11 “(2) *APPLICABILITY.*—Any revisions made to op-
12 erating and efficiency standards shall be applicable
13 only to a cogeneration facility that—

14 “(A) was not a qualifying cogeneration fa-
15 cility, or

16 “(B) had not filed with the Commission a
17 notice of self-certification or an application for
18 Commission certification under 18 C.F.R.

19 292.207
20 prior to the date of enactment of this subsection.

21 “(3) *DEFINITION.*—For purposes of this sub-
22 section, the term ‘commercial processes’ includes uses
23 of thermal and electric energy for educational and
24 healthcare facilities.

1 “(o) *RULES FOR EXISTING FACILITIES.*—Notwith-
2 *standing rule revisions under subsection (n), the Commis-*
3 *sion’s rules in effect prior to the effective date of any revised*
4 *rules prescribed under subsection (n) shall continue to*
5 *apply to any cogeneration facility or small power produc-*
6 *tion facility that—*

7 “(1) *was a qualifying cogeneration facility or a*
8 *qualifying small power production facility, or*

9 “(2) *had filed with the Commission a notice of*
10 *self-certification or an application for Commission*
11 *certification under 18 C.F.R. 292.207*
12 *prior to the date of enactment of subsections (m) and (n).”.*

13 “(b) *ELIMINATION OF OWNERSHIP LIMITATIONS.*—(1)
14 *Section 3(17)(C) of the Federal Power Act (16 U.S.C.*
15 *796(17)(C)) is amended to read as follows:*

16 “(C) *‘qualifying small power production facility’*
17 *means a small power production facility that the Commis-*
18 *sion determines, by rule, meets such requirements (includ-*
19 *ing requirements respecting minimum size, fuel use, and*
20 *fuel efficiency) as the Commission may, by rule, prescribe.”.*

21 “(2) *Section 3(18)(B) of the Federal Power Act (16*
22 *U.S.C. 796(18)(B)) is amended to read as follows:*

23 “(B) *‘qualifying cogeneration facility’ means a cogen-*
24 *eration facility that the Commission determines, by rule,*
25 *meets such requirements (including requirements respecting*

1 *minimum size, fuel use, and fuel efficiency) as the Commis-*
2 *sion may, by rule, prescribe.”.*

3 **SEC. 7063. SMART METERING.**

4 *(a) IN GENERAL.—Section 111(d) of the Public Utili-*
5 *ties Regulatory Policies Act of 1978 (16 U.S.C. 2621(d))*
6 *is amended by adding at the end the following:*

7 *“(13) TIME-BASED METERING AND COMMUNICA-*
8 *TIONS.—(A) Not later than eighteen (18) months after*
9 *the date of enactment of this paragraph, each electric*
10 *utility shall offer each of its customer classes, and*
11 *provide individual customers upon customer request,*
12 *a time-based rate schedule under which the rate*
13 *charged by the electric utility varies during different*
14 *time periods and reflects the variance in the costs of*
15 *generating and purchasing electricity at the wholesale*
16 *level. The time-based rate schedule shall enable the*
17 *electric consumer to manage energy use and cost*
18 *through advanced metering and communications tech-*
19 *nology.*

20 *“(B) The types of time-based rate schedules that*
21 *may be offered under the schedule referred to in sub-*
22 *paragraph (A) include, among others, each of the fol-*
23 *lowing:*

24 *“(i) Time-Of-Use pricing whereby elec-*
25 *tricity prices are set for a specific time period on*

1 *an advance or forward basis, typically not*
2 *changing more often than twice a year. Prices*
3 *paid for energy consumed during these periods*
4 *shall be pre-established and known to consumers*
5 *in advance of such consumption, allowing them*
6 *to vary their demand and usage in response to*
7 *such prices and manage their energy costs by*
8 *shifting usage to a lower cost period or reducing*
9 *their consumption overall.*

10 *“(ii) Critical Peak Pricing whereby time-of-*
11 *use prices are in effect except for certain peak*
12 *days, when prices may reflect the costs of gener-*
13 *ating and purchasing electricity at the wholesale*
14 *level and when consumers may receive additional*
15 *discounts for reducing peak period energy con-*
16 *sumption.*

17 *“(iii) Real-Time pricing whereby electricity*
18 *prices are set for a specific time period on an*
19 *advanced or forward basis and may change as*
20 *often as hourly.*

21 *“(C) Each electric utility subject to subpara-*
22 *graph (A) shall provide each customer requesting a*
23 *time-based rate with a time-based meter capable of*
24 *enabling the utility and customer to offer and receive*
25 *such rate, respectively.*

1 “(D) For purposes of implementing this para-
2 graph, any reference contained in this section to the
3 date of enactment of the Public Utility Regulatory
4 Policies Act of 1978 shall be deemed to be a reference
5 to the date of enactment of this paragraph.

6 “(E) In a State that permits third-party mar-
7 keters to sell electric energy to retail electric con-
8 sumers, such consumers shall be entitled to receive
9 that same time-based metering and communications
10 device and service as a retail electric consumer of the
11 electric utility.

12 “(F) Notwithstanding subsections (b) and (c) of
13 section 112, each State regulatory authority shall, not
14 later than twelve (12) months after enactment of this
15 paragraph conduct an investigation in accordance
16 with section 115(i) and issue a decision whether it is
17 appropriate to implement the standards set out in
18 subparagraphs (A) and (C).”.

19 (b) STATE INVESTIGATION OF DEMAND RESPONSE AND
20 TIME-BASED METERING.—

21 Section 115 of the Public Utilities Regulatory Policies
22 Act of 1978 (16 U.S.C. 2625) is amended by adding the
23 at the end the following:

24 “(k) TIME-BASED METERING AND COMMUNICA-
25 TIONS.—Each State regulatory authority shall, not later

1 *than twelve (12) months after enactment of this subsection,*
2 *conduct an investigation and issue a decision whether or*
3 *not it is appropriate for electric utilities to provide and*
4 *install time-based meters and communications devices for*
5 *each of their customers which enable such customers to par-*
6 *ticipate in time-based pricing rate schedules and other de-*
7 *mand response programs.”.*

8 (c) *FEDERAL ASSISTANCE ON DEMAND RESPONSE.—*
9 *Section 132(a) of the Public Utility Regulatory Policies Act*
10 *of 1978 (16 U.S.C. 2642(a)) is amended by striking “and”*
11 *at the end of paragraph (3), striking the period at the end*
12 *of paragraph (4) and inserting “; and”, and by adding the*
13 *following at the end thereof:*

14 *“(5) technologies, techniques and rate-making*
15 *methods related to advanced metering and commu-*
16 *nications and the use of these technologies, techniques*
17 *and methods in demand response programs.”.*

18 (d) *FEDERAL GUIDANCE.—Section 132 of the Public*
19 *Utility Regulatory Policies Act of 1978 (16 U.S.C. 2643)*
20 *is amended by adding the following at the end thereof:*

21 *“(d) DEMAND RESPONSE.—The Secretary shall be re-*
22 *sponsible for each of the following:*

23 *“(1) Educating consumers on the availability,*
24 *advantages and benefits of advanced metering and*

1 *communications technologies including the funding of*
2 *demonstration or pilot projects.*

3 *“(2) Working with States, utilities, other energy*
4 *providers and advanced metering and communica-*
5 *tions experts to identify and address barriers to the*
6 *adoption of demand response programs, and*

7 *“(3) Within 6 months of enactment, provide the*
8 *Congress with a report that identifies and quantifies*
9 *the national benefits of demand response and provides*
10 *policy recommendations as to how to achieve specific*
11 *levels of such benefits by January 1, 2005.”.*

12 *(e) DEMAND RESPONSE AND REGIONAL COORDINA-*
13 *TION.—*

14 *(1) POLICY.—It is the policy of the United*
15 *States to encourage States to coordinate, on a re-*
16 *gional basis, State energy policies to provide reliable*
17 *and affordable demand response services to the public.*

18 *(2) TECHNICAL ASSISTANCE.—The Secretary of*
19 *Energy shall provide technical assistance to States*
20 *and regional organizations formed by two or more*
21 *States to assist them in—*

22 *(A) identifying the areas with the greatest*
23 *demand response potential;*

1 (B) identifying and resolving problems in
2 transmission and distribution networks, includ-
3 ing through the use of demand response; and

4 (C) developing plans and programs to use
5 demand response to respond to peak demand or
6 emergency needs.

7 (3) *REPORT.*—The Federal Energy Regulatory
8 Commission shall prepare and publish an annual re-
9 port, by appropriate region, that assesses demand re-
10 sponse resources, including those available from all
11 consumer classes, and which identifies and reviews
12 each of the following:

13 (A) Saturation and penetration rate of ad-
14 vanced meters and communications technologies,
15 devices and systems.

16 (B) Existing demand response programs
17 and time-based rate programs.

18 (C) The annual resource contribution of de-
19 mand resources, including the prior year and
20 following years.

21 (D) The potential for demand response as a
22 quantifiable, reliable resource for regional plan-
23 ning purposes.

24 (E) Steps taken to ensure that, in regional
25 transmission planning and operations, that de-

1 *mand resources are provided equitable treatment*
2 *as a quantifiable, reliable resource relative to the*
3 *resource obligations of any load-serving entity,*
4 *transmission provider or transmitting party.*

5 *(f) COST RECOVERY OF DEMAND RESPONSE DE-*
6 *VICES.—It is the policy of the United States that time-based*
7 *pricing and other forms of demand response, whereby elec-*
8 *tricity customers are provided with electricity price signals*
9 *and the ability to benefit by responding to them, shall be*
10 *encouraged and the deployment of such technology and de-*
11 *vices that enable electricity customers to participate in such*
12 *pricing and demand response systems shall be facilitated.*
13 *It is further the policy of the United States that the benefits*
14 *of such demand response that accrue to those not deploying*
15 *such technology and devices, but who are part of the same*
16 *regional electricity entity, shall be recognized.*

17 ***Subtitle F—Renewable Energy***

18 ***SEC. 7071. NET METERING.***

19 *(a) ADOPTION OF STANDARD.—Section 111(d) of the*
20 *Public Utility Regulatory Policies Act of 1978 (16 U.S.C.*
21 *2621(d)) is amended by adding at the end the following:*

22 *“(14) NET METERING.—(A) Each electric utility*
23 *shall make available upon request net metering serv-*
24 *ice to any electric consumer that the electric utility*
25 *serves.*

1 “(B) For purposes of implementing this para-
2 graph, any reference contained in this section to the
3 date of enactment of the Public Utility Regulatory
4 Policies Act of 1978 shall be deemed to be a reference
5 to the date of enactment of this paragraph.

6 “(C) Notwithstanding subsections (b) and (c) of
7 section 112, each State regulatory authority shall con-
8 sider and make a determination concerning whether
9 it is appropriate to implement the standard set out
10 in subparagraph (A) not later than 1 year after the
11 date of enactment of this paragraph.”.

12 (b) *SPECIAL RULES FOR NET METERING.*—Section
13 115 of the Public Utility Regulatory Policies Act of 1978
14 (16 U.S.C. 2625) is amended by adding at the end the fol-
15 lowing:

16 “(l) *NET METERING.*—In undertaking the consider-
17 ation and making the determination under section 111 with
18 respect to the standard concerning net metering established
19 by section 111(d)(14), the term ‘net metering service’ shall
20 mean a service provided in accordance with the following
21 standards:

22 “(1) *RATES AND CHARGES.*—An electric util-
23 ity—

24 “(A) shall charge the owner or operator of
25 an on-site generating facility rates and charges

1 *that are identical to those that would be charged*
2 *other electric consumers of the electric utility in*
3 *the same rate class; and*

4 “(B) *shall not charge the owner or operator*
5 *of an on-site generating facility any additional*
6 *standby, capacity, interconnection, or other rate*
7 *or charge.*

8 “(2) *MEASUREMENT.—An electric utility that*
9 *sells electric energy to the owner or operator of an on-*
10 *site generating facility shall measure the quantity of*
11 *electric energy produced by the on-site facility and the*
12 *quantity of electric energy consumed by the owner or*
13 *operator of an on-site generating facility during a*
14 *billing period in accordance with normal metering*
15 *practices.*

16 “(3) *ELECTRIC ENERGY SUPPLIED EXCEEDING*
17 *ELECTRIC ENERGY GENERATED.—If the quantity of*
18 *electric energy sold by the electric utility to an on-site*
19 *generating facility exceeds the quantity of electric en-*
20 *ergy supplied by the on-site generating facility to the*
21 *electric utility during the billing period, the electric*
22 *utility may bill the owner or operator for the net*
23 *quantity of electric energy sold, in accordance with*
24 *normal metering practices.*

1 “(4) *ELECTRIC ENERGY GENERATED EXCEEDING*
2 *ELECTRIC ENERGY SUPPLIED.*—*If the quantity of elec-*
3 *tric energy supplied by the on-site generating facility*
4 *to the electric utility exceeds the quantity of electric*
5 *energy sold by the electric utility to the on-site gener-*
6 *ating facility during the billing period—*

7 “(A) *the electric utility may bill the owner*
8 *or operator of the on-site generating facility for*
9 *the appropriate charges for the billing period in*
10 *accordance with paragraph (2); and*

11 “(B) *the owner or operator of the on-site*
12 *generating facility shall be credited for the excess*
13 *kilowatt-hours generated during the billing pe-*
14 *riod, with the kilowatt-hour credit appearing on*
15 *the bill for the following billing period.*

16 “(5) *SAFETY AND PERFORMANCE STANDARDS.*—
17 *An eligible on-site generating facility and net meter-*
18 *ing system used by an electric consumer shall meet all*
19 *applicable safety, performance, reliability, and inter-*
20 *connection standards established by the National*
21 *Electrical Code, the Institute of Electrical and Elec-*
22 *tronics Engineers, and Underwriters Laboratories.*

23 “(6) *ADDITIONAL CONTROL AND TESTING RE-*
24 *QUIREMENTS.*—*The Commission, after consultation*
25 *with State regulatory authorities and nonregulated*

1 *electric utilities and after notice and opportunity for*
2 *comment, may adopt, by rule, additional control and*
3 *testing requirements for on-site generating facilities*
4 *and net metering systems that the Commission deter-*
5 *mines are necessary to protect public safety and sys-*
6 *tem reliability.*

7 “(7) *DEFINITIONS.*—*For purposes of this sub-*
8 *section:*

9 “(A) *The term ‘eligible on-site generating*
10 *facility’ means—*

11 “(i) *a facility on the site of a residen-*
12 *tial electric consumer with a maximum gen-*
13 *erating capacity of 10 kilowatts or less that*
14 *is fueled by solar energy, wind energy, or*
15 *fuel cells; or*

16 “(ii) *a facility on the site of a commer-*
17 *cial electric consumer with a maximum*
18 *generating capacity of 500 kilowatts or less*
19 *that is fueled solely by a renewable energy*
20 *resource, landfill gas, or a high efficiency*
21 *system.*

22 “(B) *The term ‘renewable energy resource’*
23 *means solar, wind, biomass, or geothermal en-*
24 *ergy.*

1 “(C) The term ‘high efficiency system’
2 means service fuel cells or combined heat and
3 power.

4 “(D) The term ‘net metering’ means service
5 to an electric consumer under which electric en-
6 ergy generated by that electric consumer from an
7 eligible on-site generating facility and delivered
8 to the local distribution facilities may be used to
9 offset electric energy provided by the electric util-
10 ity to the electric consumer during the applicable
11 billing period.”

12 **SEC. 7072. RENEWABLE ENERGY PRODUCTION INCENTIVE.**

13 (a) *INCENTIVE PAYMENTS.*—Section 1212(a) of the
14 *Energy Policy Act of 1992 (42 U.S.C. 13317(a)) is amended*
15 *by striking “and which satisfies” and all that follows*
16 *through “Secretary shall establish.” and inserting “. If there*
17 *are insufficient appropriations to make full payments for*
18 *electric production from all qualified renewable energy fa-*
19 *cilities in any given year, the Secretary shall assign 60 per-*
20 *cent of appropriated funds for that year to facilities that*
21 *use solar, wind, geothermal, or closed-loop (dedicated energy*
22 *crops) biomass technologies to generate electricity, and as-*
23 *sign the remaining 40 percent to other projects. The Sec-*
24 *retary may, after transmitting to the Congress an expla-*

1 *nation of the reasons therefor, alter the percentage require-*
2 *ments of the preceding sentence.”*

3 (b) *QUALIFIED RENEWABLE ENERGY FACILITY.*—*Sec-*
4 *tion 1212(b) of the Energy Policy Act of 1992 (42 U.S.C.*
5 *13317(b)) is amended—*

6 (1) *by striking “a State or any political” and*
7 *all that follows through “nonprofit electrical coopera-*
8 *tive” and inserting “a not-for-profit electric coopera-*
9 *tive, a public utility described in section 115 of the*
10 *Internal Revenue Code of 1986, a State, Common-*
11 *wealth, territory, or possession of the United States or*
12 *the District of Columbia, or a political subdivision*
13 *thereof, or an Indian tribal government of subdivision*
14 *thereof;”*; and

15 (2) *by inserting “landfill gas,” after “wind, bio-*
16 *mass,”*.

17 (c) *ELIGIBILITY WINDOW.*—*Section 1212(c) of the En-*
18 *ergy Policy Act of 1992 (42 U.S.C. 13317(c)) is amended*
19 *by striking “during the 10-fiscal year period beginning*
20 *with the first full fiscal year occurring after the enactment*
21 *of this section” and inserting “after October 1, 2003, and*
22 *before October 1, 2013”*.

23 (d) *AMOUNT OF PAYMENT.*—*Section 1212(e)(1) of the*
24 *Energy Policy Act of 1992 (42 U.S.C. 13317(e)(1)) is*

1 amended by inserting “landfill gas,” after “wind, bio-
2 mass,”.

3 (e) *SUNSET*.—Section 1212(f) of the Energy Policy Act
4 of 1992 (42 U.S.C. 13317(f)) is amended by striking “the
5 expiration of” and all that follows through “of this section”
6 and inserting “September 30, 2023”.

7 (f) *AUTHORIZATION OF APPROPRIATIONS*.—Section
8 1212(g) of the Energy Policy Act of 1992 (42 U.S.C.
9 13317(g)) is amended to read as follows:

10 “(g) *AUTHORIZATION OF APPROPRIATIONS*.—

11 “(1) *IN GENERAL*.—Subject to paragraph (2),
12 there are authorized to be appropriated such sums as
13 may be necessary to carry out this section for fiscal
14 years 2003 through 2023.

15 “(2) *AVAILABILITY OF FUNDS*.—Funds made
16 available under paragraph (1) shall remain available
17 until expended.”.

18 **SEC. 7073. RENEWABLE ENERGY ON FEDERAL LANDS.**

19 (a) *REPORT TO CONGRESS*.—Within 24 months after
20 the date of enactment of this section, the Secretary of the
21 Interior, in cooperation with the Secretary of Agriculture,
22 shall develop and report to the Congress recommendations
23 on opportunities to develop renewable energy on public
24 lands under the jurisdiction of the Secretary of the Interior

1 *and National Forest System lands under the jurisdiction*
2 *of the Secretary of Agriculture. The report shall include—*

3 *(1) 5-year plans developed by the Secretary of*
4 *the Interior and the Secretary of Agriculture, respec-*
5 *tively, for encouraging the development of wind and*
6 *solar energy consistent with applicable law and man-*
7 *agement plans; and*

8 *(2) an analysis of—*

9 *(A) the use of rights-of-ways, leases, or other*
10 *methods to develop wind and solar energy on*
11 *such lands;*

12 *(B) the anticipated benefits of grants, loans,*
13 *tax credits, or other provisions to promote wind*
14 *and solar energy development on such lands; and*

15 *(C) any issues that the Secretary of the In-*
16 *terior or the Secretary of Agriculture have en-*
17 *countered in managing wind or solar energy*
18 *projects on such lands, or believe are likely to*
19 *arise in relation to the development of wind or*
20 *solar energy on such lands;*

21 *(3) a list, developed in consultation with the Sec-*
22 *retary of Energy and the Secretary of Defense, of*
23 *lands under the jurisdiction of the Department of En-*
24 *ergy or Defense that would be suitable for develop-*
25 *ment for wind or solar energy, and any recommended*

1 *statutory and regulatory mechanisms for such devel-*
2 *opment; and*

3 (4) *any recommendations pertaining to the*
4 *issues addressed in the report.*

5 **(b) NATIONAL ACADEMY OF SCIENCES STUDY.—**

6 (1) **IN GENERAL.**—*Within 90 days after the date*
7 *of the enactment of this Act, the Secretary of the Inte-*
8 *rior shall contract with the National Academy of*
9 *Sciences to—*

10 (A) *study the potential for the development*
11 *of wind, solar, and ocean energy on the Outer*
12 *Continental Shelf;*

13 (B) *assess existing Federal authorities for*
14 *the development of such resources; and*

15 (C) *recommend statutory and regulatory*
16 *mechanisms for such development.*

17 (2) **TRANSMITTAL OF RESULTS.**—*The results of*
18 *the study shall be transmitted to the Congress within*
19 *24 months after the date of the enactment of this Act.*

20 **SEC. 7074. ASSESSMENT OF RENEWABLE ENERGY RE-**
21 **SOURCES.**

22 (a) **RESOURCE ASSESSMENT.**—*Not later than 3*
23 *months after the date of enactment of this Act, and each*
24 *year thereafter, the Secretary of Energy shall review the*
25 *available assessments of renewable energy resources avail-*

1 *able within the United States, including solar, wind, bio-*
2 *mass, ocean, geothermal, and hydroelectric energy resources,*
3 *and undertake new assessments as necessary, taking into*
4 *account changes in market conditions, available tech-*
5 *nologies, and other relevant factors.*

6 (b) *CONTENTS OF REPORTS.—Not later than 1 year*
7 *after the date of enactment of this Act, and each year there-*
8 *after, the Secretary shall publish a report based on the as-*
9 *essment under subsection (a). The report shall contain—*

10 (1) *a detailed inventory describing the available*
11 *amount and characteristics of the renewable energy*
12 *resources; and*

13 (2) *such other information as the Secretary be-*
14 *lieves would be useful in developing such renewable*
15 *energy resources, including descriptions of sur-*
16 *rounding terrain, population and load centers, near-*
17 *by energy infrastructure, location of energy and water*
18 *resources, and available estimates of the costs needed*
19 *to develop each resource, together with an identifica-*
20 *tion of any barriers to providing adequate trans-*
21 *mission for remote sources of renewable energy re-*
22 *sources to current and emerging markets, rec-*
23 *ommendations for removing or addressing such bar-*
24 *riers, and ways to provide access to the grid that do*

1 *not unfairly disadvantage renewable or other energy*
2 *producers.*

3 ***Subtitle G—Market Transparency,***
4 ***Round Trip Trading Prohibi-***
5 ***tion, and Enforcement***

6 ***SEC. 7081. MARKET TRANSPARENCY RULES.***

7 *Part II of the Federal Power Act is amended by adding*
8 *the following new section at the end thereof:*

9 ***“SEC. 219. MARKET TRANSPARENCY RULES.***

10 *“(a) COMMISSION RULES.—Not later than 180 days*
11 *after the date of enactment of this section, the Commission*
12 *shall issue rules establishing an electronic information sys-*
13 *tem to provide the Commission and the public with access*
14 *to such information as is necessary or appropriate to facili-*
15 *tate price transparency and participation in markets sub-*
16 *ject to the Commission’s jurisdiction. Such systems shall*
17 *provide information about the availability and market*
18 *price of sales of electric energy at wholesale in interstate*
19 *commerce and transmission of electric energy in interstate*
20 *commerce to the Commission, State commissions, buyers*
21 *and sellers of wholesale electric energy, users of trans-*
22 *mission services, and the public on a timely basis. The Com-*
23 *mission shall have authority to obtain such information*
24 *from any person, and any entity described in section 201(f),*

1 *who sells electric energy at wholesale in interstate commerce*
2 *or provides transmission services in interstate commerce.*

3 “(b) *EXEMPTIONS.—The Commission shall exempt*
4 *from disclosure information it determines would, if dis-*
5 *closed, (1) be detrimental to the operation of an effective*
6 *market; or (2) jeopardize system security. This section shall*
7 *not apply to an entity described in section 212(k)(2)(B)*
8 *with respect to transactions for the purchase or sale of*
9 *wholesale electric energy and transmission services within*
10 *the area described in section 212(k)(2)(A).”.*

11 ***SEC. 7082. PROHIBITION ON ROUND-TRIP TRADING.***

12 *Part II of the Federal Power Act is amended by adding*
13 *the following new section at the end thereof:*

14 ***“SEC. 220. PROHIBITION ON ROUND-TRIP TRADING.***

15 *“(a) PROHIBITION.—It shall be a violation of this Act*
16 *for any person, and any entity described in section 201(f),*
17 *willfully and knowingly to enter into any contract or other*
18 *arrangement to execute a round-trip trade for the purchase*
19 *or sale of electric energy at wholesale.*

20 *“(b) DEFINITION OF ROUND-TRIP TRADE.—For the*
21 *purposes of this section, the term ‘round-trip trade’ means*
22 *a transaction, or combination of transactions, in which a*
23 *person or other entity—*

1 “(1) enters into a contract or other arrangement
2 to purchase from, or sell to, any other person or other
3 entity electric energy at wholesale;

4 “(2) simultaneously with entering into the con-
5 tract described in paragraph (1), arranges a finan-
6 cially offsetting trade with such other person or entity
7 for the same quantity of electric energy so that, collec-
8 tively, the purchase and sale transactions in them-
9 selves result in no financial gain or loss; and

10 “(3) has a specific intent to distort reported reve-
11 nues, trading volumes, or prices.”.

12 **SEC. 7083. CONFORMING CHANGES.**

13 Section 201(e) of the Federal Power Act is amended
14 by striking “or 212” and inserting “212, 215, 216, 217,
15 218, 219, or 220”. Section 201(b)(2) of such Act is amended
16 by striking “and 212” and inserting “212, 215, 216, 217,
17 218, 219, and 220”.

18 **SEC. 7084. ENFORCEMENT.**

19 (a) **COMPLAINTS.**—Section 306 of the Federal Power
20 Act (16 U.S.C. 825e) is amended by—

21 (1) inserting “electric utility,” after “Any per-
22 son,”; and

23 (2) inserting “, transmitting utility,” after “li-
24 censee” each place it appears.

1 (b) *REVIEW OF COMMISSION ORDERS.*—Section 313(a)
2 of the Federal Power Act (16 U.S.C. 8251) is amended by
3 inserting “electric utility,” after “person,” in the first place
4 it appears and by striking “any person unless such person”
5 and inserting “any entity unless such entity”.

6 (c) *CRIMINAL PENALTIES.*—Section 316 of the Federal
7 Power Act (16 U.S.C. 8250) is amended—

8 (1) in subsection (a), by striking “\$5,000” and
9 inserting “\$1,000,000”, and by striking “two years”
10 and inserting “five years”;

11 (2) in subsection (b), by striking “\$500” and in-
12 sserting “\$25,000”; and

13 (3) by striking subsection (c).

14 (d) *CIVIL PENALTIES.*—Section 316A of the Federal
15 Power Act (16 U.S.C. 825–1) is amended—

16 (1) in subsections (a) and (b), by striking “sec-
17 tion 211, 212, 213, or 214” each place it appears and
18 inserting “Part II”; and

19 (2) in subsection (b), by striking “\$10,000” and
20 inserting “\$1,000,000”.

21 **Subtitle H—Consumer Protections**

22 **SEC. 7091. REFUND EFFECTIVE DATE.**

23 Section 206(b) of the Federal Power Act (16 U.S.C.
24 824e(b)) is amended by—

1 (1) striking “the date 60 days after the filing of
2 such complaint nor later than 5 months after the ex-
3 piration of such 60-day period” in the second sen-
4 tence and inserting “the date of the filing of such
5 complaint nor later than 5 months after the filing of
6 such complaint”;

7 (2) striking “60 days after” in the third sentence
8 and inserting “of”;

9 (3) striking “expiration of such 60-day period”
10 in the third sentence and inserting “publication
11 date”; and

12 (4) in the fifth sentence after “rendered by the”
13 insert “date 60 days after the”.

14 **SEC. 7092. JURISDICTION OVER INTERSTATE SALES.**

15 (a) *SCOPE OF AUTHORITY.*—Section 206 of the Federal
16 Power Act (16 U.S.C. 824e) is amended by adding the fol-
17 lowing new subsection at the end thereof:

18 “(e)(1) If an entity that is not a public utility (includ-
19 ing an entity referred to in section 201(f)) voluntarily
20 makes a spot market sale of electric energy and such sale
21 violates Commission rules in effect at the time of such sale,
22 such entity shall be subject to the Commission’s refund au-
23 thority under this section with respect to such violation.

24 “(2) This section shall not apply to any entity that
25 is either—

1 “(A) an entity described in section 201(f); or

2 “(B) a rural electric cooperative

3 that does not sell more than 4,000,000 megawatt hours of
4 electricity per year.

5 “(3) For purposes of this subsection, the term ‘spot
6 market sale’ means an agreement for the sale of electric en-
7 ergy at wholesale in interstate commerce that is for 24 hours
8 or less and that is entered into the day of, or the day prior
9 to, delivery.”.

10 (b) *CONFORMING AMENDMENTS.*—(1) Section 206 of
11 the Federal Power Act (16 U.S.C. 824e) is amended as fol-
12 lows:

13 (A) In subsection (b), in the seventh sentence, by
14 striking “the public utility to make”.

15 (B) In the first sentence of subsection (a), by
16 striking “hearing had” and inserting “hearing held”.

17 (2) Section 201(b)(2) of such Act (16 U.S.C. 824(b)(2))
18 is amended as follows:

19 (A) In the first sentence by striking “sections
20 210” and inserting “sections 206(f), 210”.

21 (B) In the second sentence by striking “section
22 210” and inserting “section 206(f), 210,”.

23 (3) Section 201(e) of the Federal Power Act is amended
24 by striking “section 210” and inserting “section 206(f),
25 210”.

1 (c) *UNIFORM INVESTIGATION AUTHORITY.*—Section
2 307(a) of the Federal Power Act (16 U.S.C. 825f(a)) is
3 amended as follows:

4 (1) *By inserting “, electric utility, transmitting*
5 *utility, or other entity” after “person” each time it*
6 *appears.*

7 (2) *By striking the period at the end of the first*
8 *sentence and inserting the following: “or in obtaining*
9 *information about the sale of electric energy at whole-*
10 *sale in interstate commerce and the transmission of*
11 *electric energy in interstate commerce.”.*

12 (d) *SANCTITY OF CONTRACT.*—(1) *The Federal Energy*
13 *Regulatory Commission shall have no authority to abrogate*
14 *or modify any provision of a contract, except upon a find-*
15 *ing, after notice and opportunity for a hearing, that such*
16 *action is necessary to protect the public interest, unless such*
17 *contract expressly provides for a different standard of re-*
18 *view.*

19 (2) *For purposes of this subsection, a contract is any*
20 *agreement, in effect and subject to the jurisdiction of the*
21 *Commission—*

22 (A) *under section 4 of the Natural Gas Act or*
23 *section 205 of the Federal Power Act; and*

24 (B) *that is not for sales in an organized ex-*
25 *change or auction spot market.*

1 (3) *This subsection shall not apply to any contract exe-*
2 *cuted before the date of enactment of this section unless such*
3 *contract is an interconnection agreement, nor shall this sub-*
4 *section affect the outcome in any proceeding regarding any*
5 *contract for sales of electric power executed before the date*
6 *of enactment of this section.*

7 **SEC. 7093. CONSUMER PRIVACY.**

8 (a) *IN GENERAL.—The Federal Trade Commission*
9 *shall issue rules protecting the privacy of electric consumers*
10 *from the disclosure of consumer information obtained in*
11 *connection with the sale or delivery of electric energy to elec-*
12 *tric consumers. The Federal Trade Commission shall pro-*
13 *ceed in accordance with section 553 of title 5, United States*
14 *Code, when prescribing a rule under this section.*

15 (b) *STATE AUTHORITY.—If the Federal Trade Com-*
16 *mission determines that a State’s regulations provide equiv-*
17 *alent or greater protection than the provisions of this sec-*
18 *tion, such State regulations shall apply in that State in*
19 *lieu of the regulations issued by the Commission under this*
20 *section.*

21 **SEC. 7094. UNFAIR TRADE PRACTICES.**

22 (a) *SLAMMING.—The Federal Trade Commission shall*
23 *issue rules prohibiting the change of selection of an electric*
24 *utility except with the informed consent of the electric con-*

1 *sumer or if approved by the appropriate State regulatory*
2 *authority.*

3 (b) *CRAMMING.*—*The Federal Trade Commission shall*
4 *issue rules prohibiting the sale of goods and services to an*
5 *electric consumer unless expressly authorized by law or the*
6 *electric consumer.*

7 (c) *RULEMAKING.*—*The Federal Trade Commission*
8 *shall proceed in accordance with section 553 of title 5,*
9 *United States Code, when prescribing a rule under this sec-*
10 *tion.*

11 (d) *STATE AUTHORITY.*—*If the Federal Trade Com-*
12 *mission determines that a State's regulations provide equiv-*
13 *alent or greater protection than the provisions of this sec-*
14 *tion, such State regulations shall apply in that State in*
15 *lieu of the regulations issued by the Commission under this*
16 *section.*

17 ***Subtitle I—Merger Review Reform***
18 ***and Accountability***

19 ***SEC. 7101. MERGER REVIEW REFORM AND ACCOUNT-***
20 ***ABILITY.***

21 (a) *MERGER REVIEW REFORM.*—*Within 180 days*
22 *after the date of enactment of this Act, the Secretary of En-*
23 *ergy, in consultation with the Federal Energy Regulatory*
24 *Commission and the Department of Justice, shall prepare,*
25 *and transmit to the Committee on Energy and Commerce*

1 *of the House of Representatives and the Committee on En-*
2 *ergy and Natural Resources of the Senate each of the fol-*
3 *lowing:*

4 (1) *A study of the extent to which the authorities*
5 *vested in the Federal Energy Regulatory Commission*
6 *under section 203 of the Federal Power Act are dupli-*
7 *cative of authorities vested in—*

8 (A) *other agencies of Federal and State gov-*
9 *ernment; and*

10 (B) *the Federal Energy Regulatory Com-*
11 *mission, including under sections 205 and 206 of*
12 *the Federal Power Act.*

13 (2) *Recommendations on reforms to the Federal*
14 *Power Act that would eliminate any unnecessary du-*
15 *plication in the exercise of regulatory authority or*
16 *unnecessary delays in the approval (or disapproval)*
17 *of applications for the sale, lease, or other disposition*
18 *of public utility facilities.*

19 (b) *MERGER REVIEW ACCOUNTABILITY.—Not later*
20 *than 1 year after the date of enactment of this Act and*
21 *annually thereafter, with respect to all orders issued within*
22 *the preceding year that impose a condition on a sale, lease,*
23 *or other disposition of public utility facilities under section*
24 *203(b) of the Federal Power Act, the Federal Energy Regu-*
25 *latory Commission shall transmit a report to the Committee*

1 *on Energy and Commerce of the House of Representatives*
2 *and the Committee on Energy and Natural Resources of*
3 *the Senate explaining each of the following:*

4 (1) *The condition imposed.*

5 (2) *Whether the Commission could have imposed*
6 *such condition by exercising its authority under any*
7 *provision of the Federal Power Act other than under*
8 *section 203(b).*

9 (3) *If the Commission could not have imposed*
10 *such condition other than under section 203(b), why*
11 *the Commission determined that such condition was*
12 *consistent with the public interest.*

13 ***Subtitle J—Study of Economic***
14 ***Dispatch***

15 ***SEC. 7111. STUDY ON THE BENEFITS OF ECONOMIC DIS-***
16 ***PATCH.***

17 (a) *STUDY.—The Secretary of Energy, in coordination*
18 *and consultation with the States, shall conduct a study*
19 *on—*

20 (1) *the procedures currently used by electric util-*
21 *ities to perform economic dispatch,*

22 (2) *identifying possible revisions to those proce-*
23 *dures to improve the ability of nonutility generation*
24 *resources to offer their output for sale for the purpose*
25 *of inclusion in economic dispatch; and*

1 (b) *LIMIT ON USE OF FUNDS.*—The Secretary shall
2 transmit to the Congress the report required by this sub-
3 section not later than September 30, 2004. Notwithstanding
4 subsection (a), no funds may be used to carry out the activi-
5 ties authorized by this title after September 30, 2004, unless
6 the report has been transmitted. The report shall include,
7 with respect to subsection (a), a 10-year plan containing—

8 (1) a detailed assessment of whether the aggre-
9 gate funding levels provided under subsection (a) are
10 the appropriate funding levels for that program;

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

14 (3) a detailed list of technical milestones for each
15 coal and related technology that will be pursued; and

16 (4) a detailed description of how the program
17 will avoid problems enumerated in General Account-
18 ing Office reports on the Clean Coal Technology Pro-
19 gram, including problems that have resulted in
20 unspent funds and projects that failed either finan-
21 cially or scientifically.

22 (c) *APPLICABILITY.*—Subsection (b) shall not apply to
23 any project begun before September 30, 2004.

1 **SEC. 8002. PROJECT CRITERIA.**

2 (a) *IN GENERAL.*—*The Secretary shall not provide*
3 *funding under this title for any project that does not ad-*
4 *vance efficiency, environmental performance, and cost com-*
5 *petitiveness well beyond the level of technologies that on a*
6 *full scale are in operation or have been demonstrated as*
7 *of the date of the enactment of this Act.*

8 (b) *TECHNICAL CRITERIA FOR CLEAN COAL POWER*
9 *INITIATIVE.*—

10 (1) *GASIFICATION.*—(A) *In allocating the funds*
11 *made available under section 8001(a), the Secretary*
12 *shall ensure that up to 80 percent of the funds are*
13 *used only for coal-based gasification technologies, in-*
14 *cluding gasification combined cycle, gasification fuel*
15 *cells, gasification coproduction and hybrid gasifi-*
16 *cation/combustion.*

17 (B) *The Secretary shall set technical milestones*
18 *specifying emissions levels for projects funded under*
19 *this paragraph. The milestones shall be designed to*
20 *increasingly restrict emission levels through the life of*
21 *the program. The milestones shall be designed to*
22 *achieve by 2020 coal gasification projects able—*

23 (i) *to remove 99 percent of sulfur dioxide;*
24 (ii) *to emit no more than .05 lbs of NO_x per*
25 *million BTU;*

1 (iii) to achieve substantial reductions in
2 mercury emissions; and

3 (iv) to achieve a thermal efficiency of—

4 (I) 60 percent for coal of more than
5 9,000 Btu;

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

8 (III) 50 percent for coal of less than
9 7,000 Btu.

10 (2) OTHER PROJECTS.—For projects not de-
11 scribed in paragraph (1), the Secretary shall set tech-
12 nical milestones specifying emissions levels. The mile-
13 stones shall be designed to increasingly restrict emis-
14 sion levels through the life of the program. The mile-
15 stones shall be designed to achieve by 2010 projects
16 able—

17 (A) to remove 97 percent of sulfur dioxide;

18 (B) to emit no more than .08 lbs of NO_x per
19 million BTU;

20 (C) to achieve substantial reductions in
21 mercury emissions; and

22 (D) except as provided in paragraph (4), to
23 achieve a thermal efficiency of—

24 (i) 45 percent for coal of more than
25 9,000 Btu;

1 (ii) 44 percent for coal of 7,000 to
2 9,000 Btu; and

3 (iii) 42 percent for coal of less than
4 7,000 Btu.

5 (3) *CONSULTATION.*—Before setting the technical
6 milestones under paragraphs (1)(B) and (2), the Sec-
7 retary shall consult with the Administrator of the En-
8 vironmental Protection Agency and interested enti-
9 ties, including coal producers, industries using coal,
10 organizations to promote coal or advanced coal tech-
11 nologies, environmental organizations, and organiza-
12 tions representing workers.

13 (4) *EXISTING UNITS.*—In the case of projects at
14 existing units, in lieu of the thermal efficiency re-
15 quirements set forth in paragraph (1)(B)(iv) and
16 (2)(D), the projects shall be designed to achieve an
17 overall thermal design efficiency improvement com-
18 pared to the efficiency of the unit as operated, of not
19 less than—

20 (A) 7 percent for coal of more than 9,000
21 Btu;

22 (B) 6 percent for coal of 7,000 to 9,000 Btu;

23 or

24 (C) 4 percent for coal of less than 7,000
25 Btu.

1 (5) *PERMITTED USES.*—*In allocating funds*
2 *made available under section 8001, the Secretary may*
3 *fund projects that include, as part of the project, the*
4 *separation and capture of carbon dioxide.*

5 (c) *FINANCIAL CRITERIA.*—*The Secretary shall not*
6 *provide a funding award under this title unless the recipi-*
7 *ent has documented to the satisfaction of the Secretary*
8 *that—*

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

11 (2) *the recipient will provide sufficient informa-*
12 *tion to the Secretary for the Secretary to ensure that*
13 *the award funds are spent efficiently and effectively;*
14 *and*

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

19 (d) *FINANCIAL ASSISTANCE.*—*The Secretary shall pro-*
20 *vide financial assistance to projects that meet the require-*
21 *ments of subsections (a), (b), and (c) and are likely to—*

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

24 (2) *improve the competitiveness of coal among*
25 *various forms of energy in order to maintain a diver-*

1 *sity of fuel choices in the United States to meet elec-*
2 *tricity generation requirements; and*

3 *(3) demonstrate methods and equipment that are*
4 *applicable to 25 percent of the electricity generating*
5 *facilities, utilizing different types of coal, that use*
6 *coal as the primary feedstock as of the date of the en-*
7 *actment of this Act.*

8 *(e) FEDERAL SHARE.—The Federal share of the cost*
9 *of a project funded by the Secretary under this title shall*
10 *not exceed 50 percent.*

11 *(f) APPLICABILITY.—No technology, or level of emis-*
12 *sion reduction, shall be treated as adequately demonstrated*
13 *for purposes of section 111 of the Clean Air Act, achievable*
14 *for purposes of section 169 of that Act, or achievable in*
15 *practice for purposes of section 171 of that Act solely by*
16 *reason of the use of such technology, or the achievement of*
17 *such emission reduction, by one or more facilities receiving*
18 *assistance under this title.*

19 **SEC. 8003. REPORT.**

20 *Not later than 1 year after the date of the enactment*
21 *of this Act, and once every 2 years thereafter for the fol-*
22 *lowing 8 years, the Secretary, in consultation with other*
23 *appropriate Federal agencies, shall transmit to the Congress*
24 *a report describing—*

- 1 (1) *the technical milestones set forth in section*
2 8002 and how those milestones ensure progress toward
3 meeting the requirements of subsections (b)(1)(B) and
4 (b)(2) of section 8002; and
- 5 (2) *the status of projects funded under this title.*

6 **SEC. 8004. CLEAN COAL CENTERS OF EXCELLENCE.**

7 *As part of the program authorized in section 8001, the*
8 *Secretary shall award competitive, merit-based grants to*
9 *universities for the establishment of Centers of Excellence*
10 *for Energy Systems of the Future. The Secretary shall pro-*
11 *vide grants to universities that can show the greatest poten-*
12 *tial for advancing new clean coal technologies.*

13 **TITLE IX—MOTOR FUELS**

14 **Subtitle A—General Provisions**

15 **SEC. 9101. RENEWABLE CONTENT OF MOTOR VEHICLE**
16 **FUEL.**

17 (a) *IN GENERAL.*—*Section 211 of the Clean Air Act*
18 *(42 U.S.C. 7545) is amended—*

19 (1) *by redesignating subsection (o) as subsection*
20 *(q); and*

21 (2) *by inserting after subsection (n) the fol-*
22 *lowing:*

23 “(o) *RENEWABLE FUEL PROGRAM.*—

24 “(1) *DEFINITIONS.*—*In this section:*

1 “(A) *CELLULOSIC BIOMASS ETHANOL*.—The
2 term ‘cellulosic biomass ethanol’ means ethanol
3 derived from any lignocellulosic or hemicellulosic
4 matter that is available on a renewable or recur-
5 ring basis, including—

6 “(i) dedicated energy crops and trees;

7 “(ii) wood and wood residues;

8 “(iii) plants;

9 “(iv) grasses;

10 “(v) agricultural residues;

11 “(vi) fibers;

12 “(vii) animal wastes and other waste
13 materials; and

14 “(viii) municipal solid waste.

15 “(B) *RENEWABLE FUEL*.—

16 “(i) *IN GENERAL*.—The term ‘renew-
17 able fuel’ means motor vehicle fuel that—

18 “(I)(aa) is produced from grain,
19 starch, oilseeds, or other biomass; or

20 “(bb) is natural gas produced
21 from a biogas source, including a land-
22 fill, sewage waste treatment plant,
23 feedlot, or other place where decaying
24 organic material is found; and

1 “(II) is used to replace or reduce
2 the quantity of fossil fuel present in a
3 fuel mixture used to operate a motor
4 vehicle.

5 “(ii) INCLUSION.—The term ‘renewable
6 fuel’ includes cellulosic biomass ethanol and
7 biodiesel (as defined in section 312(f) of the
8 Energy Policy Act of 1992 (42 U.S.C.
9 13220(f)) and any blending components de-
10 rived from renewable fuel (provided that
11 only the renewable fuel portion of any such
12 blending component shall be considered part
13 of the applicable volume under the renew-
14 able fuel program established by this sub-
15 section).

16 “(C) SMALL REFINERY.—The term ‘small
17 refinery’ means a refinery for which average ag-
18 gregate daily crude oil throughput for the cal-
19 endar year (as determined by dividing the aggre-
20 gate throughput for the calendar year by the
21 number of days in the calendar year) does not
22 exceed 75,000 barrels.

23 “(2) RENEWABLE FUEL PROGRAM.—

24 “(A) IN GENERAL.—Not later than 1 year
25 from enactment of this provision, the Adminis-

1 *trator shall promulgate regulations ensuring that*
 2 *gasoline sold or dispensed to consumers in the*
 3 *contiguous United States, on an annual average*
 4 *basis, contains the applicable volume of renew-*
 5 *able fuel as specified in subparagraph (B). Re-*
 6 *gardless of the date of promulgation, such regula-*
 7 *tions shall contain compliance provisions for re-*
 8 *finers, blenders, and importers, as appropriate,*
 9 *to ensure that the requirements of this section*
 10 *are met, but shall not restrict where renewables*
 11 *can be used, or impose any per-gallon obligation*
 12 *for the use of renewables. If the Administrator*
 13 *does not promulgate such regulations, the appli-*
 14 *cable percentage, on a volume percentage of gaso-*
 15 *line basis, shall be 1.62 in 2005.*

16 *“(B) APPLICABLE VOLUME.—*

17 *“(i) CALENDAR YEARS 2005 THROUGH*
 18 *2015.—For the purpose of subparagraph (A),*
 19 *the applicable volume for any of calendar*
 20 *years 2005 through 2015 shall be deter-*
 21 *mined in accordance with the following*
 22 *table:*

Applicable volume of renewable fuel

<i>“Calendar year:</i>	<i>(In billions of gallons)</i>
<i>2005</i>	<i>2.7</i>
<i>2006</i>	<i>2.7</i>
<i>2007</i>	<i>2.9</i>
<i>2008</i>	<i>2.9</i>
<i>2009</i>	<i>3.4</i>

“Calendar year:	(In billions of gallons)
2010	3.4
2011	3.4
2012	4.2
2013	4.2
2014	4.2
2015	5.0.

1 “(ii) *CALENDAR YEAR 2016 AND*
2 *THEREAFTER.—For the purpose of subpara-*
3 *graph (A), the applicable volume for cal-*
4 *endar year 2016 and each calendar year*
5 *thereafter shall be equal to the product ob-*
6 *tained by multiplying—*

7 “(I) *the number of gallons of gaso-*
8 *line that the Administrator estimates*
9 *will be sold or introduced into com-*
10 *merce in the calendar year; and*

11 “(II) *the ratio that—*

12 “(aa) *5.0 billion gallons of*
13 *renewable fuels; bears to*

14 “(bb) *the number of gallons*
15 *of gasoline sold or introduced into*
16 *commerce in calendar year 2015.*

17 “(3) *APPLICABLE PERCENTAGES.—Not later*
18 *than October 31 of each calendar year after 2002, the*
19 *Administrator of the Energy Information Adminis-*
20 *tration shall provide the Administrator an estimate of*
21 *the volumes of gasoline sales in the United States for*
22 *the coming calendar year. Based on such estimates,*

1 *the Administrator shall, by November 30 of each cal-*
2 *endar year after 2003, determine and publish in the*
3 *Federal Register, the renewable fuel obligation, on a*
4 *volume percentage of gasoline basis, applicable to re-*
5 *finers, blenders, and importers, as appropriate, for*
6 *the coming calendar year, to ensure that the require-*
7 *ments of paragraph (2) are met. For each calendar*
8 *year, the Administrator shall establish a single appli-*
9 *cable percentage that applies to all parties, and make*
10 *provision to avoid redundant obligations. In deter-*
11 *mining the applicable percentages, the Administrator*
12 *shall make adjustments to account for the use of re-*
13 *newable fuels by exempt small refineries during the*
14 *previous year.*

15 *“(4) CELLULOSIC BIOMASS ETHANOL.—For the*
16 *purpose of paragraph (2), 1 gallon of cellulosic bio-*
17 *mass ethanol shall be considered to be the equivalent*
18 *of 1.5 gallon of renewable fuel.*

19 *“(5) CREDIT PROGRAM.—*

20 *“(A) IN GENERAL.—The regulations pro-*
21 *mulgated to carry out this subsection shall pro-*
22 *vide for the generation of an appropriate*
23 *amount of credits by any person that refines,*
24 *blends, or imports gasoline that contains a quan-*
25 *tity of renewable fuel that is greater than the*

1 *quantity required under paragraph (2). Such*
2 *regulations shall provide for the generation of an*
3 *appropriate amount of credits for biodiesel fuel.*
4 *If a small refinery notifies the Administrator*
5 *that it waives the exemption provided by this*
6 *Act, the regulations shall provide for the genera-*
7 *tion of credits by the small refinery beginning in*
8 *the year following such notification.*

9 “(B) *USE OF CREDITS.*—*A person that gen-*
10 *erates credits under subparagraph (A) may use*
11 *the credits, or transfer all or a portion of the*
12 *credits to another person, for the purpose of com-*
13 *plying with paragraph (2).*

14 “(C) *LIFE OF CREDITS.*—*A credit generated*
15 *under this paragraph shall be valid to show com-*
16 *pliance:*

17 “(i) *in the calendar year in which the*
18 *credit was generated or the next calendar*
19 *year, or*

20 “(ii) *in the calendar year in which the*
21 *credit was generated or next two consecutive*
22 *calendar years if the Administrator promul-*
23 *gates regulations under paragraph (6).*

24 “(D) *INABILITY TO PURCHASE SUFFICIENT*
25 *CREDITS.*—*The regulations promulgated to carry*

1 *out this subsection shall include provisions al-*
2 *lowing any person that is unable to generate or*
3 *purchase sufficient credits to meet the require-*
4 *ments under paragraph (2) to carry forward a*
5 *renewables deficit provided that, in the calendar*
6 *year following the year in which the renewables*
7 *deficit is created, such person shall achieve com-*
8 *pliance with the renewables requirement under*
9 *paragraph (2), and shall generate or purchase*
10 *additional renewables credits to offset the renew-*
11 *ables deficit of the previous year.*

12 “(6) SEASONAL VARIATIONS IN RENEWABLE
13 FUEL USE.—

14 “(A) STUDY.—*For each of calendar years*
15 *2005 through 2015, the Administrator of the En-*
16 *ergy Information Administration, shall conduct*
17 *a study of renewable fuels blending to determine*
18 *whether there are excessive seasonal variations in*
19 *the use of renewable fuels.*

20 “(B) REGULATION OF EXCESSIVE SEASONAL
21 VARIATIONS.—*If, for any calendar year, the Ad-*
22 *ministrator of the Energy Information Adminis-*
23 *tration, based on the study under subparagraph*
24 *(A), makes the determinations specified in sub-*
25 *paragraph (C), the Administrator shall promul-*

1 *gate regulations to ensure that 35 percent or*
2 *more of the quantity of renewable fuels necessary*
3 *to meet the requirement of paragraph (2) is used*
4 *during each of the periods specified in subpara-*
5 *graph (D) of each subsequent calendar year.*

6 “(C) *DETERMINATIONS.*—*The determina-*
7 *tions referred to in subparagraph (B) are that—*

8 “(i) *less than 35 percent of the quan-*
9 *tity of renewable fuels necessary to meet the*
10 *requirement of paragraph (2) has been used*
11 *during one of the periods specified in sub-*
12 *paragraph (D) of the calendar year;*

13 “(ii) *a pattern of excessive seasonal*
14 *variation described in clause (i) will con-*
15 *tinue in subsequent calendar years; and*

16 “(iii) *promulgating regulations or*
17 *other requirements to impose a 35% or*
18 *more seasonal use of renewable fuels will*
19 *not prevent or interfere with the attainment*
20 *of national ambient air quality standards*
21 *or significantly increase the price of motor*
22 *fuels to the consumer.*

23 “(D) *PERIODS.*—*The two periods referred to*
24 *in this paragraph are—*

25 “(i) *April through September; and*

1 “(ii) *January through March and Oc-*
2 *tober through December.*

3 “(E) *EXCLUSIONS.—Renewable fuels blend-*
4 *ed or consumed in 2005 in a State which has re-*
5 *ceived a waiver under section 209(b) shall not be*
6 *included in the study in subparagraph (A).*

7 “(7) *WAIVERS.—*

8 “(A) *IN GENERAL.—The Administrator, in*
9 *consultation with the Secretary of Agriculture*
10 *and the Secretary of Energy, may waive the re-*
11 *quirement of paragraph (2) in whole or in part*
12 *on petition by one or more States by reducing*
13 *the national quantity of renewable fuel required*
14 *under this subsection—*

15 “(i) *based on a determination by the*
16 *Administrator, after public notice and op-*
17 *portunity for comment, that implementa-*
18 *tion of the requirement would have a sig-*
19 *nificant and meaningful adverse impact on*
20 *the economy or environment of a State, a*
21 *region, or the United States, or will prevent*
22 *or interfere with the attainment of a na-*
23 *tional ambient air quality standard in any*
24 *area of a State; or*

1 “(ii) based on a determination by the
2 Administrator, after public notice and op-
3 portunity for comment, that there is an in-
4 adequate domestic supply or distribution
5 capacity to meet the requirement.

6 “(B) *PETITIONS FOR WAIVERS.*—The Ad-
7 ministrators, in consultation with the Secretary
8 of Agriculture and the Secretary of Energy, shall
9 approve or disapprove a State petition for a
10 waiver of the requirement of paragraph (2) with-
11 in 90 days after the date on which the petition
12 is received by the Administrator. If the Adminis-
13 trator does not act to approve or disapprove a
14 State petition for a waiver within 90 days, the
15 Administrator shall publish a notice setting forth
16 the reasons for not acting within the required
17 90-day period.

18 “(C) *TERMINATION OF WAIVERS.*—A waiver
19 granted under subparagraph (A) shall terminate
20 after 1 year, but may be renewed by the Admin-
21 istrator after consultation with the Secretary of
22 Agriculture and the Secretary of Energy.

23 “(8) *STUDY AND WAIVER FOR INITIAL YEAR OF*
24 *PROGRAM.*—Not later than 180 days from enactment,
25 the Secretary of Energy shall complete for the Admin-

1 *istrator a study assessing whether the renewable fuels*
2 *requirement under paragraph (2) will likely result in*
3 *significant adverse consumer impacts in 2005, on a*
4 *national, regional or State basis. Such study shall*
5 *evaluate renewable fuel supplies and prices, blendstock*
6 *supplies, and supply and distribution system capa-*
7 *bilities. Based on such study, the Secretary shall*
8 *make specific recommendations to the Administrator*
9 *regarding waiver of the requirements of paragraph*
10 *(2), in whole or in part, to avoid any such adverse*
11 *impacts. Within 270 days from enactment, the Ad-*
12 *ministrator shall, consistent with the recommenda-*
13 *tions of the Secretary waive, in whole or in part, the*
14 *renewable fuels requirement under paragraph (2) by*
15 *reducing the national quantity of renewable fuel re-*
16 *quired under this subsection in 2005. This provision*
17 *shall not be interpreted as limiting the Administra-*
18 *tor's authority to waive the requirements of para-*
19 *graph (2) in whole, or in part, under paragraph (7)*
20 *or paragraph (9), pertaining to waivers.*

21 *“(9) ASSESSMENT AND WAIVER.—The Secretary*
22 *of Energy, in consultation with the Administrator of*
23 *the Environmental Protection Agency and the Sec-*
24 *retary of Agriculture on his own motion, or upon pe-*
25 *tition of any State shall evaluate the requirement of*

1 paragraph (2) and determine, prior to January 1,
2 2007, or prior to January 1 of any subsequent year
3 in which the applicable volume of renewable fuel is
4 increased under paragraph (2)(B), whether the re-
5 quirement of paragraph (2), including the applicable
6 volume of renewable fuel contained in paragraph
7 (2)(B) should remain in effect, in whole or in part,
8 during 2007 or any year or years subsequent to 2007.
9 In evaluating the requirement of paragraph (2) and
10 in making any determination under this section, the
11 Secretary shall consider the best available informa-
12 tion and data collected by accepted methods or best
13 available means regarding—

14 “(A) the capacity of renewable fuel pro-
15 ducers to supply an adequate amount of renew-
16 able fuel at competitive prices to fulfill the re-
17 quirement in paragraph (2);

18 “(B) the potential of the requirement in
19 paragraph (2) to significantly raise the price of
20 gasoline, food or heating oil for consumers in
21 any significant area or region of the country
22 above the price that would otherwise apply to
23 such commodities in the absence of the require-
24 ment;

1 “(C) the potential of the requirement in
2 paragraph (2) to interfere with the supply of fuel
3 in any significant gasoline market or region of
4 the country, including interference with the effi-
5 cient operation of refiners, blenders, importers,
6 wholesale suppliers, and retail vendors of gaso-
7 line, and other motor fuels; and

8 “(D) the potential of the requirement to
9 cause or promote exceedences of Federal, State,
10 or local air quality standards.

11 *If the Secretary determines, after public notice and*
12 *the opportunity for comment, that the requirement of*
13 *paragraph (2) would have significant and meaningful*
14 *adverse impact on the supply of fuel and related in-*
15 *frastructure or on the economy, environment, public*
16 *health or environment of any significant area or re-*
17 *gion of the country, the Secretary may waive, in*
18 *whole or in part, the requirement of paragraph (2) in*
19 *any one year or period of years as well as reduce the*
20 *applicable volume of renewable fuel contained in*
21 *paragraph (2)(B) in any one year or period of years.*

22 “(10) *SMALL REFINERIES.*—

23 “(A) *IN GENERAL.*—*The requirement of*
24 *paragraph (2) shall not apply to small refineries*
25 *until the first calendar year beginning more*

1 *than 5 years after the first year set forth in the*
2 *table in paragraph (2)(B)(i). Not later than De-*
3 *cember 31, 2006, the Secretary of Energy shall*
4 *complete for the Administrator a study to deter-*
5 *mine whether the requirement of paragraph (2)*
6 *would impose a disproportionate economic hard-*
7 *ship on small refineries. For any small refinery*
8 *that the Secretary of Energy determines would*
9 *experience a disproportionate economic hardship,*
10 *the Administrator shall extend the small refinery*
11 *exemption for such small refinery for no less*
12 *than two additional years.*

13 “(B) *ECONOMIC HARDSHIP.*—

14 “(i) *EXTENSION OF EXEMPTION.*—A
15 *small refinery may at any time petition the*
16 *Administrator for an extension of the ex-*
17 *emption from the requirement of paragraph*
18 *(2) for the reason of disproportionate eco-*
19 *nomical hardship. In evaluating a hardship*
20 *petition, the Administrator, in consultation*
21 *with the Secretary of Energy, shall consider*
22 *the findings of the study in addition to*
23 *other economic factors.*

24 “(ii) *DEADLINE FOR ACTION ON PETI-*
25 *TIONS.*—*The Administrator shall act on*

1 *any petition submitted by a small refinery*
2 *for a hardship exemption not later than 90*
3 *days after the receipt of the petition.*

4 “(C) *CREDIT PROGRAM.*—*If a small refin-*
5 *ery notifies the Administrator that it waives the*
6 *exemption provided by this Act, the regulations*
7 *shall provide for the generation of credits by the*
8 *small refinery beginning in the year following*
9 *such notification.*

10 “(D) *OPT-IN FOR SMALL REFINERS.*—*A*
11 *small refinery shall be subject to the require-*
12 *ments of this section if it notifies the Adminis-*
13 *trator that it waives the exemption under sub-*
14 *paragraph (A).”.*

15 “(b) *PENALTIES AND ENFORCEMENT.*—*Section 211(d)*
16 *of the Clean Air Act (42 U.S.C. 7545(d)) is amended—*

17 (1) *in paragraph (1)—*

18 (A) *in the first sentence, by striking “or*
19 *(n)” each place it appears and inserting “(n) or*
20 *(o)”;* *and*

21 (B) *in the second sentence, by striking “or*
22 *(m)” and inserting “(m), or (o)”;* *and*

23 (2) *in the first sentence of paragraph (2), by*
24 *striking “and (n)” each place it appears and insert-*
25 *ing “(n), and (o)”.*

1 (c) *SURVEY OF RENEWABLE FUEL MARKET.*—

2 (1) *SURVEY AND REPORT.*—Not later than De-
3 cember 1, 2006, and annually thereafter, the Admin-
4 istrator of the Environmental Protection Agency (in
5 consultation with the Secretary of Energy acting
6 through the Administrator of the Energy Information
7 Administration) shall—

8 (A) conduct, with respect to each conven-
9 tional gasoline use area and each reformulated
10 gasoline use area in each State, a survey to de-
11 termine the market shares of—

12 (i) conventional gasoline containing
13 ethanol;

14 (ii) reformulated gasoline containing
15 ethanol;

16 (iii) conventional gasoline containing
17 renewable fuel; and

18 (iv) reformulated gasoline containing
19 renewable fuel; and

20 (B) submit to Congress, and make publicly
21 available, a report on the results of the survey
22 under subparagraph (A).

23 (2) *RECORDKEEPING AND REPORTING REQUIRE-*
24 *MENTS.*—The Administrator may require any refiner,
25 blender, or importer to keep such records and make

1 *such reports as are necessary to ensure that the survey*
2 *conducted under paragraph (1) is accurate. The Ad-*
3 *ministrator shall rely, to the extent practicable, on*
4 *existing reporting and recordkeeping requirements to*
5 *avoid duplicative requirements.*

6 (3) *APPLICABLE LAW.—Activities carried out*
7 *under this subsection shall be conducted in a manner*
8 *designed to protect confidentiality of individual re-*
9 *sponses.*

10 (4) *CALCULATION OF MARKET SHARES.—Market*
11 *shares for conventional gasoline and reformulated*
12 *gasoline use areas will be calculated on a statewide*
13 *basis using information collected under paragraph (2)*
14 *and other information available to the Administrator.*
15 *Market share information may be based upon gasoline*
16 *distribution patterns that include multistate use*
17 *areas.*

18 **SEC. 9102. FUELS SAFE HARBOR.**

19 (a) *IN GENERAL.—Notwithstanding any other provi-*
20 *sion of Federal or State law, no renewable fuel, as defined*
21 *by section 211(o)(1) of the Clean Air Act, or fuel containing*
22 *MTBE, used or intended to be used as a motor vehicle fuel,*
23 *nor any motor vehicle fuel containing such renewable fuel*
24 *or MTBE, shall be deemed defective in design or manufac-*
25 *ture by virtue of the fact that it is, or contains, such a*

1 *renewable fuel or MTBE, if it does not violate a control*
2 *or prohibition imposed by the Administrator under section*
3 *211 of such Act, and the manufacturer is in compliance*
4 *with all requests for information under subsection (b) of*
5 *such section 211(b) of the Clean Air Act. If the safe harbor*
6 *provided by this section does not apply, the existence of a*
7 *design defect or manufacturing defect shall be determined*
8 *under otherwise applicable law. Nothing in this paragraph*
9 *shall be construed to affect the liability of any person for*
10 *environmental remediation costs, drinking water contami-*
11 *nation, negligence, public nuisance or any other liability*
12 *other than liability for a defect in design or manufacture*
13 *of a motor vehicle fuel.*

14 (b) *EFFECTIVE DATE.*—*This section shall be effective*
15 *as of the date of enactment and shall apply with respect*
16 *to all claims filed on or after that date.*

17 **SEC. 9103. FINDINGS AND MTBE TRANSITION ASSISTANCE.**

18 (a) *FINDINGS.*—*Congress finds that—*

19 (1) *since 1979, methyl tertiary butyl ether (re-*
20 *ferred to in this section as “MTBE”) has been used*
21 *nationwide at low levels in gasoline to replace lead as*
22 *an octane booster or anti-knocking agent;*

23 (2) *Public Law 101–549 (commonly known as*
24 *the “Clean Air Act Amendments of 1990”) (42 U.S.C.*
25 *7401 et seq.) established a fuel oxygenate standard*

1 *under which reformulated gasoline must contain at*
2 *least 2 percent oxygen by weight;*

3 *(3) at the time of the adoption of the fuel oxygen*
4 *standard, Congress was aware that significant use of*
5 *MTBE would result from the adoption of that stand-*
6 *ard, and that the use of MTBE would likely be im-*
7 *portant to the cost-effective implementation of that*
8 *program;*

9 *(4) Congress was aware that gasoline and its*
10 *component additives can and do leak from storage*
11 *tanks;*

12 *(5) the fuel industry responded to the fuel oxy-*
13 *genate standard established by Public Law 101–549*
14 *by making substantial investments in—*

15 *(A) MTBE production capacity; and*

16 *(B) systems to deliver MTBE-containing*
17 *gasoline to the marketplace;*

18 *(6) Congress has—*

19 *(A) reconsidered the relative value of the ox-*
20 *ygenate requirement for reformulated gasoline;*
21 *and*

22 *(B) decided to provide for the elimination of*
23 *the oxygenate requirement for reformulated gaso-*
24 *line and to provide for a renewable content re-*
25 *quirement for motor fuel; and*

1 (7) *it is appropriate for Congress to provide*
2 *some limited transition assistance—*

3 (A) *to merchant producers of MTBE who*
4 *produced MTBE in response to a market created*
5 *by the oxygenate requirement contained in the*
6 *Clean Air Act; and*

7 (B) *for the purpose of mitigating any fuel*
8 *supply problems that may result from the elimi-*
9 *nation of the oxygenate requirement for reformu-*
10 *lated gasoline.*

11 (b) *PURPOSES.—The purpose of this section is to pro-*
12 *vide assistance to merchant producers of MTBE in making*
13 *the transition from producing MTBE to producing other*
14 *fuel additives.*

15 (c) *MTBE MERCHANT PRODUCER CONVERSION AS-*
16 *SISTANCE.—Section 211(c) of the Clean Air Act (42 U.S.C.*
17 *7545(c)) is amended by adding at the end the following:*

18 “(5) *MTBE MERCHANT PRODUCER CONVERSION*
19 *ASSISTANCE.—*

20 “(A) *IN GENERAL.—*

21 “(i) *GRANTS.—The Secretary of En-*
22 *ergy, in consultation with the Adminis-*
23 *trator, may make grants to merchant pro-*
24 *ducers of methyl tertiary butyl ether in the*
25 *United States to assist the producers in the*

1 *conversion of eligible production facilities*
2 *described in subparagraph (C) to the pro-*
3 *duction of iso-octane and alkylates.*

4 “(i) *DETERMINATION.*—*The Adminis-*
5 *trator, in consultation with the Secretary of*
6 *Energy, may determine that transition as-*
7 *istance for the production of iso-octane and*
8 *alkylates is inconsistent with the provisions*
9 *of subparagraph (B) and, on that basis,*
10 *may deny applications for grants author-*
11 *ized by this provision.*

12 “(B) *FURTHER GRANTS.*—*The Secretary of*
13 *Energy, in consultation with the Administrator,*
14 *may also further make grants to merchant pro-*
15 *ducers of MTBE in the United States to assist*
16 *the producers in the conversion of eligible pro-*
17 *duction facilities described in subparagraph (C)*
18 *to the production of such other fuel additives*
19 *that, consistent with this subsection—*

20 “(i) *unless the Administrator deter-*
21 *mines that such fuel additives may reason-*
22 *ably be anticipated to endanger public*
23 *health or the environment;*

1 “(ii) have been registered and have
2 been tested or are being tested in accordance
3 with the requirements of this section; and

4 “(iii) will contribute to replacing gaso-
5 line volumes lost as a result of paragraph
6 (5).

7 “(C) *ELIGIBLE PRODUCTION FACILITIES.*—
8 A production facility shall be eligible to receive
9 a grant under this paragraph if the production
10 facility—

11 “(i) is located in the United States;
12 and

13 “(ii) produced methyl tertiary butyl
14 ether for consumption before April 1, 2003
15 and ceased production at any time after the
16 date of enactment.

17 “(D) *AUTHORIZATION OF APPROPRIA-*
18 *TIONS.*—There is authorized to be appropriated
19 to carry out this paragraph \$250,000,000 for
20 each of fiscal years 2004 through 2006, to re-
21 main available until expended.”.

22 “(d) *EFFECT ON STATE LAW.*—The amendments made
23 to the Clean Air Act by this title have no effect regarding
24 any available authority of States to limit the use of methyl
25 tertiary butyl ether in motor vehicle fuel.

1 **SEC. 9104. ELIMINATION OF OXYGEN CONTENT REQUIRE-**
2 **MENT FOR REFORMULATED GASOLINE.**

3 (a) *ELIMINATION.*—

4 (1) *IN GENERAL.*—Section 211(k) of the Clean
5 *Air Act* (42 U.S.C. 7545(k)) is amended—

6 (A) in paragraph (2)—

7 (i) in the second sentence of subpara-
8 graph (A), by striking “(including the oxy-
9 gen content requirement contained in sub-
10 paragraph (B))”;

11 (ii) by striking subparagraph (B); and

12 (iii) by redesignating subparagraphs
13 (C) and (D) as subparagraphs (B) and (C),
14 respectively;

15 (B) in paragraph (3)(A), by striking clause

16 (v);

17 (C) in paragraph (7)—

18 (i) in subparagraph (A)—

19 (I) by striking clause (i); and

20 (II) by redesignating clauses (ii)
21 and (iii) as clauses (i) and (ii), respec-
22 tively; and

23 (ii) in subparagraph (C)—

24 (I) by striking clause (ii); and

25 (II) by redesignating clause (iii)
26 as clause (ii); and

1 (2) *EFFECTIVE DATE.*—*The amendments made*
2 *by paragraph (1) take effect 270 days after the date*
3 *of enactment of this Act, except that such amendments*
4 *shall take effect upon enactment in any State that has*
5 *received a waiver under section 209(b) of the Clean*
6 *Air Act.*

7 (b) *MAINTENANCE OF TOXIC AIR POLLUTANT EMIS-*
8 *SION REDUCTIONS.*—*Section 211(k)(1) of the Clean Air Act*
9 *(42 U.S.C. 7545(k)(1)) is amended—*

10 (1) *by striking “Within 1 year after the enact-*
11 *ment of the Clean Air Act Amendments of 1990,” and*
12 *inserting the following:*

13 “(A) *IN GENERAL.*—*Not later than Novem-*
14 *ber 15, 1991,”; and*

15 (2) *by adding at the end the following:*

16 “(B) *MAINTENANCE OF TOXIC AIR POLLUT-*
17 *ANT EMISSIONS REDUCTIONS FROM REFORMU-*
18 *LATED GASOLINE.*—

19 “(i) *DEFINITIONS.*—*In this subpara-*
20 *graph the term ‘PADD’ means a Petroleum*
21 *Administration for Defense District.*

22 “(ii) *REGULATIONS REGARDING EMIS-*
23 *SIONS OF TOXIC AIR POLLUTANTS.*—*Not*
24 *later than 270 days after the date of enact-*
25 *ment of this subparagraph the Adminis-*

1 *trator shall establish, for each refinery or*
2 *importer, standards for toxic air pollutants*
3 *from use of the reformulated gasoline pro-*
4 *duced or distributed by the refinery or im-*
5 *porter that maintain the reduction of the*
6 *average annual aggregate emissions of toxic*
7 *air pollutants for reformulated gasoline pro-*
8 *duced or distributed by the refinery or im-*
9 *porter during calendar years 1999 and*
10 *2000, determined on the basis of data col-*
11 *lected by the Administrator with respect to*
12 *the refinery or importer.*

13 *“(iii) STANDARDS APPLICABLE TO SPE-*
14 *CIFIC REFINERIES OR IMPORTERS.—*

15 *“(I) APPLICABILITY OF STAND-*
16 *ARDS.—For any calendar year, the*
17 *standards applicable to a refinery or*
18 *importer under clause (ii) shall apply*
19 *to the quantity of gasoline produced or*
20 *distributed by the refinery or importer*
21 *in the calendar year only to the extent*
22 *that the quantity is less than or equal*
23 *to the average annual quantity of re-*
24 *formulated gasoline produced or dis-*

1 *tributed by the refinery or importer*
2 *during calendar years 1999 and 2000.*

3 *“(II) APPLICABILITY OF OTHER*
4 *STANDARDS.—For any calendar year,*
5 *the quantity of gasoline produced or*
6 *distributed by a refinery or importer*
7 *that is in excess of the quantity subject*
8 *to subclause (I) shall be subject to*
9 *standards for toxic air pollutants pro-*
10 *mulgated under subparagraph (A) and*
11 *paragraph (3)(B).*

12 *“(iv) CREDIT PROGRAM.—The Admin-*
13 *istrator shall provide for the granting and*
14 *use of credits for emissions of toxic air pol-*
15 *lutants in the same manner as provided in*
16 *paragraph (7).*

17 *“(v) REGIONAL PROTECTION OF TOXICS*
18 *REDUCTION BASELINES.—*

19 *“(I) IN GENERAL.—Not later than*
20 *60 days after the date of enactment of*
21 *this subparagraph, and not later than*
22 *April 1 of each calendar year that be-*
23 *gins after that date of enactment, the*
24 *Administrator shall publish in the*
25 *Federal Register a report that specifies,*

1 *with respect to the previous calendar*
2 *year—*

3 “*(aa) the quantity of reformulated gasoline produced that is*
4 *in excess of the average annual*
5 *quantity of reformulated gasoline*
6 *produced in 1999 and 2000; and*

7 “*(bb) the reduction of the average annual aggregate emissions*
8 *of toxic air pollutants in each*
9 *PADD, based on retail survey*
10 *data or data from other appropriate sources.*

11 “*(II) EFFECT OF FAILURE TO*
12 *MAINTAIN AGGREGATE TOXICS REDUC-*
13 *TIONS.—If, in any calendar year, the*
14 *reduction of the average annual aggregate emissions of toxic air pollutants*
15 *in a PADD fails to meet or exceed the*
16 *reduction of the average annual aggregate emissions of toxic air pollutants*
17 *in the PADD in calendar years 1999*
18 *and 2000, the Administrator, not later*
19 *than 90 days after the date of publica-*
20
21
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24

1 *tion of the report for the calendar year*
2 *under subclause (I), shall—*

3 *“(aa) identify, to the max-*
4 *imum extent practicable, the rea-*
5 *sons for the failure, including the*
6 *sources, volumes, and characteris-*
7 *tics of reformulated gasoline that*
8 *contributed to the failure; and*

9 *“(bb) promulgate revisions to*
10 *the regulations promulgated under*
11 *clause (ii), to take effect not ear-*
12 *lier than 180 days but not later*
13 *than 270 days after the date of*
14 *promulgation, to provide that,*
15 *notwithstanding clause (iii)(II),*
16 *all reformulated gasoline produced*
17 *or distributed at each refinery or*
18 *importer shall meet the standards*
19 *applicable under clause (ii) not*
20 *later than April 1 of the year fol-*
21 *lowing the report in subclause (II)*
22 *and for subsequent years.*

23 *“(vi) REGULATIONS TO CONTROL HAZ-*
24 *ARDOUS AIR POLLUTANTS FROM MOTOR VE-*
25 *HICLES AND MOTOR VEHICLE FUELS.—Not*

1 *later than July 1, 2004, the Administrator*
2 *shall promulgate final regulations to control*
3 *hazardous air pollutants from motor vehi-*
4 *cles and motor vehicle fuels, as provided for*
5 *in section 80.1045 of title 40, Code of Fed-*
6 *eral Regulations (as in effect on the date of*
7 *enactment of this subparagraph).”.*

8 *(c) CONSOLIDATION IN REFORMULATED GASOLINE*
9 *REGULATIONS.—Not later than 180 days after the date of*
10 *enactment of this Act, the Administrator shall revise the*
11 *reformulated gasoline regulations under subpart D of part*
12 *80 of title 40, Code of Federal Regulations, to consolidate*
13 *the regulations applicable to VOC-Control Regions 1 and*
14 *2 under section 80.41 of that title by eliminating the less*
15 *stringent requirements applicable to gasoline designated for*
16 *VOC-Control Region 2 and instead applying the more strin-*
17 *gent requirements applicable to gasoline designated for*
18 *VOC-Control Region 1.*

19 *(d) SAVINGS CLAUSE.—Nothing in this section is in-*
20 *tended to affect or prejudice either any legal claims or ac-*
21 *tions with respect to regulations promulgated by the Ad-*
22 *ministrator prior to enactment of this Act regarding emis-*
23 *sions of toxic air pollutants from motor vehicles or the ad-*
24 *justment of standards applicable to a specific refinery or*
25 *importer made under such prior regulations and the Ad-*

1 *ministrator may apply such adjustments to the standards*
2 *applicable to such refinery or importer under clause (iii)(I)*
3 *of section 211(k)(1)(B) of the Clean Air Act, except that—*

4 *(1) the Administrator shall revise such adjust-*
5 *ments to be based only on calendar years 1999–2000,*
6 *and*

7 *(2) for adjustments based on toxic air pollutant*
8 *emissions from reformulated gasoline significantly*
9 *below the national annual average emissions of toxic*
10 *air pollutants from all reformulated gasoline, the Ad-*
11 *ministrator may revise such adjustments to take ac-*
12 *count of the scope of any lawful and enforceable Fed-*
13 *eral or State prohibition on methyl tertiary butyl*
14 *ether imposed after the effective date of the enactment*
15 *of this paragraph, except that any such adjustment*
16 *shall require such refiner or importer, to the greatest*
17 *extent practicable, to maintain the reduction achieved*
18 *during calendar year 1999–2000 in the average an-*
19 *nuual aggregate emissions of toxic air pollutants from*
20 *reformulated gasoline produced or distributed by the*
21 *refinery or importer. Any such adjustment shall not*
22 *be made at a level below the average percentage of re-*
23 *ductions of emissions of toxic air pollutants for refor-*
24 *mulated gasoline supplied to PADD I during cal-*
25 *endar years 1999–2000.*

1 **SEC. 9105. ANALYSES OF MOTOR VEHICLE FUEL CHANGES.**

2 *Section 211 of the Clean Air Act (42 U.S.C. 7545) is*
3 *amended by inserting after subsection (o) the following:*

4 “(p) *ANALYSES OF MOTOR VEHICLE FUEL CHANGES*
5 *AND EMISSIONS MODEL.—*

6 “(1) *ANTI-BACKSLIDING ANALYSIS.—*

7 “(A) *DRAFT ANALYSIS.—Not later than 4*
8 *years after the date of enactment of this para-*
9 *graph, the Administrator shall publish for public*
10 *comment a draft analysis of the changes in emis-*
11 *sions of air pollutants and air quality due to the*
12 *use of motor vehicle fuel and fuel additives re-*
13 *sulting from implementation of the amendments*
14 *made by title IX of the Energy Policy Act of*
15 *2003.*

16 “(B) *FINAL ANALYSIS.—After providing a*
17 *reasonable opportunity for comment but not*
18 *later than 5 years after the date of enactment of*
19 *this paragraph, the Administrator shall publish*
20 *the analysis in final form.*

21 “(2) *EMISSIONS MODEL.—For the purposes of*
22 *this subsection, as soon as the necessary data are*
23 *available, the Administrator shall develop and final-*
24 *ize an emissions model that reasonably reflects the ef-*
25 *fects of gasoline characteristics or components on*

1 *emissions from vehicles in the motor vehicle fleet dur-*
2 *ing calendar year 2005.”.*

3 **SEC. 9106. DATA COLLECTION.**

4 *Section 205 of the Department of Energy Organization*
5 *Act (42 U.S.C. 7135) is amended by adding at the end the*
6 *following:*

7 “(m) *RENEWABLE FUELS SURVEY.*—(1) *In order to*
8 *improve the ability to evaluate the effectiveness of the Na-*
9 *tion’s renewable fuels mandate, the Administrator shall con-*
10 *duct and publish the results of a survey of renewable fuels*
11 *demand in the motor vehicle fuels market in the United*
12 *States monthly, and in a manner designed to protect the*
13 *confidentiality of individual responses. In conducting the*
14 *survey, the Administrator shall collect information both on*
15 *a national and regional basis, including—*

16 “(A) *the quantity of renewable fuels produced;*

17 “(B) *the quantity of renewable fuels blended;*

18 “(C) *the quantity of renewable fuels imported;*

19 “(D) *the quantity of renewable fuels demanded;*

20 “(E) *market price data; and*

21 “(F) *such other analyses or evaluations as the*
22 *Administrator finds is necessary to achieve the pur-*
23 *poses of this section.*

24 “(2) *The Administrator shall also collect or estimate*
25 *information both on a national and regional basis, pursu-*

1 ant to subparagraphs (A) through (F) of paragraph (1),
 2 for the five years prior to implementation of this subsection.

3 “(3) This subsection does not affect the authority of
 4 the Administrator to collect data under section 52 of the
 5 Federal Energy Administration Act of 1974 (15 U.S.C.
 6 790a).”.

7 **SEC. 9107. FUEL SYSTEM REQUIREMENTS HARMONIZATION**

8 **STUDY.**

9 (a) *STUDY.*—

10 (1) *IN GENERAL.*—The Administrator of the En-
 11 vironmental Protection Agency and the Secretary of
 12 Energy shall jointly conduct a study of Federal,
 13 State, and local requirements concerning motor vehi-
 14 cle fuels, including—

15 (A) requirements relating to reformulated
 16 gasoline, volatility (measured in Reid vapor
 17 pressure), oxygenated fuel, and diesel fuel; and

18 (B) other requirements that vary from State
 19 to State, region to region, or locality to locality.

20 (2) *REQUIRED ELEMENTS.*—The study shall as-
 21 sess—

22 (A) the effect of the variety of requirements
 23 described in paragraph (1) on the supply, qual-
 24 ity, and price of motor vehicle fuels available to
 25 consumers in various States and localities;

1 (B) the effect of the requirements described
2 in paragraph (1) on achievement of—

3 (i) national, regional, and local air
4 quality standards and goals; and

5 (ii) related environmental and public
6 health protection standards and goals;

7 (C) the effect of Federal, State, and local
8 motor vehicle fuel regulations, including multiple
9 motor vehicle fuel requirements, on—

10 (i) domestic refineries;

11 (ii) the fuel distribution system; and

12 (iii) industry investment in new ca-
13 pacity;

14 (D) the effect of the requirements described
15 in paragraph (1) on emissions from vehicles, re-
16 fineries, and fuel handling facilities;

17 (E) the feasibility of developing national or
18 regional motor vehicle fuel states for the 48 con-
19 tiguous States that, while improving air quality
20 at the national, regional and local levels con-
21 sistent with the attainment of national ambient
22 air quality standards, could—

23 (i) enhance flexibility in the fuel dis-
24 tribution infrastructure and improve fuel
25 fungibility;

1 (ii) reduce price volatility and costs to
2 consumers and producers;

3 (iii) provide increased liquidity to the
4 gasoline market; and

5 (iv) enhance fuel quality, consistency,
6 and supply;

7 (F) the feasibility of providing incentives, to
8 promote cleaner burning motor vehicle fuel; and

9 (G) the extent to which improvements in air
10 quality and any increases or decreases in the
11 price of motor fuel can be projected to result
12 from the Environmental Protection Agency's
13 Tier II requirements for conventional gasoline
14 and vehicle emission systems, the reformulated
15 gasoline program, the renewable content require-
16 ments established by this subtitle, State pro-
17 grams regarding gasoline volatility, and any
18 other requirements imposed by States or local-
19 ities affecting the composition of motor fuel.

20 (b) REPORT.—

21 (1) IN GENERAL.—Not later than December 31,
22 2006, the Administrator of the Environmental Protec-
23 tion Agency and the Secretary of Energy shall submit
24 to Congress a report on the results of the study con-
25 ducted under subsection (a).

1 (2) *RECOMMENDATIONS.*—

2 (A) *IN GENERAL.*—*The report shall contain*
3 *recommendations for legislative and administra-*
4 *tive actions that may be taken—*

5 (i) *to improve air quality;*

6 (ii) *to reduce costs to consumers and*
7 *producers; and*

8 (iii) *to increase supply liquidity.*

9 (B) *REQUIRED CONSIDERATIONS.*—*The rec-*
10 *ommendations under subparagraph (A) shall*
11 *take into account the need to provide advance*
12 *notice of required modifications to refinery and*
13 *fuel distribution systems in order to ensure an*
14 *adequate supply of motor vehicle fuel in all*
15 *States.*

16 (3) *CONSULTATION.*—*In developing the report,*
17 *the Administrator of the Environmental Protection*
18 *Agency and the Secretary of Energy shall consult*
19 *with—*

20 (A) *the Governors of the States;*

21 (B) *automobile manufacturers;*

22 (C) *motor vehicle fuel producers and dis-*
23 *tributors; and*

24 (D) *the public.*

1 **Subtitle B—MTBE Cleanup**

2 **SEC. 9201. FUNDING FOR MTBE CONTAMINATION.**

3 *Notwithstanding any other provision of law, there is*
4 *authorized to be appropriated to the Administrator of the*
5 *United States Environmental Protection Agency from the*
6 *Leaking Underground Storage Tank Trust Fund not more*
7 *than \$850,000,000 to be used for taking such action limited*
8 *to site assessment (including exposure assessment), correc-*
9 *tive action, inspection of underground storage tank systems,*
10 *and groundwater monitoring as the Administrator deems*
11 *necessary to protect human health, welfare, and the environ-*
12 *ment from underground storage tank releases of fuel con-*
13 *taining fuel oxygenates.*

14 **TITLE X—AUTOMOBILE**
15 **EFFICIENCY**

16 **SEC. 10001. AUTHORIZATION OF APPROPRIATIONS FOR IM-**
17 **PLEMENTATION AND ENFORCEMENT OF FUEL**
18 **ECONOMY STANDARDS.**

19 *In addition to any other funds authorized by law,*
20 *there are authorized to be appropriated to the National*
21 *Highway Traffic Safety Administration to implement and*
22 *enforce average fuel economy standards \$5,000,000 for fiscal*
23 *years 2004 through 2006.*

1 **SEC. 10002. STUDY OF FEASIBILITY AND EFFECTS OF RE-**
2 **DUCING USE OF FUEL FOR AUTOMOBILES.**

3 (a) *IN GENERAL.*—Not later than 30 days after the
4 date of the enactment of this Act, the Administrator of the
5 National Highway Traffic Safety Administration shall
6 study the feasibility and effects of reducing by model year
7 2012, by a significant percentage, the use of fuel for auto-
8 mobiles.

9 (b) *SUBJECTS OF STUDY.*—The study under this sec-
10 tion shall include—

11 (1) *examination of, and recommendation of al-*
12 *ternatives to, the policy under current Federal law of*
13 *establishing average fuel economy standards for auto-*
14 *mobiles and requiring each automobile manufacturer*
15 *to comply with average fuel economy standards that*
16 *apply to the automobiles it manufactures;*

17 (2) *examination of how automobile manufactur-*
18 *ers could contribute toward achieving the reduction*
19 *referred to in subsection (a);*

20 (3) *examination of the potential of fuel cell tech-*
21 *nology in motor vehicles in order to determine the ex-*
22 *tent to which such technology may contribute to*
23 *achieving the reduction referred to in subsection (a);*
24 *and*

25 (4) *examination of the effects of the reduction re-*
26 *ferred to in subsection (a) on—*

1 (A) gasoline supplies;

2 (B) the automobile industry, including sales
3 of automobiles manufactured in the United
4 States;

5 (C) motor vehicle safety; and

6 (D) air quality.

7 (c) *REPORT.*—The Administrator shall submit to the
8 Congress a report on the findings, conclusion, and rec-
9 ommendations of the study under this section by not later
10 than 1 year after the date of the enactment of this Act.

11 ***TITLE XI—PREVENTING THE***
12 ***MISUSE OF NUCLEAR MATE-***
13 ***RIALS AND TECHNOLOGY***

14 ***SEC. 11001. PREVENTING THE MISUSE OF NUCLEAR MATE-***
15 ***RIALS AND TECHNOLOGY.***

16 (a) *AMENDMENT.*—Chapter 14 of the Atomic Energy
17 Act of 1954 (42 U.S.C. 2201 et seq.) is amended by adding
18 at the end the following new section:

19 “*SEC. 170D. PREVENTING THE MISUSE OF NUCLEAR*
20 *MATERIALS AND TECHNOLOGY.*—

21 “a. In order to successfully promote the development
22 of nuclear energy as a safe and reliable source of electrical
23 energy, it is the policy of the United States to prevent any
24 nuclear materials, technology, components, substances, tech-

1 nical information, or related goods or services from being
2 misused or diverted from peaceful nuclear energy purposes.

3 “b. In order to further advance the policy set forth in
4 subsection a., notwithstanding any other provision of law,
5 no Federal agency shall issue any license, approval, or au-
6 thorization for the export or reexport, or the transfer or re-
7 transfer, either directly or indirectly, to any country whose
8 government has been identified by the Secretary of State
9 as engaged in state sponsorship of terrorist activities (spe-
10 cifically including any country the government of which,
11 as of September 11, 2001, had been determined by the Sec-
12 retary of State under section 620A(a) of the Foreign Assist-
13 ance Act of 1961, section 6(j)(1) of the Export Administra-
14 tion Act of 1979, or section 40(d) of the Arms Export Con-
15 trol Act to have repeatedly provided support for acts of
16 international terrorism) of—

17 “(1) any special nuclear material or byproduct
18 material;

19 “(2) any nuclear production or utilization facili-
20 ties; or

21 “(3) any components, technologies, substances,
22 technical information, or related goods or services
23 used (or which could be used) in a nuclear production
24 or utilization facility.

1 *“c. Any license, approval, or authorization described*
2 *in subsection b. made prior to the date of enactment of this*
3 *section is hereby revoked.”.*

4 ***(b) TABLE OF CONTENTS AMENDMENT.—****The table of*
5 *contents of such chapter 14 is amended by adding at the*
6 *end the following item:*

“Sec. 170D. Preventing the misuse of nuclear materials and technology.”.

7 ***TITLE XII—ADDITIONAL***
8 ***PROVISIONS***

9 ***SEC. 12001. TRANSMISSION TECHNOLOGIES.***

10 *The Federal Energy Regulatory Commission shall take*
11 *affirmative steps in the exercise of its authorities under the*
12 *Federal Power Act to encourage the deployment of trans-*
13 *mission technologies that utilize real time monitoring and*
14 *analytical software to increase and maximize the capacity*
15 *and efficiency of transmission networks and to reduce line*
16 *losses.*

Union Calendar No. 42

108TH CONGRESS
1ST SESSION

H. R. 1644

[Report No. 108-65, Part I]

A BILL

To enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes.

APRIL 8, 2003

Reported from the Committee on Energy and Commerce with an amendment

APRIL 8, 2003

Referred to the Committee on the Judiciary for a period ending not later than April 9, 2003, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(k), rule X

APRIL 8, 2003

Referral to the Committees on Science, Resources, Education and the Workforce, and Transportation and Infrastructure extended for a period ending not later than April 9, 2003

APRIL 9, 2003

Referred to the Committee on Government Reform for a period ending not later than April 9, 2003, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(h), rule X

APRIL 9, 2003

The Committees on Science, Resources, Education and the Workforce, Transportation and Infrastructure, the Judiciary, and Government Reform discharged; referred to the Committee of the Whole House on the State of the Union and ordered to be printed