

[DISCUSSION DRAFT]

MARCH 31, 2009

111TH CONGRESS
1ST SESSION

H. R. _____

To **[to be supplied]**.

IN THE HOUSE OF REPRESENTATIVES

M____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To **[to be supplied]**.

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

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

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

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

Sec. 1. Short title; table of contents.

TITLE I—CLEAN ENERGY

Subtitle A—Renewable Electricity Standard

Sec. 101. Federal renewable electricity standard.

Subtitle B—Carbon Capture and Sequestration

Sec. 111. National strategy.

Sec. 112. Regulations for geologic sequestration sites.

“Sec. 813. Geologic sequestration sites.

Sec. 113. Studies and reports.

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

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

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

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

Subtitle C—Clean Transportation

Sec. 121. Low carbon fuel standard.

“Sec. 822. Low carbon fuel standard.

Sec. 122. Electric vehicle infrastructure.

Sec. 123. Large-scale vehicle electrification program.

Sec. 124. Plug-in electric drive vehicle manufacturing.

Subtitle D—State Energy and Environment Development Funds

Sec. 131. Establishment of SEED funds.

Subtitle E—Smart Grid Advancement

Sec. 141. Definitions.

Sec. 142. Incorporation of Smart Grid capability in Energy Star program.

Sec. 143. Smart Grid peak demand reduction goals.

Sec. 144. Reauthorization of energy efficiency public information program to include Smart Grid information.

Sec. 145. Inclusion of Smart-Grid features in appliance rebate program.

Subtitle F—Transmission Planning

Sec. 151. Transmission planning.

Subtitle G—Federal Purchases of Electricity Generated by Renewable Energy

Sec. 161. Federal purchases of electricity generated by renewable energy.

Subtitle H—Technical Corrections to Energy Laws

Sec. 171. Technical corrections to Energy Independence and Security Act of 2007.

Sec. 172. Technical corrections to Energy Policy Act of 2005.

TITLE II—ENERGY EFFICIENCY

Subtitle A—Building Energy Efficiency Programs

Sec. 201. Greater energy efficiency in building codes.

Sec. 202. Building retrofit program.

Sec. 203. Energy efficient manufactured homes.

Sec. 204. Building energy performance labeling program.

Subtitle B—Lighting and Appliance Energy Efficiency Programs

- Sec. 211. Lighting efficiency standards.
- Sec. 212. Other appliance efficiency standards.
- Sec. 213. Appliance efficiency determinations and procedures.
- Sec. 214. Best-in-Class Appliances Deployment Program.
- Sec. 215. Purpose of Energy Star.

Subtitle C—Transportation Efficiency

- Sec. 221. Emissions standards.

“PART B—MOBILE SOURCES

- “Sec. 821. Greenhouse gas emission standards for mobile sources.
- Sec. 222. Greenhouse gas emissions reductions through transportation efficiency.

“PART D—PLANNING REQUIREMENTS

- “Sec. 841. Greenhouse gas emissions reductions through transportation efficiency.
- Sec. 223. SmartWay transportation efficiency program.
- “Sec. 823. SmartWay transportation efficiency program.
- Sec. 224. State vehicle fleets.

Subtitle D—Utilities Energy Efficiency

- Sec. 231. Energy efficiency resource standard for retail electricity and natural gas distributors.

Subtitle E—Industrial Energy Efficiency Programs

- Sec. 241. Industrial plant energy efficiency standards.
- Sec. 242. Electric and thermal energy efficiency award programs.

Subtitle F—Improvements in Energy Savings Performance Contracting

- Sec. 251. Energy savings performance contracts.

Subtitle G—Public Institutions

- Sec. 261. Public institutions.

TITLE III—REDUCING GLOBAL WARMING POLLUTION

- Sec. 301. Short title.

Subtitle A—Reducing Global Warming Pollution

- Sec. 311. Reducing global warming pollution.

“TITLE VII—GLOBAL WARMING POLLUTION REDUCTION PROGRAM

“PART A—GLOBAL WARMING POLLUTION REDUCTION GOALS AND TARGETS

- “Sec. 701. Findings and purpose.
- “Sec. 702. Economy-wide reduction goals.
- “Sec. 703. Reduction targets for specified sources.

- “Sec. 704. Supplemental pollution reductions.
- “Sec. 705. Scientific review.
- “Sec. 706. Presidential response and recommendations.

“PART B—DESIGNATION AND REGISTRATION OF GREENHOUSE GASES

- “Sec. 711. Designation of greenhouse gases.
- “Sec. 712. Carbon dioxide equivalent value of greenhouse gases.
- “Sec. 713. Greenhouse gas registry.

“PART C—PROGRAM RULES

- “Sec. 721. Emission allowances.
- “Sec. 722. Compliance obligation.
- “Sec. 723. Penalty for noncompliance.
- “Sec. 724. Trading.
- “Sec. 725. Banking and borrowing.
- “Sec. 726. Strategic reserve.
- “Sec. 727. Permits.
- “Sec. 728. International emission allowances.

“PART D—OFFSETS

- “Sec. 731. Offsets Integrity Advisory Board.
- “Sec. 732. Establishment of offsets program.
- “Sec. 733. Eligible project types.
- “Sec. 734. Requirements for offset projects.
- “Sec. 735. Approval of offset projects.
- “Sec. 736. Verification of offset projects.
- “Sec. 737. Issuance of offset credits.
- “Sec. 738. Audits.
- “Sec. 739. Program review and revision.
- “Sec. 740. Early offset supply.
- “Sec. 741. Environmental considerations.
- “Sec. 742. Ownership and transfer of offset credits.
- “Sec. 743. International offset credits.

“PART E—SUPPLEMENTAL EMISSIONS REDUCTIONS FROM REDUCED
DEFORESTATION

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

“PART F—CARBON MARKET ASSURANCE

- “Sec. 761. Oversight and assurance of carbon markets.
- Sec. 312. Definitions.
- “Sec. 700. Definitions.

Subtitle B—Disposition of Allowances

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

“PART H—DISPOSITION OF ALLOWANCES

“Sec. 781. Allocation of allowances for supplemental reductions.

“Sec. 782. Disbursement of allowances and proceeds from auctions of allowances.

“Sec. 783-789. **【SECTIONS RESERVED】**.

“Sec. 790. Exchange for State-issued allowances.

“Sec. 791. Auction procedures.

“Sec. 792. Auctioning allowances for other entities.

Subtitle C—Additional Greenhouse Gas Standards

Sec. 331. Greenhouse gas standards.

“TITLE VIII—ADDITIONAL GREENHOUSE GAS STANDARDS

“Sec. 801. Definitions.

“PART A—STATIONARY SOURCE STANDARDS

“Sec. 811. Standards of performance.

“PART C—EXEMPTIONS FROM OTHER PROGRAMS

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“Sec. 832. Hazardous air pollutants.

“Sec. 833. New source review.

“Sec. 834. Title V permits.

Sec. 332. HFC Regulation.

Sec. 333. Black carbon.

“PART E—BLACK CARBON

“Sec. 851. Black carbon.

Sec. 334. States.

Sec. 335. State programs.

“PART F—MISCELLANEOUS

“Sec. 861. State programs.

Sec. 336. Enforcement.

“Sec. 862. Judicial review.

Sec. 337. Conforming amendments.

TITLE IV—TRANSITIONING TO A CLEAN ENERGY ECONOMY

Subtitle A—Ensuring Domestic Competitiveness

PART 1—PRESERVING DOMESTIC COMPETITIVENESS

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- Sec. 465. Climate change adaptation services.
- Sec. 466. Federal agency climate change adaptation plans.
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SUBPART B—PUBLIC HEALTH AND CLIMATE CHANGE

- Sec. 471. National policy on public health and climate change.
- Sec. 472. National Strategy.
- Sec. 473. Authorization of appropriations.

SUBPART C—NATURAL RESOURCE ADAPTATION

- Sec. 481. Purposes.
- Sec. 482. Natural resources climate change adaptation policy.
- Sec. 483. Definitions.
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- Sec. 485. Natural Resources Climate Change Adaptation Panel.
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PART 2—INTERNATIONAL CLIMATE CHANGE ADAPTATION PROGRAM

- Sec. 491. Findings and Purposes.
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- Sec. 494. Functions of program.
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1 **TITLE I—CLEAN ENERGY**
 2 **Subtitle A—Renewable Electricity**
 3 **Standard**

4 **SEC. 101. FEDERAL RENEWABLE ELECTRICITY STANDARD.**

5 (a) IN GENERAL.—Title VI of the Public Utility Reg-
 6 ulatory Policies Act of 1978 (16 U.S.C. 2601 and fol-
 7 lowing) is amended by adding at the end the following:

8 **“SEC. 610. FEDERAL RENEWABLE ELECTRICITY STANDARD.**

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

10 “(1) AFFILIATE.—The term ‘affiliate’ when
 11 used in relation to a person, means another person
 12 that directly or indirectly owns or controls, is owned
 13 or controlled by, or is under common ownership or
 14 control with, such person, as determined under regu-
 15 lations promulgated by the Secretary.

16 “(2) BIOMASS.—The term ‘biomass’ means
 17 each of the following:

1 “(A) Crops, crop byproducts, or crop resi-
2 dues harvested from actively managed or fallow
3 agricultural land that was cleared prior to the
4 date of enactment of this section and is nonfor-
5 ested.

6 “(B) Planted trees, brush, slash, and all
7 residues from an actively managed tree planta-
8 tion located on land that was cleared prior to
9 the date of enactment of this section and is not
10 Federal land.

11 “(C) Pre-commercial-sized thinnings, slash,
12 brush, and residue from milled trees, from for-
13 ested land that is not—

14 “(i) old-growth or mature forest;

15 “(ii) identified under a State Natural
16 Heritage Program as rare, imperiled, or
17 critically imperiled; or

18 “(iii) Federal land.

19 “(D) Algae.

20 “(E) Nonhazardous plant matter derived
21 from waste such as separated yard waste, land-
22 scape right-of-way trimmings, or food waste
23 (but not municipal solid waste, recyclable waste
24 paper, painted, treated or pressurized wood, or
25 wood contaminated with plastic or metals).

1 “(F) Animal waste or animal byproducts,
2 including products of animal waste digesters.

3 “(G) Vegetative matter removed from
4 within 200 yards of any manmade structure or
5 campground.

6 “(3) DISTRIBUTED GENERATION FACILITY.—
7 The term ‘distributed generation facility’ means a
8 facility that—

9 “(A) generates renewable electricity other
10 than by means of combustion;

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

13 “(C) is no larger than 2 megawatts in ca-
14 pacity.

15 “(4) FEDERAL ALTERNATIVE COMPLIANCE PAY-
16 MENT.—The term ‘Federal alternative compliance
17 payment’ means a payment, to be submitted in lieu
18 of 1 Federal renewable electricity credit, pursuant to
19 subsection (c)(3).

20 “(5) FEDERAL LAND.—The term ‘Federal land’
21 means land owned by the United States, other than
22 land held in trust for an Indian or Indian tribe.

23 “(6) FEDERAL RENEWABLE ELECTRICITY
24 CREDIT.—The term ‘Federal renewable electricity
25 credit’ means a credit, representing one megawatt

1 hour of renewable electricity, issued pursuant to sub-
2 section (d).

3 “(7) FUEL CELL.—The term ‘fuel cell’ means a
4 device that directly converts the chemical energy of
5 a fuel and an oxidant into electricity by electro-
6 chemical processes occurring at separate electrodes
7 in the device.

8 “(8) FUND.—The term ‘Fund’ means the Re-
9 newable Electricity Deployment Fund established
10 under subsection (f).

11 “(9) QUALIFIED HYDROPOWER.—The term
12 ‘qualified hydropower’ means—

13 “(A) electricity generated solely from in-
14 creased efficiency achieved, or additions of ca-
15 pacity made, on or after January 1, 2001 at a
16 hydroelectric facility that was placed in service
17 before that date; or

18 “(B) electricity generated from generating
19 capacity added on or after January 1, 2001 to
20 a dam that did not previously have the capacity
21 to generate electricity, provided that the Com-
22 mission certifies that—

23 “(i) the dam was placed in service be-
24 fore the date of the enactment of this sec-
25 tion and was operated for flood control,

1 navigation, or water supply purposes and
2 did not produce hydroelectric power before
3 January 1, 2001;

4 “(ii) the hydroelectric project installed
5 on the dam is licensed by the Commission
6 and meets all other applicable environ-
7 mental, licensing, and regulatory require-
8 ments, including applicable fish passage re-
9 quirements; and

10 “(iii) the hydroelectric project in-
11 stalled on the dam is operated so that the
12 water surface elevation at any given loca-
13 tion and time that would have occurred in
14 the absence of the hydroelectric project is
15 maintained, subject to any license require-
16 ments that require changes in water sur-
17 face elevation for the purpose of improving
18 the environmental quality of the affected
19 waterway.

20 “(10) RENEWABLE ELECTRICITY.—The term
21 ‘renewable electricity’ means electricity generated
22 (including by means of a fuel cell) from a renewable
23 energy resource.

1 “(11) RENEWABLE ENERGY RESOURCE.—The
2 term ‘renewable energy resource’ means each of the
3 following:

4 “(A) Wind energy.

5 “(B) Solar energy.

6 “(C) Geothermal energy.

7 “(D) Biomass or landfill gas.

8 “(E) Qualified hydropower.

9 “(F) Marine and hydrokinetic renewable
10 energy, as that term is defined in section 632
11 of the Energy Independence and Security Act
12 of 2007 (42 U.S.C. 17211).

13 “(12) RETAIL ELECTRIC SUPPLIER.—

14 “(A) IN GENERAL.—The term ‘retail elec-
15 tric supplier’ means, for any given year, an
16 electric utility that sold not less than 1,000,000
17 megawatt hours of electric energy to electric
18 consumers for purposes other than resale dur-
19 ing the preceding calendar year.

20 “(B) INCLUSIONS AND LIMITATIONS.—For
21 purposes of determining whether an electric
22 utility qualifies as a retail electric supplier
23 under subparagraph (A)—

24 “(i) the sales of any affiliate of an
25 electric utility to electric consumers for

1 purposes other than resale shall be consid-
2 ered to be sales of such electric utility; and

3 “(ii) sales by any electric utility to an
4 affiliate, lessee, or tenant of such electric
5 utility shall not be treated as sales to elec-
6 tric consumers.

7 “(13) RETAIL ELECTRIC SUPPLIER’S BASE
8 AMOUNT.—The term ‘retail electric supplier’s base
9 amount’ means the total amount of electric energy
10 sold by the retail electric supplier, expressed in
11 terms of megawatt hours, to electric customers for
12 purposes other than resale during the relevant cal-
13 endar year, excluding electricity generated by—

14 “(A) a hydroelectric facility that is not
15 qualified hydropower; or

16 “(B) combustion of municipal solid waste.

17 “(14) RETIRE AND RETIREMENT.—The terms
18 ‘retire’ and ‘retirement’ with respect to a Federal re-
19 newable electricity credit, means to disqualify such
20 credit for any subsequent use under this section, re-
21 gardless of whether the use is a sale, transfer, ex-
22 change, or submission in satisfaction of a compliance
23 obligation.

24 “(b) ESTABLISHMENT OF PROGRAM.—Not later than
25 1 year after the date of enactment of this section, the Sec-

1 retary shall, by regulation, establish a program to imple-
2 ment and enforce the requirements of this section. In es-
3 tablishing such program, the Secretary shall, to the extent
4 practicable—

5 “(1) preserve the integrity, and incorporate best
6 practices, of existing State renewable electricity pro-
7 grams;

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

11 “(3) cooperate with the States to facilitate co-
12 ordination between State and Federal renewable
13 electricity programs and to minimize administrative
14 burdens and costs to retail electric suppliers.

15 “(c) ANNUAL COMPLIANCE REQUIREMENT.—

16 “(1) IN GENERAL.—Except as provided in para-
17 graph (3), for each of calendar years 2012 through
18 2039, each retail electric supplier shall, not later
19 than April 1 of the following calendar year, submit
20 to the Secretary a quantity of Federal renewable
21 electricity credits equal to the retail electric sup-
22 plier’s base amount for the calendar year multiplied
23 by the required annual percentage set forth in para-
24 graph (2). The Secretary shall retire each Federal

1 renewable energy credit immediately upon submis-
 2 sion under this section.

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

“Calendar year	Required annual percentage
2012	6.0
2013	6.0
2014	8.5
2015	8.5
2016	11.0
2017	11.0
2018	14.0
2019	14.0
2020	17.5
2021	17.5
2022	21.0
2023	21.0
2024	23.0
2025 through 2039	25.0

6 “(3) EFFICIENCY COMPLIANCE OPTION.—The
 7 Governor of a State (including, for purposes of this
 8 section, the Mayor of the District of Columbia), may
 9 petition the Secretary to reduce, by up to one fifth,
 10 the required annual percentage under paragraph (2)
 11 in any given year that shall be applied to the portion
 12 of any retail electric supplier’s base amount that is
 13 sold to electric customers located within such State
 14 for purposes other than resale. The Secretary shall
 15 grant such petition if the Secretary determines that
 16 the entities within the State that are subject to the
 17 Federal Energy Efficiency Resource Standard estab-

1 lished under section 611 of this Act are in compli-
2 ance with such standard for such year.

3 “(4) ALTERNATIVE COMPLIANCE PAYMENTS.—

4 A retail electric supplier may satisfy the require-
5 ments of paragraph (1) (as modified, where applica-
6 ble, under paragraph (3)) in whole or in part by
7 submitting in lieu of each Federal renewable elec-
8 tricity credit that would otherwise be due, a payment
9 equal to the lesser of—

10 “(A) 200 percent of the average market
11 value of a Federal renewable electricity credit
12 for the previous compliance year, as determined
13 by the Secretary; or

14 “(B) \$50, adjusted on January 1 of each
15 year following calendar year 2009 based on the
16 Gross Domestic Product Implicit Price
17 Deflator.

18 “(5) USE OF PAYMENTS.—Alternative compli-
19 ance payments submitted pursuant to paragraph (4)
20 shall be deposited in the Fund established under
21 subsection (f).

22 “(d) FEDERAL RENEWABLE ELECTRICITY CRED-
23 ITS.—

24 “(1) IN GENERAL.—The regulations promul-
25 gated under subsection (b) shall include provisions

1 governing the issuance, tracking, and verification of
2 Federal renewable electricity credits. Except as pro-
3 vided in paragraphs (2), (3), and (4) of this sub-
4 section, the Secretary shall issue to each generator
5 of renewable electricity, 1 Federal renewable elec-
6 tricity credit for each megawatt hour of renewable
7 electricity generated by such generator. The Sec-
8 retary shall assign a unique serial number to each
9 Federal renewable electricity credit.

10 “(2) GENERATION FROM STATE RENEWABLE
11 ELECTRICITY PROGRAMS USING CENTRAL PROCURE-
12 MENT AND FROM STATE ALTERNATIVE COMPLIANCE
13 PAYMENTS.—Where renewable electricity is gen-
14 erated with the support of payments from a retail
15 electric supplier pursuant to a State renewable elec-
16 tricity program (whether through State alternative
17 compliance payments or through payments to a
18 State renewable electricity procurement fund or enti-
19 ty), the Secretary shall issue Federal renewable elec-
20 tricity credits to such retail electric supplier for the
21 proportion of the relevant renewable electricity gen-
22 eration that is attributable to the retail electric sup-
23 plier’s payments, as determined pursuant to regula-
24 tions issued by the Secretary. For any remaining
25 portion of the relevant renewable electricity genera-

1 tion, the Secretary shall issue Federal renewable
2 electricity credits to the generator, as provided in
3 paragraph (1), provided that in no event shall more
4 than 1 Federal renewable electricity credit be issued
5 for the same megawatt hour of electricity. In deter-
6 mining how Federal renewable electricity credits will
7 be apportioned among retail electric suppliers and
8 generators in such circumstances, the Secretary
9 shall consider information and guidance furnished by
10 the relevant State or States.

11 “(3) CERTAIN POWER SALES CONTRACTS.—
12 When a generator has sold renewable electricity to
13 a retail electric supplier under a contract for power
14 from a facility placed in service before the date of
15 enactment of this section, and the contract does not
16 provide for the determination of ownership of the
17 Federal renewable electricity credits associated with
18 such generation, the Secretary shall issue such Fed-
19 eral renewable electricity credits to the retail electric
20 supplier for the duration of the contract.

21 “(4) CREDIT MULTIPLIER FOR DISTRIBUTED
22 GENERATION.—

23 “(A) IN GENERAL.—Except as provided in
24 subparagraph (B), the Secretary shall issue 3
25 Federal renewable electricity credits for each

1 megawatt hour of renewable electricity gen-
2 erated by a distributed generation facility.

3 “(B) ADJUSTMENT.—Except as provided
4 in subparagraph (C), not later than January 1,
5 2014, and not less frequently than every 4
6 years thereafter, the Secretary shall review the
7 effect of this paragraph and shall, as necessary,
8 reduce the number of Federal renewable elec-
9 tricity credits per megawatt hour issued under
10 this paragraph, but not below 1, to ensure that
11 such number is no higher than the Secretary
12 determines is necessary to make distributed
13 generation facilities cost competitive with other
14 sources of renewable electricity generation.

15 “(C) FACILITIES PLACED IN SERVICE
16 AFTER ENACTMENT.—For any distributed gen-
17 eration facility placed in service after the date
18 of enactment of this section, subparagraph (B)
19 shall not apply for the first 10 years after date
20 of enactment. For each year during such 10-
21 year period, the Secretary shall issue the facil-
22 ity the same number of Federal renewable elec-
23 tricity credits per megawatt hour as are issued
24 to that facility in the year in which such facility
25 is placed in service. After such 10-year period,

1 the Secretary shall issue Federal renewable en-
2 ergy credits to the facility in accordance with
3 the current multiplier as determined pursuant
4 to subparagraph (B).

5 “(5) CREDITS BASED ON INCREMENTAL HY-
6 DROPOWER.—For purposes of this subsection, the
7 number of Federal renewable electricity credits
8 issued for qualifying hydropower described in sub-
9 section (a)(9)(A) shall be calculated—

10 “(A) based solely on the increase in aver-
11 age annual generation directly resulting from
12 the efficiency improvements or capacity addi-
13 tions described in subsection (a)(9)(A); and

14 “(B) using the same water flow informa-
15 tion used to determine a historic average an-
16 nual generation baseline for the hydroelectric
17 facility, as certified by the Secretary or by the
18 Commission.

19 “(6) GENERATION FROM MIXED RENEWABLE
20 AND NON-RENEWABLE RESOURCES.—If electricity is
21 generated using both a renewable energy resource
22 and an energy source that is not a renewable energy
23 resource (as, for example, in the case of co-firing of
24 biomass and fossil fuel), the Secretary shall issue
25 Federal renewable electricity credits based on the

1 proportion of the electricity that is attributable to
2 the renewable energy resource.

3 “(7) PROHIBITION AGAINST DOUBLE-COUNT-
4 ING.—Except as provided in paragraph (4) of this
5 subsection, the Secretary shall ensure that no more
6 than 1 Federal renewable electricity credit will be
7 issued for any megawatt hour of renewable elec-
8 tricity and that no Federal renewable electricity
9 credit will be used more than once for compliance
10 with this section.

11 “(e) TRADING, BANKING, AND MARKET OVER-
12 SIGHT.—

13 “(1) TRADING.—The lawful holder of a Federal
14 renewable electricity credit may sell, exchange,
15 transfer, submit for compliance in accordance with
16 subsection (c), or submit such credit for retirement
17 by the Secretary.

18 “(2) BANKING.—A Federal renewable elec-
19 tricity credit may be submitted in satisfaction of the
20 compliance obligation set forth in subsection (c) for
21 the compliance year in which the credit was issued
22 or for any of the 3 immediately subsequent compli-
23 ance years. The Secretary shall retire any Federal
24 renewable electricity credit that has not been sub-
25 mitted under subsection (c) by the deadline for the

1 compliance year that is 3 years after the compliance
2 year in which the credit was issued.

3 “(3) OVERSIGHT.—The Commission, in con-
4 sultation with the Secretary and relevant Federal
5 agencies, may prescribe such rules as the Commis-
6 sioner determines necessary to ensure the trans-
7 parency, fairness, and stability of the market in
8 Federal renewable electricity credits and any deriva-
9 tive instruments based on such credits.

10 “(f) RENEWABLE ELECTRICITY DEPLOYMENT
11 FUND.—

12 “(1) IN GENERAL.—There is established in the
13 Treasury of the United States a Renewable Elec-
14 tricity Deployment Fund.

15 “(2) DEPOSITS.—All Federal alternative com-
16 pliance payments submitted to the Secretary pursu-
17 ant to subsection (c)(3) and civil penalties assessed
18 under this section shall be deposited into the Fund.

19 “(3) USE.—

20 “(A) IN GENERAL.—Amounts deposited in
21 the Fund shall be available exclusively for use
22 by the Secretary, subject to appropriations, to
23 make payments to retail electric suppliers in ac-
24 cordance with subparagraph (B).

1 “(B) ALLOCATION.—Not later than May 1
2 of each year from 2013 through 2040, the Sec-
3 retary shall distribute amounts deposited in the
4 Fund during the preceding 12-month period
5 among the retail electric suppliers which have
6 submitted Federal renewable electricity credits
7 to the Secretary in total or partial compliance
8 with their obligations under subsection (c) for
9 the preceding calendar year. Each retail electric
10 supplier shall receive a payment equal to the
11 product of—

12 “(i) the total payments made to all re-
13 tail electric suppliers under this subsection;
14 and

15 “(ii) the quotient obtained by dividing
16 the quantity specified in subclause (I) by
17 the quantity specified in subclause (II):

18 “(I) The quantity of Federal re-
19 newable electricity credits submitted
20 by the retail electric supplier for the
21 preceding calendar year pursuant to
22 subsection (c).

23 “(II) The total quantity of Fed-
24 eral renewable electricity credits sub-
25 mitted by all retail electric suppliers

1 for the preceding calendar year pursu-
2 ant to subsection (c).

3 “(g) INFORMATION COLLECTION.—In accordance
4 with section 13 of the Federal Energy Administration Act
5 of 1974 (15 U.S.C. 772), the Secretary may require any
6 retail electric supplier, renewable electricity generator, or
7 such other entities as the Secretary deems appropriate, to
8 provide any information the Secretary determines appro-
9 priate to carry out this section.

10 “(h) ENFORCEMENT AND JUDICIAL REVIEW.—

11 “(1) CIVIL PENALTY.—If any person fails to
12 comply with the requirements of subsection (c), such
13 person shall be liable to pay to the Secretary a civil
14 penalty equal to the product of—

15 “(A) double the Federal alternative compli-
16 ance payment calculated under subsection
17 (c)(3), and

18 “(B) the aggregate quantity of Federal re-
19 newable electricity credits (or equivalent Fed-
20 eral alternative compliance payments) that the
21 person failed to submit to the Secretary in vio-
22 lation of the requirements of subsection (c).

23 “(2) ENFORCEMENT.—The Secretary shall as-
24 sess a civil penalty under paragraph (1) in accord-
25 ance with the procedures described in section 333(d)

1 of the Energy Policy and Conservation Act of 1954
2 (42 U.S.C. 6303).

3 “(3) JUDICIAL REVIEW.—Any person who will
4 be adversely affected by a final action taken by the
5 Secretary under this section, other than the assess-
6 ment of a civil penalty under this subsection, may
7 use the procedures for review described in section
8 336(b) of the Energy Policy and Conservation Act
9 (42 U.S.C. 6306). For purposes of this paragraph,
10 references to a rule in section 336(b) of the Energy
11 Policy and Conservation Act shall be deemed to refer
12 also to all other final actions of the Secretary under
13 this section other than the assessment of a civil pen-
14 alty under this subsection.

15 “(i) SAVINGS PROVISIONS.—Nothing in this section
16 shall—

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

19 “(A) adopt or enforce any law or regula-
20 tion respecting renewable electricity, including
21 programs that exceed the required amount of
22 renewable electricity under this section, pro-
23 vided that no such law or regulation may relieve
24 any person of any requirement otherwise appli-
25 cable under this section; or

1 “(B) regulate the acquisition and disposi-
2 tion of Federal renewable electricity credits by
3 retail electric suppliers located within the terri-
4 tory of such State or political subdivision, in-
5 cluding the authority to require such retail elec-
6 tric supplier to acquire and retire Federal re-
7 newable electricity credits associated with elec-
8 tric energy it sells to end-use customers; or

9 “(2) affect the application of, or the responsi-
10 bility for compliance with, any other provision of law
11 or regulation, including environmental and licensing
12 requirements.

13 “(j) SUNSET.—This section expires on December 31,
14 2040.”.

15 (b) TABLE OF CONTENTS AMENDMENT.—The table
16 of contents of the Public Utility Regulatory Policies Act
17 of 1978 (16 U.S.C. 2601 and following) is amended by
18 adding at the end of the items relating to title VI the fol-
19 lowing:

 “Sec. 610. Federal renewable electricity standard”.

20 **Subtitle B—Carbon Capture and** 21 **Sequestration**

22 **SEC. 111. NATIONAL STRATEGY.**

23 (a) IN GENERAL.—Not later than 120 days after the
24 date of enactment of this Act, the Administrator of the
25 Environmental Protection Agency (in this section referred

1 to as the “Administrator”), in consultation with the Sec-
2 retary of Energy (in this section referred to as the “Sec-
3 retary”) and the heads of such other relevant Federal
4 agencies as the President may designate, shall submit to
5 Congress a report setting forth a unified and comprehen-
6 sive strategy to address the key legal and regulatory bar-
7 riers to the commercial-scale deployment of carbon cap-
8 ture and sequestration.

9 (b) BARRIERS.— The report under this subsection
10 shall—

11 (1) identify those regulatory and legal barriers
12 that could be addressed by a Federal agency using
13 existing statutory authority, those, if any, that re-
14 quire Federal legislation, and those that would be
15 best addressed at the State or regional level; and

16 (2) recommend rulemakings, Federal legisla-
17 tion, or other actions that should be taken to remove
18 such barriers.

19 **SEC. 112. REGULATIONS FOR GEOLOGIC SEQUESTRATION**
20 **SITES.**

21 (a) COORDINATED CERTIFICATION AND PERMITTING
22 PROCESS.—Title VIII of the Clean Air Act, as added by
23 section 331 of this Act, is amended by adding after section
24 812 (as added by section 116 of this Act) the following:

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

2 “(a) COORDINATED PROCESS.—The Administrator
3 shall establish a coordinated approach to certifying and
4 permitting geologic sequestration sites, taking into consid-
5 eration all relevant statutory authorities. In establishing
6 such approach, the Administrator shall—

7 “(1) take into account, and reduce redundancy
8 with, the requirements of section 1421 of the Safe
9 Drinking Water Act (42 U.S.C. 300h(d)), as amend-
10 ed by section 112(b) of the American Clean Energy
11 and Security Act of 2009; and

12 “(2) to the extent practicable, reduce the bur-
13 den on certified entities and implementing authori-
14 ties.

15 “(b) REGULATIONS.—Not later than 2 years after
16 the date of enactment of this title, the Administrator shall
17 promulgate regulations to protect human health and the
18 environment by minimizing the risk of escape to the at-
19 mosphere of carbon dioxide injected for purposes of geo-
20 logic sequestration, including enhanced hydrocarbon re-
21 covery combined with geologic sequestration.

22 “(c) REQUIREMENTS.—The regulations under sub-
23 section (b) shall include—

24 “(1) a process to obtain certification of a geo-
25 logic sequestration site under this section; and

26 “(2) requirements for—

1 “(A) monitoring, record keeping, and re-
2 porting for emissions associated with injection
3 into, and escape from, geologic sequestration
4 sites, taking into account any requirements or
5 protocols developed under section 713;

6 “(B) public participation in the certifi-
7 cation process that maximizes transparency;

8 “(C) the sharing of data between States,
9 Indian tribes, and the Environmental Protec-
10 tion Agency; and

11 “(D) other elements or safeguards nec-
12 essary to achieve the purpose in subsection (b).

13 “(d) REPORT.—Not later than 2 years after the en-
14 actment of this title, and at 3-year intervals thereafter,
15 the Administrator shall deliver to the Committee on En-
16 ergy and Commerce of the House of Representatives and
17 the Committee on Environment and Public Works of the
18 Senate, a report on geologic sequestration in the United
19 States, and to the extent relevant, other countries in
20 North America. Such report shall include—

21 “(1) data regarding injection, emissions to the
22 atmosphere, if any, and performance of active and
23 closed geologic sequestration sites, including those
24 where enhanced hydrocarbon recovery operations
25 occur;

1 “(2) an evaluation of the performance of rel-
2 evant Federal environmental regulations and pro-
3 grams in ensuring environmentally protective geo-
4 logic sequestration practices;

5 “(3) recommendations on how such programs
6 and regulations should be improved or made more
7 effective; and

8 “(4) other relevant information.”.

9 (b) SAFE DRINKING WATER ACT STANDARDS.—Sec-
10 tion 1421 of the Safe Drinking Water Act (42 U.S.C.
11 300h) is amended by inserting after subsection (d) the fol-
12 lowing:

13 “(e) CARBON DIOXIDE GEOLOGIC SEQUESTRATION
14 WELLS.—

15 “(1) IN GENERAL.—Not later than 1 year after
16 the date of enactment of this subsection, the Admin-
17 istrator shall promulgate regulations under sub-
18 section (a) for carbon dioxide geologic sequestration
19 wells.

20 “(2) FINANCIAL RESPONSIBILITY.—The regula-
21 tions referred to in paragraph (1) shall include re-
22 quirements for maintaining evidence of financial re-
23 sponsibility, including financial responsibility for
24 emergency and remedial response, well plugging, site
25 closure, and post-injection site care. Financial re-

1 sponsibility may be established for carbon dioxide
2 geologic sequestration wells in accordance with regu-
3 lations promulgated by the Administrator by any
4 one, or any combination, of the following: insurance,
5 guarantee, trust, standby trust, surety bond, letter
6 of credit, qualification as a self-insurer, or any other
7 method satisfactory to the Administrator.”.

8 **SEC. 113. STUDIES AND REPORTS.**

9 (a) STUDY OF LEGAL FRAMEWORK FOR GEOLOGIC
10 SEQUESTRATION SITES.—

11 (1) ESTABLISHMENT OF TASK FORCE.—As
12 soon as practicable, but not later than 6 months
13 after the date of enactment of this Act, the Adminis-
14 trator shall establish a task force to be composed of
15 an equal number of subject matter experts, non-
16 governmental organizations with expertise in envi-
17 ronmental policy, academic experts with expertise in
18 environmental law, State officials with environmental
19 expertise, representatives of State Attorneys Gen-
20 eral, and members of the private sector, to conduct
21 a study of—

22 (A) existing Federal environmental stat-
23 utes, State environmental statutes, and State
24 common law that apply to geologic sequestra-
25 tion sites for carbon dioxide, including the abil-

1 ity of such laws to serve as risk management
2 tools;

3 (B) the existing statutory framework, in-
4 cluding Federal and State laws, that apply to
5 environmental harm and damage at closed sites
6 where carbon dioxide injection has been used
7 for enhanced hydrocarbon recovery;

8 (C) the statutory framework, environ-
9 mental and safety considerations, implementa-
10 tion issues, and financial implications of poten-
11 tial models for Federal, State, or private sector
12 assumption of liabilities and financial respon-
13 sibilities with respect to closed geologic seques-
14 tration sites;

15 (D) private sector mechanisms, including
16 insurance and bonding, that may be available to
17 manage environmental risk from closed geologic
18 sequestration sites; and

19 (E) the subsurface mineral rights, water
20 rights, or property rights issues associated with
21 geological sequestration of carbon dioxide.

22 (2) REPORT.—Not later than 18 months after
23 the date of enactment of this Act, the task force es-
24 tablished under paragraph (1) shall submit to Con-
25 gress a report describing the results of the study

1 conducted under that paragraph including any con-
2 sensus recommendations of the task force.

3 (b) CARBON DIOXIDE TRANSPORTATION.—

4 (1) STUDY OF PIPELINES.—The Secretary of
5 Energy (referred to in this section as the “Sec-
6 retary”), in coordination with the Federal Energy
7 Regulatory Commission, the Administrator of the
8 Environmental Protection Agency, and such other
9 relevant Federal agencies as the President may des-
10 ignate, shall conduct a study to assess the need for
11 and barriers to the construction and operation of
12 pipelines to be used for the transportation of carbon
13 dioxide for the purpose of sequestration or enhanced
14 hydrocarbon recovery.

15 (2) SCOPE OF STUDY.—In conducting the study
16 under this subsection, the Secretary shall consider
17 each of the following:

18 (A) Any barrier or potential barrier in ex-
19 istence as of the date of enactment of this Act,
20 including any technical, siting, financing, or
21 regulatory barrier, relating to the construction
22 and operation of pipelines to be used for the
23 transportation of carbon dioxide for the purpose
24 of sequestration or enhanced hydrocarbon re-
25 covery.

1 (B) Any market risk (including throughput
2 risk) relating to the construction and operation
3 of pipelines to be used for the transportation of
4 carbon dioxide for the purpose of sequestration
5 or enhanced hydrocarbon recovery.

6 (C) Any regulatory, financing, or siting op-
7 tion that, as determined by the Secretary,
8 would mitigate any market risk described in
9 subparagraph (B) or help ensure the construc-
10 tion of pipelines dedicated to the transportation
11 of carbon dioxide for the purpose of sequestra-
12 tion or enhanced hydrocarbon recovery.

13 (D) The means by which to ensure the safe
14 transportation of carbon dioxide.

15 (E) Any preventive measure to ensure the
16 integrity of pipelines to be used for the trans-
17 portation of carbon dioxide for the purpose of
18 sequestration or enhanced hydrocarbon recov-
19 ery.

20 (F) Any other appropriate issue, as deter-
21 mined by the Secretary.

22 (3) REPORT.—Not later than 180 days after
23 the date of enactment of this Act, the Secretary
24 shall submit to the Committee on Energy and Com-
25 merce of the House of Representatives and the Com-

1 committee on Energy and Natural Resources of the Sen-
2 ate a report describing the results of the study.

3 **SEC. 114. CARBON CAPTURE AND SEQUESTRATION DEM-**
4 **ONSTRATION AND EARLY DEPLOYMENT PRO-**
5 **GRAM.**

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

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

9 (2) DISTRIBUTION UTILITY.—The term “dis-
10 tribution utility” means an entity that distributes
11 electricity directly to retail consumers under a legal,
12 regulatory, or contractual obligation to do so.

13 (3) ELECTRIC UTILITY.—The term “electric
14 utility” has the meaning provided by section 3(22)
15 of the Federal Power Act (16 U.S.C. 796(22)).

16 (4) FOSSIL FUEL-BASED ELECTRICITY.—The
17 term “fossil fuel-based electricity” means electricity
18 that is produced from the combustion of fossil fuels.

19 (5) FOSSIL FUEL.—The term “fossil fuel”
20 means coal, petroleum, natural gas or any derivative
21 of coal, petroleum, or natural gas.

22 (6) CORPORATION.—The term “Corporation”
23 means the Carbon Storage Research Corporation es-
24 tablished in accordance with this section.

1 (7) QUALIFIED INDUSTRY ORGANIZATION.—The
2 term “qualified industry organization” means the
3 Edison Electric Institute, the American Public
4 Power Association, the National Rural Electric Co-
5 operative Association, a successor organization of
6 such organizations or a group of owners or operators
7 of distribution utilities delivering fossil fuel-based
8 electricity who collectively represent at least 20 per-
9 cent of the volume of fossil fuel-based electricity de-
10 livered by distribution utilities to consumers in the
11 United States.

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

14 (b) CARBON STORAGE RESEARCH CORPORATION.—

15 (1) ESTABLISHMENT.—

16 (A) REFERENDUM.—Qualified industry or-
17 ganizations may conduct, at their own expense,
18 a referendum among the owners or operators of
19 distribution utilities delivering fossil fuel-based
20 electricity for the creation of a Carbon Storage
21 Research Corporation. Such referendum shall
22 be conducted by an independent auditing firm
23 agreed to by the qualified industry organiza-
24 tions. Voting rights in such referendum shall be
25 based on the quantity of fossil fuel-based elec-

1 tricity delivered to consumers in the previous
2 calendar year or other representative period as
3 determined by the Secretary pursuant to sub-
4 section (f). Upon approval of those persons rep-
5 resenting two-thirds of the total quantity of fos-
6 sil fuel-based electricity delivered to retail con-
7 sumers, the Corporation shall be established un-
8 less opposed by the State regulatory authorities
9 pursuant to subparagraph (B). All distribution
10 utilities voting in the referendum shall certify to
11 the independent auditing firm the quantity of
12 fossil fuel-based electricity represented by their
13 vote.

14 (B) STATE REGULATORY AUTHORITIES.—
15 Upon its own motion or the petition of a quali-
16 fied industry organization, each State regu-
17 latory authority shall consider its support or op-
18 position to the creation of the Corporation
19 under subparagraph (A). State regulatory au-
20 thorities may notify the independent auditing
21 firm referred to in subparagraph (A) of their
22 views on the creation of the Corporation within
23 180 days after the enactment of this Act. If 40
24 percent or more of the State regulatory authori-
25 ties submit to the independent auditing firm

1 written notices of opposition, the Corporation
2 shall not be established notwithstanding the ap-
3 proval of the qualified industry organizations as
4 provided in subparagraph (A).

5 (2) TERMINATION.—The Corporation shall be
6 authorized to collect assessments and conduct oper-
7 ations pursuant to this section for a 10-year period
8 from the date 6 months after the date of enactment
9 of this Act. After such 10-year period, the Corpora-
10 tion is no longer authorized to collect assessments
11 and shall be dissolved on the date 15 years after
12 such date of enactment, unless the period is ex-
13 tended by an Act of Congress.

14 (3) GOVERNANCE.—The Corporation shall oper-
15 ate as a division or affiliate of the Electric Power
16 Research Institute (referred to in this section as
17 “EPRI”) and be managed by a Board of not more
18 than 15 voting members responsible for its oper-
19 ations, including compliance with this section. EPRI,
20 in consultation with the Edison Electric Institute,
21 the American Public Power Association and the Na-
22 tional Rural Electric Cooperative Association shall
23 appoint the Board members under clauses (i), (ii),
24 and (iii) of subparagraph (A) from among can-
25 didates recommended by those organizations. At

1 least a majority of the Board members appointed by
2 EPRI shall be representatives of distribution utilities
3 subject to assessments under subsection (d).

4 (A) MEMBERS.—The Board shall include
5 at least one representative of each of the fol-
6 lowing:

7 (i) Investor-owned utilities.

8 (ii) Utilities owned by a State agency
9 or a municipality.

10 (iii) Rural electric cooperatives.

11 (iv) Fossil fuel producers.

12 (v) Non-profit environmental organi-
13 zations.

14 (vi) Independent generators or whole-
15 sale power providers.

16 (vii) Consumer groups.

17 (B) NONVOTING MEMBERS.—The Board
18 shall also include as additional non-voting Mem-
19 bers the Secretary of Energy or his designee
20 and 2 representatives of State regulatory au-
21 thorities as defined in section 3(17) of the Pub-
22 lic Utility Regulatory Policies Act of 1978 (16
23 U.S.C. 2602, 3(17)), each designated by the
24 National Association of State Regulatory Utility

1 Commissioners from States that are not within
2 the same transmission interconnection.

3 (4) COMPENSATION.—Corporation Board mem-
4 bers shall receive no compensation for their services,
5 nor shall Corporation Board members be reimbursed
6 for expenses relating to their service.

7 (5) TERMS.—Corporation Board members shall
8 serve terms of 4 years and may serve not more than
9 2 full consecutive terms. Members filling unexpired
10 terms may serve not more than a total of 8 consecu-
11 tive years. Former members of the Corporation
12 Board may be reappointed to the Corporation Board
13 if they have not been members for a period of 2
14 years. Initial appointments to the Corporation Board
15 shall be for terms of 1, 2, 3, and 4 years, staggered
16 to provide for the selection of 3 members each year.

17 (6) STATUS OF CORPORATION.—The Corpora-
18 tion shall not be considered to be an agency, depart-
19 ment, or instrumentality of the United States, and
20 no officer or director or employee of the Corporation
21 shall be considered to be an officer or employee of
22 the United States Government, for purposes of title
23 5 or title 31 of the United States Code, or for any
24 other purpose, and no funds of the Corporation shall
25 be treated as public money for purposes of chapter

1 33 of title 31, United States Code, or for any other
2 purpose.

3 (c) FUNCTIONS AND ADMINISTRATION OF THE COR-
4 PORATION.—

5 (1) IN GENERAL.—The Corporation shall estab-
6 lish and administer a program to accelerate the com-
7 mercial availability of carbon dioxide capture and
8 storage technologies and methods, including tech-
9 nologies which capture and store, or capture and
10 convert, carbon dioxide. Under such program com-
11 petitively awarded grants, contracts, and financial
12 assistance shall be provided and entered into with el-
13 igible entities. Except as provided in paragraph (7),
14 the Corporation shall use all funds derived from as-
15 sessments under subsection (d) to issue grants and
16 contracts to eligible entities.

17 (2) PURPOSE.—The purposes of the grants,
18 contracts, and assistance under this subsection shall
19 be to support commercial-scale demonstrations of
20 carbon capture or storage technology projects capa-
21 ble of advancing the technologies to commercial
22 readiness. Such projects should encompass a range
23 of different coal and other fossil fuel varieties, be
24 geographically diverse, involve diverse storage media,
25 and employ capture or storage, or capture and con-

1 version, technologies potentially suitable either for
2 new or for retrofit applications.

3 (3) ELIGIBLE ENTITIES.—Entities eligible for
4 grants, contracts or assistance under this subsection
5 may include distribution utilities, electric utilities
6 and other private entities, academic institutions, na-
7 tional laboratories, Federal research agencies, State
8 research agencies, non-profit organizations, or con-
9 sortiums of 2 or more entities. Pilot-scale and simi-
10 lar small-scale projects are not eligible for support
11 by the Corporation.

12 (4) ADMINISTRATION.—The members of the
13 Board of Directors of the Corporation shall elect a
14 Chairman and other officers as necessary, may es-
15 tablish committees and subcommittees of the Cor-
16 poration, and shall adopt rules and bylaws for the
17 conduct of business and the implementation of this
18 section. The Board shall appoint an Executive Di-
19 rector and professional support staff who may be
20 employees of the Electric Power Research Institute
21 (EPRI). After consultation with the Technical Advi-
22 sory Committee established under subsection (i), the
23 Secretary, and the Director of the National Energy
24 Technology Laboratory to obtain advice and rec-
25 ommendations on plans, programs, and project selec-

1 tion criteria, the Board shall establish priorities for
2 grants, contracts, and assistance; publish requests
3 for proposals for grants, contracts and assistance;
4 award grants, contracts and assistance competi-
5 tively, on the basis of merit, after the establishment
6 of procedures that provide for scientific peer review
7 by the Technical Advisory Committee. The Board
8 shall give preference to applications that reflect the
9 best overall value and prospect for achieving the
10 purposes of the Act, such as those which dem-
11 onstrate an integrated approach for capture and
12 storage or capture and conversion technologies. The
13 Board members shall not participate in making
14 grants or awards to entities with whom they are af-
15 filiated.

16 (5) USES OF GRANTS, CONTRACTS, AND ASSIST-
17 ANCE.—A grant, contract, or other assistance pro-
18 vided under this subsection may be used to purchase
19 carbon dioxide when needed to conduct tests of car-
20 bon dioxide storage sites, in the case of established
21 projects that are storing carbon dioxide emissions, or
22 for other purposes consistent with the purposes of
23 this section. The Corporation shall make publicly
24 available at no cost information learned as a result
25 of projects which it supports financially.

1 (6) INTELLECTUAL PROPERTY.—The Board
2 shall establish policies regarding the ownership of in-
3 tellectual property developed as a result of Corpora-
4 tion grants and other forms of technology support.
5 Such policies shall encourage individual ingenuity
6 and invention.

7 (7) ADMINISTRATIVE EXPENSES.—Up to 5 per-
8 cent of the funds collected in any fiscal year under
9 subsection (d) may be used for the administrative
10 expenses of operating the Corporation (not including
11 costs incurred in the determination and collection of
12 the assessments pursuant to subsection (d)).

13 (8) PROGRAMS AND BUDGET.—Before August 1
14 each year, the Corporation, after consulting with the
15 Technical Advisory Committee and the Secretary
16 and the Director of the Department's National En-
17 ergy Technology Laboratory and other interested
18 parties to obtain advice and recommendations, shall
19 publish for public review and comment its proposed
20 plans, programs, project selection criteria, and
21 projects to be funded by the Corporation for the
22 next calendar year. The Corporation shall also pub-
23 lish for public review and comment a budget plan for
24 the next calendar year, including the probable costs
25 of all programs, projects, and contracts and a rec-

1 ommended rate of assessment sufficient to cover
2 such costs. The Secretary may recommend program
3 and activities the Secretary considers appropriate.

4 (9) RECORDS; AUDITS.—The Corporation shall
5 keep minutes, books, and records that clearly reflect
6 all of the acts and transactions of the Corporation
7 and make public such information. The books of the
8 Corporation shall be audited by a certified public ac-
9 countant at least once each fiscal year and at such
10 other times as the Corporation may designate. Cop-
11 ies of each audit shall be provided to the Congress,
12 all Corporation board members, all qualified indus-
13 try organizations, each State regulatory authority
14 and, upon request, to other members of the industry.
15 If the audit determines that the Corporation’s prac-
16 tices fail to meet generally accepted accounting prin-
17 ciples the assessment collection authority of the Cor-
18 poration under subsection (d) shall be suspended
19 until a certified public accountant renders a subse-
20 quent opinion that the failure has been corrected.

21 (10) PUBLIC ACCESS.—The Corporation
22 Board’s meetings shall be open to the public and
23 shall occur after at least 30 days advance public no-
24 tice. Meetings of the Board of Directors may be
25 closed to the public where the agenda of such meet-

1 ings includes only confidential matters pertaining to
2 project selection, the award of grants or contracts,
3 personnel matter, or the receipt of legal advice. The
4 minutes of all meetings of the Corporation shall be
5 made available to and readily accessible by the pub-
6 lic.

7 (11) ANNUAL REPORT.—Each year the Cor-
8 poration shall prepare and make publicly available a
9 report which includes an identification and descrip-
10 tion of all programs and projects undertaken by the
11 Corporation during the previous year. The report
12 shall also detail the allocation or planned allocation
13 of Corporation resources for each such program and
14 project. The Corporation shall provide its annual re-
15 port to the Congress, the Secretary, each State regu-
16 latory authority, and upon request to the public.

17 (d) ASSESSMENTS.—

18 (1) AMOUNT.—(A) In all calendar years fol-
19 lowing its establishment, the Corporation shall col-
20 lect an assessment on distribution utilities for all
21 fossil fuel-based electricity delivered directly to retail
22 consumers (as determined under subsection (f)). The
23 assessments shall reflect the relative carbon dioxide
24 emission rates of different fossil fuel-based elec-

1 tricity, and initially shall be not less than the fol-
 2 lowing amounts for coal, natural gas, and oil:

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

3 (B) The Corporation is authorized to adjust the
 4 assessments on fossil fuel-based electricity to reflect
 5 changes in the expected quantities of such electricity
 6 from different fuel types, such that the assessments
 7 generate not less than \$1.0 billion and not more
 8 than \$1.1 billion annually. The Corporation is au-
 9 thorized to supplement assessments through addi-
 10 tional financial commitments.

11 (2) INVESTMENT OF FUNDS.—Pending dis-
 12 bursement pursuant to a program, plan, or project,
 13 the Corporation may invest funds collected through
 14 assessments under this subsection, and any other
 15 funds received by the Corporation, only in obliga-
 16 tions of the United States or any agency thereof, in
 17 general obligations of any State or any political sub-
 18 division thereof, in any interest-bearing account or
 19 certificate of deposit of a bank that is a member of
 20 the Federal Reserve System, or in obligations fully
 21 guaranteed as to principal and interest by the
 22 United States.

1 (3) REVERSION OF UNUSED FUNDS.—If the
2 Corporation does not disburse, dedicate or assign 75
3 percent or more of the available proceeds of the as-
4 sessed fees in any calendar year 7 or more years fol-
5 lowing its establishment, due to an absence of quali-
6 fied projects or similar circumstances, it shall reim-
7 burse the remaining undedicated or unassigned bal-
8 ance of such fees, less administrative and other ex-
9 penses authorized by this section, to the distribution
10 utilities upon which such fees were assessed, in pro-
11 portion to their collected assessments.

12 (e) ERCOT.—

13 (1) ASSESSMENT, COLLECTION, AND REMIT-
14 TANCE.—(A) Notwithstanding any other provision of
15 this section, within ERCOT, the assessment pro-
16 vided for in subsection (d) shall be—

17 (i) levied directly on qualified sched-
18 uling entities, or their successor entities;

19 (ii) charged consistent with other
20 charges imposed on qualified scheduling
21 entities as a fee on energy used by the
22 load-serving entities; and

23 (iii) collected and remitted by ERCOT
24 to the Corporation in the amounts and in

1 the same manner as set forth in subsection
2 (d).

3 (B) The assessment amounts referred to in sub-
4 paragraph (A) shall be—

5 (i) determined by the amount and types of
6 fossil fuel-based electricity delivered directly to
7 all retail customers in the prior calendar year
8 beginning with the year ending immediately
9 prior to the period described in subsection
10 (b)(1); and

11 (ii) take into account the number of renew-
12 able energy credits retired by the load-serving
13 entities represented by a qualified scheduling
14 entity within the prior calendar year.

15 (2) ADMINISTRATION EXPENSES.—Up to 1 per-
16 cent of the funds collected in any fiscal year by
17 ERCOT under the provisions of this subsection may
18 be used for the administrative expenses incurred in
19 the determination, collection and remittance of the
20 assessments to the Corporation.

21 (3) AUDIT.—ERCOT shall provide a copy of its
22 annual audit pertaining to the administration of the
23 provisions of this subsection to the Corporation.

24 (4) DEFINITIONS.—For the purposes of this
25 subsection:

1 (A) The term “ERCOT” means the Elec-
2 tric Reliability Council of Texas.

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

6 (C) The term “qualified scheduling enti-
7 ties” has the meaning adopted by ERCOT Pro-
8 tocols and in effect on the date of enactment of
9 this Act.

10 (D) The term “renewable energy credit”
11 has the meaning as promulgated and adopted
12 by the Public Utility Commission of Texas pur-
13 suant to section 39.904(b) of the Public Utility
14 Regulatory Act of 1999, and in effect on the
15 date of enactment of this Act.

16 (f) DETERMINATION OF FOSSIL FUEL-BASED ELEC-
17 TRICITY DELIVERIES.—

18 (1) FINDINGS.—The Congress finds that:

19 (A) The assessments under subsection (d)
20 are to be collected based on the amount of fossil
21 fuel-based electricity delivered by each distribu-
22 tion utility.

23 (B) Since many distribution utilities pur-
24 chase all or part of their retail consumer’s elec-
25 tricity needs from other entities, it may not be

1 practical to determine the precise fuel mix for
2 the power sold by each individual distribution
3 utility.

4 (C) It may be necessary to use average
5 data, often on a regional basis with reference to
6 Regional Transmission Organization (“RTO”)
7 or NERC regions, to make the determinations
8 necessary for making assessments.

9 (2) DOE PROPOSED RULE.—The Secretary,
10 acting in close consultation with the Energy Infor-
11 mation Administration, shall issue for notice and
12 comment a proposed rule to determine the level of
13 fossil fuel electricity delivered to retail customers by
14 each distribution utility in the United States during
15 the most recent calendar year or other period deter-
16 mined to be most appropriate. Such proposed rule
17 shall balance the need to be efficient, reasonably pre-
18 cise and timely, taking into account the nature and
19 cost of data currently available and the nature of
20 markets and regulation in effect in various regions
21 of the country. Different methodologies may be ap-
22 plied in different regions if appropriate to obtain the
23 best balance of such factors.

24 (3) FINAL RULE.—Within 6 months after the
25 enactment of this Act, and after opportunity for

1 comment, the Secretary shall issue a final rule under
2 this subsection for determining the level and type of
3 fossil fuel-based electricity delivered to retail cus-
4 tomers by each distribution utility in the United
5 States during the appropriate period. In issuing
6 such rule, the Secretary may consider opportunities
7 and costs to develop new data sources in the future
8 and issue recommendations for the Energy Informa-
9 tion Administration or other entities to collect such
10 data. After notice and opportunity for comment the
11 Secretary may, by rule, subsequently update and
12 modify the methodology for making such determina-
13 tions.

14 (4) ANNUAL DETERMINATIONS.—Pursuant to
15 the final rule issued under paragraph (3), the Sec-
16 retary shall make annual determinations of the
17 amounts and types for each such utility and publish
18 such determinations in the Federal Register. Such
19 determinations shall be used to conduct the ref-
20 erendum under subsection (b) and by the Corpora-
21 tion in applying any assessment under this sub-
22 section.

23 (5) REHEARING AND JUDICIAL REVIEW.—The
24 owner or operator of any distribution utility that be-
25 lieves that the Secretary has misapplied the method-

1 ology in the final rule in determining the amount
2 and types of fossil fuel electricity delivered by such
3 distribution utility may seek rehearing of such deter-
4 mination within 30 days of publication of the deter-
5 mination in the Federal Register. The Secretary
6 shall decide such rehearing petitions within 30 days.
7 The Secretary's determinations following rehearing
8 shall be final and subject to judicial review in the
9 United States Court of Appeals for the District of
10 Columbia.

11 (g) COMPLIANCE WITH CORPORATION ASSESS-
12 MENTS.—The Corporation may bring an action in the ap-
13 propriate court of the United States to compel compliance
14 with an assessment levied by the Corporation under this
15 section. A successful action for compliance under this sub-
16 section may also require payment by the defendant of the
17 costs incurred by the Corporation in bringing such action.

18 (h) MIDCOURSE REVIEW.—Not later than 5 years
19 following establishment of the Corporation, the Comp-
20 troller General of the United States shall prepare an anal-
21 ysis, and report to Congress, assessing the Corporation's
22 activities, including project selection and methods of dis-
23 bursement of assessed fees, impacts on the prospects for
24 commercialization of carbon capture and storage tech-
25 nologies, and adequacy of funding. The report shall also

1 make such recommendations as may be appropriate in
2 each of these areas. The Corporation shall reimburse the
3 Government Accountability Office for the costs associated
4 with performing this midcourse review.

5 (i) RECOVERY OF COSTS.—

6 (1) IN GENERAL.—A distribution utility whose
7 transmission, delivery, or sales of electric energy are
8 subject to any form of rate regulation shall not be
9 denied the opportunity to recover the full amount of
10 the prudently incurred costs associated with com-
11 plying with this section, consistent with applicable
12 State or Federal law.

13 (2) RATEPAYER REBATES.—Regulatory authori-
14 ties that approve cost recovery pursuant to para-
15 graph (1) may order rebates to ratepayers to the ex-
16 tent that distribution utilities are reimbursed
17 undedicated or unassigned balances pursuant to sub-
18 section (d)(3).

19 (j) TECHNICAL ADVISORY COMMITTEE.—

20 (1) ESTABLISHMENT.—There is established an
21 advisory committee, to be known as the “Technical
22 Advisory Committee”.

23 (2) MEMBERSHIP.—The Technical Advisory
24 Committee shall be comprised of not less than 7
25 members appointed by the Board from among aca-

1 demic institutions, national laboratories, independent
2 research institutions, and other qualified institu-
3 tions. No member of the Committee shall be affili-
4 ated with EPRI or with any organization having
5 members serving on the Board. At least one member
6 of the Committee shall be appointed from among of-
7 ficers or employees of the Department of Energy
8 recommended to the Board by the Secretary of En-
9 ergy.

10 (3) CHAIRPERSON AND VICE CHAIRPERSON.—
11 The Board shall designate one member of the Tech-
12 nical Advisory Committee to serve as Chairperson of
13 the Committee and one to serve as Vice Chairperson
14 of the Committee.

15 (4) COMPENSATION.—The Board shall provide
16 compensation to members of the Technical Advisory
17 Committee for travel and other incidental expenses
18 and such other compensation as the Board deter-
19 mines to be necessary.

20 (5) PURPOSE.—The Technical Advisory Com-
21 mittee shall provide independent assessments and
22 technical evaluations, as well as make non-binding
23 recommendations to the Board, concerning Corpora-
24 tion activities, including but not limited to the fol-
25 lowing:

1 (A) Reviewing and evaluating the Corpora-
2 tion's plans and budgets described in subsection
3 (c)(8), as well as any other appropriate areas,
4 which could include approaches to prioritizing
5 technologies, appropriateness of engineering
6 techniques, monitoring and verification tech-
7 nologies for storage, geological site selection,
8 cost control measures.

9 (B) Making annual non-binding rec-
10 ommendations to the Board concerning any of
11 the matters referred to in subparagraph (A), as
12 well as what types of investments, scientific re-
13 search, or engineering practices would best fur-
14 ther to the goals of the Corporation.

15 (6) PUBLIC AVAILABILITY.—All reports, evalua-
16 tions, and other materials of the Technical Advisory
17 Committee shall be made available to the public by
18 the Board, without charge, at time of receipt by the
19 Board.

20 (k) LOBBYING RESTRICTIONS.—No funds collected
21 by the Corporation shall be used in any manner for influ-
22 encing legislation or elections, except that the Corporation
23 may recommend to the Secretary and the Congress
24 changes in this section or other statutes that would fur-
25 ther the purposes of this section.

1 (l) DAVIS-BACON COMPLIANCE.—The Corporation
2 shall ensure that entities receiving grants, contracts, or
3 other financial support from the Corporation for the
4 project activities authorized by this section are in compli-
5 ance with the Davis-Bacon Act (40 U.S.C. 276a–276a–
6 5).

7 **SEC. 115. COMMERCIAL DEPLOYMENT OF CARBON CAP-**
8 **TURE AND SEQUESTRATION TECHNOLOGIES.**

9 (a) REGULATIONS.—Not later than 2 years after the
10 date of enactment of this Act, the Administrator of the
11 Environmental Protection Agency (in this section referred
12 to as the “Administrator”) shall promulgate regulations
13 establishing a program to distribute authorized funds, in
14 accordance with the requirements of this section, to sup-
15 port the commercial deployment of carbon capture and se-
16 questration technologies in both electric power generation
17 and appropriate industrial operations.

18 (b) ELIGIBILITY CRITERIA.—To be eligible for fund-
19 ing under this section, a project must implement carbon
20 capture and sequestration technology—

21 (1) at an electric generating unit that—

22 (A) has a nameplate capacity of 250
23 megawatts or more; and

1 (B) derives at least 50 percent of its an-
2 nual fuel input from coal, petroleum coke, or
3 any combination of these fuels; or

4 (2) at an industrial source that, absent carbon
5 capture and sequestration technology, would emit
6 over 250,000 tons per year of carbon dioxide equiva-
7 lent.

8 (c) DISTRIBUTION OF FUNDS.—

9 (1) MULTIPLE TRANCHES.—The Administrator
10 shall divide funds for distribution to eligible projects
11 into a series of tranches, each supporting the deploy-
12 ment of a specified quantity of electric generating
13 capacity (or such alternative metric as the Adminis-
14 trator may designate for industrial projects) utilizing
15 carbon capture and sequestration technology.

16 (2) FORM OF FUNDING.—The Administrator
17 shall distribute funds within each tranche, on a first-
18 come, first-served basis, in the form of a payment
19 per ton of carbon dioxide captured and sequestered
20 by the project.

21 (3) SLIDING SCALE.—For each tranche estab-
22 lished pursuant to paragraph (1), the Administrator
23 shall establish a payment schedule based on a sliding
24 scale that provides higher payments per ton for

1 projects achieving higher rates of capture and se-
2 questration.

3 (4) DECLINING PAYMENTS BY TRANCHE.—For
4 each successive tranche established pursuant to
5 paragraph (1), the schedule established pursuant to
6 paragraph (3) shall establish a lower payment per
7 ton than was provided in the prior tranche.

8 (5) CRITERIA FOR ESTABLISHING PAYMENT
9 SCHEDULES.—Payment levels under the program
10 under this section shall be established so as to cover
11 the reasonable incremental capital and operating
12 costs of a project that are attributable to implemen-
13 tation of carbon capture and sequestration tech-
14 nologies, taking into account—

15 (A) the reduced cost of compliance with
16 section 722 of the Clean Air Act (as added by
17 section 311 of this Act);

18 (B) the capture technology and fuel type
19 (including coal type) used by the project; and

20 (C) such other factors as the Adminis-
21 trator determines are appropriate.

22 (d) LIMITATIONS.—

23 (1) PAYMENT PERIOD.—An eligible project may
24 receive funding under this subsection only for the
25 first [x] years of operation.

1 (2) INDUSTRIAL PROJECTS.—(A) Industrial
2 sources shall receive no more than 15 percent of
3 available funds available under this section.

4 (B) An industrial source shall not be eligible to
5 receive funding under this section if it produces a
6 transportation fuel that contains more than 10 kilo-
7 grams of fossil-based carbon per million British
8 thermal units, higher heat value.

9 (3) TOTAL DEPLOYMENT.—Funding under this
10 section may be used to support the deployment of no
11 greater than [x] gigawatts of electric generating ca-
12 pacity with carbon capture and sequestration tech-
13 nology (reduced, based on such equivalent metric as
14 the Administrator may designate, by the quantity of
15 industrial source projects deployed under this sec-
16 tion).

17 (e) AUTHORIZATION.—There are authorized to be ap-
18 propriated to carry out the program under this section
19 such sums as may be necessary.

20 **SEC. 116. PERFORMANCE STANDARDS FOR COAL-FUELED**
21 **POWER PLANTS.**

22 (a) IN GENERAL.—Title VIII of the Clean Air Act
23 (as added by section 331 of this Act) is amended by add-
24 ing the following new section after section 811:

1 **“SEC. 812. PERFORMANCE STANDARDS FOR NEW COAL-**
2 **FIRED POWER PLANTS.**

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

4 “(1) COVERED EGU.—The term ‘covered EGU’
5 means a utility unit that—

6 “(A) has a permit issued under title V of
7 this Act that permits it to derive at least 30
8 percent of its annual heat input from coal, pe-
9 troleum coke, or any combination of these fuels;
10 and

11 “(B) is finally permitted after January 1,
12 2009.

13 “(2) FINALLY PERMITTED.— For purposes of
14 paragraph (1), the term ‘finally permitted’ by a
15 specified date means that the owner or operator of
16 the covered EGU has received all necessary
17 preconstruction approvals or permits under this Act,
18 for a new (not modified) utility unit, and any admin-
19 istrative review of such approvals or permits has
20 been exhausted by that date. A subsequent modifica-
21 tion of any such approval or permits shall not affect
22 the date on which a covered EGU is considered to
23 be finally permitted under this paragraph.

24 “(b) STANDARDS.—(1) A covered EGU that is finally
25 permitted after January 1, 2015, shall emit no more than
26 1,100 pounds of carbon dioxide per megawatt-hour.

1 “(2) A covered EGU that is finally permitted after
2 January 1, 2020, shall emit no more than 800 pounds
3 of carbon dioxide per megawatt-hour, or meet such more
4 stringent standard as the Administrator may establish
5 pursuant to subsection (c).

6 “(3) A covered EGU that is finally permitted after
7 January 1, 2009, and before January 1, 2015, shall, by
8 the applicable compliance date established under this
9 paragraph, emit no more than 1,100 pounds of carbon di-
10 oxide per megawatt-hour. Compliance with the require-
11 ment set forth in this paragraph shall be required by the
12 earliest of the following:

13 “(A) Four years after the date the Adminis-
14 trator issues a determination that there are in com-
15 mercial operation in the United States electric gen-
16 erating units equipped with carbon capture and se-
17 questration technology that, in the aggregate—

18 “(i) have a total of at least 2.5 gigawatts
19 of nameplate generating capacity; and

20 “(ii) are capturing and sequestering in the
21 aggregate at least 5 million tons of carbon diox-
22 ide per year, calculated on an aggregate
23 annualized basis.

24 “(B) Four years after the date the Adminis-
25 trator issues a determination that there are in com-

1 mercial operation worldwide electric generating units
2 equipped with carbon capture and sequestration
3 technology that, in the aggregate—

4 “(i) have a total of at least 5 gigawatts of
5 nameplate generating capacity; and

6 “(ii) are capturing and sequestering in the
7 aggregate at least 10 million tons of carbon di-
8 oxide per year, calculated on an aggregate
9 annualized basis, of which at least 2 million
10 tons of carbon dioxide per year, calculated on
11 an aggregate annualized basis, is being cap-
12 tured and sequestered in the United States; or

13 “(C) January 1, 2025.

14 “(c) REVIEW AND REVISION OF STANDARDS.—Not
15 later than 2025 and at 5-year intervals thereafter, the Ad-
16 ministrators shall review the standards for new covered
17 EGUs under this section and shall, by rule, reduce the
18 maximum carbon dioxide emission rate for new covered
19 EGUs to a rate which reflects the degree of emission limi-
20 tation achievable through the application of the best sys-
21 tem of emission reduction which (taking into account the
22 cost of achieving such reduction and any nonair quality
23 health and environmental impact and energy require-
24 ments) the Administrator determines has been adequately
25 demonstrated.”.

1 **Subtitle C—Clean Transportation**

2 **SEC. 121. LOW CARBON FUEL STANDARD.**

3 Part B of title VIII of the Clean Air Act, as added
4 by section 221 of this Act, is amended by adding after
5 section 821 the following section:

6 **“SEC. 822. LOW CARBON FUEL STANDARD.**

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

8 “(1) IN GENERAL.—Except as otherwise pro-
9 vided in this section, all terms used in this section
10 shall have the same meaning as when used in title
11 II, including section 211(o).

12 “(2) FUEL EMISSION BASELINE.—The term
13 ‘fuel emission baseline’ means the average lifecycle
14 greenhouse gas emissions per unit of energy, as de-
15 termined by the Administrator, of all transportation
16 fuels sold or introduced into commerce in any of the
17 50 States or the District of Columbia in calendar
18 year 2005 .

19 “(3) RENEWABLE BIOMASS.—Notwithstanding
20 paragraph (1), the term ‘renewable biomass’ shall
21 have the meaning given to such term in title VII.

22 “(4) TRANSPORTATION FUEL.—The term
23 ‘transportation fuel’ means fuel for use in motor ve-
24 hicles, motor vehicle engines, nonroad vehicles,
25 nonroad engines, and aircraft. The Administrator

1 may, at his discretion, include fuel for use in ocean-
2 going vessels and adjust the fuel emission baseline
3 as appropriate to reflect the inclusion of such fuel.

4 “(5) TRANSPORTATION FUEL PROVIDER.—The
5 term ‘transportation fuel provider’ includes any indi-
6 vidual or entity that produces, refines, blends, or im-
7 ports any transportation fuel.

8 “(b) REGULATIONS.—

9 “(1) STANDARD.—Not later than 3 years after
10 enactment of this section, the Administrator shall
11 promulgate regulations under section 211(c) and
12 this section that—

13 “(A) determine the lifecycle greenhouse
14 gas emissions of all transportation fuels;

15 “(B) determine the fuel emission baseline;

16 “(C) apply to refineries, blenders, and im-
17 porters, as appropriate, and to such other
18 transportation fuel providers as determined by
19 the Administrator;

20 “(D) ensure that, for each year from 2014
21 through 2022, the annual average lifecycle
22 greenhouse gas emissions, per unit of energy as
23 determined by the Administrator, of transpor-
24 tation fuel, excluding renewable fuel used to
25 meet the obligations of section 211(o), sold or

1 introduced into commerce by such transpor-
2 tation fuel providers in any of the 50 States or
3 the District of Columbia, does not exceed the
4 fuel emission baseline; and

5 “(E) ensure that, for 2023 and each year
6 thereafter, such transportation fuel providers
7 reduce the annual average lifecycle greenhouse
8 gas emissions, per unit of energy as determined
9 by the Administrator, for transportation fuel
10 that is sold or introduced into commerce in any
11 of the 50 States or the District of Columbia, to
12 the maximum extent practicable, taking into
13 consideration cost, energy, and other environ-
14 mental factors, and that—

15 “(i) for calendar year 2023 and later,
16 the annual average lifecycle greenhouse gas
17 emission is at least 5 percent below the
18 fuel emission baseline; and

19 “(ii) for calendar year 2030 and later,
20 the annual average lifecycle greenhouse gas
21 emission is at least 10 percent below the
22 fuel emission baseline.

23 “(2) REVIEW.—The Administrator shall from
24 time to time, but no less than every 5 years begin-
25 ning in 2020, review and revise as appropriate the

1 annual average lifecycle greenhouse gas emission re-
2 quirements of the regulations issued under this sub-
3 section.

4 “(3) PROVISIONS.—The regulations issued
5 under this subsection—

6 “(A) shall contain compliance provisions
7 applicable to transportation fuel providers and
8 other persons, as appropriate, to ensure that
9 the requirements of this subsection are met;

10 “(B) shall not impose any per-gallon obli-
11 gation regarding the amount of lifecycle green-
12 house gas emissions per unit of energy as deter-
13 mined by the Administrator; and

14 “(C) shall set the lifecycle greenhouse gas
15 emissions of biofuels derived from biomass
16 other than renewable biomass at a level no
17 higher than the fuel emission baseline.

18 “(4) ELECTION TO PARTICIPATE.—

19 “(A) PARTICIPATION.—For any transpor-
20 tation fuel provider which the Administrator
21 has not yet determined to be subject to the reg-
22 ulations under this subsection, and for any pro-
23 vider of a non-transportation fuel, the Adminis-
24 trator, at his discretion, may allow the fuel pro-
25 vider to elect to participate in the program

1 under this subsection, subject to requirements
2 established by the regulation.

3 “(B) REGULATORY PROVISIONS.—Regula-
4 tions implementing this paragraph shall in-
5 clude—

6 “(i) provisions for tracking of the fuel
7 used for transportation purposes separately
8 from fuel used for other purposes; and

9 “(ii) any other provisions determined
10 appropriate by the Administrator to carry
11 out this paragraph.

12 “(c) CREDITS.—

13 “(1) IN GENERAL.—The regulations under sub-
14 section (b) shall permit transportation fuel providers
15 to generate credits for achieving, during a calendar
16 year, greater reductions for the fuel produced or im-
17 ported by the fuel provider than are required by
18 such regulations. The Administrator shall determine
19 the appropriate amount of credits and appropriate
20 conditions, if any, on the duration, trading, and use
21 of credits. The Administrator shall, with appropriate
22 conditions, allow the use of credits or renewable
23 identification numbers generated under section
24 211(o).

1 “(2) ELECTRICITY.—The Administrator may,
2 at his discretion, issue regulations providing for—

3 “(A) the generation of credits for elec-
4 tricity used as a transportation fuel and gen-
5 erated by a source other than the vehicle; and

6 “(B) the assignment of those credits to the
7 manufacturers or importers of such vehicles or
8 to other persons as deemed appropriate by the
9 Administrator.

10 “(3) COMPLIANCE.—Each transportation fuel
11 provider subject to the regulations promulgated
12 under this section shall demonstrate compliance, in-
13 cluding, as necessary, through the use of credits
14 generated, banked or purchased.

15 “(4) INABILITY TO GENERATE OR PURCHASE
16 SUFFICIENT CREDITS.—A transportation fuel pro-
17 vider that is unable to generate or purchase suffi-
18 cient credits to meet the requirements of the regula-
19 tions under subsection (b) may carry the compliance
20 deficit forward, subject to the condition that the fuel
21 provider, for the calendar year following the year for
22 which the deficit is created—

23 “(A) achieves compliance ; and

1 “(B) generates or purchases additional
2 credits to offset the deficit from the preceding
3 calendar year.

4 “(d) WAIVERS.—The Administrator, in consultation
5 with the Secretary of Agriculture and the Secretary of En-
6 ergy, may waive the requirements of the regulations under
7 subsection (b) in whole or in part on petition by one or
8 more States, by any person subject to the requirements
9 of this section, or by the Administrator on his own motion
10 by revising the average lifecycle greenhouse gas emissions
11 reduction required through regulations under subsection
12 (b) based on a determination by the Administrator, after
13 public notice and opportunity for comment, that—

14 “(1) implementation of the requirement would
15 severely harm the economy or environment of a
16 State, a region, or the United States; or

17 “(2) there is an inadequate domestic supply of
18 fuels to meet the requirements of this section.

19 “(e) ENVIRONMENTAL AND RESOURCE CONSERVA-
20 TION IMPACTS.—Not later than 2 years after the promul-
21 gation of regulations under subsection (b), the Adminis-
22 trator shall complete a study to determine the environ-
23 mental and resource conservation impacts of the require-
24 ments of such regulations, including impacts on air and
25 water quality.

1 “(f) ENERGY SECURITY AND LEAKAGE.—Not later
2 than 18 months after the promulgation of regulations
3 under subsection (b), the Administrator shall complete a
4 study to determine the effect of the requirements of such
5 regulations on energy security. The study shall also assess
6 the potential shifting of fuel feedstocks and fuel products
7 internationally as a result of such requirements and shall
8 determine the environmental and energy security implica-
9 tions of such leakage.

10 “(g) TRANSITION.—Section 211(o) shall not apply to
11 fuel sold or introduced into commerce after December 31,
12 2022. Notwithstanding the preceding sentence, the defini-
13 tions in section 211(o) shall continue to apply except as
14 otherwise noted.”.

15 **SEC. 122. ELECTRIC VEHICLE INFRASTRUCTURE.**

16 (a) AMENDMENT OF PURPA .—Section 111(d) of
17 the Public Utility Regulatory Policies Act of 1978 (16
18 U.S.C. 2621(d)) is amended by adding at the end the fol-
19 lowing:

20 “(20) PLUG-IN HYBRID ELECTRIC VEHICLE
21 AND ELECTRIC VEHICLE INFRASTRUCTURE.—

22 “(A) UTILITY PLAN FOR INFRASTRUC-
23 TURE.—Each electric utility shall develop a
24 plan to support the use of plug-in hybrid elec-
25 tric vehicles and electric vehicles, including

1 heavy-duty hybrid electric vehicles. The plan
2 may provide for deployment of electrical charg-
3 ing stations in public or private locations, in-
4 cluding street parking, parking garages, park-
5 ing lots, homes, gas stations, and highway rest
6 stops. Any such plan may also include—

7 “(i) battery exchange, fast charging
8 infrastructure and other services;

9 “(ii) triggers for infrastructure de-
10 ployment based upon market penetration
11 of plug-in hybrid electric vehicles and elec-
12 tric vehicles; and

13 “(iii) such other elements as the State
14 determines necessary to support electric
15 vehicles and plug-in hybrid electric vehi-
16 cles.

17 Each plan under this paragraph shall provide
18 for the deployment of the charging infrastruc-
19 ture or other infrastructure necessary to ade-
20 quately support the use of plug-in hybrid elec-
21 tric vehicles and electric vehicles.

22 “(B) SUPPORT REQUIREMENTS.—Each
23 State regulatory authority (in the case of each
24 electric utility for which it has ratemaking au-

1 thority) and each utility (in the case of a non-
2 regulated utility) shall—

3 “(i) require that charging infrastruc-
4 ture deployed is interoperable with prod-
5 ucts of all auto manufacturers to the ex-
6 tent possible; and

7 “(ii) consider adopting minimum re-
8 quirements for deployment of electrical
9 charging infrastructure and other appro-
10 priate requirements necessary to support
11 the use of plug-in hybrid electric vehicles
12 and electric vehicles.

13 “(C) COST RECOVERY.—Each State regu-
14 latory authority (in the case of each electric
15 utility for which it has ratemaking authority)
16 and each utility (in the case of a nonregulated
17 utility) shall consider whether, and to what ex-
18 tent, to allow cost recovery for plans and imple-
19 mentation of plans.

20 “(D) SMART GRID INTEGRATION.—The
21 State regulatory authority (in the case of each
22 electric utility for which it has ratemaking au-
23 thority) and each utility (in the case of a non-
24 regulated utility) shall—

1 “(i) establish any appropriate proto-
2 cols and standards for integrating plug-in
3 hybrid electric vehicles and electric vehicles
4 into an electrical distribution system, in-
5 cluding Smart Grid systems and devices;

6 “(ii) include the ability for each plug-
7 in hybrid electric vehicle and electric vehi-
8 cle to be identified individually and to be
9 associated with its owner’s electric utility
10 account, regardless of the location that the
11 vehicle is plugged in, for purposes of ap-
12 propriate billing for any electricity required
13 to charge the vehicle’s batteries as well as
14 any crediting for electricity provided to the
15 electric utility from the vehicle’s batteries;
16 and

17 “(iii) review the determination made
18 in response to section 1252 of the Energy
19 Policy Act of 2005 in light of this section,
20 including whether time-of-use pricing
21 should be employed to enable the use of
22 plug-in hybrid electric vehicles and electric
23 vehicles to contribute to meeting peak-load
24 power needs”.

25 (b) COMPLIANCE.—

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

5 “(7)(A) Not later than 1 year after the enact-
6 ment of this paragraph, each State regulatory au-
7 thority (with respect to each electric utility for which
8 it has ratemaking authority) and each nonregulated
9 utility shall commence the consideration referred to
10 in section 111, or set a hearing date for consider-
11 ation, with respect to the standard established by
12 paragraph (20) of section 111(d).

13 “(B) Not later than 2 years after the date of
14 the enactment of the this paragraph, each State reg-
15 ulatory authority (with respect to each electric utility
16 for which it has ratemaking authority), and each
17 nonregulated electric utility, shall complete the con-
18 sideration, and shall make the determination, re-
19 ferred to in section 111 with respect to the standard
20 established by paragraph (20) of section 111(d).”.

21 (2) FAILURE TO COMPLY.—Section 112(c) of
22 the Public Utility Regulatory Policies Act of 1978
23 (16 U.S.C. 2622(c)) is amended by adding the fol-
24 lowing at the end:

1 “In the case of the standards established by para-
2 graph (20) of section 111(d), the reference contained in
3 this subsection to the date of enactment of this Act shall
4 be deemed to be a reference to the date of enactment of
5 such paragraph.”.

6 (3) PRIOR STATE ACTIONS.—Section 112(d) of
7 the Public Utility Regulatory Policies Act of 1978
8 (16 U.S.C. 2622(d)) is amended by striking (19)
9 and inserting “(20)” before “of section 111(d)”.

10 **SEC. 123. LARGE-SCALE VEHICLE ELECTRIFICATION PRO-**
11 **GRAM.**

12 (a) DEPLOYMENT PROGRAM.—The Secretary of En-
13 ergy shall establish a program to deploy and integrate
14 plug-in electric drive vehicles in multiple regions. In car-
15 rying out the program, the Secretary may provide finan-
16 cial assistance described under subsection (d), consistent
17 with the goals under subsection (b). The Secretary shall
18 select regions based upon applications for assistance re-
19 ceived pursuant to subsection (c).

20 (b) GOALS.—The goals of the program established
21 pursuant to subsection (a) shall be—

22 (1) to demonstrate the viability of a vehicle-
23 based transportation system that is not overly de-
24 pendent on petroleum as a fuel and contributes to

1 lower carbon emissions than a system based on con-
2 ventional vehicles;

3 (2) to facilitate the integration of advanced ve-
4 hicle technologies into electricity distribution areas
5 to improve system performance and reliability;

6 (3) to demonstrate the potential benefits of co-
7 ordinated investments in vehicle electrification on
8 personal mobility and a regional grid;

9 (4) to demonstrate protocols and standards that
10 facilitate vehicle integration into the grid; and

11 (5) to investigate differences in each region and
12 regulatory environment regarding best practices in
13 implementing vehicle electrification.

14 (c) APPLICATIONS.—Any State or local government
15 (or group of State or local governments) may apply to the
16 Secretary of Energy for financial assistance in furthering
17 the regional deployment of plug-in electric drive vehicles.
18 Such applications may be jointly sponsored by electric util-
19 ities, automobile manufacturers, technology providers, car
20 sharing companies or organizations, or other persons or
21 entities.

22 (d) USE OF FUNDS.—Pursuant to applications re-
23 ceived under subsection (c), the Secretary may make fi-
24 nancial assistance available to any applicant or joint spon-
25 sor of the application to be used for any of the following:

1 (1) Assisting persons located in the regional de-
2 ployment area, including fleet owners, in the pur-
3 chase of new plug-in electric drive vehicles by offset-
4 ting in whole or in part the incremental cost of such
5 vehicles above the cost of comparable conventionally
6 fueled vehicles.

7 (2) Supporting the use of plug-in electric drive
8 vehicles by funding projects for the deployment of
9 any of the following:

10 (A) Electrical charging stations for plug-in
11 electric drive vehicles, including battery ex-
12 change, fast charging infrastructure, and other
13 services, in public or private locations, including
14 street parking, parking garages, parking lots,
15 homes, gas stations, and highway rest stops.

16 (B) Smart Grid equipment and infrastruc-
17 ture to facilitate the charging and integration of
18 plug-in electric drive vehicles.

19 (3) Such other projects as the Secretary deter-
20 mines appropriate to support the large-scale deploy-
21 ment of plug-in electric drive vehicles in regional de-
22 ployment areas.

23 (e) PROGRAM REQUIREMENTS.—The Secretary shall
24 determine design elements and requirements of the pro-
25 gram established pursuant to subsection (a), including—

1 facturers to facilitate the manufacture of plug-in electric
2 drive vehicles, as defined in section 131(a)(5) of the En-
3 ergy Independence and Security Act of 2007, that are de-
4 veloped and produced in the United States.

5 (b) FINANCIAL ASSISTANCE.—The Secretary of En-
6 ergy may provide financial assistance to an automobile
7 manufacturer under the program established pursuant to
8 subsection (a) for—

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

13 (2) if appropriate, the purchase of domestically
14 produced vehicle batteries to be used in the manu-
15 facture of vehicles manufactured pursuant to para-
16 graph (1).

17 (c) REQUIREMENTS.—The Secretary may provide fi-
18 nancial assistance under subsection (b) to an automobile
19 manufacturer if—

20 (1) in the case of a reconstruction or retooling
21 described under subsection (b)(1), without financial
22 assistance the automobile manufacturer is not able
23 to reasonably finance the reconstruction or retooling
24 of a facility; or

1 (2) in the case of battery purchases described
2 under subsection (b)(2), without financial assistance,
3 the automobile manufacturer is not able reasonably
4 finance the purchase of such batteries.

5 (d) COORDINATION WITH REGIONAL DEPLOY-
6 MENT.—The Secretary may provide financial assistance
7 under subsection (b) in conjunction with the award of fi-
8 nancial assistance under the large scale vehicle electrifica-
9 tion program established pursuant to section 123 of this
10 Act.

11 (e) PROGRAM REQUIREMENTS.—The Secretary shall
12 determine design elements and requirements of the pro-
13 gram established pursuant to subsection (a), including—

14 (1) the type of financial mechanism with which
15 to provide financial assistance;

16 (2) criteria, in addition to the criteria described
17 under subsection (f), for evaluating applications for
18 financial assistance; and

19 (3) reporting requirements for automobile man-
20 ufacturers that receive financial assistance under
21 this section.

22 (f) CRITERIA.—In selecting recipients of financial as-
23 sistance from among applicant automobile manufacturers,
24 the Secretary shall give preference to proposals that—

25 (1) are most likely to be successful; and

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

3 (g) REPORTS.—The Secretary shall annually submit
4 to Congress a report on the program established pursuant
5 to this section.

6 (h) AUTHORIZATION OF APPROPRIATIONS.—There
7 are authorized to be appropriated such sums as are nec-
8 essary to carry out this section.

9 **Subtitle D—State Energy and** 10 **Environment Development Funds**

11 **SEC. 131. ESTABLISHMENT OF SEED FUNDS.**

12 (a) DEFINITIONS.—In this section:

13 (1) SEED FUND.—The term “SEED Fund”
14 means a State Energy and Environment Develop-
15 ment Fund established pursuant to this section.

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

20 (b) ESTABLISHMENT OF PROGRAM.—The Secretary
21 of Energy shall establish a program under which a State,
22 through its State Energy Office, may create a State En-
23 ergy and Environment Development Fund.

24 (c) PURPOSE.—The purpose of each SEED Fund is
25 to serve as a common State-level fund, including a revolv-

1 ing fund, for managing and accounting for Federal finan-
2 cial assistance to States designated primarily for clean en-
3 ergy, energy efficiency, and climate change purposes.

4 (d) GUIDANCE.—The Secretary of Energy shall de-
5 velop model regulations for the operation of a SEED Fund
6 by a State under this section. The Secretary of Energy
7 and the Administrator shall provide consultation and as-
8 sistance to States for the establishment and operation of
9 SEED Funds under this section.

10 (e) OPERATION.—

11 (1) DEPOSITS.—

12 (A) IN GENERAL.—A State may deposit
13 into its SEED Fund amounts received from
14 Federal appropriations primarily for clean en-
15 ergy, energy efficiency, or climate change pur-
16 poses, including appropriations for—

17 (i) the Weatherization Assistance Pro-
18 gram under part A of title IV of the En-
19 ergy Conservation and Production Act (42
20 U.S.C. 6861 et seq.);

21 (ii) the Low-Income Home Energy As-
22 sistance Program under the Low-Income
23 Home Energy Assistance Act of 1981 (42
24 U.S.C. 8621 et seq.);

1 (iii) grants under part D of title III of
2 the Energy Policy and Conservation Act
3 (42 U.S.C. 6321 et seq.);

4 (iv) State portions of Energy Effi-
5 ciency and Conservation Block Grants
6 under subtitle E of title V of the Energy
7 Independence and Security Act of 2007
8 (42 U.S.C. 17151 et seq.); and

9 (v) the American Recovery and Rein-
10 vestment Act of 2009.

11 (B) PENDING EXPENDITURE.—Any
12 amounts provided to a State from Federal ap-
13 propriations for a clean energy, energy effi-
14 ciency, or climate change purpose shall be
15 deemed to be serving that purpose for any pe-
16 riod those amounts are held in a SEED Fund
17 pending expenditure.

18 (C) FUNDING AUTHORIZED UNDER THIS
19 SECTION.—A State shall deposit into its SEED
20 Fund any amounts transmitted to the State
21 that were appropriated pursuant to this section.

22 (D) LOAN REPAYMENTS.—Repayments of
23 the principal or interest from a SEED Fund
24 loan provided pursuant to paragraph (2)(C)(i)

1 shall be returned to that SEED Fund to allow
2 for further SEED Fund activities by the State.

3 (2) EXPENDITURES.—

4 (A) IN GENERAL.—All expenditures from
5 SEED Funds shall support clean energy, en-
6 ergy efficiency, or climate change programs au-
7 thorized or approved by the Federal Govern-
8 ment, or serve specific purposes as provided
9 under the Federal law authorizing or appro-
10 priating the funds expended.

11 (B) DEDICATED FUNDING.—Amounts de-
12 posited in a SEED Fund for which the author-
13 izing or appropriating legislation required spe-
14 cific uses for a specified period shall be ex-
15 pended according to those requirements during
16 that period.

17 (C) UNDEDICATED FUNDING.—To the ex-
18 tent that amounts deposited in a SEED Fund
19 are not required for specific uses for a specified
20 period as described in subparagraph (B), such
21 amounts may be expended for any of the fol-
22 lowing purposes:

23 (i) LOANS.—Loans may be provided,
24 interest on commercial loans may be sub-
25 sidized at or to an interest rate as low as

1 zero, and other credit support may be pro-
2 vided, at the discretion of the State, to
3 support programs authorized to use SEED
4 Fund amounts or any other clean energy,
5 energy efficiency, or climate change pur-
6 pose authorized or approved by the Federal
7 Government.

8 (ii) GRANTS.—Grants may be pro-
9 vided to support programs authorized to
10 use SEED Fund amounts or any other
11 clean energy, energy efficiency, or climate
12 change purpose authorized or approved by
13 the Federal Government.

14 (iii) OTHER FORMS OF SUPPORT.—
15 Amounts may be provided for other forms
16 of support for programs authorized to use
17 SEED Fund amounts or any other clean
18 energy, energy efficiency, or climate
19 change purpose authorized or approved by
20 the Federal Government.

21 (iv) ADMINISTRATIVE COSTS.—Except
22 to the extent provided in Federal law au-
23 thORIZING or appropriating funds deposited
24 in a SEED Fund, not more than 5 percent
25 of the amounts in a SEED Fund in any

1 year may be used to cover administrative
2 expenses of the SEED Fund.

3 (D) SUB-FUNDS.—A State may create and
4 maintain sub-funds for local governments that
5 request such sub-funds to hold amounts trans-
6 mitted to local governments for clean energy,
7 energy efficiency, or climate change programs
8 authorized or approved by the Federal Govern-
9 ment.

10 (3) ACCOUNTABILITY AND TRANSPARENCY.—

11 (A) RECORDKEEPING.—Any State that has
12 established a SEED Fund shall maintain
13 records of all activities relating to the deposits
14 and expenditures of the SEED Fund, and shall
15 retain such records for a period of at least 5
16 years.

17 (B) CONTROLS.—Any State that has es-
18 tablished a SEED Fund shall establish fiscal
19 controls and accounting procedures for the
20 SEED Fund sufficient to ensure proper ac-
21 counting during appropriate accounting periods
22 for deposits into the SEED Fund, expenditures
23 from the SEED Fund, and SEED Fund bal-
24 ances. Such controls and procedures shall con-

1 form to generally accepted government account-
2 ing principles.

3 (C) AUDITS.—Any State that has estab-
4 lished a SEED Fund shall have an annual
5 audit conducted of the SEED Fund by an inde-
6 pendent public accountant in accordance with
7 generally accepted auditing standards.

8 (D) PUBLIC INFORMATION.—Any—

9 (i) controls and procedures established
10 under subparagraph (B); and

11 (ii) information obtained through au-
12 dits conducted under subparagraph (C),
13 except to the extent that it would be pro-
14 tected from disclosure, if it were informa-
15 tion held by the Federal Government,
16 under section 552(b) of title 5, United
17 States Code,

18 shall be made publicly available.

19 (E) OTHER PROTECTIONS.—The Secretary
20 shall require such additional procedures and
21 protections as are necessary to ensure that any
22 State that has established a SEED Fund will
23 operate the SEED Fund in an accountable and
24 transparent manner.

1 (f) FUNDING TO STATES.—Federal financial assist-
2 ance provided to States pursuant to this Act that is des-
3 ignated primarily for clean energy, energy efficiency, and
4 climate change purposes shall be deposited by the States
5 in their SEED Fund. A State’s eligibility to receive fund-
6 ing in its SEED Fund shall depend on that State’s com-
7 pliance with the requirements of this Act.

8 (g) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated to the Secretary such
10 additional sums as may be necessary to carry out this sec-
11 tion. Amounts appropriated pursuant to this section shall
12 be allocated among the States in accordance with the
13 State Energy Program formula under section 363 of the
14 Energy Policy and Conservation Act (42 U.S.C. 6323).

15 **Subtitle E—Smart Grid**

16 **Advancement**

17 **SEC. 141. DEFINITIONS.**

18 For purposes of this subtitle, the terms:

19 (1) “Secretary” means the Secretary of Energy.

20 (2) “Administrator” means the Administrator
21 of the Environmental Protection Agency.

22 (3) “Commission” means Federal Energy Reg-
23 ulatory Commission.

1 (4) “Smart Grid” has the meaning provided by
2 section 1301 of the Energy Independence and Secu-
3 rity Act of 2007 (15 U.S.C. 17381).

4 (5) “Peak demand reduction” means the reduc-
5 tion in annual peak demand as compared to a pre-
6 vious baseline year or period, expressed in
7 Megawatts (MW).

8 (6) “Peak demand” shall mean the highest
9 point of electricity demand during any hour on the
10 system of a load-serving entity during an annual cal-
11 endar year, expressed in megawatts, or more than
12 one such high point of electricity demand as a func-
13 tion of seasonal demand changes.

14 (7) “Peak period” shall mean the time period
15 on the system of a load-serving entity relative to
16 peak demand that may warrant special measures or
17 electricity resources to maintain system reliability
18 while meeting peak demand.

19 (8) “load-serving entity” means an entity that
20 provides electricity directly to retail consumers with
21 the responsibility to assure power quality and reli-
22 ability, including such entities that are investor-
23 owned, publicly owned, owned by rural electric co-
24 operatives, or other entities.

1 (9) “Applicable baseline” shall mean the aver-
2 age of the highest three annual peak demands a
3 load-serving entity has experienced during the 5
4 years immediately prior to the date of enactment of
5 this Act.

6 (10) “Peak load reduction plan” means a plan
7 developed by or for a load-serving entity that it will
8 implement to meet its peak demand management
9 goals.

10 **SEC. 142. INCORPORATION OF SMART GRID CAPABILITY IN**
11 **ENERGY STAR PROGRAM.**

12 (a) ASSESSMENT.—Within one year after the date of
13 enactment of this Act, the Secretary and the Adminis-
14 trator shall each assess the potential for cost-effective in-
15 tegration of Smart Grid technologies and capabilities in
16 all products that are reviewed by the Department of En-
17 ergy and the Environmental Protection Agency, respec-
18 tively, for potential designation as Energy Star products.

19 (b) ANALYSIS.—(1) Within 2 years after the date of
20 enactment of this Act, the Secretary and the Adminis-
21 trator shall each prepare an analysis of the potential en-
22 ergy savings, and electricity cost savings that could accrue
23 for each of the products referred to in subsection (a) in
24 the following optimal circumstances:

1 (A) The products possessed full Smart Grid ca-
2 pability.

3 (B) The products were utilized in an electricity
4 utility service area which had Smart Grid capability
5 and time-of-use electric rates.

6 (C) The time-of-use rates reflected national av-
7 erage utility rates including average peak and valley
8 daily electricity costs to the utility.

9 (D) Consumers using such products took full
10 advantage of such capability.

11 (2) The analysis under paragraph (1) shall be consid-
12 ered the “best case” Smart Grid analysis. On the basis
13 of such an analysis for each product, the Secretary and
14 the Administrator shall determine whether the installation
15 of Smart Grid capability for such a product would be cost
16 effective. For purposes of this paragraph, the term “cost
17 effective” means that the cumulative savings from using
18 the product under the best case Smart Grid circumstances
19 for a period of 5 years will be greater than the incremental
20 cost of the Smart Grid features included in the product.

21 (3) To the extent that including Smart Grid capa-
22 bility in any products analyzed under paragraph (2) yield-
23 ed a finding that doing so was cost effective in the best
24 case, the Secretary and the Administrator shall, not later

1 than 3 years after the date of enactment of this Act take
2 each of the following actions:

3 (A) Inform the manufacturer of such product of
4 such finding.

5 (B) Make special note in a prominent manner
6 on any Energy Star label for any product actually
7 including Smart Grid capability that—

8 (i) Smart Grid capability is a feature of
9 that product;

10 (ii) the use and value of those features de-
11 pended on the Smart Grid capability of the util-
12 ity system in which the product was installed
13 and the use of those features by the customer;
14 and

15 (iii) on a utility system with Smart Grid
16 capability, the use of the product's Smart Grid
17 capability could potentially reduce the cost of
18 the product's annual operation by an estimated
19 dollar amount representing the result of incre-
20 mental energy and electricity cost savings that
21 would result from the Smart Grid best case for
22 that product.

23 (C) Submit a report to Congress summarizing
24 the results of the analyses for each class of products,
25 and presenting the potential national energy and

1 electricity cost savings that could be realized if cost-
2 effective Smart Grid capability were installed in the
3 relevant products reviewed by the Energy Star pro-
4 gram.

5 **SEC. 143. SMART GRID PEAK DEMAND REDUCTION GOALS.**

6 (a) GOALS.—Not later than one year after the date
7 of enactment of this Act, load-serving entities, or States,
8 shall determine and publish peak demand reduction goals
9 for any load-serving entities that have an applicable base-
10 line in excess of 250 megawatts

11 (b) BASELINES.—(1) The Commission, in consulta-
12 tion with the Secretary, shall develop and publish, after
13 an opportunity for public comment, a methodology to pro-
14 vide for adjustments or normalization to a load-serving en-
15 tity's applicable baseline over time to reflect changes in
16 the number of customers served, weather conditions, gen-
17 eral economic conditions, and any other appropriate fac-
18 tors external to peak load management, as determined by
19 the Commission.

20 (2) The Commission shall support load-serving enti-
21 ties in determining their applicable baselines, and in devel-
22 oping their peak demand reduction goals, including any
23 load-serving entity with an applicable baseline of less than
24 250 megawatts that volunteers to participate in achieving
25 the purposes of this Act.

1 (3) The Secretary, in consultation with the Commis-
2 sion and the National Electric Reliability Corporation,
3 shall develop a system and rules for measurement and
4 verification of demand reductions.

5 (c) PEAK DEMAND REDUCTION GOALS.—(1) Peak
6 demand reduction goals may be established for an indi-
7 vidual load-serving entity, or, at the determination of a
8 State or regional entity, by that State or regional entity
9 for a larger region that shares a common system peak de-
10 mand and for which peak demand reduction measures
11 would offer regional benefit.

12 (2) A State or regional entity establishing peak de-
13 mand reduction goals shall cooperate, as necessary and
14 appropriate, with the Commission, the Secretary, State
15 regulatory commissions, State energy offices, the National
16 Electric Reliability Corporation, and other relevant au-
17 thorities.

18 (3) In determining the applicable peak demand reduc-
19 tion goals, States and other jurisdictional entities may uti-
20 lize the results of the 2009 National Demand Response
21 Potential Assessment, as authorized by section 529 of the
22 Energy Independence and Security Act of 2007.

23 (4) The applicable peak demand reduction goals shall
24 provide that—

1 (A) load-serving entities will reduce or mitigate
2 peak demand by a minimum percentage amount
3 from the applicable baseline to a lower peak demand
4 during calendar year 2012;

5 (B) load-serving entities will reduce or mitigate
6 peak demand by a minimum percentage greater
7 amount from the applicable baseline to a lower peak
8 demand during calendar year 2015; and

9 (C) the minimum percentage reductions selected
10 are the percentage reductions that are realistically
11 achievable with an aggressive effort to deploy Smart
12 Grid and peak demand reduction technologies and
13 methods, including but not limited to those listed in
14 subsection (d).

15 (d) PLAN.—Each load-serving entity shall prepare a
16 peak load reduction plan that demonstrates its ability to
17 meet each applicable goal by any or a combination of the
18 following options:

19 (1) Direct reduction in megawatts of peak de-
20 mand through energy efficiency measures with reli-
21 able and continued application during peak demand
22 periods.

23 (2) Demonstration that an amount of
24 megawatts equal to a stated portion of the applicable

1 goal is contractually committed to be available for
2 peak reduction through one or more of the following:

3 (A) Megawatts enrolled in demand re-
4 sponse programs.

5 (B) Megawatts subject to the ability of a
6 load-serving entity to call on demand response
7 programs, smart appliances, smart electricity
8 storage devices, distributed generation resources
9 on the entity's customers' premises, or other
10 measures directly capable of actively,
11 controllably, reliably, and dynamically reducing
12 peak demand ("dynamic peak management con-
13 trol").

14 (C) Megawatts available from distributed
15 dynamic electricity storage under agreement
16 with the owner of that storage.

17 (D) Megawatts committed from
18 dispatchable distributed generation dem-
19 onstrated to be reliable under peak period con-
20 ditions.

21 (E) Megawatts available from smart appli-
22 ances and equipment with Smart Grid capa-
23 bility available for direct control by the utility
24 through agreement with the customer owning
25 the appliances or equipment.

1 (F) Megawatts from a demonstrated and
2 assured minimum of distributed solar electric
3 generation capacity in instances where peak pe-
4 riod and peak load conditions are directly re-
5 lated to solar radiation and accompanying heat.

6 (3) If any of the methods listed in subpara-
7 graph (C), (D), or (E) of paragraph (2) are relied
8 upon to meet its peak demand reduction goals, the
9 load-serving entity must demonstrate this capability
10 by operating a test during the applicable calendar
11 year.

12 (4) Nothing in this subtitle shall require the
13 publication in peak demand reduction goals or in
14 any peak demand reduction plan of any information
15 that is confidential for competitive or other reasons
16 or that identifies individual customers.

17 (e) EXISTING AUTHORITY AND REQUIREMENTS.—
18 Nothing in this Act diminishes or supersedes any author-
19 ity of a State or political subdivision of a State to adopt
20 or enforce any law or regulation respecting peak load man-
21 agement, demand response, distributed storage, use of dis-
22 tributed generation, or the regulation of load-serving enti-
23 ties. The Commission, in consultation with States having
24 such peak management, demand response and distributed
25 storage programs, shall to the maximum extent prac-

1 ticable, facilitate coordination between the Federal pro-
2 gram and such State programs.

3 (f) RELIEF.— he Commission may, for good cause,
4 grant relief to load-serving entities from the requirements
5 of this section.

6 (g) OTHER LAWS.—Except as provided in sub-
7 sections (e) and (f), no law or regulation shall relieve any
8 person of any requirement otherwise applicable under this
9 section.

10 (h) COMPLIANCE.— (1) The Commission shall within
11 one year after the enactment of this Act establish a public
12 domain website where the Commission will provide infor-
13 mation and data demonstrating compliance by States, re-
14 gional entities, and load-serving entities with this Act, in-
15 cluding the success of load-serving entities in meeting ap-
16 plicable peak demand reduction goals.

17 (2) The Commission shall, by April 1 of each year
18 beginning in 2012, provide a report to Congress on com-
19 pliance with this Act and success in meeting applicable
20 peak demand reduction goals and, as appropriate, shall
21 make recommendations as to how to increase peak de-
22 mand reduction efforts.

23 (3) The Commission shall note in each such report
24 any State, political subdivision of a State, or load-serving
25 entity that has failed to comply with this Act, or is not

1 a part of any region or group of load-serving entities serv-
2 ing a region that has complied with this subtitle.

3 (4) The Commission shall have and exercise the au-
4 thority to take reasonable steps to modify the process of
5 establishing peak demand reduction goals and to accept
6 adjustments to them as appropriate when sought by load-
7 serving entities.

8 (i) ASSISTANCE AND FUNDING.—

9 (1) ASSISTANCE.—The Secretary may make
10 grants to States and to other entities with respon-
11 sibilities to be carried out under the Act to offset
12 any documented costs of carrying out such respon-
13 sibilities to the extent such costs are deemed burden-
14 some or extraordinary by the Secretary.

15 (2) FUNDING.—There are authorized to be ap-
16 propriated such sums as may be necessary to the
17 Commission, the Secretary, and the Administrator to
18 carry out the provisions of this subtitle.

19 **SEC. 144. REAUTHORIZATION OF ENERGY EFFICIENCY PUB-**
20 **LIC INFORMATION PROGRAM TO INCLUDE**
21 **SMART GRID INFORMATION.**

22 Section 134 of the Energy Policy Act of 2005 (42
23 U.S.C. 15832) is amended as follows:

24 (1) By amending the section heading to read as
25 follows “**ENERGY EFFICIENCY AND**

1 **SMART GRID PUBLIC INFORMATION**
2 **INITIATIVE.”.**

3 (2) In paragraph (1) of subsection (a) by strik-
4 ing “reduce energy consumption during the 4-year
5 period beginning on the date of enactment of this
6 Act” and inserting “increase energy efficiency and
7 to adopt Smart Grid technology and practices”.

8 (3) In paragraph (2) of subsection (a) by strik-
9 ing “benefits to consumers of reducing” and insert-
10 ing “economic and environmental benefits to con-
11 sumers and the United States of optimizing”.

12 (4) In subsection (a) by inserting at the begin-
13 ning of paragraph (3) “the effect of energy effi-
14 ciency and Smart Grid capability in reducing energy
15 and electricity prices throughout the economy, to-
16 gether with”.

17 (5) In subsection (a)(4) by redesignating sub-
18 paragraph (D) as (E), by striking “and” at the end
19 of subparagraph (C), and by inserting after subpara-
20 graph (C) the following:

21 “(D) purchasing and utilizing equipment
22 that includes Smart Grid features and capa-
23 bility; and”.

24 (6) In subsection (c), by striking “Not later
25 than July 1, 2009,” and inserting, “For each year

1 when appropriations pursuant to the authorization
2 in this section exceed \$10,000,000.”.

3 (7) In subsection (d) by striking “2010” and
4 inserting “2020”.

5 (8) In subsection (e) by striking “2010” and in-
6 serting “2020”.

7 **SEC. 145. INCLUSION OF SMART-GRID FEATURES IN APPLI-**
8 **ANCE REBATE PROGRAM.**

9 (a) AMENDMENT.—Section 124 of the Energy Policy
10 Act of 2005 (42 U.S.C. 15821) is amended as follows:

11 (1) By amending the section heading to read as
12 follows: “**ENERGY EFFICIENT AND SMART AP-**
13 **PLIANCE REBATE PROGRAM.**”.

14 (2) By redesignating paragraphs (4) and (5) as
15 paragraphs (5) and (6), respectively, and inserting
16 after paragraph (3) the following:

17 “(4) SMART APPLIANCE.—The term ‘smart ap-
18 pliance’ means a product that the Administrator of
19 the Environmental Protection Agency or the Sec-
20 retary of Energy has determined qualifies for such
21 a designation in the Energy Star program pursuant
22 to section 213 of the American Clean Energy and
23 Security Act of 2009, or that the Secretary or the
24 Administrator has separately determined includes
25 the relevant Smart Grid capabilities listed in section

1 1301 of the Energy Independence and Security Act
2 of 2007 (15 U.S.C. 17381).”.

3 (3) In subsection (b)(1) by inserting “and
4 smart” after “efficient” and by inserting after
5 “products” the first place it appears “, including
6 products designated as being smart appliances,”.

7 (4) In subsection (b)(3), by inserting “the ad-
8 ministration of” after “carry out”.

9 (5) In subsection (d), by inserting “the admin-
10 istration of” after “carrying out” and by inserting
11 “, and up to 100 percent of the value of the rebates
12 provided pursuant to this section” before the period
13 at the end.

14 (6) In subsection (e)(3), by inserting “with sep-
15 arate consideration as applicable if the product is
16 also a smart appliance,” after “Energy Star prod-
17 uct” the first place it appears and by inserting “or
18 smart appliance” before the period at the end.

19 (7) In subsection (f), by striking
20 “\$50,000,000” through the period at the end and
21 inserting “such sums as may be necessary for each
22 fiscal year from 2010 through 2015.”.

23 (b) TABLE OF CONTENTS.—The item relating to sec-
24 tion 124 in the table of contents for the Energy Policy

1 Act of 2005 (42 U.S.C. 15801 and following) is amended
2 to read as follows:

“Sec. 124. Energy efficient and smart appliance rebate program.”.

3 **Subtitle F—Transmission Planning**

4 **SEC. 151. TRANSMISSION PLANNING.**

5 Part II of the Federal Power Act (16 U.S.C. 824 et
6 seq.) is amended by adding after section 216 the following
7 new section:

8 **“SEC. 216A. TRANSMISSION PLANNING.**

9 “(a) FEDERAL POLICY.—

10 “(1) OBJECTIVES.—It is the policy of the
11 United States that regional electric grid planning
12 should facilitate the deployment of renewable and
13 other zero-carbon energy sources for generating elec-
14 tricity to reduce greenhouse gas emissions while en-
15 suring reliability, reducing congestion, ensuring
16 cyber-security, and providing for cost-effective elec-
17 tricity services throughout the United States.

18 “(2) OPTIONS.—In addition to the policy under
19 paragraph (1), it is the policy of the United States
20 that regional electric grid planning to meet these ob-
21 jectives should take into account all significant de-
22 mand-side and supply-side options, including energy
23 efficiency, distributed generation, renewable energy
24 and zero-carbon electricity generation technologies,
25 smart-grid technologies and practices, demand re-

1 sponse, electricity storage, voltage regulation tech-
2 nologies, high capacity conductor and super-
3 conductor technologies, underground transmission
4 technologies, and new conventional electric trans-
5 mission capacity and corridors.

6 “(b) PLANNING.—

7 “(1) PLANNING PRINCIPLES.—Not later than 1
8 year after the date of enactment of this section, the
9 Commission shall adopt, after notice and oppor-
10 tunity for comment, national electricity grid plan-
11 ning principles derived from the Federal policy es-
12 tablished under subsection (a) to be applied in ongo-
13 ing and future transmission planning that may im-
14 plicate interstate transmission of electricity

15 “(2) REGIONAL PLANNING ENTITIES.—Not
16 later than 3 months after the date of adoption by
17 the Commission of national electricity grid planning
18 principles pursuant to paragraph (1), entities that
19 conduct or may conduct transmission planning pur-
20 suant to State or Federal law or regulation, includ-
21 ing States, entities designated by States, public util-
22 ity transmission providers, operators and owners, re-
23 gional organizations, and electric utilities, and that
24 are willing to incorporate the national electricity grid
25 planning principles adopted by the Commission in

1 their electric grid planning, shall identify themselves
2 and the regions for which they propose to develop
3 plans to the Commission.

4 “(3) COORDINATION OF REGIONAL PLANNING
5 ENTITIES.—The Commission shall encourage re-
6 gional planning entities described under paragraph
7 (2) to cooperate and coordinate across regions and
8 to harmonize regional electric grid planning with
9 planning in adjacent or overlapping jurisdictions to
10 the maximum extent feasible. The Commission shall
11 work with States, public utilities transmission pro-
12 viders, load-serving entities, transmission operators,
13 and other organizations to resolve any conflict or
14 competition among proposed planning entities in
15 order to build consensus and promote the Federal
16 policy established under subsection (a). The Com-
17 mission shall seek to ensure that planning that is
18 consistent with the national electricity grid planning
19 principles adopted pursuant to paragraph (1) is con-
20 ducted in all regions of the United States and the
21 territories.

22 “(4) RELATION TO EXISTING PLANNING POL-
23 ICY.—In implementing the Federal policy established
24 under subsection (a), the Commission shall—

1 “(A) incorporate any ongoing planning ef-
2 forts undertaken pursuant to section 217; and

3 “(B) consult with and invite the participa-
4 tion of the Secretary of Energy in relationship
5 to the Secretary’s duties pursuant to section
6 216.

7 “(5) ASSISTANCE.—

8 “(A) IN GENERAL.—The Commission shall
9 provide support to and participate in the re-
10 gional grid planning processes conducted by re-
11 gional planning entities. The Commission may
12 provide planning resources and assistance as re-
13 quired or as requested by regional planning en-
14 tities, including system data, cost information,
15 system analysis, technical expertise, modeling
16 support, dispute resolution services, and other
17 assistance to regional planning entities, as ap-
18 propriate.

19 “(B) AUTHORIZATION.—There are author-
20 ized to be appropriated such sums as may be
21 necessary to carry out this paragraph.

22 “(6) CONFLICT RESOLUTION.—In the event
23 that regional grid plans conflict, the Commission
24 shall assist the regional planning entities in resolving

1 such conflicts in order to achieve the objectives of
2 the Federal policy established under subsection (a).

3 “(7) SUBMISSION OF PLANS.—The Commission
4 shall require regional planning entities to submit ini-
5 tial regional electric grid plans to the Commission
6 not later than 18 months after the date the Commis-
7 sion promulgates national electricity grid planning
8 principles pursuant to paragraph (1). Regional elec-
9 tric grid plans should, in general, be developed from
10 sub-regional requirements and plans, including plan-
11 ning input reflecting individual utility service areas.
12 Regional plans may then in turn be combined into
13 larger regional plans, up to interconnection-wide and
14 national plans, as appropriate and necessary as de-
15 termined by the Commission. The Commission shall
16 review such plans for consistency with the national
17 grid planning principles and may return a plan to
18 one or more planning entities for further consider-
19 ation, along with the Commission’s own rec-
20 ommendations for resolution of any conflict or for
21 improvement. To the extent practicable, all plans
22 submitted to the Commission shall be public docu-
23 ments and available on the Commission’s website.

24 “(8) MULTI-REGIONAL MEETINGS.—As regional
25 grid plans are submitted to the Commission, the

1 Commission may convene multi-regional meetings to
2 discuss regional grid plan consistency and integra-
3 tion, including requirements for multi-regional
4 projects, and to resolve any conflicts that emerge
5 from such multi-regional projects. The Commission
6 shall provide its recommendations for eliminating
7 any inter-regional conflicts.

8 “(9) REPORT TO CONGRESS.—Not later than 3
9 years after the date of enactment of this section, the
10 Commission shall provide a report to Congress con-
11 taining the results of the regional grid planning
12 process, including summaries of the adopted regional
13 plans. The Commission shall provide an electronic
14 version of its report on its website with links to all
15 regional and sub-regional plans taken into account.
16 The Commission shall note and provide its rec-
17 ommended resolution for any conflicts not resolved
18 during the planning process. The Commission shall
19 make any recommendations to Congress on the ap-
20 propriate Federal role or support required to ad-
21 dress the needs of the electric grid, including rec-
22 ommendations for addressing any needs that are be-
23 yond the reach of existing State and Federal author-
24 ity.”.

1 **Subtitle G—Federal Purchases of**
2 **Electricity Generated by Renew-**
3 **able Energy**

4 **SEC. 161. FEDERAL PURCHASES OF ELECTRICITY GEN-**
5 **ERATED BY RENEWABLE ENERGY.**

6 Section 203 of the Energy Policy Act of 2005 (42
7 U.S.C. 15852) is amended by adding at the end the fol-
8 lowing:

9 “(e) **CONTRACTS FOR RENEWABLE ENERGY.**—

10 “(1) **IN GENERAL.**—Notwithstanding section
11 501(b)(1)(B) of title 40, United States Code, a con-
12 tract for the acquisition of renewable energy for the
13 Federal Government may be made for a period of
14 not more than 30 years.

15 “(2) **EXCLUSION.**—For purposes of this sub-
16 section, the term ‘renewable energy’ shall not include
17 energy generated from municipal solid waste.

18 “(3) **STANDARDIZED RENEWABLE ENERGY PUR-**
19 **CHASE AGREEMENT.**—Not later than 90 days after
20 the date of enactment of this subsection, the Sec-
21 retary, through the Federal Energy Management
22 Program, shall publish a standardized renewable en-
23 ergy purchase agreement, setting forth commercial
24 terms and conditions, that Federal agencies may use
25 to acquire renewable energy.

1 “(4) TECHNICAL ASSISTANCE.—The Secretary
2 shall provide technical assistance to assist Federal
3 agencies in implementing this subsection.”.

4 **Subtitle H—Technical Corrections**
5 **to Energy Laws**

6 **SEC. 171. TECHNICAL CORRECTIONS TO ENERGY INDE-**
7 **PENDENCE AND SECURITY ACT OF 2007.**

8 (a) TITLE II—ENERGY SECURITY THROUGH IN-
9 CREASED PRODUCTION OF BIOFUELS.—(1) Section
10 211(o) of the Clean Air Act (42 U.S.C. 7545(o)(1)), as
11 amended by section 201 of the Energy Independence and
12 Security Act of 2007 (Public Law 110-140; 121 Stat.
13 1519), is amended—

14 (A) in subparagraph (C) of paragraph (1),
15 by striking “for gasoline or diesel” and all that
16 follows through “in 2005” and inserting “for
17 the fossil fuel that is replaced by renewable
18 fuel”; and

19 (B) in subparagraphs (E) and (H) of para-
20 graph (1), by inserting “after notice and oppor-
21 tunity for comment” after “Administrator”
22 each place it appears.

23 (2) Section 211(o)(2)(A)(i) of the Clean Air Act (42
24 U.S.C. 7545(o)(2)(A)(i)) (as amended by section
25 202(a)(1) of the Energy Independence and Security Act

1 of 2007 (121 Stat. 1521)) is amended in the last sentence
2 by striking “new facilities” and inserting “new plants”.

3 (3) Section 211(o)(7)(F) of the Clean Air Act (42
4 U.S.C. 7545(o)(7)(F)) (as amended by section 202(e)(3)
5 of the Energy Independence and Security Act of 2007
6 (121 Stat. 1527)) is amended in the first sentence by in-
7 serting after “before 2016” the following: “and that each
8 such modification shall be at a minimum equal to the pro-
9 jected volume available during the calendar year to which
10 the modification applies”.

11 (4) Section 211(e)(1) of the Clean Air Act (42 U.S.C.
12 7545(e)(1)) (as amended by section 208(1) of the Energy
13 Independence and Security Act of 2007 (121 Stat. 1531))
14 is amended by inserting “(A)” after “nonroad vehicle”.

15 (5) Section 211(v)(2)(A) of the Clean Air Act (42
16 U.S.C. 7545(v)(2)(A)) (as added by section 209 of the En-
17 ergy Independence and Security Act of 2007 (121 Stat.
18 1531)) is amended by striking “achievable” and inserting
19 “practicable”.

20 (6) Section 210(a)(1) of the Energy Independence
21 and Security Act of 2007 (42 U.S.C. 7545 note; Public
22 Law 110–140) is amended in the second sentence by strik-
23 ing “For calendar years 2008 and 2009, any ethanol
24 plant” and inserting “Renewable fuel from any ethanol

1 plant that commences construction in calendar year 2008
2 or 2009”.

3 (7) Section 230(a)(1) of the Energy Independence
4 and Security Act of 2007 (42 U.S.C. 17034(a)(1))) is
5 amended by striking “7061” and inserting “7601”.

6 (b) TITLE III—ENERGY SAVINGS THROUGH IM-
7 PROVED STANDARDS FOR APPLIANCE AND LIGHTING.—

8 (1) Section 325(u) of the Energy Policy and Conservation
9 Act (42 U.S.C. 6295(u)) (as amended by section 301(c)
10 of the Energy Independence and Security Act of 2007
11 (121 Stat. 1550)) is amended—

12 (A) by redesignating paragraph (7) as
13 paragraph (4); and

14 (B) in paragraph (4) (as so redesignated),
15 by striking “supplies is” and inserting “supply
16 is”.

17 (2) Section 302 of the Energy Independence and Se-
18 curity Act of 2007 (121 Stat. 1551)) is amended—

19 (A) in subsection (a), by striking “end of the
20 paragraph” and inserting “end of subparagraph
21 (A)”;

22 (B) in subsection (b), by striking “6313(a)”
23 and inserting “6314(a)”.

24 (3) Section 343(a)(1) of the Energy Policy and Con-
25 servation Act (42 U.S.C. 6313(a)(1)) (as amended by sec-

1 tion 302(b) of the Energy Independence and Security Act
2 of 2007 (121 Stat. 1551)) is amended—

3 (A) by striking “TEST PROCEDURES” and all
4 that follows through “At least once” and inserting
5 “TEST PROCEDURES.—At least once”; and

6 (B) by redesignating clauses (i) and (ii) as sub-
7 paragraphs (A) and (B), respectively.

8 (4) Section 342(a)(6) of the Energy Policy and Con-
9 servation Act (42 U.S.C. 6313(a)(6)) (as amended by sec-
10 tion 305(b)(2) of the Energy Independence and Security
11 Act of 2007 (121 Stat. 1554)) is amended—

12 (A) in subparagraph (B)—

13 (i) by striking “If the Secretary” and in-
14 serting the following:

15 “(i) IN GENERAL.—If the Secretary”;

16 and

17 (ii) by adding at the end the following:

18 “(ii) FACTORS.—In determining
19 whether a standard is economically justi-
20 fied for the purposes of subparagraph
21 (A)(ii)(II), the Secretary shall, after receiv-
22 ing views and comments furnished with re-
23 spect to the proposed standard, determine
24 whether the benefits of the standard ex-
25 ceed the burden of the proposed standard

1 by, to the maximum extent practicable,
2 considering—

3 “(I) the economic impact of the
4 standard on the manufacturers and
5 on the consumers of the products sub-
6 ject to the standard;

7 “(II) the savings in operating
8 costs throughout the estimated aver-
9 age life of the product in the type (or
10 class) compared to any increase in the
11 price of, or in the initial charges for,
12 or maintenance expenses of, the prod-
13 ucts that are likely to result from the
14 imposition of the standard;

15 “(III) the total projected quan-
16 tity of energy savings likely to result
17 directly from the imposition of the
18 standard;

19 “(IV) any lessening of the utility
20 or the performance of the products
21 likely to result from the imposition of
22 the standard;

23 “(V) the impact of any lessening
24 of competition, as determined in writ-
25 ing by the Attorney General, that is

1 likely to result from the imposition of
2 the standard;

3 “(VI) the need for national en-
4 ergy conservation; and

5 “(VII) other factors the Sec-
6 retary considers relevant.

7 “(iii) ADMINISTRATION.—

8 “(I) ENERGY USE AND EFFI-
9 CIENCY.—The Secretary may not pre-
10 scribe any amended standard under
11 this paragraph that increases the
12 maximum allowable energy use, or de-
13 creases the minimum required energy
14 efficiency, of a covered product.

15 “(II) UNAVAILABILITY.—

16 “(aa) IN GENERAL.—The
17 Secretary may not prescribe an
18 amended standard under this
19 subparagraph if the Secretary
20 finds (and publishes the finding)
21 that interested persons have es-
22 tablished by a preponderance of
23 the evidence that a standard is
24 likely to result in the unavail-
25 ability in the United States in

1 any product type (or class) of
2 performance characteristics (in-
3 cluding reliability, features, sizes,
4 capacities, and volumes) that are
5 substantially the same as those
6 generally available in the United
7 States at the time of the finding
8 of the Secretary.

9 “(bb) OTHER TYPES OR
10 CLASSES.—The failure of some
11 types (or classes) to meet the cri-
12 terion established under this sub-
13 clause shall not affect the deter-
14 mination of the Secretary on
15 whether to prescribe a standard
16 for the other types or classes.”;
17 and

18 (B) in subparagraph (C)(iv), by striking “An
19 amendment prescribed under this subsection” and
20 inserting “Notwithstanding subparagraph (D), an
21 amendment prescribed under this subparagraph”.

22 (5) Section 306(c) of the Energy Independence and
23 Security Act of 2007 (121 Stat. 1559) is amended—

24 (A) by striking “Section” and all that follows
25 through “is amended” and inserting “Section

1 342(a)(6)(C) of the Energy Policy and Conservation
2 Act (42 U.S.C. 6313(a)(6)(C)) (as amended by sec-
3 tion 305(b)(2)) is amended”;

4 (B)(i) by redesignating clause (iii) of section
5 342(a)(6)(B) of the Energy Policy and Conservation
6 Act (as added by section 306(c) of the Energy Inde-
7 pendence and Security Act of 2007) as clause (vi) of
8 section 342(a)(6)(C) of the Energy Policy and Con-
9 servation Act (as amended by section 305(b)(2) of
10 the Energy Independence and Security Act of 2007).

11 (6) Section 340 of the Energy Policy and Conserva-
12 tion Act (42 U.S.C. 6311) (as amended by sections
13 312(a)(2) and 314(a) of the Energy Independence and Se-
14 curity Act of 2007 (121 Stat. 1564, 1569) is amended
15 by redesignating paragraphs (22) and (23) (as added by
16 section 314(a) of that Act) as paragraphs (23) and (24),
17 respectively.

18 (7) Section 345 of the Energy Policy and Conserva-
19 tion Act (42 U.S.C. 6316) (as amended by section 312(e)
20 of the Energy Independence and Security Act of 2007
21 (121 Stat. 1567)) is amended—

22 (A) by striking “subparagraphs (B) through
23 (G)” each place it appears and inserting “subpara-
24 graphs (B), (C), (D), (I), (J), and (K)”;

1 (B) by striking “part A” each place it appears
2 and inserting “part B”; and

3 (C) in subsection (h)(3), by striking “section
4 342(f)(3)” and inserting “section 342(f)(4)”.

5 (8) Section 340(13) of the Energy Policy and Con-
6 servation Act (42 U.S.C. 6311(13)) (as amended by sec-
7 tion 313(a) of the Energy Independence and Security Act
8 of 2007 (121 Stat. 1568)) is amended—

9 (A) by striking subparagraphs (A) and (B) and
10 inserting the following:

11 “(A) IN GENERAL.—The term ‘electric
12 motor’ means any motor that is—

13 “(i) a general purpose T-frame, sin-
14 gle-speed, foot-mounting, polyphase squir-
15 rel-cage induction motor of the National
16 Electrical Manufacturers Association, De-
17 sign A and B, continuous rated, operating
18 on 230/460 volts and constant 60 Hertz
19 line power as defined in NEMA Standards
20 Publication MG1-1987; or

21 “(ii) a motor incorporating the design
22 elements described in clause (i) unless con-
23 figured as a—

24 “(I) U-frame motor;

25 “(II) NEMA Design C motor;

1 “(III) close-coupled pump motor;

2 “(IV) footless motor;

3 “(V) vertical solid shaft normal
4 thrust motor (as tested in a horizontal
5 configuration);

6 “(VI) 8-pole motor; or

7 “(VII) poly-phase motor with a
8 voltage rating of not more than 600
9 volts (other than 230 volts or 460
10 volts, or both, or can be operated on
11 230 volts or 460 volts, or both).”; and

12 (B) by redesignating subparagraphs (C)
13 through (I) as subparagraphs (B) through (H), re-
14 spectively.

15 (9)(A) Section 342(b) of the Energy Policy and Con-
16 servation Act (42 U.S.C. 6313(b)) is amended—

17 (i) in paragraph (1), by striking “paragraph (2)” and
18 inserting “paragraph (3)”;

19 (ii) by redesignating paragraphs (2) and (3) as para-
20 graphs (3) and (4);

21 (iii) by inserting after paragraph (1) the following:

22 “(2) STANDARDS EFFECTIVE BEGINNING DE-
23 CEMBER 19, 2010.—

24 “(A) IN GENERAL.—Except for definite
25 purpose motors, special purpose motors, and

1 those motors exempted by the Secretary under
2 paragraph (3) and except as provided for in
3 subparagraphs (B), (C), and (D), each electric
4 motor manufactured (alone or as a component
5 of another piece of equipment) on or after De-
6 cember 19, 2010, shall have a nominal full load
7 efficiency of not less than the nominal full load
8 efficiency described in NEMA MG-1 (2006)
9 Table 12-12.

10 “(B) FIRE PUMP ELECTRIC MOTORS.—Ex-
11 cept for those motors exempted by the Sec-
12 retary under paragraph (3), each fire pump
13 electric motor manufactured (alone or as a com-
14 ponent of another piece of equipment) on or
15 after December 19, 2010, shall have a nominal
16 full load efficiency that is not less than the
17 nominal full load efficiency described in NEMA
18 MG-1 (2006) Table 12-11.

19 “(C) NEMA DESIGN B ELECTRIC MO-
20 TORS.—Except for those motors exempted by
21 the Secretary under paragraph (3), each
22 NEMA Design B electric motor with power rat-
23 ings of more than 200 horsepower, but not
24 greater than 500 horsepower, manufactured
25 (alone or as a component of another piece of

1 equipment) on or after December 19, 2010,
2 shall have a nominal full load efficiency of not
3 less than the nominal full load efficiency de-
4 scribed in NEMA MG-1 (2006) Table 12-11.

5 “(D) MOTORS INCORPORATING CERTAIN
6 DESIGN ELEMENTS.—Except for those motors
7 exempted by the Secretary under paragraph
8 (3), each electric motor described in section
9 340(13)(A)(ii) manufactured (alone or as a
10 component of another piece of equipment) on or
11 after December 19, 2010, shall have a nominal
12 full load efficiency of not less than the nominal
13 full load efficiency described in NEMA MG-1
14 (2006) Table 12-11.”; and

15 (iv) in paragraph (3) (as redesignated by clause (ii)),
16 by striking “paragraph (1)” each place it appears in sub-
17 paragraphs (A) and (D) and inserting “paragraphs (1)
18 and (2)”.

19 (B) Section 313 of the Energy Independence and Se-
20 curity Act of 2007 (121 Stat. 1568) is repealed.

21 (C) The amendments made by—

22 (i) subparagraph (A) take effect on December
23 19, 2010; and

24 (ii) subparagraph (B) take effect on December
25 19, 2007.

1 (10) Section 321(30)(D)(i)(III) of the Energy Policy
2 and Conservation Act (42 U.S.C. 6291(30)(D)(i)(III)) (as
3 amended by section 321(a)(1)(A) of the Energy Independ-
4 ence and Security Act of 2007 (121 Stat. 1574)) is
5 amended by inserting before the semicolon the following:
6 “or, in the case of a modified spectrum lamp, not less than
7 232 lumens and not more than 1,950 lumens”.

8 (11) Section 321(30)(T) of the Energy Policy and
9 Conservation Act (42 U.S.C. 6291(30)(T)) (as amended by
10 section 321(a)(1)(B) of the Energy Independence and Se-
11 curity Act of 2007 (121 Stat. 1574)) is amended—

12 (A) in clause (i)—

13 (i) by striking the comma after “household
14 appliance” and inserting “and”; and

15 (ii) by striking “and is sold at retail,”; and

16 (B) in clause (ii), by inserting “when sold at re-
17 tail,” before “is designated”.

18 (12) Section 325 of the Energy Policy and Conserva-
19 tion Act (42 U.S.C. 6295) (as amended by sections
20 321(a)(3)(A) and 322(b) of the Energy Independence and
21 Security Act of 2007 (121 Stat. 1577, 1588)) is amended
22 by striking subsection (i) and inserting the following:

23 “(i) GENERAL SERVICE FLUORESCENT LAMPS GEN-
24 ERAL SERVICE INCANDESCENT LAMPS, INTERMEDIATE
25 BASE INCANDESCENT LAMPS, CANDELABRA BASE INCAN-

1 DESCENT LAMPS, AND INCANDESCENT REFLECTOR
 2 LAMPS.—

3 “(1) ENERGY EFFICIENCY STANDARDS.—

4 “(A) IN GENERAL.—Each of the following
 5 general service fluorescent lamps, general serv-
 6 ice incandescent lamps, intermediate base in-
 7 candescent lamps, candelabra base incandescent
 8 lamps, and incandescent reflector lamps manu-
 9 factured after the effective date specified in the
 10 tables listed in this subparagraph shall meet or
 11 exceed the following lamp efficacy, new max-
 12 imum wattage, and CRI standards:

“FLUORESCENT LAMPS

Lamp Type	Nominal Lamp Wattage	Minimum CRI	Minimum Average Lamp Efficacy (LPW)	Effective Date (Period of Months)
4-foot medium bi-pin	>35 W	69	75.0	36
.....	≤35 W	45	75.0	36
2-foot U-shaped	>35 W	69	68.0	36
.....	≤35 W	45	64.0	36
8-foot slimline	65 W	69	80.0	18
.....	≤65 W	45	80.0	18
8-foot high output	>100 W	69	80.0	18
.....	≤100 W	45	80.0	18

“INCANDESCENT REFLECTOR LAMPS

Nominal Lamp Wattage	Minimum Average Lamp Efficacy (LPW)	Effective Date (Period of Months)
40–50	10.5	36
51–66	11.0	36
67–85	12.5	36
86–115	14.0	36
116–155	14.5	36
156–205	15.0	36

“GENERAL SERVICE INCANDESCENT LAMPS

Rated Lumen Ranges	Maximum Rate Wattage	Minimum Rated Life-time	Effective Date
1490–2600	72	1,000 hrs	1/1/2012
1050–1489	53	1,000 hrs	1/1/2013
750–1049	43	1,000 hrs	1/1/2014
310–749	29	1,000 hrs	1/1/2014

“MODIFIED SPECTRUM GENERAL SERVICE INCANDESCENT LAMPS

Rated Lumen Ranges	Maximum Rate Wattage	Minimum Rated Life-time	Effective Date
1118–1950	72	1,000 hrs	1/1/2012
788–1117	53	1,000 hrs	1/1/2013
563–787	43	1,000 hrs	1/1/2014
232–562	29	1,000 hrs	1/1/2014

- 1 “(B) APPLICATION.—
- 2 “(i) APPLICATION CRITERIA.—This
- 3 subparagraph applies to each lamp that—
- 4 “(I) is intended for a general
- 5 service or general illumination applica-
- 6 tion (whether incandescent or not);
- 7 “(II) has a medium screw base
- 8 or any other screw base not defined in
- 9 ANSI C81.61–2006;
- 10 “(III) is capable of being oper-
- 11 ated at a voltage at least partially
- 12 within the range of 110 to 130 volts;
- 13 and
- 14 “(IV) is manufactured or im-
- 15 ported after December 31, 2011.

1 “(ii) REQUIREMENT.—For purposes
2 of this paragraph, each lamp described in
3 clause (i) shall have a color rendering
4 index that is greater than or equal to—

5 “(I) 80 for nonmodified spectrum
6 lamps; or

7 “(II) 75 for modified spectrum
8 lamps.

9 “(C) CANDELABRA INCANDESCENT LAMPS
10 AND INTERMEDIATE BASE INCANDESCENT
11 LAMPS.—

12 “(i) CANDELABRA BASE INCANDES-
13 CENT LAMPS.—Effective beginning Janu-
14 ary 1, 2012, a candelabra base incandes-
15 cent lamp shall not exceed 60 rated watts.

16 “(ii) INTERMEDIATE BASE INCANDES-
17 CENT LAMPS.—Effective beginning Janu-
18 ary 1, 2012, an intermediate base incan-
19 descent lamp shall not exceed 40 rated
20 watts.

21 “(D) EXEMPTIONS.—

22 “(i) STATUTORY EXEMPTIONS.—The
23 standards specified in subparagraph (A)
24 shall not apply to the following types of in-
25 candescent reflector lamps:

1 “(I) Lamps rated at 50 watts or
2 less that are ER30, BR30, BR40, or
3 ER40 lamps.

4 “(II) Lamps rated at 65 watts
5 that are BR30, BR40, or ER40
6 lamps.

7 “(III) R20 incandescent reflector
8 lamps rated 45 watts or less.

9 “(ii) ADMINISTRATIVE EXEMP-
10 TIONS.—

11 “(I) PETITION.—Any person may
12 petition the Secretary for an exemp-
13 tion for a type of general service lamp
14 from the requirements of this sub-
15 section.

16 “(II) CRITERIA.—The Secretary
17 may grant an exemption under sub-
18 clause (I) only to the extent that the
19 Secretary finds, after a hearing and
20 opportunity for public comment, that
21 it is not technically feasible to serve a
22 specialized lighting application (such
23 as a military, medical, public safety,
24 or certified historic lighting applica-

1 tion) using a lamp that meets the re-
2 quirements of this subsection.

3 “(III) ADDITIONAL CRITERION.—
4 To grant an exemption for a product
5 under this clause , the Secretary shall
6 include, as an additional criterion,
7 that the exempted product is unlikely
8 to be used in a general service lighting
9 application.

10 “(E) EXTENSION OF COVERAGE.—

11 “(i) PETITION.—Any person may peti-
12 tion the Secretary to establish standards
13 for lamp shapes or bases that are excluded
14 from the definition of general service
15 lamps.

16 “(ii) INCREASED SALES OF EXEMPT-
17 ED LAMPS.—The petition shall include evi-
18 dence that the availability or sales of ex-
19 empted incandescent lamps have increased
20 significantly since the date on which the
21 standards on general service incandescent
22 lamps were established.

23 “(iii) CRITERIA.—The Secretary shall
24 grant a petition under clause (i) if the Sec-
25 retary finds that—

1 “(I) the petition presents evi-
2 dence that demonstrates that commer-
3 cial availability or sales of exempted
4 incandescent lamp types have in-
5 creased significantly since the stand-
6 ards on general service lamps were es-
7 tablished and likely are being widely
8 used in general lighting applications;
9 and

10 “(II) significant energy savings
11 could be achieved by covering exempt-
12 ed products, as determined by the
13 Secretary based in part on sales data
14 provided to the Secretary from manu-
15 facturers and importers.

16 “(iv) NO PRESUMPTION.—The grant
17 of a petition under this subparagraph shall
18 create no presumption with respect to the
19 determination of the Secretary with respect
20 to any criteria under a rulemaking con-
21 ducted under this section.

22 “(v) EXPEDITED PROCEEDING.—If
23 the Secretary grants a petition for a lamp
24 shape or base under this subparagraph,
25 the Secretary shall—

1 “(I) conduct a rulemaking to de-
2 termine standards for the exempted
3 lamp shape or base; and

4 “(II) complete the rulemaking
5 not later than 18 months after the
6 date on which notice is provided
7 granting the petition.

8 “(F) EFFECTIVE DATES.—

9 “(i) IN GENERAL.—In this paragraph,
10 except as otherwise provided in a table
11 contained in subparagraph (A) or in clause
12 (ii), the term ‘effective date’ means the last
13 day of the month specified in the table
14 that follows October 24, 1992.

15 “(ii) SPECIAL EFFECTIVE DATES.—

16 “(I) ER, BR, AND BPAR
17 LAMPS.—The standards specified in
18 subparagraph (A) shall apply with re-
19 spect to ER incandescent reflector
20 lamps, BR incandescent reflector
21 lamps, BPAR incandescent reflector
22 lamps, and similar bulb shapes on and
23 after January 1, 2008, or the date
24 that is 180 days after the date of en-

1 actment of the Energy Independence
2 and Security Act of 2007.

3 “(II) LAMPS BETWEEN 2.25–2.75
4 INCHES IN DIAMETER.—The stand-
5 ards specified in subparagraph (A)
6 shall apply with respect to incandes-
7 cent reflector lamps with a diameter
8 of more than 2.25 inches, but not
9 more than 2.75 inches, on and after
10 the later of January 1, 2008, or the
11 date that is 180 days after the date of
12 enactment of the Energy Independ-
13 ence and Security Act of 2007.

14 “(2) COMPLIANCE WITH EXISTING LAW.—Not-
15 withstanding section 332(a)(5) and section 332(b),
16 it shall not be unlawful for a manufacturer to sell
17 a lamp that is in compliance with the law at the
18 time the lamp was manufactured.

19 “(3) RULEMAKING BEFORE OCTOBER 24,
20 1995.—

21 “(A) IN GENERAL.—Not later than 36
22 months after October 24, 1992, the Secretary
23 shall initiate a rulemaking procedure and shall
24 publish a final rule not later than the end of
25 the 54-month period beginning on October 24,

1 1992, to determine whether the standards es-
2 tablished under paragraph (1) should be
3 amended.

4 “(B) ADMINISTRATION.—The rule shall
5 contain the amendment, if any, and provide
6 that the amendment shall apply to products
7 manufactured on or after the 36-month period
8 beginning on the date on which the final rule is
9 published.

10 “(4) RULEMAKING BEFORE OCTOBER 24,
11 2000.—

12 “(A) IN GENERAL.—Not later than 8 years
13 after October 24, 1992, the Secretary shall ini-
14 tiate a rulemaking procedure and shall publish
15 a final rule not later than 9 years and 6 months
16 after October 24, 1992, to determine whether
17 the standards in effect for fluorescent lamps
18 and incandescent lamps should be amended.

19 “(B) ADMINISTRATION.—The rule shall
20 contain the amendment, if any, and provide
21 that the amendment shall apply to products
22 manufactured on or after the 36-month period
23 beginning on the date on which the final rule is
24 published.

1 “(5) RULEMAKING FOR ADDITIONAL GENERAL
2 SERVICE FLUORESCENT LAMPS.—

3 “(A) IN GENERAL.—Not later than the
4 end of the 24-month period beginning on the
5 date labeling requirements under section
6 324(a)(2)(C) become effective, the Secretary
7 shall—

8 “(i) initiate a rulemaking procedure to
9 determine whether the standards in effect
10 for fluorescent lamps and incandescent
11 lamps should be amended so that the
12 standards would be applicable to additional
13 general service fluorescent lamps; and

14 “(ii) publish, not later than 18
15 months after initiating the rulemaking, a
16 final rule including the amended stand-
17 ards, if any.

18 “(B) ADMINISTRATION.—The rule shall
19 provide that the amendment shall apply to
20 products manufactured after a date which is 36
21 months after the date on which the rule is pub-
22 lished.

23 “(6) STANDARDS FOR GENERAL SERVICE
24 LAMPS.—

1 “(A) RULEMAKING BEFORE JANUARY 1,
2 2014.—

3 “(i) IN GENERAL.—Not later than
4 January 1, 2014, the Secretary shall ini-
5 tiate a rulemaking procedure to determine
6 whether—

7 “(I) standards in effect for gen-
8 eral service lamps should be amended;
9 and

10 “(II) the exclusions for certain
11 incandescent lamps should be main-
12 tained or discontinued based, in part,
13 on excluded lamp sales collected by
14 the Secretary from manufacturers.

15 “(ii) SCOPE.—The rulemaking—

16 “(I) shall not be limited to incan-
17 descent lamp technologies; and

18 “(II) shall include consideration
19 of a minimum standard of 45 lumens
20 per watt for general service lamps.

21 “(iii) AMENDED STANDARDS.—If the
22 Secretary determines that the standards in
23 effect for general service lamps should be
24 amended, the Secretary shall publish a
25 final rule not later than January 1, 2017,

1 with an effective date that is not earlier
2 than 3 years after the date on which the
3 final rule is published.

4 “(iv) PHASED-IN EFFECTIVE
5 DATES.—The Secretary shall consider
6 phased-in effective dates under this sub-
7 paragraph after considering—

8 “(I) the impact of any amend-
9 ment on manufacturers, retiring and
10 repurposing existing equipment,
11 stranded investments, labor contracts,
12 workers, and raw materials; and

13 “(II) the time needed to work
14 with retailers and lighting designers
15 to revise sales and marketing strate-
16 gies.

17 “(v) BACKSTOP REQUIREMENT.—If
18 the Secretary fails to complete a rule-
19 making in accordance with clauses (i)
20 through (iv) or if the final rule does not
21 produce savings that are greater than or
22 equal to the savings from a minimum effi-
23 cacy standard of 45 lumens per watt, effec-
24 tive beginning January 1, 2020, the Sec-
25 retary shall prohibit the manufacture of

1 any general service lamp that does not
2 meet a minimum efficacy standard of 45
3 lumens per watt.

4 “(vi) STATE PREEMPTION.—Neither
5 section 327 nor any other provision of law
6 shall preclude California or Nevada from
7 adopting, effective beginning on or after
8 January 1, 2018—

9 “(I) a final rule adopted by the
10 Secretary in accordance with clauses
11 (i) through (iv);

12 “(II) if a final rule described in
13 subclause (I) has not been adopted,
14 the backstop requirement under
15 clause (v); or

16 “(III) in the case of California, if
17 a final rule described in subclause (I)
18 has not been adopted, any California
19 regulations relating to these covered
20 products adopted pursuant to State
21 statute in effect as of the date of en-
22 actment of the Energy Independence
23 and Security Act of 2007.

24 “(B) RULEMAKING BEFORE JANUARY 1,
25 2020.—

1 “(i) IN GENERAL.—Not later than
2 January 1, 2020, the Secretary shall ini-
3 tiate a rulemaking procedure to determine
4 whether—

5 “(I) standards in effect for gen-
6 eral service lamps should be amended;
7 and

8 “(II) the exclusions for certain
9 incandescent lamps should be main-
10 tained or discontinued based, in part,
11 on excluded lamp sales data collected
12 by the Secretary from manufacturers.

13 “(ii) SCOPE.—The rulemaking shall
14 not be limited to incandescent lamp tech-
15 nologies.

16 “(iii) AMENDED STANDARDS.—If the
17 Secretary determines that the standards in
18 effect for general service lamps should be
19 amended, the Secretary shall publish a
20 final rule not later than January 1, 2022,
21 with an effective date that is not earlier
22 than 3 years after the date on which the
23 final rule is published.

24 “(iv) PHASED-IN EFFECTIVE
25 DATES.—The Secretary shall consider

1 phased-in effective dates under this sub-
2 paragraph after considering—

3 “(I) the impact of any amend-
4 ment on manufacturers, retiring and
5 repurposing existing equipment,
6 stranded investments, labor contracts,
7 workers, and raw materials; and

8 “(II) the time needed to work
9 with retailers and lighting designers
10 to revise sales and marketing strate-
11 gies.

12 “(7) FEDERAL ACTIONS.—

13 “(A) COMMENTS OF SECRETARY.—

14 “(i) IN GENERAL.—With respect to
15 any lamp to which standards are applicable
16 under this subsection or any lamp specified
17 in section 346, the Secretary shall inform
18 any Federal entity proposing actions that
19 would adversely impact the energy con-
20 sumption or energy efficiency of the lamp
21 of the energy conservation consequences of
22 the action.

23 “(ii) CONSIDERATION.—The Federal
24 entity shall carefully consider the com-
25 ments of the Secretary.

1 “(B) AMENDMENT OF STANDARDS.—Not-
2 withstanding section 325(n)(1), the Secretary
3 shall not be prohibited from amending any
4 standard, by rule, to permit increased energy
5 use or to decrease the minimum required en-
6 ergy efficiency of any lamp to which standards
7 are applicable under this subsection if the ac-
8 tion is warranted as a result of other Federal
9 action (including restrictions on materials or
10 processes) that would have the effect of either
11 increasing the energy use or decreasing the en-
12 ergy efficiency of the product.

13 “(8) COMPLIANCE.—

14 “(A) IN GENERAL.—Not later than the
15 date on which standards established pursuant
16 to this subsection become effective, or, with re-
17 spect to high-intensity discharge lamps covered
18 under section 346, the effective date of stand-
19 ards established pursuant to that section, each
20 manufacturer of a product to which the stand-
21 ards are applicable shall file with the Secretary
22 a laboratory report certifying compliance with
23 the applicable standard for each lamp type.

24 “(B) CONTENTS.—The report shall include
25 the lumen output and wattage consumption for

1 each lamp type as an average of measurements
2 taken over the preceding 12-month period.

3 “(C) OTHER LAMP TYPES.—With respect
4 to lamp types that are not manufactured during
5 the 12-month period preceding the date on
6 which the standards become effective, the re-
7 port shall—

8 “(i) be filed with the Secretary not
9 later than the date that is 12 months after
10 the date on which manufacturing is com-
11 menced; and

12 “(ii) include the lumen output and
13 wattage consumption for each such lamp
14 type as an average of measurements taken
15 during the 12-month period.”.

16 (13) Section 325(l)(4)(A) of the Energy Policy and
17 Conservation Act (42 U.S.C. 6295(l)(4)(A)) (as amended
18 by section 321(a)(3)(B) of the Energy Independence and
19 Security Act of 2007 (121 Stat. 1581)) is amended by
20 striking “only”.

21 (14) Section 327(b)(1)(B) of the Energy Policy and
22 Conservation Act (42 U.S.C. 6297(b)(1)(B)) (as amended
23 by section 321(d)(3) of the Energy Independence and Se-
24 curity Act of 2007 (121 Stat. 1585)) is amended—

1 (A) in clause (i), by inserting “and” after the
2 semicolon at the end;

3 (B) in clause (ii), by striking “; and” and in-
4 serting a period; and

5 (C) by striking clause (iii).

6 (15) Section 321(e) of the Energy Independence and
7 Security Act of 2007 (121 Stat. 1586) is amended—

8 (A) in the matter preceding paragraph (1), by
9 striking “is amended” and inserting “(as amended
10 by section 306(b)) is amended”; and

11 (B) by striking paragraphs (1) and (2) and in-
12 serting the following:

13 “(1) in paragraph (5), by striking ‘or’ after the
14 semicolon at the end;

15 “(2) in paragraph (6), by striking the period at
16 the end and inserting ‘; or’; and”.

17 (16) Section 332(a) of the Energy Policy and Con-
18 servation Act (42 U.S.C. 6302(a)) (as amended by section
19 321(e) of the Energy Independence and Security Act of
20 2007 (121 Stat. 1586)) is amended by redesignating the
21 second paragraph (6) as paragraph (7).

22 (17) Section 321(30)(C)(ii) of the Energy Policy and
23 Conservation Act (42 U.S.C. 6291(30)(C)(ii)) (as amend-
24 ed by section 322(a)(1)(B) of the Energy Independence

1 and Security Act of 2007 (121 Stat. 1587)) is amended
2 by inserting a period after “40 watts or higher”.

3 (18) Section 322(b) of the Energy Independence and
4 Security Act of 2007 (121 Stat. 1588)) is amended by
5 striking “6995(i)” and inserting “6295(i)”.

6 (19) Section 327(c) of the Energy Policy and Con-
7 servation Act (42 U.S.C. 6297(c)) (as amended by sec-
8 tions 324(f) of the Energy Independence and Security Act
9 of 2007 (121 Stat. 1594)) is amended—

10 (A) in paragraph (6), by striking “or” after the
11 semicolon at the end;

12 (B) in paragraph (8)(B), by striking “and”
13 after the semicolon at the end;

14 (C) in paragraph (9)—

15 (i) by striking “except that—” and all that
16 follows through “if the Secretary fails to issue”
17 and inserting “except that if the Secretary fails
18 to issue”;

19 (ii) by redesignating clauses (i) and (ii) as
20 subparagraphs (A) and (B), respectively; and

21 (iii) by striking the period at the end and
22 inserting a semicolon; and

23 (D) by adding at the end the following:

1 “(10) is a regulation for general service lamps
2 that conforms with Federal standards and effective
3 dates; or

4 “(11) is an energy efficiency standard for gen-
5 eral service lamps enacted into law by the State of
6 Nevada prior to December 19, 2007, if the State has
7 not adopted the Federal standards and effective
8 dates pursuant to subsection (b)(1)(B)(ii).”.

9 (20) Section 325(b) of the Energy Independence and
10 Security Act of 2007 (121 Stat. 1596)) is amended by
11 striking “6924(c)” and inserting “6294(c)”.

12 (c) TITLE IV—ENERGY SAVINGS IN BUILDINGS AND
13 INDUSTRY.—

14 (1) Section 401 of the Energy Independence and Se-
15 curity Act of 2007 (42 U.S.C. 17061) is amended—

16 (A) in paragraph (2), by striking “484” and in-
17 serting “494”; and

18 (B) in paragraph (13), by striking “Agency”
19 and inserting “Administration”.

20 (2) Section 422 of the Energy Conservation and Pro-
21 duction Act (42 U.S.C. 6872) (as amended by section
22 411(a) of the Energy Independence and Security Act of
23 2007 (121 Stat. 1600)) is amended by striking 1 of the
24 2 periods at the end of paragraph (5).

1 (3) Section 543 of the National Energy Conservation
2 Policy Act (42 U.S.C. 8253) (as amended by sections 432
3 and 434(a) of the Energy Independence and Security Act
4 of 2007 (121 Stat. 1607, 1614) is amended by redesign-
5 nating subsection (f) (as added by section 434(a) of that
6 Act) as subsection (g).

7 (4) Section 305(a)(3)(D)(i) of the Energy Conserva-
8 tion and Production Act (42 U.S.C. 6834(a)(3)(D)(i)) (as
9 amended by section 433(a) of the Energy Independence
10 and Security Act of 2007 (121 Stat. 1612)) is amended—

11 (A) in subclause (I)___

12 (i) by striking “in fiscal year 2003 (as
13 measured by Commercial Buildings Energy
14 Consumption Survey or Residential Energy
15 Consumption Survey data from the Energy In-
16 formation Agency” and inserting “as measured
17 by the calendar year 2003 Commercial Build-
18 ings Energy Consumption Survey or the cal-
19 endar year 2005 Residential Energy Consump-
20 tion Survey data from the Energy Information
21 Administration”; and

22 (ii) in the table at the end, by striking
23 “Fiscal Year” and inserting “Calendar Year”;
24 and

25 (B) in subclause (II)—

1 (i) by striking “(II) Upon petition” and in-
2 serting the following:

3 “(II) DOWNWARD ADJUSTMENT
4 OF NUMERIC REQUIREMENT.—

5 “(aa) IN GENERAL.—On pe-
6 tition”; and

7 (ii) by striking the last sentence and in-
8 serting the following:

9 “(bb) EXCEPTIONS TO RE-
10 QUIREMENT FOR CONCURRENCE
11 OF SECRETARY.—

12 “(AA) IN GENERAL.—
13 The requirement to petition
14 and obtain the concurrence
15 of the Secretary under this
16 subclause shall not apply to
17 any Federal building with
18 respect to which the Admin-
19 istrator of General Services
20 is required to transmit a
21 prospectus to Congress
22 under section 3307 of title
23 40, United States Code, or
24 to any other Federal build-
25 ing designed, constructed, or

1 renovated by the Adminis-
2 trator if the Administrator
3 certifies, in writing, that
4 meeting the applicable nu-
5 meric requirement under
6 subclause (I) with respect to
7 the Federal building would
8 be technically impracticable
9 in light of the specific func-
10 tional needs for the building.

11 “(BB) ADJUSTMENT.—
12 In the case of a building de-
13 scribed in subitem (AA), the
14 Administrator may adjust
15 the applicable numeric re-
16 quirement of subclause (I)
17 downward with respect to
18 the building.”.

19 (5) Section 436(c)(3) of the Energy Independence
20 and Security Act of 2007 (42 U.S.C. 17092(c)(3)) is
21 amended by striking “474” and inserting “494”.

22 (6) Section 440 of the Energy Independence and Se-
23 curity Act of 2007 (42 U.S.C. 17096) is amended by strik-
24 ing “and 482”.

1 (7) Section 373(c) of the Energy Policy and Con-
2 servation Act (42 U.S.C. 6343(c)) (as amended by section
3 451(a) of the Energy Independence and Security Act of
4 2007 (121 Stat. 1628)) is amended by striking “Adminis-
5 trator” and inserting “Secretary”.

6 (d) TITLE V—ENERGY SAVINGS IN GOVERNMENT
7 AND PUBLIC INSTITUTIONS.—(1) Section 303 of the Pub-
8 lic Utility Regulatory Policies Act of 1978 (15 U.S.C.
9 3203) (as amended by subsections (b) and (c) of section
10 532 of the Energy Independence and Security Act of 2007
11 (121 Stat. 1666)) is amended—

12 (A) in subsection (a), by striking “(or”
13 and all that follows through “, each State” and
14 inserting “(or after October 24, 1992, in the
15 case of standards under paragraphs (3) and (4)
16 of subsection (b), or after December 19, 2007,
17 in the case of standards under paragraphs (5)
18 and (6) of subsection (b)), each State”; and

19 (B) in the second sentence of subsection
20 (b)(6)(B), by striking “subtitle” each place it
21 appears and inserting “title”.

22 (2) Section 521(a) of the Energy Independence and
23 Security Act of 2007 (121 Stat. 1661) is amended by
24 striking “the Sun Wall Design Project” and inserting “an
25 approved project prospectus”.

1 (3) Section 541(3)(A)(i)(II) of the Energy Independ-
2 ence and Security Act of 2007 (42 U.S.C.
3 17151(3)(A)(i)(II)) is amended by striking “and” after
4 the semicolon at the end and inserting “or”.

5 (e) TITLE VI—ACCELERATED RESEARCH AND DE-
6 VELOPMENT.—(1) Section 641(h)(7)(A) of the Energy
7 Independence and Security Act of 2007 (42 U.S.C.
8 17231(h)(7)(A)) is amended by striking “a energy” and
9 inserting “an energy”.

10 (2) Section 655(b) of the Energy Independence and
11 Security Act of 2007 (42 U.S.C. 17243(b)) is amended—

12 (A) in paragraph (1), by striking “solid-state
13 light package” and inserting “solid-state-light pack-
14 age”; and

15 (B) in paragraph (3), by striking “sold-state-
16 light-light” and inserting “solid-state-light package”.

17 (f) TITLE VIII—IMPROVED MANAGEMENT OF EN-
18 ERGY POLICY.—Section 807(a)(2) of the Energy Inde-
19 pendence and Security Act of 2007 (42 U.S.C.
20 17286(a)(2)) is amended by striking “the the” and insert-
21 ing “the”.

22 (g) TITLE IX—INTERNATIONAL ENERGY PRO-
23 GRAMS.—Section 916(b) of the Energy Independence and
24 Security Act of 2007 (42 U.S.C. 17336(b)) is amended
25 by striking “the Export of Clean and Efficient Energy

1 Technologies” each place it appears in paragraphs (1) and
2 (4)(A) and inserting “Clean and Efficient Energy Tech-
3 nology Exports”.

4 (h) TITLE X—GREEN JOBS.—Section 171(e)(4)(A)
5 of the Workforce Investment Act of 1998 (29 U.S.C.
6 2916(e)(4)(A)) (as added by section 1002 of the Energy
7 Independence and Security Act of 2007 (121 Stat. 1754))
8 is amended by striking “of the Workforce Investment Act
9 of 1998 (29 U.S.C. 2931 and 2938)”.

10 (i) TITLE XI—ENERGY TRANSPORTATION AND IN-
11 FRASTRUCTURE.—(1) Section 53501(5)(A)(iii) of title 46,
12 United States Code (as amended by section 1122(a)(1) of
13 the Energy Independence and Security Act of 2007 (121
14 Stat. 1762)), is amended by striking “trade trade” and
15 inserting “trade”.

16 (2) Section 53501 of title 46, United States Code (as
17 amended by section 1122(a)(2) of the Energy Independ-
18 ence and Security Act of 2007 (121 Stat. 1762)), is
19 amended by redesignating the second paragraph (7) (re-
20 lating to the definition of “United States foreign trade”)
21 and paragraph (8) (relating to the definition of “vessel”)
22 as paragraphs (8) and (9), respectively.

23 (j) TITLE XII—SMALL BUSINESS ENERGY PRO-
24 GRAMS.—(1) Section 103(18)(E) of the Small Business
25 Investment Act of 1958 (15 U.S.C. 662(18)(E)) (as added

1 by section 1205(b)(3) of the Energy Independence and Se-
2 curity Act of 2007 (121 Stat. 1772)) is amended by in-
3 serting “Federal” before “Credit”.

4 (2) Section 1206(b) of the Energy Independence and
5 Security Act of 2007 (121 Stat. 1774) is amended by
6 striking “(15 U.S.C. 303(b)(4)) is amended by adding at
7 the end” and inserting “(15 U.S.C. 683(b)(4)) is amended
8 by inserting after subparagraph (D)”.

9 (3) Section 394 of the Small Business Investment Act
10 of 1958 (15 U.S.C. 690m) (as added by section 1207 of
11 the Energy Independence and Security Act of 2007 (121
12 Stat. 1783)) is amended by inserting a comma after
13 “314”.

14 (k) TITLE XIII—SMART GRID.—(1) Section 1302 of
15 the Energy Independence and Security Act of 2007 (42
16 U.S.C. 17382) is amended in the first sentence by striking
17 “enactment” and inserting “the date of enactment of this
18 Act”.

19 (2) Section 1305 of the Energy Independence and Se-
20 curity Act of 2007 (42 U.S.C. 17385(c)) is amended—

21 (A) in subsection (a)(2), by striking “Inter-
22 national” and inserting “Institute of”; and

23 (B) in subsection (c), by striking “of enact-
24 ment” and inserting “after the date of enactment of
25 this Act”.

1 (3) Section 1306(e)(3) of the Energy Independence
2 and Security Act of 2007 (42 U.S.C. 17386(e)(3)) is
3 amended by striking “section 1307 (paragraph (17) of
4 section 111(d) of the Public Utility Regulatory Policies
5 Act of 1978)” and inserting “paragraph (19) of section
6 111(d) of the Public Utility Regulatory Policies Act of
7 1978 (16 U.S.C. 2621(d))”.

8 (1) **EFFECTIVE DATE.**—This section and the amend-
9 ments made by this section take effect as if included in
10 the Energy Independence and Security Act of 2007 (Pub-
11 lic Law 110–140; 121 Stat. 1492).

12 **SEC. 172. TECHNICAL CORRECTIONS TO ENERGY POLICY**

13 **ACT OF 2005.**

14 (a) **TABLE OF CONTENTS; DEFINITIONS.**—(1) The
15 table of contents in section 1(b) of the Energy Policy Act
16 of 2005 (Public Law 109–58; 119 Stat. 594) is amended
17 by inserting after the item relating to section 1 the fol-
18 lowing:

“Sec. 2. Definitions.”.

19 (2) Section 2(2)(A) of the Energy Policy Act of 2005
20 (42 U.S.C. 15801(2)(A)) is amended by striking “Higher
21 Education Act of 1065” and inserting “Higher Education
22 Act of 1965”.

23 (b) **TITLE I—ENERGY EFFICIENCY.**—Section
24 325(g)(8)(C)(ii) of the Energy Policy and Conservation
25 Act (42 U.S.C. 6295(g)(8)(C)(ii)) (as added by section

1 135(c)(2)(B) of the Energy Policy Act of 2005) is amend-
2 ed by striking “20°F” and inserting “–20°F”.

3 (c) TITLE II—RENEWABLE ENERGY.—(1) Section
4 2(g) of the Geothermal Steam Act of 1970 (30 U.S.C.
5 1001(g)) (as added by section 236(2) of the Energy Policy
6 Act of 2005) is amended by striking “; and” at the end
7 and inserting a period.

8 (2) Section 33(a)(2)(B) of the Federal Power Act (16
9 U.S.C. 823d(a)(2)(B)) (as added by section 241(c) of the
10 Energy Policy Act of 2005) is amended by inserting “de-
11 termined necessary” after “initially”.

12 (d) TITLE III—OIL AND GAS.—Section 347(b) of the
13 Energy Policy Act of 2005 (119 Stat. 704) is amended—

14 (1) in paragraph (2), by striking the ending
15 quotation marks after “Alaska” and the following
16 period and inserting a period;

17 (2) in paragraph (3), by striking the ending
18 quotation marks after “Reserve” and the following
19 period and inserting a period;

20 (3) in paragraph (4), by striking the ending
21 quotation marks after “seq.)” and the following pe-
22 riod and inserting a period;

23 (4) in paragraph (5), by striking the ending
24 quotation marks after “this section” and the fol-
25 lowing period and inserting a period;

1 (5) in paragraph (6), by striking the ending
2 quotation marks after “629)” and the following pe-
3 riod and inserting a period;

4 (6) in paragraph (7), by striking the ending
5 quotation marks after “structures” and the following
6 period and inserting a period;

7 (7) in paragraph (8), by striking the ending
8 quotation marks after “Secretary” and the following
9 period and inserting a period; and

10 (8) in paragraph (11), by inserting a period
11 after “provided therein”.

12 (e) TITLE IV—COAL.—Section 417(d)(3) of the En-
13 ergy Policy Act of 2005 (42 U.S.C. 15977(d)(3)) is
14 amended by striking “the Act” and inserting “this Act”.

15 (f) TITLE VI—NUCLEAR MATTERS.—(1) Section
16 641(b)(1) of the Energy Policy Act of 2005 (42 U.S.C.
17 16021(b)(1)) is amended by striking “942(d)” and insert-
18 ing “952(d)”.

19 (2) Section 655(a) of the Energy Policy Act of 2005
20 (119 Stat. 813) is amended by striking “236a.” and in-
21 serting “236 a.”.

22 (g) TITLE VII—VEHICLES AND FUELS.—(1) Section
23 514(b)(1)(B) of the Energy Policy Act of 1992 (42 U.S.C.
24 13263a(b)(1)(B)) (as added by section 703(a)(2) of the
25 Energy Policy Act of 2005) is amended—

1 (A) by striking “a reduction equal to”; and
2 (B) by striking “given credit under section
3 508”.

4 (2) Section 782(c)(1)(A)(i) of the Energy Policy Act
5 of 2005 (42 U.S.C. 16122(c)(1)(A)(i)) is amended by
6 striking “March 2000” and inserting “January 1, 1999”.

7 (3) Section 783(c) of the Energy Policy Act of 2005
8 (42 U.S.C. 16123(c)) is amended by striking “section 808
9 of this Act” and inserting “section 782(c)”.

10 (h) TITLE IX—RESEARCH AND DEVELOPMENT.—

11 (1) Section 306(b)(1)(F) of the Biomass Research and
12 Development Act of 2000 (7 U.S.C. 8605(b)(1)(F)) (as
13 redesignated by section 941(d)(1)(B) of the Energy Policy
14 Act of 2005) is amended by striking “an individual” and
15 inserting “2 individuals”.

16 (2) Section 999B(c)(1) of the Energy Policy Act of
17 2005 (42 U.S.C. 16372(c)(1)) is amended in the first sen-
18 tence by striking “this chapter” and inserting “this sub-
19 title”.

20 (3) Section 5(b)(2) of the Federal Nonnuclear En-
21 ergy Research and Development Act of 1974 (42 U.S.C.
22 5904(b)(2)) is amended by striking “Administrator” and
23 inserting “Secretary”.

1 (i) TITLE XI—PERSONNEL AND TRAINING.—Section
2 1102(b) of the Energy Policy Act of 2005 (Public Law
3 109–58) is amended—

4 (1) by striking “3165” and inserting
5 “3165(a)”; and

6 (2) by striking “7381b” and inserting
7 “7381b(a)”.

8 (j) TITLE XII—ELECTRICITY.—(1) Section 112 of
9 the Public Utility Regulatory Policies Act of 1978 (16
10 U.S.C. 2622) (as amended by section 1254(b)(2) of the
11 Energy Policy Act of 2005) is amended as follows:

12 (A) By striking the last sentence of subsection
13 (d).

14 (B) By inserting at the end of subsection (c)
15 the following: “In the case of the standards estab-
16 lished by paragraphs (16) through (19) of section
17 111(d), the reference contained in this subsection to
18 the date of enactment of this Act shall be deemed
19 to be a reference to the date of enactment of such
20 paragraphs.”.

21 (2) Section 314(d) of the Federal Power Act
22 (16 U.S.C. 825m(d)) (as added by section 1288 of
23 the Energy Policy Act of 2005) is amended by strik-
24 ing “section 221” and inserting “section 222”.

1 (k) TITLE XV—ETHANOL AND MOTOR FUELS.—(1)
2 Section 211 of the Clean Air Act (42 U.S.C. 7545) is
3 amended—

4 (A) by redesignating subsection (q) (as
5 added by section 1506 of the Energy Policy Act
6 of 2005) as subsection (p); and

7 (B) by redesignating subsections (r)
8 through (v) as subsections (q) through (u), re-
9 spectively.

10 (2) Section 212(b) of the Clean Air Act (42 U.S.C.
11 7546(b)) (as added by section 1511 of the Energy Policy
12 Act of 2005) is amended—

13 (A) in paragraph (1)—

14 (i) by striking “title XIV of the Energy
15 Policy Act” and inserting “title XV of the En-
16 ergy Policy Act of 2005 (42 U.S.C. 16501 et
17 seq.)”; and

18 (ii) by striking “sucrose-derived”; and

19 (B) in paragraph (2)(A), by striking “sucrose-
20 derived”.

21 (3) Section 1530(d) of the Energy Policy Act of
22 2005 (Public Law 109–58) is amended by striking
23 paragraphs (1) through (3) and inserting the fol-
24 lowing:

1 “(1) By striking the comma at the end of sub-
2 paragraph (E) and inserting ‘; or’.

3 “(2) By adding after subparagraph (E) the fol-
4 lowing:

5 “(F) the requirements established in sec-
6 tion 9003.’.”.

7 (4) Section 211(e)(4)(C) of the Clean Air Act (42
8 U.S.C. 7545(c)(4)(C)) (as amended by section 1541(b) of
9 the Energy Policy Act of 2005) is amended by redesi-
10 gnating the second clause (v) as clause (vi).

11 (l) TITLE XVIII—STUDIES.—Sections 1808 and
12 1832 of the Energy Policy Act of 2005 (42 U.S.C. 16522,
13 16524) are repealed.

14 (m) EFFECTIVE DATE.—This section and the amend-
15 ments made by this section take effect as if included in
16 the Energy Policy Act of 2005 (Public Law 109–58; 119
17 Stat. 594).

18 **TITLE II—ENERGY EFFICIENCY**

19 **Subtitle A—Building Energy**

20 **Efficiency Programs**

21 **SEC. 201. GREATER ENERGY EFFICIENCY IN BUILDING**

22 **CODES.**

23 (a) IN GENERAL.—Section 304 of the Energy Con-
24 servation and Production Act (42 U.S.C. 6833) is amend-
25 ed to read as follows:

1 **“SEC. 304. UPDATING STATE BUILDING ENERGY EFFI-**
2 **CIENCY CODES.**

3 “(a) UPDATING NATIONAL MODEL BUILDING EN-
4 ERGY CODES.—(1)(A) The Secretary shall support updat-
5 ing the national model building energy codes and stand-
6 ards at least every 3 years to achieve the energy savings
7 targets set under subparagraph (B).

8 “(B)(i) The applicable target for overall nationwide
9 energy savings, compared to the 2006 IECC for residen-
10 tial buildings and ASHRAE Standard 90.1-2004 for com-
11 mercial buildings, for the national model building energy
12 codes and standards shall be—

13 “(I) 30 percent in editions of each model code
14 or standard released after the date of enactment of
15 the American Clean Energy and Security Act of
16 2009;

17 “(II) 50 percent in editions of each model code
18 or standard released after January 1, 2016; and

19 “(III) as set by the Secretary under clause (ii).

20 “(ii) The Secretary—

21 “(I) may set targets to supplement the targets
22 set under clause (i)(I) or (II) and under subclause
23 (II) of this clause for any year after 2012; and

24 “(II) shall set targets at least once every 3
25 years after 2016.

1 “(iii) Any target set by the Secretary under clause
2 (ii)—

3 “(I) shall be set at least 3 years in advance of
4 the year in which it first applies;

5 “(II) shall be coordinated with the IECC and
6 ASHRAE Standard 90.1 cycles;

7 “(III) shall be set at the maximum level of en-
8 ergy efficiency that is technologically feasible and
9 life-cycle cost effective, and on a path to achieving
10 net-zero-energy buildings; and

11 “(IV) shall provide for at least an equivalent
12 level of energy efficiency as that of any previous tar-
13 get set under this subparagraph.

14 “(iv) If the Secretary fails to set a target as required
15 under clause (ii)(II), the target shall be the maximum of
16 previous targets set under clause (i).

17 “(2)(A) Not later than 90 days after the date of en-
18 actment of the American Clean Energy and Security Act
19 of 2009, and not later than 90 days after the date of a
20 revision of the provisions of the IECC or ASHRAE Stand-
21 ard 90.1 regarding building energy use, the Secretary
22 shall make a preliminary determination on—

23 “(i) whether the then current version of the
24 IECC or ASHRAE Standard 90.1 regarding build-

1 ing energy use, as so revised, if applicable, will im-
2 prove energy efficiency in buildings; and

3 “(ii) whether such code, standard, or revision
4 will meet the targets set by the Secretary under
5 paragraph (1).

6 The Secretary shall make a final determination not
7 later than 6 months after the date of such prelimi-
8 nary determination.

9 “(B) If the Secretary makes a determination under
10 subparagraph (A)(ii) that a code or standard, or portion
11 of a code or standard, does not meet the targets set under
12 paragraph (1), or if a national model building energy code
13 or standard is not updated for more than 3 years, then
14 the Secretary shall, within 12 months after such deter-
15 mination or such failure to update, establish a modified
16 code or standard that meets such targets. Any such modi-
17 fied code or standard—

18 “(i) shall achieve the maximum level of energy
19 savings that is technologically feasible and life-cycle
20 cost-effective, and on a path to achieving net-zero-
21 energy buildings;

22 “(ii) shall be based on the latest revision of the
23 IECC or ASHRAE Standard 90.1, but may also
24 consider other model codes or standards; and

1 “(iii) shall serve as the baseline for the next de-
2 termination under subparagraph (A)(i).

3 “(C) The Secretary shall provide the opportunity for
4 public comment on targets, determinations, and modified
5 codes and standards under this subsection, and shall pub-
6 lish notice of targets, determinations, and modified codes
7 and standards under this subsection in the Federal Reg-
8 ister.

9 “(D) If the Secretary establishes a code or standard
10 under subparagraph (B) relating to roofs, the Secretary
11 shall include a requirement for the use of roofing materials
12 that demonstrate—

13 “(i) on residential single family homes and
14 other buildings with slanted roofs—

15 “(I) for fiberglass asphalt-shingle roofing,
16 an initial solar reflectance of 0.3 or higher; and

17 “(II) for all other roofing materials, an ini-
18 tial solar reflectance of 0.4 or higher; and

19 “(ii) on commercial buildings and all buildings
20 with flat roofs, roofing materials with—

21 “(I) an initial solar reflectance of 0.7 or
22 higher;

23 “(II) a solar reflectance value 3 years after
24 installation (‘h’ solar reflectance) of 0.55 or
25 higher; and

1 “(III) a thermal emittance of 0.8 or high-
2 er.

3 Any national model building energy code or standard es-
4 tablished after January 1, 2016, shall include the require-
5 ments specified in this subparagraph.

6 “(b) STATE CERTIFICATION OF BUILDING ENERGY
7 CODE UPDATES.—(1) Not later than 12 months after the
8 date of enactment of the American Clean Energy and Se-
9 curity Act of 2009, subject to the provisions of this sec-
10 tion, each State shall certify to the Secretary that it has
11 reviewed and updated the provisions of its residential and
12 commercial building codes regarding energy efficiency.
13 Such certification shall include a demonstration that such
14 State’s code provisions meet or exceed the 2009 IECC for
15 residential buildings and the ASHRAE Standard 90.1-
16 2007 for commercial buildings, or achieve equivalent or
17 greater energy savings.

18 “(2)(A) Not later than 12 months after the Secretary
19 makes an affirmative determination under subsection
20 (a)(2)(A)(i) or establishes a modified code or standard
21 under subsection (a)(2)(B), each State shall certify to the
22 Secretary that it has reviewed and updated the provisions
23 of its building code regarding energy efficiency. Such cer-
24 tification shall include a demonstration that such State’s

1 code provisions meet or exceed the revised code or stand-
2 ard, or achieve equivalent or greater energy savings.

3 “(B) If the Secretary fails to make the determina-
4 tions under subsection (a)(2)(A)(i) and (ii) by the date
5 specified in subsection (a)(2)(A), or fails to establish a
6 modified code or standard by the date specified in sub-
7 section (a)(2)(B), each State shall within 18 months after
8 the specified date certify that it has reviewed the revised
9 code or standard described in subsection (a)(2)(A), and
10 updated the provisions of its building code regarding en-
11 ergy efficiency to meet or exceed any provisions found to
12 improve energy efficiency in buildings, or to achieve equiv-
13 alent or greater energy savings in other ways.

14 “(c) STATE CERTIFICATION OF COMPLIANCE WITH
15 BUILDING CODES.—(1) Each State shall, not later than
16 2 years after any certification under subsection (b), certify
17 that it has—

18 “(A) achieved compliance under paragraph (3)
19 with the certified State building energy code or with
20 the associated model code or standard; or

21 “(B) made significant progress under para-
22 graph (4) toward achieving compliance with the cer-
23 tified State building energy code or with the associ-
24 ated model code or standard.

1 If the State does not certify under subparagraph (A) that
2 is has achieved compliance, the State shall repeat the cer-
3 tification under this paragraph each year until it certifies
4 that it has achieved compliance.

5 “(2) A certification under paragraph (1) shall include
6 documentation of the rate of compliance based on inde-
7 pendent inspections of a random sample of the new and
8 renovated buildings covered by the code or standard in the
9 preceding year, or based on an alternative method that
10 yields an accurate measure of compliance.

11 “(3)(A) A State shall be considered to achieve compli-
12 ance under paragraph (1)(A) if—

13 “(i) at least 90 percent of new and renovated
14 building space covered by the code or standard in
15 the preceding year substantially meets all the re-
16 quirements of the code or standard regarding energy
17 efficiency, or achieves an equivalent energy savings
18 level; or

19 “(ii) the estimated excess energy use of new
20 and renovated buildings that did not meet the code
21 or standard in the preceding year, compared to a
22 baseline of comparable buildings that meet the code
23 or standard, is not more than 5 percent of the esti-
24 mated energy use of all new and renovated buildings

1 covered by the code or standard in the preceding
2 year.

3 “(B) Only renovations with building permits are cov-
4 ered under this paragraph. If the Secretary determines the
5 percentage targets under subparagraph (A) are not rea-
6 sonably achievable for renovated residential or commercial
7 buildings, the Secretary may reduce the targets for such
8 renovated buildings to the highest achievable level.

9 “(4)(A) A State shall be considered to have made sig-
10 nificant progress toward achieving compliance for pur-
11 poses of paragraph (1)(B) if the State has developed and
12 is implementing a plan for achieving compliance within 6
13 years after the date the State was required to make a cer-
14 tification under paragraph (1), including training and en-
15 forcement programs and—

16 “(i) after 1 or more years of adequate funding,
17 after the date the State was required to make a cer-
18 tification under paragraph (1), has demonstrated
19 progress, in conformance with such plan, toward
20 compliance;

21 “(ii) after 4 or more years of adequate funding,
22 after the date the State was required to make a cer-
23 tification under paragraph (1), meets the require-
24 ment in paragraph (3), substituting 80 percent for

1 90 percent or substituting 10 percent for 5 percent;

2 or

3 “(iii) has not had more than 6 years of ade-
4 quate funding, after the date the State was required
5 to make a certification under paragraph (1).

6 “(B) Funding shall be considered adequate, for pur-
7 poses of this paragraph, when the Federal Government
8 provides to States in the aggregate at least [amount to
9 be determined] in a year in funding and support for devel-
10 opment and implementation of State building energy
11 codes, including for training and enforcement.

12 “(d) FAILURE TO MEET DEADLINES.—(1) A State
13 that has not made a certification required under sub-
14 section (b) or (c) by the applicable deadline shall submit
15 to the Secretary—

16 “(A) a report on the status of the State with
17 respect to meeting the requirements and submitting
18 the certification; and

19 “(B) a plan for meeting the requirements and
20 submitting the certification.

21 “(2) Any State from which the Secretary has not re-
22 ceived a certification by a deadline under subsection (b)
23 or (c) of this section is out of compliance with this section.

24 “(3) In any State that is out of compliance with this
25 section, a local government may be in compliance with this

1 section by meeting the certification requirements under
2 subsections (b) and (c) of this section, not later than 1
3 year after the deadline for the State meeting those re-
4 quirements.

5 “(4) The Secretary shall annually submit to Con-
6 gress, and publish in the Federal Register, a report on
7 the status of national model building energy codes and
8 standards, the status of code and standard adoption and
9 compliance in the States, and implementation of this sec-
10 tion. The report shall include estimates of impacts of past
11 action under this section and projected impacts of future
12 action on lifetime energy use by buildings and resulting
13 energy costs.

14 “(e) TECHNICAL ASSISTANCE.—(1) The Secretary
15 shall on a timely basis provide technical assistance to
16 building energy efficiency model code-setting and standard
17 development organizations. This assistance shall include
18 technical assistance as requested by the organizations in
19 evaluating code or standards proposals or revisions, build-
20 ing energy analysis and design tools, building demonstra-
21 tions, and design assistance and training. The Secretary
22 shall submit code and standard amendment proposals,
23 with supporting evidence, sufficient to enable the national
24 model building energy codes and standards to meet the
25 targets in subsection (a)(1).

1 “(2) The Secretary shall support the development of
2 voluntary advanced model codes and standards for resi-
3 dential and commercial buildings, for potential use as na-
4 tional model building energy codes and standards, that
5 achieve energy savings of at least 30 percent compared
6 to the national model building energy codes and standards
7 in effect at that time. Such advanced codes and standards
8 may include elements that address green building design,
9 voluntary and market transformation programs, incentive
10 criteria, and voluntary adoption by States. In providing
11 support under this paragraph, the Secretary shall give
12 preference to voluntary model codes and standards devel-
13 oped by the International Code Council and by ASHRAE.

14 “(3) The Secretary shall provide technical assistance
15 to States—

16 “(A) to implement the requirements of this sec-
17 tion, including procedures for States to demonstrate
18 that their code provisions achieve equivalent or
19 greater energy savings than the national model codes
20 and standards and to document rates of compliance,
21 and to improve and implement State residential and
22 commercial building energy efficiency codes; or

23 “(B) to otherwise promote the design and con-
24 struction of energy efficient buildings.

1 “(f) AVAILABILITY OF INCENTIVE FUNDING.—(1)

2 The Secretary shall provide incentive funding to States to
3 implement the requirements of this section, and to im-
4 prove and implement State residential and commercial
5 building energy efficiency codes, including increasing and
6 verifying compliance with such codes. In determining
7 whether, and in what amount, to provide incentive funding
8 under this subsection, the Secretary shall consider the ac-
9 tions proposed by the State to implement the requirements
10 of this section.

11 “(2) Additional funding shall be provided under this
12 subsection for implementation of a plan to achieve compli-
13 ance under subsection (c)—

14 “(A) to a State that has adopted residential
15 and commercial building energy efficiency codes on
16 a Statewide basis that meet the requirements of sub-
17 sections (b) and (c); or

18 “(B) in a State that does not meet the criteria
19 in subparagraph (A), to a local government that has
20 adopted and is implementing residential and com-
21 mercial building energy efficiency codes as described
22 in subparagraph (A).

23 “(3) Of the amounts made available under this sub-
24 section, the Secretary may use amounts required, not ex-

1 ceeding \$500,000 for each State, to train State and local
2 officials to implement codes described in paragraph (2).

3 “(4) There are authorized to be appropriated to the
4 Secretary of Energy to carry out this section such sums
5 as are necessary for fiscal year 2010 and each fiscal year
6 thereafter.

7 “(g) DEFINITION.—In this section, the term ‘national
8 model building energy codes and standards’ means codes
9 and standards—

10 “(1) with respect to which the Secretary has
11 made an affirmative determination under subsection
12 (a)(2)(A)(i) and (ii); or

13 “(2) established by the Secretary under sub-
14 section (a)(2)(B).”.

15 (b) DEFINITION.—Section 303 of the Energy Con-
16 servation and Production Act (42 U.S.C. 6832) is amend-
17 ed by adding at the end the following new paragraph:

18 “(17) The term ‘IECC’ means the International
19 Energy Conservation Code.”.

20 **SEC. 202. BUILDING RETROFIT PROGRAM.**

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

22 (1) PERFORMANCE-BASED BUILDING RETROFIT
23 PROGRAM.—The term “performance-based building
24 retrofit program” means a program that determines

1 success in energy efficiency based on actual meas-
2 ured savings after a retrofit is complete.

3 (2) PRESCRIPTIVE BUILDING RETROFIT PRO-
4 GRAM.—The term “prescriptive building retrofit pro-
5 gram” means a program that projects success in en-
6 ergy efficiency based on the known effectiveness of
7 measures prescribed to be included in a retrofit.

8 (3) STATE ENERGY PROGRAM.—The term
9 “State Energy Program” means the program under
10 part D of title III of the Energy Policy and Con-
11 servation Act (42 U.S.C. 6321 et seq.)

12 (b) ESTABLISHMENT.—The Administrator shall de-
13 velop and implement, in consultation with the Secretary
14 of Energy, standards for a national energy and environ-
15 mental building retrofit policy for single-family and multi-
16 family residences. The Secretary of Energy shall develop
17 and implement, in consultation with the Administrator,
18 standards for a national energy and environmental build-
19 ing retrofit policy for commercial buildings. The programs
20 to implement the residential and commercial policies based
21 on the standards developed under this section shall to-
22 gether be known as the Retrofit for Energy and Environ-
23 mental Performance (REEP) program.

24 (c) PROGRAM DESIGN.—

1 (1) PURPOSE.—The purpose of the REEP pro-
2 gram is to facilitate the retrofitting of existing build-
3 ings across the United States to achieve maximum
4 cost-effective energy efficiency improvements and
5 significant improvements in water use and other en-
6 vironmental attributes.

7 (2) FEDERAL RESOURCES.—The REEP pro-
8 gram shall utilize Federal personnel and resources
9 as needed for development, design, program mate-
10 rials, administration, seed capital, and other activi-
11 ties and support.

12 (3) ASSISTANCE TO STATES.—The REEP pro-
13 gram shall provide Federal financial assistance to
14 States, for deposit in their State Energy and Envi-
15 ronment Development Fund, to be administered
16 through the State Energy Program, for management
17 and the accomplishment of the program's objectives
18 at the individual building level, through local agen-
19 cies as appropriate, in accordance with standards
20 and requirements established under this section.

21 (4) STATE AND LOCAL ASSISTANCE.—State and
22 local agencies may offer free or low-cost building au-
23 dits, incentives, technical assistance, training, incen-
24 tive financing, and other forms of assistance to indi-
25 vidual building owners under the standards and

1 guidelines developed for the REEP program in ac-
2 cordance with this section, as well as promotion and
3 management of the REEP program.

4 (5) STRUCTURE OF PROGRAM OPERATIONS.—
5 State and local agencies shall have broad flexibility
6 in the structure of REEP program operations and
7 in the choice of retrofit agencies or contractors.

8 (d) FEDERAL ADMINISTRATION.—

9 (1) EXISTING PROGRAMS.— In creating and op-
10 erating the residential REEP program—

11 (A) the Administrator shall make appro-
12 priate use of existing programs, including the
13 Energy Star program and in particular the En-
14 vironmental Protection Agency Energy Star for
15 Buildings program; and

16 (B) the Secretary of Energy shall make
17 appropriate use of existing programs, including
18 delegating authority to the Director of Commer-
19 cial High-Performance Green Buildings ap-
20 pointed under section 421 of the Energy Inde-
21 pendence and Security Act of 2007 (42 U.S.C.
22 17081), who shall designate and provide fund-
23 ing to support a High-Performance Green
24 Building Partnership Consortium pursuant to
25 such section to support efforts under this Act.

1 (2) CONSULTATION AND COORDINATION.—The
2 Administrator and the Secretary of Energy shall
3 consult with and coordinate with the Secretary of
4 Housing and Urban Development in carrying out the
5 REEP program.

6 (3) ADMINISTRATION OF FUNDING.—The Sec-
7 retary of Energy shall administer the financing for
8 the REEP program, providing funds to and adminis-
9 tration through State Energy Offices under the
10 State Energy Program, or through such existing
11 State offices or entities regulated by the State that
12 the Governor of the State designates to carry out
13 the purposes of this Act. The Secretary shall ensure
14 accountability for funds dispensed, including meas-
15 urement and verification of energy, water, and envi-
16 ronmental savings achieved.

17 (4) ASSISTANCE.—The Administrator and the
18 Secretary of Energy shall provide consultation and
19 assistance to State and local agencies for the estab-
20 lishment of revolving loan funds or other forms of fi-
21 nancial assistance under this section.

22 (e) STATE AND LOCAL ADMINISTRATION.—

23 (1) DELEGATION.—The State Energy Office or
24 designated State agency described in subsection
25 (d)(3) may delegate performance of appropriate ele-

1 ments of the REEP program, upon their request
2 and subject to State law, to counties, municipalities,
3 appropriate public agencies, and other divisions of
4 local government, as well as to entities regulated by
5 the State. The State shall ensure accountability for
6 expended funds provided under this section, and
7 shall maintain responsibility for meeting the stand-
8 ards and requirements of the REEP program.

9 (2) EMPLOYMENT.—States and local govern-
10 ment entities may employ public or regulated inves-
11 tor-owned utilities, building auditors and inspectors,
12 contractors, nonprofit organizations, and other enti-
13 ties to perform audits and retrofit services under
14 this section.

15 (f) ELEMENTS OF REEP PROGRAM.—The elements
16 of the REEP program shall include the following:

17 (1) The Administrator and the Secretary of En-
18 ergy shall establish goals and standards for accom-
19 plishing the purpose stated in subsection (c)(1), and
20 shall annually review and, as appropriate, revise
21 such goals and standards.

22 (2) Residential Energy Services Network
23 (RESNET) certification of building energy and envi-
24 ronment auditors, inspectors, and raters, or an

1 equivalent certification system as determined by the
2 Administrator.

3 (3) Building Performance Institute (BPI) cer-
4 tification or licensing by States of building energy
5 and environmental retrofit contractors, or an equiva-
6 lent certification or licensing system as determined
7 by the Administrator.

8 (4) Building Performance Institute, Residential
9 Energy Services Network, or other appropriate in-
10 formation on equipment and procedures, as deter-
11 mined by the Administrator, that contractors can
12 use to test the energy and environmental efficiency
13 of buildings effectively (such as infrared photog-
14 raphy and pressurized testing, and tests for water
15 use and indoor air quality).

16 (5) Provision of clear and effective materials to
17 describe the testing and retrofit processes for typical
18 buildings.

19 (6) Suggested guidelines for offering and man-
20 aging prescriptive building retrofit programs and
21 performance-based building retrofit programs for
22 residential and commercial buildings.

23 (7) Suggested guidelines for applying
24 retrocommissioning principles to improve a build-
25 ing's operations and maintenance procedures.

1 (8) Determination of energy savings in a per-
2 formance-based building retrofit program through—

3 (A) for residential buildings, comparison of
4 before and after retrofit scores on the Home
5 Energy Rating System (HERS) Index, where
6 the final score is produced by an objective third
7 party;

8 (B) for commercial buildings, Environ-
9 mental Protection Agency Portfolio Manager
10 benchmarks; or

11 (C) for either residential or commercial
12 buildings, use of an Administrator-approved
13 simulation program, subject to appropriate soft-
14 ware standards and verification of at least 15
15 percent of all work done.

16 (9) Suggested guidelines for utilizing the En-
17 ergy Star Portfolio Manager, the Home Energy Rat-
18 ing System (HERS) rating system, Home Perform-
19 ance with Energy Star program approvals, and any
20 other tools associated with the retrofit program.

21 (10) Requirements and guidelines for post-ret-
22 rofit inspection and confirmation of work and energy
23 savings.

24 (11) Detailed descriptions of funding options
25 for the benefit of State and local governments, along

1 with model forms, accounting aids, agreements, and
2 guides to best practices.

3 (12) Guidelines for obtaining certification of
4 buildings after retrofit as Energy Star buildings, as-
5 signing Home Energy Rating System (HERS) rat-
6 ing, and completing applicable building performance
7 labels.

8 (13) Sample materials for publicizing the pro-
9 gram to building owners, including public service an-
10 nouncements and advertisements.

11 (14) Processes for tracking the numbers and lo-
12 cations of buildings retrofitted under the REEP pro-
13 gram, with information on projected and actual sav-
14 ings of energy and its value over time.

15 (15) A requirement that building retrofits con-
16 ducted pursuant to a REEP program shall use roof-
17 ing materials that demonstrate—

18 (A) on residential single family homes and
19 other buildings with slanted roofs—

20 (i) for fiberglass asphalt-shingle roof-
21 ing, an initial solar reflectance of 0.3 or
22 higher; or

23 (ii) for all other roofing materials, an
24 initial solar reflectance of 0.4 or higher;
25 and

1 (B) on commercial buildings and all build-
2 ings with flat roofs, roofing materials with—

3 (i) an initial solar reflectance of 0.7 or
4 higher;

5 (ii) a solar reflectance value 3 years
6 after installation (“h” solar reflectance) of
7 0.55 or higher; and

8 (iii) a thermal emittance of 0.8 or
9 higher.

10 (g) REQUIREMENTS.—As a condition of receiving
11 funding for the REEP program appropriated pursuant to
12 this section, a State shall—

13 (1) adopt the standards for training, certifi-
14 cation of contractors, certification of buildings, and
15 post-retrofit inspection as developed by the Adminis-
16 trator and the Secretary of Energy for residential
17 and commercial buildings, respectively, except as
18 necessary to match local conditions, needs, efficiency
19 opportunities, or other local factors, or to accord
20 with State laws or regulations, and then only after
21 the Administrator or the Secretary of Energy, as ap-
22 propriate, approves such a variance; and

23 (2) establish fiscal controls and accounting pro-
24 cedures (which conform to generally accepted gov-
25 ernment accounting principles) sufficient to ensure

1 proper accounting during appropriate accounting pe-
2 riods for payments received and disbursements, and
3 for fund balances.

4 The Secretary of Energy shall conduct or require each
5 State to have such independent financial audits of REEP-
6 related funding as the Secretary of Energy considers nec-
7 essary or appropriate to carry out the purposes of this
8 section.

9 (h) FINANCIAL OPTIONS TO SUPPORT REEP PRO-
10 GRAM.—The Secretary of Energy and the Administrator
11 shall support the implementation through State REEP
12 programs of alternate means of creating incentives for, or
13 reducing financial barriers to, improved energy and envi-
14 ronmental performance in buildings, consistent with this
15 section, including—

16 (1) implementing prescriptive building retrofit
17 programs and performance-based building retrofit
18 programs;

19 (2) providing credit enhancement, interest rate
20 subsidies, or other credit support;

21 (3) providing initial capital for public revolving
22 fund financing of retrofits, with repayments by bene-
23 ficiary building owners over time through their tax
24 payments, calibrated to create net positive cash flow
25 to the building owner;

1 (4) providing funds to support utility-operated
2 retrofit programs with repayments over time
3 through utility rates, calibrated to create net positive
4 cash flow to the building owner, and transferable
5 from one building owner to the next with the build-
6 ing's utility services; and

7 (5) other means proposed by State and local
8 agencies, subject to the approval of the Secretary of
9 Energy.

10 (i) FEDERAL FINANCIAL SUPPORT.—

11 (1) IN GENERAL.—Financial support shall be
12 provided to a State Energy Program, for the specific
13 purpose of supporting the REEP program. The Sec-
14 retary and the Administrator may vary or adjust the
15 specific amounts provided pursuant to paragraph (3)
16 in years subsequent to the first year after the date
17 of enactment of this Act as they determine necessary
18 to achieve optimum cost-effectiveness and to maxi-
19 mize incentives to achieve energy efficiency within
20 the total building award amounts provided in that
21 paragraph.

22 (2) ALLOCATION OF FUNDING.—

23 (A) INITIAL YEAR.—The Secretary of En-
24 ergy shall allocate amounts appropriated during
25 the initial year of the REEP program among

1 the States in accordance with the State Energy
2 Program formula under section 363 of the En-
3 ergy Policy and Conservation Act (42 U.S.C.
4 6323).

5 (B) SUBSEQUENT YEARS.—In the second
6 year of the REEP program and thereafter, the
7 Secretary of Energy shall allocate amounts
8 among the States as follows:

9 (i) $\frac{1}{2}$ of available or appropriated
10 funds shall be allocated among the States
11 in accordance with the State Energy Pro-
12 gram formula described in subparagraph
13 (A).

14 (ii) $\frac{1}{2}$ of available or appropriated
15 funds shall be allocated among the States
16 in accordance with the relative building en-
17 ergy efficiency and environmental perform-
18 ance of the various States in retrofitting
19 buildings in accordance with this section
20 during the preceding year, with higher allo-
21 cations going to States showing greater
22 success in improving energy and environ-
23 mental performance of the buildings retro-
24 fitted in that State during that preceding
25 year.

1 (3) FORMS OF SUPPORT.—State and local
2 REEP programs may make per-building direct ex-
3 penditures for retrofit improvements, or their equiv-
4 alent in indirect financial support, from Federal
5 funds as follows:

6 (A) RESIDENTIAL PROGRAM.—

7 (i) AWARDS.—For residential build-
8 ings, a program may provide—

9 (I) up to \$500 to support a free
10 or low-cost detailed building energy
11 audit that prescribes energy-reducing
12 measures, with such amount fully re-
13 coverable from the recipient if the pre-
14 scribed measures are not performed,
15 within 1 year after completion of the
16 audit, sufficiently to enable the build-
17 ing to achieve at least a 20 percent
18 reduction in energy use;

19 (II) a total of \$1,000 for meas-
20 ures, prescribed in an audit conducted
21 under subclause (I), designed to re-
22 duce energy consumption by more
23 than 10 percent, and \$2,000 for
24 measures prescribed in such an audit,

1 designed to reduce energy consump-
2 tion by more than 20 percent;

3 (III) \$3,000 for demonstrated
4 savings of 20 percent, pursuant to a
5 performance-based building retrofit
6 program; and

7 (IV) \$150 for each additional
8 percentage point of energy savings
9 achieved beyond savings for which
10 funding is provided under subclause
11 (II) or (III).

12 Funding shall not be provided under
13 clauses (II) and (III) for the same energy
14 savings.

15 (ii) MAXIMUM PERCENTAGE.—Awards
16 under clause (i) shall not to exceed 50 per-
17 cent of retrofit costs for each building.

18 (iii) ADDITIONAL AWARDS.—Addi-
19 tional awards may be provided, for build-
20 ings achieving at least 20 percent energy
21 savings using funding provided under
22 clause (i), as follows:

23 (I) WATER.—Grants of \$600
24 may be made for measures projected
25 or measured (using an appropriate

1 method approved by the Adminis-
2 trator) to achieve at least 35 percent
3 potable water savings through equip-
4 ment or systems with an estimated
5 service life of not less than seven
6 years, and an additional \$20 may be
7 provided for each additional one per-
8 cent of such savings, up to a max-
9 imum total grant of \$1,200.

10 (II) RENEWABLE ENERGY USE.—

11 For cost-effective use of renewable en-
12 ergy, an award of up to \$2,000 may
13 be provided for uses with respect to
14 which Federal tax credits are not
15 available, and the Administrator shall
16 develop relevant standards for docu-
17 menting compliance.

18 (B) COMMERCIAL PROGRAM.—

19 (i) AWARDS.—For commercial build-
20 ings, a program may provide—

21 (I) \$1,000 to support a free or
22 low-cost building audit of energy-re-
23 duction potential that prescribes en-
24 ergy efficiency improvements and im-
25 provements of other building at-

1 tributes, with such amount fully re-
2 coverable from the recipient if the pre-
3 scribed improvements are not per-
4 formed, within 1 year after completion
5 of the audit, sufficiently to enable the
6 building to achieve at least a 20 per-
7 cent reduction in energy use;

8 (II) \$0.15 per square foot of ret-
9 rofit area for demonstrated energy use
10 reductions from 20 percent to 30 per-
11 cent;

12 (III) \$0.75 per square foot for
13 demonstrated energy use reductions
14 from 30 percent to 40 percent;

15 (IV) \$1.60 per square foot for
16 demonstrated energy use reductions
17 from 40 percent to 50 percent; and

18 (V) \$2.50 per square foot for
19 demonstrated energy use reductions
20 exceeding 50 percent.

21 (ii) LIMITATION.—Amounts provided
22 under subclauses (II) through (V) of clause
23 (i) combined shall not exceed 50 percent of
24 the total retrofit cost of a building.

1 (iii) ADDITIONAL AWARDS.—Addi-
2 tional awards may be provided, for build-
3 ings achieving at least 20 percent energy
4 savings using funding provided under
5 clause (i), as follows:

6 (I) WATER.—Grants may be
7 made for whole building potable water
8 use reduction (using an appropriate
9 method approved by the Secretary of
10 Energy) for up to 50 percent of the
11 total retrofit cost, including amounts
12 up to—

13 (aa) \$24.00 per thousand
14 gallons per year of potable water
15 savings of 40 percent or more;

16 (bb) \$27.00 per thousand
17 gallons per year of potable water
18 savings of 50 percent or more;
19 and

20 (cc) \$30.00 per thousand
21 gallons per year of potable water
22 savings of 60 percent or more.

23 (II) RENEWABLE ENERGY USE.—
24 For cost-effective use of renewable en-
25 ergy, an award of up to \$10,000 may

1 be provided for uses with respect to
2 which Federal tax credits are not
3 available, and the Secretary of Energy
4 shall develop relevant standards for
5 documenting compliance.

6 (III) ENVIRONMENTAL IMPROVE-
7 MENTS.—For other environmental im-
8 provements relating to—

9 (aa) indoor air quality;

10 (bb) natural lighting;

11 (cc) use of renewable mate-
12 rials; and

13 (dd) any other such im-
14 provements, as determined by the
15 Secretary of Energy, that do not
16 result in a decrease in energy ef-
17 ficiency,

18 an award of up to \$1,000 for improve-
19 ments in each such category.

20 (C) HISTORIC BUILDINGS.—Notwith-
21 standing subparagraphs (A) and (B), a building
22 in or eligible for the National Register of His-
23 toric Places shall be eligible for awards under
24 this paragraph in amounts up to 120 percent of

1 the amounts set forth in subparagraphs (A) and
2 (B).

3 (D) SUPPLEMENTAL SUPPORT.—State and
4 local governments may supplement the per-
5 building expenditures under this paragraph
6 with funding from other sources.

7 (j) SOURCES OF FEDERAL FUNDS.—

8 (1) ADDITIONAL STATE ENERGY PROGRAM
9 FUNDS.—Any appropriated funding provided to a
10 State Energy Program that is not specifically re-
11 quired to be expended for a different federally des-
12 ignated purpose may be used to support a REEP
13 program.

14 (2) PROGRAM ADMINISTRATION.—State Energy
15 Offices or designated State agencies may expend up
16 to 10 percent of funding provided under this section
17 for program administration.

18 (3) AUTHORIZATION OF APPROPRIATIONS.—
19 There are authorized to be appropriated for the pur-
20 poses of this section, for each of fiscal years 2010,
21 2011, 2012, and 2013—

22 (A) such sums as may be necessary to the
23 Secretary of Energy for distribution to State
24 Energy Offices and other designated State
25 agencies in accordance with this section;

1 (B) such sums as may be necessary to the
2 Administrator for program administration
3 costs;

4 (C) such sums as may be necessary to the
5 Secretary of Energy for program administration
6 costs; and

7 (D) such sums as may be necessary to the
8 Secretary of Housing and Urban Development
9 for program administration costs.

10 **SEC. 203. ENERGY EFFICIENT MANUFACTURED HOMES.**

11 (a) DEFINITIONS.—In this section:

12 (1) MANUFACTURED HOME.—The term “manu-
13 factured home” has the meaning given such term in
14 section 603 of the National Manufactured Housing
15 Construction and Safety Standards Act of 1974 (42
16 U.S.C. 5402).

17 (2) ENERGY STAR QUALIFIED MANUFACTURED
18 HOME.—The term “Energy Star qualified manufac-
19 tured home” means a manufactured home that has
20 been designed, produced, and installed in accordance
21 with Energy Star’s guidelines by an Energy Star
22 certified plant.

23 (b) PURPOSE.—The purpose of this section is to as-
24 sist low-income households residing in manufactured
25 homes constructed prior to 1976 to save energy and en-

1 ergy expenditures by providing support toward the pur-
2 chase of new Energy Star qualified manufactured homes.

3 (c) GRANTS TO STATE AGENCIES.—

4 (1) GRANTS.—The Secretary of Energy may
5 make grants to State agencies responsible for devel-
6 oping State energy conservation plans under section
7 362 of the Energy Policy and Conservation Act (42
8 U.S.C. 6322) (or such other existing State agency
9 that exercises similar functions as the Governor of
10 a State may designate), to provide owners of manu-
11 factured homes constructed prior to 1976 rebates to
12 use toward purchases of new Energy Star qualified
13 manufactured homes.

14 (2) ALLOCATION OF GRANTS.—Grants under
15 paragraph (1) shall be distributed to State agencies
16 in States on the basis of their proportionate share
17 of all manufactured homes constructed prior to 1976
18 that are occupied as primary residences in the
19 United States, based on the most recent and accu-
20 rate data available.

21 (3) REBATES.—

22 (A) PRIMARY RESIDENCE REQUIRE-
23 MENT.—A rebate described under paragraph
24 (1) may only be made to an owner of a manu-
25 factured home constructed prior to 1976 that is

1 used on a year-round basis as a primary resi-
2 dence.

3 (B) DESTRUCTION AND REPLACEMENT.—

4 A rebate described under paragraph (1) may be
5 made only if the manufactured home con-
6 structed prior to 1976 will be—

7 (i) destroyed (including appropriate
8 recycling); and

9 (ii) replaced, in the same general loca-
10 tion, as determined by the applicable State
11 agency, with an Energy Star qualified
12 manufactured home.

13 (C) SINGLE REBATE.—A rebate described
14 under paragraph (1) may not be provided to
15 any owner of a manufactured home constructed
16 prior to 1976 that was or is a member of a
17 household for which any member of the house-
18 hold was provided a rebate pursuant to this sec-
19 tion.

20 (D) ELIGIBLE HOUSEHOLDS.—To be eligi-
21 ble to receive a rebate described under para-
22 graph (1), an owner of a manufactured home
23 constructed prior to 1976 shall demonstrate to
24 the applicable State agency that the total in-
25 come of all members the owner's household does

1 not exceed 200 percent of the Federal poverty
2 level for income in the applicable area.

3 (4) REBATE LIMITATION.—Rebates provided by
4 State agencies under this section shall not exceed
5 \$7,500 per manufactured home from any funds ap-
6 propriated pursuant to this section.

7 (5) USE OF STATE FUNDS.—A State agency
8 providing rebates under this section may supplement
9 the amount of such rebates under paragraph (4) by
10 any amount such agency approves if such additional
11 amount is from State funds and other sources, in-
12 cluding private donations or grants from charitable
13 foundations.

14 (6) SIMILAR PROGRAMS.—

15 (A) STATE PROGRAMS.—A State agency
16 conducting a program that has the purpose of
17 replacing manufactured homes constructed
18 prior to 1976 with Energy Star qualified manu-
19 factured homes, may use funding provided
20 under this section to support such a program,
21 provided such funding does not exceed the re-
22 bate limitation amount under paragraph (4).

23 (B) FEDERAL PROGRAMS.—The Secretary
24 of Energy shall seek to achieve the purpose of

1 this section through similar Federal programs
2 including—

3 (i) the Weatherization Assistance Pro-
4 gram under part A of title IV of the En-
5 ergy Conservation and Production Act (42
6 U.S.C. 6861 et seq.); and

7 (ii) the program under part D of title
8 III of the Energy Policy and Conservation
9 Act (42 U.S.C. 6321 et seq.).

10 (7) ADMINISTRATION.—

11 (A) CONTROLS AND PROCEDURES.—Each
12 State agency receiving funding under this sec-
13 tion shall establish fiscal controls and account-
14 ing procedures sufficient, as determined by the
15 Secretary of Energy, to ensure proper account-
16 ing for disbursements made from such funds
17 and fund balances. Such procedures shall con-
18 form to generally accepted government account-
19 ing principles.

20 (B) COORDINATION WITH OTHER STATE
21 AGENCIES.—A State agency receiving funding
22 under this section may coordinate its efforts,
23 and share funds for administration, with other
24 State agencies involved in low-income housing
25 programs.

1 (C) ADMINISTRATIVE EXPENSES.—A State
2 agency receiving funding under this section may
3 expend not more than 10 percent of such funds
4 for administrative expenses.

5 (d) AUTHORIZATION OF APPROPRIATIONS.—

6 (1) IN GENERAL.—There are authorized to be
7 appropriated to the Secretary of Energy such sums
8 as may be necessary to carry out this section.

9 (2) ADMINISTRATIVE EXPENSES.—Of the
10 amounts available each fiscal year to carry out this
11 section, the Secretary of Energy may expend not
12 more than 5 percent to pay administrative expenses.

13 **SEC. 204. BUILDING ENERGY PERFORMANCE LABELING**
14 **PROGRAM.**

15 (a) ESTABLISHMENT.—

16 (1) PURPOSE.—The Administrator shall estab-
17 lish a building energy performance labeling program
18 with broad applicability to the residential and com-
19 mercial markets to enable and encourage knowledge
20 about building energy performance by owners and
21 occupants and to inform efforts to reduce energy
22 consumption nationwide.

23 (2) COMPONENTS.—In developing such pro-
24 gram, the Administrator shall—

1 (A) consider existing programs, such as
2 Environmental Protection Agency's Energy
3 Star program, the Home Energy Rating System
4 (HERS) Index, and Federal programs at the
5 Department of Energy;

6 (B) support the development of model per-
7 formance labels for residential and commercial
8 buildings; and

9 (C) utilize incentives and other means to
10 spur use of energy performance labeling by pub-
11 lic and private sector buildings nationwide.

12 (b) DATA ASSESSMENT FOR BUILDING ENERGY PER-
13 FORMANCE.—

14 (1) INITIAL REPORT.—Not later than 90 days
15 after the date of enactment of this Act, the Adminis-
16 trator shall provide to Congress, as well as to the
17 Secretary of Energy and the Office of Management
18 and Budget, a report identifying—

19 (A) all principal building types for which
20 statistically significant energy performance data
21 exists to serve as the basis of measurement pro-
22 tocols and labeling requirements for achieved
23 building energy performance; and

1 (B) those building types for which addi-
2 tional data is required to enable the develop-
3 ment of such protocols and requirements.

4 (2) ADDITIONAL REPORTS.—Additional updated
5 reports shall be provided as often as considered
6 practicable by the Administrator, but not less than
7 every 2 years.

8 (c) BUILDING DATA ACQUISITION.—

9 (1) RESOURCE REQUIREMENTS.—For all prin-
10 cipal building types identified under subsection (b),
11 the Secretary of Energy, not later than 90 days
12 after a report by the Administrator under subsection
13 (b), shall provide to Congress, the Administrator,
14 and the Office of Management and Budget a state-
15 ment of additional resources needed, if any, to fully
16 develop the relevant data, as well as the anticipated
17 timeline for data development.

18 (2) CONSULTATION.—The Secretary of Energy
19 shall consult with the Administrator concerning the
20 ability to use data series for these additional build-
21 ing types to support the achieved performance com-
22 ponent in the labeling program.

23 (3) IMPROVEMENTS TO BUILDING ENERGY CON-
24 SUMPTION DATABASES.—

1 (A) COMMERCIAL DATABASE.—The Sec-
2 retary of Energy shall support improvements to
3 the Commercial Buildings Energy Consumption
4 Survey (CBECS) as authorized by section
5 205(k) of the Department of Energy Organiza-
6 tion Act (42 U.S.C. 7135(k))—

7 (i) to enable complete and robust data
8 for the actual energy performance of prin-
9 cipal building types currently covered by
10 survey;

11 (ii) to cover additional building types
12 as identified by the Administrator, such
13 that achieved performance measurement
14 protocols are developed for at least 90 per-
15 cent of all major commercial building types
16 within 5 years; and

17 (iii) to include third-party audits of
18 random data samplings to ensure the qual-
19 ity and accuracy of survey information.

20 (B) RESIDENTIAL DATABASES.—The Ad-
21 ministrator, in consultation with the Energy In-
22 formation Administration and the Secretary of
23 Energy, shall support improvements to the Res-
24 idential Energy Consumption Survey (RECS)
25 as authorized by section 205(k) of the Depart-

1 ment of Energy Organization Act (42 U.S.C.
2 7135(k)), or such other residential energy per-
3 formance databases as the Administrator con-
4 siders appropriate, to aid the development of
5 achieved performance measurement protocols
6 for residential building energy use for at least
7 90 percent of the residential market within 5
8 years.

9 (C) CONSULTATION.—The Secretary of
10 Energy and the Administrator shall consult
11 with public, private, and nonprofit sector rep-
12 resentatives from the building industry and real
13 estate industry to assist in the evaluation and
14 improvement of building energy performance
15 databases and labeling programs.

16 (d) IDENTIFICATION OF MEASUREMENT PROTOCOLS
17 FOR ACHIEVED PERFORMANCE.—

18 (1) PROPOSED PROTOCOLS AND REQUIRE-
19 MENTS.—At the earliest practicable date, but not
20 later than 1 year after identifying a building type
21 under subsection (b)(1)(A), the Administrator shall
22 propose a measurement protocol for that building
23 type and a requirement detailing how to use that
24 protocol in completing applicable commercial or resi-

1 dential performance labels created pursuant to this
2 section.

3 (2) FINAL RULE.—After providing for appro-
4 priate notice and comment, the Administrator shall
5 publish a final rule containing a measurement pro-
6 tocol and the corresponding requirements for apply-
7 ing that protocol. Such a rule—

8 (A) shall define the minimum period for
9 measurement of energy use by buildings of that
10 type and other details for determining achieved
11 performance, to include leased buildings or
12 parts thereof;

13 (B) shall identify necessary data collection
14 and record retention requirements; and

15 (C) may specify transition rules and ex-
16 emptions for classes of buildings within the
17 building type.

18 (e) PROCEDURES FOR EVALUATING DESIGNED PER-
19 FORMANCE.—The Administrator shall develop procedures
20 for evaluating the designed performance of individual
21 building types. The Administrator may conduct such feasi-
22 bility studies and demonstration projects as are necessary
23 to evaluate the sufficiency of proposed protocols for de-
24 signed performance.

1 (f) CREATION OF BUILDING ENERGY PERFORMANCE
2 LABELING PROGRAM.—

3 (1) MODEL LABEL.—Not later than 1 year
4 after the date of enactment of this Act, the Adminis-
5 trator shall propose a model building energy label
6 that provides a format—

7 (A) to display achieved performance and
8 designed performance data;

9 (B) that may be tailored for residential
10 and commercial buildings, and for single-occu-
11 pancy and multitenanted buildings; and

12 (C) to display other appropriate elements
13 identified during the development of measure-
14 ment protocols under subsections (d) and (e).

15 (2) INCLUSIONS.—Nothing in this section shall
16 require the inclusion on such a label of designed per-
17 formance data where impracticable or not cost effec-
18 tive, or to preclude the display of both achieved per-
19 formance and designed performance data for a par-
20 ticular building where both such measures are avail-
21 able, practicable, and cost effective.

22 (3) EXISTING PROGRAMS.—In developing the
23 model label, the Administrator shall consider exist-
24 ing programs, including—

1 (A) the Environmental Protection Agency's
2 Energy Star Portfolio Manager program and
3 the California HERS II program Custom Ap-
4 proach for the achieved performance component
5 of the label;

6 (B) the Home Energy Rating System
7 (HERS) Index system for the designed per-
8 formance component of the label; and

9 (C) other Federal and State programs, in-
10 cluding the Department of Energy's related
11 programs on building technologies and those of
12 the Federal Energy Management Program.

13 (4) FINAL RULE.—After providing for appro-
14 priate notice and comment, the Administrator shall
15 publish a final rule containing the label applicable to
16 covered building types.

17 (g) DEMONSTRATION PROJECTS FOR LABELING
18 PROGRAM.—

19 (1) IN GENERAL.—The Administrator shall con-
20 duct building energy performance labeling dem-
21 onstration projects for different building types—

22 (A) to ensure the sufficiency of the current
23 Commercial Buildings Energy Consumption
24 Survey and other data to serve as the basis for
25 new measurement protocols for the achieved

1 performance component of the building energy
2 performance labeling program;

3 (B) to inform the development of measure-
4 ment protocols for building types not currently
5 covered by the Commercial Buildings Energy
6 Consumption Survey; and

7 (C) to identify any additional criteria need-
8 ed to ensure effective use of the model label.

9 (2) PARTICIPATION.—Such demonstration
10 projects shall include participation of—

11 (A) buildings from diverse geographical
12 and climate regions;

13 (B) buildings in both urban and rural
14 areas;

15 (C) single-family residential buildings;

16 (D) multihousing residential buildings with
17 more than 50 units, including at least one
18 project that provides affordable housing to indi-
19 viduals of diverse incomes;

20 (E) single-occupant commercial buildings
21 larger than 30,000 square feet;

22 (F) multitenanted commercial buildings
23 larger than 50,000 square feet; and

24 (G) buildings from both the public and pri-
25 vate sectors.

1 (3) PRIORITY.—Priority in the selection of dem-
2 onstration projects shall be given to projects that fa-
3 cilitate large-scale implementation of the labeling
4 program for samples of buildings across neighbor-
5 hoods, geographic regions, cities, or States.

6 (4) FINDINGS.—The Administrator shall report
7 any findings from demonstration projects under this
8 subsection, including an identification of any areas
9 of needed data improvement, to the Department of
10 Energy’s Energy Information Administration and
11 Building Technologies Program.

12 (5) COORDINATION.—The Administrator and
13 the Secretary of Energy shall coordinate demonstra-
14 tion projects undertaken pursuant to this subsection
15 with those undertaken as part of the Zero-Net-En-
16 ergy Commercial Buildings Initiative adopted under
17 section 422 of the Energy Independence and Secu-
18 rity Act of 2007 (42 U.S.C. 17082).

19 (h) IMPLEMENTATION OF LABELING PROGRAM.—

20 (1) IN GENERAL.—The Administrator, in con-
21 sultation with the Secretary of Energy, shall work
22 with all State Energy Offices established pursuant
23 to part D of title III of the Energy Policy and Con-
24 servation Act (42 U.S.C. 6321 et seq.) or other
25 State authorities as necessary for the purpose of im-

1 plementing the labeling program established under
2 this section for commercial and residential buildings.

3 (2) OUTREACH TO LOCAL AUTHORITIES.—The
4 Administrator shall, acting in consultation and co-
5 ordination with the respective States, encourage use
6 of the labeling program by counties and other local-
7 ities to broaden access to information about building
8 energy use, for example, through disclosure of build-
9 ing label contents in tax, title, and other records
10 those localities maintain. For this purpose, the Ad-
11 ministrators shall develop an electronic version of the
12 label and information that can be readily trans-
13 mitted and read in widely-available computer pro-
14 grams but is protected from unauthorized manipula-
15 tion.

16 (3) MEANS OF IMPLEMENTATION.—In adopting
17 the model labeling program established under this
18 section, a State shall require that labeled informa-
19 tion be made accessible to new and prospective own-
20 ers, lenders, tenants, occupants, or other relevant
21 parties in such a way that the information is more
22 fully factored into market transactions. Such
23 accessibility may be accomplished through—

24 (A) labeling the building and public dislo-
25 sure of the label at the time of—

1 (i) a building audit conducted with
2 support from Federal or State funds;

3 (ii) a building energy-efficiency ret-
4 rofit conducted in response to such an
5 audit;

6 (iii) a final inspection of major ren-
7 ovations or additions made to a building in
8 accordance with a building permit issued
9 by a local government entity;

10 (iv) a sale that is recorded for title
11 and tax purposes;

12 (v) a new lien recorded on the prop-
13 erty for more than a set percentage of the
14 assessed value of the property if that lien
15 reflects public financial assistance for en-
16 ergy-related improvements to that building;
17 or

18 (vi) a change in ownership or oper-
19 ation of the building for purposes of utility
20 billing; or

21 (B) other appropriate means.

22 (4) DISTRIBUTION OF FUNDS.—

23 (A) ELIGIBLE STATES.—The Adminis-
24 trator shall distribute funds allocated to the
25 program under this section to States that—

1 (i) adopt by statute or regulation a re-
2 quirement that buildings be assessed and
3 labeled, consistent with the labeling re-
4 quirements of the program established
5 under this section, including a requirement
6 described in paragraph (3); or

7 (ii) adopt a plan to implement a
8 model labeling program established under
9 this section within 6 months after the es-
10 tablishment of that program and within 3
11 years after the date of enactment of this
12 Act.

13 (B) ALLOCATION FORMULA.—The alloca-
14 tion of such funds to States shall be as follows:

15 (i) $\frac{1}{3}$ shall be allocated equally among
16 eligible States.

17 (ii) $\frac{2}{3}$ shall be allocated in proportion
18 to the number of buildings potentially sub-
19 ject to the model labeling program in each
20 State.

21 (5) GUIDANCE.—The Administrator may create
22 or identify model programs and resources to provide
23 guidance to offer to States and localities for creating
24 labeling programs consistent with the model pro-
25 gram established under this section.

1 (6) PROGRESS REPORT.—The Administrator, in
2 consultation with the Secretary of Energy, shall pro-
3 vide a progress report to Congress not later than 3
4 years after the date of enactment of this Act that—

5 (A) evaluates the effectiveness of efforts to
6 advance use of the model labeling program by
7 States and localities;

8 (B) recommends any legislative changes
9 necessary to broaden the use of the model label-
10 ing program; and

11 (C) identifies any changes to broaden the
12 use of the model labeling program that the Ad-
13 ministrator has made or intends to make that
14 do not require additional legislative authority.

15 (i) IMPLEMENTATION OF LABELING PROGRAM IN
16 FEDERAL BUILDINGS.—

17 (1) USE OF LABELING PROGRAM.—The Sec-
18 retary of Energy and the Administrator shall use the
19 labeling program established under this section to
20 evaluate energy performance in the facilities of the
21 Department of Energy and the Environmental Pro-
22 tection Agency, respectively, to the extent prac-
23 ticable, and shall encourage and support implemen-
24 tation efforts in other Federal agencies.

1 (2) ANNUAL PROGRESS REPORT.—The Sec-
2 retary of Energy and Administrator shall provide an
3 annual progress report to Congress and the Office of
4 Management and Budget detailing efforts to imple-
5 ment this subsection, as well as any best practices
6 or needed resources identified as a result of such ef-
7 forts.

8 (j) PUBLIC OUTREACH.—The Secretary of Energy
9 and the Administrator, in consultation with nonprofit and
10 industry stakeholders with specialized expertise, and in
11 conjunction with other energy efficiency public awareness
12 efforts, shall establish a business and consumer education
13 program to increase awareness about the importance of
14 building energy efficiency and to facilitate widespread use
15 of the labeling program established under this section.

16 (k) DEFINITIONS.—In this section:

17 (1) BUILDING TYPE.—The term “building
18 type” means a grouping of buildings as identified by
19 their principal building activities, or as grouped by
20 their use, including office buildings, laboratories, li-
21 braries, data centers, retail hotels, warehouses, and
22 educational facilities.

23 (2) MEASUREMENT PROTOCOL.—The term
24 “measurement protocol” means the methodology,
25 prescribed by the Administrator, for defining a

1 benchmark for building energy performance for a
2 specific building type and for measuring that per-
3 formance against the benchmark.

4 (3) ACHIEVED PERFORMANCE.—The term
5 “achieved performance” means the actual energy
6 consumption of a building as compared to a baseline
7 building of the same type and size, determined by
8 actual consumption data normalized for appropriate
9 variables.

10 (4) DESIGNED PERFORMANCE.—The term “de-
11 signed performance” means the energy consumption
12 performance a building would achieve if operated
13 consistent with its design intent for building energy
14 use, utilizing a standardized set of operational condi-
15 tions informed by data collected or confirmed during
16 an energy audit.

17 (l) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated—

19 (1) to the Administrator for implementation of
20 this section such sums as may be necessary for each
21 fiscal year; and

22 (2) to the Secretary of Energy for implementa-
23 tion of this section such sums as may be necessary
24 for each fiscal year.

1 **Subtitle B—Lighting and Appliance**
2 **Energy Efficiency Programs**

3 **SEC. 211. LIGHTING EFFICIENCY STANDARDS.**

4 (a) OUTDOOR LIGHTING.—

5 (1) DEFINITIONS.—(A) Section 340(1) of the
6 Energy Policy and Conservation Act (42 U.S.C.
7 6311(1)) is amended by striking subparagraph (L)
8 and inserting the following:

9 “(L) Outdoor luminaires.

10 “(M) Outdoor high light output lamps.

11 “(N) Any other type of industrial equip-
12 ment which the Secretary classifies as covered
13 equipment under section 341(b).”.

14 (B) Section 340 of the Energy Policy and Con-
15 servation Act (42 U.S.C. 6311) is amended by add-
16 ing at the end the following:

17 “(25) The term ‘luminaire’ means a complete
18 lighting unit consisting of a lamp or lamps, together
19 with parts designed to distribute the light, to posi-
20 tion and protect such lamps, and to connect such
21 lamps to the power supply.

22 “(26) The term ‘outdoor luminaire’ means a lu-
23 minaire that is listed as suitable for wet locations
24 pursuant to Underwriters Laboratories Inc. stand-
25 ard UL 1598 and is labeled as ‘Suitable for Wet Lo-

1 cations' consistent with section 410.4(A) of the Na-
2 tional Electrical Code 2005, except for—

3 “(A) luminaires designed solely for signs
4 that cannot be used in general lighting applica-
5 tions;

6 “(B) portable luminaires designed for use
7 at theatrical and television performance areas
8 and construction sites;

9 “(C) luminaires designed for continuous
10 immersion in swimming pools and other water
11 features;

12 “(D) seasonal luminaires incorporating
13 solely individual lamps rated at 10 watts or
14 less;

15 “(E) luminaires designed solely to be used
16 in emergency conditions;

17 “(F) landscape luminaries, with an inte-
18 grated photoelectric switch or programmable
19 time switch, with a nominal voltage of 15 volts
20 or less; and

21 “(G) components used for repair of in-
22 stalled luminaries.

23 “(27) The term ‘outdoor high light output
24 lamp’ means a lamp that—

1 “(A) has a rated lumen output not less
2 than 2601 lumens and not greater than 35,000
3 lumens;

4 “(B) is capable of being operated at a volt-
5 age not less than 110 volts and not greater
6 than 300 volts, or driven at a constant current
7 of 6.6 amperes; and

8 “(C) is not a Parabolic Aluminized Reflec-
9 tor lamp.

10 “(28) The term ‘outdoor lighting control’ means
11 a device incorporated in a luminaire that receives a
12 signal, from either a sensor (such as an occupancy
13 sensor, motion sensor, or daylight sensor) or an
14 input signal (including analog or digital signals com-
15 municated through wired or wireless technology),
16 and can adjust the light level according to the sig-
17 nal.”.

18 (2) STANDARDS.—Section 342 of the Energy
19 Policy and Conservation Act (42 U.S.C. 6313) is
20 amended by adding at the end the following:

21 “(g) OUTDOOR LUMINAIRES.—

22 “(1) Each outdoor luminaire manufactured on
23 or after January 1, 2011, shall have—

24 “(A) a lighting efficiency of at least 50
25 lumens per watt; and

1 “(B) a lumen maintenance, calculated as
2 mean rated lumens divided by initial lumens, of
3 at least 0.6.

4 “(2) Each outdoor luminaire manufactured on
5 or after January 1, 2013, shall have—

6 “(A) a lighting efficiency of at least 70
7 lumens per watt; and

8 “(B) a lumen maintenance, calculated as
9 mean rated lumens divided by initial lumens, of
10 at least 0.6.

11 “(3) Each outdoor luminaire manufactured on
12 or after January 1, 2015, shall have—

13 “(A) a lighting efficiency of at least 80
14 lumens per watt; and

15 “(B) a lumen maintenance, calculated as
16 mean rated lumens divided by initial lumens, of
17 at least 0.65.

18 “(4) In addition to the requirements of para-
19 graphs (1) through (3), each outdoor luminaire man-
20 ufactured on or after January 1, 2011, shall have
21 the capability of producing at least two different
22 light levels, including 100 percent and 60 percent of
23 full lamp output.

24 “(5)(A) Not later than January 1, 2017, the
25 Secretary shall issue a final rule amending the appli-

1 cable standards established in paragraphs (3) and
2 (4) if technologically feasible and economically justi-
3 fied. Such a final rule shall be effective no later than
4 January 1, 2020.

5 “(B) A final rule issued under subparagraph
6 (A) shall establish efficiency standards at the max-
7 imum level that is technically feasible and economi-
8 cally justified, as provided in subsections (o) and (p)
9 of section 325. The Secretary may also, in such rule-
10 making, amend or discontinue the product exclusions
11 listed in section 340(23)(A) through (G), or amend
12 the lumen maintenance requirements in paragraph
13 (3) if he determines that such amendments are con-
14 sistent with the purposes of this Act.

15 “(C) If the Secretary issues a final rule under
16 subparagraph (A) establishing amended standards,
17 the final rule shall provide that the amended stand-
18 ards apply to products manufactured on or after
19 January 1, 2020, or one year after the date on
20 which the final amended standard is published,
21 whichever is later.

22 “(h) OUTDOOR HIGH LIGHT OUTPUT LAMPS.—Each
23 outdoor high light output lamp manufactured on or after
24 January 1, 2012, shall have a lighting efficiency of at least
25 45 lumens per watt.”.

1 (3) TEST PROCEDURES.—Section 343(a) of the
2 Energy Policy and Conservation Act (42 U.S.C.
3 6314(a)) is amended by adding at the end the fol-
4 lowing:

5 “(10) OUTDOOR LIGHTING.—

6 “(A) With respect to outdoor luminaries
7 and outdoor high light output lamps, the test
8 procedures shall be based upon the test proce-
9 dures specified in Illuminating Engineering So-
10 ciety procedure LM-79 as of March 1, 2009,
11 and/or other appropriate consensus test proce-
12 dures developed by the Illuminating Engineer-
13 ing Society or other appropriate consensus
14 standards bodies.

15 “(B) If Illuminating Engineering Society
16 procedure LM-79 is amended, the Secretary
17 shall amend the test procedures established in
18 subparagraph (A) as necessary to be consistent
19 with the amended LM-79 test procedure, unless
20 the Secretary determines, by rule, published in
21 the Federal Register and supported by clear
22 and convincing evidence, that to do so would
23 not meet the requirements for test procedures
24 under paragraph (2).

1 “(C) The Secretary may revise the test
2 procedures for outdoor luminaries or outdoor
3 high light output lamps by rule consistent with
4 paragraph (2), and may incorporate as appro-
5 priate consensus test procedures developed by
6 the Illuminating Engineering Society or other
7 appropriate consensus standards bodies.”.

8 (4) PREEMPTION.—Section 345 of the Energy
9 Policy and Conservation Act (42 U.S.C. 6316) is
10 amended by adding at the end the following:

11 “(i)(1) Except as provided in paragraph (2), section
12 327 shall apply to outdoor luminaries to the same extent
13 and in the same manner as the section applies under part
14 B.

15 “(2) Any State standard that is adopted on or before
16 January 1, 2015, pursuant to a statutory requirement to
17 adopt efficiency standards for reducing outdoor lighting
18 energy use enacted prior to January, 31, 2008, shall not
19 be preempted.”.

20 (b) PORTABLE LIGHTING.—

21 (1) PORTABLE LIGHT FIXTURES.—

22 (A) DEFINITIONS.—Section 321 of the En-
23 ergy Policy and Conservation Act (42 U.S.C.
24 6291) is amended by adding at the end the fol-
25 lowing:

1 “(67) ART WORK LIGHT FIXTURE.—The term
2 ‘art work light fixture’ means a light fixture de-
3 signed only to be mounted directly to an art work
4 and for the purpose of illuminating that art work.

5 “(68) LED LIGHT ENGINE.—The term ‘LED
6 light engine’ or ‘LED light engine with integral heat
7 sink’ means a subsystem of an LED light fixture
8 that—

9 “(A) includes 1 or more LED components,
10 including—

11 “(i) an LED driver power source with
12 electrical and mechanical interfaces; and

13 “(ii) an integral heat sink to provide
14 thermal dissipation; and

15 “(B) may be designed to accept additional
16 components that provide aesthetic, optical, and
17 environmental control.

18 “(69) LED LIGHT FIXTURE.—The term ‘LED
19 light fixture’ means a complete lighting unit con-
20 sisting of—

21 “(A) an LED light source with 1 or more
22 LED lamps or LED light engines; and

23 “(B) parts—

24 “(i) to distribute the light;

1 “(ii) to position and protect the light
2 source; and

3 “(iii) to connect the light source to
4 electrical power.

5 “(70) LIGHT FIXTURE.—The term ‘light fix-
6 ture’ means a product designed to provide light that
7 includes—

8 “(A) at least 1 lamp socket; and

9 “(B) parts—

10 “(i) to distribute the light;

11 “(ii) position and protect 1 or more
12 lamps; and

13 “(iii) to connect 1 or more lamps to a
14 power supply.

15 “(71) PORTABLE LIGHT FIXTURE.—

16 “(A) IN GENERAL.—The term ‘portable
17 light fixture’ means a light fixture that has a
18 flexible cord and an attachment plug for con-
19 nection to a nominal 120-volt circuit that—

20 “(i) allows the user to relocate the
21 product without any rewiring; and

22 “(ii) typically can be controlled with a
23 switch located on the product or the power
24 cord of the product.

1 “(B) EXCLUSIONS.—The term ‘portable
2 light fixture’ does not include—

3 “(i) direct plug-in night lights, sun or
4 heat lamps, medical or dental lights, port-
5 able electric hand lamps, signs or commer-
6 cial advertising displays, photographic
7 lamps, germicidal lamps, or light fixtures
8 for marine use or for use in hazardous lo-
9 cations (as those terms are defined in
10 ANSI/NFPA 70 of the National Electrical
11 Code); or

12 “(ii) decorative lighting strings, deco-
13 rative lighting outfits, or electric candles or
14 candelabra without lamp shades that are
15 covered by Underwriter Laboratories (UL)
16 standard 588, ‘Seasonal and Holiday Dec-
17 orative Products’.”.

18 (B) COVERAGE.—

19 (i) IN GENERAL.—Section 322(a) of
20 the Energy Policy and Conservation Act
21 (42 U.S.C. 6292(a)) is amended—

22 (I) by redesignating paragraph
23 (20) as paragraph (21); and

24 (II) by inserting after paragraph
25 (19) the following:

1 “(20) Portable light fixtures.”.

2 (ii) CONFORMING AMENDMENTS.—

3 Section 325(l) of the Energy Policy and
4 Conservation Act (42 U.S.C. 6295(l)) is
5 amended by striking “paragraph (19)”
6 each place it appears in paragraphs (1)
7 and (2) and inserting “paragraph (21)”.

8 (C) TEST PROCEDURES.—Section 323(b)
9 of the Energy Policy and Conservation Act (42
10 U.S.C. 6293(b)) is amended by adding at the
11 end the following:

12 “(19) LED FIXTURES AND LED LIGHT EN-
13 GINES.—Test procedures for LED fixtures and LED
14 light engines shall be based on Illuminating Engi-
15 neering Society of North America (IESNA) test pro-
16 cedure LM-79, Approved Method for Electrical and
17 Photometric Testing of Solid-State Lighting Devices,
18 and IESNA-approved test procedure for testing
19 LED light engines.”.

20 (D) STANDARDS.—Section 325 of the En-
21 ergy Policy and Conservation Act (42 U.S.C.
22 6295) is amended—

23 (i) by redesignating subsection (ii) as
24 subsection (nn);

1 (ii) in subsection (nn)(2), as redesign-
2 nated in clause (i) of this subparagraph, by
3 striking “(hh)” and inserting “(mm)”; and
4 (iii) by inserting after subsection (hh)
5 the following:

6 “(ii) PORTABLE LIGHT FIXTURES.—

7 “(1) IN GENERAL.—Subject to paragraphs (2)
8 and (3), portable light fixtures manufactured on or
9 after January 1, 2012, shall meet 1 or more of the
10 following requirements:

11 “(A) Be a fluorescent light fixture that
12 meets the requirements of the Energy Star Pro-
13 gram for Residential Light Fixtures, Version
14 4.2.

15 “(B) Be equipped with only 1 or more
16 GU–24 line-voltage sockets and not be rated for
17 use with incandescent lamps of any type (as de-
18 fined in ANSI standards), and meet the re-
19 quirements of version 4.2 of the Energy Star
20 program for residential light fixtures.

21 “(C) Be an LED light fixture or a light
22 fixture with an LED light engine and comply
23 with the following minimum requirements:

24 “(i) Minimum light output: 200
25 lumens (initial).

1 “(ii) Minimum LED light engine effi-
2 cacy: 40 lumens/watt installed in fixtures
3 that meet the minimum light fixture effi-
4 cacy of 29 lumens/watt or, alternatively, a
5 minimum LED light engine efficacy of 60
6 lumens/watt for fixtures that do not meet
7 the minimum light fixture efficacy of 29
8 lumens/watt.

9 “(iii) All portable fixtures shall have a
10 minimum LED light fixture efficacy of 29
11 lumens/watt and a minimum LED light
12 engine efficacy of 60 lumens/watt by Janu-
13 ary 1, 2016.

14 “(iv) Color Correlated Temperature
15 (CCT): 2700K through 4000K.

16 “(v) Minimum Color Rendering Index
17 (CRI): 75.

18 “(vi) Power factor equal to or greater
19 than 0.70.

20 “(vii) Portable luminaries that have
21 internal power supplies shall have zero
22 standby power when the luminaire is
23 turned off.

1 “(viii) LED light sources shall deliver
2 at least 70 percent of initial lumens for at
3 least 25,000 hours.

4 “(D)(i) Be equipped with an ANSI-des-
5 ignated E12, E17, or E26 screw-based socket
6 and be prepackaged and sold together with 1
7 screw-based compact fluorescent lamp or screw-
8 based LED lamp for each screw-based socket
9 on the portable light fixture.

10 “(ii) The compact fluorescent or LED
11 lamps prepackaged with the light fixture shall
12 be fully compatible with any light fixture con-
13 trols incorporated into the light fixture (for ex-
14 ample, light fixtures with dimmers shall be
15 packed with dimmable lamps).

16 “(iii) Compact fluorescent lamps pre-
17 packaged with light fixtures shall meet the re-
18 quirements of the Energy Star Program for
19 CFLs Version 4.0.

20 “(iv) Screw-based LED lamps shall comply
21 with the minimum requirements described in
22 subparagraph (C).

23 “(E) Be equipped with 1 or more single-
24 ended, non-screw based halogen lamp sockets
25 (line or low voltage), a dimmer control or high-

1 low control, and be rated for a maximum of 100
2 watts.

3 “(2) REVIEW.—

4 “(A) REVIEW.—The Secretary shall review
5 the criteria and standards established under
6 paragraph (1) to determine if revised standards
7 are technologically feasible and economically
8 justified.

9 “(B) COMPONENTS.—The review shall in-
10 clude consideration of—

11 “(i) whether a separate compliance
12 procedure is still needed for halogen fix-
13 tures described in subparagraph (E) and,
14 if necessary, what an appropriate standard
15 for halogen fixtures shall be;

16 “(ii) whether the specific technical cri-
17 teria described in subparagraphs (A), (C),
18 and (D)(iii) should be modified; and

19 “(iii) which fixtures should be exempt-
20 ed from the light fixture efficacy standard
21 as of January 1, 2016, because the fix-
22 tures are primarily decorative in nature (as
23 defined by the Secretary) and, even if ex-
24 empted, are likely to be sold in limited
25 quantities.

1 “(C) TIMING.—

2 “(i) DETERMINATION.—Not later
3 than January 1, 2014, the Secretary shall
4 publish amended standards, or a deter-
5 mination that no amended standards are
6 justified, under this subsection.

7 “(ii) STANDARDS.—Any standards
8 under this paragraph shall take effect on
9 January 1, 2016.

10 “(3) ART WORK LIGHT FIXTURES.—Art work
11 light fixtures manufactured on or after January 1,
12 2012, shall—

13 “(A) comply with paragraph (1); or

14 “(B)(i) contain only ANSI-designated E12
15 screw-based line-voltage sockets;

16 “(ii) have not more than 3 sockets;

17 “(iii) be controlled with an integral high/
18 low switch;

19 “(iv) be rated for not more than 25 watts
20 if fitted with 1 socket; and

21 “(v) be rated for not more than 15 watts
22 per socket if fitted with 2 or 3 sockets.

23 “(4) EXCEPTION FROM PREEMPTION.—Not-
24 withstanding section 327, Federal preemption shall
25 not apply to a regulation concerning portable light

1 fixtures adopted by the California Energy Commis-
2 sion on or before January 1, 2014.”.

3 (2) GU-24 BASE LAMPS.—

4 (A) DEFINITIONS.—Section 321 of the En-
5 ergy Policy and Conservation Act (42 U.S.C.
6 6291) (as amended by paragraph (1)(A)) is
7 amended by adding at the end the following:

8 “(72) GU-24.—The term ‘GU-24’” means the
9 designation of a lamp socket, based on a coding sys-
10 tem by the International Electrotechnical Commis-
11 sion, under which—

12 “(A) ‘G’ indicates a holder and socket type
13 with 2 or more projecting contacts, such as pins
14 or posts;

15 “(B) ‘U’ distinguishes between lamp and
16 holder designs of similar type that are not
17 interchangeable due to electrical or mechanical
18 requirements; and

19 “(C) 24 indicates the distance in millime-
20 ters between the electrical contact posts.

21 “(73) GU-24 ADAPTOR.—

22 “(A) IN GENERAL.—The term ‘GU-24
23 Adaptor’ means a 1-piece device, pig-tail, wiring
24 harness, or other such socket or base attach-
25 ment that—

1 “(i) connects to a GU-24 socket on 1
2 end and provides a different type of socket
3 or connection on the other end; and

4 “(ii) does not alter the voltage.

5 “(B) EXCLUSION.—The term ‘GU-24
6 Adaptor’ does not include a fluorescent ballast
7 with a GU-24 base.

8 “(74) GU-24 BASE LAMP.—‘GU-24 base lamp’
9 means a light bulb designed to fit in a GU-24 sock-
10 et.”.

11 (B) STANDARDS.—Section 325 of the En-
12 ergy Policy and Conservation Act (42 U.S.C.
13 6295) (as amended by paragraph (1)(D)) is
14 amended by inserting after subsection (ii) the
15 following:

16 “(jj) GU-24 BASE LAMPS.—

17 “(1) IN GENERAL.—A GU-24 base lamp shall
18 not be an incandescent lamp as defined by ANSI.

19 “(2) GU-24 ADAPTORS.—GU-24 adaptors shall
20 not adapt a GU-24 socket to any other line voltage
21 socket.”.

22 (3) STANDARDS FOR CERTAIN INCANDESCENT
23 REFLECTOR LAMPS.—Section 325(i) of the Energy
24 Policy and Conservation Act (42 U.S.C. 6293(i)) is

1 amended by adding at the end the following new
2 paragraphs:

3 “(9) STANDARDS FOR CERTAIN INCANDESCENT
4 REFLECTOR LAMPS.—(A) No later than 12 months
5 after enactment of this paragraph, the Secretary
6 shall publish a final rule establishing standards for
7 incandescent reflector lamp types specified in para-
8 graph (1)(C) of this subsection. Such standards
9 shall be effective 2 years after publication of the
10 final rule.

11 “(B) If the Secretary fails to issue a final rule
12 before the deadline specified in (i), then, effective
13 three years from the date of enactment of this para-
14 graph, the minimum standard for lamp types speci-
15 fied in 325(i)(1)(C) shall be the same as the stand-
16 ard for other incandescent reflector lamps estab-
17 lished by the Secretary pursuant to this section.

18 “(C) Any rulemaking for incandescent reflector
19 lamps completed after enactment of this section
20 shall consider standards for all incandescent reflec-
21 tor lamps, inclusive of those specified in paragraph
22 (1)(C).

23 “(10) REFLECTOR LAMPS.—No later than Jan-
24 uary 1, 2015, the Secretary shall publish a final rule
25 establishing and amending standards for reflector

1 lamps, including incandescent reflector lamps. Such
2 standards shall be effective no sooner than three
3 years after publication of the final rule. Such rule-
4 making shall consider incandescent and non-
5 incandescent technologies.”.

6 **SEC. 212. OTHER APPLIANCE EFFICIENCY STANDARDS.**

7 (a) STANDARDS FOR WATER DISPENSERS, HOT
8 FOOD HOLDING CABINETS, AND PORTABLE ELECTRIC
9 SPAS.—

10 (1) DEFINITIONS.—Section 321 of the Energy
11 Policy and Conservation Act (42 U.S.C. 6291), as
12 amended by section 211 of this Act, is further
13 amended by adding at the end the following:

14 “(75) The term ‘water dispenser’ means a fac-
15 tory-made assembly that mechanically cools and
16 heats potable water and that dispenses the cooled or
17 heated water by integral or remote means.

18 “(76) The term ‘bottle-type water dispenser’
19 means a water dispenser that uses a bottle or res-
20 ervoir as the source of potable water.

21 “(77) The term ‘point of use water dispenser’
22 means a water dispenser that uses a building’s water
23 pipes as the source of potable water.

24 “(78) The term ‘commercial hot food holding
25 cabinet’ means a heated, fully-enclosed compartment

1 with one or more solid or glass doors that is de-
2 signed to maintain the temperature of hot food that
3 has been cooked in a separate appliance. Such term
4 does not include heated glass merchandizing cabi-
5 nets, drawer warmers, or cook-and-hold appliances.

6 “(79) The term ‘portable electric spa’ means a
7 factory-built electric spa or hot tub, supplied with
8 equipment for heating and circulating water.”.

9 (2) TEST PROCEDURES.—Section 323(b) of the
10 Energy Policy and Conservation Act (42 U.S.C.
11 6293(b)) is amended by adding at the end the fol-
12 lowing:

13 “(20) BOTTLE TYPE WATER DISPENSERS AND
14 POINT OF USE WATER DISPENSERS.—Test proce-
15 dures for bottle type water dispenser and point of
16 use water dispensers shall be based on ‘Energy Star
17 Program Requirements for Bottled Water Coolers
18 version 1’ published by the Environmental Protec-
19 tion Agency. Units with an integral, automatic timer
20 shall not be tested using section D, ‘Timer Usage,’
21 of the test criteria.

22 “(21) COMMERCIAL HOT FOOD HOLDING CABI-
23 NETS.—Test procedures for commercial hot food
24 holding cabinets shall be based on the test proce-
25 dures described in ANSI/ASTM F2140–01 (Test for

1 idle energy rate-dry test). Interior volume shall be
2 based on the method shown in the Environmental
3 Protection Agency's 'Energy Star Program Require-
4 ments for Commercial Hot Food Holding Cabinets'
5 as in effect on August 15, 2003.

6 “(22) PORTABLE ELECTRIC SPAS.—Test proce-
7 dures for portable electric spas shall be based on the
8 test method for portable electric spas contained in
9 section 1604, title 20, California Code of Regula-
10 tions as amended on December 3, 2008.”.

11 (3) STANDARDS.—Section 325 of the Energy
12 Policy and Conservation Act (42 U.S.C. 6295), as
13 amended by section 211 of this Act, is further
14 amended by adding after subsection (ii) the fol-
15 lowing:

16 “(kk) BOTTLE TYPE WATER DISPENSERS AND
17 POINT OF USE WATER DISPENSERS.—Effective January
18 1, 2012, bottle-type water dispensers and point of use
19 water dispensers designed for dispensing both hot and cold
20 water shall not have standby energy consumption greater
21 than 1.2 kilowatt-hours per day.

22 “(ll) COMMERCIAL HOT FOOD HOLDING CABI-
23 NETS.—Effective January 1, 2012, commercial hot food
24 holding cabinets with interior volumes of 5 cubic feet or
25 greater shall have a maximum idle energy rate of 40 watts

1 per cubic foot of interior volume. Commercial hot food
2 holding cabinets with interior volumes of less than 5 cubic
3 feet or less shall have a maximum idle energy rate of 40
4 watts.

5 “(mm) PORTABLE ELECTRIC SPAS.—Effective Janu-
6 ary 1, 2012, portable electric spas shall not have a normal-
7 ized standby power greater than $5(V^{2/3})$ Watts where
8 V =the fill volume in gallons.

9 The Secretary of Energy shall consider revisions to the
10 standards in subsections (kk), (ll), and (mm) in accord-
11 ance with subsection (o) and publish a final rule no later
12 than January 1, 2013 establishing such revised standards,
13 or make a finding that no revisions are technically feasible
14 and economically justified. Any such revised standards
15 shall take effect January 1, 2016.”.

16 (b) COMMERCIAL FURNACE EFFICIENCY STAND-
17 ARDS.—Section 342(a) of the Energy Policy and Con-
18 servation Act (42 U.S.C. 6312(a))is amended by inserting
19 after paragraph (10) the following new paragraph

20 “(11) WARM AIR FURNACES.—Each warm air
21 furnace with an input rating of 225,000 Btu per
22 hour or more and manufactured after one year from
23 date of enactment of this paragraph shall meet the
24 following standard levels:

25 “(A) GAS-FIRED UNITS.—

1 “(i) Minimum combustion efficiency of
2 80 percent.

3 “(ii) Include an interrupted or inter-
4 mittent ignition device.

5 “(iii) Have jacket losses not exceeding
6 0.75 percent of the input rating.

7 “(iv) Have either power venting or a
8 flue damper.

9 “(B) OIL-FIRED UNITS.—

10 “(i) Minimum thermal efficiency of 81
11 percent

12 “(ii) Have jacket losses not exceeding
13 0.75 percent of the input rating;

14 “(iii) Have either power venting or a
15 flue damper.”.

16 **SEC. 213. APPLIANCE EFFICIENCY DETERMINATIONS AND**
17 **PROCEDURES.**

18 (a) DEFINITION OF ENERGY CONSERVATION STAND-
19 ARD.—Section 321(6) of the Energy Policy and Conserva-
20 tion Act (42 U.S.C. 6291(6)) is amended to read as fol-
21 lows:

22 “(6) ENERGY CONSERVATION STANDARD.—

23 “(A) IN GENERAL.—The term ‘energy con-
24 servation standard’ means 1 or more perform-
25 ance standards that—

1 “(i) for covered products (excluding
2 clothes washers, dishwashers, showerheads,
3 faucets, water closets, and urinals), pre-
4 scribe a minimum level of energy efficiency
5 or a maximum quantity of energy use, de-
6 termined in accordance with test proce-
7 dures prescribed under section 323;

8 “(ii) for showerheads, faucets, water
9 closets, and urinals, prescribe a minimum
10 level of water efficiency or a maximum
11 quantity of water use, determined in ac-
12 cordance with test procedures prescribed
13 under section 323; and

14 “(iii) for clothes washers and dish-
15 washers—

16 “(I) prescribe a minimum level of
17 energy efficiency or a maximum quan-
18 tity of energy use, determined in ac-
19 cordance with test procedures pre-
20 scribed under section 323; and

21 “(II) may include a minimum
22 level of water efficiency or a maximum
23 quantity of water use, determined in
24 accordance with those test procedures.

1 “(B) INCLUSIONS.—The term ‘energy con-
2 servation standard’ includes—

3 “(i) 1 or more design requirements, if
4 the requirements were established—

5 “(I) on or before the date of en-
6 actment of this subclause;

7 “(II) as part of a consensus
8 agreement under section 325(p)(4); or

9 “(III) as part of a final rule pub-
10 lished on or after January 1, 2012,
11 and

12 “(ii) any other requirements that the
13 Secretary may prescribe under section
14 325(r).

15 “(C) EXCLUSION.—The term ‘energy con-
16 servation standard’ does not include a perform-
17 ance standard for a component of a finished
18 covered product, unless regulation of the com-
19 ponent is authorized or established pursuant to
20 this title.”.

21 (b) ADOPTING CONSENSUS TEST PROCEDURES AND
22 TEST PROCEDURES IN USE ELSEWHERE.—Section
23 323(b) of the Energy Policy and Conservation Act (42
24 U.S.C. 6293(b)), as amended by section 212 of this Act,

1 is further amended by adding the following new paragraph
2 after paragraph (21):

3 “(23) CONSENSUS AND ALTERNATE TEST PRO-
4 CEDURES.—

5 “(A) RECEIPT OF JOINT RECOMMENDA-
6 TION OR ALTERNATE TESTING PROCEDURE.—

7 On receipt of—

8 “(i) a statement that is submitted
9 jointly by interested persons that are fairly
10 representative of relevant points of view
11 (including representatives of manufactur-
12 ers of covered products, States, and effi-
13 ciency advocates), as determined by the
14 Secretary, and contains recommendations
15 with respect to the testing procedure for a
16 covered product, or

17 “(ii) a submission of a testing proce-
18 dure currently in use for a covered product
19 by a State, nation, or group of nations—

20 “(I) if the Secretary determines
21 that the recommended testing proce-
22 dure contained in the statement or
23 submission is in accordance with sub-
24 section (b)(3), the Secretary may
25 issue a final rule that establishes an

1 energy or water conservation testing
2 procedure that is published simulta-
3 neously with a notice of proposed rule-
4 making that proposes a new or
5 amended energy or water conservation
6 testing procedure that is identical to
7 the testing procedure established in
8 the final rule to establish the rec-
9 ommended testing procedure (referred
10 to in this paragraph as a ‘direct final
11 rule’); or

12 “(II) if the Secretary determines
13 that a direct final rule cannot be
14 issued based on the statement or sub-
15 mission, the Secretary shall publish a
16 notice of the determination, together
17 with an explanation of the reasons for
18 the determination.

19 “(B) PUBLIC COMMENT.—The Secretary
20 shall solicit public comment for a period of at
21 least 110 days with respect to each direct final
22 rule issued by the Secretary under subpara-
23 graph (A)(ii)(I).

24 “(C) WITHDRAWAL OF DIRECT FINAL
25 RULES.—

1 “(i) IN GENERAL.—Not later than
2 120 days after the date on which a direct
3 final rule issued under subparagraph
4 (A)(ii)(I) is published in the Federal Reg-
5 ister, the Secretary shall withdraw the di-
6 rect final rule if—

7 “(I) the Secretary receives 1 or
8 more adverse public comments relat-
9 ing to the direct final rule under sub-
10 paragraph (B) or any alternative joint
11 recommendation; and

12 “(II) based on the rulemaking
13 record relating to the direct final rule,
14 the Secretary determines that such
15 adverse public comments or alter-
16 native joint recommendation may pro-
17 vide a reasonable basis for with-
18 drawing the direct final rule under
19 paragraph (3) or any other applicable
20 law.

21 “(ii) ACTION ON WITHDRAWAL.—On
22 withdrawal of a direct final rule under
23 clause (i), the Secretary shall—

24 “(I) proceed with the notice of
25 proposed rulemaking published simul-

1 taneously with the direct final rule as
2 described in subparagraph (A)(ii)(I);
3 and

4 “(II) publish in the Federal Reg-
5 ister the reasons why the direct final
6 rule was withdrawn.

7 “(iii) TREATMENT OF WITHDRAWN DI-
8 RECT FINAL RULES.—A direct final rule
9 that is withdrawn under clause (i) shall
10 not be considered to be a final rule for
11 purposes of subsection (b).

12 “(D) EFFECT OF PARAGRAPH.—Nothing
13 in this paragraph authorizes the Secretary to
14 issue a direct final rule based solely on receipt
15 of more than 1 statement containing rec-
16 ommended test procedures relating to the direct
17 final rule.”.

18 (c) UPDATING TELEVISION TEST METHODS.—Sec-
19 tion 323(b) of the Energy Policy and Conservation Act
20 (42 U.S.C. 6293(b))(42 U.S.C. 6293(b)), as amended by
21 subsection (a)(2) is further amended by adding at the end
22 the following new paragraph:

23 “(24) TELEVISIONS.—(A) On the date of enact-
24 ment of this section, Appendix H to Subpart B of
25 Part 430 of the United States Code of Federal Reg-

1 ulations, ‘Uniform Test Method for Measuring the
2 Energy Consumption of Television Sets’, is repealed.

3 “(B) No later than 12 months after enactment
4 of this paragraph the Secretary shall publish in the
5 Federal Register a final rule prescribing a new test
6 method for televisions.”.

7 (d) CRITERIA FOR PRESCRIBING NEW OR AMENDED
8 STANDARDS.—(1) Section 325(o)(2)(B)(i) of the Energy
9 Policy and Conservation Act (42 U.S.C. 6295(o)(2)(B)(i))
10 is amended as follows:

11 (A) By striking “and” at the end of subclause
12 (VI).

13 (B) By and inserting the following new sub-
14 clauses after subclause (VI):

15 “(VII) the estimated value of the
16 carbon dioxide or other greenhouse
17 gas emission reductions that will be
18 achieved by virtue of the higher en-
19 ergy efficiency of the covered products
20 resulting from the imposition of the
21 standard;

22 “(VIII) the estimated impact of
23 standards for a particular product on
24 average consumer energy prices;

1 “(IX) the increased energy effi-
2 ciency that may be attributable to the
3 installation of Smart Grid tech-
4 nologies or capabilities in the covered
5 products, if applicable in the deter-
6 mination of the Secretary;

7 “(X) the commercial availability
8 in the United States or in other na-
9 tions of examples of covered products
10 that achieve significantly higher effi-
11 ciency standards for energy or for
12 water, including their degree of mar-
13 ket penetration; and”.

14 (C) By redesignating subclause (VII) as sub-
15 clause (XI).

16 (2) Section 325(o)(2)(B)(iii) of such Act is amended
17 as follows:

18 (A) By striking “three” and inserting “5”.

19 (B) By striking the last sentence and inserting
20 the following: “Such a presumption may be rebutted
21 only if the Secretary finds, based on clear, con-
22 vincing, and reliable evidence, that—

23 “(I) such standard level would
24 cause serious and unavoidable hard-
25 ship to the average consumer of the

1 product, or to manufacturers sup-
2 plying a significant portion of the
3 market for the product, that substan-
4 tially outweighs the standard level's
5 benefits;

6 “(II) the standard and imple-
7 menting regulations cannot be de-
8 signed to avoid or mitigate the hard-
9 ship identified under subparagraph I,
10 through the adoption of regional
11 standards consistent with paragraph
12 (6) of this subsection, or other reason-
13 able means consistent with this chap-
14 ter;

15 “(III) the same or substantially
16 similar hardship would not occur
17 under a standard adopted in the ab-
18 sence of the presumption, but that
19 otherwise meets the requirements of
20 this section; and

21 “(IV) the hardship cannot be
22 avoided or mitigated pursuant the
23 procedures specified in section 504 of
24 the Department of Energy Organiza-
25 tion Act (42 U.S.C. 7194).

1 A determination by the Secretary that the
2 criteria triggering the such presumption
3 are not met, or that the criterion for rebut-
4 ting the presumption are met shall not be
5 taken into consideration in the Secretary’s
6 determination of whether a standard is
7 economically justified.”.

8 (e) OBTAINING APPLIANCE INFORMATION FROM
9 MANUFACTURERS.—Section 326(d) of the Energy Policy
10 and Conservation Act (42 U.S.C. 6295(d)) is amended to
11 read as follows:

12 “(d) INFORMATION REQUIREMENTS.—(1) For pur-
13 poses of carrying out this part, the Secretary shall publish
14 proposed regulations not later than one year from the en-
15 actment of the American Clean Energy and Security Act
16 of 2009, and after receiving public comment, final regula-
17 tions not later than 18 months from such date of enact-
18 ment under this part or other provision of law adminis-
19 tered by the Secretary, which shall require each manufac-
20 turer of a covered product to submit information or re-
21 ports to the Secretary on an annual basis in a form adopt-
22 ed by the Secretary. Such reports shall include informa-
23 tion or data with respect to—

24 “(A) the manufacturers’ compliance with all re-
25 quirements applicable pursuant to this part;

1 “(B) the economic impact of any proposed en-
2 ergy conservation standard;

3 “(C) the manufacturers’ annual shipments of
4 each class or category of covered products, orga-
5 nized, to the maximum extent practicable, by—

6 “(i) energy efficiency, energy use, and, if
7 applicable, water use;

8 “(ii) the presence or absence of such effi-
9 ciency related or energy consuming operational
10 characteristics or components as the Secretary
11 determines are relevant for the purposes of car-
12 rying out this part; and

13 “(iii) the State or regional location of sale,
14 for covered products for which the Secretary
15 may adopt regional standards; and

16 “(D) such other categories of information as
17 the Secretary deems relevant to carry out this part,
18 including such other information as may be nec-
19 essary to establish and revise test procedures, label-
20 ing rules, and energy conservation standards and to
21 insure compliance with the requirements of this
22 part.

23 “(2) In adopting regulations under this subsection,
24 the Secretary shall consider existing public sources of in-

1 formation, including nationally recognized certification
2 programs of trade associations.

3 “(3) The Secretary shall exercise authority under this
4 section in a manner designed to minimize unnecessary
5 burdens on manufacturers of covered products.

6 “(4) To the extent that they do not conflict with the
7 duties of the Secretary in carrying out this part, the provi-
8 sions of section 796(d) of title 15 shall apply with respect
9 to information obtained under this subsection to the same
10 extent and in the same manner as they apply with respect
11 to other energy information obtained under section 15
12 U.S.C. 796.”.

13 (f) STATE WAIVER.—Section 327(c) of the Energy
14 Policy and Conservation Act (42 U.S.C. 6297(c)) is
15 amended by striking “and” at the end of paragraph (8),
16 by striking the period at the end of paragraph (9) and
17 inserting “; and” and by adding at the end the following:

18 “(10) is a regulation concerning standards for
19 hot food holding cabinets, drinking water dispensers
20 and portable electric spas adopted by the California
21 Energy Commission on or before January 1, 2013.”.

22 (g) WAIVER OF FEDERAL PREEMPTION.—Subsection
23 (b) of section 327 of the Energy Policy and Conservation
24 Act (42 U.S.C. 6297(d)) is amended as follows:

1 (1) In subparagraph (A) of paragraph (1) of
2 such subsection (b) by inserting “statute or” be-
3 tween “State” and “regulation” in both instances
4 where it occurs.

5 (2) In subparagraph (B) of paragraph (1) of
6 such subsection (b) by adding at the following at the
7 end thereof: “In making such a finding, the Sec-
8 retary may not reject a petition for failure of the pe-
9 titioning State or river basin commission to produce
10 confidential information maintained by any manu-
11 facturer or distributor, or group or association of
12 manufacturers or distributors, and which the peti-
13 tioning party does not have the legal right to ob-
14 tain.”.

15 (3) In clause (ii) of paragraph (1)(C) of such
16 subsection (b) by inserting “estimated”
17 before “costs” in both instances where it appears.

18 (4) In paragraph (1)(C)(ii) of such subsection
19 (b) by striking “in the context of the State’s energy
20 plan and forecast,”.

21 (h) INCLUSION OF CARBON OUTPUT ON APPLIANCE
22 “ENERGYGUIDE” LABELS.—(1) Section 324(a)(2) of the
23 Energy Policy and Conservation Act (42 U.S.C.
24 6294(a)(2)) is amended by adding the following at the
25 end:

1 “(I)(i) Not later than 90 days after the
2 date of enactment of this subparagraph, the
3 Commission shall initiate a rulemaking to im-
4 plement the additional labeling requirements
5 specified in subsection (c)(1)(C) of this section
6 with an effective date for the revised labeling
7 requirement not later than 6 months from
8 issuance of the final rule.

9 “(ii) Not later than 18 months after the
10 date of enactment of this subparagraph, the
11 Commission shall complete the rulemaking initi-
12 ated under clause (i).

13 “(iii) Not later than 90 days after issuance
14 of the final rule as provided in this subpara-
15 graph, the Secretary shall issue calculation
16 methods required to effectuate the labeling re-
17 quirements specified in subsection (c)(1)(C) of
18 this section.”

19 (2) Section 324(c)(1) of the Energy Policy and
20 Conservation Act (42 U.S.C. 6294(c)(1)) is amend-
21 ed—

22 (A) by striking “and” at the end of sub-
23 paragraph (A);

24 (B) by striking the period at the end of
25 subparagraph (B); and

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

3 “(C) for products or groups of products
4 providing a comparable function (including the
5 group of products comprising the heating func-
6 tion of heat pumps and furnaces) among cov-
7 ered products listed in paragraphs (3), (4), (5),
8 (8), (9), (10) and (11) of section 322 (a) of this
9 part, and others designated by the Secretary,
10 the estimated total annual atmospheric carbon
11 dioxide emissions (or their equivalent in other
12 greenhouse gases) associated with, or caused
13 by, the product, calculated utilizing the fol-
14 lowing:

15 “(i) national average energy use for
16 the product including energy consumed at
17 the point of end use based on test proce-
18 dures developed under section 323 of this
19 part;

20 “(ii) national average energy con-
21 sumed or lost in the production, genera-
22 tion, transportation, storage, and distribu-
23 tion of energy to the point of end use; and

1 “(iii) any direct emissions of green-
2 house gases from the product during nor-
3 mal use;

4 “(D) In determining the national average
5 energy consumption and total annual atmos-
6 pheric carbon dioxide emissions, the Secretary
7 shall utilize Federal government sources, includ-
8 ing the Energy Information Administration An-
9 nual Energy Review, the Environmental Protec-
10 tion Agency eGRID data base, Environmental
11 Protection Agency AP-42 Emission Factors as
12 amended, and other sources determined to be
13 appropriate by the Secretary; and

14 “(E) information presenting, for each
15 product (or group of products providing the
16 comparable function) identified in section
17 (c)(1)(C) of this section, the estimated annual
18 carbon dioxide emissions calculated within the
19 range of emissions calculated for all models of
20 the product or group according to its function,
21 including those models consuming fuels and
22 those models not consuming fuels.”.

23 (i) PERMITTING STATES TO SEEK INJUNCTIVE EN-
24 FORCEMENT.—Section 334 of the Energy Policy and Con-

1 servation Act (42 U.S.C. 6304(a)) is amended to read as
2 follows:

3 **“SEC. 334. JURISDICTION AND VENUE.**

4 “(a) JURISDICTION.—The United States district
5 courts shall have jurisdiction to restrain—

6 “(1) any violation of section 332; and

7 “(2) any person from distributing in commerce
8 any covered product which does not comply with an
9 applicable rule under section 324 or 325.

10 “(b) AUTHORITY.—Any action referred to in sub-
11 section (a) shall be brought by the Commission or by the
12 attorney general of a State in the name of the State, ex-
13 cept that—

14 “(1) any such action to restrain any violation of
15 section 332(a)(3) which relates to requirements pre-
16 scribed by the Secretary or any violation of section
17 332(a)(4) which relates to request of the Secretary
18 under section 326(b)(2) shall be brought by the Sec-
19 retary; and

20 “(2) any violation of section 332(a)(5) or
21 332(a)(7) shall be brought by the Secretary or by
22 the attorney general of a State in the name of the
23 State.

24 “(c) VENUE AND SERVICE OF PROCESS.—Any such
25 action may be brought in the United States district court

1 for a district wherein any act, omission, or transaction
2 constituting the violation occurred, or in such court of the
3 district wherein the defendant is found or transacts busi-
4 ness. In any action under this section, process may be
5 served on a defendant in any other district in which the
6 defendant resides or may be found.”.

7 (j) TREATMENT OF APPLIANCES WITHIN BUILDING
8 CODES.—(1) Section 327(f)(3) of the Energy Policy and
9 Conservation Act (42 U.S.C. 6297(f)(3)) is amended by
10 striking subparagraphs (B) through (E) and inserting the
11 following:

12 “(B) The code meets at least one of the
13 following requirements—

14 “(i) The code does not require that
15 the covered product have an energy effi-
16 ciency exceeding—

17 “(I) the applicable energy con-
18 servation standard established in or
19 prescribed under section 325;

20 “(II) the level required by a reg-
21 ulation of that State for which the
22 Secretary has issued a rule granting a
23 waiver under subsection (d) of this
24 section; or

1 “(III) the required level estab-
2 lished in the International Energy
3 Conservation Code or in a standard of
4 the American Society of Heating, Re-
5 frigerating and Air-Conditioning En-
6 gineers.

7 “(ii) If the code uses one or more
8 baseline building designs against which all
9 submitted building designs are to be evalu-
10 ated and such baseline building designs
11 contain a covered product subject to an en-
12 ergy conservation standard established in
13 or prescribed under section 325, the base-
14 line building designs are based on an effi-
15 ciency level for such covered product which
16 meets but does not exceed one of the levels
17 specified in clause (i).

18 “(iii) If the code sets forth one or
19 more optional combinations of items which
20 meet the energy consumption or conserva-
21 tion objective, in at least one combination
22 that the State has found to be reasonably
23 achievable using commercially available
24 technologies the efficiency of the covered

1 product meets but does not exceed one of
2 the levels specified in clause (i).

3 “(C) The credit to the energy consumption
4 or conservation objective allowed by the code for
5 installing covered products having energy effi-
6 ciencies exceeding one of the levels specified in
7 subparagraph (B)(i) is on a one-for-one equiva-
8 lent energy use or equivalent energy cost basis,
9 taking into account the typical lifetime of the
10 product.

11 “(D) The energy consumption or conserva-
12 tion objective is specified in terms of an esti-
13 mated total consumption of energy (which may
14 be calculated from energy loss- or gain-based
15 codes) utilizing an equivalent amount of energy
16 (which may be specified in units of energy or its
17 equivalent cost) and equivalent lifetimes.

18 “(E) The estimated energy use of any cov-
19 ered product permitted or required in the code,
20 or used in calculating the objective, is deter-
21 mined using the applicable test procedures pre-
22 scribed under section 323, except that the State
23 may permit the estimated energy use calcula-
24 tion to be adjusted to reflect the conditions of
25 the areas where the code is being applied if

1 such adjustment is based on the use of the ap-
2 plicable test procedures prescribed under sec-
3 tion 323 or other technically accurate docu-
4 mented procedure.”.

5 (2) Section 327(f)(4)(B) of the Energy Policy
6 and Conservation Act (42 U.S.C. 6297(f)(4)(B)) is
7 amended to read as follows:

8 “(B) If a building code requires the instal-
9 lation of covered products with efficiencies ex-
10 ceeding the levels and requirements specified in
11 paragraph (3)(B), such requirement of the
12 building code shall not be applicable unless the
13 Secretary has granted a waiver for such re-
14 quirement under subsection (d) of this sec-
15 tion.”.

16 **SEC. 214. BEST-IN-CLASS APPLIANCES DEPLOYMENT PRO-**
17 **GRAM.**

18 (a) IN GENERAL.—The Secretary of Energy shall, in
19 consultation with the Administrator, establish and admin-
20 ister a program to be known as the “Best-in-Class Appli-
21 ances Deployment Program”.

22 (b) PURPOSE.—The purpose of the Best-in-Class Ap-
23 pliances Deployment Program is to reward retailers with
24 bonuses for increasing the sales of best-in-class high-effi-
25 ciency installed building equipment, high-efficiency con-

1 sumer electronics, and high-efficiency household appliance
2 models, with the goal of reducing life-cycle costs for con-
3 sumers, encouraging innovation, and maximizing energy
4 savings and public benefit. The program shall include
5 bounties under subsection (c) to retailers for the replace-
6 ment and recycling of old, inefficient, and environmentally
7 harmful appliances. The program shall also include bo-
8 nuses under subsection (d) to manufacturers for devel-
9 oping new Superefficient Best-in-Class Products.

10 (b) INCENTIVES FOR SALES OF BEST-IN-CLASS
11 PRODUCT MODELS.—

12 (1) SELECTION OF BEST-IN-CLASS PRODUCT
13 MODELS.—In establishing the program, the Sec-
14 retary of Energy shall use broad product classes and
15 select as qualifying Best-in-Class Product models no
16 more than the most efficient ten percent of the com-
17 mercially available product models in a class that
18 demonstrate, as a group, a distinctly greater energy
19 efficiency than the average energy efficiency of that
20 class of appliances. In selecting models, the Sec-
21 retary shall—

22 (A) identify commercially available models
23 in the relevant class of products;

24 (B) identify the subgroup and percentage
25 of those models (not greater than 10 percent)

1 that the Secretary believes share the distinctly
2 higher energy-efficiency characteristics that
3 warrant designation as best-in-class;

4 (C) specify the higher energy-efficiency
5 characteristic they share;

6 (D) announce the best-in-class designation
7 and the best-in-class bonus to be paid for each
8 sale of an eligible best-in-class model over a 3-
9 year period beginning on the date of the an-
10 nouncement;

11 (E) add other models in that class to the
12 list of best-in-class models eligible for the bonus
13 as they demonstrate their ability to meet the
14 higher-efficiency characteristics on which the
15 designation was made; and

16 (F) make bonus payments for qualifying
17 models sold during the 3-year period.

18 (2) REVIEW OF BEST-IN-CLASS STANDARDS.—

19 The Secretary shall review annually the product-spe-
20 cific criteria and the product models that qualify as
21 Best-in-Class Products and, after a 30-day comment
22 period, make upwards adjustments in the efficiency
23 criteria as required to maintain an appropriate ratio
24 of such product models to the total number of prod-
25 uct models in the product class.

1 (3) UPGRADE OF BEST-IN-CLASS PRODUCT ELI-
2 GIBILITY.—To the extent that the Secretary deter-
3 mines to increase the energy efficiency required to
4 qualify for best-in-class designation within any group
5 of product models, the Secretary shall—

6 (A) consider any Superefficient Best-in-
7 Class Product models that have been designated
8 pursuant to subsection (d);

9 (B) specify and announce the new higher
10 best-in-class standard;

11 (C) list those models that qualify as best-
12 in-class under the new higher standard;

13 (D) announce any change in the bonus
14 payment appropriate to increase the market
15 share of such best-in-class models, which shall
16 not be lower than any ongoing bonus payment
17 during the 3-year period for any prior designa-
18 tion of best-in-class models;

19 (E) pay the new bonus payment for any
20 models already qualifying under the earlier
21 best-in-class standard that continue to qualify
22 under the revised standard for a new 3-year-pe-
23 riod; and

24 (F) continue paying bonus payments at the
25 original level to any models that qualified at

1 that level but do not qualify at the new level for
2 the remainder of the 3-year period announced
3 with the original designation.

4 (4) SIZE OF INDIVIDUAL BONUS PAYMENTS.—

5 The size of each bonus payment shall be the product
6 of—

7 (A) an amount determined by the Sec-
8 retary; and

9 (B) the difference in energy consumption
10 as determined by comparing the energy used by
11 the qualifying product and the energy used by
12 the average product in the product class.

13 The Secretary shall determine the amount under
14 subparagraph (A) for each product type in consulta-
15 tion with State and utility efficiency program admin-
16 istrators as well as the Administrator, based on esti-
17 mates of the amount of bonus payment that would
18 provide significant incentive to increase the market
19 share of Best-in-Class Products.

20 (5) ELIGIBLE BONUS RECIPIENT.—(A) The
21 Secretary shall ensure that not more than 1 bonus
22 payment is provided to distributors and retailers per
23 unit of eligible models sold.

24 (B) In this section—

1 (i) the term “retailer” means an indi-
2 vidual, organization, or company that sells
3 products directly to end-users; and

4 (ii) the term “distributor” mean an indi-
5 vidual, organization, or company that sells
6 products in multiple lots and not directly to in-
7 dividual end-users.

8 (C) The Secretary may make distributors eligi-
9 ble to receive the best-in-class incentive for sales
10 that are not to the final end-user in addition to re-
11 tailers to the extent that the Secretary determines
12 that for a particular product category distributors
13 are well situated to increase sales of Best-in-Class
14 Products.

15 (c) BOUNTIES FOR REPLACEMENT AND RETIREMENT
16 OF EXISTING LOW-EFFICIENCY PRODUCTS.—

17 (1) The Secretary of Energy shall establish a
18 program to make a bounty payment for the recovery
19 and recycling of older operating low-efficiency appli-
20 ances that might otherwise continue in operation.

21 (2) The Secretary shall offer a bounty as an ad-
22 ditional incentive for retailers based on documenta-
23 tion that the sales of a Best-in-Class Product were
24 accompanied by the retirement and recycling of an
25 existing inefficient but still-functioning product by

1 the consumer to whom the Best-in-Class Product
2 was sold.

3 (3) The bounty payment shall be based on the
4 difference between the estimated energy use of the
5 product replaced and the energy use of an average
6 new product in the product class, discounted for the
7 estimated remaining lifetime of the product that was
8 recycled.

9 (4) The Secretary may specify that the avail-
10 ability of a product bonus related to sale of a Best-
11 in-Class Product is linked to the recovery and recy-
12 cling of an older working appliance, and may limit
13 the total payment to less than the sum of the bonus
14 and the bounty payments, if not doing so would
15 mean that the Nation's total energy use would oth-
16 erwise increase.

17 (5) The Secretary shall ensure that no product
18 for which a bounty is paid is sold or returned to ac-
19 tive service, but that it is instead destroyed, and re-
20 cycled to the extent feasible.

21 (6) The Secretary shall establish standards for
22 environmentally responsible methods of recycling, es-
23 pecially for products utilizing refrigerants.

24 (d) REWARDS TO MANUFACTURERS FOR DEVELOP-
25 MENT OF SUPEREFFICIENT BEST-IN-CLASS PRODUCTS.—

1 (1) IN GENERAL.—(A) The Secretary of Energy
2 shall establish a program to reward manufacturers
3 for the development and production of Superefficient
4 Best-in-Class Products.

5 (B) In this section, the term “Superefficient
6 Best-in-Class Product” means a product that—

7 (i) can be mass produced; and

8 (ii) achieves the highest level of efficiency
9 that the Secretary finds could be produced and
10 sold commercially to mass-market consumers.

11 (C) The Secretary may establish a standard for
12 a Superefficient Best-in-Class Product even if no ex-
13 isting product exists, if the Secretary has reasonable
14 grounds to conclude that a mass-producible product
15 could be made to meet that standard.

16 (D) The Secretary may also establish a super-
17 efficient best-in-class level that is met by one or
18 more existing Best-in-Class Product models if those
19 product models have distinct energy efficiency at-
20 tributes and performance characteristics that make
21 them significantly better, in the judgment of the
22 Secretary, than those product models qualifying as
23 best-in-class, but that represent not more than 10
24 percent of the currently qualifying best-in-class mod-
25 els.

1 (2) REWARD.—

2 (A) The bonus payment provided to a
3 manufacturer for the development and produc-
4 tion of a Superefficient Best-in-Class Product
5 shall be in addition to any bonus payments
6 made to retailers for best-in-class qualification.

7 (B) The amount of the bonus paid per unit
8 for qualifying Superefficient Best-in-Class
9 Product models as sold to retailers or distribu-
10 tors shall be the product of—

11 (i) an amount determined by the Sec-
12 retary; and

13 (ii) the difference in energy consump-
14 tion as determined by comparing the en-
15 ergy used by the qualifying product and
16 the energy used by the average product in
17 the product class.

18 (C) The Secretary shall determine the
19 amount under subparagraph (B)(i) for each
20 product type by considering the present value to
21 the nation of the energy (and water or other re-
22 sources or inputs) saved over the useful life of
23 the product, and may adjust this value upward
24 or downward after consultation with State and

1 utility efficiency program administrators as well
2 as the Administrator.

3 (D) The adjustment may also be made
4 based on the effect of the bonuses on the sales
5 of products in different classes that may be af-
6 fected by this program.

7 (E) The incremental bonus payments shall
8 be applied to sales of any Superefficient Best-
9 in-Class Product for the first 3 years of its sale.

10 (3) COORDINATION OF INCENTIVES.—No prod-
11 uct for which Federal tax credit is received under
12 section 45M of the Internal Revenue Code of 1986
13 shall be eligible to receive bonus payments pursuant
14 to this subsection.

15 (e) REPORTING.—Each retailer, distributor, and
16 manufacturer participating in the program under this sec-
17 tion shall meet any reasonable request of the Secretary
18 of Energy for documentation of sales reported for purpose
19 of receiving bonuses or bounties, and shall report to the
20 Secretary, on a confidential basis for program-design pur-
21 poses—

22 (1) for retailers and distributors, the number of
23 units sold within each product type and model-spe-
24 cific wholesale purchase price on a monthly basis;

1 (2) for manufacturers, model-specific energy
2 consumption data; and

3 (3) for manufacturers, on an immediate basis,
4 concerning any product design or function changes
5 that affect the energy consumption of the unit.

6 (f) AUDITING REQUIREMENTS.—The Secretary of
7 Energy shall establish monitoring and verification proto-
8 cols to ensure that energy consumption tests for each
9 model are recorded correctly and that sales of energy-effi-
10 cient models are tabulated correctly by each claimant of
11 bonus or bounty payments under this section. In addition,
12 the Secretary may require reports from retailers on the
13 methods used to increase the sales of qualifying products
14 as a factor in determining the level and allocation of any
15 such payments.

16 (g) DISCLOSURE.—The Secretary of Energy may re-
17 quire that retailers and distributors disclose publicly and
18 to consumers their participation in the program under this
19 section.

20 (h) COST-EFFECTIVENESS REQUIREMENT.—

21 (1) DEFINITIONS.—In this subsection:

22 (A) COST-EFFECTIVENESS.—The term
23 “cost-effectiveness” means a measure of aggre-
24 gate savings in the cost of energy over the life-
25 time of the product as a ratio to the cost to the

1 Secretary of Energy of the rewards for the
2 product.

3 (B) SAVINGS.—The term “savings” means
4 the cumulative megawatt-hours of electricity or
5 million British thermal units of other fuels
6 saved by a product, in comparison to projected
7 energy consumption based on the efficiency per-
8 formance of displaced new product sales. The
9 amount of savings is the product of—

10 (i) the net number of best-in-class or
11 superefficient best-in-class pieces of equip-
12 ment, electronics, and appliances sold by a
13 retailer, manufacturer, or distributor in a
14 calendar year;

15 (ii) the savings during the projected
16 useful life of the pieces of equipment, elec-
17 tronics, and appliances; and

18 (iii) the impact of any documented
19 measures to retire and recycle low-per-
20 forming devices at the time of purchase of
21 highly-efficient substitutes.

22 (2) REQUIREMENT.—The Secretary shall make
23 cost-effectiveness a top priority in designing and ad-
24 ministering this section, except that the cost-effec-
25 tiveness of the bonuses to manufacturers, in aggre-

1 gate, may be lower by this measure than that of the
2 bonuses and bounties to retailers and distributors.

3 (i) AUTHORIZATION.—There are authorized to be ap-
4 propriated such sums as may be necessary for each of the
5 fiscal years 2010 through 2014 to the Secretary of Energy
6 for purposes of this section, of which not more than 10
7 percent for any fiscal year may be expended on program
8 administration.

9 **SEC. 215. PURPOSE OF ENERGY STAR.**

10 Section 324A of the Energy Policy and Conservation
11 Act (42 U.S.C. 6294a) is amended—

12 (1) by redesignating subsections (b) through (d)
13 as subsections (c) through (e), respectively; and

14 (2) by inserting after subsection (a) the fol-
15 lowing new subsection:

16 “(b) PURPOSE.—The purpose of the Energy Star
17 program for products is to assist consumers in selecting
18 products for purchase that have demonstrated high energy
19 efficiency and that are cost-effective from the consumer’s
20 perspective, ensuring that any incremental cost attrib-
21 utable to the energy-efficient features of such products will
22 be more than recovered in the value of energy savings the
23 products will make possible within several years of pur-
24 chase, typically within 3 years but no more than 5 years.”.

1 **Subtitle C—Transportation**
2 **Efficiency**

3 **SEC. 221. EMISSIONS STANDARDS.**

4 (a) MOTOR VEHICLE STANDARDS.—The President
5 shall use statutory authorities in effect on the day before
6 the enactment of this section to set motor vehicle stand-
7 ards that—

8 (1) are achievable by the automobile manufac-
9 turing companies;

10 (2) to the extent practicable, harmonize stand-
11 ards that may be set by the National Highway Traf-
12 fic Safety Administration pursuant to the authority
13 in chapter 329 of title 49, United States Code,
14 standards that may be set by the Administrator of
15 the Environmental Protection Agency pursuant to
16 the authority in the Clean Air Act, and standards
17 that have or may be set by the State of California;

18 (3) achieve at least as much emissions reduc-
19 tions as would be achieved by implementation of the
20 California law AB 1493 if enforced in the State of
21 California and the other States that have adopted
22 the standard; and

23 (4) do not preempt California’s legal authority
24 to adopt and enforce its own mobile source emissions
25 standards.

1 (b) GREENHOUSE GAS EMISSION STANDARDS FOR
2 MOBILE SOURCES.—Title VIII of the Clean Air Act, as
3 added by section 331 of this Act, is amended by inserting
4 after part A the following new part:

5 **“PART B—MOBILE SOURCES**
6 **“SEC. 821. GREENHOUSE GAS EMISSION STANDARDS FOR**
7 **MOBILE SOURCES.**

8 “(a) MOTOR VEHICLES AND ENGINES.—

9 “(1) Pursuant to section 202(a)(1), by Decem-
10 ber 31, 2010, the Administrator shall promulgate
11 standards applicable to emissions of greenhouse
12 gases from new heavy-duty vehicles and engines, ex-
13 cluding such vehicles covered by the Tier II stand-
14 ards (as established by the Administrator as of the
15 date of the enactment of this section). The Adminis-
16 trator may revise these standards from time to time.

17 “(2) Regulations issued under section 202(a)(1)
18 applicable to emissions of greenhouse gases from
19 new heavy-duty vehicles and engines, excluding such
20 vehicles covered by the Tier II standards (as estab-
21 lished by the Administrator as of the date of the en-
22 actment of this section), shall contain standards that
23 achieve the greatest degree of emissions reduction
24 achievable based on the application of technology
25 which the Administrator determines will be available

1 at the time such standards take effect, taking into
2 consideration cost, energy, and safety factors associ-
3 ated with the application of such technology. Any
4 such regulations shall take effect after such period
5 as the Administrator finds necessary to permit the
6 development and application of the requisite tech-
7 nology.

8 “(b) NONROAD VEHICLES AND ENGINES.—

9 “(1) Pursuant to section 213(a)(4), the Admin-
10 istrator shall promulgate standards applicable to
11 emissions of greenhouse gases from new marine ves-
12 sels and locomotives, and from new engines used in
13 marine vessels and locomotives, by December 31,
14 2012. The Administrator shall also promulgate
15 standards applicable to emissions of greenhouse
16 gases for such other classes and categories of
17 nonroad vehicles and engines as the Administrator
18 determines appropriate and in the timeframe the
19 Administrator determines appropriate. The Adminis-
20 trator shall base such determination, among other
21 factors, on the relative contribution of greenhouse
22 gas emissions, and the costs for achieving reduc-
23 tions, from such classes or categories of new
24 nonroad engines and vehicles. The Administrator
25 may revise these standards from time to time.

1 “(2) Standards under section 213(a)(4) applica-
2 ble to emissions of greenhouse gases from new ma-
3 rine vessels and locomotives, and from new engines
4 used in marine vessels and locomotives, shall achieve
5 the greatest degree of emissions reduction achievable
6 based on the application of technology which the Ad-
7 ministrator determines will be available at the time
8 such standards take effect, taking into consideration
9 cost, energy, and safety factors associated with the
10 application of such technology. Any such regulations
11 shall take effect after such period as the Adminis-
12 trator finds necessary to permit the development and
13 application of the requisite technology.

14 “(3) For purposes of this section and standards
15 under section 213(a)(4) applicable to emissions of
16 greenhouse gases, the term ‘nonroad engines and ve-
17 hicles’ shall include non-internal combustion engines
18 and the vehicles these engines power (such as elec-
19 tric engines and electric vehicles), for those non-in-
20 ternal combustion engines and vehicles which would
21 be in the same category and have the same uses as
22 nonroad engines and vehicles that are powered by in-
23 ternal combustion engines.

24 “(c) AIRCRAFT AND AIRCRAFT ENGINES.—

1 “(1) Pursuant to section 231(a), the Adminis-
2 trator shall promulgate standards applicable to emis-
3 sions of greenhouse gases from new aircraft and new
4 engines used in aircraft by December 31, 2012. Not-
5 withstanding any requirement in section 231(a), the
6 Administrator shall also promulgate standards appli-
7 cable to emissions of greenhouse gases from other
8 classes and categories of aircraft and aircraft en-
9 gines for such classes and categories as the Adminis-
10 trator determines appropriate and in the timeframe
11 the Administrator determines appropriate. The Ad-
12 ministrator may revise these standards from time to
13 time.

14 “(2) Standards under section 231(a) applicable
15 to emissions of greenhouse gases from new aircraft
16 and new engines used in aircraft, and any later revi-
17 sions or additional standards, shall achieve the
18 greatest degree of emissions reduction achievable
19 based on the application of technology which the Ad-
20 ministrator determines will be available at the time
21 such standards take effect, taking into consideration
22 cost, energy, and safety factors associated with the
23 application of such technology. Any such standards
24 shall take effect after such period as the Adminis-

1 trator finds necessary to permit the development and
2 application of the requisite technology.

3 “(d) AVERAGING, BANKING, AND TRADING OF EMIS-
4 SIONS CREDITS.—In establishing standards applicable to
5 emissions of greenhouse gases pursuant to this section and
6 sections 202(a), 213(a)(4), and 231(a), the Administrator
7 may establish provisions for averaging, banking, and trad-
8 ing of greenhouse gas emissions credits within or across
9 classes or categories of motor vehicles and motor vehicle
10 engines, nonroad vehicles and engines (including marine
11 vessels), and aircraft and aircraft engines, to the extent
12 the Administrator determines appropriate and considering
13 the factors appropriate in setting standards under those
14 sections. Such provisions may include reasonable and ap-
15 propriate provisions concerning generation, banking, trad-
16 ing, duration, and use of credits.

17 “(e) REPORTS.—The Administrator shall, from time
18 to time, submit a report to Congress that projects the
19 amount of greenhouse gas emissions from the transpor-
20 tation sector, including transportation fuels, for the years
21 2030 and 2050, based on the standards adopted under
22 this section.”.

1 **SEC. 222. GREENHOUSE GAS EMISSIONS REDUCTIONS**
2 **THROUGH TRANSPORTATION EFFICIENCY.**

3 Title VIII of the Clean Air Act, as added by section
4 331 of this Act, is further amended by inserting after part
5 C the following new part:

6 **“PART D—PLANNING REQUIREMENTS**

7 **“SEC. 841. GREENHOUSE GAS EMISSIONS REDUCTIONS**
8 **THROUGH TRANSPORTATION EFFICIENCY.**

9 “(a) IN GENERAL.—Each State shall—

10 “(1) not later than 3 years after the date of the
11 enactment of this section, submit to the Adminis-
12 trator goals for transportation-related greenhouse
13 gas emissions reductions; and

14 “(2) as part of each transportation plan or
15 transportation improvement plan developed under
16 title 23 or title 49, United States Code, ensure that
17 a plan to achieve such goals, or an updated version
18 of such a plan, is submitted to the Administrator
19 and to the Secretary of Transportation (in this sec-
20 tion referred to as the ‘Secretary’) by each metro-
21 politan planning organization in the State for an
22 area with a population exceeding 200,000.

23 “(b) MODELS AND METHODOLOGIES.—

24 “(1) IN GENERAL.—The Administrator shall
25 promulgate regulations to establish standardized
26 models and methodologies for use in developing

1 goals, plans, and strategies under this section. Such
2 regulations may approve or improve existing models
3 and methodologies.

4 “(2) TIMING.—The Administrator shall—

5 “(A) publish proposed regulations under
6 paragraph (1) not later than 1 year after the
7 date of the enactment of this section; and

8 “(B) promulgate final regulations under
9 paragraph (1) not later than 2 years after such
10 date of enactment.

11 “(c) GREENHOUSE GAS REDUCTION GOALS.—

12 “(1) CONSULTATION.—Each State shall develop
13 the goals referred to in subsection (a)(1)—

14 “(A) in concurrence with State agencies re-
15 sponsible for air quality and transportation;

16 “(B) in consultation with each metropoli-
17 tan planning organization for an area in the
18 State with a population exceeding 200,000 and
19 applicable local air quality and transportation
20 agencies; and

21 “(C) with public involvement, including
22 public comment periods and meetings.

23 “(2) PERIOD.—The goals referred to in sub-
24 section (a)(1) shall be for 10- and 20-year periods.

1 “(3) TARGETS; DESIGNATED YEAR.—The goals
2 referred to in subsection (a)(1) shall establish tar-
3 gets to reduce mobile source greenhouse gas emis-
4 sions in the covered area from levels projected under
5 a business-as-usual scenario. The targets shall be de-
6 signed to ensure that the levels of such emissions
7 stabilize and decrease after a designated year. The
8 State shall consider designating 2010 as such des-
9 ignated year.

10 “(4) COVERED AREA.—The goals referred to in
11 subsection (a)(1) shall be established—

12 “(A) on a statewide basis; and

13 “(B) for each metropolitan planning orga-
14 nization in the State for an area with a popu-
15 lation exceeding 200,000.

16 “(5) REVISED GOALS.—Every 4 years, each
17 State shall update and revise, as appropriate, the
18 goals referred to in subsection (a)(1).

19 “(d) PLANNING.—A plan referred to in subsection
20 (a)(2) shall—

21 “(1) be based upon the models and methodolo-
22 gies established by the Administrator under sub-
23 section (b);

24 “(2) address mobile sources, economic develop-
25 ment, and scenario analysis; and

1 “(3) be developed—

2 “(A) with public involvement, including
3 public comment periods and meetings;

4 “(B) with regional coordination, including
5 with respect to—

6 “(i) metropolitan planning organiza-
7 tions;

8 “(ii) the localities comprising the met-
9 ropolitan planning organization;

10 “(iii) the State in which the metro-
11 politan planning organization is located;

12 and

13 “(iv) air quality and transportation
14 agencies for the State and region involved;

15 and

16 “(C) in consultation with the State and
17 local housing, public health, economic develop-
18 ment, land use, environment, and public trans-
19 portation agencies.

20 “(e) STRATEGIES.—In developing goals under sub-
21 section (a)(1) and a plan under subsection (a)(2), the
22 State or metropolitan planning organization, as applicable,
23 shall consider transportation and land use planning strate-
24 gies to reduce greenhouse gas emissions, including the fol-
25 lowing:

1 “(1) Efforts to increase public transportation,
2 including commuter rail service and ridership, by
3 adding at a minimum—

4 “(A) new public transportation systems,
5 including new commuter rail systems;

6 “(B) employer-based subsidies; and

7 “(C) cleaner locomotive technologies.

8 “(2) Updates to zoning and other land use reg-
9 ulations and plans to support development that—

10 “(A) coordinates transportation and land
11 use planning;

12 “(B) focuses future growth close to exist-
13 ing and planned job centers and public facili-
14 ties;

15 “(C) uses existing infrastructure;

16 “(D) promotes walking, bicycling, and pub-
17 lic transportation use; and

18 “(E) mixes land uses such as housing, re-
19 tail, and schools.

20 “(3) Implementation of a policy (referred to as
21 a ‘complete streets policy’) that—

22 “(A) ensures adequate accommodation of
23 all users of transportation systems, including
24 pedestrians, bicyclists, public transportation

1 users, motorists, children, the elderly, and indi-
2 viduals with disabilities; and

3 “(B) adequately addresses the safety and
4 convenience of all users of the transportation
5 system.

6 “(4) Construction of bicycle and pedestrian in-
7 frastructure facilities.

8 “(5) Projects to promote telecommuting, flexi-
9 ble work schedules, or satellite work centers.

10 “(6) Pricing measures such as congestion pric-
11 ing.

12 “(7) Intermodal freight system strategies, in-
13 cluding enhanced rail services, short sea shipping,
14 and other strategies.

15 “(8) Parking policies.

16 “(9) Travel demand management projects.

17 “(10) Restriction of the use of certain roads, or
18 lanes, by vehicles other than passenger buses and
19 high-occupancy vehicles.

20 “(11) Reduction of vehicle idling, including
21 idling associated with freight management, construc-
22 tion, transportation, and commuter operations.

23 “(12) Policies to encourage the use of retrofit
24 technologies and early replacement of vehicles, en-

1 engines and equipment to reduce greenhouse gas emis-
2 sions from existing mobile sources.

3 “(13) Other projects that the Administrator
4 finds reduce greenhouse gas emissions from mobile
5 sources.

6 “(f) PUBLIC AVAILABILITY.—The Administrator
7 shall publish, including by posting on the Environmental
8 Protection Agency’s website—

9 “(1) the goals and plans submitted under sub-
10 section (a); and

11 “(2) for each plan submitted under subsection
12 (a)(2), an analysis of the anticipated effects of the
13 plan on greenhouse gas emissions and oil consump-
14 tion.

15 “(g) ENFORCEMENT.—If the Administrator finds
16 that a State has failed to submit goals under subsection
17 (a)(1), or to ensure the submission of a plan under sub-
18 section (a)(2), for any area in the State (irrespective of
19 whether the area is a nonattainment area), the Adminis-
20 trator may impose a prohibition in accordance with section
21 179(b)(1) applicable to the area. The Administrator may
22 not impose a prohibition under the preceding sentence,
23 and no action may be brought by the Administrator or
24 any other entity alleging a violation of this section, based

1 on the content or adequacy of a goal or plan submitted
2 under subsection (a)(1) or (a)(2).

3 “(h) COMPETITIVE GRANTS.—

4 “(1) GRANTS.—The Administrator, in consulta-
5 tion with the Secretary of Transportation, may
6 award grants on a competitive basis to metropolitan
7 planning organizations to develop or implement
8 plans submitted under subsection (a)(2) or elements
9 thereof.

10 “(2) PRIORITY.—In making grants under para-
11 graph (1), the Administrator shall give priority to
12 applicants based upon—

13 “(A) the amount of greenhouse gas emis-
14 sions to be reduced on a total or per capita
15 basis, as determined by the Administrator in
16 consultation with the Secretary of Transpor-
17 tation; and

18 “(B) such other factors as the Adminis-
19 trator determines appropriate.

20 “(3) AUTHORIZATION OF APPROPRIATIONS.—

21 To carry out this subsection, there are authorized to
22 be appropriated such sums as may be necessary.

23 “(i) DEFINITIONS.—In this section:

24 “(1) The term ‘metropolitan planning organiza-
25 tion’ means a metropolitan planning organization, as

1 such term is used in section 176 of the Clean Air
2 Act.

3 “(2) The term ‘scenario analysis’ means an
4 analysis that is conducted by identifying different
5 trends and making projections based on those trends
6 to develop a range of scenarios and estimates of how
7 each scenario could improve access to goods and
8 services, including access to employment, education,
9 and health care (especially for elderly and economi-
10 cally disadvantaged communities), and could affect
11 rates of—

12 “(A) vehicle miles traveled;

13 “(B) use of mobile source fuel by type, in-
14 cluding electricity; and

15 “(C) greenhouse gas emissions from the
16 mobile source sector.

17 “(j) LAND USE AUTHORITY.—Nothing in this section
18 may be construed to—

19 “(1) infringe upon the existing authority of
20 State or local governments to plan or control land
21 use, or

22 “(2) provide or transfer authority over land use
23 to any other entity.”.

1 **SEC. 223. SMARTWAY TRANSPORTATION EFFICIENCY PRO-**
2 **GRAM.**

3 Part B of title VIII of the Clean Air Act, as added
4 by section 221 of this Act (and amended by section 121
5 of this Act), is further amended by adding after section
6 822 the following section:

7 **“SEC. 823. SMARTWAY TRANSPORTATION EFFICIENCY PRO-**
8 **GRAM.**

9 “(a) IN GENERAL.—There is established within the
10 Environmental Protection Agency a SmartWay Transport
11 Program to quantify, demonstrate and promote the bene-
12 fits of technologies, products, fuels and operational strate-
13 gies that reduce petroleum consumption, air pollution and
14 greenhouse gas emissions from the mobile source sector.

15 “(b) GENERAL DUTIES.—Under the program estab-
16 lished under this section, the Administrator shall carry out
17 each of the following:

18 “(1) Development of measurement protocols to
19 evaluate the energy consumption and greenhouse gas
20 impacts from technologies and strategies in the mo-
21 bile source sector, including those for passenger
22 transport and goods movement.

23 “(2) Development of qualifying thresholds for
24 certifying, verifying or designating energy-efficient,
25 low-greenhouse gas SmartWay technologies and

1 strategies for each mode of passenger transportation
2 and goods movement.

3 “(3) Development of partnership and recogni-
4 tion programs to promote best practices and drive
5 demand for energy-efficient, low-greenhouse gas
6 transportation performance.

7 “(4) Promotion of the availability of and en-
8 courage the adoption of SmartWay certified or
9 verified technologies and strategies and publication
10 of the availability of financial incentives such as as-
11 sistance from loan programs and other Federal and
12 State incentives.

13 “(c) SMARTWAY TRANSPORT FREIGHT PARTNER-
14 SHIP.—The Administrator shall establish a SmartWay
15 Transport Partnership program with shippers and carriers
16 of goods to promote energy-efficient, low-greenhouse gas
17 transportation. In carrying out such partnership, the Ad-
18 ministrator shall undertake each of the following:

19 “(1) Certification of the energy and greenhouse
20 gas performance of participating freight carriers, in-
21 cluding those operating rail, trucking, marine, and
22 other goods movement operations.

23 “(2) Publication of a comprehensive energy and
24 greenhouse gas performance index of freight modes
25 (including rail, trucking, marine and other modes of

1 transporting goods) and individual freight companies
2 so that shippers can choose to deliver their goods
3 more efficiently.

4 “(3) Development of tools for—

5 “(A) carriers to calculate their energy and
6 greenhouse gas performance, and

7 “(B) shippers to calculate the energy and
8 greenhouse gas impacts of moving their prod-
9 ucts and to evaluate the relative impacts from
10 transporting their goods by different modes and
11 corporate carriers.

12 “(4) Provision of recognition opportunities for
13 participating shipper and carrier companies dem-
14 onstrating advanced practices and achieving superior
15 levels of greenhouse gas performance.

16 “(d) IMPROVING FREIGHT GHG PERFORMANCE
17 DATABASES.—The Secretary of the Treasury shall, in
18 consultation with the Administrator, define and collect
19 data on the physical and operational characteristics of the
20 Nation’s truck population, with special emphasis on data
21 related to energy efficiency and greenhouse gas perform-
22 ance to inform the performance index in subsection (c)(2)
23 of this section, and other means of goods transport as nec-
24 essary, at least every 5 years as part of the economic cen-
25 sus required under title 13 of the United States Code.

1 “(e) ESTABLISHMENT OF FINANCING PROGRAM.—

2 The Administrator shall establish a SmartWay Financing
3 Program to competitively award funding to eligible entities
4 identified by the Administrator in accordance with the
5 program requirements in subsection (g).

6 “(f) PURPOSE.—Under the SmartWay Financing
7 Program, eligible entities shall—

8 “(1) use funds awarded by the Administrator to
9 provide flexible loan and lease terms that increase
10 approval rates and/or lower the costs of loans and
11 leases in accordance with guidance developed by the
12 Administrator, and

13 “(2) make these loans and leases available to
14 public and private entities for the purpose of adopt-
15 ing low-greenhouse gas technologies or strategies for
16 the mobile source sector that are designated by the
17 Administrator.

18 “(g) PROGRAM REQUIREMENTS.—The Administrator
19 shall determine program design elements and require-
20 ments, including—

21 “(1) the type of financial mechanism with
22 which to award funding, in the form of grants or
23 contracts;

24 “(2) the designation of eligible entities to re-
25 ceive funding, including State, tribal, and local gov-

1 ernments, regional organizations comprised of gov-
2 ernmental units, nonprofit organizations, or for-prof-
3 it companies;

4 “(3) criteria for evaluating applications from el-
5 igible entities, including anticipated—

6 “(A) cost-effectiveness of loan and/or lease
7 program on a metric-ton-of-greenhouse gas-
8 saved-per-dollar basis,

9 “(B) ability to promote the loan and/or
10 lease program and associated technologies and
11 strategies to target audience; and

12 “(4) reporting requirements for entities that re-
13 ceive awards, including—

14 “(A) actual cost-effectiveness and green-
15 house gas savings from loan and/or lease pro-
16 gram based on a methodology designated by the
17 Administrator;

18 “(B) total number of applications and
19 number of approved applications, and

20 “(C) terms granted to loan and lease re-
21 cipients compared to prevailing market prac-
22 tices.

23 “(h) AUTHORIZATION OF APPROPRIATIONS.—Such
24 sums as necessary are authorized to be appropriated to
25 the Administrator to carry out this section.”.

1 **SEC. 224. STATE VEHICLE FLEETS.**

2 Section 507(o) of the Energy Policy Act of 1992 (42
3 U.S.C. 13257) is amended by adding the following new
4 paragraph at the end thereof:

5 “(3) The Secretary shall revise the rules under
6 this subsection with respect to the types of alter-
7 native fueled vehicles required for compliance with
8 this subsection to ensure those rules are consistent
9 with any guidance issued pursuant to section 303 of
10 this Act.”.

11 **Subtitle D—Utilities Energy**
12 **Efficiency**

13 **SEC. 231. ENERGY EFFICIENCY RESOURCE STANDARD FOR**
14 **RETAIL ELECTRICITY AND NATURAL GAS DIS-**
15 **TRIBUTORS.**

16 (a) IN GENERAL.—Title VI of the Public Utility Reg-
17 ulatory Policies Act of 1978 (16 U.S.C. 2601 and fol-
18 lowing) is amended by adding after section 610 (as added
19 by section 101 of this Act) the following:

20 **“SEC. 611. FEDERAL ENERGY EFFICIENCY RESOURCE**
21 **STANDARD FOR RETAIL ELECTRICITY AND**
22 **NATURAL GAS DISTRIBUTORS.**

23 “(a) STATEMENT OF FEDERAL POLICY.—The Fed-
24 eral energy efficiency resource standard established by this
25 section sets nationwide minimum levels of electricity and
26 natural gas savings to be achieved through utility effi-

1 ciency programs, building energy codes, appliance stand-
2 ards, and related efficiency measures. In light of the cost-
3 effective energy efficiency opportunities that exist across
4 the country in every sector of the economy, retail elec-
5 tricity distributors, retail natural gas distributors, and
6 States should additionally consider energy efficiency as a
7 resource in utility planning and procurement activities and
8 should seek to achieve all energy efficiency that is avail-
9 able at lower cost than energy supply options.

10 “(b) DEFINITIONS.—In this section:

11 “(1) AFFILIATE.—The term ‘affiliate’ when
12 used in relation to a person, means another person
13 that directly or indirectly owns or controls, is owned
14 or controlled by, or is under common ownership con-
15 trol with, such person, as determined under regula-
16 tions promulgated by the Secretary.

17 “(2) ASHRAE, ANSI, AND IESNA.—The terms
18 ‘ASHRAE’, ‘ANSI’, and ‘IESNA’ mean the Amer-
19 ican Society of Heating, Refrigerating and Air Con-
20 ditioning Engineers, the American National Stand-
21 ards Institute, and the Illuminating Engineering So-
22 ciety of North America, respectively.

23 “(3) BASE QUANTITY.—The term ‘base quan-
24 tity’, with respect to a retail electricity distributor or
25 retail natural gas distributor, means, for each year

1 for which a performance standard is established
2 under subsection (d), the average annual quantity of
3 electricity or natural gas delivered by the retail elec-
4 tricity distributor or retail natural gas distributor to
5 retail customers during the 2 calendar years imme-
6 diately preceding such year. In determining the base
7 quantity of a retail natural gas distributor, natural
8 gas delivered for purposes of electricity generation
9 shall be excluded.

10 “(4) CHP SAVINGS.—The term ‘CHP savings’
11 means—

12 “(A) CHP system savings from a combined
13 heat and power system that commences oper-
14 ation after the date of enactment of this sec-
15 tion; and

16 “(B) the increase in CHP system savings
17 from upgrading or replacing, after the date of
18 enactment of this section, a combined heat and
19 power system that commenced operation on or
20 before the date of enactment of this section.

21 “(5) CHP SYSTEM SAVINGS.—The term ‘CHP
22 system savings’ means the electric output, and the
23 electricity saved due to the mechanical output, of a
24 combined heat and power system, adjusted to reflect
25 any increase in fuel consumption by that system as

1 compared to the fuel that would have been required
2 to produce an equivalent useful thermal energy out-
3 put in a separate thermal-only system.

4 “(6) CODES AND STANDARDS SAVINGS.—

5 “(A) IN GENERAL.—The term ‘codes and
6 standards savings’ means a reduction in end-
7 use electricity or natural gas consumption in a
8 retail electricity distributor or a retail natural
9 gas distributor’s service territory as a result of
10 the adoption and implementation, after the date
11 of enactment of this section, of new or revised
12 appliance and equipment efficiency standards or
13 building energy codes.

14 “(B) BASELINES.—In calculating codes
15 and standards savings—

16 “(i) the baseline for calculating sav-
17 ings from building codes shall be the 2006
18 International Energy Conservation Code
19 for residential buildings and the ASHRAE/
20 ANSI/IESNA Standard 90.1–2004 for
21 commercial buildings, or the relevant State
22 building code in effect on date of enact-
23 ment of this section, whichever is more
24 stringent; and

1 “(ii) the baseline for calculating sav-
2 ings from appliance standards shall be the
3 average efficiency of new appliances in the
4 relevant category or categories prior to
5 adoption and implementation of the new
6 standard.

7 “(7) COMBINED HEAT AND POWER SYSTEM.—
8 The term ‘combined heat and power system’ means
9 a system that uses the same energy source both for
10 the generation of electrical or mechanical power and
11 the production of steam or another form of useful
12 thermal energy, provided that—

13 “(A) the system meets such requirements
14 relating to efficiency and other operating char-
15 acteristics as the Secretary may promulgate by
16 regulation; and

17 “(B) the net wholesale sales of electricity
18 by the facility will not exceed 50 percent of
19 total annual electric generation by the facility.

20 “(8) COST-EFFECTIVE.—The term ‘cost-effec-
21 tive’, with respect to an energy efficiency measure,
22 means that the measure achieves a net present value
23 of economic benefits over the life of the measure,
24 both directly to the energy consumer and to the
25 economy, that is greater than the net present value

1 of the cost of the measure over the life of the meas-
2 ure, both directly to the energy consumer and to the
3 economy.

4 “(9) CUSTOMER FACILITY SAVINGS.—The term
5 ‘customer facility savings’ means a reduction in end-
6 use electricity or natural gas consumption (including
7 recycled energy savings) at a facility of an end-use
8 consumer of electricity or natural gas served by a re-
9 tail electricity distributor or natural gas distributor,
10 as compared to—

11 “(A) in the case of a new facility, con-
12 sumption at a reference facility of average effi-
13 ciency;

14 “(B) in the case of an existing facility,
15 consumption at such facility during a base pe-
16 riod (which shall not be less than 1 year); or

17 “(C) in the case of new equipment, regard-
18 less of whether the new equipment replaces ex-
19 isting equipment at the end of the useful life of
20 the existing equipment, consumption by new
21 equipment of average efficiency of the same
22 equipment type, provided that customer savings
23 under this subparagraph shall not be counted
24 towards customer savings under subparagraph
25 (A) or (B).

1 “(10) ELECTRICITY SAVINGS.—The term ‘elec-
2 tricity savings’ means reductions in electricity con-
3 sumption, relative to business-as-usual projections,
4 achieved through measures implemented after the
5 date of enactment of this section, limited to—

6 “(A) customer facility savings of elec-
7 tricity, adjusted to reflect any associated in-
8 crease in fuel consumption at the facility;

9 “(B) reductions in distribution system
10 losses of electricity achieved by a retail elec-
11 tricity distributor, as compared to losses attrib-
12 utable to new or replacement distribution sys-
13 tem equipment of average efficiency;

14 “(C) CHP savings; and

15 “(D) codes and standards savings of elec-
16 tricity.

17 “(11) NATURAL GAS SAVINGS.—The term ‘nat-
18 ural gas savings’ means reductions in natural gas
19 consumption, relative to business-as-usual projec-
20 tions, achieved through measures implemented after
21 the date of enactment of this section, limited to—

22 “(A) customer facility savings of natural
23 gas, adjusted to reflect any associated increase
24 in electricity consumption or consumption of
25 other fuels at the facility;

1 “(B) reductions in leakage, operational
2 losses, and consumption of natural gas fuel to
3 operate a gas distribution system, achieved by
4 a retail natural gas distributor, as compared to
5 similar leakage, losses, and consumption during
6 a base period (which shall not be less than 1
7 year); and

8 “(C) codes and standards savings of nat-
9 ural gas.

10 “(12) POWER POOL.—The term ‘power pool’
11 means an association of 2 or more interconnected
12 electric systems that is recognized by the Commis-
13 sion as having an agreement to coordinate oper-
14 ations and planning for improved reliability and effi-
15 ciencies, including a Regional Transmission Organi-
16 zation or an Independent System Operator.

17 “(13) RECYCLED ENERGY SAVINGS.—The term
18 ‘recycled energy savings’ means a reduction in elec-
19 tricity or natural gas consumption that results from
20 a modification of an industrial or commercial system
21 that commenced operation before the date of enact-
22 ment of this section, in order to recapture electrical,
23 mechanical, or thermal energy that would otherwise
24 be wasted.

1 “(14) REPORTING PERIOD.—The term ‘report-
2 ing period’ means—

3 “(A) calendar year 2012; and

4 “(B) each successive 2-calendar-year pe-
5 riod thereafter.

6 “(15) RETAIL ELECTRICITY DISTRIBUTOR.—

7 “(A) IN GENERAL.—The term ‘retail elec-
8 tricity distributor’ means, for any given cal-
9 endar year, an electric utility that owns or oper-
10 ates an electric distribution facility and, using
11 the facility, delivered not less than 1,500,000
12 megawatt-hours of electric energy to electric
13 consumers for purposes other than resale dur-
14 ing the most recent 2-calendar-year period for
15 which data are available.

16 “(B) INCLUSIONS AND LIMITATIONS.—For
17 purposes of determining whether an electric
18 utility qualifies as a retail electricity distributor
19 under subparagraph (A)—

20 “(i) deliveries by any affiliate of an
21 electric utility to electric consumers for
22 purposes other than resale shall be consid-
23 ered to be deliveries by such electric utility;
24 and

1 “(ii) deliveries by any electric utility
2 to a lessee, tenant, or affiliate of such elec-
3 tric utility shall not be treated as deliveries
4 to electric consumers.

5 “(16) RETAIL NATURAL GAS DISTRIBUTOR.—

6 “(A) IN GENERAL.—The term ‘retail nat-
7 ural gas distributor’ means, for any given cal-
8 endar year, a local distribution company, as
9 that term is defined in section 2(17) of the
10 Natural Gas Policy Act of 1978 (15 U.S.C.
11 3301(17)), that delivered to natural gas con-
12 sumers more than 5,000,000,000 cubic feet of
13 natural gas during the most recent 2-calendar-
14 year period for which data are available.

15 “(B) INCLUSIONS AND LIMITATIONS.—For
16 purposes of determining whether a person
17 qualifies as a retail natural gas distributor
18 under subparagraph (A)—

19 “(i) deliveries of natural gas by any
20 affiliate of a local distribution company to
21 consumers for purposes other than resale
22 shall be considered to be deliveries by such
23 local distribution company; and

24 “(ii) deliveries of natural gas to a les-
25 see, tenant, or affiliate of a local distribu-

1 tion company shall not be treated as deliv-
2 eries to natural gas consumers.

3 “(17) THIRD-PARTY EFFICIENCY PROVIDER.—

4 The term ‘third-party efficiency provider’ means any
5 retailer, building owner, energy service company, fi-
6 nancial institution or other commercial, industrial or
7 non-profit entity that is capable of providing elec-
8 tricity savings or natural gas savings in accordance
9 with the requirements of subsections (e) and (f).

10 “(c) ESTABLISHMENT OF PROGRAM.—Not later than

11 1 year after the date of enactment of this section, the Sec-
12 retary shall, by regulation, establish a program to imple-
13 ment and enforce the requirements of this section. In es-
14 tablishing such program, the Secretary shall, to the extent
15 practicable, preserve the integrity, and incorporate best
16 practices, of existing State energy efficiency programs.

17 “(d) PERFORMANCE STANDARDS.—

18 “(1) COMPLIANCE OBLIGATION.—Not later
19 than April 1 of the calendar year immediately fol-
20 lowing each reporting period—

21 “(A) each retail electricity distributor shall
22 submit to the Secretary a report, in accordance
23 with regulations issued by the Secretary, dem-
24 onstrating that it has achieved, by the end of
25 each calendar year in the reporting period, cu-

1 cumulative electricity savings (adjusted to account
 2 for any attrition of savings measures imple-
 3 mented in prior years) that are equal to the ap-
 4 plicable percentage of the base quantity of such
 5 retail electricity distributor for such year, as es-
 6 tablished under paragraph (2), (3), or (4) of
 7 this subsection; and

8 “(B) each retail natural gas distributor
 9 shall submit to the Secretary a report, in ac-
 10 cordance with regulations issued by the Sec-
 11 retary, demonstrating that it has achieved, by
 12 the end of each calendar year in the reporting
 13 period, cumulative natural gas savings (ad-
 14 justed to account for any attrition of savings
 15 measures implemented in prior years) that are
 16 equal to the applicable percentage of the base
 17 quantity of such retail natural gas distributor
 18 for such year, as established under paragraph
 19 (2), (3), or (4) of this subsection.

20 “(2) STANDARDS FOR 2012 THROUGH 2020.—

21 For calendar years 2012 through 2020, the applica-
 22 ble percentages are as follows:

“Calendar Year	Cumulative Electricity Savings Percentage	Cumulative Natural Gas Savings Percentage
2012	1.00	0.75
2013	2.00	1.50

“Calendar Year	Cumulative Electricity Savings Percentage	Cumulative Natural Gas Savings Percentage
2014	3.25	2.50
2015	4.50	3.50
2016	6.00	4.75
2017	7.50	6.00
2018	10.00	7.25
2019	12.50	8.50
2020	15.00	10.00

1 “(3) SUBSEQUENT YEARS.—

2 “(A) CALENDAR YEARS 2021 THROUGH
3 2030.—Not later than December 31, 2018, the
4 Secretary shall promulgate regulations estab-
5 lishing performance standards (expressed as ap-
6 plicable percentages of base quantity for both
7 cumulative electricity savings and cumulative
8 natural gas savings) for calendar years 2021
9 through 2030.

10 “(B) SUBSEQUENT EXTENSIONS.—Except
11 as provided in subparagraph (A), not later than
12 December 31 of the penultimate reporting pe-
13 riod for which performance standards have been
14 set under this paragraph, the Secretary shall
15 promulgate regulations establishing perform-
16 ance standards (expressed as applicable per-
17 centages of base quantity for both cumulative
18 electricity savings and cumulative natural gas

1 savings) for the 10-calendar-year period fol-
2 lowing the last calendar year for which perform-
3 ance standards previously were set.

4 “(C) REQUIREMENTS.—The Secretary
5 shall set standards under this paragraph to re-
6 flect the highest level of cost-effective energy ef-
7 ficiency potential that is reasonably achievable,
8 taking into account cost-effective energy savings
9 achieved by leading retail electricity distributors
10 and retail natural gas distributors, opportuni-
11 ties for new codes and standard savings, tech-
12 nology improvements, and other indicators of
13 cost-effective energy efficiency potential. In no
14 case shall the applicable percentages for any
15 calendar year be lower than those for calendar
16 year 2020 (including any increase in the stand-
17 ard for calendar year 2020 pursuant to para-
18 graph (4)).

19 “(4) MIDCOURSE REVIEW AND ADJUSTMENT OF
20 STANDARDS.—Not later than December 31, 2014,
21 and at 10-year intervals thereafter, the Secretary
22 shall review the most recent standards established
23 under paragraph (2) or (3) and shall, by regulation,
24 increase the standards if the Secretary determines
25 that additional cost-effective energy efficiency poten-

1 tial is reasonably achievable, taking into account the
2 factors identified in paragraph (3)(C). If the Sec-
3 retary revises standards pursuant to this paragraph,
4 the regulations shall provide adequate lead time to
5 ensure that compliance with the increased standards
6 is feasible.

7 “(5) DELAY OF SUBMISSION FOR FIRST RE-
8 PORTING PERIOD.—Notwithstanding paragraphs (1)
9 and (2), for the 2012 reporting period, the Secretary
10 may accept a request from a retail electricity dis-
11 tributor or a retail natural gas distributor to delay
12 the required submission of documentation of some or
13 all of the required savings for up to 2 years. The re-
14 quest for delay shall include a plan for coming into
15 full compliance by the end of the 2013–2014 report-
16 ing period.

17 “(e) TRANSFERS OF ELECTRICITY OR NATURAL GAS
18 SAVINGS.—

19 “(1) BILATERAL CONTRACTS FOR SAVINGS
20 TRANSFERS.—Subject to the limitations of this para-
21 graph, a retail electricity distributor or retail natural
22 gas distributor may use electricity savings or natural
23 gas savings purchased, pursuant to a bilateral con-
24 tract, from another retail electricity distributor or
25 retail natural gas distributor, a State, or a third-

1 party efficiency provider to meet the applicable per-
2 formance standard under subsection (d).

3 “(2) REQUIREMENTS.—Electricity or natural
4 gas savings purchased and used for compliance pur-
5 suant to this paragraph shall be—

6 “(A) measured and verified in accordance
7 with the procedures specified under subsection
8 (f);

9 “(B) reported in accordance with sub-
10 section (d); and

11 “(C) achieved within the same State as is
12 served by the retail electricity distributor or re-
13 tail natural gas distributor.

14 “(3) EXCEPTION.—Notwithstanding paragraph
15 (2)(C), a State regulatory authority may authorize a
16 retail electricity distributor or a retail natural gas
17 distributor regulated by such State regulatory au-
18 thority to purchase savings achieved in a different
19 State, provided that—

20 “(A) such savings are achieved within the
21 same power pool; and

22 “(B) the State regulatory authority that
23 regulates the purchaser oversees the measure-
24 ment and verification of the savings pursuant to

1 the procedures and standards applicable in the
2 purchaser's State.

3 “(4) REGULATORY APPROVAL.—Nothing in this
4 paragraph shall limit or affect the authority of a
5 State regulatory authority to require a retail elec-
6 tricity distributor or retail natural gas distributor
7 that is regulated by such State regulatory authority
8 to obtain such State regulatory authority's author-
9 ization or approval of a contract for transfer of sav-
10 ings under this paragraph.

11 “(5) LIMITATIONS.—In the interest of opti-
12 mizing achievement of cost-effective efficiency poten-
13 tial, the Secretary may prescribe such limitations as
14 the Secretary determines appropriate with respect to
15 the proportion of a retail electricity or natural gas
16 distributor's compliance obligation, under the appli-
17 cable performance standards under subsection (d),
18 that may be met using electricity or natural gas sav-
19 ings that are purchased under this paragraph.

20 “(f) MEASUREMENT AND VERIFICATION OF SAV-
21 INGS.—The regulations promulgated pursuant to sub-
22 section (b) shall include—

23 “(1) procedures and standards for defining and
24 measuring electricity savings and natural gas sav-

1 ings that can be counted towards the performance
2 standards set forth in subsection (d), which shall—

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

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

12 “(C) account for the useful life of meas-
13 ures;

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

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

19 “(F) include procedures for counting CHP
20 savings and recycled energy savings;

21 “(G) establish methods for calculating
22 codes and standards energy savings, including
23 the use of verified compliance rates;

24 “(H) count only measures and savings that
25 are additional to business-as-usual practices;

1 “(I) except in the case of codes and stand-
2 ards savings, ensure that the retail electricity
3 distributor or retail natural gas distributor
4 claiming the savings played a significant role in
5 achieving the savings (including through the ac-
6 tivities of a designated agent of the distributor
7 or through the purchase of transferred savings);

8 “(J) avoid double-counting of savings used
9 for compliance with this section, including
10 transferred savings; and

11 “(K) include savings from programs ad-
12 ministered by the retail electric or natural gas
13 distributor that are funded by State, Federal,
14 or other sources; and

15 “(2) procedures and standards for third-party
16 verification of reported electricity savings or natural
17 gas savings.

18 “(g) ENFORCEMENT AND JUDICIAL REVIEW.—

19 “(1) REVIEW OF RETAIL DISTRIBUTOR RE-
20 PORTS.—The Secretary shall review each report sub-
21 mitted to the Secretary by a retail electricity dis-
22 tributor or retail natural gas distributor under sub-
23 section (d) to verify that the applicable performance
24 standards under subsection (d) have been met. In
25 determining compliance with the applicable perform-

1 ance standards, the Secretary shall exclude reported
2 electricity savings or natural gas savings that are
3 not adequately demonstrated and documented, in ac-
4 cordance with the regulations issued under sub-
5 sections (d), (e), and (f).

6 “(2) PENALTY FOR FAILURE TO DOCUMENT
7 ADEQUATE SAVINGS.—If a retail electricity dis-
8 tributor or a retail natural gas distributor fails to
9 demonstrate compliance with an applicable perform-
10 ance standard under subsection (d), or to pay to the
11 State an applicable alternative compliance payment
12 under subsection (h)(4), the Secretary shall assess
13 against the retail electricity distributor or retail nat-
14 ural gas distributor a civil penalty for each such fail-
15 ure in an amount equal to, as adjusted for inflation
16 in accordance with such regulations as the Secretary
17 may promulgate—

18 “(A) \$50 per megawatt-hour of electricity
19 savings or alternative compliance payment that
20 the retail electricity distributor failed to achieve
21 or make, respectively; or

22 “(B) \$5 per million British thermal units
23 of natural gas savings or alternative compliance
24 payment that the retail natural gas distributor
25 failed to achieve or make, respectively.

1 “(3) OFFSETTING STATE PENALTIES.—The
2 Secretary shall reduce the amount of any penalty
3 under paragraph (2) by the amount paid by the rel-
4 evant retail electricity distributor or retail natural
5 gas distributor to a State for failure to comply with
6 the requirements of a State energy efficiency re-
7 source standard during the same compliance period,
8 provided that the State standard is comparable in
9 type to the Federal standard established under this
10 section and is more stringent than the applicable
11 performance standards under subsection (d).

12 “(4) ENFORCEMENT PROCEDURES.—The Sec-
13 retary shall assess a civil penalty, as provided under
14 paragraph (1), in accordance with the procedures
15 described in section 333(d) of the Energy Policy and
16 Conservation Act of 1954 (42 U.S.C. 6303).

17 “(5) JUDICIAL REVIEW.—Any person who will
18 be adversely affected by a final action taken by the
19 Secretary under this section, other than the assess-
20 ment of a civil penalty, may use the procedures for
21 review described in section 336(b) of the Energy
22 Policy and Conservation Act (42 U.S.C. 6306). For
23 purposes of this paragraph, references to a rule in
24 section 336(b) of the Energy Policy and Conserva-
25 tion Act shall be deemed to refer also to all other

1 final actions of the Secretary under this section
2 other than the assessment of a civil penalty.

3 “(h) STATE ADMINISTRATION.—

4 “(1) IN GENERAL.—Upon receipt of an applica-
5 tion from the Governor of a State (including, for
6 purposes of this subsection, the Mayor of the Dis-
7 trict of Columbia), the Secretary may delegate to the
8 State the administration of this section within the
9 State’s territory if the Secretary determines that the
10 State will implement an energy efficiency program
11 that meets or exceeds the requirements of this sec-
12 tion, including—

13 “(A) achieving electricity savings and nat-
14 ural gas savings at least as great as those re-
15 quired under the applicable performance stand-
16 ards established under subsection (d);

17 “(B) reviewing reports and verifying elec-
18 tricity savings and natural gas savings achieved
19 in the State (including savings transferred from
20 outside the State); and

21 “(C) in the case of failure to document
22 adequate savings, requiring payment of alter-
23 native compliance payments that are at least as
24 high as those required under subsection (g) and

1 using such payments to implement cost-effective
2 efficiency programs.

3 “(2) SECRETARIAL DETERMINATION.—The Sec-
4 retary shall make a substantive determination ap-
5 proving or disapproving a State application, after
6 public notice and comment, within 180 days of re-
7 ceipt of a complete application.

8 “(3) ALTERNATIVE MEASUREMENT AND
9 VERIFICATION PROCEDURES AND STANDARDS.—As
10 part of an application submitted under paragraph
11 (1), a State may request to use alternative measure-
12 ment and verification procedures and standards to
13 those specified in subsection (f), provided the State
14 demonstrates that such alternative procedures and
15 standards provide a level of accuracy of measure-
16 ment and verification at least equivalent to the Fed-
17 eral procedures and standards promulgated under
18 subsection (f).

19 “(4) USE OF ALTERNATIVE COMPLIANCE PAY-
20 MENTS.—Alternative compliance payments collected
21 by a State pursuant to this section shall be used by
22 the State to administer its delegated authority under
23 this section and to implement cost-effective energy
24 efficiency programs. Such programs shall—

1 “(A) to the extent feasible, achieve elec-
2 tricity savings and natural gas savings in the
3 State sufficient to make up the deficit associ-
4 ated with the alternative compliance payments;
5 and

6 “(B) be measured and verified in accord-
7 ance with the applicable procedures and stand-
8 ards under subsection (f) or paragraph (3) of
9 this subsection, as the case may be.

10 “(5) REVIEW OF STATE IMPLEMENTATION.—

11 “(A) PERIODIC REVIEW.—Every 2 years,
12 the Secretary shall review State implementation
13 of this section for conformance with the re-
14 quirements of this section in approximately one-
15 half of the States that have received approval
16 under this subsection to administer the pro-
17 gram, such that each State shall be reviewed at
18 least every 4 years. To facilitate such review,
19 the Secretary may require the State to submit
20 a report demonstrating its conformance with
21 the requirements of this section, including—

22 “(i) reports submitted by retail elec-
23 tricity distributors and retail natural gas
24 distributors to the State demonstrating

1 compliance with applicable performance
2 standards;

3 “(ii) the impact of such standards on
4 projected electricity and natural gas de-
5 mand within the State;

6 “(iii) an accounting of the State’s use
7 of alternative compliance payments and the
8 resulting electricity savings and natural
9 gas savings achieved; and

10 “(iv) such other information as the
11 Secretary determines appropriate.

12 “(B) REVIEW UPON PETITION.—Notwith-
13 standing subparagraph (A), upon receipt of a
14 public petition containing credible allegation of
15 substantial deficiencies, the Secretary shall
16 promptly review a State’s implementation of
17 delegated authority under this section.

18 “(C) DEFICIENCIES.—If deficiencies are
19 found in a review under this paragraph, the
20 Secretary shall notify the State and direct it to
21 correct such deficiencies and to report to the
22 Secretary on progress within 180 days of the
23 receipt of review results. If the deficiencies are
24 substantial, the Secretary shall—

1 “(i) disallow such reported savings as
2 the Secretary determines are not credible
3 due to deficiencies;

4 “(ii) re-review the State not later than
5 2 years after the original review; and

6 “(iii) if substantial deficiencies remain
7 uncorrected after the review provided for
8 under clause (ii), revoke the authority of
9 such State to administer the program es-
10 tablished under this section.

11 “(6) CALLS FOR REVISION OF STATE APPLICA-
12 TIONS.—As a condition of maintaining its delegated
13 authority to administer this section, the Secretary
14 may require a State to submit a revised application
15 under paragraph (1) if the Secretary has—

16 “(A) promulgated new or revised perform-
17 ance standards under subsection (d);

18 “(B) promulgated new or substantially re-
19 vised measurement and verification procedures
20 and standards under subsection (f); or

21 “(C) otherwise substantially revised the
22 program established under this section.

23 “(i) INFORMATION AND REPORTS.—In accordance
24 with section 13 of the Federal Energy Administration Act
25 of 1974 (15 U.S.C. 772), the Secretary may require any

1 retail electricity distributor, any retail natural gas dis-
2 tributor, any third-party efficiency provider, or such other
3 entities as the Secretary deems appropriate, to provide any
4 information the Secretary determines appropriate to carry
5 out this section.

6 “(j) STATE LAW.—Nothing in this section shall di-
7 minish or qualify any authority of a State or political sub-
8 division of a State to adopt or enforce any law or regula-
9 tion respecting electricity savings or natural gas savings,
10 including any law or regulation establishing energy effi-
11 ciency requirements more stringent than those under this
12 section, provided that no such law or regulation may re-
13 lieve any person of any requirement otherwise applicable
14 under this section.”.

15 (b) TABLE OF CONTENTS AMENDMENT.—The table
16 of contents of the Public Utility Regulatory Policies Act
17 of 1978 (16 U.S.C. 2601 and following) is amended by
18 adding at the end of the items relating to title VI the fol-
19 lowing:

“Sec. 611. Federal energy efficiency resource standard.”.

20 **Subtitle E—Industrial Energy**
21 **Efficiency Programs**

22 **SEC. 241. INDUSTRIAL PLANT ENERGY EFFICIENCY STAND-**
23 **ARDS.**

24 The Secretary of Energy shall develop industrial
25 plant energy efficiency certification standards as part of

1 the existing Department of Energy program of developing
2 American National Standards Institute (ANSI) accredited
3 standards for industrial benchmarking, and shall seek
4 ANSI accreditation of such standards.

5 **SEC. 242. ELECTRIC AND THERMAL ENERGY EFFICIENCY**
6 **AWARD PROGRAMS.**

7 (a) THERMAL AND ELECTRIC ENERGY RECOVERY
8 AWARDS.—The Secretary of Energy shall establish a pro-
9 gram to make monetary awards to the owners and opera-
10 tors of new and existing electric energy generation facili-
11 ties or thermal energy production facilities using fossil or
12 nuclear fuel, to encourage them to use innovative means
13 of recovering any thermal energy that is a potentially use-
14 ful byproduct of electric power generation or other proc-
15 esses to—

16 (1) generate additional electric energy; or
17 (2) make sales of thermal energy not used for
18 electric generation, in the form of steam, hot water,
19 chilled water, or desiccant regeneration, or for other
20 commercially valid purposes.

21 (b) AMOUNT OF AWARDS.—

22 (1) ELIGIBILITY.—Awards shall be made under
23 subsection (a) only for the use of innovative means
24 that increase the net energy efficiency at the facility

1 concerned in relationship to the current standard
2 technology in use at similar facilities.

3 (2) AMOUNT.—The amount of an award made
4 under subsection (a) shall equal an amount up to
5 the value of 25 percent of the energy projected to be
6 recovered or generated during the first 5 years of
7 operation of the facility using the innovative energy
8 recovery method, or such lesser amount that the
9 Secretary determines to be the minimum amount
10 that can cost-effectively stimulate such innovation.

11 (3) LIMITATION.—No person may receive an
12 award under this section if a grant under the waste
13 energy incentive grant program under section 373 of
14 the Energy Policy and Conservation Act (42 U.S.C.
15 6343) is made for the same energy savings resulting
16 from the same innovative method.

17 (c) REGULATORY STATUS.—The Secretary of Energy
18 shall—

19 (1) assist State regulatory commissions to iden-
20 tify and make changes in State regulatory programs
21 for electric utilities to provide appropriate regulatory
22 status for thermal energy byproduct businesses of
23 regulated electric utilities to encourage those utilities
24 to enter businesses making the sales referred to in
25 subsection (a)(2); and

1 (2) encourage self-regulated utilities to enter
2 businesses making the sales referred to in subsection
3 (a)(2).

4 (d) ELIGIBILITY FOR SEED LOANS.—Owners and op-
5 erators of electric energy generation and thermal energy
6 production facilities shall be eligible for SEED Fund loans
7 under subtitle D of title I to provide initial capital for en-
8 tering into businesses involving sales referred to in sub-
9 section (a)(2).

10 (e) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated to the Secretary of En-
12 ergy such sums as are necessary for the purposes of this
13 section.

14 **Subtitle F—Improvements in En-**
15 **ergy Savings Performance Con-**
16 **tracting**

17 **SEC. 251. ENERGY SAVINGS PERFORMANCE CONTRACTS.**

18 (a) COMPETITION REQUIREMENTS FOR TASK OR DE-
19 LIVERY ORDERS UNDER ENERGY SAVINGS PERFORM-
20 ANCE CONTRACTS.—

21 (1) COMPETITION REQUIREMENTS.—Subsection
22 (a) of section 801 of the National Energy Conserva-
23 tion Policy Act (42 U.S.C. 8287(a)) is amended by
24 adding at the end the following paragraph:

1 “(3) COMPETITION REQUIREMENTS FOR TASK
2 OR DELIVERY ORDERS.—

3 “(A) The head of a Federal agency may
4 issue a task or delivery order for energy savings
5 performance contract services by—

6 “(i) reviewing the qualifications of two
7 or more contractors that have been com-
8 petitively awarded multiple-award indefi-
9 nite-delivery, indefinite-quantity contracts
10 to provide energy savings performance
11 services;

12 “(ii) selecting two or more contractors
13 (from among those reviewed under clause
14 (i)) to conduct discussions concerning the
15 contractors’ respective qualifications to im-
16 plement potential energy conservation
17 measures, including requesting references
18 demonstrating experience on similar efforts
19 and the resulting energy savings of such
20 similar efforts;

21 “(iii) selecting and authorizing one or
22 more contractors (from among those se-
23 lected under clause (ii)) to conduct a site
24 survey or investigation and a feasibility de-
25 sign and study for the purpose of allowing

1 each contractor to submit a firm-fixed
2 price proposal to implement specific energy
3 conservation measures;

4 “(iv) negotiating a task or delivery
5 order for energy savings performance con-
6 tracting services with one of the contrac-
7 tors selected under clause (iii) based on the
8 energy conservation measures identified in
9 the site survey or investigation and feasi-
10 bility design and study; and

11 “(v) issuing a task or delivery order
12 for energy savings performance contracting
13 services to such contractor.

14 “(B) The issuance of a task or delivery
15 order for energy savings performance con-
16 tracting services pursuant to subparagraph (A)
17 is deemed to satisfy the task and delivery order
18 competition requirements in section 2304e(d) of
19 title 10, United States Code. and section
20 303J(d) of the Federal Property and Adminis-
21 trative Services Act of 1949 (41 U.S.C. 253j).

22 “(C) The Secretary may issue guidance as
23 necessary to agencies issuing task or delivery
24 orders pursuant to subparagraph (A).”.

1 (2) EFFECTIVE DATE.—The amendment made
2 by subsection (a) is inapplicable to task or delivery
3 orders issued before the date of enactment of this
4 section.

5 (b) INCLUSION OF CONTRACTS FOR RENEWABLE EN-
6 ENERGY.—Section 801(a)(2) of the National Energy Con-
7 servation Policy Act (42 U.S.C. 8287) is amended—

8 (1) by redesignating subparagraphs (E), (F),
9 and (G) as subparagraphs (F), (G), and (H), respec-
10 tively; and

11 (2) by inserting after subparagraph (D) the fol-
12 lowing new subparagraph:

13 “(E) CONTRACTS FOR RENEWABLE EN-
14 ERGY FROM PUBLIC UTILITY SERVICES.—Not-
15 withstanding section 501(b)(1)(B) of title 40,
16 United States Code, a contract for renewable
17 energy entered into in support of an Energy
18 Savings Performance Contract may be made for
19 a period of not more than 30 years.”.

20 (c) INCLUSION OF INSTALLATION OF RENEWABLE
21 ENERGY SYSTEMS.—Section 804(2)(B) of the National
22 Energy Conservation Policy Act (42 U.S.C. 8287c(2)(B))
23 is amended to read as follows:

24 “(B) the increased efficient use of an exist-
25 ing energy source by cogeneration or heat re-

1 covery installed on the Federal facility site, and
2 installation of renewable energy systems;”.

3 (d) INCLUSION OF THERMAL RENEWABLE EN-
4 ENERGY.—Section 203 of the Energy Policy Act of 2005 (42
5 U.S.C. 15852) is amended—

6 (1) in subsection (a), by striking “electric”; and

7 (2) in subsection (b)(2), by inserting “or ther-
8 mal” after “electric”.

9 (e) CREDIT FOR RENEWABLE ENERGY PRODUCED
10 AND USED ON SITE.—Subsection (c) of section 203 of the
11 Energy Policy Act of 2005 (42 U.S.C. 15852) is amended
12 to read as follows:

13 “(c) CALCULATION.—Renewable energy produced at
14 a Federal facility, on Federal lands, or on Indian lands,
15 shall be calculated separately from renewable energy con-
16 sumed at a Federal facility, and each may be used to com-
17 ply with the consumption requirement under subsection
18 (a).”.

19 (f) FINANCING FLEXIBILITY.—Section 801(a)(2)(F)
20 of the National Energy Conservation Policy Act (42
21 U.S.C. 8287(a)(2)(F)) is amended by striking “In” and
22 inserting “Notwithstanding any other provision of law,
23 in”.

1 **Subtitle G—Public Institutions**

2 **SEC. 261. PUBLIC INSTITUTIONS.**

3 Section 399A of the Energy Policy and Conservation
4 Act (42 U.S.C. 6371h–1) is amended—

5 (1) in subsection (a)(5), by striking “or a des-
6 igned” and inserting “a not-for-profit hospital or
7 not-for-profit inpatient health care facility, or a des-
8 igned agent”;

9 (2) in subsection (c)(1), by striking subpara-
10 graph (C);

11 (3) in subsection (f)(3)(A), by striking
12 “\$1,000,000” and inserting “\$2,500,000”; and

13 (4) in subsection (i)(1), by striking
14 “\$250,000,000 for each of fiscal years 2009 through
15 2013” and inserting “such sums as may be nec-
16 essary for each of fiscal years 2010 through 2015”.

17 **TITLE III—REDUCING GLOBAL** 18 **WARMING POLLUTION**

19 **SEC. 301. SHORT TITLE.**

20 This title may be cited as the “Safe Climate Act”.

21 **Subtitle A—Reducing Global** 22 **Warming Pollution**

23 **SEC. 311. REDUCING GLOBAL WARMING POLLUTION.**

24 The Clean Air Act (42 U.S.C. and following) is
25 amended by adding at the end the following new title:

1 **“TITLE VII—GLOBAL WARMING**
2 **POLLUTION REDUCTION PRO-**
3 **GRAM**

4 **“PART A—GLOBAL WARMING POLLUTION**
5 **REDUCTION GOALS AND TARGETS**

6 **“SEC. 701. FINDINGS AND PURPOSE.**

7 “(a) FINDINGS.—The Congress finds as follows:

8 “(1) Global warming poses a significant threat
9 to the national security, economy, public health and
10 welfare, and environment of the United States, as
11 well as of other nations.

12 “(2) Reviews of scientific studies, including by
13 the Intergovernmental Panel on Climate Change and
14 the National Academies, demonstrate that global
15 warming is the result of the combined anthropogenic
16 greenhouse gas emissions from numerous sources of
17 all types and sizes. Each increment of emission,
18 when combined with other emissions, causes or con-
19 tributes materially to the acceleration and extent of
20 global warming and its adverse effects for the life-
21 time of such gas in the atmosphere. Accordingly,
22 controlling emissions in small as well as large
23 amounts is essential to prevent, slow the pace of, re-
24 duce the threats from, and mitigate global warming
25 and its adverse effects.

1 “(3) Because they induce global warming,
2 greenhouse gas emissions cause or contribute to in-
3 juries to persons in the United States, including—

4 “(A) adverse health effects such as disease
5 and loss of life;

6 “(B) displacement of human populations;

7 “(C) damage to property and other inter-
8 ests related to ocean levels, acidification, and
9 ice changes;

10 “(D) severe weather and seasonal changes;

11 “(E) disruption, costs, and losses to busi-
12 ness, trade, employment, farms, subsistence,
13 aesthetic enjoyment of the environment, recre-
14 ation, culture, and tourism;

15 “(F) damage to plants, forests, lands, and
16 waters;

17 “(G) harm to wildlife and habitat;

18 “(H) scarcity of water and the decreased
19 abundance of other natural resources;

20 “(I) worsening of tropospheric air pollu-
21 tion;

22 “(J) substantial threats of similar damage;
23 and

24 “(K) other harm.

1 “(4) That many of these effects and risks of fu-
2 ture effects of global warming are widely shared
3 does not minimize the adverse effects individual per-
4 sons have suffered, will suffer, and are at risk of
5 suffering because of global warming.

6 “(5) That some of the adverse and potentially
7 catastrophic effects of global warming are presently
8 at risk of occurring and not a certainty does not ne-
9 gate the harm persons suffer from actions that in-
10 crease the likelihood, extent, and severity of such fu-
11 ture impacts.

12 “(6) Nations of the world look to the United
13 States for leadership in addressing the threat of and
14 harm from global warming. Full implementation of
15 this Act is critical to engage other nations in an
16 international effort to mitigate the threat of and
17 harm from global warming.

18 “(7) Global warming and its adverse effects are
19 now occurring and are likely to continue and in-
20 crease in magnitude, and to do so at a greater and
21 more harmful rate, unless this Act is fully imple-
22 mented and enforced in an expeditious manner.

23 “(b) PURPOSE.—It is the general purpose of this Act
24 to help prevent, reduce the pace of, mitigate, and remedy

1 global warming and its adverse effects. To fulfill the pur-
2 poses of this Act, it is necessary to—

3 “(1) require the timely fulfillment of all govern-
4 mental acts and duties, both substantive and proce-
5 dural, and the prompt compliance of covered entities
6 with the requirements of this Act;

7 “(2) establish and maintain an effective, trans-
8 parent, and fair market for emissions allowances and
9 preserve the integrity of the cap on emissions and of
10 offset credits;

11 “(3) advance the production and deployment of
12 clean energy and efficiency technologies; and

13 “(4) ensure effective enforcement of this Act by
14 citizens, states, and all levels of government because
15 each violation of this Act is likely to result in an ad-
16 ditional increment of greenhouse gas emission that
17 will slow the pace of implementation of this Act’s
18 goals and cause or contribute to global warming and
19 its adverse effects.

20 **“SEC. 702. ECONOMY-WIDE REDUCTION GOALS.**

21 “The purpose of this title and title VIII of this Act
22 is to reduce steadily the quantity of United States green-
23 house gas emissions such that—

24 “(1) in 2012, the quantity of United States
25 greenhouse gas emissions does not exceed 97 percent

1 of the quantity of United States greenhouse gas
2 emissions in 2005;

3 “(2) in 2020, the quantity of United States
4 greenhouse gas emissions does not exceed 80 percent
5 of the quantity of United States greenhouse gas
6 emissions in 2005;

7 “(3) in 2030, the quantity of United States
8 greenhouse gas emissions does not exceed 58 percent
9 of the quantity of United States greenhouse gas
10 emissions in 2005; and

11 “(4) in 2050, the quantity of United States
12 greenhouse gas emissions does not exceed 17 percent
13 of the quantity of United States greenhouse gas
14 emissions in 2005.

15 **“SEC. 703. REDUCTION TARGETS FOR SPECIFIED SOURCES.**

16 “(a) IN GENERAL.—Not later than 2 years after the
17 date of enactment of this title, pursuant to section 721(e),
18 the Administrator shall promulgate regulations to cap and
19 reduce annually the greenhouse gas emissions of capped
20 sources each calendar year beginning in 2012 such that—

21 “(1) in 2012, the quantity of greenhouse gas
22 emissions from capped sources does not exceed 97
23 percent of the quantity of greenhouse gas emissions
24 from such sources in 2005;

1 “(2) in 2020, the quantity of greenhouse gas
2 emissions from capped sources does not exceed 80
3 percent of the quantity of greenhouse gas emissions
4 from such sources in 2005;

5 “(3) in 2030, the quantity of greenhouse gas
6 emissions from capped sources does not exceed 58
7 percent of the quantity of greenhouse gas emissions
8 from such sources in 2005; and

9 “(4) in 2050, the quantity of greenhouse gas
10 emissions from capped sources does not exceed 17
11 percent of the quantity of greenhouse gas emissions
12 from such sources in 2005.

13 “(b) DEFINITION.—For purposes of this section, the
14 term ‘greenhouse gas emissions from such sources in
15 2005’ means emissions for which section 722 would have
16 required emission allowances to be held if the require-
17 ments of this title for the specified year had been in effect
18 in 2005.

19 **“SEC. 704. SUPPLEMENTAL POLLUTION REDUCTIONS.**

20 “For the purposes of decreasing the likelihood of cat-
21 astrophic climate change, preserving tropical forests,
22 building capacity to generate offset credits, and facili-
23 tating international action on global warming, the Admin-
24 istrator shall set aside the percentage specified in section
25 781 of the quantity of emission allowances established

1 under section 721(a) for each year, to be used to provide
2 incentives to reduce deforestation in developing countries
3 pursuant to part E. In 2020, the activities to reduce defor-
4 estation shall provide greenhouse gas reductions in an
5 amount equal to an additional 10 percentage points of re-
6 ductions from United States greenhouse gas emissions in
7 2005. The Administrator shall transfer these allowances
8 to countries that enter into and implement agreements or
9 arrangements relating to reduced deforestation as de-
10 scribed in section 754(a)(2).

11 **“SEC. 705. SCIENTIFIC REVIEW.**

12 “(a) IN GENERAL.—Not later than 1 year after the
13 date of enactment of this title, the Administrator shall
14 offer to enter into a contract with the National Academy
15 of Sciences (in this section referred to as the ‘Academy’)
16 under which the Academy shall, not later than July 1,
17 2012, and every 4 years thereafter, submit to Congress
18 and the Administrator a report that includes—

19 “(1) an analysis of the latest scientific informa-
20 tion and data relevant to global climate change;

21 “(2) an analysis of the technological feasibility
22 of achieving additional reductions in greenhouse gas
23 emissions; and

24 “(3) an analysis of the status of worldwide
25 greenhouse gas reduction efforts, including imple-

1 mentation of Safe Climate Act and other policies,
2 both domestic and international, for reducing green-
3 house gas emissions, preventing dangerous atmos-
4 pheric concentrations of greenhouse gases, pre-
5 venting a dangerous increase in global average tem-
6 perature and reducing vulnerability to the impacts of
7 climate change.

8 “(b) EXCEPTION.—Paragraphs (2) and (3) of sub-
9 section (a) shall not apply to the first report submitted
10 under subsection (a).

11 “(c) LATEST SCIENTIFIC INFORMATION.—The anal-
12 ysis required under subsection (a)(1) shall—

13 “(1) address existing scientific information and
14 reports, including the most recent assessment report
15 of the Intergovernmental Panel on Climate Change,
16 greenhouse gas emissions trends identified by the
17 Energy Information Agency, data from the National
18 Oceanic and Atmospheric Administration, data from
19 the Climate Change Science Program, data from the
20 National Aeronautics and Space Administration,
21 data from the Environmental Protection Agency in-
22 cluding the Agency’s Greenhouse Gas Inventory, and
23 the European Union’s global temperature data as-
24 sessment; and

1 “(2) include a description of trends and projec-
2 tions for—

3 “(A) global and country-specific annual
4 emissions of greenhouse gases, and cumulative
5 emissions produced between 1850 and the
6 present, including—

7 “(i) global cumulative emissions of an-
8 thropogenic greenhouse gases;

9 “(ii) global annual emissions of an-
10 thropogenic greenhouse gases; and

11 “(iii) by country, annual and cumu-
12 lative anthropogenic emissions of green-
13 house gases for the top 50 emitting na-
14 tions;

15 “(B) significant changes, both globally and
16 by country, in annual nonanthropogenic green-
17 house gas emissions including any accelerated
18 and large scale releases of greenhouse gases
19 from natural sources, such as from melting per-
20 mafrost, large scale natural forest decline, or a
21 decline in greenhouse gas absorption by the
22 oceans;

23 “(C) global atmospheric concentrations of
24 greenhouse gases, expressed in annual con-
25 centration units as well as carbon dioxide

1 equivalents based on 100-year global warming
2 potentials;

3 “(D) major climate forcing factors, such as
4 aerosols;

5 “(E) global average temperature, expressed
6 as seasonal and annual averages in land, ocean,
7 and land-plus-ocean averages; and

8 “(F) sea level rise;

9 “(3) describe increased risks to natural systems
10 and society that would result from an increase in
11 global average temperature 3.6 degrees Fahrenheit
12 (2 degrees Celsius) above the pre-industrial average,
13 as well as any other temperature thresholds the
14 Academy deems appropriate;

15 “(4) assess the impacts of global climate change
16 on—

17 “(A) human populations, including impacts
18 on public health, economic livelihoods, and
19 human infrastructure, and displacement due to
20 flooding;

21 “(B) freshwater systems, including water
22 resources for human consumption and agri-
23 culture and natural and managed ecosystems,
24 flood and drought risks, and relative humidity;

1 “(C) the carbon cycle, including impacts
2 related to the thawing of permafrost and terres-
3 trial and ocean carbon sinks;

4 “(D) species, including impacts on species
5 abundance, phenology, and distribution;

6 “(E) oceans and ocean ecosystems, includ-
7 ing effects on sea level rise, ocean acidity, ocean
8 temperatures, the health of coral reefs, fresh-
9 water influx on ocean circulation, and other in-
10 dicators of ocean ecosystem health;

11 “(F) the cryosphere, including effects on
12 ice sheet mass balance, mountain glacier mass
13 balance, and sea-ice extent and volume;

14 “(G) extreme weather events, including ef-
15 fects on intense precipitation, tropical cyclones,
16 and severe heat waves;

17 “(H) agriculture and forest systems, in-
18 cluding effects on potential growing season, dis-
19 tribution, and yield; and

20 “(I) any other indicators the Academy
21 deems appropriate; and

22 “(5) in assessing risks and impacts, use a risk
23 management framework, including both qualitative
24 and quantitative measures, to assess the observed

1 and projected impacts of current and future climate
2 change, accounting for—

3 “(A) both monetized and non-monetized
4 losses;

5 “(B) potential nonlinear, abrupt, or essen-
6 tially irreversible changes in the climate system;

7 “(C) potential nonlinear increases in the
8 cost of impacts;

9 “(D) potential low-probability, high impact
10 events; and

11 “(E) whether impacts are transitory or es-
12 sentially permanent.

13 “(d) TECHNOLOGICAL INFORMATION.—The analysis
14 required under subsection (a)(2) shall—

15 “(1) address existing technological information
16 and reports, including the most recent reports by the
17 Department of Energy and the International Energy
18 Agency;

19 “(2) assess the current and future projected de-
20 ployment of technologies and practices in the United
21 States that reduce or limit greenhouse gas emis-
22 sions, including—

23 “(A) technologies for capture and seques-
24 tration of greenhouse gases;

1 “(B) technologies to improve energy effi-
2 ciency;

3 “(C) low or zero-greenhouse gas emitting
4 energy technologies;

5 “(D) low or zero-greenhouse gas emitting
6 fuels;

7 “(E) biological sequestration practices and
8 technologies; and

9 “(F) any other technologies the Academy
10 deems relevant; and

11 “(3) assess and compare the emissions reduc-
12 tion potential, commercial viability, market penetra-
13 tion, and deployment of the technologies described in
14 paragraph (2), including—

15 “(A) an assessment of the need for addi-
16 tional research and development, including pub-
17 licly funded research and development;

18 “(B) an assessment of the state of com-
19 mercial deployment, including, where appro-
20 priate, a comparison to the cost and level of de-
21 ployment of conventional fossil fuel-fired energy
22 technologies and devices; and

23 “(C) an assessment of the existence of any
24 substantial technological, legal, or market-based
25 barriers to commercial deployment.

1 “(e) STATUS OF GREENHOUSE GAS REDUCTION EF-
2 FORTS.—The analysis required under subsection (a)(3)
3 shall address—

4 “(1) whether the programs under Safe Climate
5 Act and other Federal statutes are driving sufficient
6 United States greenhouse gas emissions reductions
7 to meet the emissions reduction targets in section
8 702; and

9 “(2) whether United States actions, in concert
10 with international action, are sufficient to avoid—

11 “(A) atmospheric greenhouse gas con-
12 centrations above 450 parts per million carbon
13 dioxide equivalent; and

14 “(B) global average surface temperature
15 3.6 degrees Fahrenheit (2 degrees Celsius)
16 above the pre-industrial average, or such other
17 temperature thresholds as the Academy deems
18 appropriate.

19 “(f) RECOMMENDATIONS.—

20 “(1) LATEST SCIENTIFIC INFORMATION.—
21 Based on the analysis described in subsection (a)(1),
22 the Academy shall identify actions that could be
23 taken to better—

1 “(A) characterize changes in the earth-climate system and impacts of global climate change;
2
3

4 “(B) inform decision making and actions related to global climate change;
5

6 “(C) mitigate risks to natural and social systems; and
7

8 “(D) design policies to better account for climate risks.
9

10 “(2) TECHNOLOGICAL INFORMATION.—Based on the analysis described in subsection (a)(2), the Academy shall identify—
11
12

13 “(A) additional emissions reductions that may be possible as a result of technologies described in the analysis;
14
15

16 “(B) barriers to the deployment of such technologies; and
17

18 “(C) actions that could be taken to speed deployment of such technologies.
19

20 “(3) STATUS OF GREENHOUSE GAS REDUCTION EFFORTS.—Based on the analysis described in subsection (a)(3), the Academy shall identify—
21
22

23 “(A) the quantity of additional reductions required to meet the emissions reduction targets in section 702; and
24
25

1 “(B) the quantity of additional reductions
2 in global greenhouse gas emissions needed to
3 avoid the identified concentration and tempera-
4 ture thresholds.

5 “(g) AUTHORIZATION OF APPROPRIATIONS.—There
6 are authorized to be appropriated to carry out this section
7 such sums as may be necessary.

8 **“SEC. 706. PRESIDENTIAL RESPONSE AND RECOMMENDA-**
9 **TIONS.**

10 “Not later than July 1, 2017, and every 4 years
11 thereafter—

12 “(1) the President shall direct relevant Federal
13 agencies to use existing statutory authority to take
14 appropriate actions identified in the report sub-
15 mitted under section 705 by the National Academy
16 of Sciences in the previous year and to address any
17 shortfalls identified in such report; and

18 “(2) in the event that the National Academy of
19 Sciences has concluded, in the most recent report
20 submitted under section 705, that the United States
21 will not achieve the necessary domestic greenhouse
22 gas emissions reductions, or that global actions will
23 not maintain safe global average surface tempera-
24 ture and atmospheric greenhouse gas concentration
25 thresholds, the President shall submit to Congress a

1 plan identifying domestic and international actions
2 that will achieve necessary additional greenhouse gas
3 reductions, including any recommendations for legis-
4 lative action.

5 **“PART B—DESIGNATION AND REGISTRATION OF**
6 **GREENHOUSE GASES**

7 **“SEC. 711. DESIGNATION OF GREENHOUSE GASES.**

8 “(a) GREENHOUSE GASES.—For purposes of this
9 title, the following are greenhouse gases:

10 “(1) Carbon dioxide.

11 “(2) Methane.

12 “(3) Nitrous oxide.

13 “(4) Sulfur hexafluoride.

14 “(5) Hydrofluorocarbons emitted as a byprod-
15 uct.

16 “(6) A perfluorocarbon.

17 “(7) Nitrogen trifluoride.

18 “(8) Any other anthropogenic gas designated as
19 a greenhouse gas by the Administrator under this
20 section.

21 “(b) DETERMINATION ON ADMINISTRATOR’S INITIA-
22 TIVE.—The Administrator shall, by rule—

23 “(1) designate another anthropogenic gas as a
24 greenhouse gas, except as provided in paragraph (3),
25 if the Administrator determines that 1 metric ton of

1 the gas makes the same or greater contribution to
2 global warming over 100 years as 1 metric ton of
3 carbon dioxide;

4 “(2) determine the carbon dioxide equivalent
5 value for each gas with respect to which the Admin-
6 istrator makes an affirmative determination under
7 paragraph (1);

8 “(3) for each gas described in paragraph (1)
9 that is used as a substitute for a class I or class II
10 substance under title VI, determine whether and the
11 extent to which that gas, when used as a product,
12 should be regulated under section 619 and specify
13 appropriate compliance obligations under section
14 619; and

15 “(4) specify the appropriate compliance obliga-
16 tions under this title for each gas designated as a
17 greenhouse gas under paragraph (1).

18 “(c) PETITIONS TO DESIGNATE A GREENHOUSE
19 GAS.—

20 “(1) IN GENERAL.—Any person may petition
21 the Administrator to designate as a greenhouse gas
22 any anthropogenic gas 1 metric ton of which makes
23 the same or greater contribution to global warming
24 over 100 years as 1 metric ton of carbon dioxide.

1 “(2) CONTENTS OF PETITION.—The petitioner
2 shall provide sufficient data, as specified by rule by
3 the Administrator, to demonstrate that the gas is
4 likely to be a greenhouse gas and is likely to be pro-
5 duced, imported, used, or emitted in the United
6 States. To the extent practicable, the petitioner shall
7 also identify producers, importers, distributors,
8 users, and emitters of the gas in the United States.

9 “(3) REVIEW AND ACTION BY THE ADMINIS-
10 TRATOR.—Not later than 90 days after receipt of a
11 petition under paragraph (2), the Administrator
12 shall determine whether the petition is complete and
13 notify the petitioner and the public of the decision.

14 “(4) ADDITIONAL INFORMATION.—The Admin-
15 istrator may require producers, importers, distribu-
16 tors, users, or emitters of the gas to provide infor-
17 mation on the contribution of the gas to global
18 warming over 100 years compared to carbon dioxide.

19 “(5) TREATMENT OF PETITION.—For any sub-
20 stance used as a substitute for a class I or class II
21 substance under title VI, the Administrator may
22 elect to treat a petition under this subsection as a
23 petition to list the substance as a class II, group II
24 substance under section 619, and may require the

1 petition to be amended to address listing criteria
2 promulgated under that section.

3 “(6) DETERMINATION.—Not later than 2 years
4 after receipt of a complete petition, the Adminis-
5 trator shall, after notice and an opportunity for com-
6 ment—

7 “(A) issue a determination that 1 metric
8 ton of the gas does not make a contribution to
9 global warming over 100 years that is equal to
10 or greater than that made by 1 metric ton of
11 carbon dioxide and an explanation of the deci-
12 sion, which shall be published in the Federal
13 Register; or

14 “(B) determine that 1 metric ton of the
15 gas makes a contribution to global warming
16 over 100 years that is equal to or greater than
17 that made by 1 metric ton of carbon dioxide,
18 and take the actions described in subsection
19 (b)(1), (2), (3), and (4) with respect to such
20 gas.

21 “(7) GROUNDS FOR DENIAL.—The Adminis-
22 trator may not deny a petition under this subsection
23 solely on the basis of inadequate Environmental Pro-
24 tection Agency resources or time for review.

25 “(d) MANUFACTURING AND EMISSION NOTICES.—

1 “(1) NOTICE REQUIREMENT.—

2 “(A) IN GENERAL.—Effective 24 months
3 after the date of enactment of this title, no per-
4 son may manufacture or import into the United
5 States a fluorinated gas, or emit a significant
6 quantity, as determined by the Administrator,
7 of any fluorinated gas that is generated as a
8 byproduct during the production or use of an-
9 other fluorinated gas, unless—

10 “(i) the gas is designated as a green-
11 house gas under this section;

12 “(ii) the Administrator has deter-
13 mined that 1 metric ton of such gas does
14 not make a contribution to global warming
15 that is equal to or greater than that made
16 by 1 metric ton of carbon dioxide; or

17 “(iii) the person taking the manufac-
18 ture, importation, or emission action has
19 submitted to the Administrator, on or be-
20 fore the start of such manufacture, impor-
21 tation, or emission, a notice of such per-
22 son’s manufacture, importation, or emis-
23 sion of such gas, and the Administrator
24 has not determined that that notice or a
25 substantially similar notice is incomplete.

1 “(B) ALTERNATIVE COMPLIANCE.—For a
2 gas that is a substitute for a class I or class II
3 substance under title VI and either has been
4 listed as acceptable for use under section 612
5 or is currently subject to evaluation under sec-
6 tion 612, the Administrator may accept the no-
7 tice and information provided pursuant to that
8 section as fulfilling the obligation under clause
9 (iii) of subparagraph (B).

10 “(2) REVIEW AND ACTION BY THE ADMINIS-
11 TRATOR.—

12 “(A) COMPLETENESS.—Upon receipt of
13 notice under paragraph (1)(A)(iii) or (B), the
14 Administrator shall, not later than 90 days
15 after the date of enactment of this title, deter-
16 mine whether the notice is complete.

17 “(B) DETERMINATION.— If the Adminis-
18 trator determines that the notice is complete,
19 the Administrator shall, after notice and an op-
20 portunity for comment, not later than 12
21 months after receipt of the notice—

22 “(i) issue a determination that 1 met-
23 ric ton of the gas does not make a con-
24 tribution to global warming over 100 years
25 that is equal to or greater than that made

1 by 1 metric ton of carbon dioxide and an
2 explanation of the decision, which shall be
3 published in the Federal Register; or

4 “(ii) determine that 1 metric ton of
5 the gas makes a contribution to global
6 warming over 100 years that is equal to or
7 greater than that made by 1 metric ton of
8 carbon dioxide, and take the actions de-
9 scribed in subsection (b)(1), (2), (3), and
10 (4) with respect to such gas.

11 “(e) REGULATIONS.—Not later than one year after
12 the date of enactment of this title, the Administrator shall
13 promulgate regulations to carry out this section. Such reg-
14 ulations shall include—

15 “(1) requirements for the contents of a petition
16 submitted under subsection (c);

17 “(2) requirements for the contents of a notice
18 required under subsection (d); and

19 “(3) methods and standards for evaluating the
20 carbon dioxide equivalent value of a gas.

21 “(f) GASES REGULATED UNDER TITLE VI.—The
22 Administrator shall not designate a gas as a greenhouse
23 gas under this section to the extent that the gas is regu-
24 lated under title VI.

1 “(g) SAVINGS CLAUSE.—Nothing in this section shall
 2 be interpreted to relieve any person from complying with
 3 the requirements of section 612.

4 **“SEC. 712. CARBON DIOXIDE EQUIVALENT VALUE OF**
 5 **GREENHOUSE GASES.**

6 “(a) INITIAL VALUE.—Except as provided by the Ad-
 7 ministrator under this section or section 711, the carbon
 8 dioxide equivalent value of greenhouse gases for purposes
 9 of this Act shall be as follows:

“CARBON DIOXIDE EQUIVALENT OF 1 TON OF LISTED
GREENHOUSE GASES

Greenhouse gas (1 metric ton)	Carbon dioxide equivalent (metric tons)
Carbon dioxide	1
Methane	25
Nitrous oxide	298
HFC-23	14,800
HFC-125	3,500
HFC-134a	1,430
HFC-143a	4,470
HFC-152a	124
HFC-227ea	3,220
HFC-236fa	9,810
HFC-4310mee	1,640
CF ₄	7,390
C ₂ F ₆	12,200
C ₄ F ₁₀	8,860
C ₆ F ₁₄	9,300

**“CARBON DIOXIDE EQUIVALENT OF 1 TON OF LISTED
GREENHOUSE GASES—Continued**

Greenhouse gas (1 metric ton)	Carbon dioxide equivalent (metric tons)
SF ₆	22,800
NF ₃	17,200

1 “(b) PERIODIC REVIEW.—

2 “(1) Not later than February 1, 2017, and (ex-
3 cept as provided in paragraph (3)) not less than
4 every 5 years thereafter, the Administrator shall—

5 “(A) review and, if appropriate, revise the
6 carbon dioxide equivalent values established
7 under this section or section 711(b)(2), based
8 on a determination of the number of metric
9 tons of carbon dioxide that makes the same
10 contribution to global warming over 100 years
11 as 1 metric ton of each greenhouse gas; and

12 “(B) publish in the Federal Register the
13 results of that review and any revisions.

14 “(2) A revised determination published in the
15 Federal Register under paragraph (1)(B) shall take
16 effect for greenhouse gas emissions starting on Jan-
17 uary 1 of the first calendar year starting at least 9
18 months after the date on which the revised deter-
19 mination was published.

20 “(3) The Administrator may decrease the fre-
21 quency of review and revision under paragraph (1)

1 if the Administrator determines that such decrease
2 is appropriate in order to synchronize such review
3 and revision with any similar review process carried
4 out pursuant to the United Nations Framework
5 Convention on Climate Change, done at New York
6 on May 9, 1992, or to an agreement negotiated
7 under that convention, except that in no event shall
8 the Administrator carry out such review and revision
9 any less frequently than every 10 years.

10 “(c) **METHODOLOGY.**—In setting carbon dioxide
11 equivalent values, for purposes of this section or section
12 711, the Administrator shall take into account publica-
13 tions by the Intergovernmental Panel on Climate Change
14 or a successor organization under the auspices of the
15 United Nations Environmental Programme and the World
16 Meteorological Organization.

17 **“SEC. 713. GREENHOUSE GAS REGISTRY.**

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

19 “(1) **CLIMATE REGISTRY.**—The term ‘Climate
20 Registry’ means the greenhouse gas emissions reg-
21 istry jointly established and managed by more than
22 40 States and Indian tribes in 2007 to collect high-
23 quality greenhouse gas emission data from facilities,
24 corporations, and other organizations to support var-
25 ious greenhouse gas emission reporting and reduc-

1 tion policies for the member States and Indian
2 tribes.

3 “(2) REPORTING ENTITY.—The term ‘reporting
4 entity’ means—

5 “(A) a covered entity;

6 “(B) an entity that—

7 “(i) would be a covered entity if it had
8 emitted in 2008 or any subsequent year
9 more than 25,000 tons of carbon dioxide
10 equivalent; and

11 “(ii) has emitted in 2008 or any sub-
12 sequent year more than 10,000 tons of
13 carbon dioxide equivalent;

14 “(C) any other entity that emits a green-
15 house gas, if the Administrator determines that
16 reporting under this section by such entity will
17 help achieve the purposes of this title or title
18 VIII; or

19 “(D) any vehicle fleet with emissions of
20 more than 25,000 tons of carbon dioxide equiv-
21 alent on an annual basis, if the Administrator
22 determines that the inclusion of such fleet will
23 help achieve the purposes of this title or title
24 VIII.

25 “(b) REGULATIONS.—

1 “(1) IN GENERAL.—Not later than 6 months
2 after the date of enactment of this title, the Admin-
3 istrator shall issue regulations establishing a Federal
4 greenhouse gas registry. Such regulations shall—

5 “(A) require reporting entities to submit to
6 the Administrator data on—

7 “(i) greenhouse gas emissions in the
8 United States;

9 “(ii) the production and manufacture
10 in the United States, and importation into
11 the United States, of fuels and other prod-
12 ucts the uses of which result in greenhouse
13 gas emissions; and

14 “(iii) the sequestration of greenhouse
15 gases;

16 “(B) require covered entities to submit to
17 the Administrator data sufficient to ensure
18 compliance with the requirements of this title;

19 “(C) require reporting of electricity deliv-
20 ered to industrial sources in energy-intensive in-
21 dustries;

22 “(D) ensure the completeness, consistency,
23 transparency, accuracy, precision, and reliability
24 of such data;

1 “(E) take into account the best practices
2 from the most recent Federal, State, tribal, and
3 international protocols for the measurement, ac-
4 counting, reporting, and verification of green-
5 house gas emissions, including protocols from
6 the Climate Registry and other mandatory
7 State or multistate authorized programs;

8 “(F) take into account the latest scientific
9 research;

10 “(G) require that, for covered entities with
11 respect to greenhouse gases for which they are
12 required to hold emission allowances under sec-
13 tion 722, and, to the extent determined to be
14 appropriate by the Administrator, for covered
15 entities with respect to other greenhouse gases
16 and for other reporting entities, submitted data
17 are based on—

18 “(i) continuous monitoring systems
19 for fuel flow or emissions, such as contin-
20 uous emission monitoring systems;

21 “(ii) alternative systems that are dem-
22 onstrated as providing data with the same
23 precision, reliability, accessibility, and
24 timeliness as data provided by continuous

1 monitoring systems for fuel flow or emis-
2 sions; or

3 “(iii) alternative methodologies that
4 are demonstrated to provide data with pre-
5 cision, reliability, accessibility, and timeli-
6 ness as similar as is technically feasible to
7 that of data generally provided by contin-
8 uous monitoring systems for fuel flow or
9 emissions, if the Administrator determines
10 that, with respect to a reporting entity,
11 there is no continuous monitoring system
12 or alternative system described in clause
13 (i) or (ii) that is technically feasible.

14 “(H) require that the Administrator, in de-
15 termining the extent to which the requirement
16 to use systems or methodologies in accordance
17 with subparagraph (G) is appropriate for re-
18 porting entities other than covered entities or
19 greenhouse gas for which emission allowances
20 are not required to be held, consider the cost of
21 using such systems and methodologies, and of
22 using other systems and methodologies that are
23 available and suitable, for quantifying the emis-
24 sions involved in light of the purposes of this

1 title, including the goal of collecting consistent
2 entity-wide data;

3 “(I) include methods for minimizing double
4 reporting and avoiding irreconcilable double re-
5 porting of greenhouse gas emissions;

6 “(J) establish measurement protocols for
7 carbon capture and sequestration systems, in-
8 cluding those where enhanced hydrocarbon re-
9 covery operations occur, taking into consider-
10 ation the regulations promulgated under section
11 813;

12 “(K) require that reporting entities provide
13 the data required under subparagraph (A) in
14 reports submitted electronically to the Adminis-
15 trator, in such form and containing such infor-
16 mation as may be required by the Adminis-
17 trator;

18 “(L) include requirements for keeping
19 records supporting or related to, and protocols
20 for auditing, submitted data;

21 “(M) establish consistent policies for calcu-
22 lating carbon content and greenhouse gas emis-
23 sions for each type of fossil fuel with respect to
24 which reporting is required;

1 “(N) subsequent to implementation of poli-
2 cies developed under subparagraph (M), provide
3 for immediate dissemination, to States, Indian
4 tribes, and on the Internet, of all data reported
5 under this section as soon as practicable after
6 electronic audit by the Administrator and any
7 resulting correction of data, except that data
8 shall not be disseminated under this subpara-
9 graph if—

10 “(i) its nondissemination is vital to
11 the national security of the United States,
12 as determined by the President; or

13 “(ii) it is confidential business infor-
14 mation that cannot be derived from infor-
15 mation that is otherwise publicly available
16 and that would cause significant calculable
17 competitive harm if published, except
18 that—

19 “(I) data relating to greenhouse
20 gas emissions, including any upstream
21 or verification data from reporting en-
22 tities, shall not be considered to be
23 confidential business information;

24 “(II) data that is confidential
25 business information shall be provided

1 to a State or Indian tribe within
2 whose jurisdiction the reporting entity
3 is located, if the Administrator deter-
4 mines that such State or Indian tribe
5 has in effect protections for confiden-
6 tial business information that are
7 equivalent to protections applicable to
8 the Federal Government;

9 “(O) prescribe methods by which the Ad-
10 ministrator shall, in cases in which satisfactory
11 data are not submitted to the Administrator for
12 any period of time, estimate emission levels—

13 “(i) for covered entities with respect
14 to greenhouse gas emissions for which they
15 are required to hold emission allowances
16 under section 722—

17 “(I) with a conservative estimate
18 of the highest emission levels that
19 may have occurred during the period
20 for which data are missing; or

21 “(II) to the extent the Adminis-
22 trator considers appropriate, with an
23 estimate of emission levels assuming
24 the unit is emitting at a maximum po-
25 tential level during the period, in

1 order to ensure that emissions are not
2 underreported and to create a strong
3 incentive for meeting data monitoring
4 and reporting requirements; and

5 “(ii) for covered entities with respect
6 to greenhouse gas emissions for which they
7 are not required to hold emission allow-
8 ances under section 722 and for other re-
9 porting entities, with a reasonable estimate
10 of the emission levels that may have oc-
11 curred during the period for which data
12 are missing;

13 “(P) require an appropriate certification,
14 by the designated representative for the report-
15 ing entity and as determined by the Adminis-
16 trator, of accurate and complete accounting of
17 greenhouse gas emissions; and

18 “(Q) include requirements for other data
19 necessary for accurate and complete accounting
20 of greenhouse gas emissions, as determined by
21 the Administrator, including data for quality
22 assurance of monitoring systems, monitors and
23 other measurement devices, and other data
24 needed to verify reported emissions.

25 “(2) TIMING.—

1 “(A) CALENDAR YEARS 2007 THROUGH
2 2010.—For a base period of calendar years
3 2007 through 2010, each reporting entity shall
4 submit annual data required under this section
5 to the Administrator not later than March 31,
6 2011. The Administrator may waive or modify
7 reporting requirements for calendar years 2007
8 through 2010 for categories of reporting enti-
9 ties if the Administrator determines that the re-
10 porting entities did not keep data or records
11 necessary to meet reporting requirements. The
12 Administrator may, in addition to or in lieu of
13 such requirements, collect information on en-
14 ergy consumption and production.

15 “(B) SUBSEQUENT CALENDAR YEARS.—
16 For calendar year 2011 and each subsequent
17 calendar year, each reporting entity shall sub-
18 mit quarterly data required under this section
19 to the Administrator not later than 60 days
20 after the end of the applicable quarter, except
21 when the data is already being reported to the
22 Administrator on an earlier timeframe for an-
23 other program.

24 “(3) WAIVER OF REPORTING REQUIREMENTS.—
25 The Administrator may waive reporting require-

1 ments under this section for specific entities if the
2 Administrator determines that sufficient and equally
3 or more reliable verified and timely data are avail-
4 able to the Administrator and the public on the
5 Internet under other mandatory statutory require-
6 ments.

7 “(4) ALTERNATIVE THRESHOLD.—The Admin-
8 istrator may, by rule, establish applicability thresh-
9 olds for reporting under this section using alter-
10 native metrics and levels, provided that such metrics
11 and levels are easier to administer and cover the
12 same size and type of sources as the threshold de-
13 fined in this section.

14 “(c) INTERRELATIONSHIP WITH OTHER SYSTEMS.—
15 In developing the regulations issued under subsection (b),
16 the Administrator shall take into account the work done
17 by the Climate Registry and other mandatory State or
18 multistate programs. Such regulations shall include an ex-
19 planation of any major differences in approach between
20 the system established under the regulations and such reg-
21 istries and programs.

22 **“PART C—PROGRAM RULES**

23 **“SEC. 721. EMISSION ALLOWANCES.**

24 “(a) IN GENERAL.—The Administrator shall estab-
25 lish a separate quantity of emission allowances for each

1 calendar year starting in 2012, in the amounts prescribed
2 under subsection (e).

3 “(b) IDENTIFICATION NUMBERS.—The Adminis-
4 trator shall assign to each emission allowance established
5 under subsection (a) a unique identification number that
6 includes the vintage year for that emission allowance.

7 “(c) LEGAL STATUS OF EMISSION ALLOWANCES.—

8 “(1) IN GENERAL.—None of the following con-
9 stitute a property right:

10 “(A) An emission allowance.

11 “(B) A compensatory allowance.

12 “(C) A strategic reserve allowance.

13 “(D) An offset credit.

14 “(2) TERMINATION OR LIMITATION.—Nothing
15 in this Act or any other provision of law shall be
16 construed to limit or alter the authority of the
17 United States, including the Administrator acting
18 pursuant to statutory authority, to terminate or
19 limit allowances or credits.

20 “(3) OTHER PROVISIONS UNAFFECTED.—Noth-
21 ing in this Act relating to allowances or credits es-
22 tablished or issued under this title shall affect the
23 application of any other provision of law to a covered
24 entity, or the responsibility for a covered entity to
25 comply with any such provision of law.

1 “(d) SAVINGS PROVISION.—Nothing in this title shall
 2 be construed as requiring a change of any kind in any
 3 State law regulating electric utility rates and charges, or
 4 as affecting any State law regarding such State regula-
 5 tion, or as limiting State regulation (including any
 6 prudence review) under such a State law. Nothing in this
 7 title shall be construed as modifying the Federal Power
 8 Act or as affecting the authority of the Federal Energy
 9 Regulatory Commission under that Act. Nothing in this
 10 title shall be construed to interfere with or impair any pro-
 11 gram for competitive bidding for power supply in a State
 12 in which such program is established.

13 “(e) ALLOWANCES FOR EACH CALENDAR YEAR.—

14 “(1) IN GENERAL.—Except as provided in para-
 15 graph (2), the number of emission allowances estab-
 16 lished by the Administrator under subsection (a) for
 17 each calendar year shall be as provided in the fol-
 18 lowing table:

“Calendar year	Emission allowances (in mil- lions)
2012	4,770
2013	4,666
2014	5,058
2015	4,942
2016	5,391
2017	5,261

“Calendar year	Emission allowances (in mil- lions)
2018	5,132
2019	5,002
2020	4,873
2021	4,739
2022	4,605
2023	4,471
2024	4,337
2025	4,203
2026	4,069
2027	3,935
2028	3,801
2029	3,667
2030	3,533
2031	3,408
2032	3,283
2033	3,158
2034	3,033
2035	2,908
2036	2,784
2037	2,659
2038	2,534
2039	2,409
2040	2,284
2041	2,159
2042	2,034
2043	1,910
2044	1,785

“Calendar year	Emission allowances (in mil- lions)
2045	1,660
2046	1,535
2047	1,410
2048	1,285
2049	1,160
2050 and each year thereafter	1,035

1 “(2) REVISION.—

2 “(A) IN GENERAL.—If, after notice and an
3 opportunity for public comment, the Adminis-
4 trator determines that—

5 “(i) United States greenhouse gas
6 emissions in 2005 were other than 7,206
7 million metric tons carbon dioxide equiva-
8 lent;

9 “(ii) the types of covered entities with
10 compliance obligations under section 722
11 in 2012 were responsible for other than
12 68.2 percent of United States greenhouse
13 gas emissions in 2005;

14 “(iii) the types of covered entities with
15 compliance obligations under section 722
16 in 2014 were responsible for other than
17 75.7 percent of United States greenhouse
18 gas emissions in 2005; or

1 “(iv) the types of covered entities with
2 compliance obligations under section 722
3 in 2016 were responsible for other than
4 84.5 percent United States greenhouse gas
5 emissions in 2005,
6 the Administrator may adjust, in accordance
7 with subparagraph (B), the number of emission
8 allowances required to be established pursuant
9 to paragraph (1).

10 “(B) ADJUSTMENT FORMULA.—

11 “(i) IN GENERAL.—If the Adminis-
12 trator adjusts, under subparagraph (A) of
13 this paragraph, the number of emission al-
14 lowances required to be established pursu-
15 ant to paragraph (1), the number of emis-
16 sion allowances the Administrator requires
17 to be established for any given calendar
18 year shall equal the product of—

19 “(I) United States greenhouse
20 gas emissions in 2005, expressed in
21 tons of carbon dioxide equivalent;

22 “(II) the percent of United
23 States greenhouse gas emissions in
24 2005 from the types of covered enti-

1 ties with compliance obligations for
2 the given calendar year; and

3 “(III) the percentage set forth
4 for that calendar year in section 703,
5 or determined under clause (iii) of
6 this subparagraph.

7 “(ii) PERCENTAGE OF EMISSIONS
8 FROM COVERED ENTITIES.—For purposes
9 of subparagraph (A) and clause (i)(II) of
10 this subparagraph, the percent of United
11 States greenhouse gas emissions in 2005
12 from the types of covered entities with
13 compliance obligations for the given cal-
14 endar year shall be based on the amount of
15 greenhouse gas emissions for which those
16 covered entities would have been required
17 to hold emission allowances under section
18 722 if this title had been in effect for 2005
19 emissions.

20 “(iii) TARGETS.—In applying the for-
21 mula under clause (i)(III) of this subpara-
22 graph, for calendar years for which a per-
23 centage is not listed in section 703, the
24 Administrator shall use a uniform annual

1 decline in the amount of emissions between
2 the years that are specified.

3 “(iv) LIMITATION ON ADJUSTMENT
4 TIMING.—Once a calendar year has ended,
5 the Administrator may not adjust the
6 number of emission allowances required for
7 that calendar year.

8 “(C) LIMITATION ON ADJUSTMENT AU-
9 THORITY.—The Administrator may adjust
10 under this paragraph the number of emission
11 allowances required to be established pursuant
12 to paragraph (1) only once.

13 “(f) COMPENSATORY ALLOWANCE.—

14 “(1) IN GENERAL.—The regulations promul-
15 gated under subsection (g) shall provide for the es-
16 tablishment and distribution of compensatory allow-
17 ances for—

18 “(A) the destruction, in 2012 or later, of
19 fluorinated gases that are greenhouse gases if—

20 “(i) emission allowances were retired
21 for their production; and

22 “(ii) such gases are not required to be
23 destroyed under any other provision of law;

24 “(B) the nonemissive use, in 2012 or later,
25 of petroleum-based or coal-based liquid or gas-

1 eous fuel, petroleum coke, natural gas liquid, or
2 natural gas as a feedstock, if emission allow-
3 ances were retired for the greenhouse gases
4 that would have been emitted from their com-
5 bustion; and

6 “(C) the consumptive use, in 2012 or later,
7 of fluorinated gases in a production process, in-
8 cluding semiconductor research or manufac-
9 turing, if emission allowances were retired for
10 the production of such gas.

11 “(2) ESTABLISHMENT AND DISTRIBUTION.—

12 “(A) IN GENERAL.—The Administrator
13 shall establish and distribute to the entity tak-
14 ing the actions described in subparagraph (A),
15 (B), or (C) of paragraph (1) a quantity of com-
16 pensatory allowances no greater than the num-
17 ber of tons of carbon dioxide equivalent of
18 avoided emissions achieved through such ac-
19 tions.

20 “(B) SOURCE OF ALLOWANCES.—Compen-
21 satory allowances established under this sub-
22 section shall not be allowances established
23 under subsection (a).

24 “(C) IDENTIFICATION NUMBERS.—The
25 Administrator shall assign to each compen-

1 satory allowance established under subpara-
2 graph (A) a unique identification number.

3 “(3) APPLICABILITY OF SECTIONS.—Sections
4 724 and 725(b), and subsection (c) of this section,
5 shall apply to compensatory allowances to the same
6 extent as they apply to emission allowances.

7 “(4) DEFINITIONS.—For purposes of this sub-
8 section—

9 “(A) the term ‘destruction’ means the con-
10 version of a greenhouse gas by thermal, chem-
11 ical, or other means to another gas with little
12 or no global warming potential;

13 “(B) the term ‘nonemissive use’ means the
14 use of fossil energy in an industrial or manufac-
15 turing process that does not result in green-
16 house gas emissions during such process and
17 which ensures that no greenhouse gases will be
18 emitted from the substance; and

19 “(C) the term ‘consumptive use’ means a
20 use which has either—

21 “(i) destroyed a fluorinated gas; or

22 “(ii) converted a fluorinated gas into
23 another greenhouse gas with a lower global
24 warming potential.

1 “(g) REGULATIONS.—Not later than 24 months after
2 the date of enactment of this title, the Administrator shall
3 promulgate regulations to carry out the provisions of this
4 title.

5 **“SEC. 722. COMPLIANCE OBLIGATION.**

6 “(a) IN GENERAL.—Except as otherwise provided in
7 this section, as of 12:01 a.m. on April 1 (or a later date
8 established by the Administrator under subsection (j)) of
9 each calendar year starting in 2013, the owner or operator
10 of a covered entity shall hold a quantity of emission allow-
11 ances at least as great as the quantity calculated as fol-
12 lows:

13 “(1) ELECTRICITY SOURCES.—For a covered
14 entity described in section 700(12)(A), 1 emission
15 allowance for each ton of carbon dioxide equivalent
16 of greenhouse gas that such covered entity emitted
17 in the previous calendar year, excluding emissions
18 resulting from the use of—

19 “(A) petroleum-based or coal-based liquid
20 or gaseous fuel;

21 “(B) natural gas liquid;

22 “(C) renewable biomass;

23 “(D) petroleum coke; or

24 “(E) hydrofluorocarbons, perfluorocarbons,
25 sulfur hexafluoride, nitrogen trifluoride, or any

1 other fluorinated gas that is a greenhouse gas
2 purchased for use at that covered entity.

3 “(2) FUEL PRODUCERS AND IMPORTERS.—For
4 a covered entity described in section 700(12)(B), 1
5 emission allowance for each ton of carbon dioxide
6 equivalent of greenhouse gas that would be emitted
7 from the combustion of any petroleum-based or coal-
8 based liquid fuel, petroleum coke, or natural gas liq-
9 uid, produced or imported by such covered entity
10 during the previous calendar year for sale or dis-
11 tribution in interstate commerce, assuming no cap-
12 ture and sequestration of any greenhouse gas emis-
13 sions.

14 “(3) FLUORINATED GAS PRODUCERS AND IM-
15 PORTERS.—For a covered entity described in section
16 700(12)(C), 1 emission allowance for each ton of
17 carbon dioxide equivalent of perfluorocarbons, sulfur
18 hexafluoride, nitrogen trifluoride, or any other
19 fluorinated gas that is a greenhouse gas, or any
20 combination thereof, produced or imported by such
21 covered entity during the previous calendar year for
22 sale or distribution in interstate commerce.

23 “(4) GEOLOGICAL SEQUESTRATION SITES.—For
24 a covered entity described in section 700(12)(D), 1
25 emission allowance for each ton of carbon dioxide

1 equivalent of greenhouse gas that such covered enti-
2 ty emitted in the previous calendar year.

3 “(5) INDUSTRIAL STATIONARY SOURCES.—For
4 a covered entity described in section 700(12)(E),
5 (F), or (G), 1 emission allowance for each ton of
6 carbon dioxide equivalent of greenhouse gas that
7 such covered entity emitted in the previous calendar
8 year, excluding emissions resulting from the use
9 of—

10 “(A) petroleum-based or coal-based liquid
11 or gaseous fuel;

12 “(B) natural gas liquid;

13 “(C) renewable biomass;

14 “(D) petroleum coke; or

15 “(E) hydrofluorocarbons, perfluorocarbons,
16 sulfur hexafluoride, nitrogen trifluoride, or any
17 other fluorinated gas that is a greenhouse gas
18 purchased for use at that covered entity.

19 “(6) INDUSTRIAL FOSSIL FUEL-FIRED COMBUS-
20 TION DEVICES.—For a covered entity described in
21 section 700(12)(H), 1 emission allowance for each
22 ton of carbon dioxide equivalent of greenhouse gas
23 that the devices emitted in the previous calendar
24 year, excluding emissions resulting from the use
25 of—

1 “(A) petroleum-based or coal-based liquid
2 or gaseous fuel;

3 “(B) natural gas liquid;

4 “(C) renewable biomass; or

5 “(D) petroleum coke.

6 “(7) LOCAL DISTRIBUTION COMPANIES.—For a
7 covered entity described in section 700(12)(I), 1
8 emission allowance for each ton of carbon dioxide
9 equivalent of greenhouse gas that will be emitted
10 from the combustion of the natural gas such entity
11 delivered during the previous calendar year to cus-
12 tomers that are not covered entities, assuming no
13 capture and sequestration of that greenhouse gas.

14 “(8) APPLICATION OF MULTIPLE PARA-
15 GRAPHS.—A covered entity to which more than 1 of
16 paragraphs (1) through (7) apply shall hold emission
17 allowances in compliance with all applicable para-
18 graphs, except that not more than 1 emission allow-
19 ance shall be required for the same emission.

20 “(b) PHASE-IN OF COMPLIANCE REQUIREMENT.—

21 “(1) INDUSTRIAL STATIONARY SOURCES.—The
22 requirement under subsection (a) shall first apply to
23 a covered entity described in section 700(12)(E),
24 (F), (G), or (H) with respect to emissions occurring
25 during calendar year 2014.

1 “(2) LOCAL DISTRIBUTION COMPANIES.—The
2 requirement under subsection (a) shall first apply to
3 a covered entity described in section 700(12)(I) with
4 respect to emissions occurring during calendar year
5 2016.

6 “(c) ALTERNATIVE COMPLIANCE.—A covered entity
7 may satisfy its compliance obligations under subsection (a)
8 for a calendar year in accordance with the following:

9 “(1) OFFSET CREDITS.—

10 “(A) IN GENERAL.—A covered entity may
11 satisfy a percentage of its compliance obliga-
12 tions by holding 1.25 offset credits in lieu of an
13 emission allowance.

14 “(B) APPLICABLE PERCENTAGE.— The
15 percentage referred to in subparagraph (A) for
16 a given calender year shall be determined by di-
17 viding 2 billion by the sum of 2 billion plus the
18 number of emission allowances established
19 under section 721(a) for the previous year, and
20 multiplying that number by 100. Not more than
21 one half of the applicable percentage under this
22 paragraph may be used for a year by holding
23 domestic offset credits, and not more than one
24 half of the applicable percentage under this

1 paragraph may be used for a year by holding
2 international offset credits.

3 “(C) PRESIDENT’S RECOMMENDATION.—

4 The President may make a recommendation to
5 Congress as to whether the number 2 billion
6 specified in subparagraph (B) should be in-
7 creased or decreased.

8 “(2) INTERNATIONAL EMISSION ALLOW-
9 ANCES.—A covered entity may satisfy its compliance
10 obligations by holding an international emission al-
11 lowance in lieu of an emission allowance, except as
12 modified under section 728(d).

13 “(3) COMPENSATORY ALLOWANCES.—A covered
14 entity may satisfy its compliance obligations by hold-
15 ing a compensatory allowance obtained under section
16 721(f) in lieu of an emission allowance.

17 “(d) RETIREMENT OF ALLOWANCES AND CRED-
18 ITS.—As soon as practicable after a deadline established
19 under this title for holding allowances, the Administrator
20 shall retire the quantity of allowances or credits required
21 under this title.

22 “(e) ALTERNATIVE METRICS.—For categories of cov-
23 ered entities described in subparagraph (B), (C), (F), (G),
24 or (H) of section 700(12), the Administrator may, by rule,
25 establish an applicability threshold for inclusion under

1 those subparagraphs using an alternative metric and level,
2 provided that such metric and level are easier to admin-
3 ister and cover the same size and type of sources as the
4 threshold defined in such subparagraphs.

5 “(f) THRESHOLD REVIEW.—For each category of
6 covered entities described in subparagraph (B), (C), (F),
7 (G), or (H) of section 700(12), the Administrator shall,
8 in 2020 and once every 8 years thereafter, review the car-
9 bon dioxide equivalent emission thresholds that are used
10 to define covered entities. After consideration of—

11 “(1) emissions from covered entities in each
12 such category, and from other entities of the same
13 type that emit less than the threshold amount for
14 the category (including emission sources that com-
15 mence operation after the date of enactment of this
16 title that are not covered entities); and

17 “(2) whether greater greenhouse gas emission
18 reductions can be cost-effectively achieved by low-
19 ering the applicable threshold,

20 the Administrator may by rule lower such threshold to not
21 less than 10,000 tons of carbon dioxide equivalent emis-
22 sions. In determining the cost effectiveness of potential re-
23 ductions from lowering the threshold for covered entities,
24 the Administrator shall consider alternative regulatory

1 greenhouse gas programs, including setting standards
2 under other titles of this Act.

3 “(g) DESIGNATED REPRESENTATIVES.—The regula-
4 tions promulgated under section 721(g) shall require that
5 each covered entity, and each entity holding allowances or
6 credits or receiving allowances or credits from the Admin-
7 istrator under this title, select a designated representative.

8 “(h) EDUCATION AND OUTREACH.—

9 “(1) IN GENERAL.—The Administrator shall es-
10 tablish and carry out a program of education and
11 outreach to assist covered entities, especially entities
12 having little experience with environmental regu-
13 latory requirements similar or comparable to those
14 under this title, in preparing to meet the compliance
15 obligations of this title. Such program shall include
16 education with respect to using markets to effec-
17 tively achieve such compliance.

18 “(2) FAILURE TO RECEIVE INFORMATION.—A
19 failure to receive information or assistance under
20 this subsection may not be used as a defense against
21 an allegation of any violation of this title.

22 “(i) ADJUSTMENT OF OBLIGATION DEADLINE.—The
23 Administrator may, by rule, establish a compliance obliga-
24 tion deadline, for a calendar year, later than the date pro-
25 vided in subsection (a), as necessary to ensure the avail-

1 ability of emissions data, but in no event shall the deadline
2 be later than June 1.

3 “(j) NOTICE REQUIREMENT FOR COVERED ENTITIES
4 RECEIVING NATURAL GAS FROM LOCAL DISTRIBUTION
5 COMPANIES.—The owner or operator of a covered entity
6 that takes delivery of natural gas from a local distribution
7 company shall, not later than September 1 of each cal-
8 endar year, notify such local distribution company in writ-
9 ing that such entity will qualify as a covered entity under
10 this title for that calendar year.

11 **“SEC. 723. PENALTY FOR NONCOMPLIANCE.**

12 “(a) ENFORCEMENT.—A violation of any prohibition
13 of, requirement of, or regulation promulgated pursuant to
14 this title shall be a violation of this Act. Each emission
15 allowance not held as required by this title shall be a sepa-
16 rate violation.

17 “(b) EXCESS EMISSIONS PENALTY.—

18 “(1) IN GENERAL.—The owner or operator of
19 any covered entity that fails for any year to hold, on
20 the deadline described in section 722(a) or (i) or
21 725(c), 1 or more of the emission allowances due
22 pursuant to either of those sections shall be liable
23 for payment to the Administrator of an excess emis-
24 sions penalty in the amount described in paragraph
25 (2).

1 “(2) AMOUNT.—The amount of an excess emis-
2 sions penalty required to be paid under paragraph
3 (1) shall be equal to the product obtained by multi-
4 plying—

5 “(A) the number of emission allowances
6 that the owners or operators failed to hold on
7 the deadline; by

8 “(B) twice the fair market value of emis-
9 sion allowances established for emissions occur-
10 ring in the calendar year for which the emission
11 allowances were due.

12 “(3) TIMING.—An excess emissions penalty re-
13 quired under this subsection shall be immediately
14 due and payable to the Administrator, without de-
15 mand, in accordance with regulations promulgated
16 by the Administrator, which shall be issued not later
17 than 2 years after the date of enactment of this
18 title.

19 “(4) NO EFFECT ON LIABILITY.—An excess
20 emissions penalty due and payable by the owners or
21 operators of a covered entity under this subsection
22 shall not diminish the liability of the owners or oper-
23 ators for any fine, penalty, or assessment against
24 the owners or operators for the same violation under
25 any other provision of this Act or any other law.

1 “(c) **EXCESS EMISSIONS ALLOWANCES.**—The owners
2 or operators of a covered entity that fail for any year to
3 hold, on the deadline described in section 722(a) or (i)
4 or 725(c), 1 or more of the emission allowances due pursu-
5 ant to either of those sections shall be liable to offset the
6 excess emissions by an equal quantity of emission allow-
7 ances during—

8 “(1) the following calendar year; or

9 “(2) such longer period as the Administrator
10 may prescribe.

11 **“SEC. 724. TRADING.**

12 “(a) **PERMITTED TRANSACTIONS.**—Except as other-
13 wise provided in this title, the lawful holder of an emission
14 allowance may, without restriction, sell, exchange, trans-
15 fer, hold for compliance in accordance with section 722,
16 or request that the Administrator retire the emission al-
17 lowance.

18 “(b) **NO RESTRICTION ON TRANSACTIONS.**—The
19 privilege of purchasing, holding, selling, exchanging, and
20 requesting retirement of emission allowances shall not be
21 restricted to the owners and operators of covered entities,
22 except as otherwise provided in this title.

23 “(c) **EFFECTIVENESS OF ALLOWANCE TRANS-**
24 **FERS.**—No transfer of an emission allowance shall be ef-
25 fective until a written certification of the transfer, signed

1 by a responsible official of the transferor, is received and
2 recorded by the Administrator in accordance with regula-
3 tions promulgated under section 721(g).

4 “(d) ALLOWANCE TRACKING SYSTEM.—The regula-
5 tions promulgated under section 721(g) shall include a
6 system for issuing, recording, holding, and tracking allow-
7 ances and credits that shall specify all necessary proce-
8 dures and requirements for an orderly and competitive
9 functioning of the emission allowance system. Such regula-
10 tions shall provide for appropriate publication of the infor-
11 mation in the system on the Internet.

12 **“SEC. 725. BANKING AND BORROWING.**

13 “(a) BANKING.—An emission allowance may be used
14 to meet the compliance obligation requirements of section
15 722(a) or section 723 for emissions in—

16 “(1) the vintage year for the allowance; or

17 “(2) any calendar year subsequent to the vin-
18 tage year for the allowance.

19 “(b) EXPIRATION.—An allowance or credit estab-
20 lished or issued by the Administrator under this title shall
21 not expire unless—

22 “(1) it is retired by the Administrator as re-
23 quired under this title; or

24 “(2) the Administrator determines by regula-
25 tion that expiration is necessary to ensure the au-

1 thenticity and integrity of allowances or the allow-
2 ance tracking system.

3 “(c) BORROWING FUTURE VINTAGE YEAR ALLOW-
4 ANCES.—

5 “(1) BORROWING WITHOUT INTEREST.—In ad-
6 dition to the uses described in subsection (a), an
7 emission allowance may be used to meet the compli-
8 ance obligation requirements of section 722(a) or
9 section 723 for emissions in the calendar year imme-
10 diately preceding the vintage year for the allowance.

11 “(2) BORROWING WITH INTEREST.—

12 “(A) IN GENERAL.—A covered entity may
13 satisfy up to 15 percent of its compliance obli-
14 gations under section 722(a) in a specific cal-
15 endar year by holding emission allowances with
16 a vintage year 1 to 5 years later than that cal-
17 endar year.

18 “(B) LIMITATIONS.—An emission allow-
19 ance borrowed pursuant to this paragraph shall
20 be an emission allowance established by the Ad-
21 ministrators for a specific future calendar year
22 under section 721(a) and that is held by the
23 borrower.

24 “(C) REPAYMENT WITH INTEREST.—For
25 each emission allowance that an owner or oper-

1 ator of a covered entity borrows pursuant to
2 this paragraph, such owner or operator shall, at
3 the time it borrows the allowance, hold for re-
4 irement by the Administrator a quantity of
5 emission allowances that is equal to the product
6 obtained by multiplying—

7 “(i) 0.08; by

8 “(ii) the number of years between the
9 calendar year in which the allowance is
10 being used to satisfy a compliance obliga-
11 tion and the vintage year of the allowance.

12 **“SEC. 726. STRATEGIC RESERVE.**

13 “(a) STRATEGIC RESERVE AUCTIONS.—

14 “(1) IN GENERAL.—Once each quarter of each
15 calendar year for which compliance obligation re-
16 quirements under section 722(a) apply, the Adminis-
17 trator shall auction strategic reserve allowances.

18 “(2) RESTRICTION TO COVERED ENTITIES.—In
19 each auction conducted under paragraph (1), only
20 covered entities that the Administrator expects will
21 be required under section 722(a) to hold emission al-
22 lowances in the following calendar year shall be eligi-
23 ble to purchase emission allowances.

24 “(b) POOL OF EMISSION ALLOWANCES FOR STRA-
25 TEGIC RESERVE AUCTIONS.—

1 “(1) FILLING THE STRATEGIC RESERVE.—

2 “(A) IN GENERAL.—The Administrator
3 shall, not later than 2 years after the date of
4 enactment of this title, reserve for auction
5 under this section emission allowances estab-
6 lished for the period of calendar years 2012
7 through 2050 under section 721(a), as provided
8 in subparagraph (B).

9 “(B) PERCENTAGE REMOVAL.—The
10 amount referred to in subparagraph (A) shall
11 be—

12 “(i) for each of calendar years 2012
13 through 2019, the quantity of emission al-
14 lowances reserved pursuant to subpara-
15 graph (A) shall be 1 percent of the quan-
16 tity established for that year pursuant to
17 section 721(e)(1);

18 “(ii) for each of calendar years 2020
19 through 2029, the quantity of emission al-
20 lowances reserved pursuant to subpara-
21 graph (A) shall be 2 percent of the quan-
22 tity established for that year pursuant to
23 section 721(e)(1); and

24 “(iii) for each of calendar years 2030
25 through 2050, the quantity of emission al-

1 lowances reserved pursuant to subpara-
2 graph (A) shall be 3 percent of the quan-
3 tity established for that year pursuant to
4 section 721(e)(1).

5 “(C) EFFECT ON OTHER PROVISIONS.—
6 Any provision in this title that refers to a quan-
7 tity or percentage of the emission allowances es-
8 tablished for a calendar year under section
9 721(a) shall be considered to refer to the
10 amount of emission allowances as determined
11 pursuant to section 721(e), less any emission
12 allowances established for that year that are
13 placed in the strategic reserve under this para-
14 graph.

15 “(2) SUPPLEMENTING THE STRATEGIC RE-
16 SERVE.—The Administrator shall also—

17 “(A) transfer to the strategic reserve each
18 emission allowance that was offered for sale but
19 not sold at an auction conducted under part C;
20 and

21 “(B) transfer emission allowances estab-
22 lished under subsection (g) from auction pro-
23 ceeds, and deposit them into the strategic re-
24 serve, to the extent necessary to maintain the
25 reserve at its original size.

1 “(c) MINIMUM STRATEGIC RESERVE AUCTION
2 PRICE.—

3 “(1) IN GENERAL.—At each strategic reserve
4 auction, the Administrator shall offer emission al-
5 lowances for sale beginning at a minimum price per
6 emission allowance, which shall be known as the
7 ‘minimum strategic reserve auction price’.

8 “(2) INITIAL MINIMUM STRATEGIC RESERVE
9 AUCTION PRICES.—The minimum strategic reserve
10 auction price shall be [insert amount twice the
11 EPA-modeled 2012 allowance price EPA provides to
12 the Committee] for the strategic reserve auctions
13 held in 2012. For the strategic reserve auctions held
14 in 2013 and 2014, the minimum strategic reserve
15 auction price shall be the strategic reserve auction
16 price for the previous year increased by 5 percent
17 plus the rate of inflation (as measured by the Con-
18 sumer Price Index).

19 “(3) MINIMUM STRATEGIC RESERVE AUCTION
20 PRICE IN SUBSEQUENT YEARS.—For each strategic
21 reserve auction held in 2015 and each year there-
22 after, the minimum strategic reserve auction price
23 shall be 100 percent above a rolling 36-month aver-
24 age of the daily closing price for that year’s allow-

1 ance vintage as reported on registered carbon trad-
2 ing facilities, calculated using constant dollars.

3 “(d) QUANTITY OF EMISSION ALLOWANCES SOLD AT
4 STRATEGIC RESERVE AUCTION.—

5 “(1) INITIAL LIMITS.—For each of calendar
6 years 2012 through 2016, not more than 5 percent
7 of the emission allowances established for that cal-
8 endar year under section 721(a) may be sold at the
9 combined strategic reserve auctions during that
10 year.

11 “(2) LIMITS IN SUBSEQUENT YEARS.—For cal-
12 endar year 2017 and each year thereafter, not more
13 than 10 percent of the emission allowances estab-
14 lished for that calendar year under section 721(a)
15 may be sold at the combined strategic reserve auc-
16 tions during that year.

17 “(3) ALLOCATION OF LIMITATION.—One-fourth
18 of each year’s annual strategic reserve auction limit
19 under this subsection shall be made available for
20 auction in each quarter. Any allowances made avail-
21 able for sale in a quarterly auction and not sold
22 shall be rolled over and added to the quantity avail-
23 able for sale in the following quarter, except that al-
24 lowances not sold at auction in the fourth quarter of
25 a year shall not be rolled over to the following cal-

1 endar year's auctions, but shall be returned to the
2 reserve.

3 “(e) PURCHASE LIMIT.—

4 “(1) IN GENERAL.—Except as provided in para-
5 graph (2) or (3), the annual number of emission al-
6 lowances that a covered entity may purchase at the
7 strategic reserve auctions in each calendar year shall
8 not exceed 10 percent of the covered entity's most
9 recent emission allowance compliance obligation
10 under section 722(a).

11 “(2) 2012 LIMIT.—For calendar year 2012, the
12 maximum number of emission allowances that a cov-
13 ered entity may purchase from that year's strategic
14 reserve auctions shall be 10 percent of the covered
15 entity's greenhouse gas emissions that the covered
16 entity reported to the registry established under sec-
17 tion 713 for 2011 and for which emission allowances
18 would be required under section 722(a) if occurring
19 in later calendar years.

20 “(3) NEW ENTRANTS.—The Administrator
21 shall, by regulation, establish a separate limitation
22 applicable to entities that expect to become a cov-
23 ered entity in the year of the auction, permitting
24 them to purchase emission allowances at the stra-
25 tegic reserve auctions in their first calendar year of

1 operation in an amount of at least 10 percent of
2 their expected compliance obligation under section
3 722(a) for that year.

4 “(f) DELEGATION OR CONTRACT.—Pursuant to regu-
5 lations under this section, the Administrator may, by dele-
6 gation or contract, provide for the conduct of auctions
7 under the Administrator’s supervision by other depart-
8 ments or agencies of the Federal Government or by non-
9 governmental agencies, groups, or organizations.

10 “(g) USE OF AUCTION PROCEEDS.—

11 “(1) DEPOSIT IN STRATEGIC RESERVE FUND.—
12 The proceeds from strategic reserve auctions shall be
13 placed in the Strategic Reserve Fund established
14 under section 782(c), and shall be available without
15 further appropriation or fiscal year limitation.

16 “(2) INTERNATIONAL OFFSET CREDITS FOR RE-
17 DUCED DEFORESTATION.—The Administrator shall
18 use the proceeds from each strategic reserve auction
19 to purchase international offset credits issued for re-
20 duced deforestation activities pursuant to section
21 753(e). The Administrator shall retire those inter-
22 national offset credits and establish a number of
23 emission allowances equal to 80 percent of the num-
24 ber of international offset credits so retired. Emis-
25 sion allowances established under this paragraph

1 shall be in addition to those established under sec-
2 tion 721(a).

3 “(3) EMISSION ALLOWANCES.—The Adminis-
4 trator shall deposit emission allowances issued under
5 paragraph (2) in the strategic reserve, except that,
6 with respect to any such emission allowance in ex-
7 cess of the amount necessary to fill the strategic re-
8 serve to its original size, the Administrator shall—

9 “(A) assign a vintage year to the emission
10 allowance, which shall be no earlier than the
11 year in which the allowance is established under
12 paragraph (2); or

13 “(B) to the extent any such allowances
14 cannot be assigned a vintage year because of
15 the limitation in paragraph (4), retire the allow-
16 ances.

17 “(4) LIMITATION.—In no case may the Admin-
18 istrator assign under paragraph (3)(A) more emis-
19 sion allowances to a vintage year than the number
20 of emission allowances reserved for the strategic re-
21 serve from that vintage year under subsection
22 (b)(1).

23 “(h) AVAILABILITY OF INTERNATIONAL OFFSET
24 CREDITS FOR AUCTION.—

1 “(1) IN GENERAL.—The Administrator shall
2 issue regulations allowing any entity in possession of
3 international offset credits from reduced deforest-
4 ation issued under section 753(e) to request that the
5 Administrator include such offset credits in a stra-
6 tegic reserve auction. The regulations shall provide
7 that—

8 “(A) such international offset credits will
9 be used to fill bid orders only after the supply
10 of strategic reserve allowances available for sale
11 at the auction has been depleted;

12 “(B) international offset credits may be
13 sold at a strategic reserve auction under this
14 subsection only if the Administrator determines
15 that it is highly likely that covered entities will,
16 to cover emissions occurring in the year the
17 auction is held, meet their compliance obligation
18 under section 722 by holding offset credits in
19 an amount equal to or greater than 80 percent
20 of 2 billion tons of carbon dioxide equivalent;

21 “(C) upon sale of such international offset
22 credits, the Administrator shall retire those
23 international offset credits, and establish and
24 provide to the purchasers a number of emission

1 allowances equal to 80 percent of the number of
2 international offset credits so retired; and

3 “(D) for international offset credits sold
4 pursuant to this subsection, the proceeds for
5 the entity that offered the international offset
6 credits for sale shall equal the average daily
7 price for international offset credits sold on reg-
8 istered exchanges during the six months prior
9 to the strategic reserve auction at which they
10 were auctioned, and the remaining funds col-
11 lected upon the sale of the international offset
12 credits shall be deposited in the Treasury.

13 “(2) PROCEEDS.—For international offset cred-
14 its auctioned pursuant to this subsection, notwith-
15 standing section 3302 of title 31, United States
16 Code, or any other provision of law, within 90 days
17 of receipt, the United States shall transfer the pro-
18 ceeds from the auction to the entity which possessed
19 the international offset credits auctioned. No funds
20 transferred from a purchaser to a seller of inter-
21 national offset credits under this paragraph shall be
22 held by any officer or employee of the United States
23 or treated for any purpose as revenue to the United
24 States or the Administrator.

1 “(3) PRICING.—When the Administrator acts
2 under this subsection as the agent of an entity in
3 possession of international offset credits, the Admin-
4 istrator is not obligated to obtain the highest price
5 possible for the international offset credits, and in-
6 stead shall auction such international offset credits
7 in the same manner and pursuant to the same rules
8 (except as modified in paragraph (1)) as set forth
9 for auctioning strategic reserve allowances. Entities
10 requesting that such international offset credits be
11 offered for sale at a strategic reserve auction may
12 not set a minimum reserve price for their inter-
13 national offset credits.

14 “(i) INITIAL REGULATIONS.—Not later than 24
15 months after the date of enactment of this title, the Ad-
16 ministrator shall promulgate regulations, in consultation
17 with other appropriate agencies, governing the auction of
18 allowances under this section. Such regulations shall in-
19 clude the following requirements:

20 “(1) FREQUENCY; FIRST AUCTION.—Auctions
21 shall be held four times per year at regular intervals,
22 with the first auction to be held no later than March
23 31, 2012.

24 “(2) AUCTION FORMAT.—Auctions shall follow
25 a single-round, sealed-bid, uniform price format.

1 “(3) PARTICIPATION; FINANCIAL ASSURANCE.—
2 Auctions shall be open to any covered entity, except
3 that the Administrator may establish financial as-
4 surance requirements to ensure that auction partici-
5 pants can and will perform on their bids.

6 “(4) DISCLOSURE OF BENEFICIAL OWNER-
7 SHIP.—Each bidder in an auction shall be required
8 to disclose the person or entity sponsoring or bene-
9 fitting from the bidder’s participation in the auction
10 if such person or entity is, in whole or in part, other
11 than the bidder.

12 “(5) PURCHASE LIMITS.—No person may, di-
13 rectly or in concert with another participant, pur-
14 chase more than 20 percent of the allowances of-
15 fered for sale at any quarterly auction.

16 “(6) PUBLICATION OF INFORMATION.—After
17 the auction, the Administrator shall, in a timely
18 fashion, publish the identities of winning bidders,
19 the quantity of allowances obtained by each winning
20 bidder, and the auction clearing price.

21 “(7) OTHER REQUIREMENTS.—The Adminis-
22 trator may include in the regulations such other re-
23 quirements or provisions as the Administrator, in
24 consultation with other appropriate agencies, con-
25 siders necessary to promote effective, efficient,

1 transparent, and fair administration of auctions
2 under this section.

3 “(j) REVISION OF REGULATIONS.—The Adminis-
4 trator may, at any time, in consultation with other appro-
5 priate agencies, revise the initial regulations promulgated
6 under subsection (i). Such revised regulations need not
7 meet the requirements identified in subsection (i) if the
8 Administrator determines that an alternative auction de-
9 sign would be more effective, taking into account factors
10 including costs of administration, transparency, fairness,
11 and risks of collusion or manipulation. In determining
12 whether and how to revise the initial regulations under
13 this subsection, the Administrator shall not consider maxi-
14 mization of revenues to the Federal Government.

15 **“SEC. 727. PERMITS.**

16 “(a) PERMIT PROGRAM.—For stationary sources
17 subject to title V of this Act, the provisions of this title
18 shall be implemented by permits issued to covered entities
19 (and enforced) in accordance with the provisions of title
20 V, as modified by this title. Any such permit issued by
21 the Administrator, or by a State with an approved permit
22 program, shall require a covered entity to hold a number
23 of emission allowances at least equal to the total annual
24 amount of carbon dioxide equivalents for which emission
25 allowances must be held by the covered entity under sec-

1 tion 722. No such permit shall be issued that is incon-
2 sistent with the requirements of this title, and title V as
3 applicable. Nothing in this section regarding compliance
4 plans or in title V shall be construed as affecting emission
5 allowances. Submission of a statement by the owner or
6 operator, or the designated representative of the owners
7 and operators, of a covered entity that the owners and
8 operators will hold emission allowances not less than the
9 total amount of carbon dioxide equivalents for a year for
10 which emission allowances must be held by the covered
11 entity under section 722 shall be deemed to meet the pro-
12 posed and approved planning requirements of title V. Rec-
13 ordation by the Administrator of transfers of emission al-
14 lowances shall amend automatically all applicable pro-
15 posed or approved permit applications, compliance plans,
16 and permits.

17 “(b) MULTIPLE OWNERS.—No permit shall be issued
18 under this section and no emission allowances shall be dis-
19 bursed under this title to a covered entity or any other
20 person until the designated representative of the owners
21 or operators has filed a certificate of representation with
22 regard to matters under this title, including the holding
23 and distribution of emission allowances and the proceeds
24 of transactions involving emission allowances. Where there
25 are multiple holders of a legal or equitable title to, or a

1 leasehold interest in, such a covered entity or other entity
2 or where a utility or industrial customer purchases power
3 from an independent power producer, the certificate shall
4 state—

5 “(1) that emission allowances and the proceeds
6 of transactions involving emission allowances will be
7 deemed to be held or distributed in proportion to
8 each holder’s legal, equitable, leasehold, or contrac-
9 tual reservation or entitlement; or

10 “(2) if such multiple holders have expressly pro-
11 vided for a different distribution of emission allow-
12 ances by contract, that emission allowances and the
13 proceeds of transactions involving emission allow-
14 ances will be deemed to be held or distributed in ac-
15 cordance with the contract.

16 A passive lessor, or a person who has an equitable interest
17 through such lessor, whose rental payments are not based,
18 either directly or indirectly, upon the revenues or income
19 from the covered entity or other shall not be deemed to
20 be a holder of a legal, equitable, leasehold, or contractual
21 interest for the purpose of holding or distributing emission
22 allowances as provided in this subsection, during either the
23 term of such leasehold or thereafter, unless expressly pro-
24 vided for in the leasehold agreement. Except as otherwise
25 provided in this subsection, where all legal or equitable

1 title to or interest in a covered entity, or other entity, is
2 held by a single person, the certification shall state that
3 all emission allowances received by the entity are deemed
4 to be held for that person.

5 “(c) PROHIBITION.—It shall be unlawful for any per-
6 son to operate any covered entity except in compliance
7 with the terms and requirements of a permit issued by
8 the Administrator or a State with an approved permit pro-
9 gram. For purposes of this subsection, compliance, as pro-
10 vided in section 504(f), with a permit issued under title
11 V which complies with this title for covered entities shall
12 be deemed compliance with this subsection as well as sec-
13 tion 502(a).

14 **“SEC. 728. INTERNATIONAL EMISSION ALLOWANCES.**

15 “(a) QUALIFYING PROGRAMS.—The Administrator,
16 in consultation with the Secretary of State, may by rule
17 designate an international climate change program as a
18 qualifying international program if—

19 “(1) the program is run by a national or supra-
20 national foreign government, and imposes a manda-
21 tory absolute tonnage limit on greenhouse gas emis-
22 sions from 1 or more foreign countries, or from 1 or
23 more economic sectors in such a country or coun-
24 tries; and

1 “(2) the program is at least as stringent as the
2 program established by this title, including provi-
3 sions to ensure comparable monitoring, compliance,
4 enforcement, quality of offsets, and restrictions on
5 the use of offsets.

6 “(b) DISQUALIFIED ALLOWANCES.—An international
7 emission allowance may not be held under section 722 if
8 it is in the nature of an offset instrument or allowance
9 awarded based on the achievement of greenhouse gas
10 emission reductions or avoidance, or greenhouse gas se-
11 questration, that are not subject to the mandatory abso-
12 lute tonnage limits referred to in subsection (a)(1).

13 “(c) RETIREMENT.—

14 “(1) ENTITY CERTIFICATION.—The owner or
15 operator of an entity that holds an international
16 emission allowance under section 722 shall certify to
17 the Administrator that such international emission
18 allowance has not previously been used to comply
19 with any foreign, international, or domestic green-
20 house gas regulatory program.

21 “(2) RETIREMENT.—

22 “(A) FOREIGN AND INTERNATIONAL REG-
23 ULATORY ENTITIES.—The Administrator, in
24 consultation with the Secretary of State, shall
25 seek, by whatever means appropriate, including

1 agreements and technical cooperation on allow-
2 ance tracking, to ensure that any relevant for-
3 eign, international, and domestic regulatory en-
4 tities—

5 “(i) are notified of the use, for pur-
6 poses of compliance with this title, of any
7 international emission allowance; and

8 “(ii) provide for the disqualification of
9 such international emission allowance for
10 any subsequent use under the relevant for-
11 eign, international, or domestic greenhouse
12 gas regulatory program, regardless of
13 whether such use is a sale, exchange, or
14 submission to satisfy a compliance obliga-
15 tion.

16 “(B) DISQUALIFICATION FROM FURTHER
17 USE.—The Administrator shall ensure that,
18 once an international emission allowance has
19 been retired or otherwise used for purposes of
20 compliance with this title, such allowance shall
21 be disqualified from any further use under this
22 title.

23 “(d) USE LIMITATIONS.—The Administrator may, by
24 rule, modify the percentage of a covered entity’s compli-

1 ance obligation that may be met with international emis-
2 sion allowances under section 722(c)(2).

3 **“PART D—OFFSETS**

4 **“SEC. 731. OFFSETS INTEGRITY ADVISORY BOARD.**

5 “(a) ESTABLISHMENT.—Not later than 30 days after
6 the date of enactment of this title, the Administrator shall
7 establish an independent Offsets Integrity Advisory
8 Board. The Advisory Board shall make recommendations
9 to the Administrator for use in promulgating and revising
10 regulations under this part and part E, and for ensuring
11 the overall environmental integrity of the programs estab-
12 lished pursuant to those regulations.

13 “(b) MEMBERSHIP.—The Advisory Board shall be
14 comprised of nine members with relevant expertise. At
15 least six members of the Advisory Board shall be sci-
16 entists, and at least one member shall be a member of
17 the National Academy of Sciences. The Administrator
18 shall appoint Advisory Board members, including a chair
19 and vice-chair of the Advisory Board. Terms shall be 3
20 years in length, except for initial terms, which may be up
21 to 5 years in length to allow staggering. Members may
22 be reappointed only once for an additional 3-year term,
23 and such second term may follow directly after a first
24 term.

1 “(c) ACTIVITIES.—The Advisory Board established
2 pursuant to subsection (a) shall—

3 “(1) provide recommendations, not later than
4 90 days after the Advisory Board’s establishment
5 and periodically thereafter, to the Administrator re-
6 garding offset project types that should be consid-
7 ered for eligibility under section 733, taking into
8 consideration relevant scientific and other issues, in-
9 cluding—

10 “(A) the potential for accurate quantifica-
11 tion of greenhouse gas reduction, avoidance, or
12 sequestration for an offset project type;

13 “(B) the potential level of scientific and
14 measurement uncertainty associated with an
15 offset project type; and

16 “(C) any beneficial or adverse environ-
17 mental, public health, welfare, social, economic,
18 or energy effects associated with an offset
19 project type;

20 “(2) provide recommendations to the Adminis-
21 trator regarding offset methodologies that should be
22 considered under regulations promulgated pursuant
23 to section 734(a) and (b), including methodologies to
24 address the issues of additionality, activity baselines,
25 measurement, leakage, uncertainty, and permanence;

1 “(3) advise the Administrator, and other rel-
2 evant Federal agencies, regarding scientific, tech-
3 nical, and methodological issues specific to the
4 issuance of international offset credits under section
5 743;

6 “(4) advise the Administrator, and other rel-
7 evant Federal agencies, regarding scientific, tech-
8 nical, and methodological issues associated with the
9 implementation of part E;

10 “(5) advise the Administrator of areas in which
11 further knowledge is required to appraise the ade-
12 quacy of existing, revised, or proposed methodologies
13 for use under this part and part E, and describe the
14 research efforts necessary to provide the required in-
15 formation; and

16 “(6) advise the Administrator on other ways to
17 improve or safeguard the environmental integrity of
18 programs established under this part and part E.

19 “(d) SCIENTIFIC REVIEW OF OFFSET AND DEFOR-
20 ESTATION REDUCTION PROGRAMS.—Not later than Janu-
21 ary 1, 2017, and at five-year intervals thereafter, the Ad-
22 visory Board shall submit to the Administrator and make
23 available to the public an analysis of relevant scientific and
24 technical information related to this part and part E. The
25 Advisory Board shall review approved and potential offset

1 methodologies, scientific studies, offset project monitoring,
2 offset project verification reports, and audits, and evaluate
3 the net emissions effects of implemented offset projects.
4 The Advisory Board shall recommend changes to offset
5 methodologies, protocols, or project types, or to the overall
6 offset program under this part, to ensure that offset cred-
7 its issued by the Administrator do not compromise the in-
8 tegrity of the emissions cap established under section 702,
9 and to avoid or minimize any adverse effects to human
10 health or the environment.

11 **“SEC. 732. ESTABLISHMENT OF OFFSETS PROGRAM.**

12 “(a) REGULATIONS.—Not later than 2 years after
13 the date of enactment of this title, the Administrator, in
14 consultation with appropriate Federal agencies and taking
15 into consideration the recommendations of the Advisory
16 Board, shall promulgate regulations establishing a pro-
17 gram for the issuance of offset credits in accordance with
18 the requirements of this part.

19 “(b) REQUIREMENTS.—The regulations described in
20 subsection (a) shall—

21 “(1) authorize the issuance of offset credits
22 with respect to qualifying offset projects that result
23 in reductions or avoidance of greenhouse gas emis-
24 sions, or sequestration of greenhouse gases;

1 “(2) ensure that such offset credits represent
2 verifiable and additional greenhouse gas emission re-
3 ductions or avoidance, or increases in sequestration;

4 “(3) ensure that offset credits issued for se-
5 questration offset projects are only issued for green-
6 house gas reductions that are permanent; and

7 “(4) provide for the implementation of the re-
8 quirements of this part.

9 “(c) COORDINATION TO MINIMIZE NEGATIVE EF-
10 FECTS.—In promulgating and implementing regulations
11 under this part, the Administrator shall act (including by
12 rejecting projects, if necessary) to avoid or minimize, to
13 the maximum extent practicable, adverse effects on human
14 health or the environment resulting from the implementa-
15 tion of offset projects under this part.

16 “(d) OFFSET REGISTRY.—The Administrator shall
17 establish an Offset Registry for qualifying offset projects
18 and offset credits issued with respect thereto under this
19 part.

20 “(e) FEES.—The Administrator may assess fees pay-
21 able by offset project representatives in an amount nec-
22 essary to cover the administrative costs to the Environ-
23 mental Protection Agency of processing and approving off-
24 set projects and issuing offset credits under this part.

1 **“SEC. 733. ELIGIBLE PROJECT TYPES.**

2 “(a) LIST OF ELIGIBLE PROJECT TYPES.—

3 “(1) IN GENERAL.—As part of the regulations
4 promulgated under section 732(a), the Adminis-
5 trator shall establish, and may periodically revise, a
6 list of types of projects eligible for offset credits
7 under this part.

8 “(2) ADVISORY BOARD RECOMMENDATIONS.—

9 In determining the eligibility of project types, the
10 Administrator shall take into consideration the rec-
11 ommendations of the Advisory Board. If a list estab-
12 lished under this section differs from the rec-
13 ommendations of the Advisory Board, the Adminis-
14 trator shall provide a justification for the discrep-
15 ancy.

16 “(3) INITIAL DETERMINATION.—The Adminis-

17 trator shall establish the initial eligibility list under
18 paragraph (1) not later than 2 years after the date
19 of enactment of this title. In determining the initial
20 list, the Administrator shall give priority to consider-
21 ation of offset project types that are recommended
22 by the Advisory Board.

23 “(b) MODIFICATION OF LIST.—The Administrator—

24 “(1) may at any time, by rule, add a project
25 type to the list established under subsection (a) if
26 the Administrator, in consultation with appropriate

1 Federal agencies and taking into consideration the
2 recommendations of the Advisory Board, determines
3 that the project type can generate additional reduc-
4 tions or avoidance of greenhouse gas emissions, or
5 sequestration of greenhouse gases, subject to the re-
6 quirements of this part;

7 “(2) may at any time, by rule, remove a project
8 type from the list established under subsection (a),
9 in consultation with appropriate Federal agencies
10 and taking into consideration the recommendations
11 of the Advisory Board; and

12 “(3) shall consider adding to or removing from
13 the list established under subsection (a), at a min-
14 imum, types proposed to the Administrator—

15 “(A) by petition pursuant to subsection
16 (c); or

17 “(B) by the Advisory Board.

18 “(c) PETITION PROCESS.—Any person may petition
19 the Administrator to modify the list established under sub-
20 section (a) by adding or removing a project type. Any such
21 petition shall include a showing by the petitioner that
22 there is adequate data to establish that the project type
23 will meet the requirements of this part. Not later than
24 12 months after receipt of such a petition, the Adminis-
25 trator shall either grant or deny the petition and publish

1 a written explanation of the reasons for the Administra-
2 tor's decision. The Administrator may not deny a petition
3 on the basis of inadequate Environmental Protection
4 Agency resources or time for review.

5 **“SEC. 734. REQUIREMENTS FOR OFFSET PROJECTS.**

6 “(a) **METHODOLOGIES.**—

7 “(1) **IN GENERAL.**—As part of the regulations
8 promulgated under section 732(a), the Adminis-
9 trator shall establish, for each type of offset project
10 listed as eligible under section 733(a), the following:

11 “(A) **ADDITIONALITY.**—A standardized
12 methodology for determining the additionality
13 of greenhouse gas emission reductions or avoid-
14 ance, or greenhouse gas sequestration, achieved
15 by an offset project of that type. Such method-
16 ology shall ensure, at a minimum, that any
17 greenhouse gas emission reduction or avoidance,
18 or any greenhouse gas sequestration, is consid-
19 ered additional only to the extent that it results
20 from activities that—

21 “(i) are not required by or undertaken
22 to comply with any law, including any reg-
23 ulation;

1 “(ii) were not commenced prior to
2 January 1, 2009, except as provided in
3 section 740(a); and

4 “(iii) exceed the activity baseline es-
5 tablished under subparagraph (B).

6 “(B) ACTIVITY BASELINES.—A standard-
7 ized methodology for establishing activity base-
8 lines for offset projects of that type. The Ad-
9 ministrators shall set activity baselines to reflect
10 a conservative estimate of business-as-usual
11 performance or practices for the relevant type
12 of activity such that the baseline provides an
13 adequate margin of safety to ensure the envi-
14 ronmental integrity of offsets calculated in ref-
15 erence to such baseline.

16 “(C) MEASUREMENT.—A standardized
17 methodology for determining the extent to
18 which greenhouse gas emission reductions or
19 avoidance, or greenhouse gas sequestration,
20 achieved by an offset project of that type exceed
21 a relevant activity baseline, including protocols
22 for monitoring.

23 “(D) LEAKAGE.—A standardized method-
24 ology for accounting for and mitigating poten-

1 tial leakage, if any, from an offset project of
2 that type.

3 “(E) UNCERTAINTY.—A standardized
4 methodology for use in determining and dis-
5 counting for uncertainty with respect to the
6 greenhouse gas emission reduction or avoidance,
7 or greenhouse gas sequestration from, an offset
8 project of that type.

9 “(2) VARIANCES.—The Administrator may es-
10 tablish procedures for an offset project representa-
11 tive to request approval for the use of methodologies
12 that differ from those established by the Adminis-
13 trator pursuant to subparagraphs (A) through (E)
14 of paragraph (1). The Administrator may grant such
15 a variance request if, in the Administrator’s judg-
16 ment, use of the requested methodologies will ensure
17 that the requirements of this part will be satisfied.

18 “(b) ACCOUNTING FOR REVERSALS.—

19 “(1) IN GENERAL.—The Administrator shall es-
20 tablish policies to account for and address reversals
21 in sequestration projects, including—

22 “(A) a requirement to report any reversal
23 with respect to an offset project for which offset
24 credits have been issued under this part;

1 “(B) policies to assign liability and respon-
2 sibility for mitigating and fully compensating
3 for reversals; and

4 “(C) any other provisions the Adminis-
5 trator determines necessary to account for and
6 address reversals.

7 “(2) MECHANISMS.—The Administrator shall
8 prescribe mechanisms to ensure that any sequestra-
9 tion with respect to which an offset credit is issued
10 under this part results in a permanent net increase
11 in sequestration, and that full account is taken of
12 any actual or potential reversal of such sequestra-
13 tion, with an adequate margin of safety. The Admin-
14 istrator shall prescribe at least one of the following
15 mechanisms to meet the requirements of this para-
16 graph:

17 “(A) An offsets reserve, pursuant to para-
18 graph (3).

19 “(B) Insurance that provides for full com-
20 pensation for the amount of emissions released
21 due to reversal.

22 “(C) Another mechanism that the Admin-
23 istrator determines satisfies the requirements of
24 this part.

25 “(3) OFFSETS RESERVE.—

1 “(A) IN GENERAL.—An offsets reserve re-
2 ferred to in paragraph (2)(A) is a program
3 under which, before issuance of offset credits
4 under this part, the Administrator shall sub-
5 tract and reserve from the quantity to be issued
6 a quantity of offset credits based on the risk of
7 reversal. The Administrator shall—

8 “(i) hold these reserved offset credits
9 in the offsets reserve; and

10 “(ii) register the holding of the re-
11 served offset credits in the Offset Registry
12 established under section 732(d).

13 “(B) PROJECT REVERSAL.—

14 “(i) IN GENERAL.—If a reversal has
15 occurred with respect an offset project for
16 which offset credits are reserved under this
17 paragraph, the Administrator shall remove
18 offset credits from the offsets reserve and
19 cancel them to fully account for the tons of
20 carbon dioxide equivalent that are no
21 longer sequestered.

22 “(ii) INTENTIONAL REVERSALS.—If
23 the Administrator determines that a rever-
24 sal was intentional, the offset project rep-
25 resentative for the relevant offset project

1 shall place into the offset reserve a quan-
2 tity of offset credits, or combination of off-
3 set credits and emission allowances, equal
4 in number to the number of reserve offset
5 credits that were canceled due to the rever-
6 sal pursuant to clause (i).

7 “(iii) UNINTENTIONAL REVERSALS.—
8 If the Administrator determines that a re-
9 versal was unintentional, the offset project
10 representative for the relevant offset
11 project shall place into the offset reserve a
12 quantity of offset credits, or combination
13 of offset credits and emission allowances,
14 equal in number to the number of offset
15 credits that were reserved for that quali-
16 fying project, or the number of reserve off-
17 set credits that were canceled due to the
18 reversal pursuant to clause (i), whichever
19 is less.

20 “(C) USE OF RESERVED OFFSET CRED-
21 ITS.—Offset credits placed into the offsets re-
22 serve under this paragraph may not be used to
23 satisfy compliance obligations under section
24 722.

25 “(c) CREDITING PERIODS.—

1 “(1) IN GENERAL.—For each offset project
2 type, the Administrator shall specify a crediting pe-
3 riod in accordance with this subsection.

4 “(2) DURATION.—The crediting period shall be
5 no less than 5 and no greater than 10 years for any
6 project type other than those involving sequestra-
7 tion.

8 “(3) ELIGIBILITY.—An offset project shall be
9 eligible to generate offset credits under this part
10 only during the project’s crediting period. During
11 such crediting period, the project shall remain eligi-
12 ble to generate offset credits, subject to the meth-
13 odologies and project type eligibility list that applied
14 as of the date of project approval under section 735,
15 except as provided in paragraph (4) of this sub-
16 section.

17 “(4) PETITION FOR NEW CREDITING PERIOD.—
18 An offset project representative may petition for a
19 new crediting period to commence after termination
20 of a crediting period, subject to the methodologies
21 and project type eligibility list in effect at the time
22 when such petition is submitted. A petition may not
23 be submitted under this paragraph more than 18
24 months before the end of the pending crediting pe-
25 riod.

1 “(d) ENVIRONMENTAL INTEGRITY.—In establishing
2 the requirements under this section, the Administrator
3 shall apply conservative assumptions or methods to maxi-
4 mize the certainty that the environmental integrity of the
5 cap established under section 703 is not compromised.

6 “(e) PRE-EXISTING METHODOLOGIES.—In promul-
7 gating requirements under this section, the Administrator
8 shall give due consideration to methodologies for offset
9 projects existing as of the date of enactment of this title.

10 “(f) ADDED PROJECT TYPES.—The Administrator
11 shall establish methodologies described in subsection (a)
12 for any project type that is added to the list pursuant to
13 section 733.

14 **“SEC. 735. APPROVAL OF OFFSET PROJECTS.**

15 “(a) APPROVAL PETITION.—An offset project rep-
16 resentative shall submit an offset project approval petition
17 providing such information as the Administrator requires
18 to determine whether the offset project is eligible for
19 issuance of offset credits under rules promulgated pursu-
20 ant to this part.

21 “(b) TIMING.—An approval petition shall be sub-
22 mitted to the Administrator under subsection (a) no later
23 than the time at which an offset project’s first verification
24 report is submitted.

1 “(c) APPROVAL PETITION REQUIREMENTS.—The
2 Administrator shall specify the required components of an
3 offset project approval petition required under subsection
4 (a), which shall include—

5 “(1) designation of an offset project representa-
6 tive; and

7 “(2) any other information that the Adminis-
8 trator considers to be necessary to achieve the pur-
9 poses of this part.

10 “(d) APPROVAL AND NOTIFICATION.—Not later than
11 90 days after receiving a complete approval petition under
12 subsection (a), the Administrator shall approve or reject
13 the petition in writing and, if the petition is denied, pro-
14 vide the reasons for denial. A petition may be resubmitted
15 for approval at any time following denial. After an offset
16 project is approved, the offset project representative shall
17 not be required to resubmit an approval petition during
18 the offset project’s crediting period, except as provided in
19 section 734(c)(4).

20 “(e) APPEAL.—The Administrator shall establish
21 procedures for appeal and review of determinations made
22 under subsection (d).

23 “(f) VOLUNTARY PREAPPROVAL REVIEW.—The Ad-
24 ministrator shall establish a voluntary preapproval review
25 procedure, to allow an offset project representative to re-

1 quest the Administrator to conduct a preliminary eligi-
2 bility review for an offset project. Findings of such reviews
3 shall not be binding upon the Administrator. The vol-
4 untary preapproval review procedure—

5 “(1) shall require the offset project representa-
6 tive to submit such basic project information as the
7 Administrator requires to provide a meaningful re-
8 view; and

9 “(2) shall require a response from the Adminis-
10 trator not later than 6 weeks after receiving a re-
11 quest for review under this subsection.

12 **“SEC. 736. VERIFICATION OF OFFSET PROJECTS.**

13 “(a) IN GENERAL.—An offset project representative
14 shall submit a report, prepared by a third-party verifier
15 accredited under subsection (d), providing such informa-
16 tion as the Administrator requires to determine the quan-
17 tity of greenhouse gas emission reductions or avoidance,
18 or sequestration of greenhouse gas, resulting from the off-
19 set project.

20 “(b) SCHEDULE.—The Administrator shall prescribe
21 a schedule for the submission of verification reports under
22 subsection (a).

23 “(c) VERIFICATION REPORT REQUIREMENTS.—The
24 Administrator shall specify the required components of a

1 verification report required under subsection (a), which
2 shall include—

3 “(1) the name and contact information for the
4 offset project representative;

5 “(2) the quantity of greenhouse gas reduced,
6 avoided, or sequestered;

7 “(3) the methodologies applicable to the project
8 pursuant to section 734;

9 “(4) a certification establishing that the conflict
10 of interest requirements in the regulations promul-
11 gated under subsection (d)(1) have been complied
12 with; and

13 “(5) any other information that the Adminis-
14 trator considers to be necessary to achieve the pur-
15 poses of this part.

16 “(d) VERIFIER ACCREDITATION.—

17 “(1) IN GENERAL.—As part of the regulations
18 promulgated under section 732(a), the Adminis-
19 trator shall establish a process and requirements for
20 accreditation of third-party verifiers to ensure that
21 such verifiers are professionally qualified and have
22 no conflicts of interest.

23 “(2) STANDARDS.—The Administrator may ac-
24 credit, or accept for purposes of accreditation under
25 this subsection, verifiers accredited under the Amer-

1 ican National Standards Institute (ANSI) accredita-
2 tion program in accordance with ISO 14065. The
3 Administrator shall accredit, or accept for accredita-
4 tion, verifiers under this paragraph only if the Ad-
5 ministrator finds that the American National Stand-
6 ards Institute accreditation program provides suffi-
7 cient assurance that the requirements of this part
8 will be met.

9 “(3) PUBLIC ACCESSIBILITY.—Each verifier
10 meeting the requirements for accreditation in ac-
11 cordance with this subsection shall be listed in a
12 publicly accessible database, which shall be main-
13 tained and updated by the Administrator.

14 **“SEC. 737. ISSUANCE OF OFFSET CREDITS.**

15 “(a) DETERMINATION AND NOTIFICATION.—Not
16 later than 90 days after receiving a verification report
17 under section 736, the Administrator shall make a deter-
18 mination of the quantity of greenhouse gas emissions re-
19 duced or avoided, or greenhouse gases sequestered, result-
20 ing from an offset project approved under section 735, and
21 shall notify the offset project representative in writing of
22 such determination.

23 “(b) ISSUANCE OF OFFSET CREDITS.—The Adminis-
24 trator shall issue one offset credit to an offset project rep-
25 resentative for each ton of carbon dioxide equivalent that

1 the Administrator has determined has been reduced,
2 avoided, or sequestered during the period covered by a
3 verification report submitted in accordance with section
4 736, only if—

5 “(1) the Administrator has approved the offset
6 project pursuant to section 735; and

7 “(2) the relevant emissions reduction, avoid-
8 ance, or sequestration has already occurred, during
9 the offset project’s crediting period.

10 “(c) APPEAL.—The Administrator shall establish
11 procedures for appeal and review of determinations made
12 under subsection (a).

13 “(d) TIMING.—Offset credits meeting the criteria es-
14 tablished in subsection (b) shall be issued not later than
15 2 weeks following the verification determination made by
16 the Administrator under subsection (a).

17 “(e) REGISTRATION.—The Administrator shall as-
18 sign a unique serial number to and register each offset
19 credit to be issued.

20 **“SEC. 738. AUDITS.**

21 “(a) IN GENERAL.—The Administrator shall, on an
22 ongoing basis, conduct random audits of offset projects,
23 offset credits, and practices of third-party verifiers. In
24 each year, the Administrator shall conduct audits, at min-

1 imum, for a representative sample of project types and
2 geographic areas.

3 “(b) DELEGATION.—The Administrator may delegate
4 to a State or tribal government the responsibility for con-
5 ducting audits under this section if the Administrator
6 finds that the program proposed by the State or tribal
7 government provides assurances equivalent to those pro-
8 vided by the auditing program of the Administrator, and
9 that the integrity of the offset program under this part
10 will be maintained. Nothing in this subsection shall pre-
11 vent the Administrator from conducting any audit the Ad-
12 ministrator considers necessary and appropriate.

13 **“SEC. 739. PROGRAM REVIEW AND REVISION.**

14 ““At least once every 5 years, the Administrator shall
15 review and, based on new information and taking into con-
16 sideration the recommendations of the Advisory Board,
17 update and revise—

18 “(1) the methodologies established under sec-
19 tion 734(a);

20 “(2) the reversal policies and mechanisms es-
21 tablished under section 734(b);

22 “(3) measures to improve the accountability of
23 the offsets program; and

1 “(4) any other requirements established under
2 this part to ensure the environmental integrity and
3 effective operation of this part.

4 **“SEC. 740. EARLY OFFSET SUPPLY.**

5 “(a) PROJECTS REGISTERED UNDER OTHER GOV-
6 ERNMENT-RECOGNIZED PROGRAMS.—Except as provided
7 in subsection (b), the Administrator shall issue an offset
8 credit for each ton of carbon dioxide equivalent emissions
9 reduced or avoided, or sequestered—

10 “(1) under an offset project that was started
11 after January 1, 2001; and

12 “(2) for which a credit was issued under any
13 regulatory or voluntary greenhouse gas emission off-
14 set program that the Administrator determines—

15 “(A) was established by State or tribal law
16 or regulation prior to January 1, 2009;

17 “(B) has developed offset project type
18 standards, methodologies, and protocols
19 through a public consultation process;

20 “(C) has publicly published standards,
21 methodologies, and protocols that require that
22 credited emission reductions or sequestration
23 are permanent, additional, verifiable, and en-
24 forceable;

1 “(D) requires that all emission reductions
2 or sequestration be verified by a State regu-
3 latory agency or an accredited third-party inde-
4 pendent verification body;

5 “(E) requires that all credits issued are
6 registered in a publicly accessible registry, with
7 individual serial numbers assigned for each ton
8 of carbon dioxide equivalent emission reductions
9 or sequestration; and

10 “(F) ensures that no credits are issued for
11 activities for which the entity administering the
12 program, or a program administrator or rep-
13 resentative, has funded, solicited, or served as a
14 fund administrator for the development of, the
15 project or activity that caused the emission re-
16 duction or sequestration.

17 “(b) INELIGIBLE CREDITS.—Subsection (a) shall not
18 apply to offset credits that have expired or have been re-
19 tired or canceled, or used for compliance under a program
20 established pursuant to a State law.

21 “(c) LIMITATION.—Notwithstanding subsection
22 (a)(1), offset credits shall be issued under this part—

23 “(1) only for reductions or avoidance of green-
24 house gas emissions, or sequestration of greenhouse
25 gases, that occur after January 1, 2009; and

1 “(2) only until the date that is 3 years after the
2 date of enactment of this title, or the date that regu-
3 lations promulgated under section 732(a) take ef-
4 fect, whichever occurs sooner.

5 “(d) RETIREMENT OF CREDITS.—The Administrator
6 shall seek to ensure that offset credits described in sub-
7 section (a)(2) are retired for purposes of use under a pro-
8 gram described in subsection (b).

9 **“SEC. 741. ENVIRONMENTAL CONSIDERATIONS.**

10 “If the Administrator lists forestry projects as eligible
11 offset project types under section 733, the Administrator,
12 in consultation with appropriate Federal agencies, shall
13 promulgate regulations for the selection and use of tree
14 species in forestry offset projects—

15 “(1) to ensure that native species are given pri-
16 mary consideration in such projects;

17 “(2) to enhance biological diversity in such
18 projects;

19 “(3) to prohibit the use of federally designated
20 or State-designated noxious weeds;

21 “(4) to prohibit the use of a species listed by
22 a regional or State invasive plant authority within
23 the applicable region or State; and

24 “(5) in accordance with widely accepted, envi-
25 ronmentally sustainable forestry practices.

1 **“SEC. 742. OWNERSHIP AND TRANSFER OF OFFSET CRED-**
2 **ITS.**

3 “(a) OWNERSHIP.—Initial ownership of an offset
4 credit shall lie with the entity represented by the offset
5 project representative, unless otherwise specified in a le-
6 gally binding contract or agreement.

7 “(b) TRANSFERABILITY.—An offset credit issued
8 under this part may be sold, traded, or transferred, unless
9 the offset credit has expired or been retired or used for
10 compliance.

11 **“SEC. 743. INTERNATIONAL OFFSET CREDITS.**

12 “(a) IN GENERAL.—The Administrator, in consulta-
13 tion with the Secretary of State, may issue, in accordance
14 with this section, international offset credits based on ac-
15 tivities that reduce or avoid greenhouse gas emissions, or
16 increase sequestration of greenhouse gases, in a developing
17 country.

18 “(b) ESTABLISHMENT.—

19 “(1) REGULATIONS.—Not later than 2 years
20 after the date of enactment of this title, the Admin-
21 istrator, in consultation with the Secretary of State
22 and taking into consideration the recommendations
23 of the Advisory Board, shall promulgate regulations
24 for implementing this section. The issuance of inter-
25 national offset credits under this section shall be
26 subject to the requirements of this part.

1 “(2) REQUIREMENTS FOR INTERNATIONAL
2 OFFSET CREDITS.—The Administrator may issue
3 international offset credits only if—

4 “(A) the United States is a party to a bi-
5 lateral or multilateral agreement or arrange-
6 ment that includes the country in which the
7 project or measure achieving the relevant green-
8 house gas emission reduction or avoidance, or
9 greenhouse gas sequestration, has occurred;

10 “(B) such country is a developing country;
11 and

12 “(C) such agreement or arrangement—

13 “(i) ensures that all of the require-
14 ments of this part apply to the issuance of
15 international offset credits under this sec-
16 tion; and

17 “(ii) provides for the appropriate dis-
18 position of international offset credits
19 issued.

20 “(c) SECTOR-BASED CREDITS.—

21 “(1) IN GENERAL.— In order to minimize the
22 potential for leakage and to encourage countries to
23 take nationally appropriate mitigation actions to re-
24 duce or avoid greenhouse gas emissions, or sequester

1 greenhouse gases, the Administrator, in consultation
2 with the Secretary of State, shall—

3 “(A) identify under paragraph (2) sectors
4 of specific countries with respect to which the
5 issuance of international offset credits on a sec-
6 toral basis is appropriate; and

7 “(B) issue international offset credits for
8 such sectors only on a sectoral basis.

9 “(2) IDENTIFICATION OF SECTORS.—

10 “(A) GENERAL RULE.—The Adminis-
11 trator, in consultation with the Secretary of
12 State, shall identify sectors of specific countries
13 with respect to which the issuance of inter-
14 national offset credits on a sectoral basis is ap-
15 propriate. In general, a sectoral basis shall be
16 appropriate for activities—

17 “(i) in countries that have compara-
18 tively high greenhouse gas emissions, or
19 comparatively greater levels of economic
20 development; and

21 “(ii) that, if located in the United
22 States, would be within a sector subject to
23 the compliance obligation under section
24 722.

1 “(B) FACTORS.—In determining the sec-
2 tors and countries for which international offset
3 credits should be awarded only on a sectoral
4 basis, the Administrator, in consultation with
5 the Secretary of State, shall consider the fol-
6 lowing factors:

7 “(i) The country’s gross domestic
8 product.

9 “(ii) The country’s total greenhouse
10 gas emissions.

11 “(iii) Whether the comparable sector
12 of the United States economy is covered by
13 the compliance obligation under section
14 722.

15 “(iv) The heterogeneity or homo-
16 geneity of sources within the relevant sec-
17 tor.

18 “(v) Whether the relevant sector pro-
19 vides products or services that are sold in
20 internationally competitive markets.

21 “(vi) The risk of leakage if inter-
22 national offset credits were issued on a
23 project-level basis, as distinct from a sec-
24 tor-level basis, for activities within the rel-
25 evant sector.

1 “(vii) The capability of accurately
2 measuring, monitoring, reporting, and
3 verifying the performance of sources across
4 the relevant sector.

5 “(viii) Whether the relevant country
6 has requested that 1 or more of the sectors
7 in its economy be eligible for sector-based
8 credits under this subsection.

9 “(ix) Such other factors as the Ad-
10 ministrator, in consultation with the Sec-
11 retary of State, determines are appropriate
12 to—

13 “(I) ensure the integrity of the
14 United States greenhouse gas emis-
15 sions cap established under section
16 703; and

17 “(II) encourage countries to take
18 nationally appropriate mitigation ac-
19 tions to reduce or avoid greenhouse
20 gas emissions, or sequester green-
21 house gases.

22 “(3) **SECTORAL BASIS.**—

23 “(A) **DEFINITION.**—In this subsection, the
24 term ‘sectoral basis’ means the issuance inter-
25 national offset credits only for the quantity of

1 sector-wide reductions or avoidance of green-
2 house gas emissions, or sector-wide increases in
3 sequestration of greenhouse gases, achieved
4 across the relevant sector of the economy rel-
5 ative to a baseline level of performance estab-
6 lished in an agreement or arrangement de-
7 scribed in subsection (b)(2)(A) for the sector.

8 “(B) BASELINE.—The baseline for a sec-
9 tor shall be established at levels of greenhouse
10 gas emissions lower than would occur under a
11 business-as-usual scenario, and additionality
12 and performance shall be determined on the
13 basis of such baseline.

14 “(4) MODIFICATION OF REQUIREMENTS.—In
15 promulgating regulations under subsection (b)(1)
16 with respect to the issuance of international offset
17 credits under this subsection, the Administrator may
18 modify or omit a requirement of this part (excluding
19 the requirements of this section) if the Adminis-
20 trator determines that the application of that re-
21 quirement to this subsection is not feasible. In modi-
22 fying or omitting such a requirement on the basis of
23 infeasibility, the Administrator shall ensure, with an
24 adequate margin of safety, the integrity of inter-
25 national offset credits issued under this section and

1 of the greenhouse gas emissions cap established pur-
2 suant to section 703.

3 “(d) CREDITS ISSUED BY AN INTERNATIONAL
4 BODY.—

5 “(1) IN GENERAL.—The Administrator, in con-
6 sultation with the Secretary of State, may issue
7 international offset credits in exchange for instru-
8 ments in the nature of offset credits that are issued
9 by an international body established pursuant to the
10 United Nations Framework Convention on Climate
11 Change, to a protocol to such Convention, or to a
12 treaty that succeeds such Convention. The Adminis-
13 trator may issue such credits only if, in addition to
14 the requirements of subsection (b), the Adminis-
15 trator has determined that the international body
16 that issued the instruments has implemented sub-
17 stantive and procedural requirements for the rel-
18 evant project type that provide equal or greater as-
19 surance of the integrity of such instruments as is
20 provided by the requirements of this part.

21 “(2) RETIREMENT.—The Administrator, in
22 consultation with the Secretary of State, shall seek,
23 by whatever means appropriate, including agree-
24 ments, arrangements, or technical cooperation with

1 the international issuing body described in para-
2 graph (1), to ensure that such body—

3 “(A) is notified of the Administrator’s
4 issuance, under this subsection, of an inter-
5 national offset credit in exchange for an instru-
6 ment issued by such international body; and

7 “(B) provides, to the extent feasible, for
8 the disqualification of the instrument issued by
9 such international body for subsequent use
10 under any relevant foreign or international
11 greenhouse gas regulatory program, regardless
12 of whether such use is a sale, exchange, or sub-
13 mission to satisfy a compliance obligation.

14 “(3) MODIFICATION OF REQUIREMENTS.—In
15 promulgating regulations under subsection (b)(1)
16 with respect to the issuance of international offset
17 credits under this subsection, the Administrator may
18 modify or omit a requirement of this part (excluding
19 the requirements of this section) if the Adminis-
20 trator determines that the application of that re-
21 quirement to this subsection is not feasible. In modi-
22 fying or omitting such a requirement on the basis of
23 infeasibility, the Administrator shall ensure, with an
24 adequate margin of safety, the integrity of inter-
25 national offset credits issued under this section and

1 of the greenhouse gas emissions cap established pur-
2 suant to section 703.

3 “(e) OFFSETS FROM REDUCED DEFORESTATION.—

4 “(1) REQUIREMENTS.—The Administrator, in
5 accordance with an agreement or arrangement de-
6 scribed in subsection (b)(2)(A), shall issue inter-
7 national offset credits for greenhouse gas emission
8 reductions achieved through activities to reduce de-
9 forestation only if, in addition to the requirements of
10 subsection (b)—

11 “(A) the activity occurs in a country listed
12 by the Administrator pursuant to paragraph
13 (2);

14 “(B) the quantity of the international off-
15 set credits is determined by comparing the na-
16 tional emissions from deforestation relative to a
17 national deforestation baseline for that country
18 established, in accordance with an agreement or
19 arrangement described in subsection (b)(2)(A),
20 pursuant to paragraph (3);

21 “(C) the reduction in emissions from de-
22 forestation has occurred before the issuance of
23 the international offset credit and, taking into
24 consideration relevant international standards,
25 has been demonstrated using ground-based in-

1 ventories, remote sensing technology, and other
2 methodologies to ensure that all relevant carbon
3 stocks are accounted;

4 “(D) the Administrator has made appro-
5 priate adjustments to account for circumstances
6 specific to the country, such as discounting for
7 any additional uncertainty; and

8 “(E) the activity is designed, carried out,
9 and managed—

10 “(i) in accordance with widely accept-
11 ed, environmentally sustainable forestry
12 practices; and

13 “(ii) to promote native species and
14 conservation or restoration of native for-
15 ests, if practicable, and to avoid the intro-
16 duction of invasive nonnative species.

17 “(2) ELIGIBLE COUNTRIES.—The Adminis-
18 trator, in consultation with the Secretary of State
19 and in accordance with an agreement or arrange-
20 ment described in subsection (b)(2)(A), shall estab-
21 lish, and periodically review and update, a list of the
22 developing countries that have the capacity to par-
23 ticipate in international deforestation reduction ac-
24 tivities at a national level, including—

1 “(A) the technical capacity to monitor and
2 measure forest carbon fluxes for all significant
3 sources of greenhouse gas emissions from defor-
4 estation with an acceptable level of uncertainty;
5 and

6 “(B) the institutional capacity to reduce
7 emissions from deforestation, including strong
8 forest governance and mechanisms to deliver
9 deforestation resources for local actions.

10 “(3) PROTECTION OF INTERESTS.—With re-
11 spect to an agreement or arrangement described in
12 subsection (b)(2)(A) with a country that addresses
13 offset credits under this subsection, the Adminis-
14 trator shall seek to ensure the establishment and en-
15 forcement by such country of legal regimes, stand-
16 ards and safeguards that—

17 “(A) give due regard to the rights and in-
18 terests of local communities, indigenous peoples,
19 and vulnerable social groups;

20 “(B) promote consultations with local com-
21 munities and indigenous peoples in affected
22 areas, as partners and primary stakeholders,
23 prior to and during the design, planning, imple-
24 mentation, and monitoring and evaluation of
25 activities; and

1 “(C) encourage sharing of profits from in-
2 centives for emissions reductions with local
3 communities and indigenous peoples.

4 “(4) NATIONAL DEFORESTATION BASELINE.—A
5 national deforestation baseline shall—

6 “(A) be national in scope;

7 “(B) be consistent with nationally appro-
8 priate mitigation commitments or actions, tak-
9 ing into consideration the average annual his-
10 torical deforestation rates of the country during
11 a period of at least 5 years and other factors
12 to ensure additionality;

13 “(C) establish a trajectory that would re-
14 sult in zero gross deforestation by not later
15 than 20 years after the national deforestation
16 baseline has been established;

17 “(D) be adjusted over time to take account
18 of changing national circumstances;

19 “(E) be designed to account for all signifi-
20 cant sources of greenhouse gas emissions from
21 deforestation in the country; and

22 “(F) be consistent with the national defor-
23 estation baseline, if any, established for such
24 country under section 754(d)(1).

1 “(5) DEFORESTATION.—In implementing this
2 subsection, the Administrator, taking into consider-
3 ation the recommendations of the Advisory Board,
4 may include forest degradation, or soil carbon losses
5 associated with forested wetlands or peatlands, with-
6 in the meaning of deforestation.

7 “(6) MODIFICATION OF REQUIREMENTS.—In
8 promulgating regulations under subsection (b)(1)
9 with respect to the issuance of international offset
10 credits under this subsection, the Administrator may
11 modify or omit a requirement of this part (excluding
12 the requirements of this section) if the Adminis-
13 trator determines that the application of that re-
14 quirement to this subsection is not feasible. In modi-
15 fying or omitting such a requirement on the basis of
16 infeasibility, the Administrator shall ensure, with an
17 adequate margin of safety, the integrity of inter-
18 national offset credits issued under this section and
19 of the greenhouse gas emissions cap established pur-
20 suant to section 703.

21 “(f) AVOIDING DOUBLE COUNTING.—The Adminis-
22 trator, in consultation with the Secretary of State, shall
23 seek, by whatever means appropriate, including agree-
24 ments, arrangements, or technical cooperation, to ensure
25 that activities on the basis of which international offset

1 credits are issued under this section are not used for com-
2 pliance with an obligation to reduce or avoid greenhouse
3 gas emissions, or increase greenhouse gas sequestration,
4 under a foreign or international regulatory system. In ad-
5 dition, no international offset credits shall be issued for
6 emissions reductions from activities with respect to which
7 emission allowances were allocated under part E.

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

10 **“SEC. 751. DEFINITIONS.**

11 “In this part:

12 “(1) INTERNATIONAL DEFORESTATION REDUC-
13 TION ACTIVITIES.—The term ‘international deforest-
14 ation reduction activities’ means activities in devel-
15 oping countries authorized by this part.

16 “(2) LEAKAGE PREVENTION ACTIVITIES.—The
17 term ‘leakage prevention activities’ means activities
18 in developing countries that are directed at pre-
19 serving existing forest carbon stocks, including for-
20 ested wetlands and peatlands, that might, absent
21 such activities, be lost through leakage.

22 “(3) NATIONAL DEFORESTATION REDUCTION
23 ACTIVITIES.—The term ‘national deforestation re-
24 duction activities’ means activities in developing
25 countries that reduce a quantity of greenhouse gas

1 emissions from deforestation that is calculated by
2 measuring actual emissions against a national defor-
3 estation baseline established pursuant to section
4 754(d)(1) and (2).

5 “(4) SUBNATIONAL DEFORESTATION REDUC-
6 TION ACTIVITIES.—The term ‘subnational deforest-
7 ation reduction activities’ means activities in devel-
8 oping countries that reduce a quantity of greenhouse
9 gas emissions from deforestation that are calculated
10 by measuring actual emissions using an appropriate
11 baseline established by the Administrator.

12 “(5) SUPPLEMENTAL EMISSIONS REDUC-
13 TIONS.—The term ‘supplemental emissions reduc-
14 tions’ means greenhouse gas emissions reductions
15 achieved from reduced or avoided deforestation
16 under this part.

17 **“SEC. 752. FINDINGS.**

18 “Congress finds that—

19 “(1) land use change, primarily deforestation, is
20 one of the largest sources of greenhouse gas emis-
21 sions in developing countries, amounting to roughly
22 20 percent of overall emissions globally;

23 “(2) recent scientific analysis shows that it will
24 be substantially more difficult to limit the increase
25 in global temperatures to less than 2 degrees centi-

1 grade above preindustrial levels without reducing
2 and ultimately halting net emissions from deforest-
3 ation;

4 “(3) reducing emissions from deforestation is
5 highly cost-effective, compared to many other
6 sources of emissions reductions;

7 “(4) as part of a global effort to mitigate cli-
8 mate change, it is in the national interest of the
9 United States to assist developing countries to re-
10 duce and ultimately halt emissions from deforest-
11 ation; and

12 “(5) in addition to contributing significantly to
13 worldwide efforts to address global warming, this as-
14 sistance will generate significant environmental and
15 social cobenefits, including protection of biodiversity,
16 ecosystem services, and forest-related livelihoods.

17 **“SEC. 753. SUPPLEMENTAL EMISSIONS REDUCTIONS**
18 **THROUGH REDUCED DEFORESTATION.**

19 “(a) REGULATIONS.—Not later than 2 years after
20 the date of enactment of this title, the Administrator, in
21 consultation with the Secretary of State and the Secretary
22 of Agriculture, shall promulgate regulations establishing
23 a program to use emission allowances set aside for this
24 purpose under section 781 to achieve the reduction of

1 greenhouse gas emissions from deforestation in developing
2 countries in accordance with the requirements of this part.

3 “(b) OBJECTIVES.—The objectives of the program es-
4 tablished under this section shall be to—

5 “(1) achieve supplemental emissions reductions
6 of at least 720,000,000 tons of carbon dioxide equiv-
7 alent in 2020, a cumulative amount of at least
8 6,000,000,000 tons of carbon dioxide equivalent by
9 December 31, 2025, and additional supplemental
10 emissions reductions in subsequent years;

11 “(2) build capacity to reduce deforestation in
12 countries experiencing deforestation, including pre-
13 paring developing countries to participate in inter-
14 national markets for international offset credits for
15 reduced emissions from deforestation; and

16 “(3) preserve existing forest carbon stocks in
17 countries where such forest carbon may be vulner-
18 able to international leakage, particularly in devel-
19 oping countries with largely intact native forests.

20 **“SEC. 754. REQUIREMENTS FOR INTERNATIONAL DEFOR-
21 ESTATION REDUCTION PROGRAM.**

22 “(a) ELIGIBLE COUNTRIES.—The Administrator
23 may support activities under this section only with respect
24 to a developing country that—

1 “(1) the Administrator determines is experi-
2 encing deforestation or degradation or has standing
3 forest carbon stocks that may be at risk of deforest-
4 ation or degradation; and

5 “(2) has entered into a bilateral or multilateral
6 agreement or arrangement with the United States
7 establishing the conditions of its participation in the
8 program established under this section, which shall
9 include an agreement to meet the standards estab-
10 lished under subsection (d) for the activities to
11 which those standards apply.

12 “(b) ACTIVITIES.—Subject to the requirements of
13 this part, the Administrator may support activities to
14 achieve the objectives identified in section 753(b), includ-
15 ing—

16 “(1) national deforestation reduction activities;

17 “(2) subnational deforestation reduction activi-
18 ties, including pilot activities that reduce greenhouse
19 gas emissions but are subject to significant uncer-
20 tainty;

21 “(3) leakage prevention activities;

22 “(4) development of measurement, monitoring,
23 and verification capacities to enable a country to
24 quantify supplemental emissions reductions and to

1 participate in international markets for offset credits
2 from reduced or avoided deforestation;

3 “(5) development of governance structures to
4 reduce deforestation and illegal logging;

5 “(6) enforcement of requirements for reduced
6 deforestation or forest conservation;

7 “(7) efforts to combat illegal logging and in-
8 crease enforcement cooperation; and

9 “(8) providing incentives for policy reforms to
10 achieve the objectives identified in section 753(b).

11 “(c) MECHANISMS.—

12 “(1) IN GENERAL.—The Administrator may
13 support activities to achieve each of the objectives
14 identified in section 753(b) by—

15 “(A) developing and implementing pro-
16 grams and projects that achieve such objectives;
17 and

18 “(B) distributing emission allowances to a
19 country that is eligible under subsection (a), to
20 any private or public group (including public
21 international organizations), or to an inter-
22 national fund established by an international
23 agreement to which the United States is a
24 party, to carry out activities to achieve such ob-
25 jectives.

1 “(2) IMPLEMENTATION THROUGH INTER-
2 NATIONAL ORGANIZATIONS.—If assistance is distrib-
3 uted through an international organization, the Ad-
4 ministrator shall ensure the establishment and im-
5 plementation of adequate mechanisms to apply and
6 enforce the eligibility requirements and other re-
7 quirements of this section.

8 “(d) STANDARDS.—The Administrator shall promul-
9 gate standards to ensure that supplemental emissions re-
10 ductions achieved through supported activities are addi-
11 tional, measurable, verifiable, permanent, monitored, and
12 account for leakage and uncertainty. In addition, such
13 standards shall—

14 “(1) require the establishment of a national de-
15 forestation baseline for each country with national
16 deforestation reduction activities that is used to ac-
17 count for reductions achieved from such activities;

18 “(2) provide that a national deforestation base-
19 line established under paragraph (1) shall—

20 “(A) be national in scope;

21 “(B) be consistent with nationally appro-
22 priate mitigation commitments or actions, tak-
23 ing into consideration the average annual his-
24 torical deforestation rates of the country during

1 a period of at least 5 years and other factors
2 to ensure additionality;

3 “(C) establish a trajectory that would re-
4 sult in zero gross deforestation by not later
5 than 20 years from the date the baseline is es-
6 tablished;

7 “(D) be adjusted over time to take account
8 of changing national circumstances;

9 “(E) be designed to account for all signifi-
10 cant sources of greenhouse gas emissions from
11 deforestation in the country; and

12 “(F) be consistent with the national defor-
13 estation baseline, if any, established for such
14 country under section 754(d)(1);

15 “(3) with respect to support provided pursuant
16 to subsection (b)(1) or (2), require supplemental
17 emissions reductions to be achieved and verified
18 prior to compensation through the provision of emis-
19 sion allowances;

20 “(4) with respect to accounting for subnational
21 deforestation reduction activities that lack the stand-
22 ardized or precise measurement and monitoring
23 techniques needed for a full accounting of changes
24 in emissions or baselines, or are subject to other
25 sources of uncertainty, apply a conservative discount

1 factor to reflect the uncertainty regarding the levels
2 of reductions achieved;

3 “(5) ensure that international deforestation re-
4 duction activities shall be designed, carried out, and
5 managed—

6 “(A) in accordance with widely accepted,
7 environmentally sustainable forestry practices;
8 and

9 “(B) to promote native species and con-
10 servation or restoration of native forests, if
11 practicable, and to avoid the introduction of
12 invasive nonnative species; and

13 “(6) with respect to support for all activities
14 under this part, seek to ensure the establishment
15 and enforcement by the recipient country of legal re-
16 gimes, standards, and safeguards that—

17 “(A) give due regard to the rights and in-
18 terests of local communities, indigenous peoples,
19 and vulnerable social groups;

20 “(B) promote consultations with local com-
21 munities and indigenous peoples in affected
22 areas, as partners and primary stakeholders,
23 prior to and during the design, planning, imple-
24 mentation, monitoring, and evaluation of activi-
25 ties under this part; and

1 “(C) encourage sharing of profits from in-
2 centives for emissions reductions or leakage
3 prevention with local communities and indige-
4 nous peoples.

5 “(e) EXPANSION OF SCOPE.—The Administrator
6 may decide, taking into account any advice from the Advi-
7 sory Board, to expand, where appropriate, the scope of
8 international deforestation reduction activities to in-
9 clude—

10 “(1) reduced emissions from forest degradation;
11 or

12 “(2) reduced soil carbon-derived emissions asso-
13 ciated with deforestation and degradation of forested
14 wetlands and peatlands.

15 “(f) ACCOUNTING.—The Administrator shall estab-
16 lish a publicly accessible registry of the supplemental emis-
17 sions reductions achieved through support provided under
18 this part each year, after appropriately discounting for un-
19 certainty and other relevant factors as required by the
20 standards established under subsection (d).

21 “(g) TRANSITION TO NATIONAL REDUCTIONS.—Be-
22 ginning 5 years after the date that a country entered into
23 the agreement required under subsection (a)(2), the Ad-
24 ministrator shall provide no further compensation through
25 emission allowances to that country under this section for

1 any subnational deforestation reduction activities, except
2 that the Administrator may extend this period by an addi-
3 tional 5 years if the Administrator determines that—

4 “(1) the country is making substantial progress
5 towards adopting and implementing a program to
6 achieve reductions in deforestation measured against
7 a national baseline;

8 “(2) the greenhouse gas emissions reductions
9 achieved are not resulting in significant leakage; and

10 “(3) the greenhouse gas emissions reductions
11 achieved are being appropriately discounted to ac-
12 count for any leakage that is occurring.

13 The limitation under this subsection shall not apply to
14 support for activities to further the objectives listed in sec-
15 tion 753(b)(2) or (3).

16 **“SEC. 755. REPORTS AND REVIEWS.**

17 “(a) REPORTS.—Not later than January 1, 2014,
18 and annually thereafter, the Administrator shall submit
19 to the Committee on Energy and Commerce and the Com-
20 mittee on Foreign Affairs of the House of Representatives,
21 and the Committee on Environment and Public Works and
22 the Committee on Foreign Relations of the Senate, and
23 make available to the public, a report on the support pro-
24 vided under this part during the prior fiscal year. The re-
25 port shall include—

1 “(1) a statement of the quantity of supple-
2 mental emissions reductions for which compensation
3 was provided under this part during the prior fiscal
4 year, as registered by the Administrator under sec-
5 tion 754(f); and

6 “(2) a description of the international deforest-
7 ation reduction activities, capacity-building activities,
8 and leakage protection activities supported under
9 this part, including a statement of the quantity of
10 emission allowances provided to each recipient for
11 each activity during the prior fiscal year, and a de-
12 scription of what was accomplished through each of
13 the activities.

14 “(b) **REVIEWS.**—Not later than 4 years after the date
15 of enactment of this title and every 5 years thereafter,
16 the Administrator, in consultation with the Secretary of
17 State and taking into consideration any evaluation by or
18 recommendations from the Advisory Board established
19 under section 731, shall conduct a review of the activities
20 undertaken pursuant to this part and make any appro-
21 priate changes in the program established under this part
22 based on the findings of the review. The review shall in-
23 clude the effects of the activities on—

24 “(1) total documented carbon stocks of each
25 country that directly or indirectly received support

1 under this part compared with such country's na-
2 tional deforestation baseline;

3 “(2) the number of countries with the capacity
4 to generate for sale in the international market for
5 instruments in the nature of offset credits from for-
6 est-related activities, and the amount of such activi-
7 ties;

8 “(3) forest governance in each country that di-
9 rectly or indirectly received support under this part;

10 “(4) indigenous and forest-dependent peoples
11 residing in areas affected by such activities;

12 “(5) biodiversity and ecosystem services within
13 forested areas associated with the activities;

14 “(6) international leakage; and

15 “(7) any program or mechanism established
16 under the United Nations Framework Convention on
17 Climate Change related to greenhouse gas emissions
18 from deforestation.

19 **“SEC. 756. LEGAL EFFECT OF PART.**

20 “Nothing in this part supersedes, limits, or otherwise
21 affects any restriction imposed by Federal law (including
22 regulations) on any interaction between an entity located
23 in the United States and an entity located in a foreign
24 country.

1 **“PART F—CARBON MARKET ASSURANCE**

2 **“SEC. 761. OVERSIGHT AND ASSURANCE OF CARBON MAR-**
3 **KETS.**

4 “(a) DEFINITIONS.—In this section:

5 “(1) COMMISSION.—The term ‘Commission’
6 means the Federal Energy Regulatory Commission.

7 “(2) REGULATED ALLOWANCE.—The term ‘reg-
8 ulated allowance’ means any emission allowance,
9 compensatory allowance, or offset credit established
10 or issued under this title.

11 “(3) REGULATED ALLOWANCE DERIVATIVE.—
12 The term ‘regulated allowance derivative’ means an
13 instrument that is or includes an instrument—

14 “(A) which—

15 “(i) is of the character of, or is com-
16 monly known to the trade as, a ‘put op-
17 tion’, ‘call option’, ‘privilege’, ‘indemnity’,
18 ‘advance guaranty’, ‘decline guaranty’, or
19 ‘swap agreement’; or

20 “(ii) is a contract of sale for future
21 delivery; and

22 “(B) the value of which, in whole or in
23 part, is expressly linked to the price of a regu-
24 lated allowance or another regulated allowance
25 derivative.

1 “(4) REGULATED INSTRUMENT.—The term
2 ‘regulated instrument’ means a regulated allowance
3 or a regulated allowance derivative.

4 “(b) REGULATED ALLOWANCE MARKET.—

5 “(1) AUTHORITY.—The Commission, in con-
6 sultation and coordination with the Administrator,
7 shall promulgate regulations for the establishment,
8 operation, and oversight of markets for regulated al-
9 lowances not later than 18 months after the date of
10 the enactment of this section, and from time to time
11 thereafter as may be appropriate.

12 “(2) REGULATIONS.—The regulations promul-
13 gated pursuant to paragraph (1) shall—

14 “(A) provide for effective and comprehen-
15 sive market oversight;

16 “(B) prohibit fraud, market manipulation,
17 and excess speculation, and provide measures to
18 limit unreasonable fluctuation in the prices of
19 regulated allowances;

20 “(C) facilitate compliance with this title by
21 covered entities;

22 “(D) ensure market transparency and rec-
23 ordkeeping necessary to provide for efficient
24 price discovery; prevention of fraud, market ma-

1 manipulation, and excess speculation; and compli-
2 ance with this Act;

3 “(E) ensure that position limitations for
4 individual market participants are established
5 with respect to each class of regulated allow-
6 ances;

7 “(F) ensure that margin requirements are
8 established for each class of regulated allow-
9 ances;

10 “(G) provide for the formation and oper-
11 ation of a national market system that allows
12 for best execution in the trading of regulated al-
13 lowances;

14 “(H) limit or eliminate counterparty risks,
15 market power concentration risks, and other
16 risks associated with over-the-counter trading;
17 and

18 “(I) establish standards for qualification as
19 and operation of registered trading facilities for
20 regulated allowances;

21 “(J) establish standards for qualification
22 as and operation of registered clearing organi-
23 zations for trading facilities for regulated allow-
24 ances; and

1 “(K) include such other requirements as
2 necessary to preserve market integrity and fa-
3 cilitate compliance with this title and the regu-
4 lations promulgated under this title.

5 “(3) DEFAULT RULE.—

6 “(A) An individual market participant, di-
7 rectly or in concert with another participant,
8 shall not control more than 10 percent of any
9 class of regulated allowance.

10 “(B) To the extent that regulations pro-
11 mulgated under this subsection provide dif-
12 ferent rules with respect to the matters de-
13 scribed in subparagraph (A), the regulations
14 shall supersede subparagraph (A).

15 “(4) ENFORCEMENT.—

16 “(A) IN GENERAL.—If the Commission de-
17 termines, after notice and an opportunity for a
18 hearing on the record, that any person (other
19 than a trading facility for regulated allowances,
20 or clearing organization, registered with the
21 Commission) has violated any rule or order
22 issued by the Commission under this sub-
23 section, the Commission may issue an order—

24 “(i) prohibiting the person from trad-
25 ing on a trading facility for regulated al-

1 lowances registered with the Commission,
2 and requiring all such facilities to refuse
3 the person all privileges for such period as
4 may be specified in the order;

5 “(ii) if the person is registered with
6 the Commission in any capacity, sus-
7 pending, for a period of not more than 6
8 months, or revoking, the registration of the
9 person;

10 “(iii) assessing the person, in accord
11 with the gravity of the violation, a civil
12 penalty of not more than the greater of
13 \$1,000,000 or triple the monetary gain to
14 the person for each such violation; and

15 “(iv) requiring restitution to cus-
16 tomers of damages proximately caused by
17 the violation.

18 “(B) AUTHORITY TO SUSPEND OR REVOKE
19 REGISTRATION.—The Commission may suspend
20 for a period of not more than 6 months, or re-
21 voke, the registration of a trading facility for
22 regulated allowances or of a clearing organiza-
23 tion registered by the Commission if, after no-
24 tice and opportunity for a hearing on the
25 record, the Commission finds that—

1 “(i) the entity violated any rule or
2 order issued by the Commission under this
3 subsection; or

4 “(ii) a director, officer, employee, or
5 agent of the entity has violated any rule or
6 order issued by the Commission under this
7 subsection.

8 “(C) CEASE AND DESIST ORDERS.—If the
9 Commission finds, after notice and an oppor-
10 tunity for a hearing on the record, that a per-
11 son has violated any rule or order issued by the
12 Commission under this subsection, the Commis-
13 sion may issue an order directing the person to
14 cease and desist from the violation.

15 “(D) ACTIONS TO COLLECT CIVIL PEN-
16 ALTIES.—If any person fails to pay a civil pen-
17 alty assessed under this subsection after an
18 order assessing the penalty has become final
19 and unappealable, the Commission shall bring
20 an action to recover the amount of the penalty
21 in any appropriate United States district court.
22 In any such action, the validity or appropriate-
23 ness of the final assessment order or judgment
24 shall not be subject to review. The Commission
25 shall be represented by the Attorney General or

1 the Solicitor General, as appropriate, in any ac-
2 tion under this subparagraph.

3 “(c) DELEGATION OF AUTHORITY TO THE PRESI-
4 DENT.—

5 “(1) DELEGATION.—The President, taking into
6 consideration the recommendations of the inter-
7 agency working group established in subsection (d),
8 shall delegate to members of the working group and
9 the heads of other appropriate Federal agencies the
10 authority to promulgate regulations for the estab-
11 lishment, operation, and oversight of all markets for
12 regulated allowance derivatives.

13 “(2) REGULATIONS.—The regulations promul-
14 gated pursuant to paragraph (1) shall—

15 “(A) provide for effective and comprehen-
16 sive market oversight;

17 “(B) prohibit fraud, market manipulation,
18 and excess speculation, and provide measures to
19 limit unreasonable fluctuation in the prices of
20 regulated allowance derivatives;

21 “(C) facilitate compliance with this title by
22 covered entities;

23 “(D) ensure market transparency and rec-
24 ordkeeping necessary to provide for efficient
25 price discovery; prevention of fraud, market ma-

1 manipulation, and excess speculation; and compli-
2 ance with this Act;

3 “(E) ensure that position limitations for
4 individual market participants are established
5 with respect to each regulated allowance deriva-
6 tive;

7 “(F) ensure that margin requirements are
8 established for each regulated allowance deriva-
9 tive;

10 “(G) provide for the formation and oper-
11 ation of a national market system that allows
12 for best execution in the trading of regulated al-
13 lowance derivatives;

14 “(H) to the extent the regulations deviate
15 from the rule set forth in paragraph (4)(B),
16 limit or eliminate counterparty risks, market
17 power concentration risks, and other risks asso-
18 ciated with over-the-counter trading; and

19 “(I) include such other requirements as
20 necessary to preserve market integrity and fa-
21 cilitate compliance with this title and the regu-
22 lations promulgated under this title.

23 “(3) DEADLINE.—The agencies authorized to
24 promulgate regulations for the establishment, oper-
25 ation, and oversight of markets for regulated allow-

1 ance derivatives pursuant to paragraph (1) shall
2 promulgate such regulations not later than 18
3 months after the date of enactment of this section,
4 and from time to time thereafter as may be appro-
5 priate.

6 “(4) DEFAULT RULES.—

7 “(A) An individual market participant, di-
8 rectly or in concert with another participant,
9 shall not control more than 10 percent of the
10 open interest in any regulated allowance deriva-
11 tive.

12 “(B) All contracts for the purchase or sale
13 of any regulated allowance derivative shall be
14 executed on or through a designated contract
15 market provided for in section 5 of the Com-
16 modity Exchange Act (7 U.S.C. 7).

17 “(C) To the extent that regulations pro-
18 mulgated under this subsection provide dif-
19 ferent rules with respect to the matters de-
20 scribed in subparagraph (A) or (B), the regula-
21 tions shall supersede subparagraph (A) or (B),
22 as the case may be.

23 “(d) WORKING GROUP.—

24 “(1) ESTABLISHMENT.—Not later than 30 days
25 after the date of the enactment of this section, the

1 President shall establish an interagency working
2 group on carbon market oversight, which shall in-
3 clude the Administrator and representatives of other
4 relevant agencies, to make recommendations to the
5 President regarding proposed regulations for the es-
6 tablishment, operation, and oversight of markets for
7 regulated allowance derivatives.

8 “(2) REPORT.—Not later than 180 days after
9 the date of the enactment of this section, and bienni-
10 ally thereafter, the interagency working group shall
11 submit a written report to the President and Con-
12 gress that includes its recommendations to the
13 President regarding proposed regulations for the es-
14 tablishment, operation, and oversight of markets for
15 regulated allowance derivatives and any rec-
16 ommendations to Congress for statutory changes
17 needed to ensure the establishment, operation, and
18 oversight of transparent, fair, stable, and efficient
19 markets for regulated allowance derivatives.

20 “(e) ENFORCEMENT OF REGULATIONS.—Each Fed-
21 eral agency that promulgates under subsection (c) a regu-
22 lation of conduct with respect to a regulated allowance de-
23 rivative shall have the same authority to enforce compli-
24 ance with the regulation as the Commodity Futures Trad-
25 ing Commission has to enforce compliance with any regu-

1 lation of similar conduct with respect to a contract, agree-
2 ment, or transaction over which the Commodity Futures
3 Trading Commission has jurisdiction.

4 “(f) PROHIBITION ON PRICE OR MARKET MANIPULA-
5 TION, FRAUD, AND FALSE OR MISLEADING STATEMENTS
6 OR REPORTS.—(1) It shall be a felony punishable by a
7 fine of not more than \$25,000,000 (or \$5,000,000 in the
8 case of a person who is an individual) or imprisonment
9 for not more than 20 years, or both, together with the
10 costs of prosecution for any person, directly or indirectly—

11 “(A) in connection with a transaction involving
12 a regulated instrument, to knowingly—

13 “(i) use any manipulative or deceptive de-
14 vice or contrivance in violation of regulations
15 promulgated pursuant to this section;

16 “(ii) corner or attempt to corner the regu-
17 lated instrument; or

18 “(iii) cheat or defraud, or attempt to cheat
19 or defraud, any other person;

20 “(B) to deliver or cause to be delivered a know-
21 ingly false, misleading, or inaccurate report con-
22 cerning information or conditions that affect or tend
23 to affect the price of a regulated instrument;

24 “(C) to knowingly make, or cause to be made,
25 in an application, report, or document required to be

1 filed under any regulation promulgated pursuant to
2 this section, a statement which is false or misleading
3 with respect to a material fact, or to omit any mate-
4 rial fact required to be stated therein or necessary
5 to make the statements therein not misleading; or

6 “(D) to knowingly falsify, conceal, or cover up
7 by any trick, scheme, or artifice a material fact,
8 make any false, fictitious, or fraudulent statements
9 or representations, or make or use any false writing
10 or document that contains a false, fictitious, or
11 fraudulent statement or entry, to an entity on or
12 through which transactions in regulated instruments
13 occur, or are settled or cleared, acting in furtherance
14 of its official duties under this section or regulations
15 promulgated under this section.

16 “(2) If a person is found guilty of a felony established
17 in paragraph (1), the person may be prohibited from hold-
18 ing or trading regulated instruments for a period of not
19 more than 5 years pursuant to the regulations promul-
20 gated under this section, except that, if the person is a
21 covered entity, the person shall be allowed to hold suffi-
22 cient regulated allowances to meet its compliance obliga-
23 tions.”.

1 **SEC. 312. DEFINITIONS.**

2 Title VII of the Clean Air Act, as added by section
3 311 of this Act, is amended by inserting before part A
4 the following new section:

5 **“SEC. 700. DEFINITIONS.**

6 “In this title:

7 “(1) **ADDITIONAL.**—The term ‘additional’,
8 when used with respect to reductions or avoidance of
9 greenhouse gas emissions, or to sequestration of
10 greenhouse gases, means reductions, avoidance, or
11 sequestration that result in a lower level of net
12 greenhouse gas emissions or atmospheric concentra-
13 tions than would occur in the absence of an offset
14 project.

15 “(2) **ADDITIONALITY.**—The term ‘additionality’
16 means the extent to which reductions or avoidance
17 of greenhouse gas emissions, or sequestration of
18 greenhouse gases, are additional.

19 “(3) **ADVISORY BOARD.**—The term ‘Advisory
20 Board’ means the Offsets Integrity Advisory Board
21 established under section 731.

22 “(4) **AFFILIATED.**—The term ‘affiliated’, when
23 used in relation to a local distribution company,
24 means owned or controlled by, or under common
25 ownership or control with, another local distribution
26 company, as determined by the Administrator.

1 “(5) BIOLOGICAL SEQUESTRATION; BIO-
2 LOGICALLY SEQUESTERED.—The terms ‘biological
3 sequestration’ and ‘biologically sequestered’ mean
4 the removal of greenhouse gases from the atmos-
5 phere by terrestrial biological means, such as by
6 growing plants, and the storage of those greenhouse
7 gases in plants or soils.

8 “(6) CAPPED EMISSIONS.—The term ‘capped
9 emissions’ means greenhouse gas emissions for
10 which an emission allowance must be held pursuant
11 to section 722, including emissions from the combus-
12 tion or oxidation of natural gas, petroleum-based or
13 coal-based liquid or gaseous fuel, petroleum coke, or
14 natural gas liquid for which an allowance must be
15 held pursuant to section 722(a)(2) or (7).

16 “(7) CAPPED SECTOR.—The term ‘capped sec-
17 tor’ means a sector of economic activity that directly
18 emits capped emissions, including the industrial sec-
19 tor, the electricity generation sector, the transpor-
20 tation sector, the residential and commercial sectors
21 (to the extent they burn oil or natural gas), but not
22 including the agricultural or forestry sectors.

23 “(8) CAPPED SOURCE.—The term ‘capped
24 source’ means a source that directly emits capped
25 emissions.

1 “(9) CARBON STOCK.—The term ‘carbon stock’
2 means the quantity of carbon contained in a biologi-
3 cal reservoir or system which has the capacity to ac-
4 cumulate or release carbon.

5 “(10) CERTIFIED GEOLOGIC SEQUESTRATION
6 SITE.—The term ‘certified geologic sequestration
7 site’ means a geologic sequestration site that has
8 been certified under section 813.

9 “(11) COMPENSATORY ALLOWANCE.—The term
10 ‘compensatory allowance’ means an allowance issued
11 under section 721(f).

12 “(12) COVERED ENTITY.—The term ‘covered
13 entity’ means each of the following:

14 “(A) Any electricity source.

15 “(B) Any stationary source that produces,
16 and any entity that imports, for sale or dis-
17 tribution in interstate commerce in 2008 or any
18 subsequent year, petroleum-based or coal-based
19 liquid fuel, petroleum coke, or natural gas liq-
20 uid, the combustion of which would emit more
21 than 25,000 tons of carbon dioxide equivalent,
22 as determined by the Administrator.

23 “(C) Any stationary source that produces,
24 and any entity that imports, for sale or dis-
25 tribution in interstate commerce in 2008 or any

1 subsequent year more than 25,000 tons of car-
2 bon dioxide equivalent of—

3 “(i) fossil fuel-based carbon dioxide;

4 “(ii) nitrous oxide;

5 “(iii) perfluorocarbons;

6 “(iv) sulfur hexafluoride;

7 “(v) nitrogen trifluoride;

8 “(vi) any other fluorinated gas that is
9 a greenhouse gas, as designated by the Ad-
10 ministrator under section 711(b) or (c); or

11 “(vii) any combination of greenhouse
12 gases described in clauses (i) through (vi).

13 “(D) Any geologic sequestration site,
14 whether certified under section 813 or not.

15 “(E) Any stationary source in the fol-
16 lowing industrial sectors:

17 “(i) Adipic acid production.

18 “(ii) Primary aluminum production.

19 “(iii) Ammonia manufacturing.

20 “(iv) Cement production, excluding
21 grinding-only operations.

22 “(v) Hydrochlorofluorocarbon produc-
23 tion.

24 “(vi) Lime manufacturing.

25 “(vii) Nitric acid production.

- 1 “(viii) Petroleum refining.
- 2 “(ix) Phosphoric acid production.
- 3 “(x) Silicon carbide production.
- 4 “(xi) Soda ash production.
- 5 “(xii) Titanium dioxide production.
- 6 “(xiii) Coal-based liquid or gaseous
- 7 fuel production.
- 8 “(F) Any stationary source in the chemical
- 9 or petrochemical sector that, in 2008 or any
- 10 subsequent year—
- 11 “(i) manufactures acrylonitrile, carbon
- 12 black, ethylene, ethylene dichloride, ethyl-
- 13 ene oxide, or methanol; or
- 14 “(ii) manufactures a chemical or pe-
- 15 trochemical product not manufactured as
- 16 of the date of enactment of this title, if
- 17 manufacturing that product results in an-
- 18 nual process emissions of 25,000 or more
- 19 tons of carbon dioxide equivalent.
- 20 “(G) Any stationary source that—
- 21 “(i) is in one of the following indus-
- 22 trial sectors: ethanol production; ferroalloy
- 23 production; food processing; glass produc-
- 24 tion; hydrogen production; iron and steel
- 25 production; lead production; pulp and

1 paper manufacturing; and zinc production;
2 and

3 “(ii) has emitted 25,000 or more tons
4 of carbon dioxide equivalent in 2008 or
5 any subsequent year.

6 “(H) Any fossil fuel-fired combustion de-
7 vice (such as a boiler) or grouping of such de-
8 vices that—

9 “(i) is all or part of an industrial
10 source not specified in subparagraph (E),
11 (F), or (G); and

12 “(ii) has emitted 25,000 or more tons
13 of carbon dioxide equivalent in 2008 or
14 any subsequent year.

15 “(I) Any local distribution company that
16 (or any group of 2 or more affiliated local dis-
17 tribution companies that, in the aggregate) in
18 2008 or any subsequent year, delivers
19 460,000,000 cubic feet or more of natural gas
20 to customers that are not covered entities.

21 “(13) CREDITING PERIOD.—The term ‘crediting
22 period’ means the period with respect to which an
23 offset project is eligible to earn offset credits under
24 part D, as determined under section 733(a)(3).

1 “(14) DESIGNATED REPRESENTATIVE.—The
2 term ‘designated representative’ means, with respect
3 to a covered entity, a reporting entity, or any other
4 entity receiving or holding allowances or credits
5 under this title, an individual authorized, through a
6 certificate of representation submitted to the Admin-
7 istrator by the owners and operators, to represent
8 the owners and operators in all matters pertaining
9 to this title (including the holding, transfer, or dis-
10 position of allowances or credits), and to make all
11 submissions to the Administrator under this title.

12 “(15) DEVELOPING COUNTRY.—The term ‘de-
13 veloping country’ means a country eligible to receive
14 financial assistance from the International Bank for
15 Reconstruction and Development (commonly known
16 as the World Bank).

17 “(16) DOMESTIC OFFSET CREDIT.—The term
18 ‘domestic offset credit’ means an offset credit issued
19 under part D, other than an international offset
20 credit.

21 “(17) ELECTRICITY SOURCE.—The term ‘elec-
22 tricity source’ means a stationary source that in-
23 cludes one or more utility units.

24 “(18) EMISSION.—The term ‘emission’ means
25 the release of a greenhouse gas into the ambient air.

1 Such term does not include gases that are captured
2 and geologically sequestered, except to the extent
3 that they are later released into the atmosphere, in
4 which case they shall be subject to section 722(a)(4).

5 “(19) EMISSION ALLOWANCE.—The term ‘emis-
6 sion allowance’ means a limited authorization to
7 emit 1 ton of carbon dioxide equivalent of a green-
8 house gas in accordance with this title.

9 “(20) FAIR MARKET VALUE.—The term ‘fair
10 market value’ means the average daily closing price
11 on registered exchanges, during a specified time pe-
12 riod, of an emission allowance.

13 “(21) FEDERAL LAND.—The term ‘Federal
14 land’ means land that is owned by the United
15 States, other than land held in trust for an Indian
16 or Indian tribe.

17 “(22) FOSSIL FUEL.—The term ‘fossil fuel’
18 means natural gas, petroleum, coal, or any form of
19 solid, liquid, or gaseous fuel derived from such mate-
20 rial, including consumer products that are derived
21 from such materials and are combusted.

22 “(23) FOSSIL FUEL-FIRED.—The term ‘fossil
23 fuel-fired’ means powered by combustion of fossil
24 fuel, alone or in combination with any other fuel, re-
25 gardless of the percentage of fossil fuel consumed.

1 “(24) GEOLOGIC SEQUESTRATION; GEOLOGI-
2 CALLY SEQUESTERED.—The terms ‘geologic seques-
3 tration’ and ‘geologically sequestered’ mean the iso-
4 lation of greenhouse gases in geologic formations at
5 certified geologic sequestration sites.

6 “(25) GREENHOUSE GAS.—The term ‘green-
7 house gas’ means any gas described in section
8 711(a) or designated under section 711(b), (c), or
9 (d), except to the extent that it is regulated under
10 title VI.

11 “(26) HOLD.—The term ‘hold’ means to have
12 in the appropriate account in the allowance tracking
13 system, or submit to the Administrator for recording
14 in such account.

15 “(27) INDUSTRIAL SOURCE.—The term ‘indus-
16 trial source’ means any stationary source that—

17 “(A) is not an electricity source; and

18 “(B) is in—

19 “(i) the manufacturing sector (as de-
20 fined in North American Industrial Classi-
21 fication System codes 31, 32, and 33); or

22 “(ii) the natural gas processing or
23 natural gas pipeline transportation sector
24 (as defined in North American Industrial

1 Classification System codes 211112 or
2 486210).

3 “(28) INTERNATIONAL EMISSION ALLOW-
4 ANCE.—The term ‘international emission allowance’
5 means a tradable authorization to emit 1 ton of car-
6 bon dioxide equivalent of greenhouse gas that is
7 issued by a national or supranational foreign govern-
8 ment pursuant to a qualifying international program
9 designated by the Administrator pursuant to section
10 728(a).

11 “(29) INTERNATIONAL FOREST CARBON ACTIVI-
12 TIES.—The term ‘international forest carbon activi-
13 ties’ means national or subnational activities in
14 countries other than the United States that are di-
15 rected at—

16 “(A) reducing greenhouse gas emissions
17 from deforestation or forest degradation; or

18 “(B) increasing sequestration of carbon
19 through—

20 “(i) afforestation or reforestation of
21 acreage not forested as of January 1,
22 2009;

23 “(ii) restoration of degraded land or
24 forest; or

25 “(iii) improved forest management.

1 “(30) INTERNATIONAL OFFSET CREDIT.—The
2 term ‘international offset credit’ means an offset
3 credit issued by the Administrator under section
4 743.

5 “(31) LEAKAGE.—The term ‘leakage’ means a
6 significant increase in greenhouse gas emissions, or
7 significant decrease in sequestration, which is caused
8 by an offset project and occurs outside the bound-
9 aries of the offset project.

10 “(32) LOCAL DISTRIBUTION COMPANY.—The
11 term ‘local distribution company’ has the meaning
12 given that term in section 2(17) of the Natural Gas
13 Policy Act of 1978 (15 U.S.C. 3301(17)).

14 “(33) NATIONAL DEFORESTATION BASELINE.—
15 The term ‘national deforestation baseline’ means a
16 baseline developed pursuant to section 754(c).

17 “(34) NATURAL GAS LIQUID.—The term ‘nat-
18 ural gas liquid’ includes ethane, propane, butane,
19 and isobutene.

20 “(35) OFFSET CREDIT.—The term ‘offset cred-
21 it’ means a credit issued under part D.

22 “(36) OFFSET PROJECT.—The term ‘offset
23 project’ means a project or activity that reduces or
24 avoids greenhouse gas emissions, or sequesters

1 greenhouse gases, and for which offset credits are
2 issued under part D.

3 “(37) OFFSET PROJECT REPRESENTATIVE.—
4 The term ‘offset project representative’ means the
5 individual or entity designated as the offset project
6 representative in a verification report for an offset
7 project submitted under section 735(e).

8 “(38) PETROLEUM.—The term ‘petroleum’ in-
9 cludes crude oil, tar sands, oil shale, and heavy oils.

10 “(39) RENEWABLE BIOMASS.—The term ‘re-
11 newable biomass’ means each of the following:

12 “(A) Crops, crop byproducts, or crop resi-
13 dues harvested from actively managed or fallow
14 agricultural land that was cleared prior to the
15 date of enactment of this title and is nonfor-
16 ested.

17 “(B) Planted trees, brush, slash, and all
18 residues from an actively managed tree planta-
19 tion located on land that was cleared prior to
20 the date of enactment of this title and is not
21 Federal land.

22 “(C) Pre-commercial-sized thinnings, slash,
23 brush, and residue from milled trees, from for-
24 ested land that is not—

25 “(i) old-growth or mature forest;

1 “(ii) identified under a State Natural
2 Heritage Program as rare, imperiled, or
3 critically imperiled; or

4 “(iii) Federal land.

5 “(D) Algae.

6 “(E) Nonhazardous plant matter derived
7 from waste such as separated yard waste, land-
8 scape right-of-way trimmings, or food waste
9 (but not municipal solid waste, recyclable waste
10 paper, painted, treated or pressurized wood, or
11 wood contaminated with plastic or metals).

12 “(F) Animal waste or animal byproducts,
13 including products of animal waste digesters.

14 “(G) Vegetative matter removed from
15 within 200 yards of any manmade structure or
16 campground.

17 “(40) RETIRE.—The term ‘retire’, with respect
18 to an allowance or credit established or issued under
19 this title, means to disqualify such allowance or
20 credit for any subsequent use under this title, re-
21 gardless of whether the use is a sale, exchange, or
22 submission of the allowance or credit to satisfy a
23 compliance obligation.

1 “(41) REVERSAL.—The term ‘reversal’ means
2 an intentional or unintentional loss of sequestered
3 greenhouse gases to the atmosphere.

4 “(42) SEQUESTERED AND SEQUESTRATION.—
5 The terms ‘sequestered’ and ‘sequestration’ mean
6 the separation, isolation, or removal of greenhouse
7 gases from the atmosphere, as determined by the
8 Administrator. The terms do not include nonterres-
9 trial sequestration.

10 “(43) STATIONARY SOURCE.—The term ‘sta-
11 tionary source’ means any integrated operation com-
12 prising any plant, building, structure, or stationary
13 equipment, including support buildings and equip-
14 ment, that is located within one or more contiguous
15 or adjacent properties, is under common control of
16 the same person or persons, and emits or may emit
17 a greenhouse gas.

18 “(44) STRATEGIC RESERVE ALLOWANCE.—The
19 term ‘strategic reserve allowance’ means an emission
20 allowance reserved for, transferred to, or deposited
21 in the strategic reserve, or established, under section
22 726.

23 “(45) TON OF CARBON DIOXIDE EQUIVA-
24 LENT.—The term ‘ton of carbon dioxide equivalent’
25 has the meaning specified in section 712(a) or deter-

1 mined by the Administrator under section 711 or
2 712.

3 “(46) UNCAPPED EMISSIONS.—The term ‘un-
4 capped emissions’ means emissions of greenhouse
5 gases emitted after December 31, 2011, for which
6 an emission allowance is not required to be held by
7 either the source of the emission or by a covered en-
8 tity under section 722.

9 “(47) UNITED STATES GREENHOUSE GAS EMIS-
10 SIONS.—The term ‘United States greenhouse gas
11 emissions’ means the total quantity of annual green-
12 house gas emissions from the United States, as cal-
13 culated by the Administrator and reported to the
14 United Nations Framework Convention on Climate
15 Change Secretariat.

16 “(48) UTILITY UNIT.—The term ‘utility unit’
17 means a fossil fuel-fired combustion device that, at
18 any time after the date of enactment of this title,
19 serves a generator that produces electricity for sale,
20 except that a fossil fuel-fired combustion device that
21 cogenerates steam and electricity is not a utility unit
22 for purposes of this title unless the device is con-
23 structed for the purpose of supplying, or, after No-
24 vember 15, 1990, supplies, more than one-third of

1 its potential electric output capacity and more than
2 25 megawatts of electrical output for sale.

3 “(49) VINTAGE YEAR.—The term ‘vintage year’
4 means the calendar year for which an emission al-
5 lowance is established under section 721(a), except
6 that the vintage year for a strategic reserve allow-
7 ance shall be the year in which such allowance is
8 purchased at auction.”.

9 **Subtitle B—Disposition of**
10 **Allowances**

11 **SEC. 321. DISPOSITION OF ALLOWANCES FOR GLOBAL**
12 **WARMING POLLUTION REDUCTION PRO-**
13 **GRAM.**

14 Title VII of the Clean Air Act, as added by section
15 311 of this Act, is amended by adding at the end the fol-
16 lowing part:

17 **“PART H—DISPOSITION OF ALLOWANCES**

18 **“SEC. 781. ALLOCATION OF ALLOWANCES FOR SUPPLE-**
19 **MENTAL REDUCTIONS.**

20 “(a) IN GENERAL.—The Administrator shall allocate
21 emission allowances to be distributed in accordance with
22 part E in the following amounts:

23 “(1) For vintage years 2012 through 2025, 5
24 percent of the emission allowances established for
25 each year under section 721(a).

1 “(2) For vintage years 2026 through 2030, 3
2 percent of the emission allowances established for
3 each year under section 721(a).

4 “(3) For vintage years 2031 through 2050, 2
5 percent of the emission allowances established for
6 each year under section 721(a).

7 “(b) ADJUSTMENT.—The Administrator shall modify
8 the percentages set forth in subsection (a) as necessary
9 to ensure the achievement of the annual supplemental
10 emission reduction objective for 2020 and the cumulative
11 reduction target through 2025 set forth in 753(b).

12 “(c) CARRYOVER.—If the Administrator has not dis-
13 tributed all of the allowances allocated pursuant to this
14 section for a given vintage year by the end of that year,
15 the Administrator shall—

16 “(1) auction those emission allowances under
17 section 791 not later than March 31 of the year fol-
18 lowing that vintage year; and

19 “(2) increase the allocation for the vintage year
20 after the vintage year for which emission allowances
21 were undisbursed by the amount of undisbursed
22 emission allowances.

1 **“SEC. 782. DISBURSEMENT OF ALLOWANCES AND PRO-**
2 **CEEDS FROM AUCTIONS OF ALLOWANCES.**

3 “(a) ALLOCATION OF EMISSION ALLOWANCES.—The
4 Administrator shall allocate emission allowances estab-
5 lished under section 721(a) in the following amounts:

【to be supplied】

6 “(b) AUCTION OF EMISSION ALLOWANCES.—The Ad-
7 ministrator shall auction emission allowances established
8 under section 721(a) in the following amounts:

【to be supplied】

9 “(c) FUNDS ESTABLISHED.—There is established in
10 the Treasury of the United States the following funds:

11 “(1) The Strategic Reserve Fund.

12 “(2) 【Other funds to be supplied】.

13 **“SEC. 783-789. [SECTIONS RESERVED].**

14 **“SEC. 790. EXCHANGE FOR STATE-ISSUED ALLOWANCES.**

15 “(a) IN GENERAL.—Not later than one year after the
16 date of enactment of this title, the Administrator shall
17 issue regulations allowing any person in the United States
18 to exchange greenhouse gas emission allowances issued be-
19 fore December 31, 2011, by the State of California or for
20 the Regional Greenhouse Gas Initiative (in this section re-
21 ferred to as ‘State allowances’) for emission allowances es-
22 tablished by the Administrator under section 721(a).

23 “(b) REGULATIONS.—Regulations issued under sub-
24 section (a) shall—

1 “(1) provide that a person exchanging State al-
2 lowances under this section receive emission allow-
3 ances established under section 721(a) in the
4 amount that is sufficient to compensate for the cost
5 of obtaining and holding such State allowances;

6 “(2) establish a deadline by which persons must
7 exchange the State allowances; and

8 “(3) provide that the Federal emission allow-
9 ances disbursed pursuant to this section shall be de-
10 ducted from the allowances to be auctioned pursuant
11 to section 782(b).

12 “(c) **COST OF OBTAINING STATE ALLOWANCE.**—For
13 purposes of this section, the cost of obtaining a State al-
14 lowance shall be the average auction price for emission al-
15 lowances issued in the year in which the State allowance
16 was issued under the program under which the State al-
17 lowance was issued.

18 **“SEC. 791. AUCTION PROCEDURES.**

19 “(a) **IN GENERAL.**—To the extent that auctions of
20 emission allowances by the Administrator are authorized
21 by this part, such auctions shall be carried out pursuant
22 to this section and the regulations established hereunder.

23 “(b) **INITIAL REGULATIONS.**—Not later than 12
24 months after the date of enactment of this title, the Ad-
25 ministrato

1 priate, shall promulgate regulations governing the auction
2 of allowances under this section. Such regulations shall in-
3 clude the following requirements:

4 “(1) FREQUENCY; FIRST AUCTION.—Auctions
5 shall be held four times per year at regular intervals,
6 with the first auction to be held no later than March
7 31, 2011.

8 “(2) AUCTION SCHEDULE; CURRENT AND FU-
9 TURE VINTAGES.—The Administrator shall, at each
10 quarterly auction under this section, offer for sale
11 both a portion of the allowances with the same vin-
12 tage year as the year in which the auction is being
13 conducted and a portion of the allowances with vin-
14 tage years from future years. The preceding sen-
15 tence shall not apply to auctions held before 2012,
16 during which period, by necessity, the Administrator
17 shall auction only allowances with a vintage year
18 that is later than the year in which the auction is
19 held. Beginning with the first auction and at each
20 quarterly auction held thereafter, the Administrator
21 may offer for sale allowances with vintage years of
22 up to four years in advance of the year in which the
23 auction is being conducted.

24 “(3) AUCTION FORMAT.—Auctions shall follow
25 a single-round, sealed-bid, uniform price format.

1 “(4) PARTICIPATION; FINANCIAL ASSURANCE.—
2 Auctions shall be open to any person, except that
3 the Administrator may establish financial assurance
4 requirements to ensure that auction participants can
5 and will perform on their bids.

6 “(5) DISCLOSURE OF BENEFICIAL OWNER-
7 SHIP.—Each bidder in the auction shall be required
8 to disclose the person or entity sponsoring or bene-
9 fitting from the bidder’s participation in the auction
10 if such person or entity is, in whole or in part, other
11 than the bidder.

12 “(6) PURCHASE LIMITS.—No person may, di-
13 rectly or in concert with another participant, pur-
14 chase more than 5 percent of the allowances offered
15 for sale at any quarterly auction.

16 “(7) PUBLICATION OF INFORMATION.—After
17 the auction, the Administrator shall, in a timely
18 fashion, publish the identities of winning bidders,
19 the quantity of allowances obtained by each winning
20 bidder, and the auction clearing price.

21 “(8) OTHER REQUIREMENTS.—The Adminis-
22 trator may include in the regulations such other re-
23 quirements or provisions as the Administrator, in
24 consultation with other agencies, as appropriate,
25 considers appropriate to promote effective, efficient,

1 transparent, or fair administration of auctions under
2 this section.

3 “(c) REVISION OF REGULATIONS.—The Adminis-
4 trator may, in consultation with other agencies, as appro-
5 priate, at any time, revise the initial regulations promul-
6 gated under subsection (b) based on the Administrator’s
7 experience in administering allowance auctions. Such re-
8 vised regulations need not meet the requirements identi-
9 fied in subsection (b) if the Administrator determines that
10 an alternative auction design would be more effective, tak-
11 ing into account factors including costs of administration,
12 transparency, fairness, and risks of collusion or manipula-
13 tion. In determining whether and how to revise the initial
14 regulations under this subsection, the Administrator shall
15 not consider maximization of revenues to the Federal Gov-
16 ernment.

17 “(d) DELEGATION OR CONTRACT.—Pursuant to reg-
18 ulations under this section, the Administrator may by del-
19 egation or contract provide for the conduct of auctions
20 under the Administrator’s supervision by other depart-
21 ments or agencies of the Federal Government or by non-
22 governmental agencies, groups, or organizations.

1 **“SEC. 792. AUCTIONING ALLOWANCES FOR OTHER ENTI-**
2 **TIES.**

3 “(a) CONSIGNMENT.—Any entity in possession of
4 emission allowances under this title may request that the
5 Administrator auction, pursuant to section 791, the allow-
6 ances on consignment.

7 “(b) ALLOWANCES FOR REDUCED DEFOREST-
8 ATION.—For emission allowances distributed to a foreign
9 country or other entity pursuant to section 754(c)(2), the
10 Administrator shall act as such foreign country’s or other
11 entity’s agent, sell the emission allowances at auction ac-
12 cording to the procedures established under section 791,
13 and provide the proceeds directly to the foreign country
14 or other entity.

15 “(c) PRICING.—When the Administrator acts under
16 this section as the agent of an entity in possession of emis-
17 sion allowances, the Administrator is not obligated to ob-
18 tain the highest price possible for the emission allowances,
19 and instead shall auction consignment allowances in the
20 same manner and pursuant to the same rules as auctions
21 of other allowances under section 791. The Administrator
22 may permit emission allowance owners to condition the
23 sale of their allowances pursuant to this section on a min-
24 imum reserve price.

25 “(d) PROCEEDS.—For emission allowances auctioned
26 pursuant to this section, notwithstanding section 3302 of

1 title 31, United States Code, or any other provision of law,
2 within 90 days of receipt, the United States shall transfer
3 the proceeds from the auction to the entity which pos-
4 sessed the emission allowances auctioned. No funds trans-
5 ferred from a purchaser to a seller of emission allowances
6 under this subsection shall be held by any officer or em-
7 ployee of the United States or treated for any purpose as
8 revenue to the United States or the Administrator.

9 “(e) REGULATIONS.—The Administrator shall issue
10 regulations within 24 months after the date of enactment
11 of this title to implement this section.”.

12 **Subtitle C—Additional Greenhouse** 13 **Gas Standards**

14 **SEC. 331. GREENHOUSE GAS STANDARDS.**

15 The Clean Air Act (42 U.S.C. 7401 and following),
16 as amended by subtitles A and B of this title, is further
17 amended by adding the following new title at the end
18 thereof:

19 **“TITLE VIII—ADDITIONAL** 20 **GREENHOUSE GAS STANDARDS**

21 **“SEC. 801. DEFINITIONS.**

22 “For purposes of this title, terms that are defined
23 in title VII, except for the term ‘stationary source’, shall
24 have the meaning given those terms in title VII.

1 **“PART A—STATIONARY SOURCE STANDARDS**

2 **“SEC. 811. STANDARDS OF PERFORMANCE.**

3 “(a) UNCAPPED STATIONARY SOURCES.—

4 “(1) LIST OF SOURCE CATEGORIES .—(A)

5 Within 12 months after the date of enactment of
6 this title, the Administrator shall publish under sec-
7 tion 111(b)(1)(A) a list of categories of stationary
8 sources consisting of sources that individually had
9 uncapped greenhouse gas emissions greater than
10 10,000 tons of carbon dioxide equivalent and that,
11 in the aggregate, were responsible for emitting at
12 least 20 percent of the uncapped greenhouse gas
13 emissions.

14 “(B) The Administrator shall include on the list
15 under this paragraph each source category that is
16 responsible for at least 10 percent of the uncapped
17 methane emissions. Notwithstanding any other pro-
18 vision, the list required by this section shall not in-
19 clude sources of enteric fermentation. The list under
20 this paragraph shall include industrial sources, the
21 emissions from which, when added to the capped
22 emissions from industrial sources, constitute at least
23 95 percent of the greenhouse gas emissions of the
24 industrial sector.

25 “(C) For purposes of this subsection, emissions
26 shall be calculated using tons of carbon dioxide

1 equivalents. In promulgating the list required by this
2 paragraph and the schedule required under by para-
3 graph (2)(C), the Administrator shall use the most
4 current emissions data available at the time of publi-
5 cation.

6 “(2) STANDARDS AND SCHEDULE.— (A) For
7 each category listed as provided in paragraph (1),
8 the Administrator shall promulgate standards of
9 performance under section 111 for the uncapped
10 emissions of greenhouse gases from stationary
11 sources in that category and shall promulgate cor-
12 responding regulations under section 111(d).

13 “(B) The Administrator shall promulgate
14 standards as required by this subsection for sta-
15 tionary sources in categories listed as provided in
16 paragraph (1) as expeditiously as practicable, assur-
17 ing that—

18 “(i) standards for listed source categories
19 that, combined, emitted 80 percent or more of
20 the greenhouse gas emissions of the listed
21 source categories shall be promulgated not later
22 than 3 years after the date of the enactment of
23 this title and shall include standards for natural
24 gas extraction; and

25 “(ii) for all other listed source categories—

1 “(I) standards for not less than an
2 additional 25 percent of the listed cat-
3 egories shall be promulgated not later than
4 5 years after the date of enactment of this
5 title;

6 “(II) standards for not less than an
7 additional 25 percent of the listed cat-
8 egories shall be promulgated not later than
9 7 years after the date of enactment of this
10 title; and

11 “(III) standards for all the listed cat-
12 egories shall be promulgated not later than
13 10 years after the date of enactment of
14 this title.

15 “(C) Not later than 24 months after the date
16 of enactment of this title and after notice and oppor-
17 tunity for comment, the Administrator shall publish
18 a schedule establishing a date for the promulgation
19 of standards for each category of sources listed pur-
20 suant to paragraph (1). The date for each category
21 shall be consistent with the requirements of subpara-
22 graph (B). The determination of priorities for the
23 promulgation of standards pursuant to this para-
24 graph is not a rulemaking and shall not be subject
25 to judicial review, except that failure to promulgate

1 any standard pursuant to the schedule established
2 by this paragraph shall be subject to review under
3 section 304(a)(2).

4 “(D) Notwithstanding section 307, no action of
5 the Administrator listing a source category under
6 paragraph (1) shall be a final agency action subject
7 to judicial review, except that any such action may
8 be reviewed under section 307 when the Adminis-
9 trator issues performance standards for such cat-
10 egory.

11 “(b) CAPPED SOURCES.—No standard of perform-
12 ance shall be established under section 111 for capped
13 greenhouse gas emissions from a capped source. In pro-
14 mulgating a standard of performance under section 111
15 for the emission from capped sources of any air pollutant
16 that is not a greenhouse gas, the Administrator shall treat
17 the emission of any greenhouse gas by those entities as
18 a nonair quality public health and environmental impact
19 within the meaning of section 111(a)(1).

20 “(c) PERFORMANCE STANDARDS.— For purposes of
21 setting a performance standard for source categories listed
22 pursuant to subsection (a)—

23 “(1) The Administrator shall take into account
24 the goal of reducing total United States greenhouse
25 gas emissions as set forth in section 702.

1 “(2) The Administrator may promulgate a de-
2 sign, equipment, work practice, or operational stand-
3 ard, or any combination thereof, under section 111
4 in lieu of a standard of performance under that sec-
5 tion without regard to any determination of feasi-
6 bility that would otherwise be required under section
7 111(h).

8 “(3) Notwithstanding any other provision, in
9 setting the level of each standard required by this
10 section, the Administrator shall take into account
11 projections of allowance prices, such that the mar-
12 ginal cost of compliance (expressed as dollars per
13 ton of carbon dioxide equivalent reduced) imposed by
14 the standard would not, in the judgement of the Ad-
15 ministrator, be expected to exceed the Administra-
16 tor’s projected allowance prices over the time period
17 spanning from the date of initial compliance to the
18 date that the next revisions of the standard would
19 come into effect pursuant to the schedule under sec-
20 tion 111(b)(1)(B).

21 “(d) DEFINITIONS.—In this section:

22 “(1) The terms ‘uncapped greenhouse gas emis-
23 sions’ and ‘uncapped methane emissions’ mean those
24 greenhouse gas or methane emissions, respectively,
25 for which no covered entity would have been re-

1 quired to hold an allowance under section 722 if the
2 requirements of this title had been in effect for the
3 same year as the emissions data upon which the list
4 is based.

5 **“PART C—EXEMPTIONS FROM OTHER PROGRAMS**

6 **“SEC. 831. CRITERIA POLLUTANTS.**

7 “No greenhouse gas may be listed under section
8 108(a) on the basis of its effect on climate change.

9 **“SEC. 832. HAZARDOUS AIR POLLUTANTS.**

10 “No greenhouse gas may be added to the list of haz-
11 ardous air pollutants under section 112 unless such green-
12 house gas meets the listing criteria of section 112(b) inde-
13 pendent of its effects on climate change.

14 **“SEC. 833. NEW SOURCE REVIEW.**

15 “The provisions of part C of title I shall not apply
16 to a greenhouse gas solely on the basis of its effect on
17 climate change or regulation under title VII or this title.

18 **“SEC. 834. TITLE V PERMITS.**

19 “Notwithstanding any provision of title III or V, in
20 determining whether a stationary source is required to
21 apply for, or operate pursuant to, a permit under title V,
22 the Administrator shall not consider the source’s green-
23 house gas emissions.”.

1 **SEC. 332. HFC REGULATION.**

2 (a) IN GENERAL.—Title VI of the Clean Air Act (42
3 U.S.C. 7671 and following) (relating to stratospheric
4 ozone protection) is amended by adding the following new
5 section to the end thereof:

6 **“SEC. 619. HYDROFLUOROCARBONS (HFCs).**

7 “(a) TREATMENT AS CLASS II, GROUP II SUB-
8 STANCES.—Except as otherwise provided in this section,
9 hydrofluorocarbons shall be treated as class II substances
10 for purposes of applying the provisions of this title. The
11 Administrator shall establish two groups of class II sub-
12 stances. Class II, group I, substances shall include all
13 hydrochlorofluorocarbons (HCFCs) listed pursuant to sec-
14 tion 602(b). Class II, group II substances shall include
15 each of the following:

16 “(1) Hydrofluorocarbon-23 (HFC-23).

17 “(2) Hydrofluorocarbon-32 (HFC-32).

18 “(3) Hydrofluorocarbon-41 (HFC-41).

19 “(4) Hydrofluorocarbon-125 (HFC-125).

20 “(5) Hydrofluorocarbon-134 (HFC-134).

21 “(6) Hydrofluorocarbon-134a (HFC-134a).

22 “(7) Hydrofluorocarbon-143 (HFC-143).

23 “(8) Hydrofluorocarbon-143a (HFC-143a).

24 “(9) Hydrofluorocarbon-152 (HFC-152).

25 “(10) Hydrofluorocarbon-152a (HFC-152a).

26 “(11) Hydrofluorocarbon-227ea (HFC-227ea).

1 “(12) Hydrofluorocarbon-236cb (HFC-236cb).

2 “(13) Hydrofluorocarbon-236ea (HFC-236ea).

3 “(14) Hydrofluorocarbon-236fa (HFC-236fa).

4 “(15) Hydrofluorocarbon-245ca (HFC-245ca).

5 “(16) Hydrofluorocarbon-245fa (HFC-245fa).

6 “(17) Hydrofluorocarbon-365mfc (HFC-
7 365mfc).

8 “(18) Hydrofluorocarbon-43-10mee (HFC-43-
9 10mee).

10 “(19) Hydrofluoroolefin-1234yf (HFO-1234yf).

11 “(20) Hydrofluoroolefin-1234ze (HFO-1234ze).

12 Not later than 6 months after the date of enactment of
13 this title, the Administrator shall publish an initial list of
14 class II, group II substances, which shall include the sub-
15 stances listed in this subsection. The Administrator may
16 add to the list of class II, group II substances any other
17 greenhouse gas listed by the Administrator pursuant to
18 section 711 if that substance is used as a substitute for
19 a class I or II substance. Within 24 months after the date
20 of enactment of this section, the Administrator shall
21 amend the regulations under this title (including the regu-
22 lations referred to in sections 603, 608, 609, 610, 611,
23 612, and 613) to apply to class II, group II substances.

24 “(b) CONSUMPTION AND PRODUCTION OF CLASS II,
25 GROUP II SUBSTANCES.—

1 “(1) PRODUCTION AND CONSUMPTION PHASE
2 DOWN.—In the case of class II, group II substances,
3 in lieu of applying section 605 and the regulations
4 thereunder, the Administrator shall promulgate reg-
5 ulations phasing down the consumption and produc-
6 tion of class II, group II substances in the United
7 States and the importation of products containing
8 any class II, group II substance in accordance with
9 this subsection within 18 months after the date of
10 enactment of this section. The Administrator shall
11 ensure that the production of class II, group II sub-
12 stances is phased down in accordance with the same
13 schedule (subject to the same exceptions and other
14 provisions) as is applicable to the phase-down of con-
15 sumption of class II, group II substances under this
16 title. Effective January 1, 2012, it shall be unlawful
17 for any person to produce any class II, group II sub-
18 stance, import any class II, group II substance, or
19 import any product containing any class II, group II
20 substance without holding one consumption allow-
21 ance or one destruction offset credit for each carbon
22 dioxide equivalent ton of the class II, group II sub-
23 stance. To maintain the integrity of the class II,
24 group II cap, the Administrator may, through rule-
25 making, limit the percentage of each person’s com-

1 pliance obligation that may be met through the use
2 of destruction offset credits or banked allowances.

3 “(2) SCHEDULE.—Pursuant to the regulations
4 promulgated pursuant to paragraph (1), the number
5 of class II, group II consumption allowances estab-
6 lished by the Administrator for each calendar year
7 beginning in 2012 shall be the following percentage
8 of the baseline, as established by the Administrator
9 pursuant to paragraph (3):

“Calendar Year	Percent of Baseline
2012	96
2013	93
2014	90
2015	87
2016	84
2017	81
2018	78
2019	75
2020	72
2021	69
2022	66
2023	63
2024	60
2025	57
2026	54
2027	51
2028	48

“Calendar Year	Percent of Baseline
2029	45
2030	42
2031	39
2032	36
2033	33
2034	30
2035	27
2036	24
2037	21
2038	18
after 2038	15

1 “(3) BASELINE.—(A) Within 12 months after
2 the date of enactment of this section, the Adminis-
3 trator shall promulgate regulations to establish the
4 baseline for purposes of paragraph (2). The baseline
5 shall be the sum of the annual average consumption
6 of all class II substances in calendar years 2004,
7 2005, and 2006 and annual average quantity of all
8 class II substances contained in imported products
9 in calendar years 2004, 2005, and 2006, expressed
10 in tons of carbon dioxide equivalents.

11 “(B) Notwithstanding subparagraph (A), if the
12 Administrator determines that the baseline is higher
13 than 380 million metric tons of carbon dioxide
14 equivalents, then the Administrator shall establish

1 the baseline at 380 million metric tons of carbon di-
2 oxide equivalents.

3 “(C) Notwithstanding subparagraph (A), if the
4 Administrator determines that the baseline is lower
5 than 280 million metric tons of carbon dioxide
6 equivalents, then the Administrator shall establish
7 the baseline at 280 million metric tons of carbon di-
8 oxide equivalents.

9 “(4) DISTRIBUTION OF ALLOWANCES.—

10 “(A) IN GENERAL.—Pursuant to the regu-
11 lations promulgated under paragraph (1), for
12 each calendar year beginning in 2012, the Ad-
13 ministrator shall distribute allowances in ac-
14 cordance with this paragraph.

15 “(B) ESTABLISHMENT OF POOLS.—The
16 Administrator shall establish two allowance
17 pools. 80 percent of the consumption allowances
18 available for a calendar year shall be placed in
19 the producer-importer pool and 20 percent of
20 the consumption allowances available for a cal-
21 endar year shall be placed in the secondary
22 pool.

23 “(C) PRODUCER-IMPORTER POOL.—

24 “(i) AUCTION.—(I) For each calendar
25 year, the Administrator shall offer for sale

1 at auction the following percentage of the
2 consumption allowances in the producer-
3 importer pool:

“Calendar Year	Percent Available for Auction
2012	20
2013	30
2014	40
2015	50
2016	60
2017	70
2018	80
2019	90
after 2019	100

4 “(II) Any producer of a class II,
5 group II substance or importer of a class
6 II, group II substance may participate in
7 the auction. No other persons may partici-
8 pate in the auction.

9 “(ii) NON-AUCTION SALE.—(I) For
10 each calendar year, as soon as practicable
11 after auction, the Administrator shall offer
12 for sale the remaining consumption allow-
13 ances in the producer-importer pool at a
14 price equal to the clearing price of that
15 year’s auction.

1 “(II) The Administrator shall offer to
2 sell the remaining consumption allowances
3 to producers of class II, group II sub-
4 stances and importers of class II, group II
5 substances in proportion to their relative
6 class II substance production and/or im-
7 portation during calendar years 2004,
8 2005, and 2006.

9 “(III) Any consumption allowances
10 made available for non-auction sale to a
11 specific producer or importer of class II,
12 group II substances but not purchased by
13 the specific producer or importer shall be
14 made available for sale to any producer or
15 importer of class II, group II substances
16 during calendar years 2004, 2005, and
17 2006. If demand for such consumption al-
18 lowances exceeds supply of such consump-
19 tion allowances, the Administrator shall
20 develop and utilize criteria for the distribu-
21 tion of such consumption allowances that
22 may include pro rata shares, historic pro-
23 duction and importation, economic or tech-
24 nical hardship, or other factors deemed rel-
25 evant by the Administrator.

1 “(D) SECONDARY POOL.—(i) For each cal-
2 endar year, as soon as practicable after the auc-
3 tion required in subparagraph (C), the Adminis-
4 trator shall offer for sale the consumption al-
5 lowances in the secondary pool at a price equal
6 to the clearing price of that year’s auction.

7 “(ii) The Administrator shall accept appli-
8 cations for purchase of secondary pool con-
9 sumption allowances from—

10 “(I) importers of products containing
11 class II, group II substances;

12 “(II) persons who purchased any class
13 II, group II substance directly from a pro-
14 ducer or importer of class II, group II sub-
15 stances for use in a manufactured product,
16 a manufacturing process, or a reclamation
17 process;

18 “(III) persons who did not produce or
19 import any class II, group II substance
20 during calendar years 2004, 2005, or 2006
21 but who the Administrator determines have
22 a genuine interest in producing or import-
23 ing any class II, group II substance;

1 “(IV) a producer or importer of any
2 class II, group II substance during cal-
3 endar years 2004, 2005, or 2006.

4 “(iii) If the supply of consumption allow-
5 ances in the secondary pool equals or exceeds
6 the demand for consumption allowances in the
7 secondary pool as presented in the applications
8 for purchase, the Administrator shall sell the
9 consumption allowances in the secondary pool
10 to the applicants in the amounts requested in
11 the applications for purchase. Any consumption
12 allowances in the secondary pool not purchased
13 in a calendar year may be rolled over and added
14 to the quantity available in the pool in the fol-
15 lowing year.

16 “(iv) If the demand for consumption allow-
17 ances in the secondary pool as presented in the
18 applications for purchase exceeds the supply of
19 consumption allowances in the secondary pool,
20 the Administrator shall distribute the consump-
21 tion allowances as follows:

22 “(I) The Administrator shall first sell
23 the consumption allowances in the sec-
24 ondary pool to any importers of products
25 containing class II, group II substances in

1 the amounts requested in their applications
2 for purchase. If the demand for such con-
3 sumption allowances exceeds supply of
4 such consumption allowances, the Adminis-
5 trator shall develop and utilize criteria for
6 the distribution of such consumption allow-
7 ances among importers of products con-
8 taining class II, group II substances that
9 may include pro rata shares, historic im-
10 portation, economic or technical hardship,
11 or other factors deemed relevant by the
12 Administrator.

13 “(II) The Administrator shall next
14 sell any remaining consumption allowances
15 to persons identified in subclauses (II) and
16 (III) of clause (ii) in the amounts re-
17 quested in their applications for purchase.
18 If the demand for such consumption allow-
19 ances exceeds remaining supply of such
20 consumption allowances, the Administrator
21 shall develop and utilize criteria for the
22 distribution of such consumption allow-
23 ances among subclauses (II) and (III) ap-
24 plicants that may include pro rata shares,
25 historic use, economic or technical hard-

1 ship, or other factors deemed relevant by
2 the Administrator.

3 “(III) The Administrator shall then
4 sell any remaining consumption allowances
5 to producers or importers of any class II,
6 group II substance during calendar years
7 2004, 2005, or 2006 in the amounts re-
8 quested in their applications for purchase.
9 If demand for such consumption allow-
10 ances exceeds remaining supply of such
11 consumption allowances, the Administrator
12 shall develop and utilize criteria for the
13 distribution of such consumption allow-
14 ances that may include pro rata shares,
15 historic production and importation, eco-
16 nomic or technical hardship, or other fac-
17 tors deemed relevant by the Administrator.

18 “(E) DISCRETION TO WITHHOLD ALLOW-
19 ANCES.—Nothing in this paragraph prevents
20 the Administrator from exercising his discretion
21 to withhold and retire consumption allowances
22 that would otherwise be available for auction or
23 non-auction sale.

24 “(5) BANKING .—A consumption allowance or
25 destruction offset credit may be used to meet the

1 compliance obligation requirements of paragraph (1)
2 in—

3 “(A) the vintage year for the allowance or
4 destruction offset credit; or

5 “(B) any calendar year subsequent to the
6 vintage year for the allowance or destruction
7 offset credit.

8 “(6) AUCTIONS.—

9 “(A) INITIAL REGULATIONS.—Not later
10 than 18 months after the date of enactment of
11 this section, the Administrator shall promulgate
12 regulations governing the auction of allowances
13 under this section. Such regulations shall in-
14 clude the following requirements:

15 “(i) FREQUENCY; FIRST AUCTION.—
16 Auctions shall be held one time per year at
17 regular intervals, with the first auction to
18 be held no later than October 31, 2011.

19 “(ii) AUCTION FORMAT.—Auctions
20 shall follow a single-round, sealed-bid, uni-
21 form price format.

22 “(iii) FINANCIAL ASSURANCE.—The
23 Administrator may establish financial as-
24 surance requirements to ensure that auc-

1 tion participants can and will perform on
2 their bids.

3 “(iv) DISCLOSURE OF BENEFICIAL
4 OWNERSHIP.—Each bidder in the auction
5 shall be required to disclose the person or
6 entity sponsoring or benefitting from the
7 bidder’s participation in the auction if such
8 person or entity is, in whole or in part,
9 other than the bidder or the bidder’s em-
10 ployer.

11 “(v) PUBLICATION OF INFORMA-
12 TION.—After the auction, the Adminis-
13 trator shall, in a timely fashion, publish
14 the number of bidders, number of winning
15 bidders, the quantity of allowances sold,
16 and the auction clearing price.

17 “(vi) BIDDING LIMITS.—No producer
18 of any class II, group II substance or im-
19 porter of any class II, group II substance
20 may, directly or in concert with another
21 participant, purchase more than 50 per-
22 cent of the allowances of any vintage year
23 offered for sale at any auction.

24 “(vii) OTHER REQUIREMENTS.—The
25 Administrator may include in the regula-

1 tions such other requirements or provisions
2 as the Administrator considers necessary
3 to promote effective, efficient, transparent,
4 and fair administration of auctions under
5 this section, including allowing a person to
6 commit at auction to purchase and take
7 possession of allowances after the auction.

8 “(B) REVISION OF REGULATIONS.—The
9 Administrator may, at any time, revise the ini-
10 tial regulations promulgated under subpara-
11 graph (A) based on the Administrator’s experi-
12 ence in administering allowance auctions. Such
13 revised regulations need not meet the require-
14 ments identified in subparagraph (A) if the Ad-
15 ministrator determines that an alternative auc-
16 tion design would be more effective, taking into
17 account factors including costs of administra-
18 tion, transparency, fairness, and risks of collu-
19 sion or manipulation. In determining whether
20 and how to revise the initial regulations under
21 this paragraph, the Administrator shall not con-
22 sider maximization of revenues to the Federal
23 Government.

24 “(7) IMPORTED PRODUCTS.—If the United
25 States ratifies or otherwise adheres to an inter-

1 national agreement, including any amendment to the
2 Montreal Protocol on Substances That Deplete the
3 Ozone Layer, which restricts the production and
4 consumption of class II, group II substances—

5 “(A) as of the date on which such inter-
6 national agreement becomes binding on all par-
7 ties, it shall no longer be unlawful for any per-
8 son to import any product containing any class
9 II, group II substance whose production and
10 consumption is regulated by the Montreal Pro-
11 tocol without holding one consumption allow-
12 ance or one destruction offset credit for each
13 carbon dioxide equivalent ton of the class II,
14 group II substance;

15 “(B) the Administrator shall promulgate
16 regulations within 12 months of the date the
17 United States ratifies or otherwise adheres to
18 such international agreement to establish a new
19 baseline for purposes of paragraph (2) which
20 new baseline shall be the original baseline less
21 the carbon dioxide equivalent of the annual av-
22 erage quantity of any class II substances con-
23 tained in imported products in calendar years
24 2004, 2005, and 2006 that are restricted by
25 such international agreement.

1 “(C) as of the date on which such inter-
2 national agreement becomes binding on all par-
3 ties, no importer of any product containing any
4 class II, group II substance regulated by the
5 Montreal Protocol may, directly or in concert
6 with another participant, purchase any allow-
7 ances offered for sale by the Administrator; and

8 “(D) The Administrator may adjust the
9 two allowance pools established in paragraph
10 (4) such that up to 90 percent of the consump-
11 tion allowances available for a calendar year are
12 placed in the producer-importer pool with the
13 remaining consumption allowances placed in the
14 secondary pool.

15 “(8) OFFSETS.—

16 “(A) CHLOROFLUOROCARBON DESTRUC-
17 TION.—Within 18 months after the date of en-
18 actment of this section, the Administrator shall
19 promulgate regulations to provide for the
20 issuance of offset credits for the destruction, in
21 the calendar year 2012 or later, of
22 chlorofluorocarbons in the United States. The
23 Administrator shall establish and distribute to
24 the destroying entity a quantity of destruction
25 offset credits equal to .8 times the number of

1 tons of carbon dioxide equivalents of reduction
2 achieved through the destruction. No destruc-
3 tion offset credits shall be established for the
4 destruction of a substance emitted as a byprod-
5 uct.

6 “(B) DEFINITION.—For purposes of this
7 paragraph, the term ‘destruction’ means the
8 conversion of a substance by thermal, chemical,
9 or other means to another substance with a
10 very low carbon dioxide equivalent value and no
11 ozone depletion potential.

12 “(C) REGULATIONS.—The regulations pro-
13 mulgated under this paragraph shall include
14 standards and protocols for project eligibility,
15 certification of destroyers, monitoring, tracking,
16 destruction efficiency, quantification of project
17 and baseline emissions and global warming po-
18 tential, and verification. The Administrator
19 shall ensure that destruction offset credits rep-
20 resent real and verifiable destruction of
21 chlorofluorocarbons or other class I or class II,
22 group I, substances authorized under subpara-
23 graph (D).

24 “(D) OTHER SUBSTANCES.—The Adminis-
25 trator may promulgate regulations to add to the

1 list of class I and class II, group I, substances
2 that can be destroyed for destruction offset
3 credits, taking into account a candidate sub-
4 stance's carbon dioxide equivalent value, ozone
5 depletion potential, prevalence in banks in the
6 United States, and emission rates, as well as
7 the need for additional cost containment under
8 the class II, group II cap and the integrity of
9 the class II, group II cap. The Administrator
10 shall not add a class I or class II substance to
11 the list if the substance has not been completely
12 phased-out internationally pursuant to the Mon-
13 treal Protocol.

14 “(E) EXTENSION OF OFFSETS.—(i) At any
15 time after the Administrator promulgates regu-
16 lations pursuant to subparagraph (A), the Ad-
17 ministrator may include as destruction offset
18 credits under this paragraph offset credits
19 issued under part D of title VII, for issuance in
20 accordance with the standards and protocols es-
21 tablished pursuant to subparagraph (C) of this
22 paragraph and such part D, and the require-
23 ments of section 722(c)(1) shall apply. The Ad-
24 ministrator may omit or modify a requirement
25 of such part D with respect to destruction off-

1 set credits if the Administrator determines that
2 the application of that requirement to such
3 credits is not feasible. In modifying or omitting
4 such a requirement on the basis of infeasibility,
5 the Administrator shall ensure, with an ade-
6 quate margin of safety, the integrity of destruc-
7 tion offset credits issued under this subpara-
8 graph and of the greenhouse gas emissions cap
9 established pursuant to section 703.

10 “(ii) The Administrator shall not make the
11 addition under clause (i) unless the Adminis-
12 trator finds that insufficient destruction is oc-
13 ccurring under this paragraph and that the addi-
14 tion would increase destruction.

15 “(c) DEADLINES FOR COMPLIANCE.—The January
16 2015 deadline specified in section 611(c) and 611(e) shall
17 be January 1, 2012, in the case of class II, group II, sub-
18 stances. Notwithstanding the deadlines specified for class
19 II substances in sections 608, 609, 610, 612, and 613 that
20 occur prior to January 1, 2009, the deadline for promul-
21 gating regulations under those sections for class II, group
22 II, substances shall be January 1, 2012.

23 “(d) EXCEPTIONS FOR ESSENTIAL USES.—Notwith-
24 standing the phase down of production and consumption
25 required by this section, to the extent consistent with any

1 applicable international agreement to which the United
2 States is a party or otherwise adheres, the Administrator
3 may provide the following exceptions for essential uses:

4 “(1) MEDICAL DEVICES.—The Administrator,
5 after notice and opportunity for public comment,
6 and in consultation with the Commissioner of the
7 Food and Drug Administration, may provide an ex-
8 ception for the production and consumption of class
9 II, group II substances solely for use in medical de-
10 vices.

11 “(2) AVIATION SAFETY.—The Administrator,
12 after notice and opportunity for public comment,
13 may authorize the production of limited quantities of
14 class II, group II substances solely for the purposes
15 of aviation safety if the Administrator of the Federal
16 Aviation Administration, in consultation with the
17 Administrator, determines that no safe and effective
18 substitute has been developed and that such author-
19 ization is necessary for aviation safety purposes.

20 “(e) DEVELOPING COUNTRIES.—Notwithstanding
21 the phase down of production required by this section, the
22 Administrator, after notice and opportunity for public
23 comment, may authorize the production of limited quan-
24 tities of class II, group II substances in excess of the
25 amounts otherwise allowable under this section solely for

1 export to, and use in, developing countries. Any produc-
2 tion authorized under this subsection shall be solely for
3 purposes of satisfying the basic domestic needs of such
4 countries as provided in applicable international agree-
5 ments, if any, to which the United States is a party or
6 otherwise adheres.

7 “(f) NATIONAL SECURITY; FIRE SUPPRESSION,
8 ETC.—The provisions of subsection (f) and paragraphs
9 (1) and (2) of subsection (g) of section 604 shall apply
10 to class II, group II substances in the same manner and
11 to the same extent, consistent with any applicable inter-
12 national agreement to which the United States is a party
13 or otherwise adheres, as such provisions apply to the sub-
14 stances specified in such subsection.

15 “(g) ACCELERATED SCHEDULE.—In lieu of section
16 606, the provisions of paragraphs (1), (2), and (3) of this
17 subsection shall apply in the case of class II, group II sub-
18 stances.

19 “(1) IN GENERAL.—The Administrator shall
20 promulgate regulations, after notice and opportunity
21 for public comment, which establish a schedule for
22 phasing down the production and consumption of
23 class II, group II substances that is more stringent
24 than the schedule set forth in this section if, based
25 on the availability of substitutes, the Administrator

1 determines that such more stringent schedule is
2 practicable, taking into account technological
3 achievability, safety, and other factors the Adminis-
4 trator deems relevant, or if the Montreal Protocol,
5 or any applicable international agreement to which
6 the United States is a party or otherwise adheres,
7 is modified or established to include a schedule or
8 other requirements to control or reduce production,
9 consumption, or use of any class II, group II sub-
10 stance more rapidly than the applicable schedule
11 under this section.

12 “(2) PETITION.—Any person may submit a pe-
13 tition to promulgate regulations under this sub-
14 section in the same manner and subject to the same
15 procedures as are provided in section 606(b).

16 “(3) INCONSISTENCY.— If the Administrator
17 determines that the provisions of this section regard-
18 ing banking and destruction offset credits create a
19 significant potential for inconsistency with the re-
20 quirements of any applicable international agree-
21 ment to which the United States is a party or other-
22 wise adheres, the Administrator may promulgate
23 regulations restricting the availability of banking
24 and destruction offset credits to the extent necessary
25 to avoid such inconsistency.

1 “(h) EXCHANGE.—Section 607(b) (relating to inter-
2 pollutant transfers) shall apply in the case of exchanges
3 of class II, group II substances production or consumption
4 allowances on a carbon dioxide equivalent basis. In accord-
5 ance with section 607(b)(3), no exchanges or transfers
6 may take place between class II, group II substances and
7 class II, group I substances.

8 “(i) LABELING.—(1) In applying section 611 to prod-
9 ucts containing or manufactured with class II, group II
10 substances, in lieu of the words ‘destroying ozone in the
11 upper atmosphere’ on labels required under section 611
12 there shall be substituted the words ‘contributing to global
13 warming’.

14 “(2) The Administrator may, through rulemaking,
15 exempt products containing or manufactured with class II,
16 group II substances determined to have a very low carbon
17 dioxide equivalent value from the requirements of section
18 611.

19 “(j) NONESSENTIAL PRODUCTS.—For the purposes
20 of section 610, class II, group II substances shall be regu-
21 lated under section 610(b), except that in applying section
22 610(b) ‘hydrofluorocarbon’ shall be substituted for the
23 word ‘chlorofluorocarbon’ and ‘class II, group II,’ shall be
24 substituted for the term ‘class I’. Class II, group II sub-

1 stances shall not be subject to the provisions of section
2 610(d).

3 “(k) MOTOR VEHICLE AIR CONDITIONERS.—

4 “(1) Section 609(e) of the Clean Air Act (42
5 U.S.C. 7671h(e)) is amended by inserting ‘, group
6 I’ after each reference to ‘class II’.

7 “(2) Section 609 of the Clean Air Act (42
8 U.S.C. 7671h) is amended by adding the following
9 new subsection after subsection (e):

10 ““(f) CLASS II, GROUP II SUBSTANCES.—

11 ““(1) REPAIR.—The Administrator may pro-
12 mulgate regulations establishing requirements for re-
13 pair of motor vehicle air conditioners prior to adding
14 a class II, group II substance.

15 ““(2) SMALL CONTAINERS.—(A) The Adminis-
16 trator may promulgate regulations establishing serv-
17 icing practices and procedures for recovery of class
18 II, group II substances from containers which con-
19 tain less than 20 pounds of such class II, group II
20 substances.

21 ““(B) Not later than 18 months after enact-
22 ment of this subsection, the Administrator shall ei-
23 ther promulgate regulations requiring that con-
24 tainers which contain less than 20 pounds of a class
25 II, group II substance be equipped with a device or

1 technology that limits refrigerant emissions and
2 leaks from the container and limits refrigerant emis-
3 sions and leaks during the transfer of refrigerant
4 from the container to the motor vehicle air condi-
5 tioner or issue a determination that such require-
6 ments are not necessary or appropriate.

7 ““(C) Not later than 18 months after enact-
8 ment of this subsection, the Administrator shall pro-
9 mulgate regulations establishing requirements for
10 consumer education materials on best practices asso-
11 ciated with the use of containers which contain less
12 than 20 pounds of a class II, group II substance and
13 prohibiting the sale or distribution, or offer for sale
14 or distribution, of any class II, group II substance
15 in a container which contain less than 20 pounds of
16 such class II, group II substance, unless consumer
17 education materials consistent with such require-
18 ments are displayed and available at point-of-sale lo-
19 cations, provided to the consumer, or included in or
20 on the packaging of the container which contain less
21 than 20 pounds of a class II, group II substance.

22 ““(D) The Administrator may, through rule-
23 making, extend the requirements established under
24 this paragraph to containers which contain 30
25 pounds or less of a class II, group II substance if

1 the Administrator determines that such action would
2 produce significant environmental benefits

3 “(3) RESTRICTION OF SALES.—Effective Jan-
4 uary 1, 2014, no person may sell or distribute or
5 offer to sell or distribute or otherwise introduce into
6 interstate commerce any class II, group II substance
7 as an automotive refrigerant in any size container
8 unless the class II, group II substance has been
9 found acceptable for use in a motor vehicle air con-
10 ditioner under section 612.’.

11 “(1) CARBON DIOXIDE EQUIVALENT VALUE.—In lieu
12 of section 602(e), the provisions of this subsection shall
13 apply in the case of class II, group II substances. Simulta-
14 neously with establishing the list of class II, group II sub-
15 stances, and simultaneously with any addition to that list,
16 the Administrator shall publish the carbon dioxide equiva-
17 lent value of each listed class II, group II substance, based
18 on a determination of the number of metric tons of carbon
19 dioxide that makes the same contribution to global warm-
20 ing over 100 years as 1 metric ton of each class II, group
21 II substance.

22 【“(m) REPORTING REQUIREMENTS.—In lieu of sec-
23 tions 603(b) and 603 e), the provisions of paragraphs (1)
24 and (2) of this subsection shall apply in the case of class
25 II, group II substances:】

1 【“(1) IN GENERAL.—On a quarterly basis, or
2 such other basis (not less than annually) as deter-
3 mined by the Administrator, each person who pro-
4 duced, imported, or exported a class II, group II
5 substance, or who imported a product containing a
6 class II, group II substance, shall file a report with
7 the Administrator setting forth the carbon dioxide
8 equivalent amount of the substance that such person
9 produced, imported, or exported, as well as the
10 amount that was contained in products imported by
11 that person, during the preceding reporting period.
12 Each such report shall be signed and attested by a
13 responsible officer. No such report shall be required
14 from a person after April 1 of the calendar year
15 after such person permanently ceases production,
16 importation, and exportation of the substance, as
17 well as importation of products containing the sub-
18 stance, and so notifies the Administrator in writing.
19 If the United States ratifies or otherwise adheres to
20 an international agreement that restricts the produc-
21 tion and consumption of class II, group II sub-
22 stances, then no such report shall be required from
23 a person with respect to importation of products
24 containing any class II, group II substance re-
25 stricted by such agreement after April 1 of the cal-

1 endar year following the year during which such
2 international agreement becomes binding on all par-
3 ties.】

4 “(2) BASELINE REPORTS FOR CLASS II, GROUP
5 II SUBSTANCES.—Unless such information has been
6 previously reported to the Administrator, on the date
7 on which the first report under paragraph (1) of this
8 subsection is required to be filed, each person who
9 produced, imported, or exported a class II, group II
10 substance, or who imported a product containing a
11 class II, group II substance, (other than a substance
12 added to the list of class II, group II substances
13 after the publication of the initial list of such sub-
14 stances under this section), shall file a report with
15 the Administrator setting forth the carbon dioxide
16 equivalent amount of such substance that such per-
17 son produced, imported, exported, or that was con-
18 tained in products imported by that person, during
19 each of calendar years 2004, 2005, and 2006. In the
20 case of a substance added to the list of class II,
21 group II substances after publication of the initial
22 list of such substances under this section, each per-
23 son who produced, imported, exported, or imported
24 products containing such substance in calendar year
25 2004, 2005, or 2006 shall file a report with the Ad-

1 administrator within 180 days after the date on which
2 such substance is added to the list, setting forth the
3 carbon dioxide equivalent amount of the substance
4 that such person produced, imported, and exported,
5 as well as the amount that was contained in prod-
6 ucts imported by that person, in calendar years
7 2004, 2005, and 2006”

8 (b) TABLE OF CONTENTS.—The table of contents for
9 such title VI is amended by adding the following new item
10 at the end thereof:

 “Sec. 619. Hydrofluorocarbons (HFCs).”.

11 (c) FIRE SUPPRESSION AGENTS.—Section 605(a) of
12 the Clean Air Act (42 U.S.C. 7671(a)) is amended by
13 striking “or” at the end of paragraph (2), striking the
14 period at the end of paragraph (3) and inserting “; or”
15 and adding the following new paragraph after paragraph
16 (3):

17 “(4) is listed as acceptable for use as a fire sup-
18 pression agent for nonresidential applications in ac-
19 cordance with section 612 (c) of the Clean Air Act.”.

20 **SEC. 333. BLACK CARBON.**

21 (a) DEFINITION.—As used in this section, the term
22 “black carbon” means the light absorbing component of
23 carbonaceous aerosols.

24 (b) BLACK CARBON ABATEMENT REPORT.—Not
25 later than one year after the date of enactment of this

1 section, the Administrator shall, in consultation with other
2 appropriate Federal agencies, submit to Congress a report
3 regarding black carbon emissions. The report shall include
4 the following:

5 (1) A summary of the current research that
6 identifies—

7 (A) an inventory of the major sources of
8 black carbon emissions in the United States
9 and throughout the world, including—

10 (i) an estimate of the quantity of cur-
11 rent and projected future emissions; and

12 (ii) the net climate forcing of the
13 emissions from such sources, including
14 consideration of co-emissions of other pol-
15 lutants;

16 (B) effective and cost-effective control
17 technologies, operations, and strategies for ad-
18 ditional domestic and international black carbon
19 emissions reductions, such as diesel retrofit
20 technologies on existing on-road and off-road
21 engines and programs to address residential
22 cookstoves, forest burning, and other agri-
23 culture-based burning;

24 (C) potential metrics quantifying the cli-
25 matic effects of black carbon emissions, includ-

1 ing its radiative forcing and warming effects,
2 that may be used to compare the climate bene-
3 fits of different mitigation strategies, including
4 an assessment of the uncertainty in such
5 metrics; and

6 (D) the public health and environmental
7 benefits associated with additional controls for
8 black carbon emissions.

9 (2) Recommendations regarding—

10 (A) development of additional emissions
11 monitoring techniques and capabilities, mod-
12 eling, and other black carbon-related areas of
13 study;

14 (B) areas of focus for additional study of
15 technologies, operations, and strategies with the
16 greatest potential to reduce emissions of black
17 carbon; and

18 (C) actions, in addition to those identified
19 by the Administrator under section 851 of the
20 Clean Air Act (as amended by subsection (c)),
21 the Federal Government may take to encourage
22 or require reductions in black carbon emissions.

23 (c) BLACK CARBON MITIGATION.—Title VIII of the
24 Clean Air Act, as added by section 331 of this Act, and

1 amended by section 222 of this Act, is further amended
2 by adding after part D the following new part:

3 **“PART E—BLACK CARBON**

4 **“SEC. 851. BLACK CARBON.**

5 “(a) DOMESTIC BLACK CARBON MITIGATION.—Not
6 later than one year after the date of enactment of this
7 section, the Administrator, taking into consideration the
8 public health and environmental impacts of black carbon
9 emissions, including the effects on global warming, the
10 Arctic, and other snow and ice-covered surfaces, shall pro-
11 pose regulations under the existing authorities of this Act
12 to reduce emissions of black carbon or propose a finding
13 that existing regulations promulgated pursuant to this Act
14 adequately regulate black carbon emissions. Not later than
15 two years after the date of enactment of this section, the
16 Administrator shall promulgate final regulations under the
17 existing authorities of this Act or finalize the proposed
18 finding.

19 “(b) INTERNATIONAL BLACK CARBON MITIGA-
20 TION.—

21 “(1) REPORT.—Not later than one year after
22 the date of enactment of this section, the Adminis-
23 trator, in coordination with the Secretary of State
24 and other appropriate Federal agencies, shall trans-
25 mit a report to Congress on the amount, type, and

1 direction of all present United States financial, tech-
2 nical, and related assistance to foreign countries to
3 reduce, mitigate, and otherwise abate black carbon
4 emissions.

5 “(2) OTHER OPPORTUNITIES.—The report re-
6 quired under paragraph (1) shall also identify oppor-
7 tunities and recommendations, including action
8 under existing authorities, to achieve significant
9 black carbon emission reductions in foreign countries
10 through technical assistance or other approaches
11 to—

12 “(A) promote sustainable solutions to
13 bring clean, efficient, safe, and affordable
14 stoves, fuels, or both stoves and fuels to resi-
15 dents of developing countries that are reliant on
16 solid fuels such as wood, dung, charcoal, coal,
17 or crop residues for home cooking and heating,
18 so as to help reduce the public health, environ-
19 mental, and economic impacts of black carbon
20 emissions from these sources by—

21 “(i) identifying key regions for large-
22 scale demonstration efforts, and key part-
23 ners in each such region; and

24 “(ii) developing for each such region a
25 large-scale implementation strategy with a

1 goal of collectively reaching 20,000,000
2 homes over 5 years with interventions that
3 will—

4 “(I) increase stove efficiency by
5 over 50 percent (or such other goal as
6 determined by the Administrator);

7 “(II) reduce emissions of black
8 carbon by over 60 percent (or such
9 other goal as determined by the Ad-
10 ministrator); and

11 “(III) reduce the incidence of se-
12 vere pneumonia in children under 5
13 years old by over 30 percent (or such
14 other goal as determined by the Ad-
15 ministrator);

16 “(B) make technological improvements to
17 diesel engines and provide greater access to
18 fuels that emit less or no black carbon;

19 “(C) reduce unnecessary agricultural or
20 other biomass burning where feasible alter-
21 natives exist;

22 “(D) reduce unnecessary fossil fuel burn-
23 ing that produces black carbon where feasible
24 alternatives exist;

1 “(E) reduce other sources of black carbon
2 emissions; and

3 “(F) improve capacity to achieve greater
4 compliance with existing laws to address black
5 carbon emissions.”.

6 (d) AUTHORIZATION OF APPROPRIATIONS.—There
7 are authorized to be appropriated such sums as are nec-
8 essary to carry out this section.

9 **SEC. 334. STATES.**

10 Section 116 of the Clean Air Act (42 U.S.C. 7416)
11 is amended by adding the following at the end thereof:
12 “For the purposes of this section, the phrases ‘standard
13 or limitation respecting emissions of air pollutants’ and
14 ‘requirements respecting control or abatement of air pollu-
15 tion’ shall include any provision to: cap greenhouse gas
16 emissions, require surrender to the State or a political
17 subdivision thereof of emission allowances or offset credits
18 established or issued under this Act, and require the use
19 of such allowances or credits as a means of demonstrating
20 compliance with requirements established by a State or
21 political subdivision thereof.”.

22 **SEC. 335. STATE PROGRAMS.**

23 Title VIII of the Clean Air Act, as added by section
24 331 of this Act and amended by several sections of this

1 Act, is further amended by adding after part E (as added
2 by section 333 of this Act) the following new part:

3 **“PART F—MISCELLANEOUS**

4 **“SEC. 861. STATE PROGRAMS.**

5 “Notwithstanding section 116, no State or political
6 subdivision thereof shall implement or enforce a cap that
7 covers any capped emissions emitted during the years
8 2012 through 2017. For purposes of this section, the term
9 ‘cap’ means an absolute tonnage limit on the amount of
10 greenhouse gases that can be emitted by a group of
11 sources over a specified time period, and that does not
12 vary with any other factor, including the number of
13 sources covered, the amount of time the sources operate,
14 and the production of the sources. For purposes of this
15 section, the term ‘cap’ does not include, among other
16 things, fleet-wide motor vehicle emission requirements
17 that allow greater emissions with increased vehicle produc-
18 tion, or requirements that fuels, or other products, meet
19 an average pollution emission rate or lifecycle greenhouse
20 gas standard.”.

21 **SEC. 336. ENFORCEMENT.**

22 (a) CITIZEN SUITS.—Section 304 of the Clean Air
23 Act (42 U.S.C. 7604) is amended by adding the following
24 new subsection at the end thereof:

1 “(h)(1) The persons authorized by subsection (a) to
2 commence an action under this section shall include any
3 person who has suffered, or reasonably expects to suffer,
4 a harm attributable, in whole or in part, to a violation
5 or failure to act referred to in subsection (a).

6 “(2) For purposes of this section, the term ‘harm’
7 includes any effect of air pollution (including climate
8 change), currently occurring or at risk of occurring, and
9 the incremental exacerbation of any such effect or risk
10 that is associated with a small incremental emission of any
11 air pollutant (including any greenhouse gas as defined in
12 title VII), whether or not the effect or risk is widely
13 shared.

14 “(3) For purposes of this section, an effect or risk
15 associated with any air pollutant (including any green-
16 house gas as defined in title VII) shall be considered at-
17 tributable to the violation or failure to act concerned if
18 the violation or failure to act slows the pace of implemen-
19 tation of this Act or compliance with this Act or results
20 in any emission of greenhouse gas or other air pollutant
21 at a higher level than would have been emitted in the ab-
22 sence of the violation or failure to act.”.

23 (b) GENERAL JUDICIAL REVIEW.—Section 307(b) of
24 the Clean Air Act (42 U.S.C. 7607(b)) is amended by add-
25 ing the following new paragraphs at the end thereof:

1 “(3)(A) A petition for review may be filed
2 under this section by any person who has suffered
3 or reasonably expects to suffer a harm attributable,
4 in whole or in part, to an action of the Adminis-
5 trator referred to in paragraph (1).

6 “(B) For purposes of this section, the term
7 ‘harm’ may include any effect of air pollution (in-
8 cluding climate change), currently occurring or at
9 risk of occurring, and the incremental exacerbation
10 of any such effect or risk that is associated with a
11 small incremental emission of any air pollutant, (in-
12 cluding any greenhouse gas as defined in title VII),
13 whether or not the effect or risk is widely shared.

14 “(C) For purposes of this section, an effect or
15 risk associated with any air pollutant (including any
16 greenhouse gas as defined in title VII) shall be con-
17 sidered attributable to an action of the Adminis-
18 trator referred to in paragraph (1) concerned if the
19 action slows the pace of implementation of this Act
20 or compliance with this Act or results in any emis-
21 sion of greenhouse gas or other air pollutant at a
22 higher level than would have been emitted in the ab-
23 sence of the action of the Administrator.

24 “(4)(A) If the court determines that any action
25 of the Administrator is arbitrary, capricious, or oth-

1 otherwise unlawful, the court may remand such action,
2 without vacatur, if vacatur would impair or delay
3 protection of the environment or public health or
4 otherwise undermine the timely achievement of the
5 purposes of this Act.

6 “(B) If the court determines that any action of
7 the Administrator is arbitrary, capricious, or other-
8 wise unlawful, and remands the matter to the Ad-
9 ministrator, the Administrator shall complete final
10 action on remand within an expeditious time period
11 no longer than the time originally allowed for the ac-
12 tion or one year, whichever is less, unless the court
13 on motion determines that a shorter or longer period
14 is necessary, appropriate, and consistent with the
15 purposes of this Act. The court of appeals shall have
16 jurisdiction to enforce a deadline for action on re-
17 mand under this subparagraph.”.

18 (c) PETITION FOR RECONSIDERATION.—Section
19 307(d)(7)(B) of the Clean Air Act (42 U.S.C.
20 7607(d)(7)(B)) is amended as follows:

21 (1) By inserting after the second sentence “If
22 a petition for reconsideration is filed, the Adminis-
23 trator shall take final action on such petition, in-
24 cluding promulgation of final action either revising
25 or determining not to revise the action for which re-

1 consideration is sought, within 150 days after the
2 petition is received by the Administrator or the peti-
3 tion shall be deemed denied for the purpose of judi-
4 cial review.”.

5 (2) By amending the third sentence to read as
6 follows: “Such person may seek judicial review of
7 such denial, or of any other final action, by the Ad-
8 ministrator, in response to a petition for reconsider-
9 ation, in the United States court of appeals for the
10 appropriate circuit (as provided in subsection (b)).”.

11 (d) JUDICIAL REVIEW.—Part F of title VIII of the
12 Clean Air Act, as added by section 335 of this Act, is
13 amended by adding at the end the following new section:
14 **“SEC. 862. JUDICIAL REVIEW.**

15 “(a) IN GENERAL.—With respect to a civil action
16 under section 304 or a petition for review under section
17 307 alleging a Federal agency violation of, or failure to
18 perform a nondiscretionary act or duty under, title VII
19 or this title, the provisions of section 304 and section 307
20 apply except as otherwise expressly provided in this sec-
21 tion.

22 “(b) COMMON CLAIMS.—When civil actions arising
23 under title VII or this title are pending in the same court
24 and involve one or more common questions of fact or com-
25 mon claims regarding the same alleged Federal agency

1 violation or failure to act, the court may consolidate such
2 claims into a single action for judicial review. When civil
3 actions arising under title VII or this title are pending
4 in different districts and involve one or more common
5 questions of fact or common claims regarding the same
6 alleged violation or failure to act, such actions may be con-
7 solidated pursuant to section 1407 of title 28, United
8 States Code.

9 “(c) REMEDIES.—

10 “(1) IN GENERAL.—In addition to the remedies
11 available under this Act, a court may provide the
12 remedies specified in this subsection in the case of
13 a violation of title VII or this title.

14 “(2) PAYMENT.—In any civil action alleging a
15 violation of title VII or this title if the court finds
16 that an agency has significantly violated title VII or
17 this title in its failure to perform any nondis-
18 cretionary act or duty under title VII or this title,
19 the court may award a payment, payable by the
20 United States Treasury, to be used for a beneficial
21 mitigation project recommended by the plaintiff or
22 to compensate the plaintiff for any impact from
23 global warming suffered by the plaintiff. The total
24 payment for all claims by all plaintiffs in any such
25 action shall not exceed the amount provided in sec-

1 tion 1332(b) of title 28, United States Code. A court
2 may deny a second payment under this section if the
3 court determines that the plaintiff has filed multiple
4 separate actions that could reasonably have been
5 combined into a single action. No payment may be
6 awarded under this paragraph for violations of an
7 agency's obligation to collect or report information
8 to the public. No court may award any payment
9 under this paragraph in any given year if the cumu-
10 lative payments awarded by courts under this para-
11 graph in such year are equal to or greater than
12 \$1,500,000.

13 “(3) COSTS.—A court may award costs of liti-
14 gation to any substantially prevailing plaintiff or to
15 any other plaintiff whenever the court determines
16 such an award is appropriate in the case of a viola-
17 tion of title VII or this title. Such an award is ap-
18 propriate when such litigation contributes to the
19 Federal agency's compliance with title VII or this
20 title. For purposes of this paragraph, costs of litiga-
21 tion include reasonable attorney fees and expert fees.

22 “(4) EXCLUSIVE REMEDY.—Notwithstanding
23 any other provision of Federal law—

24 “(A) no plaintiff who is awarded a pay-
25 ment under this subsection for a failure to per-

1 form a mandatory duty under title VII or this
2 title may be awarded a payment for such failure
3 under any other Federal law; and

4 “(B) no plaintiff may be awarded a pay-
5 ment under this subsection for a failure to per-
6 form a mandatory duty under title VII or this
7 title if the plaintiff has been awarded a pay-
8 ment for such failure under any other Federal
9 law.”.

10 **SEC. 337. CONFORMING AMENDMENTS.**

11 (a) FEDERAL ENFORCEMENT.—Section 113 of the
12 Clean Air Act (42 U.S.C. 7413) is amended as follows:

13 (1) In subsection (a)(3), by striking “or title
14 VI,” and inserting “title VI, title VII, or title VIII”.

15 (2) In subsection (b), by striking “or a major
16 stationary source” and inserting “a major stationary
17 source, or a covered EGU under title VIII,” in the
18 material preceding paragraph (1).

19 (3) In paragraph (2), by striking “or title VI”
20 and inserting “title VI, title VII, or title VIII”.

21 (4) In subsection (c)—

22 (A) in the first sentence of paragraph (1),
23 by striking “or title VI (relating to strato-
24 spheric ozone control),” and inserting “title VI
25 (relating to stratospheric ozone control), or title

1 VII or VIII (relating to reduction of greenhouse
2 gas emissions),”; and

3 (B) in the first sentence of paragraph (3),
4 by striking “or VI” and inserting “VI, VII,
5 VIII”.

6 (5) In subsection (d)(1)(B), by striking “or VI”
7 and inserting “VI, VII, or VIII”.

8 (6) In subsection (f), in the first sentence, by
9 striking “or VI” and inserting “VI, VII, or VIII”.

10 (b) RETENTION OF STATE AUTHORITY.—Section
11 116 of the Clean Air Act (42 U.S.C. 7416) is amended
12 as follows:

13 (1) By striking “and 233” and inserting “233”.

14 (2) By striking “of moving sources)” and in-
15 serting “of moving sources), and 871 (preempting
16 certain State greenhouse gas programs for a limited
17 time)”.

18 (c) INSPECTIONS, MONITORING, AND ENTRY.—Sec-
19 tion 114(a) of the Clean Air Act (42 U.S.C. 7414(a)) is
20 amended by striking “section 112,” and all that follows
21 through “(ii)” and inserting the following: “section 112,
22 or any regulation of greenhouse gas emissions under title
23 VII or VIII, (ii)”.

1 (d) ENFORCEMENT.—Subsection (f) of section 304 of
2 the Clean Air Act (42 U.S.C. 7604(f)) is amended as fol-
3 lows:

4 (1) By striking “; or” at the end of paragraph
5 (3) thereof and inserting a comma.

6 (2) By striking the period at the end of para-
7 graph (4) thereof and inserting “, or”.

8 (3) By adding the following after paragraph (4)
9 thereof:

10 “(5) any requirement of title VII or VIII.”.

11 (e) ADMINISTRATIVE PROCEEDINGS AND JUDICIAL
12 REVIEW.—Section 307 of the Clean Air Act (42 U.S.C.
13 7607) is amended as follows:

14 (1) In subsection (a), by striking “, or section
15 306” and inserting “section 306, or title VII or
16 VIII”.

17 (2) In subsection (b)(1)—

18 (A) by striking “,” and inserting “,” in
19 each place such punctuation appears; and

20 (B) by striking “section 120,” in the first
21 sentence and inserting “section 120, any final
22 action under title VII or VIII,”.

23 (3) In subsection (d)(1) by amending subpara-
24 graph (S) to read as follows:

1 “(S) the promulgation or revision of any
2 regulation under title VII or VIII,”.

3 **TITLE IV—TRANSITIONING TO A**
4 **CLEAN ENERGY ECONOMY**
5 **Subtitle A—Ensuring Domestic**
6 **Competitiveness**

7 **PART 1—PRESERVING DOMESTIC**
8 **COMPETITIVENESS**

9 **SEC. 401. PURPOSES.**

10 The purposes of this part are as follows:

11 (1) To prevent an increase in greenhouse gas
12 emissions in countries other than the United States
13 as a result of direct and indirect compliance costs in-
14 curred under title VII of the Clean Air Act.

15 (2) To compensate the owners and operators of
16 entities in eligible domestic industrial sectors and
17 subsectors for carbon emission costs incurred under
18 title VII of the Clean Air Act.

19 (3) To limit compensation to the owners and
20 operators of entities in eligible industrial sectors and
21 subsectors to an amount that will prevent carbon
22 leakage while also rewarding innovation and facility-
23 level investments in energy efficiency performance
24 improvements.

1 (4) To provide compensation to the owners and
2 operators of entities in eligible industrial sectors and
3 subsectors for the costs of directly and indirectly
4 purchasing emission allowances needed for compli-
5 ance with title VII of the Clean Air Act, but not for
6 costs associated with other related or unrelated mar-
7 ket dynamics.

8 (5) To eliminate or reduce distribution of re-
9 bates under this part when such distribution is no
10 longer necessary to prevent carbon leakage from eli-
11 gible sectors or subsectors.

12 **SEC. 402. DEFINITIONS.**

13 (a) **IN GENERAL.**—Except as otherwise noted, for
14 purposes of this part, terms that are defined in title VII
15 of the Clean Air Act shall have the meanings given those
16 terms in title VII.

17 (b) **OTHER DEFINITIONS.**—In this part:

18 (1) The term “carbon leakage” means any sub-
19 stantial increase (as determined by the Adminis-
20 trator) in greenhouse gas emissions by manufac-
21 turing entities located in countries without commen-
22 surate greenhouse gas regulation, provided that such
23 increase is caused by an incremental cost of produc-
24 tion increase in the United States resulting from the
25 implementation of title VII of the Clean Air Act.

1 (2) The term “output” means the total tonnage
2 or other standard unit of production (as determined
3 by the Administrator) produced by a manufacturing
4 entity.

5 **SEC. 403. DISTRIBUTION OF REBATES.**

6 (a) DISTRIBUTION OF REBATES.—

7 (1) IN GENERAL.—The Administrator shall an-
8 nually distribute rebates, in amounts calculated
9 under subsection (c), to the owners and operators of
10 entities in eligible industrial sectors and subsectors
11 designated under subsection (b), subject to the max-
12 imum quantity limitation established under para-
13 graph (2) of this subsection.

14 (2) MAXIMUM.—If the total rebates calculated
15 under subsection (c) exceed the amount authorized
16 for this program, the Administrator shall reduce the
17 amount distributed to owners and operators under
18 paragraph (1) on a pro rata basis.

19 (3) LIST.—Not later than February 1 of each
20 year starting in 2012, the Administrator shall pub-
21 lish in the Federal Register a list of eligible indus-
22 trial sectors and subsectors pursuant to subsection
23 (b) and the amount of the rebate per unit of produc-
24 tion that shall be provided to entities in each eligible
25 industrial sector in the following calendar year.

1 (b) ELIGIBLE INDUSTRIAL SECTORS AND SUBSEC-
2 TORS.—

3 (1) IN GENERAL.—Not later than January 1,
4 2011, the Administrator shall promulgate a rule des-
5 ignating, based on the criteria under paragraph (2),
6 the industrial sectors and subsectors eligible for re-
7 bates under this part.

8 (2) PRESUMPTIVELY ELIGIBLE SECTORS AND
9 SUBSECTORS.—An owner or operator of an entity
10 shall receive rebates under subsection (a) if such
11 source is in a sector or subsector that is included in
12 a six-digit classification of the North American In-
13 dustrial Classification System that meets the criteria
14 under subparagraphs (A) and (B). The Adminis-
15 trator may rescind the eligibility of such sector or
16 subsector only if the Administrator determines, after
17 notice and an opportunity for comment, that, even
18 in the absence of the rebates distributed under this
19 section, such sector or subsector would not be sub-
20 ject to carbon leakage.

21 (A) ENERGY OR GREENHOUSE GAS INTEN-
22 SITY.—As determined by the Administrator, the
23 sector or subsector had—

24 (i) an energy intensity of at least 5
25 percent, calculated by dividing the cost of

1 purchased electricity and fuel costs of the
2 sector or subsector by the value of the
3 shipments of the sector or subsector, based
4 on data described in subparagraph (C); or
5 (ii) a greenhouse gas intensity of at
6 least 5 percent, calculated by dividing—

7 (I) **【insert EPA projected allow-**
8 **ance price for the year 2020 when it**
9 **is provided to the Committee】** multi-
10 plied by the tons of carbon dioxide
11 equivalent greenhouse gas emissions
12 (including direct emissions from fuel
13 combustion, process emissions, and in-
14 direct emissions from the generation
15 of electricity used to produce the out-
16 put of a sector or subsector) of the
17 sector or subsector; by

18 (II) the value of the shipments of
19 the sector or subsector, based on data
20 described in subparagraph (C).

21 (B) **TRADE INTENSITY.**—As determined by
22 the Administrator, the sector or subsector had
23 a trade intensity of at least 15 percent, cal-
24 culated by dividing the value of the total im-
25 ports and exports of such sector or subsector by

1 the value of the shipments plus the value of im-
2 ports of such sector or subsector, based on data
3 described in subparagraph (C).

4 (C) DATA SOURCES.—

5 (i) ELECTRICITY AND FUEL COSTS,
6 VALUE OF SHIPMENTS.—For purposes of
7 this subsection, the Administrator shall de-
8 termine electricity and fuel costs and the
9 value of shipments from data from years
10 2006, 2007, or 2008 from the United
11 States Census of Mineral Industries and
12 the United States Census Annual Survey
13 of Manufacturers (using data from the
14 most recent year that is available, up to
15 and including 2008), or, if such data are
16 unavailable, from data from the 2002 or
17 2006 Energy Information Agency's Manu-
18 facturing Energy Consumption Survey
19 (using 2006 data if it is available) and the
20 2002 or 2007 Economic Census of the
21 United States (using 2007 data if it is
22 available). The Administrator shall use
23 Manufacturing Energy Consumption Sur-
24 vey data from the most detailed industrial
25 classification level if such data is available.

1 If data from the Manufacturing Energy
2 Consumption Survey are unavailable for
3 any sector or subsector at the six-digit
4 classification level in the North American
5 Industrial Classification System, then the
6 Administrator may extrapolate the infor-
7 mation necessary to determine the eligi-
8 bility of a sector or subsector under this
9 paragraph from available Manufacturing
10 Energy Consumption Survey data per-
11 taining to a broader industrial category
12 classified in the North American Industrial
13 Classification System. Fuel cost data shall
14 not include the cost of fuel used as feed-
15 stock by an industrial sector or subsector.

16 (ii) IMPORTS AND EXPORTS.—For
17 purposes of this subsection, the Adminis-
18 trator may establish the value of imports
19 and exports by using United States Inter-
20 national Trade Commission data.

21 (iii) PERCENTAGES.—The Adminis-
22 trator shall round the energy intensity,
23 greenhouse gas intensity, and trade inten-
24 sity percentages under subparagraphs (A)

1 and (B), respectively, to the nearest whole
2 number.

3 (iv) GREENHOUSE GAS EMISSION CAL-
4 CULATIONS.—When calculating the tons of
5 carbon dioxide equivalent greenhouse gas
6 emissions for each sector or subsector
7 under subsection (b)(2)(A), the Adminis-
8 trator may, to the extent necessary with
9 respect to a sector or subsector, use eco-
10 nomic and engineering models and the best
11 available information on technology per-
12 formance levels for such sector or sub-
13 sector.

14 (3) INDIVIDUAL SHOWING.—The owner or oper-
15 ator of an entity in a sector or subsector shall re-
16 ceive rebates under subsection (a) if the Adminis-
17 trator determines that sufficient evidence exists that
18 such sector or subsector should be treated separately
19 from the other sectors or subsectors in the same six-
20 digit section of the North American Industrial Clas-
21 sification System code and that the sector or sub-
22 sector meets the energy or greenhouse gas intensity
23 and trade intensity criteria in paragraph (2).

24 (4) ADMINISTRATIVE DETERMINATION OF ADDI-
25 TIONAL ELIGIBLE SECTORS OR SUBSECTORS.—

1 (A) Any person may petition the Adminis-
2 trator to designate, by rule, as eligible under
3 this subsection any sector or subsector that
4 does not meet the criteria under paragraph (2)
5 or (3) but demonstrates to the satisfaction of
6 the Administrator that it is subject to carbon
7 leakage, comparable to that of sectors or sub-
8 sectors that meet the criteria under paragraph
9 (2) or (3).

10 (B) In determining whether a sector or
11 subsector is subject to carbon leakage, the Ad-
12 ministrator, in consultation with other Federal
13 agencies, as appropriate, shall take into ac-
14 count, in addition to the sector or subsector's
15 energy or greenhouse gas intensity and trade
16 intensity as calculated under paragraph (2),
17 each of the following:

18 (i) The potential for greater foreign
19 sourcing of production or services and the
20 effect of international competition on do-
21 mestic production.

22 (ii) The effect of international mar-
23 kets on product pricing.

24 (iii) The potential for net imports to
25 increase, or exports to decrease (resulting

1 in a loss of market share held by domestic
2 manufacturers to manufacturers located in
3 other countries), as a result of the direct
4 and indirect compliance costs of title VII
5 of the Clean Air Act.

6 (iv) The state of international negotia-
7 tions, agreements, and activities to reduce
8 global greenhouse gas emissions.

9 (C) For the purposes of subsection (b)(4),
10 section (b)(2)(C) shall be modified to require
11 the Administrator to use the most recent data
12 available for value of shipments from the listed
13 sources.

14 (c) CALCULATION OF REBATES.—

15 (1) COVERED ENTITIES.—Except as provided in
16 subsection (a)(2), the quantity of rebates distributed
17 by the Administrator under this section for a cal-
18 endar year to the owner or operator of a covered en-
19 tity shall be equal to the sum of the covered entity's
20 direct compliance factor and the covered entity's in-
21 direct carbon factor. Calculations under this para-
22 graph shall be based on the average of the best
23 available data from the calendar years that are 2
24 and 3 calendar years prior to the calendar year of

1 distribution. For purposes of determining such
2 amounts for each calendar year:

3 (A) DIRECT COMPLIANCE FACTOR.—The
4 direct compliance factor for a covered entity for
5 a calendar year is the product of—

6 (i) the output of the covered entity;

7 and

8 (ii) 85 percent of the average green-
9 house gas emissions (expressed in tons of
10 carbon dioxide equivalent) per unit of out-
11 put for all covered entities in the sector or
12 subsector, as determined by the Adminis-
13 trator based on reports provided under
14 subparagraph (C).

15 (B) INDIRECT CARBON FACTOR.—The in-
16 direct carbon factor for an entity for a calendar
17 year is the product obtained by multiplying the
18 output of the covered entity by both the emis-
19 sions intensity factor determined pursuant to
20 clause (i) and the electricity efficiency factor
21 determined pursuant to clause (ii) for the year
22 concerned.

23 (i) EMISSIONS INTENSITY FACTOR.—

24 (I) REGULATED ELECTRICITY
25 MARKETS.—In a regulated electricity

1 market, the emissions intensity factor
2 is the average greenhouse gas emis-
3 sions (expressed in tons of carbon di-
4 oxide equivalents) per kilowatt hour of
5 the electricity purchased by the cov-
6 ered entity, as determined by the Ad-
7 ministrator based on reports provided
8 under subparagraph (D).

9 (II) WHOLESALE COMPETITIVE
10 ELECTRICITY MARKETS.—In a whole-
11 sale competitive electricity market, the
12 emissions intensity factor is the aver-
13 age greenhouse gas emissions (ex-
14 pressed in tons of carbon dioxide
15 equivalents) per kilowatt hour of the
16 marginal source of supply of elec-
17 tricity purchased by the covered enti-
18 ty, as determined by the Adminis-
19 trator based on reports provided
20 under subparagraph (D).

21 (ii) ELECTRICITY EFFICIENCY FAC-
22 TOR.—The electricity efficiency factor is
23 85 percent of the average amount of elec-
24 tricity (in kilowatt hours) used per unit of
25 output for all covered entities in the rel-

1 evant sector or subsector, as determined by
2 the Administrator based on reports pro-
3 vided under subparagraph (C).

4 (C) REPORT TO ADMINISTRATOR.—Each
5 owner or operator of an entity in any sector or
6 subsector designated under subsection (b) and
7 each department, agency, and instrumentality
8 of the United States shall provide the Adminis-
9 trator with such information as the Adminis-
10 trator finds necessary to determine the direct
11 compliance factor and the indirect carbon factor
12 for each covered entity subject to this section.

13 (D) GREENHOUSE GASES FROM ELEC-
14 TRICITY.—Each person selling electricity to the
15 owner or operator of an entity in any sector or
16 subsector designated under subsection (b) shall
17 provide the owner or operator of the entity and
18 the Administrator, on a quarterly basis, such
19 information as is required to determine the
20 emissions intensity factor under subparagraph
21 (B)(i).

22 (E) EMISSIONS INTENSITY FACTOR RE-
23 DUCTION.—In calculating the average tons of
24 carbon dioxide equivalents of greenhouse gas
25 emissions for the numerator of the emissions

1 intensity factor under subparagraph (B)(i), the
2 Administrator shall reduce the actual, total ton-
3 nage (expressed in tons of carbon dioxide
4 equivalents) used by the value of any funding or
5 allowances the Administrator determines are
6 distributed at no cost under this Act to the per-
7 son making the sale of electricity and are used
8 by such person to prevent electricity rate in-
9 creases to the owner or operator of the entity.

10 (F) IRON AND STEEL SECTOR OR SUBSEC-
11 TORS.—For the purposes of determining the
12 amount of rebates to be distributed under this
13 section to the owner or operator of any iron and
14 steel manufacturing entity in a sector or sub-
15 sector designated under subsection (b), the Ad-
16 ministrator shall consider as in different sectors
17 and subsectors entities using integrated iron
18 and steelmaking technologies (including coke
19 ovens, blast furnaces, and other iron-making
20 technologies) and entities using electric arc fur-
21 nace technologies.

22 (2) OTHER ELIGIBLE ENTITIES.—The amount
23 of rebates distributed by the Administrator for a cal-
24 endar year to an owner or operator of an entity that
25 is in an eligible industrial sector or subsector, but is

1 not a covered entity, shall be equal to the indirect
2 carbon factor for the entity, as determined under
3 paragraph (1)(B). Calculations under this paragraph
4 shall be based on the average of the best available
5 data from the calendar years that are 2 and 3 cal-
6 endar years prior to the calendar year of distribu-
7 tion.

8 (3) INITIAL YEARS OF OPERATION.—The Ad-
9 ministrator shall issue regulations governing the dis-
10 tribution of rebates for the first and second years of
11 operation of an entity entitled to rebates under this
12 part. These regulations shall provide for—

13 (A) the distribution of rebates to such enti-
14 ties based on comparable entities in the same
15 sector or subsector; and

16 (B) an adjustment in the third year of op-
17 eration to reconcile the total amount of rebates
18 received during the first and second years of
19 operation to the amount the entity would have
20 received during the first and second years of
21 operation had the appropriate data been avail-
22 able.

23 **SEC. 404. REPORTS TO CONGRESS.**

24 Not later than one year after the first year in which
25 rebates is distributed pursuant to this part, and at least

1 every two years thereafter, the Administrator, in consulta-
2 tion with other Federal agencies, as appropriate, shall
3 transmit to Congress a report on the carbon leakage of
4 domestic industrial manufacturers and the effectiveness of
5 the distribution of rebates under section 403 in achieving
6 the purposes of this part. Such reports shall include rec-
7 ommendations on how to better achieve the purposes of
8 this part.

9 **SEC. 405. MODIFICATION OR ELIMINATION OF DISTRIBUTION OF REBATES.**
10

11 (a) ANNUAL PHASE DOWN SUBJECT TO ANNUAL RE-
12 VIEW.—

13 (1) REDUCTION.—The rebates provided to a
14 covered entity shall equal a percentage multiplied by
15 the sum of the entity's direct compliance factor and
16 the entity's indirect carbon factor. The rebates pro-
17 vided to an entity that is in an eligible sector or sub-
18 sector but is not a covered entity shall equal that
19 same percentage multiplied by the entity's indirect
20 carbon factor. This percentage shall equal 100 per-
21 cent for each calendar year through 2020. Subject
22 to paragraph (2), beginning in calendar year 2021,
23 and in each calendar year thereafter, this percentage
24 shall be reduced by 10 percentage points annually.

1 (2) REVIEW.—If the President, determines that
2 other countries have not taken actions that have
3 substantially mitigated the risk that domestic com-
4 panies in a particular sector or subsector will reduce
5 existing, or not initiate new, production in the
6 United States due to the costs of complying with
7 this title, then the Administrator shall, by rule, re-
8 duce or eliminate the reduction under paragraph (1)
9 to reflect such risk. The Administrator may reduce
10 or eliminate the reduction under paragraph (1) for
11 individual sectors or aggregates of sectors and sub-
12 sectors, as appropriate.

13 (b) ANNUAL REVIEW FOR ELIMINATION.—Each cal-
14 endar year after 2020, the Administrator may eliminate
15 the distribution of rebates to the owners and operators of
16 entities in an eligible sector or subsector if the Adminis-
17 trator, in consultation with other Federal agencies, as ap-
18 propriate, determines that more than 70 percent of the
19 global output from a sector or subsector is manufactured
20 in countries subject to commensurate greenhouse gas reg-
21 ulation. In making such determination, the Administrator
22 shall consider a country to have commensurate greenhouse
23 gas regulation if—

24 (1) the country’s annual greenhouse gas inten-
25 sity or energy intensity (as described in section

1 403(b)) for a sector or subsector is equal to or less
2 than the greenhouse gas intensity or energy inten-
3 sity for such sector or subsector in the United States
4 in the most recent calendar year for which reliable
5 data are available; or

6 (2) the country has implemented policies, in-
7 cluding sectoral caps, export tariffs, or production
8 fees, that individually or collectively place a price on
9 greenhouse gas emissions from a sector or subsector
10 that is at least 60 percent of the cost of complying
11 with title VII of the Clean Air Act in the United
12 States for such sector or subsector, averaged over a
13 two-year period.

14 **SEC. 406. CESSATION OF QUALIFYING ACTIVITIES.**

15 If, as determined by the Administrator, an entity is
16 no longer in an eligible sector or subsector designated
17 under section 403(b), the Administrator shall not dis-
18 tribute rebates to the owner or operator of such facility
19 under this part.

20 **SEC. 407. AUTHORIZATION OF APPROPRIATIONS.**

21 To carry out this part, there are authorized to be ap-
22 propriated such sums as may be necessary.

1 **PART 2—INTERNATIONAL RESERVE ALLOWANCE**

2 **PROGRAM**

3 **SEC. 411. DEFINITIONS.**

4 In this part:

5 (1) COVERED GOOD.—The term “covered good”
6 means a good that, as identified by the Adminis-
7 trator by regulation—

8 (A) is a primary product;

9 (B) generates, in the course of the manu-
10 facture of the good, a substantial quantity of
11 direct greenhouse gas emissions or indirect
12 greenhouse gas emissions; and

13 (C) is closely related to a good of the
14 United States that is affected by a requirement
15 of title VII of the Clean Air Act.

16 (2) INDIRECT GREENHOUSE GAS EMISSIONS.—
17 The term “indirect greenhouse gas emissions”
18 means greenhouse gas emissions resulting from the
19 generation of electricity consumed in manufacturing
20 a covered good.

21 (3) PRIMARY PRODUCT.—The term “primary
22 product” means—

23 (A) iron, steel, steel mill products (includ-
24 ing pipe and tube), aluminum, cement, glass
25 (including flat, container, and specialty glass

1 and fiberglass), pulp, paper, chemicals, and in-
2 dustrial ceramics; and

3 (B) any other manufactured product
4 that—

5 (i) is sold in bulk for purposes of fur-
6 ther manufacture or inclusion in a finished
7 product; and

8 (ii) generates, in the course of the
9 manufacture of the product, direct green-
10 house gas emissions or indirect greenhouse
11 gas emissions that are comparable (on an
12 emissions-per-output basis) to emissions
13 generated in the manufacture of products
14 listed in subparagraph (A).

15 **SEC. 412. PURPOSES.**

16 The purposes of this part are—

17 (1) to promote a strong global effort to signifi-
18 cantly reduce greenhouse gas emissions;

19 (2) to ensure, to the maximum extent prac-
20 ticable, that greenhouse gas emissions occurring out-
21 side the United States do not undermine the objec-
22 tives of the United States in addressing global cli-
23 mate change; and

24 (3) to encourage effective international action
25 to achieve those objectives through—

1 (A) agreements negotiated between the
2 United States and foreign countries; and

3 (B) measures carried out by the United
4 States that comply with applicable international
5 agreements.

6 **SEC. 413. INTERNATIONAL NEGOTIATIONS.**

7 (a) FINDING.—Congress finds that the purposes de-
8 scribed in section 412 can be most effectively addressed
9 and achieved through agreements negotiated between the
10 United States and foreign countries.

11 (b) STATEMENT OF POLICY.—It is the policy of the
12 United States to work proactively under the United Na-
13 tions Framework Convention on Climate Change and, in
14 other appropriate forums, to establish binding agreements
15 committing all major greenhouse gas-emitting nations to
16 contribute equitably to the reduction of global greenhouse
17 gas emissions.

18 **SEC. 414. REPORT TO CONGRESS AND FINDING.**

19 (a) REPORT TO CONGRESS.—Not later than June 30,
20 2017, the President, in consultation with the Environ-
21 mental Protection Agency and other appropriate agencies,
22 shall submit to Congress a report on—

23 (1) the extent to which direct and indirect com-
24 pliance costs incurred pursuant to title VII of the

1 Clean Air Act have resulted in, or are likely to result
2 in—

3 (A) a reduction in existing, or failure to
4 initiate new, domestic production in sectors or
5 subsectors that produce or manufacture covered
6 goods;

7 (B) a reduction in existing, or failure to
8 initiate new, domestic jobs in sectors or subsec-
9 tors that manufacture or produce covered
10 goods; and

11 (C) an increase in greenhouse gas emis-
12 sions—

13 (i) by foreign manufacturing facilities
14 that manufacture or produce covered goods
15 and that do not have greenhouse gas com-
16 pliance obligations commensurate with
17 those that would apply in the United
18 States; and

19 (ii) that are caused by incremental
20 cost increases resulting from compliance
21 with title VII of the Clean Air Act;

22 (2) the extent to which the funding provided, or
23 expected to be provided, pursuant to part 1 has miti-
24 gated or addressed the factors listed in paragraph
25 (1); and

1 (3) the level of greenhouse gas regulation (in-
2 cluding requirements, export tariffs, or other meas-
3 ures adopted to imposed to reduce greenhouse gas
4 emissions) of particular sectors or subsectors in
5 other developed and developing countries, and the
6 cost of compliance with those regulations, taking
7 into account the distribution of allowances, credits,
8 or rebates.

9 (b) FINDING.—The President shall also make a find-
10 ing as to whether the direct and indirect compliance costs,
11 as mitigated by funding provided under part 1, are caus-
12 ing any of the adverse effects listed below. If the President
13 determines that direct and indirect costs, after mitigated
14 by rebates provided under part 1, to a sector or subsector
15 of complying with title VII of the Clean Air Act are caus-
16 ing a significant—

17 (1) reduction in existing, or failure to initiate
18 new, domestic production in any sector or subsector
19 that manufactures or produces covered goods;

20 (2) reduction in existing, or failure to initiate
21 new, domestic jobs in any sector or subsector that
22 manufacture or produce covered goods; or

23 (3) increase in greenhouse gas emissions—

24 (A) by foreign manufacturing facilities that
25 manufacture or produce covered goods and that

1 do not have greenhouse gas compliance obliga-
2 tions commensurate with those that would
3 apply in the United States; and

4 (B) that are caused by incremental cost in-
5 creases resulting from compliance with title VII
6 of the Clean Air Act;

7 then the President shall issue regulations creating the pro-
8 gram authorized by section 416.

9 (c) DELEGATION.—The President may delegate his
10 responsibilities under this section to an appropriate agen-
11 cy, department, or official of the United States Govern-
12 ment.

13 **SEC. 415. PROHIBITION.**

14 After the effective date of regulations issued by the
15 Administrator under section 416(a), no person may im-
16 port into the United States a covered good without sub-
17 mitting the required number of international reserve al-
18 lowances in accordance with such regulations.

19 **SEC. 416. INTERNATIONAL RESERVE ALLOWANCE PRO-**
20 **GRAM.**

21 (a) ESTABLISHMENT.—

22 (1) IN GENERAL.—If the President makes an
23 affirmative determination under section 414(b),
24 then, not later than 24 months after that determina-
25 tion, the Administrator shall issue regulations—

1 (A) establishing, determining an appro-
2 priate price for, and offering for sale to United
3 States importers international reserve allow-
4 ances;

5 (B) requiring the submission of appro-
6 priate amounts of such allowances in conjunc-
7 tion with the importation into the United States
8 of a covered good produced by any sector or
9 subsector for which the President made an af-
10 firmative finding under section 414(b); and

11 (C) exempting from the requirements of
12 subparagraph (B) covered goods produced in—

13 (i) foreign countries that the United
14 Nations has identified as among the least
15 developed or developing countries; or

16 (ii) foreign countries that the Presi-
17 dent has determined to be responsible for
18 less than 0.5 percent of total global green-
19 house gas emissions.

20 (2) PURPOSE OF PROGRAM.—The Adminis-
21 trator shall establish the program under paragraph
22 (1) in a manner that addresses, consistent with
23 international agreements to which the United States
24 is a party, the competitive imbalance in the costs of
25 producing or manufacturing covered goods in af-

1 fected sectors or subsectors resulting from the dif-
2 ference in—

3 (A) the direct and indirect costs of com-
4 plying with title VII of the Clean Air Act; and

5 (B) the direct and indirect costs, if any, of
6 complying in other countries with greenhouse
7 gas regulatory programs, requirements, export
8 tariffs, or other measures adopted or imposed
9 to reduce greenhouse gas emissions.

10 (b) COVERED FACILITIES.—International reserve al-
11 lowances may not be held by covered entities to comply
12 with the compliance obligations of section 722 of the Clean
13 Air Act.

14 **Subtitle B—Green Jobs and**
15 **Worker Transition**

16 **SEC. 421. CLEAN ENERGY CURRICULUM DEVELOPMENT**
17 **GRANTS.**

18 (a) AUTHORIZATION.—The Secretary of Education is
19 authorized to award grants, on a competitive basis, to eli-
20 gible partnerships to develop programs of study (con-
21 taining the information described in section 122(c)(1)(A)
22 of the Carl D. Perkins Career and Technical Education
23 Act of 2006 (20 U.S.C. 2342), that are focused on emerg-
24 ing careers and jobs in renewable energy, energy effi-
25 ciency, and climate change mitigation.

1 (b) ELIGIBLE PARTNERSHIPS.—For purposes of this
2 section, an eligible partnership shall include—

3 (1) at least 1 local education agency eligible for
4 funding under section 131 of the Carl D. Perkins
5 Career and Technical Education Act of 2006 (20
6 U.S.C. 2351) or an area career and technical edu-
7 cation school or education service agency described
8 in such section;

9 (2) at least 1 postsecondary institution eligible
10 for funding under section 132 of such Act (20
11 U.S.C. 2352); and

12 (3) representatives of the community including
13 business, labor organizations, and industry that have
14 experience in clean energy.

15 (c) APPLICATION.—An eligible partnership seeking a
16 grant under this section shall submit an application to the
17 Secretary at such time and in such manner as the Sec-
18 retary may require. Applications shall include—

19 (1) a description of the eligible partners and
20 partnership, the roles and responsibilities of each
21 partner, and a demonstration of each partner's ca-
22 pacity to support the program;

23 (2) a description of the career area or areas
24 within the field of clean energy to be developed, the

1 reason for the choice, and evidence of the labor mar-
2 ket need to prepare students in that area;

3 (3) a description of the new or existing program
4 of study and both secondary and postsecondary com-
5 ponents;

6 (4) a description of the students to be served by
7 the new program of study;

8 (5) a description of how the program of study
9 funded by the grant will be replicable and dissemi-
10 nated to schools outside of the partnership, including
11 urban and rural areas;

12 (6) a description of applied learning that will be
13 incorporated into the program of study and how it
14 will incorporate or reinforce academic learning;

15 (7) a description of how the program of study
16 will be delivered;

17 (8) a description of how the program will pro-
18 vide accessibility to students, especially economically
19 disadvantaged, low performing, and urban and rural
20 students; and

21 (9) a description of how the program will ad-
22 dress placement of students in nontraditional fields
23 as described in section 3(20) of the Carl D. Perkins
24 Career and Technical Education Act of 2006 (20
25 U.S.C. 2302(20)).

1 (d) PRIORITY.—The Secretary shall give priority to
2 applications that—

3 (1) use online learning or other innovative
4 means to deliver the program of study to students,
5 educators, and instructors outside of the partner-
6 ship; and

7 (2) focus on low performing students and spe-
8 cial populations as defined in section 3(29) of the
9 Carl D. Perkins Career and Technical Education
10 Act of 2006 (20 U.S.C. 2302(29)).

11 (e) PEER REVIEW.—The Secretary shall convene a
12 peer review process to review applications for grants under
13 this section and to make recommendations regarding the
14 selection of grantees. Members of the peer review com-
15 mittee shall include—

16 (1) educators who have experience imple-
17 menting curricula with comparable purposes; and

18 (2) business and industry experts in clean en-
19 ergy-related fields.

20 (f) USES OF FUNDS.—Grants awarded under this
21 section shall be used for the development, implementation,
22 and dissemination of programs of study (as described in
23 section 122(c)(1)(A) of the Carl D. Perkins Career and
24 Technical Education Act (20 U.S.C. 342(c)(1)(A))) in ca-
25 reer areas related to clean energy.

1 **SEC. 422. WORKFORCE TRAINING AND EDUCATION IN**
2 **CLEAN ENERGY, ENERGY EFFICIENCY, CLI-**
3 **MATE CHANGE MITIGATION, AND SUSTAIN-**
4 **ABLE ENVIRONMENTAL PRACTICES.**

5 (a) DEFINITION.—In this section, the term “institu-
6 tion of higher education” has the meaning given the term
7 in section 101 of the Higher Education Act of 1965 (20
8 U.S.C. 1001).

9 (b) IN GENERAL.—From funds made available under
10 subsection (e), the Secretary of Labor shall carry out a
11 sustainability workforce training and education program.
12 In carrying out the program, the Secretary shall award
13 grants to institutions of higher education to provide work-
14 force training and education in industries and practices,
15 such as—

16 (1) clean energy, including wind, solar, and geo-
17 thermal energy;

18 (2) green construction, green retrofitting, and
19 green design;

20 (3) green chemistry,

21 (4) water and energy conservation;

22 (5) recycling and waste reduction;

23 (6) sustainable agriculture and farming;

24 (7) sustainable culinary practices;

25 (8) Smart Grid technology, design, and deploy-
26 ment;

1 (9) advanced vehicle technology, including plug-
2 in electric drive vehicles; and

3 (10) electric power transmission systems, in-
4 cluding upgrading and reconductoring.

5 (c) AWARD CONSIDERATIONS.—Of the funds made
6 available under subsection (b) for a fiscal year, not less
7 than half shall be awarded to institutions of higher edu-
8 cation with existing (as of the date of the award) academic
9 programs that lead to certificates or degrees in 1 or more
10 of the industries and practices described in paragraphs (1)
11 through (10) of subsection (b).

12 (d) PEER REVIEW.—The Secretary shall convene a
13 peer review process to review applications for grants under
14 this section and to make recommendations regarding the
15 selection of grantees. Members of the peer review com-
16 mittee shall include—

17 (1) educators who have relevant experience in
18 implementing curricula with comparable aims and
19 subject matter; and

20 (2) business and industry experts who work in
21 clean energy-related fields.

22 (e) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated such sums as are nec-
24 essary to carry out this section for fiscal year 2009 and
25 each subsequent fiscal year.

1 **SEC. 423. WAGE RATE REQUIREMENTS.**

2 Each recipient of support under the provisions of this
3 subtitle or subtitle J of title I of the National and Commu-
4 nity Service Act of 1990 (42 U.S.C. 12511 et seq.) shall
5 provide reasonable assurance that all those employed in
6 the performance of programs authorized under those pro-
7 visions, including those employed by contractors or sub-
8 contractors, will be paid wages at rates not less than those
9 prevailing on similar work in the locality as determined
10 by the Secretary of Labor in accordance with subchapter
11 IV of chapter 31 of part A of subtitle II of title 40, United
12 States Code (commonly referred to as the “Davis-Bacon
13 Act”).

14 **SEC. 424. WORKER TRANSITION.**

[to be supplied]

15 **Subtitle C—Consumer Assistance**

16 **SEC. 431. [TO BE SUPPLIED].**

17 **Subtitle D—Exporting Clean**
18 **Technology**

19 **SEC. 451. PURPOSES.**

20 The purposes of this subtitle are—

21 (1) to provide United States assistance to en-
22 courage widespread deployment, in developing coun-
23 tries, of technologies that reduce greenhouse gas
24 emissions; and

1 (2) to provide such assistance in a manner that
2 encourages such countries to adopt policies and
3 measures that substantially reduce emissions of
4 greenhouse gases.

5 **SEC. 452. DEFINITIONS.**

6 In this subtitle:

7 (1) **APPROPRIATE CONGRESSIONAL COMMIT-**
8 **TEES.**—The term “appropriate congressional com-
9 mittees” means—

10 (A) the Committees on Energy and Com-
11 merce and Foreign Affairs of the House of Rep-
12 resentatives; and

13 (B) the Committees on Environment and
14 Public Works, Energy and Natural Resources,
15 and Foreign Relations of the Senate.

16 (2) **DEVELOPING COUNTRY.**—The term “devel-
17 oping country” means a country eligible to receive fi-
18 nancial assistance from the International Bank for
19 Reconstruction and Development (commonly known
20 as the World Bank).

21 (3) **ELIGIBLE COUNTRY.**—The term “eligible
22 country” means a developing country that is deter-
23 mined by the President under section 454 to be eli-
24 gible to receive assistance from the International
25 Clean Technology Fund.

1 (4) INTERAGENCY GROUP.—The term “inter-
2 agency group” means the group established by the
3 President under section 453 to administer the Inter-
4 national Clean Technology Fund.

5 (5) INTERNATIONAL CLEAN TECHNOLOGY
6 FUND.—The term “International Clean Technology
7 Fund” means the International Clean Technology
8 Fund established under section 453.

9 **SEC. 453. FUND ESTABLISHMENT AND GOVERNANCE.**

10 (a) ESTABLISHMENT.—There is hereby established in
11 the Treasury of the United States an International Clean
12 Technology Fund.

13 (b) INTERAGENCY GROUP.—The President shall es-
14 tablish an interagency group to administer the Inter-
15 national Clean Technology Fund. The Members of the
16 interagency group shall include—

17 (1) the Secretary of State;

18 (2) the Administrator of the Environmental
19 Protection Agency;

20 (3) the Secretary of Energy;

21 (4) the Secretary of the Treasury; and

22 (5) any other head of a Federal agency or execu-
23 tive branch appointee that the President may des-
24 ignate.

1 (c) CHAIRPERSON.—The Secretary of State shall
2 serve as the chairperson of the interagency group.

3 **SEC. 454. DETERMINATION OF ELIGIBLE COUNTRIES.**

4 (a) PUBLICATION AND REVISION OF LIST.—Not later
5 than January 1, 2012, and annually thereafter, the Presi-
6 dent shall determine and publish a list of countries eligible
7 for assistance under this subtitle.

8 (b) CRITERIA FOR ELIGIBILITY.—The criteria for
9 designation as an eligible country shall include the fol-
10 lowing:

11 (1) The country is a developing country that
12 has signed and ratified an international treaty or
13 agreement that requires such country to undertake
14 nationally appropriate greenhouse gas mitigation ac-
15 tivities.

16 (2) The President has determined that the
17 country has undertaken nationally appropriate miti-
18 gation activities that will achieve substantial reduc-
19 tions in greenhouse gas emissions, relative to busi-
20 ness-as-usual levels, in a measurable, reportable, and
21 verifiable manner.

22 (3) Such other criteria as the President deter-
23 mines will serve the purposes of this subtitle or
24 other United States national security, foreign policy,
25 environmental, or economic objectives.

1 **SEC. 455. FUNDING.**

2 (a) IN GENERAL.—The Secretary of State, in con-
3 sultation with the interagency group, is authorized to pro-
4 vide assistance from the International Clean Technology
5 Fund for projects (which, for purposes of this subtitle,
6 shall include sector-based or cross-sectoral programs, poli-
7 cies, or measures) that are in eligible countries and ap-
8 proved under this subtitle.

9 (b) FORMS OF ASSISTANCE.—Assistance under this
10 subtitle may be provided in the form of grants, loans, or
11 such other forms of assistance as the Secretary of State
12 may authorize after consultation with the interagency
13 group.

14 (c) DISTRIBUTION OF ASSISTANCE.—

15 (1) IN GENERAL.—The Secretary of State, in
16 consultation with the interagency group, shall dis-
17 tribute assistance from the International Clean
18 Technology Fund—

19 (A) directly;

20 (B) through agreements with the Inter-
21 national Bank for Reconstruction and Develop-
22 ment (commonly known as the World Bank),
23 one or more other multilateral development
24 banks, or international development institu-
25 tions;

1 (C) through an international fund created
2 pursuant to the United Nations Framework
3 Convention on Climate Change, done at New
4 York on May 9, 1992, or an agreement nego-
5 tiated under such Convention; or

6 (D) through some combination of the
7 mechanisms identified in subparagraphs (A)
8 through (C).

9 (2) DISTRIBUTION THROUGH INTERNATIONAL
10 INSTITUTION OR FUND.—If assistance is distributed
11 through an international institution or fund, as au-
12 thorized in paragraph (1), the Secretary of State
13 and the interagency group shall seek to ensure the
14 establishment and implementation of adequate mech-
15 anisms to apply and enforce the project selection cri-
16 teria and other requirements of this subtitle.

17 (3) LIMITATION.—Not more than 20 percent of
18 amounts made available to carry out this subtitle
19 shall be spent in any single country in any year.

20 (d) PROJECT CATEGORIES.—Assistance under this
21 subtitle shall be limited to projects that achieve substantial
22 reductions in greenhouse gas emissions through the de-
23 ployment of low- or zero-carbon technologies, including
24 projects that—

1 (1) deploy technologies to capture and sequester
2 carbon dioxide emissions from electric generating
3 units or large industrial sources;

4 (2) deploy renewable electricity generation from
5 wind, solar, biomass, geothermal, marine, or
6 hydrokinetic sources;

7 (3) achieve substantial increases in the effi-
8 ciency of electricity consumption, distribution, or
9 transmission; or

10 (4) reduce transportation sector emissions
11 through increased transportation system efficiency
12 or use of transportation fuels that have lifecycle
13 greenhouse gas emissions that are substantially
14 lower than those attributable to fossil fuel-based al-
15 ternatives.

16 (e) CRITERIA FOR PROJECT SELECTION.—Not later
17 than 2 years after the date of enactment of this subtitle,
18 the interagency group shall develop and publish a set of
19 criteria to be used in selecting projects within eligible
20 countries for assistance under this subtitle. These criteria
21 shall—

22 (1) require that—

23 (A) the project will result in substantial
24 measurable, reportable, and verifiable reduc-

1 tions in greenhouse gas emissions relative to
2 business-as-usual levels;

3 (B) the project will not have significant ad-
4 verse effects on human health, safety, or wel-
5 fare, the environment, or natural resources
6 within or outside the boundaries of the project;

7 (C) the project owner or operator has dem-
8 onstrated capacity to implement and maintain
9 any technologies purchased or installed with as-
10 sistance from the International Clean Tech-
11 nology Fund;

12 (D) the project will not cause any net loss
13 of United States jobs or displacement of United
14 States production;

15 (E) the project meets such other require-
16 ments as the interagency group determines ap-
17 propriate to further the purposes of this sub-
18 title; and

19 (F) the project will be co-financed by the
20 host country government, private sector institu-
21 tions, or a multinational development bank; and

22 (2) give preference to projects that—

23 (A) maximize greenhouse gas reductions
24 achieved per dollar of assistance provided;

1 (B) promise to achieve large-scale green-
2 house gas reductions at a sectoral or cross-sec-
3 toral level; or

4 (C) have the potential to catalyze a shift
5 within the host country towards widespread de-
6 ployment of low- or zero-carbon energy tech-
7 nologies.

8 (f) PROJECT APPROVAL.—Except where assistance is
9 distributed through an international institution or fund
10 pursuant to subsection (c), the Secretary of State, in con-
11 sultation with the interagency group, shall select projects
12 to receive assistance under this subtitle in accordance with
13 the selection criteria developed under subsection (e).

14 (g) MONITORING, EVALUATION, AND ENFORCE-
15 MENT.—The Secretary of State, in consultation with the
16 interagency group, shall establish and implement a system
17 to monitor and evaluate the performance of projects re-
18 ceiving assistance under this subtitle. The Secretary of
19 State shall have the authority to suspend or terminate as-
20 sistance in whole or in part for a project if it is determined
21 that the project is not operating in compliance with the
22 approved proposal.

23 **SEC. 456. ANNUAL REPORTS.**

24 Not later than March 1, 2012, and annually there-
25 after, the President shall submit to the appropriate Con-

1 gressional committees a report on the assistance provided
2 under this subtitle during the prior fiscal year. Such re-
3 port shall include—

4 (1) a description of the amount of obligations
5 and expenditures for assistance provided to each eli-
6 gible country during the prior fiscal year;

7 (2) a description of each project that received
8 assistance, including the amount of obligations and
9 expenditures for assistance provided to such project,
10 during the prior fiscal year; and

11 (3) an estimate of the greenhouse gas emission
12 reductions achieved by assistance provided under
13 this subtitle during the prior fiscal year.

14 **Subtitle E—Adapting to Climate** 15 **Change**

16 **PART 1—DOMESTIC ADAPTATION**

17 **Subpart A—National Climate Change Adaptation** 18 **Program**

19 **SEC. 461. DEFINITIONS.**

20 As used in this subpart—

21 (1) COUNCIL.—The term “Council” means the
22 National Climate Change Adaptation Council estab-
23 lished under section 462.

24 (2) NATIONAL ASSESSMENT.—The term “Na-
25 tional Assessment” refers to a National Climate

1 Change Vulnerability Assessment prepared pursuant
2 to section 464.

3 (3) NATIONAL CLIMATE CHANGE ADAPTATION
4 FUND.—The term “National Climate Change Adap-
5 tation Fund” means the National Climate Change
6 Adaptation Fund established under section 467 of
7 this Act.

8 (4) NOAA.—The term “NOAA” means the Na-
9 tional Oceanic and Atmospheric Administration.

10 (5) PROGRAM.—The term “Program” means
11 the National Climate Change Adaptation Program
12 established under section 463.

13 (6) TRIBAL GOVERNMENT.—The term “tribal
14 government” means the official government of a fed-
15 erally recognized Indian tribe.

16 **SEC. 462. NATIONAL CLIMATE CHANGE ADAPTATION COUN-**
17 **CIL.**

18 (a) ESTABLISHMENT.—Not later than 90 days after
19 the date of enactment of this Act, the President shall es-
20 tablish a National Climate Change Adaptation Council,
21 consisting of representatives, appointed by the head of the
22 respective Federal agency, of—

23 (1) NOAA;

24 (2) the Environmental Protection Agency;

25 (3) the Department of Agriculture;

- 1 (4) the Department of Commerce;
- 2 (5) the Department of Defense;
- 3 (6) the Department of Energy;
- 4 (7) the Department of Health and Human
5 Services;
- 6 (8) the Department of Homeland Security;
- 7 (9) the Department of Housing and Urban De-
8 velopment;
- 9 (10) the Department of the Interior;
- 10 (11) the Department of Transportation;
- 11 (12) the Army Corps of Engineers;
- 12 (13) the Centers for Disease Control;
- 13 (14) the Federal Emergency Management
14 Agency;
- 15 (15) the National Aeronautics and Space Ad-
16 ministration;
- 17 (16) the United States Geological Survey; and
- 18 (17) such other Federal agencies or depart-
19 ments as the President considers appropriate.

20 (b) CHAIRPERSON.—The representative described in
21 subsection (a)(1) shall be the chairperson of the Council.

22 (c) FUNCTIONS.—The Council shall serve as a forum
23 for interagency consultation on, and coordination of, Fed-
24 eral policies relating to assessment of, and adaptation to,

1 the impacts of climate change on the United States and
2 its territories.

3 **SEC. 463. NATIONAL CLIMATE CHANGE ADAPTATION PRO-**
4 **GRAM.**

5 The Secretary of Commerce, acting through the Ad-
6 ministrator of NOAA, shall establish within NOAA a Na-
7 tional Climate Change Adaptation Program for the pur-
8 pose of increasing the overall effectiveness of Federal cli-
9 mate change adaptation efforts. Under the Program, the
10 Administrator of NOAA shall, in consultation as appro-
11 priate with the Council—

12 (1) develop and publish periodic National As-
13 sessments under section 464;

14 (2) provide to Federal agencies, local, State,
15 and tribal governments, and nongovernmental stake-
16 holders policy-relevant scientific information, re-
17 search products, decision tools, and technical sup-
18 port related to climate change impacts and adapta-
19 tion to such impacts, as provided in section 465; and

20 (3) advise Federal agencies on issues related to
21 climate change impacts and adaptation to such im-
22 pacts, including through the provision of technical
23 support to Federal agencies in the development of
24 agency climate change adaptation plans as required
25 under section 466.

1 **SEC. 464. NATIONAL CLIMATE CHANGE VULNERABILITY AS-**
2 **SESSMENTS.**

3 (a) IN GENERAL.—Not later than January 1, 2012,
4 and every 4 years thereafter, the Administrator of NOAA
5 shall publish and deliver to the President a National Cli-
6 mate Change Vulnerability Assessment evaluating regional
7 and national vulnerability to impacts of climate change,
8 strategies to adapt to such impacts, and priorities for fur-
9 ther research related to climate change impacts and adapt-
10 ive capacity.

11 (b) CONTENTS.—

12 (1) REGIONAL ASSESSMENTS.—Each National
13 Assessment shall include regional assessments for a
14 sufficient number of geographic regions within the
15 United States and its territories to effectively ad-
16 dress specific climate change impacts at the regional
17 and State or territorial levels. Each regional assess-
18 ment shall—

19 (A) assess, at an appropriate geographic
20 scale, the nature and probability of predicted
21 short-term, medium-term, and long-term im-
22 pacts of climate change on human health and a
23 broad range of natural systems, resources, in-
24 frastructure, and social and economic sectors;

25 (B) provide a regionally prioritized list of
26 vulnerable systems and areas and an estimate

1 of the range of anticipated costs of climate
2 change impacts within the region;

3 (C) describe current efforts within the re-
4 gion to adapt to climate change impacts, in
5 areas such as public health, emergency re-
6 sponse, infrastructure and development, water
7 resource management, agriculture, forest man-
8 agement, and coastal management;

9 (D) identify gaps in current adaptation ef-
10 forts within the region, strategies to address
11 such gaps, and estimates of the costs of imple-
12 menting such strategies;

13 (E) describe current research, observation,
14 and monitoring activities focused on under-
15 standing regional climate change impacts and
16 adaptation to such impacts, as well as research
17 and data needs and priorities in these areas;

18 (F) assess the adequacy of existing mecha-
19 nisms for communication and coordination
20 within the region between Federal agencies and
21 regional, State, local, and tribal stakeholders
22 and recommend measures to enhance such com-
23 munication and coordination; and

1 (G) include any other information relevant
2 to understanding regional climate change im-
3 pacts and adaptation.

4 (2) NATIONAL SYNTHESIS.—Each National As-
5 sessment shall include a synthesis of the regional as-
6 sements, including—

7 (A) a description of relevant research on
8 national-scale, international-scale, or global-
9 scale climate change impacts, vulnerabilities,
10 and adaptive strategies not addressed in the re-
11 gional assessments;

12 (B) based on the regional assessments, a
13 nationally prioritized list of vulnerable systems
14 and regions in the United States and a national
15 estimate of the range of costs of short-term,
16 medium-term, and long-term costs of predicted
17 climate change impacts;

18 (C) a nationally prioritized list of strate-
19 gies and actions to address climate change im-
20 pacts, including estimates of the costs of imple-
21 menting such strategies and actions and the ap-
22 propriate roles of relevant Federal Government
23 agencies;

24 (D) a description of priorities for devel-
25 oping Federal research, observation, and moni-

1 toring, and policy tools to meet the needs of
2 State and local decisionmakers identified in the
3 regional assessments;

4 (E) an assessment of the adequacy of ex-
5 isting mechanisms for communication and co-
6 ordination between Federal agencies and re-
7 gional, State, local, and tribal stakeholders and
8 recommendations for measures to enhance such
9 communication and coordination;

10 (F) a description of the progress made to-
11 wards achieving the objectives identified in the
12 prior National Assessment, except that such re-
13 quirement shall not apply to the first National
14 Assessment; and

15 (G) any other relevant results from the re-
16 gional assessments that have implications for
17 Federal climate change research, mitigation, or
18 adaptation efforts.

19 (c) **METHODOLOGICAL AND PROCEDURAL REQUIRE-**
20 **MENTS.—**

21 (1) **CONSULTATION WITH COUNCIL.—**In devel-
22 oping the National Assessments, the Administrator
23 of NOAA shall consult with the Council and shall
24 seek input and assistance from the Federal agencies

1 represented on the Council within their respective
2 areas of expertise.

3 (2) CONSULTATION WITH LOCAL, STATE, AND
4 REGIONAL STAKEHOLDERS.—In developing the Na-
5 tional Assessments, the Administrator of NOAA and
6 participating Federal agencies shall consult with
7 State, local, and tribal governments and nongovern-
8 mental stakeholders at the local, State, and regional
9 levels, to facilitate coordination of efforts and to
10 maximize the utility to local, State, regional, and
11 tribal decision makers of the information provided
12 by the National Assessment.

13 (3) BEST AVAILABLE SCIENCE.—The National
14 Assessments shall be based on the best scientific and
15 commercial data available.

16 (4) TREATMENT OF UNCERTAINTY.—To ensure
17 that scientific uncertainties are addressed through a
18 consistent methodology, all components of the Na-
19 tional Assessments shall follow either—

20 (A) the guidance on treatment of uncer-
21 tainty set forth in the Intergovernmental Panel
22 on Climate Change's Guidance Notes for Lead
23 Authors of the IPCC Fourth Assessment Re-
24 port on Addressing Uncertainty; or

1 (B) such similar uniform guidelines on the
2 treatment of uncertainty as the Administrator
3 of NOAA may establish.

4 (5) UTILIZATION OF PRIOR RESEARCH AND AS-
5 SESSMENTS.—In developing the National Assess-
6 ments, the Administrator of NOAA shall, to the ex-
7 tent practicable, take into consideration research
8 and information contained in—

9 (A) the reports of the Intergovernmental
10 Panel on Climate Change;

11 (B) reports or research published by the
12 Global Change Research Program and the Cli-
13 mate Change Science Program; and

14 (C) any existing climate change adaptation
15 strategy, report, or assessment prepared by or
16 for a Federal, State, local, or tribal government
17 entity.

18 **SEC. 465. CLIMATE CHANGE ADAPTATION SERVICES.**

19 (a) NATIONAL CLIMATE SERVICE.—The Secretary of
20 Commerce, acting through the Administrator of NOAA,
21 shall establish within NOAA a National Climate Service
22 to serve as a clearinghouse to provide State, local, and
23 tribal government decisionmakers with access to regionally
24 and nationally relevant information, data, forecasts, and

1 services relating to climate change impacts and adaptation
2 to such impacts. The National Climate Service shall—

3 (1) develop and provide access to policy-relevant
4 climate information products, databases, decision
5 tools, and services for Federal, State, local, and trib-
6 al government decisionmakers and policymakers;

7 (2) provide technical assistance to Federal,
8 State, local, and tribal government efforts to assess
9 vulnerability to climate change impacts and develop
10 appropriate strategies and plans to reduce such vul-
11 nerability;

12 (3) facilitate communication and coordination
13 among Federal, State, local, and tribal stakeholders
14 with regard to climate change information and adap-
15 tation strategies; and

16 (4) undertake education and outreach initiatives
17 related to climate change impacts, vulnerabilities,
18 and the application of climate information in deci-
19 sionmaking.

20 (b) REGIONAL AND NATIONAL WORKSHOPS.—To fa-
21 cilitate information exchange, outreach, and coordination
22 of efforts on assessment of and adaptation to climate
23 change impacts, the Administrator of NOAA shall, during
24 each 4-year cycle during which a National Assessment is
25 being prepared (or, in the case of the first National As-

1 sessment, the period between the date of enactment of this
2 Act and January 1, 2012), convene—

3 (1) at least one stakeholder workshop in each
4 region identified by the National Assessment, to
5 which appropriate governmental and nongovern-
6 mental stakeholders from the region are invited; and

7 (2) at a date after all of the regional workshops
8 described in paragraph (1) have been completed, at
9 least one national-level workshop to which appro-
10 priate governmental and nongovernmental stake-
11 holders from all of the regions identified by the Na-
12 tional Assessments are invited.

13 (c) **OBSERVATION AND MONITORING.**—The Adminis-
14 trator of NOAA is authorized to deploy such observation
15 and monitoring systems, including remote sensing sys-
16 tems, as may be necessary to support the National Climate
17 Change Adaptation Program established under this sub-
18 part.

19 **SEC. 466. FEDERAL AGENCY CLIMATE CHANGE ADAPTA-**
20 **TION PLANS.**

21 (a) **PUBLICATION AND REVIEW.**—

22 (1) **PRESIDENTIAL REVIEW.**—Within 1 year
23 after the date of publication of each National As-
24 sessment, each Federal agency with representation
25 on the Council shall—

1 (A) complete an agency climate change ad-
2 aptation plan detailing the agency's current and
3 projected efforts to address the potential im-
4 pacts of climate change on matters within the
5 agency's jurisdiction; and

6 (B) submit such agency climate change ad-
7 aptation plan to the President for review.

8 (2) SUBMISSION TO CONGRESS.—Within 18
9 months after the date of publication of each Na-
10 tional Assessment, each Federal agency with rep-
11 resentation on the Council shall submit the agency
12 climate change adaptation plan described in para-
13 graph (1), as finalized following Presidential review,
14 to the House Committee on Energy and Commerce,
15 the Senate Committee on Environment and Public
16 Works, and the committees in the House of Rep-
17 resentatives and the Senate with principal jurisdic-
18 tion over the relevant agency.

19 (b) REQUIREMENTS.—Each agency climate change
20 adaptation plan shall include—

21 (1) a review of the current impacts of climate
22 change on matters within the agency's jurisdiction;

23 (2) a review of anticipated future (short-term,
24 medium-term, and long-term) impacts of climate
25 change on matters within the agency's jurisdiction,

1 including an assessment of the probability of such
2 impacts that follows the guidelines on treatment of
3 uncertainty established for the National Assess-
4 ments;

5 (3) a description of priorities, within the scope
6 of the agency's jurisdiction, for building the adaptive
7 capacity of the United States and its territories;

8 (4) a review of the agency's current efforts to
9 address climate change impacts on matters within
10 its jurisdiction, including a description of how cur-
11 rent and future impacts are being integrated into
12 agency decisionmaking and a description of budg-
13 etary and human resources dedicated to adaptation
14 to climate change;

15 (5) a description of initiatives that will be un-
16 dertaken to address climate change impacts on mat-
17 ters within the jurisdiction of the agency, includ-
18 ing—

19 (A) the strategic objectives of such initia-
20 tives;

21 (B) the resources that will be dedicated to
22 such initiatives;

23 (C) timelines for implementation; and

24 (D) benchmarks and methods for assessing
25 effectiveness;

1 (6) a description of current and proposed mech-
2 anisms to enhance cooperation on climate change ad-
3 aptation efforts with other Federal agencies and
4 with State, local, and tribal governments and non-
5 governmental stakeholders;

6 (7) an assessment of the agency's success in
7 meeting the objectives outlined in its most recent
8 agency climate change adaptation plan, except that
9 this paragraph shall not apply to the first agency cli-
10 mate change adaptation plan; and

11 (8) an estimate of the budgetary and human re-
12 sources needed to address climate change impacts on
13 matters within the jurisdiction of the agency.

14 **SEC. 467. FEDERAL FUNDING FOR STATE, LOCAL, AND**
15 **TRIBAL ADAPTATION PROJECTS.**

16 (a) NATIONAL CLIMATE CHANGE ADAPTATION
17 FUND.—

18 (1) ESTABLISHMENT.—There is established in
19 the Treasury of the United States a National Cli-
20 mate Change Adaptation Fund.

21 (2) AUTHORIZATION OF APPROPRIATIONS.—
22 There are authorized to be appropriated to the Na-
23 tional Climate Change Adaptation Fund such sums
24 as may be necessary.

1 (b) ESTABLISHMENT OF PROGRAM.—Not later than
2 January 1, 2013, the President shall—

3 (1) directly, or through such Federal agency or
4 agencies as the President may designate, promulgate
5 regulations establishing an integrated program to
6 use funds in the National Climate Change Adapta-
7 tion Fund to provide financial assistance to State,
8 local, and tribal governments, individually or jointly,
9 for implementation of projects to reduce vulner-
10 ability to climate change impacts; and

11 (2) submit such regulations to the House Com-
12 mittee on Energy and Commerce, the Senate Com-
13 mittee on Environment and Public Works, and other
14 committees of relevant jurisdiction in the House of
15 Representatives and the Senate.

16 (c) CONSULTATION.—In promulgating the regula-
17 tions under subsection (b), the President, or such Federal
18 agency or agencies as the President may designate, shall—

19 (1) consult with the Administrator of NOAA
20 and the Council; and

21 (2) take into consideration the findings and rec-
22 ommendations of the most recent National Assess-
23 ment and any relevant agency climate change adap-
24 tation plans developed pursuant to section 466.

1 (d) REQUIREMENTS.—The regulations promulgated
2 under subsection (a) shall—

3 (1) identify the Federal agency or agencies to
4 be charged with administering each element of the
5 program, and any relevant information relating to
6 organization, governance, and respective responsibil-
7 ities under the program;

8 (2) identify priorities and objectives for building
9 State, local, and tribal governments' capacity to
10 adapt to climate change impacts through financial
11 support for State, local, and tribal projects;

12 (3) identify mechanisms, including grants or
13 loans, through which funds within the National Cli-
14 mate Change Adaptation Fund will be used to pro-
15 vide financial support for projects implemented by
16 State, local, or tribal governments;

17 (4) identify categories of projects eligible for
18 funding under the program, consistent with the re-
19 gional and national adaptation priorities identified in
20 the National Assessment;

21 (5) describe procedures for submission, evalua-
22 tion, and approval of project proposals;

23 (6) establish selection criteria for evaluating cli-
24 mate change adaptation project proposals submitted,
25 individually or jointly, by State, local, and tribal gov-

1 ernments, including consideration of environmental
2 impacts and cost-effectiveness in reducing vulner-
3 ability to climate change impacts;

4 (7) establish criteria for allocating funding
5 among different regions, States, localities, and In-
6 dian tribes, and among different project categories;

7 (8) establish criteria and mechanisms for re-
8 viewing project performance and for enforcing any
9 restrictions imposed as a condition of supporting an
10 approved project; and

11 (9) provide such other information regarding
12 implementation of the proposed program as the
13 President or the promulgating agency or agencies
14 consider appropriate.

15 (e) PROGRAM IMPLEMENTATION.—If, after the 1-
16 year period beginning on the date of submission of the
17 regulations under subsection (b), Congress has not en-
18 acted a statute codifying the program established by the
19 regulations or an alternative to such program, the agency
20 or agencies identified in the regulations pursuant to sub-
21 section (d)(1) shall implement the regulations.

22 (f) PERIODIC REVISIONS.—

23 (1) SUBMISSION OF REVISED REGULATIONS.—

24 If a program has been implemented pursuant to sub-
25 section (e), the President shall, not later than Janu-

1 ary 1 of the calendar year following the publication
2 of each subsequent National Assessment, promulgate
3 and submit to Congress revised regulations that—

4 (A) meet the requirements of subsection
5 (d); and

6 (B) reflect any relevant information or rec-
7 ommendations included in the most recent Na-
8 tional Assessment and relevant agency climate
9 change adaptation plans.

10 (2) IMPLEMENTATION OF REVISED REGULA-
11 TIONS.—If, after the 1-year period beginning on the
12 date of submission of any revised regulations under
13 paragraph (1), Congress has not enacted a statute
14 codifying the program established by revised regula-
15 tions or an alternative to such program, the agency
16 or agencies identified in the revised regulations
17 under subsection (d)(1) shall implement the revised
18 regulations.

19 **Subpart B—Public Health and Climate Change**

20 **SEC. 471. NATIONAL POLICY ON PUBLIC HEALTH AND CLI-**
21 **MATE CHANGE.**

22 It is the policy of the Federal Government, in co-
23 operation with State, tribal, and local governments, other
24 concerned public and private organizations and citizens to
25 use all practicable means and measures—

1 (1) to assist the efforts of public health profes-
2 sionals, first responders, States, tribes, municipali-
3 ties, and local communities to incorporate measures
4 to adapt health systems to address impacts of cli-
5 mate change;

6 (2) to encourage further research, interdiscipli-
7 nary partnership, and collaboration between stake-
8 holders to understand and monitor the health im-
9 pacts of climate change, for preparedness activities,
10 and for improvement of health care infrastructure;
11 and

12 (3) to encourage each and every American to
13 learn about the impact of climate change on health.

14 **SEC. 472. NATIONAL STRATEGY.**

15 (a) **REQUIREMENT.**—The Secretary of Health and
16 Human Services shall, within two years after the date of
17 the enactment of this Act, on the basis of the best avail-
18 able science, promulgate a national strategy for mitigating
19 the impacts of climate change on public health in the
20 United States.

21 (b) **CONSULTATION AND COMMENT.**—In developing
22 the national strategy, the Secretary shall—

23 (1) consult with the Director of the Centers for
24 Disease Control and Prevention, Administrator of
25 the Environmental Protection Agency, Director of

1 the National Institutes of Health, Administrator of
2 the National Oceanic and Atmospheric Administra-
3 tion, Administrator of the National Aeronautical
4 Space Association, Administrator of the Federal
5 Emergency Management Association, Secretary of
6 Agriculture, Indian tribes, local governments, public
7 health organizations, scientists, and other interested
8 stakeholders; and

9 (2) provide opportunity for public comment.

10 **SEC. 473. AUTHORIZATION OF APPROPRIATIONS.**

11 There are authorized to be appropriated such sums
12 as are necessary to develop and implement the national
13 policy set forth in section 471 and the National Strategy
14 set forth in section 472.

15 **Subpart C—Natural Resource Adaptation**

16 **SEC. 481. PURPOSES.**

17 The purposes of this subpart are to—

18 (1) establish an integrated Federal program to
19 assist natural resources to become more resilient and
20 adapt to and withstand the impacts of climate
21 change and ocean acidification; and

22 (2) provide financial support and incentives for
23 programs, strategies, and activities that assist nat-
24 ural resources to become more resilient and adapt to

1 the impacts of climate change and ocean acidifica-
2 tion.

3 **SEC. 482. NATURAL RESOURCES CLIMATE CHANGE ADAP-
4 TATION POLICY.**

5 It is the policy of the Federal Government, in co-
6 operation with State and local governments, tribal organi-
7 zations, and other interested stakeholders to use all prac-
8 ticable means and measures to assist natural resources to
9 become more resilient and adapt to and withstand the im-
10 pacts of climate change and ocean acidification.

11 **SEC. 483. DEFINITIONS.**

12 In this subpart:

13 (1) **COASTAL STATE.**—The term “coastal
14 State” has the meaning given the term in section
15 304 of the Coastal Zone Management Act of 1972
16 (16 U.S.C. 1453).

17 (2) **ECOLOGICAL PROCESSES.**—The term “eco-
18 logical processes” means biological, chemical, or
19 physical interaction between the biotic and abiotic
20 components of an ecosystem and includes—

21 (A) nutrient cycling;

22 (B) pollination;

23 (C) predator-prey relationships;

24 (D) soil formation;

25 (E) gene flow;

- 1 (F) disease epizootiology;
2 (G) larval dispersal and settlement;
3 (H) hydrological cycling;
4 (I) decomposition; and
5 (J) disturbance regimes such as fire and
6 flooding.

7 (3) NATURAL RESOURCES.—The term “natural
8 resources” means the terrestrial, freshwater, estua-
9 rine, and marine fish, wildlife, plants, land, water,
10 habitats, and ecosystems of the United States.

11 (4) TRIBAL ORGANIZATION.—The term “tribal
12 organization” has the meaning given the term in
13 section 4 of the Indian Self-Determination and Edu-
14 cation Assistance Act (25 U.S.C. 450b).

15 **SEC. 484. COUNCIL ON ENVIRONMENTAL QUALITY.**

16 The Chair of the Council on Environmental Quality
17 shall—

18 (1) advise the President on implementation and
19 development of—

20 (A) a Natural Resources Climate Change
21 Adaptation Strategy required under section
22 486; and

23 (B) Federal natural resource agency adap-
24 tation plans required under section 488;

1 (2) serve as the Chair of the Natural Resources
2 Climate Change Adaptation Panel established under
3 section 485; and

4 (3) coordinate Federal agency strategies, plans,
5 programs, and activities related to assisting natural
6 resources to become more resilient and adapt to and
7 withstand the impacts of climate change and ocean
8 acidification.

9 **SEC. 485. NATURAL RESOURCES CLIMATE CHANGE ADAP-**
10 **TATION PANEL.**

11 (a) ESTABLISHMENT.—Not later than 90 days after
12 the date of the enactment of this Act, the President shall
13 establish a Natural Resources Climate Change Adaptation
14 Panel, consisting of—

15 (1) the head of the respective Federal agency or
16 department of—

17 (A) the Department of Commerce, acting
18 through the Administrator of NOAA;

19 (B) the Department of the Interior;

20 (C) the Environmental Protection Agency;

21 (D) the Department of Agriculture; and

22 (E) the Army Corps of Engineers; and

23 (2) the Chair of the Council on Environmental
24 Quality; and

1 (1) base the strategy on the best available
2 science, as identified by the Climate Change Adapta-
3 tion Science and Information Program established
4 under section 487;

5 (2) develop the strategy in cooperation with
6 States, United States territories, and Indian tribes;

7 (3) coordinate with other Federal agencies as
8 appropriate;

9 (4) consult with local governments, conservation
10 organizations, scientists, and other interested stake-
11 holders;

12 (5) provide public notice and opportunity for
13 comment; and

14 (6) review and revise the Strategy every 5 years
15 to incorporate new information regarding the im-
16 pacts of climate change and ocean acidification on
17 natural resources and advances in the development
18 of strategies for becoming more resilient and adapt-
19 ing to those impacts.

20 (c) CONTENTS.—The National Resources Adaptation
21 Strategy shall include—

22 (1) an assessment, at an appropriate geo-
23 graphic scale, of the nature and probability of pre-
24 dicted short-term, medium-term, and long-term im-
25 pacts of climate change and ocean acidification on

1 natural resources, including cumulative and syner-
2 gistic effects;

3 (2) a description of current research, observa-
4 tion, and monitoring activities related to the impacts
5 of climate change and ocean acidification on natural
6 resources, as well as identification of research and
7 data needs and priorities;

8 (3) identification of natural resources that are
9 likely to be adversely affected by climate change and
10 ocean acidification and have a need for conservation;

11 (4) specific protocols for integrating climate
12 change and ocean acidification adaptation strategies
13 and activities into the conservation and management
14 of natural resources by Federal agencies to ensure
15 consistency across agency jurisdictions and re-
16 sources;

17 (5) specific actions that Federal agencies should
18 take to assist natural resources in adapting to and
19 withstanding the impacts of climate change and
20 ocean acidification, including a timeline to imple-
21 ment those actions;

22 (6) specific mechanisms for ensuring commu-
23 nication and coordination among Federal agencies,
24 and between Federal agencies and State natural re-

1 source agencies, United States territories, and In-
2 dian tribes; and

3 (7) a process for guiding the development of de-
4 tailed agency and department specific adaptation
5 plans required under section 488 to address the im-
6 pacts of climate change and ocean acidification on
7 the natural resources in the jurisdiction of each
8 agency.

9 (d) IMPLEMENTATION.—Consistent with their au-
10 thorities under other laws, each Federal agency with rep-
11 resentation on the National Resources Climate Change
12 Adaptation Panel shall integrate the elements of the strat-
13 egy into agency plans, programs, and activities related to
14 the conservation and management of natural resources.

15 **SEC. 487. NATURAL RESOURCES CLIMATE CHANGE ADAP-**
16 **TATION SCIENCE AND INFORMATION PRO-**
17 **GRAM.**

18 (a) ESTABLISHMENT.—Not later than 90 days after
19 the date of the enactment of this Act, the Secretary of
20 Commerce, acting through the Administrator of the
21 NOAA, and the Secretary of the Interior, acting through
22 the Director of the United States Geological Survey, shall
23 establish a Natural Resources Climate Change Adaptation
24 Science and Information Program. The program shall be
25 implemented through the National Global Warming and

1 Wildlife Science Center within the United States Geologi-
2 cal Survey and through counterpart programs established
3 by the Secretary of Commerce within the National Oceanic
4 and Atmospheric Administration.

5 (b) FUNCTIONS.—The National Resources Climate
6 Change Adaptation Science and Information Program
7 shall—

8 (1) provide technical assistance to Federal
9 agencies, State and local governments, and tribal or-
10 ganizations in their efforts to assess the impacts of
11 climate change and ocean acidification on natural re-
12 sources;

13 (2) conduct and sponsor research and provide
14 Federal agencies, State and local governments, and
15 tribal organizations with research products, decision
16 and monitoring tools and information, to develop
17 strategies for assisting natural resources to become
18 more resilient and adapt to and withstand the im-
19 pacts of climate change and ocean acidification; and

20 (3) assist Federal agencies in the development
21 of detailed agency and department specific adapta-
22 tion plans required under section 488.

23 (c) SURVEY.—Not later than 180 days after the date
24 of enactment of this Act and every 5 years thereafter, the
25 Secretary of Commerce and the Secretary of the Interior

1 shall undertake a climate change and ocean acidification
2 impact survey that—

3 (1) identifies natural resources considered likely
4 to be adversely affected by climate change and ocean
5 acidification;

6 (2) includes baseline monitoring and ongoing
7 trend analysis;

8 (3) identifies and prioritizes needed monitoring
9 and research that is of greatest relevance to the on-
10 going needs of natural resource managers to address
11 the impacts of climate change and ocean acidifica-
12 tion; and

13 (4) identifies decision tools necessary to develop
14 strategies for assisting natural resources to become
15 more resilient and adapt to and withstand the im-
16 pacts of climate change and ocean acidification.

17 (d) SCIENCE ADVISORY BOARD.—

18 (1) ESTABLISHMENT.—Not later than 180 days
19 after the date of enactment of this Act, the Sec-
20 retary of Commerce and the Secretary of the Inte-
21 rior shall establish and appoint the members of a
22 Science Advisory Board, to be comprised of not
23 fewer than 10 and not more than 20 members—

24 (A) who have expertise in fish, wildlife,
25 plant, aquatic, and coastal and marine biology,

1 ecology, climate change, ocean acidification, and
2 other relevant scientific disciplines;

3 (B) who represent a balanced membership
4 among Federal, State, and local representatives,
5 universities, and conservation organizations;
6 and

7 (C) at least $\frac{1}{2}$ of whom are recommended
8 by the President of the National Academy of
9 Sciences.

10 (2) DUTIES.—The Science Advisory Board
11 shall—

12 (A) advise the Natural Resources Climate
13 Change Adaptation Science and Information
14 Program established under subsection (a) on
15 the state-of-the-science regarding the impacts of
16 climate change and ocean acidification on nat-
17 ural resources and scientific strategies and
18 mechanisms for adaptation; and

19 (B) identify and recommend priorities for
20 ongoing research needs on such issues.

21 (3) COLLABORATION.—The Science Advisory
22 Board shall collaborate with other climate change
23 and ecosystem research entities in other Federal
24 agencies and departments.

1 (4) AVAILABILITY TO THE PUBLIC.—The advice
2 and recommendations of the Science Advisory Board
3 shall be made available to the public.

4 **SEC. 488. FEDERAL NATURAL RESOURCE AGENCY ADAPTA-**
5 **TION PLANS.**

6 (a) DEVELOPMENT.—Not later than 1 year after the
7 date of the development of a Natural Resources Climate
8 Change Adaptation Strategy under section 486, each Fed-
9 eral agency with representation on the Natural Resources
10 Climate Change Adaptation Panel established under sec-
11 tion 485 shall—

12 (1) complete an agency adaptation plan, con-
13 sistent with the Natural Resources Climate Change
14 Adaptation Strategy under section 486 and the Nat-
15 ural Resources Climate Change Adaptation Policy
16 under section 482, detailing the agency's current
17 and projected efforts to address the potential im-
18 pacts of climate change and ocean acidification on
19 natural resources within the agency's jurisdiction
20 and necessary additional actions, including a
21 timeline for implementation of those actions;

22 (2) provide opportunities for public review and
23 comment on the agency adaptation plan; and

24 (3) submit such plan to the President for ap-
25 proval.

1 (b) SUBMISSION TO CONGRESS.—Not later than 30
2 days after the date of approval by the President, each Fed-
3 eral agency with representation on the Natural Resources
4 Climate Change Adaptation Panel under section 485 shall
5 submit to the Committee on Energy and Commerce of the
6 House of Representatives, the Committee on Environment
7 and Public Works of the Senate, and the committees of
8 the House of Representatives and the Senate with prin-
9 cipal jurisdiction over the relevant agency an agency adap-
10 tation plan described in subsection (a) along with a sched-
11 ule for the implementation of such plan.

12 (c) REQUIREMENTS.—Each agency adaptation plan
13 shall include prioritized goals and measures and a sched-
14 ule for implementation—

15 (1) to assess the current and future impacts of
16 climate change and ocean acidification on natural re-
17 sources within the agency’s jurisdiction, including
18 cumulative and synergistic effects, and to identify
19 and monitor those natural resources that are likely
20 to be adversely affected and that have need for con-
21 servation;

22 (2) to assess the agency’s efforts to address the
23 current and future impacts of climate change and
24 ocean acidification on natural resources within the
25 scope of the agency’s jurisdiction and to develop and

1 implement strategies to assist such resources in be-
2 coming more resilient and adapting to and with-
3 standing those impacts, including—

4 (A) the protection, maintenance, and res-
5 toration of habitats and ecosystems;

6 (B) the establishment of habitat linkages
7 and corridors;

8 (C) the restoration and conservation of ec-
9 ological processes;

10 (D) the protection of a broad diversity of
11 native species across their range; and

12 (E) the protection of wildlife health, recog-
13 nizing that climate can alter the distribution
14 and ecology of parasites, pathogens, and vec-
15 tors.

16 (3) to integrate such adaptation strategies into
17 agency plans, programs, activities, and actions re-
18 lated to the conservation and management of nat-
19 ural resources and to establish new plans, programs,
20 activities, and actions as necessary;

21 (4) including a description of current and pro-
22 posed mechanisms to enhance cooperation and co-
23 ordination on natural resources adaptation efforts
24 with other Federal agencies, State and local govern-

1 ments, and tribal organizations and nongovern-
2 mental stakeholders;

3 (5) to develop specific written guidance to re-
4 source managers to—

5 (A) explain how managers are expected to
6 address the effects of climate change and ocean
7 acidification;

8 (B) identify how managers are to obtain
9 any site-specific information that may be nec-
10 essary; and

11 (C) to reflect best practices shared among
12 relevant agencies, while also recognizing the
13 unique missions, objectives, and responsibilities
14 of each agency; and

15 (6) to identify and assess data and information
16 gaps necessary to develop natural resource adapta-
17 tion plans and strategies.

18 (d) IMPLEMENTATION.—Upon approval by the Presi-
19 dent, each Federal agency shall implement their agency
20 plan through existing and new policies, programs, activi-
21 ties, and actions to the extent not inconsistent with exist-
22 ing authority. To the maximum extent practicable and
23 consistent with applicable law, implementation shall be
24 conducted in a way that protects, maintains, and restores
25 the resilience of natural resources under the jurisdiction

1 of other agencies and their ability to adapt and withstand
2 the impacts of climate change and ocean acidification.

3 (e) REVISION AND REVIEW.—Not less than every 5
4 years, each Federal agency adaptation plan shall be re-
5 viewed and revised to incorporate the best available science
6 and other information regarding the impacts of climate
7 change and ocean acidification on natural resources.

8 **SEC. 489. STATE NATURAL RESOURCES ADAPTATION**
9 **PLANS.**

10 (a) REQUIREMENT.—In order to be eligible to receive
11 funds under section 490, not later than 1 year after the
12 development of a Natural Resources Climate Change Ad-
13 aptation Strategy required under section 486 each State
14 shall prepare a State natural resources adaptation plan
15 detailing the State's current and projected efforts to ad-
16 dress the potential impacts of climate change and ocean
17 acidification on natural resources and coastal areas within
18 the State's jurisdiction.

19 (b) REVIEW OR APPROVAL.—Each State plan shall
20 be reviewed and approved by the Secretary of the Interior
21 and, as applicable, the Secretary of Commerce, to be con-
22 sistent with a national Natural Resources Climate Change
23 Adaptation Strategy required under section 486 and the
24 Federal natural resource agency adaptation plans under
25 section 488.

1 (1) Within 10 days after transmittal of a plan,
2 revision to a plan, or resubmittal of a plan by a
3 State, the Secretary of the Interior and the Sec-
4 retary of Commerce shall commence a review of the
5 strategy, revised plan, or revision, respectively.

6 (2) Within 180 days after transmittal of a plan,
7 or a revision to a plan, the Secretary of the Interior
8 and the Secretary of Commerce shall approve or dis-
9 approve the plan by written notice.

10 (3) Within 90 days after transmittal of a resub-
11 mitted plan, as a result of disapproval by written no-
12 tice, the Secretary of the Interior and the Secretary
13 of Commerce shall approve or disapprove the plan by
14 written notice.

15 (c) CONTENTS.—A State natural resources adapta-
16 tion plan shall—

17 (1) include a strategy for addressing the im-
18 pacts of climate change and ocean acidification on
19 fish, wildlife, plants, habitats, ecosystems, wildlife
20 health, and ecological processes that—

21 (A) describes the impacts of climate
22 change and ocean acidification on the diversity
23 and health of the fish, wildlife and plant popu-
24 lations, habitats, ecosystems, and associated ec-
25 ological processes;

1 (B) establishes programs for monitoring
2 the impacts of climate change on fish, wildlife,
3 and plant populations, habitats, ecosystems,
4 and associated ecological processes;

5 (C) describes and prioritizes proposed con-
6 servation actions to assist fish, wildlife, plant
7 populations, habitats, ecosystems, and associ-
8 ated ecological processes in becoming more re-
9 siliant and adapting to those impacts;

10 (D) includes strategies, specific conserva-
11 tion actions, and a time frame for implementing
12 conservation actions for fish, wildlife, and plant
13 populations, habitats, ecosystems, and associ-
14 ated ecological processes;

15 (E) establishes methods for assessing the
16 effectiveness of conservation actions taken to
17 assist fish, wildlife, and plant populations, habi-
18 tats, ecosystems, and associated ecological proc-
19 esses in becoming more resilient and adapting
20 to the impacts of climate changes and ocean
21 acidification and for updating those actions to
22 respond appropriately to new information or
23 changing conditions;

1 (F) is incorporated into a revision of the
2 comprehensive wildlife conservation strategy of
3 a State—

4 (i) that has been submitted to the
5 United States Fish and Wildlife Service;
6 and

7 (ii) that has been approved by the
8 Service or on which a decision on approval
9 is pending; and

10 (G) is developed—

11 (i) with the participation of the State
12 fish and wildlife agency, the State coastal
13 agency, the State agency responsible for
14 administration of Land and Water Con-
15 servation Fund grants, the State Forest
16 Legacy program coordinator, and other
17 State agencies considered appropriate by
18 the Governor of such State; and

19 (ii) in coordination with the Secretary
20 of the Interior, and where applicable, the
21 Secretary of Commerce; and

22 (2) include, in the case of a coastal State, a
23 strategy for addressing the impacts of climate
24 change and ocean acidification on the coastal zone
25 that—

1 (A) identifies natural resources that are
2 likely to be impacted by climate change and
3 ocean acidification and describes those impacts;

4 (B) identifies and prioritizes continuing re-
5 search and data collection needed to address
6 those impacts including—

7 (i) acquisition of high resolution
8 coastal elevation and nearshore bathymetry
9 data;

10 (ii) historic shoreline position maps,
11 erosion rates, and inventories of shoreline
12 features and structures;

13 (iii) measures and models of relative
14 rates of sea level rise or lake level changes,
15 including effects on flooding, storm surge,
16 inundation, and coastal geological proc-
17 esses;

18 (iv) habitat loss, including projected
19 losses of coastal wetlands and potentials
20 for inland migration of natural shoreline
21 habitats;

22 (v) coastal species and ecosystem mi-
23 grations, and changes in species population
24 dynamics;

1 (vi) changes in storm frequency, in-
2 tensity, or rainfall patterns;

3 (vii) saltwater intrusion into coastal
4 rivers and aquifers;

5 (viii) changes in chemical or physical
6 characteristics of marine and estuarine
7 systems;

8 (ix) increased harmful algal blooms;
9 and

10 (x) spread of invasive species;

11 (C) identifies and prioritizes adaptation
12 strategies to assist natural resources to become
13 more resilient and to adapt to and withstand
14 and minimize the impacts of climate change
15 and ocean acidification, including—

16 (i) protection, maintenance, and res-
17 toration of ecologically important coastal
18 lands, coastal and ocean ecosystems, and
19 species biodiversity and the establishment
20 of habitat buffer zones, migration cor-
21 ridors, and climate refugia; and

22 (ii) improved planning, siting policies,
23 and hazard mitigation strategies;

24 (D) establishes programs for the long-term
25 monitoring of the impacts of climate change

1 and ocean acidification on the coastal zone and
2 to assess and adjust, when necessary, such
3 adaptive management strategies;

4 (E) establishes performance measures for
5 assessing the effectiveness of adaptation strate-
6 gies intended to improve resilience and the abil-
7 ity of natural resources in the coastal zone to
8 adapt to and withstand the impacts of climate
9 change and ocean acidification and of adapta-
10 tion strategies intended to minimize those im-
11 pacts on the coastal zone and to update those
12 strategies to respond to new information or
13 changing conditions; and

14 (F) is developed with the participation of
15 the State coastal agency and other appropriate
16 State agencies and in coordination with the
17 Secretary of Commerce and other appropriate
18 Federal agencies.

19 (d) PUBLIC INPUT.—States shall provide for solicita-
20 tion and consideration of public and independent scientific
21 input in the development of their plans.

22 (e) COORDINATION WITH OTHER PLANS.—The State
23 plan shall take into consideration research and informa-
24 tion contained in, and coordinate with and integrate the

1 goals and measures identified in, as appropriate, other
2 natural resources conservation strategies, including—

3 (1) the national fish habitat action plan;

4 (2) plans under the North American Wetlands
5 Conservation Act (16 U.S.C. 4401 et seq.);

6 (3) the Federal, State, and local partnership
7 known as “Partners in Flight”;

8 (4) federally approved coastal zone management
9 plans under the Coastal Zone Management Act of
10 1972 (16 U.S.C. 1451 et seq.);

11 (5) federally approved regional fishery manage-
12 ment plants and habitat conservation activities
13 under the Magnuson-Stevens Fishery Conservation
14 and Management Act (16 U.S.C. 1801 et seq.);

15 (6) the national coral reef action plan;

16 (7) recovery plans for threatened species and
17 endangered species under section 4(f) of the Endan-
18 gered Species Act of 1973 (16 U.S.C. 1533(f));

19 (8) habitat conservation plans under section 10
20 of that Act (16 U.S.C. 1539);

21 (9) other Federal and State plans for imperiled
22 species;

23 (10) State hazard mitigation plans; and

24 (11) other State-based strategies that com-
25 prehensively implement adaptation activities to re-

1 mediate the effects of climate change and ocean
2 acidification on fish, wildlife, plants, and other nat-
3 ural resources.

4 (f) UPDATING.—Each State plan shall be updated
5 not less than every 5 years.

6 (g) FUNDING.—

7 (1) IN GENERAL.—Funds made available to
8 States under section 490 shall be used only for ac-
9 tivities that are consistent with a State natural re-
10 sources adaptation plan that has been approved by
11 the Secretaries of Interior and Commerce.

12 (2) INITIAL.—Until the earlier of the date that
13 is 3 years after the date of the enactment of this Act
14 or the date on which a State receives approval for
15 the State strategy, a State shall be eligible to receive
16 funding under section 490 for adaptation activities
17 that are—

18 (A) consistent with the comprehensive
19 wildlife strategy of the State and, where appro-
20 priate, other natural resources conservation
21 strategies; and

22 (B) in accordance with a workplan devel-
23 oped in coordination with—

24 (i) the Secretary of the Interior; and

1 (ii) the Secretary of Commerce, for
2 any coastal State subject to the condition
3 that coordination with the Secretary of
4 Commerce shall be required only for those
5 portions of the strategy relating to activi-
6 ties affecting the coastal zone.

7 (3) PENDING APPROVAL.—During the period
8 for which approval by the applicable Secretary of a
9 State plan is pending, the State may continue receiv-
10 ing funds under section 490 pursuant to the
11 workplan described in paragraph (2)(B).

12 **SEC. 490. NATURAL RESOURCES CLIMATE CHANGE ADAP-**
13 **TATION FUND.**

14 (a) ESTABLISHMENT OF FUND.—There is estab-
15 lished in the Treasury of the United States a Natural Re-
16 sources Climate Change Adaptation Fund.

17 (b) AUTHORIZATION AND AVAILABILITY OF
18 FUNDS.—

19 (1) AUTHORIZATION.—There are authorized to
20 be appropriated to the National Resources Climate
21 Change Adaptation Fund such sums as may be nec-
22 essary to carry out this subpart.

23 (2) AVAILABILITY.—Any amounts deposited
24 into the Natural Resources Climate Change Adapta-

1 tion Fund shall be available without further appro-
2 priation or fiscal year limitation.

3 (c) DISTRIBUTIONS.—

4 (1) STATES.—Of the amounts made available
5 each fiscal year to carry out this subpart, 40 percent
6 shall be available to States to carry out adaptation
7 activities in accordance with a State natural re-
8 sources adaptation plans approved under section
9 489. Specifically—

10 (A) 32.5 percent shall be available to State
11 wildlife agencies through the Wildlife Conserva-
12 tion and Restoration Account established under
13 section 3(a)(2) of the Pittman-Robertson Wild-
14 life Restoration Act (16 U.S.C. 669b(a)(2));
15 and

16 (B) 7.5 percent shall be available to State
17 coastal agencies pursuant to the formula estab-
18 lished by the Secretary of Commerce under sec-
19 tion 306(c) of the Coastal Management Act of
20 1972 (16 U.S.C. 1455(c)).

21 (2) DEPARTMENT OF THE INTERIOR.—Of the
22 amounts made available each fiscal year to carry out
23 this subpart—

1 (A) 17 percent shall be available to the
2 Secretary of the Interior for use in funding ad-
3 aptation activities carried out—

4 (i) under endangered species, migra-
5 tory bird, and other fish and wildlife pro-
6 grams administered by the United States
7 Fish and Wildlife Service;

8 (ii) on wildlife refuges and other pub-
9 lic land under the jurisdiction of the
10 United States Fish and Wildlife Service,
11 the Bureau of Land Management, or the
12 National Park Service; or

13 (iii) within Federal water managed by
14 the Bureau of Reclamation;

15 (B) 5 percent shall be available to the Sec-
16 retary of the Interior for adaptation activities
17 carried out under cooperative grant programs,
18 including—

19 (i) the cooperative endangered species
20 conservation fund authorized under section
21 6 of the Endangered Species Act of 1973
22 (16 U.S.C. 1535);

23 (ii) programs under the North Amer-
24 ican Wetlands Conservation Act (16
25 U.S.C. 4401 et seq.);

- 1 (iii) the multinational species con-
2 servation fund established under the head-
3 ing “MULTINATIONAL SPECIES CON-
4 SERVATION FUND” of title I of the De-
5 partment of the Interior and Related
6 Agencies Appropriations Act, 1999 (16
7 U.S.C. 4946);
- 8 (iv) the Neotropical Migratory Bird
9 Conservation Fund established by section
10 9(a) of the Neotropical Migratory Bird
11 Conservation Act (16 U.S.C. 6108(a));
- 12 (v) the Coastal Program of the United
13 States Fish and Wildlife Service;
- 14 (vi) the National Fish Habitat Action
15 Plan;
- 16 (vii) the Partners for Fish and Wild-
17 life Program;
- 18 (viii) the Landowner Incentive Pro-
19 gram;
- 20 (ix) the Wildlife Without Borders Pro-
21 gram of the United States Fish and Wild-
22 life Service; and
- 23 (x) the Park Flight Migratory Bird
24 Program of the National Park Service; and

1 (C) 1 percent shall be available to the Sec-
2 retary of the Interior to provide financial assist-
3 ance to Indian tribes to carry out adaptation
4 activities through the Tribal Wildlife Grants
5 Program of the United States Fish and Wildlife
6 Service.

7 (3) LAND AND WATER CONSERVATION FUND.—

8 (A) DEPOSITS.—

9 (i) IN GENERAL.—Of the amounts
10 made available for each fiscal year to carry
11 out this subpart 12 percent shall be depos-
12 ited into the Land and Water Conservation
13 Fund established under section 2 of the
14 Land and Water Conservation Fund Act of
15 1965 (16 U.S.C. 4601–5).

16 (ii) USE OF DEPOSITS.—Deposits into
17 the Land and Water Conservation Fund
18 under this paragraph shall—

19 (I) be supplemental to authoriza-
20 tions provided under section 3 of the
21 Land and Water Conservation Fund
22 Act of 1965 (16 U.S.C. 4601–6) which
23 shall remain available for nonadapta-
24 tion needs; and

1 (II) be available for expenditure
2 to carry out this subpart without fur-
3 ther appropriation or fiscal year limi-
4 tation.

5 (B) ALLOCATIONS.—Of the amounts de-
6 posited under this paragraph into the Land and
7 Water Conservation Fund—

8 (i) 1/6 shall be available to the Sec-
9 retary of the Interior and made available
10 on a competitive basis to carry out adapta-
11 tion activities through the acquisition of
12 land and interests in land under section 6
13 of the Land and Water Conservation Fund
14 Act of 1965 (16 U.S.C. 4601–8)—

15 (I) to States in accordance with
16 their natural resources adaptation
17 plans, and to Indian tribes;

18 (II) notwithstanding section 5 of
19 that Act (16 U.S.C. 4601–7); and

20 (III) in addition to any funds
21 provided pursuant to annual appro-
22 priations Acts, the Energy Policy Act
23 of 2005 (42 U.S.C. 15801 et seq.), or
24 any other authorization for non-
25 adaptation needs;

1 (ii) 1/3 shall be available to the Sec-
2 retary of the Interior to carry out adapta-
3 tion activities through the acquisition of
4 lands and interests in land under section 7
5 of the Land and Water Conservation Fund
6 Act of 1965 (16 U.S.C. 4601–9);

7 (iii) 1/6 shall be available to the Sec-
8 retary of Agriculture and made available to
9 the States to carry out adaptation activi-
10 ties through the acquisition of land and in-
11 terests in land under section 7 of the For-
12 est Legacy Program under the Cooperative
13 Forestry Assistance Act of 1978 (16
14 U.S.C. 2103c); and

15 (iv) 1/3 shall be available to the Sec-
16 retary of Agriculture to carry out adapta-
17 tion activities through the acquisition of
18 land and interests in land under section 7
19 of the Land and Water Conservation Fund
20 Act of 1965 (16 U.S.C. 4601–9).

21 (C) EXPENDITURE OF FUNDS.—In allo-
22 cating funds under subparagraph (B), the Sec-
23 retary of the Interior and the Secretary of Agri-
24 culture shall take into consideration factors in-
25 cluding—

1 (i) the availability of non-Federal con-
2 tributions from State, local, or private
3 sources;

4 (ii) opportunities to protect wildlife
5 corridors or otherwise to link or consoli-
6 date fragmented habitats;

7 (iii) opportunities to reduce the risk of
8 catastrophic wildfires, extreme flooding, or
9 other climate-related events that are harm-
10 ful to fish and wildlife and people; and

11 (iv) the potential for conservation of
12 species or habitat types at serious risk due
13 to climate change, ocean acidification, and
14 other stressors.

15 (4) FOREST SERVICE.—Of the amounts made
16 available each fiscal year to carry out this subpart,
17 5 percent shall be available to the Secretary of Agri-
18 culture for use in funding adaptation activities car-
19 ried out on national forests and national grasslands
20 under the jurisdiction of the Forest Service, or pur-
21 suant to the cooperative Wings Across the Americas
22 Program.

23 (5) ENVIRONMENTAL PROTECTION AGENCY.—
24 Of the amounts made available each fiscal year to
25 carry out this subpart, 5 percent shall be available

1 to the Administrator of the Environmental Protec-
2 tion Agency for use in adaptation activities restoring
3 and protecting—

4 (A) large-scale freshwater aquatic eco-
5 systems, such as the Everglades, the Great
6 Lakes, Flathead Lake, the Missouri River, the
7 Mississippi River, the Colorado River, the Sac-
8 ramento-San Joaquin Rivers, the Ohio River,
9 the Columbia-Snake River System, the Apa-
10 lachicola, Chattahoochee, and Flint River Sys-
11 tem, the Connecticut River, and the Yellowstone
12 River;

13 (B) large-scale estuarine ecosystems, such
14 as Chesapeake Bay, Long Island Sound, Puget
15 Sound, the Mississippi River Delta, the San
16 Francisco Bay Delta, Narragansett Bay, and
17 Albemarle-Pamlico Sound; and

18 (C) freshwater and estuarine ecosystems,
19 watersheds, and basins identified as priorities
20 by the Administrator, working in cooperation
21 with other Federal agencies, States, local gov-
22 ernments, scientists, and other conservation
23 partners.

24 (6) CORPS OF ENGINEERS.—Of the amounts
25 made available each fiscal year to carry out this sub-

1 part, 7.5 percent shall be available to the Secretary
2 of the Army for use by the Corps of Engineers to
3 carry out adaptation activities restoring—

4 (A) large-scale freshwater aquatic eco-
5 systems, such as the ecosystems described in
6 paragraph (5)(A);

7 (B) large-scale estuarine ecosystems, such
8 as the ecosystems described in paragraph
9 (5)(B);

10 (C) freshwater and estuarine ecosystems,
11 watersheds, and basins identified as priorities
12 by the Corps of Engineers, working in coopera-
13 tion with other Federal agencies, States, local
14 governments, scientists, and other conservation
15 partners; and

16 (D) habitats and ecosystems through the
17 implementation of estuary habitat restoration
18 projects authorized by the Estuary Restoration
19 Act of 2000 (33 U.S.C. 2901 et seq.), project
20 modifications for improvement of the environ-
21 ment, aquatic restoration and protection
22 projects authorized by section 206 of the Water
23 Resources Development Act of 1996 (33 U.S.C.
24 2330), and other appropriate programs and ac-
25 tivities.

1 (7) DEPARTMENT OF COMMERCE.—Of the
2 amounts made available each fiscal year to carry out
3 this subpart, 7.5 percent shall be available to the
4 Secretary of Commerce for use in funding adapta-
5 tion activities to protect, maintain, and restore
6 coastal, estuarine, and marine resources, habitats,
7 and ecosystems, including such activities carried out
8 under—

9 (A) the coastal and estuarine land con-
10 servation program;

11 (B) the community-based restoration pro-
12 gram;

13 (C) the Coastal Zone Management Act of
14 1972 (16 U.S.C. 1451 et seq.), that are specifi-
15 cally designed to strengthen the ability of coast-
16 al, estuarine, and marine resources, habitats,
17 and ecosystems to adapt to and withstand the
18 impacts of climate change and ocean acidifica-
19 tion;

20 (D) the Open Rivers Initiative;

21 (E) the Magnuson-Stevens Fishery Con-
22 servation and Management Act (16 U.S.C.
23 1801 et seq.);

24 (F) the Marine Mammal Protection Act of
25 1972 (16 U.S.C. 1361 et seq.);

1 (G) the Endangered Species Act of 1973
2 (16 U.S.C. 1531 et seq.);

3 (H) the Marine Protection, Research, and
4 Sanctuaries Act of 1972 (33 U.S.C. 1401 et
5 seq.); and

6 (I) the Coral Reef Conservation Act of
7 2000 (16 U.S.C. 6401 et seq.).

8 (d) COST SHARING.—Notwithstanding any other pro-
9 vision of law, a State or Indian tribe that receives a grant
10 under paragraphs (1) or (2)(C) of subsection (d) shall use
11 funds from non-Federal sources to pay 10 percent of the
12 costs of each activity carried out using amounts under the
13 grant.

14 (e) CONSISTENCY WITH FEDERAL PLANS.—Funds
15 made available under paragraph (2) through (7) of sub-
16 section (d) shall be used only for adaptation activities that
17 are consistent with the natural resources adaptation plans
18 required to be developed by each Federal agency under
19 section 488.

20 **PART 2—INTERNATIONAL CLIMATE CHANGE**
21 **ADAPTATION PROGRAM**

22 **SEC. 491. FINDINGS AND PURPOSES.**

23 (a) FINDINGS.—Congress finds that—

24 (1) global climate change is a potentially sig-
25 nificant threat multiplier for instability around the

1 world and is likely to exacerbate competition and
2 conflict over agricultural, vegetative, marine, and
3 water resources and displace people, thus increasing
4 hunger and poverty and causing increased pressure
5 on developing countries;

6 (2) the strategic, social, political, economic, cul-
7 tural, and environmental consequences of global cli-
8 mate change are likely to have disproportionate im-
9 pacts on developing countries, which have less eco-
10 nomic and financial capacity to respond to such im-
11 pacts;

12 (3) the countries most vulnerable to climate
13 change, due both to exposure to harmful impacts
14 and to their lower capacity to adapt, are developing
15 countries with very low industrial emissions that
16 have contributed less to climate change than more
17 affluent countries;

18 (4) developing countries rely, to a much greater
19 degree, on the natural and environmental systems
20 likely to be affected by climate change for suste-
21 nance and livelihoods, as well as economic growth
22 and stability;

23 (5) the consequences of global climate change,
24 including increases in poverty and destabilization of
25 economies and societies, are likely to pose a long-

1 term threat to the national security, foreign policy,
2 and economic interests of the United States;

3 (6) it is in the national security, foreign policy,
4 and economic interests of the United States to rec-
5 ognize, plan for, and mitigate the international stra-
6 tegic, social, political, cultural, environmental and
7 economic effects of a changing climate and to assist
8 developing countries to increase their resilience to
9 those effects;

10 (7) under the United Nations Framework Con-
11 vention on Climate Change and under the Bali Ac-
12 tion Plan, developed country parties, including the
13 United States, committed to provide “new and addi-
14 tional financial resources” to assist developing coun-
15 tries in meeting the costs of adaptation; and

16 (8) consistent with the United Nations Frame-
17 work Convention on Climate Change and the Bali
18 Action Plan, funding directed towards these pur-
19 poses must be predictable, sustainable, and addi-
20 tional to internationally agreed levels of overseas de-
21 velopment assistance.

22 (b) PURPOSES.—The purposes of this part are—

23 (1) to provide assistance from the United
24 States to the most vulnerable developing countries in
25 order to support the development and implementa-

1 tion of climate change adaptation programs and
2 projects that reduce the vulnerability and increase
3 the resilience of communities to climate change im-
4 pacts including impacts upon water availability, agri-
5 cultural productivity, flood risk, coastal resources,
6 timing of seasons, biodiversity, economic livelihoods,
7 health and diseases, and human migration; and

8 (2) to provide such assistance in a manner that
9 promotes and protects the national security, foreign
10 policy, environmental, and economic interests of the
11 United States where such interests may be advanced
12 by minimizing, averting, or increasing resilience to
13 climate change impacts.

14 **SEC. 492. DEFINITIONS.**

15 In this part:

16 (1) APPROPRIATE CONGRESSIONAL COMMIT-
17 TEES.—The term “appropriate congressional com-
18 mittees” means—

19 (A) the Committee on Energy and Com-
20 merce, the Committee on Foreign Affairs, and
21 any other relevant committees on national secu-
22 rity, the environment, and foreign policy of the
23 House of Representatives; and

24 (B) the Committees on Environment and
25 Public Works, Foreign Relations, and any other

1 relevant committees on national security, the
2 environment, and foreign policy of the Senate.

3 (2) MOST VULNERABLE DEVELOPING COUN-
4 TRIES.—The term “most vulnerable developing
5 countries” means, as determined by the Adminis-
6 trator of USAID, developing countries that are most
7 vulnerable to climate change impacts, and may in-
8 clude countries identified by the United Nations as
9 least developed countries, low-lying and other small
10 island developing countries, and other developing
11 countries that are at risk of substantial adverse im-
12 pacts of climate change and have limited capacity to
13 respond to such impacts, considering the approaches
14 included in any international treaties and agree-
15 ments.

16 (3) PROGRAM.—The term “Program” means
17 the International Climate Change Adaptation Pro-
18 gram established under section 493.

19 (4) USAID.—The term “USAID” means the
20 United States Agency for International Develop-
21 ment.

22 **SEC. 493. ESTABLISHMENT.**

23 The Secretary of State, working with the Adminis-
24 trator of USAID and the Administrator of the Environ-

1 mental Protection Agency, shall establish an International
2 Climate Change Adaptation Program within USAID.

3 **SEC. 494. FUNCTIONS OF PROGRAM.**

4 (a) **ACTIVITIES AND FOREIGN AID.**—

5 (1) **IN GENERAL.**—In order to achieve the pur-
6 poses under section 491, the Program may carry out
7 activities and projects and make grants to any pri-
8 vate or public group (including public international
9 organizations), association, or other entity engaged
10 in peaceful activities, to—

11 (A) provide assistance to the most vulner-
12 able developing countries for the development of
13 national or regional climate change adaptation
14 plans, associated national policies, and in the
15 planning, financing, and execution of adapta-
16 tion projects;

17 (B) support investments, capacity-building
18 activities, and other assistance, to reduce vul-
19 nerability and promote community-level resil-
20 ience related to climate change and its impacts
21 in the most vulnerable developing countries, in-
22 cluding impacts on water availability, agricul-
23 tural productivity, flood risk, coastal resources,
24 timing of seasons, biodiversity, economic liveli-
25 hoods, human migration, or other social, eco-

1 nomic, political, cultural, or environmental mat-
2 ters;

3 (C) support climate change adaptation re-
4 search in or for the most vulnerable developing
5 countries;

6 (D) encourage the protection and rehabili-
7 tation of natural systems, the enhancement and
8 diversification of agricultural, fishery, and other
9 livelihoods, and the reduction of disaster risk, in
10 order to reduce vulnerability and provide in-
11 creased resilience to climate change for local
12 communities and livelihoods in the most vulner-
13 able developing countries;

14 (E) support the deployment of technologies
15 that would help the most vulnerable developing
16 countries respond to the destabilizing impacts
17 of climate change and encourage the identifica-
18 tion and adoption of appropriate renewable and
19 efficient energy technologies that are beneficial
20 in increasing community-level resilience to the
21 impacts of global climate change in those coun-
22 tries; and

23 (F) encourage the engagement of local
24 communities through full disclosure of informa-
25 tion, consultation, and the communities' in-

1 formed participation relating to the develop-
2 ment of plans, programs and projects to in-
3 crease community-level resilience to climate
4 change impacts.

5 (2) LIMITATION.—Not more than 10 percent of
6 amounts made available to carry out this part shall
7 be spent in any single country in any year.

8 (3) PRIORITIZING ASSISTANCE.—In providing
9 assistance under this part, the Administrator of
10 USAID shall give priority to countries that are most
11 vulnerable to the adverse impacts of climate change,
12 determined by the likelihood and severity of such im-
13 pacts and the country's capacity to adapt to such
14 impacts.

15 (b) COMMUNITY ENGAGEMENT.—

16 (1) The Administrator of USAID shall ensure
17 that local communities in areas where any projects
18 or activities are planned under the Program are en-
19 gaged through full disclosure of information, public
20 participation, and consultation.

21 (2) For each country receiving assistance under
22 the Program, the Administrator of USAID shall es-
23 tablish a process for consultation with, and disclo-
24 sure of information to, local, national, and inter-

1 national stakeholders regarding any projects and ac-
2 tivities planned under the Program.

3 (3) The Administrator of USAID shall, to the
4 extent practicable, ensure that projects or activities
5 under the Program are aligned with broader devel-
6 opment, poverty alleviation, or natural resource
7 management objectives and initiatives in the recipi-
8 ent country.

9 (c) REPORTING.—

10 (1) INITIAL REPORT.—Not later than 180 days
11 after the date of enactment of this part, the Admin-
12 istrator of USAID shall submit to the President and
13 appropriate congressional committees an initial re-
14 port that—

15 (A) based on the most recent information
16 available from reliable public sources or knowl-
17 edge obtained by USAID on a reliable basis,
18 identifies the developing countries that are most
19 vulnerable to climate change impacts and in
20 which assistance may have the greatest and
21 most sustainable benefit to reducing vulner-
22 ability to climate change; and

23 (B) describes the process and methodology
24 for selecting the recipients of assistance or
25 grants under subsection (a)(1).

1 (2) ANNUAL REPORTS.—Not later than 12
2 months after the date on which the initial report is
3 submitted pursuant to paragraph (1), and annually
4 thereafter, the Administrator of the USAID shall
5 submit reports to the President and appropriate con-
6 gressional committees that—

7 (A) describe the extent to which global cli-
8 mate change, through its potential negative im-
9 pacts on sensitive populations and natural re-
10 sources in the most vulnerable developed coun-
11 tries, may threaten, cause, or exacerbate polit-
12 ical, economic, environmental, cultural, or social
13 instability or international conflict in those re-
14 gions;

15 (B) describe the ramifications of any po-
16 tentially destabilizing impacts climate change
17 may have on the national security, foreign pol-
18 icy, and economic interests of the United
19 States, including—

20 (i) the creation of refugees and inter-
21 nally displaced peoples;

22 (ii) international or internal armed
23 conflicts over water, food, land, or other
24 resources;

1 (iii) loss of agricultural and other live-
2 lihoods, cultural stability, and other causes
3 of increased poverty and economic desta-
4 bilization;

5 (iv) decline in availability of resources
6 needed for survival, including water;

7 (v) increased impact of natural disas-
8 ters (including droughts, flooding, and
9 other severe weather events);

10 (vi) increased prevalence or virulence
11 of climate-related diseases; and

12 (vii) intensified urban migration;

13 (C) describe how funds made available
14 under section 495 were spent during the pre-
15 vious calendar year to enhance the national se-
16 curity, foreign policy, and economic interests of
17 the United States and assist in avoiding the
18 economically, politically, environmentally, cul-
19 turally, and socially destabilizing impacts of cli-
20 mate change in most vulnerable developing
21 countries;

22 (D) identify and recommend the developing
23 countries that are most vulnerable to climate
24 change impacts and in which assistance may
25 have the greatest and most sustainable benefit

1 to reducing vulnerability to climate change, in-
2 cluding in the form of deploying technologies,
3 investments, capacity-building activities, and
4 other types of assistance for adaptation to cli-
5 mate change impacts and approaches to reduce
6 greenhouse gases in ways that may also provide
7 community-level resilience to climate change im-
8 pacts; and

9 (E) describe cooperation undertaken with
10 other nations and international organizations to
11 carry out this part.

12 **SEC. 495. FUNDING.**

13 (a) DISTRIBUTION OF FUNDS.—The Administrator
14 of USAID shall distribute the funds for the purposes of
15 this part.

16 (b) OVERSIGHT.—The Administrator of USAID shall
17 oversee the expenditures by the Program.

18 (c) CONDITIONAL DISTRIBUTION TO INTERNATIONAL
19 ADAPTATION FUNDS.—The Administrator of USAID
20 shall, after consulting with the Secretary of State, the Sec-
21 retary of the Treasury, and the Administrator of the Envi-
22 ronmental Protection Agency, distribute at least 40 per-
23 cent and up to 60 percent of the funds available to the
24 Program to an international fund that meets the require-
25 ments of subsection (d), if any such fund exists, and shall

1 annually certify in a report to Congress that any inter-
2 national fund receiving funds under this section meets the
3 requirements of subsection (d) or that no international
4 fund meeting the requirements of subsection (d) exists. In
5 the event that no fund meeting the requirements of sub-
6 section (e) exists, the Administrator shall distribute avail-
7 able funds directly in accordance with the requirements
8 of this part. The Administrator of USAID shall notify the
9 appropriate congressional committees not less than 15
10 days prior to an allocation or transfer of funds pursuant
11 to this subsection.

12 (d) INTERNATIONAL FUND ELIGIBILITY.—An inter-
13 national fund is eligible for funding under the Program
14 provided that it is created pursuant to the United Nations
15 Framework Convention on Climate Change, done at New
16 York on May 9, 1992, or an agreement negotiated under
17 the Convention and that the agreement—

18 (1) specifies the terms and conditions under
19 which the United States is to provide monies to the
20 fund, and under which the international fund is to
21 disburse monies to recipient countries;

22 (2) ensures that assistance from the United
23 States to the fund and the principal and income of
24 the fund are disbursed only for purposes that are

1 consistent with those described in paragraph
2 491(b)(1);

3 (3) requires a regular meeting of a governing
4 body of the international fund that includes rep-
5 resentation from most vulnerable developing coun-
6 tries and provides full public access;

7 (4) requires that local communities and indige-
8 nous peoples in areas where any activities or pro-
9 grams are planned are engaged through full disclo-
10 sure of information, public participation, and con-
11 sultation;

12 (5) spends not more than 10 percent of the
13 amounts available to the fund in any single country
14 in any year; and

15 (6) requires the international fund to prepare
16 and make public an annual report that—

17 (A) identifies and recommends the devel-
18 oping countries that are most vulnerable to cli-
19 mate change impacts and in which assistance
20 can have the greatest and most sustainable ben-
21 efit to reducing vulnerability to climate change;

22 (B) describes the process and methodology
23 for selecting the recipients of assistance or
24 grants from the fund;

1 (C) describes specific programs and
2 projects funded by the international fund and
3 the extent to which the assistance is addressing
4 the adaptation needs of the most vulnerable de-
5 veloping countries;

6 (D) describes the performance goals for as-
7 sistance authorized under the fund and ex-
8 presses such goals in an objective and quantifi-
9 able form, to the extent practicable;

10 (E) describes the performance indicators to
11 be used in measuring or assessing the achieve-
12 ment of the performance goals described in sub-
13 paragraph (D);

14 (F) provides a basis for recommendations
15 for adjustments to assistance authorized under
16 this part to enhance the impact of such assist-
17 ance; and

18 (G) describes the participation of other na-
19 tions and international organizations in funding
20 and governing the international fund.

21 **SEC. 496. MONITORING AND EVALUATION OF PROGRAM.**

22 (a) IN GENERAL.—The Administrator of USAID
23 shall establish and implement a system to monitor and
24 evaluate the effectiveness and efficiency of assistance pro-
25 vided under this part in order to maximize the long-term

1 sustainable development impact of such assistance, includ-
2 ing the extent to which the assistance is meeting the pur-
3 poses of this part and addressing the adaptation needs of
4 developing countries.

5 (b) GOALS.—In carrying out subsection (a), the Ad-
6 ministrator of USAID shall—

7 (1) in consultation with national governments
8 in recipient countries, establish performance goals
9 for assistance authorized under this part and ex-
10 press such goals in an objective and quantifiable
11 form, to the extent practicable;

12 (2) establish performance indicators to be used
13 in measuring or assessing the achievement of the
14 performance goals described in paragraph (1), in-
15 cluding an evaluation of the extent to which the Pro-
16 gram provides for full disclosure of information and
17 consultation and informed participation by local
18 communities and an evaluation of the extent to
19 which local communities participated in the projects
20 and programs implemented under this part and the
21 impacts of local community participation on the
22 goals and objectives of the projects and programs;

23 (3) provide a basis for recommendations for ad-
24 justments to assistance authorized under this part to
25 enhance the impact of such assistance; and

1 (4) include in the annual report to Congress
2 and other relevant agencies required under section
3 494(c)(2), the monitoring and evaluation of pro-
4 grams subject to this section in its findings.